

[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 August 23, 2018, the U.S. Trade Representative (Trade Representative) imposed additional duties on goods of China with an annual trade value of approximately \$16 billion (the \$16 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 September 2018, 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 August 23, 2018 effective date of the \$16 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), 83 FR 40823 (August 16, 2018), 83 FR 47236 (September 18, 2018), 83 FR 47974 (September 21, 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 August 23, 2018, the Trade Representative imposed additional 25 percent duties on goods of China classified in 279 8-digit subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of \$16 billion. *See* 83 FR 40823. 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 \$16 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 47236 (the September 18 notice).

Under the September 18 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 \$16 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 September 18 notice stated that the Trade Representative would take into account whether an exclusion would undermine the objective of the Section 301 investigation.

The September 18 notice required submission of requests for exclusion from the \$16 billion action no later than December 18, 2018, 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 September 18 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 69 specially prepared product descriptions, which cover 292 separate exclusion requests.

In accordance with the September 18 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)–(4) are conforming amendments to the HTSUS reflecting the modification made by the Annex to this notice.

As stated in the September 18 notice, the exclusions will apply as of the August 23, 2018 effective date of the \$16 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 August 23, 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 9903.88.12 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	
“9903.88.12	Articles the product of China, as provided for in U.S. note 20(o) 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(o) to subchapter III of chapter 99 in numerical sequence:

“(o) The U.S. Trade Representative determined to establish a process by which particular products classified in heading 9903.88.02 and provided for in U.S. notes 20(c) and (d) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.02. See 83 Fed. Reg. 40823 (August 16, 2018) and 83 Fed. Reg. 47236 (September 18, 2018). Pursuant to the product exclusion process, the U.S. Trade Representative has determined that the additional duties provided for in heading 9903.88.02 shall not apply to the following particular products, which are provided for in the enumerated statistical reporting numbers:

- (1) Chlorinated polyethylene elastomer, in white or pale yellow powder form, containing 28 to 44 percent by weight of chlorine (described in statistical reporting number 3901.90.1000)
- (2) Polytetrafluoroethylene ((C2F4)n), having a particle size of 5 to 500 microns and a melting point of 315 to 329 degrees Celsius (described in statistical reporting number 3904.61.0090)
- (3) Expandable plastics beads, 0.30 to 0.50 mm in diameter, consisting of copolymers of methylmethacrylate (62 to 64 percent by weight) and styrene

- (26 to 28 percent by weight) (described in statistical reporting number 3906.90.2000)
- (4) Polyol blends containing 92 percent or more by weight of polyether polyol (CAS number 9049-71-2) and 2.5% or more by weight of N,N-dimethylcyclohexamine (described in statistical reporting number 3907.20.0000)
 - (5) Hot melt flat shapes of biaxially oriented polypropylene (BOPP) film with an acrylic emulsion (described in statistical reporting number 3919.90.5060)
 - (6) Polyethylene film, 20.32 to 198.12 cm in width, and 30.5 to 2000.5 m in length, coated on one side with solvent acrylic adhesive, clear or in transparent colors, whether or not printed, in rolls (described in statistical reporting number 3919.90.5060)
 - (7) Polyvinyl chloride film, coated on one side with pressure sensitive solvent-acrylic adhesive that allows for easy removal from a flat glass or flat, rigid, clear plastics surface, 106.7 cm, 137.2 cm or 152.4 cm in width, and 30.38 m or 49.99 m in length, with regular perforations measuring 1.5 to 1.6 mm in diameter, where the perforations cover 30, 40 or 50 percent of the surface area (described in statistical reporting number 3919.90.5060)
 - (8) Printed rectangular polyethylene sheets depicting images on one side, with self-adhesive edges protected with peel-off liners on the other side, measuring 30.5 cm by 45.7 cm or 30.5 cm by 25.4 cm (described in statistical reporting number 3919.90.5060)
 - (9) Self-adhesive colored or printed polyvinyl chloride film with a peelable liner, in rolls, measuring 30.5 cm or 50.8 cm in width and 3.05 m to 6.10 m in length, of a kind used for lining shelves or drawers (described in statistical reporting number 3919.90.5060)
 - (10) Printed, nonpermeable plastic film of ethylene designed for use in packaging personal care products such as baby wipes, adult wipes and similar wet stack products (provided for in statistical reporting number 3920.10.0000)
 - (11) Polyethylene film of a kind used for wrapping perishable foods, in rolls measuring 30.5 cm in width and up to 76.2 m in length, with a starter edge tab, put up in retail packages incorporating a built-in slide cutter and grip strip for holding the film in place until subsequent use (described in statistical reporting number 3920.10.0000)
 - (12) Rectangular sheets of high-density or low-density polyethylene, 111.75 cm to 215.9 cm in width, and 152.4 cm to 304.8 cm in length, with a sticker attached to mark the center of each sheet, of a kind used in hospital or surgery center operating rooms (described in statistical reporting number 3920.10.0000)
 - (13) Spark-ignition rotary or reciprocating internal combustion piston engines to be installed in agricultural or horticultural machinery or equipment, 4,476 W or more but not more than 37.6 kW, each valued not over \$180 (described in statistical reporting number 8407.90.1020)

- (14) Gasoline or liquid propane (LP) engines each having a displacement of more than 2 liters but not more than 2.5 liters (described in statistical reporting number 8407.90.9010)
- (15) Spark-ignition internal combustion piston engines, not elsewhere specified or included, 746 W or greater but not exceeding 4,476 W, with an engine displacement of not more than 430 cc (described in statistical reporting number 8407.90.9040)
- (16) Heat guns (described in statistical reporting number 8419.89.9585)
- (17) Heated tissue preparation microscope slide flattening tables (described in statistical reporting number 8419.89.9585)
- (18) Tissue sample paraffin floatation baths (described in statistical reporting number 8419.89.9585)
- (19) Air amplifiers powered solely by an external source of compressed air, which is routed through the apparatus in such a manner as to draw in ambient air, increase its speed and direct the air through an output port, each such apparatus not exceeding 1 kg in weight (described in statistical reporting number 8424.89.9000)
- (20) Apparatus capable of generating and projecting liquid particles of a size that simulates haze, fog or snow (depending on the composition of the liquid or powdered source), whether or not incorporating laser or other lighting apparatus (described in statistical reporting number 8424.89.9000)
- (21) Apparatus capable of mechanically generating and projecting bubbles from a liquid source, each apparatus weighing more than 2.5 kg but not more than 6.5 kg (described in statistical reporting number 8424.89.9000)
- (22) Aroma-spraying sets, each of which includes a battery-powered aerosol apparatus and a glass bottle containing not more than 25 ml of essential oil solution, each set weighing not more than 300 g (described in statistical reporting number 8424.89.9000)
- (23) Collars of a size suitable for dogs or cats, fitted with a means to provide a stimulus to the animal, by means of a sprayer, whether or not combined with a static electric discharge device or sound emitter; and such collars capable of being controlled by an external transmission device, whether or not the controller is presented with the collar as a set (described in statistical reporting number 8424.89.9000)
- (24) Dispensers of hand-cleaning or hand-sanitizing solutions, whether employing a manual pump or a proximity-detecting battery-operated pump, each article weighing not more than 3 kg (described in statistical reporting number 8424.89.9000)
- (25) Oral irrigators (dental water-jet machines) (described in statistical reporting number 8424.89.9000)
- (26) Parts washers, each consisting of a steel basin having a capacity no greater than 100 liters, steel drain plug, support legs and a shelf, a recirculating centrifugal pump assembly, a power cord incorporating an electrical fusible

- link, a gooseneck spigot assembly, with a steel lid held by a “piano-type” hinge and by a lid support bracket incorporating a mechanical fusible link (described in statistical reporting number 8424.89.9000)
- (27) Rotary surface washers, consisting of a tube, at one end of which is a fitting suitable for connection to an external power washer and a handle for controlling the position of the apparatus, and at the other end of which is an assembly of one or more rotating brushes that receive the output of the external power washer (described in statistical reporting number 8424.89.9000)
 - (28) Wet- and dry-diffusion apparatus fitted for incorporation into scent-releasing machines (described in statistical reporting number 8424.89.9000)
 - (29) Walk behind rotary tillers, electric powered, individually weighing less than 14 kg (described in statistical reporting number 8432.29.0060)
 - (30) Fertilizer distributors with a capacity not exceeding 40 kg (described in statistical reporting number 8432.42.0000)
 - (31) Benchtop drill presses, each with a power rating of less than 750 watts and valued under \$1,000 each (described in statistical reporting number 8465.95.0055)
 - (32) Bearing housings each valued over \$2000 (described in statistical reporting number 8483.30.8020)
 - (33) AC motors, of 18.65W or more but not exceeding 37.5 W, each with attached actuators, crankshafts or gears (described in statistical reporting number 8501.10.6020)
 - (34) C-frame 2-pole AC electric motors, of 18.65W or more but not exceeding 37.5 W, each valued not over \$4 (described in statistical reporting number 8501.10.6020)
 - (35) Electric motors, of 18.65W or more but not exceeding 37.5 W, each valued over \$28 but not over \$35 (described in statistical reporting number 8501.10.6080)
 - (36) Amorphous silicon solar chargers with a power output of 100 W or less (described in statistical reporting number 8501.31.8010)
 - (37) Electric motors, each with an output rating not exceeding 800 W (described in statistical reporting number 8501.52.4000)
 - (38) Armature shafts for electric motors of heading 8501 (described in statistical reporting number 8503.00.9520)
 - (39) Windshield wiper motor covers and shafts (described in statistical reporting number 8503.00.9520)
 - (40) Leakage current detection and interruption (LCDI) cords (described in statistical reporting number 8536.30.8000)
 - (41) Control boards for stoves, ranges and ovens of heading 8516 (described in statistical reporting number 8537.10.3000)
 - (42) Zener diodes, each valued not over \$0.25 (described in statistical reporting number 8541.10.0050)

- (43) Position or speed sensors for motor vehicle transmission systems, each valued not over \$12 (described in statistical reporting number 8543.70.4500)
- (44) Wheel speed sensors for anti-lock motor vehicle braking systems, each valued not over \$12 (described in statistical reporting number 8543.70.4500)
- (45) Antenna amplifiers, each valued not over \$15 (described in statistical reporting number 8543.70.9960)
- (46) Antenna noise suppressors, each valued not over \$5 (described in statistical reporting number 8543.70.9960)
- (47) Apparatus using passive infrared detection sensors designed for turning lights on and off (described in statistical reporting number 8543.70.9960)
- (48) Audio controllers, each valued not over \$100 (described in statistical reporting number 8543.70.9960)
- (49) Audio mixers, each valued not over \$75 (described in statistical reporting number 8543.70.9960)
- (50) Devices incorporating sensors and monitors for identifying encoded television and radio signal information of survey participants (described in statistical reporting number 8543.70.9960)
- (51) Electrically powered cat noise control devices (described in statistical reporting number 8543.70.9960)
- (52) Electrically powered combs of a kind used on pets (described in statistical reporting number 8543.70.9960)
- (53) Electrically powered dog training, controlling, repelling or locating apparatus whether or not put up in kits, including dog collars fitted with GPS or other transmitting or receiving devices and electrical barrier transmitter devices (described in statistical reporting number 8543.70.9960)
- (54) Electrically powered insect control apparatus (described in statistical reporting number 8543.70.9960)
- (55) Electrically powered static-emitting plastic strips designed for use in training or controlling pets (described in statistical reporting number 8543.70.9960)
- (56) LED lamps for flash curing nail polish (described in statistical reporting number 8543.70.9960)
- (57) Liquid leak detectors (described in statistical reporting number 8543.70.9960)
- (58) Multiple device remote controls, other than radio remote control, each valued not over \$2 (described in statistical reporting number 8543.70.9960)
- (59) Robots, programmable, measuring not more than 40 cm high by 22 cm wide by 27 cm deep, incorporating an LCD display, camera and microphone but without "hands" (described in statistical reporting number 8543.70.9960)
- (60) Couplers, knuckles and yokes and parts thereof for vehicles of heading 8605 or 8606 (described in statistical reporting number 8607.30.1000)
- (61) Motorcycles (including mopeds), with reciprocating internal combustion piston engine of a cylinder capacity not exceeding 50 cc, valued not over \$500 each (described in statistical reporting number 8711.10.0000)

- (62) Polarizing film, of triacetate, with a pressure sensitive adhesive backing (described in statistical reporting number 9001.20.0000)
- (63) Digital clinical thermometers, valued not over \$11 each (described in statistical reporting number 9025.19.8040)
- (64) Cooking thermometers, including candy and deep-fry thermometers (described in statistical reporting number 9025.19.8080)
- (65) Infrared thermometers (described in statistical reporting number 9025.19.8080)
- (66) Combined thermometer and hygrometer devices (described in statistical reporting number 9025.80.1000)
- (67) Pulse output gas meters of a kind that can be read remotely (described in statistical reporting number 9028.10.0000)
- (68) Pulse output water meters, of cast stainless steel (described in statistical reporting number 9028.20.0000)
- (69) Fingertip pulse oximeters (described in statistical reporting number 9029.20.4080)”

3. by amending the last sentence of the first paragraph of U.S. note 20(d) to subchapter III of chapter 99 by:

- a. inserting “, except products of China granted an exclusion by the U.S. Trade Representative and provided for in heading 9903.88.12 and U.S. note 20(o) to subchapter III of chapter 99” after the phrase “heading 9903.88.02 applies to all products of China that are classified in the following 8-digit subheadings”, where it appears at the end of the sentence.

4. by amending the article description of heading 9903.88.02:

- a. by inserting “Except as provided in heading 9903.88.12,” before “Articles the product of China, as provided for in U.S. note 20(c) to this subchapter and as provided for in the subheadings enumerated in U.S. note 20(d)”.