

[Billing Code 3290-F0]

**OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

**Notice of Product Exclusions and 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.

**SUMMARY:** On August 20, 2019, at the direction of the President, the U.S. Trade Representative determined to modify the action being taken in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation by imposing additional duties of 10 percent *ad valorem* on goods of China with an annual trade value of approximately \$300 billion. The additional duties on products in List 1, which is set out in Annex A of that action, became effective on September 1, 2019. The U.S. Trade Representative initiated a product exclusion process in October 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, and make certain amendments to previously announced exclusions.

**DATES:** The product exclusions announced in this notice apply as of September 1, 2019, the effective date of List 1 of the \$300 billion action, and extend to September 1, 2020.

**FOR FURTHER INFORMATION CONTACT:** For general questions about this notice, contact Associate 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](mailto:traderemedymail@cbp.dhs.gov).

## **SUPPLEMENTARY INFORMATION:**

### **A. Background**

For background on the proceedings in this investigation, please see prior notices including: 82 FR 40213 (August 24, 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 47974 (September 21, 2018), 83 FR 49153 (September 28, 2018), 84 FR 20459 (May 9, 2019), 84 FR 43304 (August 20, 2019), 84 FR 45821 (August 30, 2019), 84 FR 57144 (October 24, 2019), 84 FR 69447 (December 18, 2019), 85 FR 3741 (January 22, 2020), 85 FR 13970 (March 10, 2020), 85 FR 15244 (March 17, 2020), 85 FR 17936 (March 31, 2020), 85 FR 28693 (May 13, 2020), 85 FR 32098 (May 28, 2020), 85 FR 35975 (June 12, 2020), 85 FR 41658 (July 10, 2020), and 85 FR 44563 (July 23, 2020).

On August 20, 2019, the U.S. Trade Representative, at the direction of the President, announced a determination to modify the action being taken in the Section 301 investigation by imposing an additional 10 percent *ad valorem* duty on products of China with an annual aggregate trade value of approximately \$300 billion. 84 FR 43304 (August 20 notice). The August 20 notice contains two lists of tariff subheadings, with two different effective dates. List 1, which is set out in Annex A of the August 20 notice, was effective September 1, 2019. List 2, which is set out in Annex C of the August 20 notice, was scheduled to take effect on December 15, 2019.

On August 30, 2019, the U.S. Trade Representative, at the direction of the President, determined to modify the action being taken in the investigation by increasing the rate of additional duty from 10 to 15 percent *ad valorem* on the goods of China specified in Annex A (List 1) and Annex C (List 2) of the August 20 notice. *See* 84 FR 45821. Subsequently, the U.S. Trade Representative announced determinations suspending until further notice the additional duties on products set out in Annex C (List 2) and reducing the additional duties for the products covered in Annex A of the August 20 notice (List 1) to 7.5 percent. *See* 84 FR 69447 and 85 FR 3741.

On October 24, 2019, the U.S. Trade Representative established a process by which U.S. stakeholders could request exclusion of particular products classified within an eight-digit Harmonized Tariff Schedule of the United States (HTSUS) subheading covered by List 1 of the \$300 billion action from the additional duties. *See* 84 FR 57144 (October 24 notice). Under the October 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 eight-digit subheading covered by the \$300 billion action. Requestors also had to provide the ten-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, among other information. 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 October 24 notice stated that the U.S. Trade Representative would take into account whether an exclusion would undermine the objectives of the Section 301 investigation.

The October 24 notice required submission of requests for exclusion from List 1 of the \$300 billion action no later than January 31, 2020, and noted that the U.S. Trade Representative periodically would announce decisions. In March 2020, the U.S. Trade Representative granted an initial set of exclusion requests. *See* 85 FR 13970. The U.S. Trade Representative granted additional exclusions in March, May, June and July 2020. *See* 85 FR 15244, 85 FR 17936, 85 FR 28693, as modified by 85 FR 32098, 85 FR 35975, 85 FR 41658, and 85 FR 44563. The Office of the United States Trade Representative regularly updates the status of each pending request on the Exclusions Portal at <https://exclusions.ustr.gov/s/docket?docketNumber=USTR-2019-0017>.

## **B. Determination to Grant Certain Exclusions**

Based on the evaluation of the factors set out in the October 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 one existing ten-digit HTSUS subheading and 9 specially prepared product descriptions, which together respond to 25 separate exclusion requests.

In accordance with the October 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 ten-digit HTSUS subheading as described in the Annex, and not by the product descriptions set out in any particular request for exclusion.

Paragraph A, subparagraphs (3)-(4) of the Annex contain conforming amendments to the HTSUS reflecting the modifications made by the Annex.

The U.S. Trade Representative will continue to issue determinations on pending requests on a periodic basis.

Joseph Barloon  
General Counsel  
Office of the United States 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 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 heading 9903.88.55 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/<br>Subheading | Article Description   | Rates of Duty                                   |         |   |
|------------------------|---|---|---------|---|
|                        |   | 1   |         | 2 |
|                        |   | General   | Special |   |
| “9903.88.55            | Articles the product of China, as provided for in U.S. note 20(hhh) 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(hhh) to subchapter III of chapter 99 in numerical sequence:

“(hhh) The U.S. Trade Representative determined to establish a process by which particular products classified in heading 9903.88.15 and provided for in U.S. notes 20(r) and (s) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.15. See 84 Fed. Reg. 43304 (August 20, 2019), 84 Fed. Reg. 45821 (August 30, 2019), 84 Fed. Reg. 57144 (October 24, 2019) and 85 Fed. Reg. 3741 (January 22, 2020). Pursuant to the product exclusion process, the U.S. Trade Representative has determined that, as provided in heading 9903.88.54, the additional duties provided for in heading 9903.88.15 shall not apply to the following particular products, which are provided for in the following enumerated statistical reporting numbers:

- 1) 8443.32.1050
- 2) Doorway dust barrier kits, each comprising a sheet of plastics measuring not more than 0.15 mm in thickness, at least 1.2 m but not more than 1.6 m in width and at least 2.1 m but not more than 2.6 m in length, with two parallel slide fasteners extending the full length of the sheet, two metal flap hooks and a roll of tape with adhesive on both sides for securing the sheet to a doorway, such kits put up for

- retail sale (described in statistical reporting number 3926.90.9990 prior to July 1, 2020; described in statistical reporting number 3926.90.9985 effective July 1, 2020)
- 3) Heads, plates, grip disks, slide clamps, foot plugs and other parts of plastics, of a kind used in temporary dust barrier systems for interior construction (described in statistical reporting number 3926.90.9990 prior to July 1, 2020; described in statistical reporting number 3926.90.9985 effective July 1, 2020)
  - 4) Locking zip tie fasteners of plastics (described in statistical reporting number 3926.90.9990 prior to July 1, 2020; described in statistical reporting number 3926.90.9985 effective July 1, 2020)
  - 5) Decorative glassware, each consisting of a rectangular glass box in a brass frame with a hinged top, measuring at least 11.5 cm but not more than 21.5 cm by at least 16 cm but not more than 26.5 cm by at least 3 cm but not more than 8 cm, weighing at least 500 g but not more than 1.5 kg, valued over \$5 each (described in statistical reporting number 7013.99.9000 prior to July 1, 2020; described in statistical reporting number 7013.99.9010 or 7013.99.9090 effective July 1, 2020)
  - 6) Decorative glassware, each piece consisting of a blown-glass globe, measuring at least 65 mm but not more than 150 mm in diameter, containing a sculpture, water and artificial snow, with a poured-resin base, weighing at least 800 g but not more than 3 kg, valued over \$5 (described in statistical reporting number 7013.99.9000 prior to July 1, 2020; described in statistical reporting number 7013.99.9090 effective July 1, 2020)
  - 7) Digital optical image scanners with maximum scanning width measuring at least 60 cm but not more than 92 cm (described in statistical reporting number 8471.60.8000)
  - 8) Slingshot apparatus, whether or not electrically powered, of a kind used for outdoor games (described in statistical reporting number 9506.99.6080)
  - 9) Swing sets and parts and accessories thereof (described in statistical reporting number 9506.99.6080)
  - 10) Trap shooting launchers and parts and accessories thereof (described in statistical reporting number 9506.99.6080)
3. by amending the last sentence of the first paragraph of U.S. note 20(r):
    - a. by deleting “or (7)” and by inserting “(7)” in lieu thereof; and
    - b. by inserting “; or (8) heading 9903.88.55 and U.S. note 20(hhh) to subchapter III of chapter 99” after “U.S. note 20(fff) to subchapter III of chapter 99”.
  4. by amending the article description of heading 9903.88.15:
    - a. by deleting “9903.88.51 or” and by inserting “9903.88.51,” in lieu thereof; and
    - b. by inserting “or 9903.88.55” after “9903.88.53”.