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## 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 amendments.

**SUMMARY:** Effective August 23, 2018, the U.S. Trade Representative imposed additional duties on goods of China with an annual trade value of approximately \$16 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's determination included a decision to establish a product exclusion process. The U.S. Trade Representative initiated the exclusion process in September 2018, and stakeholders have submitted requests for the exclusion of specific products. In July, September and October 2019, the U.S. Trade Representative granted exclusion requests. This notice makes amendments to certain notes in the Harmonized Tariff Schedule of the United States (HTSUS). The U.S. Trade Representative will continue to issue decisions as necessary.

**DATES:** The amendments announced in this notice are retroactive to the date the original exclusions were published and do not extend the period for the original exclusions. 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 Counsel Philip Butler 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 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), 84 FR 29576 (June 24, 2019), 84 FR 37381 (July 31, 2019), 84 FR 49600 (September 20, 2019), and 84 FR 52553 (October 2, 2019).

Effective August 23, 2018, the U.S. Trade Representative imposed additional 25 percent duties on goods of China classified in 279 8-digit subheadings of the HTSUS, with an approximate annual trade value of \$16 billion. *See* 83 FR 40823. The U.S. Trade Representative's determination included a decision to establish a process by which U.S. stakeholders can request exclusion of particular products classified within an 8-digit HTSUS subheading covered by the \$16 billion action from the additional duties. The U.S. 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 it 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 U.S. 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 U.S. Trade Representative periodically would announce decisions. In July 2019, the U.S. Trade Representative granted an initial set of exclusion requests. *See* 84 FR 37381. The U.S. Trade Representative granted additional exclusions in September and October 2019. *See* 84 FR 49600 and 84 FR 52553.

## **B. Amendments to Certain Exclusions**

To correct technical and ministerial errors and in order to conform to the U.S. Trade Representative's intent to grant certain exclusions, the Annex to this notice includes amendments to certain notes in the HTSUS.

In order to clarify a periodic revision to the HTSUS, subparagraph A(1) of the Annex modifies the text to U.S. note 20(v)(86) to subchapter III of chapter 99 of the HTSUS, as set out in the Annex of the notice published at 84 FR 49600 (September 20, 2019).

Subparagraphs A(2–7) of the Annex correct errors in U.S. notes 20(v)(21), 20(v)(22), 20(v)(36), 20(v)(71), 20(v)(72), and 20(v)(87) to subchapter III of chapter 99 of the HTSUS, as set out in the Annex of the notice published at 84 FR 49600 (September 20, 2019).

In order to conform to the U.S. Trade Representative's intent to grant certain exclusion requests, Subparagraphs A(8–9) of the Annex make amendments to U.S. notes 20(v)(20) and 20(v)(37) to subchapter III of chapter 99 of the HTSUS, as set out in the annex of the notice published at 84 FR 49600 (September 20, 2019).

The U.S. Trade Representative will continue to issue determinations on a periodic basis as needed.

## **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:

1. U.S. note 20(v)(21) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “2.44 mm” and inserting “2.44 m” in lieu thereof.
2. U.S. note 20(v)(22) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “47.5 cm in width, 61.0 cm in length and 24 mm in thickness” and inserting “45.72 cm in width, 60.96 cm in length and 0.6096 mm in thickness” in lieu thereof.
3. U.S. note 20(v)(36) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “1.12 cm or more but not exceeding 1.52 cm in width and 1.93 cm or more but not exceeding 2.29 cm in length” and inserting “1.12 m or more but not over 1.52 m in width and 1.93 m or more but not over 2.29 m in length” in lieu thereof.
4. U.S. note 20(v)(71) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “25 W but not exceeding 2.0 kW” and inserting “exceeding 750 W but not over 1.8 kW” in lieu thereof.
5. U.S. note 20(v)(72) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is deleted.
6. U.S. note 20(v)(20) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “1.5 m or more in width, printed in various colors, valued at \$1.60 to \$1.90 per kg” and inserting “0.6 m or more in width, whether or not printed in various colors, valued at \$0.88 or more but not over \$2.42 per kg” in lieu thereof.

7. U.S. note 20(v)(37) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “plastic sheeting made of plain-woven, high-density polyethylene fabric coated on both sides with low-density polyethylene, in rolls measuring 5 m in width” and inserting “plastic sheeting, core/scrim woven layer of high-density polyethylene (HDPE) textile strip, coated on both sides with low density polyethylene (LDPE), with a layer of visible black film of linear LDPE, polyvinyl chloride free, weighing not over 1.492 kg/m<sup>2</sup>, in rolls each not over 5 m in width” in lieu thereof.
8. U.S. note 20(v)(86) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “(described in statistical reporting numbers 8711.60.0050 or 8711.60.0090)” and inserting “(described in statistical reporting numbers 8711.60.0050 or 8711.60.0090, effective July 1, 2019; described in statistical reporting number 8711.60.0000, effective prior to July 1, 2019)” in lieu thereof.
9. U.S. note 20(v)(87) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “not exceeding 250 W” (described in statistical reporting numbers 8711.60.0050)” and inserting “of 1.0 kW or more but not over 2.1 kW (described in statistical reporting number 8711.60.0090, effective July 1, 2019; described in statistical reporting number 8711.60.0000, prior to July 1, 2019)”.

**Joseph Barloon**

*General Counsel,*

*Office of the U.S. Trade Representative.*

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