

[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 September 24, 2018, the U.S. Trade Representative (Trade Representative) imposed additional duties on goods of China with an annual trade value of approximately \$200 billion (the \$200 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 subsequent modification in May 2019 included a decision to establish a product exclusion process. The Trade Representative initiated the exclusion process in June 2019, and stakeholders have submitted requests for the exclusion of specific products. This notice announces the Trade Representative's determination to grant certain 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 September 24, 2018 effective date of the \$200 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 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), and 84 FR 29576 (June 24, 2019).

Effective September 24, 2018, the Trade Representative imposed additional 10 percent duties on goods of China classified in [5,745] 8-digit subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of \$200 billion. *See* 83 FR 47974. The Trade Representative's subsequent modification increased the additional duty to 25 percent and decided 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 \$200 billion action from the additional duties. *See* 84 FR 20459. The Trade Representative issued a notice setting out the process for the product exclusions, and opened a public docket. *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 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 Trade Representative would periodically announce decisions. 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>.

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 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 reflected in 10 specially prepared product descriptions, which cover 15 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 to this notice, 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 to this notice.

As stated in the June 24 notice, the exclusions will apply as of the September 24, 2018 effective date of the \$200 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 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 9903.88.13 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
“9903.88.13	Articles the product of China, as provided for in U.S. note 20(p) 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(p) to subchapter III of chapter 99 in numerical sequence:

“(p) 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) Container units of plastics, each comprising a tub and lid therefore, configured or fitted for the conveyance, packing, or dispensing of wet wipes (described in statistical reporting number 3923.10.9000)
- (2) Injection molded polypropylene plastic caps or lids each weighing not over 24 grams designed for dispensing wet wipes (described in statistical reporting number 3923.50.0000)
- (3) Kayak paddles, double ended, with shafts of aluminum and blades of fiberglass reinforced nylon (described in statistical reporting number 3926.90.3000)

- (4) High tenacity polyester yarn not over 600 decitex (described in statistical reporting number 5402.20.3010)
 - (5) Nonwovens weighing more than 25 g/m² but not more than 70 g/m² in rolls, not impregnated coated or covered (described in statistical reporting number 5603.92.0090)
 - (6) Pet cages of steel (described in statistical reporting number 7323.99.9080)
 - (7) Carts, not mechanically propelled, each with three or four wheels, of the kind used for household shopping (described in statistical reporting number 8716.80.5090)
 - (8) Truck trailer skirt brackets, other than parts of general use of Section XV (described in statistical reporting number 8716.90.5060)
 - (9) Inflatable boats, other than kayaks and canoes, with over 20 gauge polyvinyl chloride (PVC), each valued at \$500 or less and weighing not over 52 kg (described in statistical reporting number 8903.10.0060)
 - (10) Inflatable kayaks and canoes, with over 20 gauge polyvinyl chloride (PVC), each valued at \$500 or less and weighing not over 22 kg (described in statistical reporting number 8903.10.0060)"
3. by amending the last sentence of the first paragraph of U.S. note 20(e) to subchapter III of chapter 99 by inserting after the phrase "imposed by heading 9903.88.03":
- “, except products of China granted an exclusion by the U.S. Trade Representative and provided for in heading 9903.88.13 and U.S. note 20(p) to subchapter III of chapter 99”;
4. by amending the first sentence of U.S. note 20(f) to subchapter III of chapter 99 by inserting after the phrase “the following 8-digit subheadings” the following phrase:
- “, except products of China granted an exclusion by the U.S. Trade Representative and provided for in heading 9903.88.13 and U.S. note 20(p) to subchapter III of chapter 99”; and
5. by amending the Article Description of heading 9903.88.03:
- a. by deleting “”Articles the product of China,” and
 - b. by inserting in lieu thereof: “Except as provided in heading 9903.88.13, articles the product of China,.”.