

[Billing Code 3290-F0]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**Notice of Product Exclusion Extensions: 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 exclusion extensions.

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 initiated an exclusion process in September 2018 and has granted three sets of exclusions under the \$16 billion action. The second set of exclusions was published in September 2019 and will expire on September 20, 2020. On June 25, 2020, the U.S. Trade Representative established a process for the public to comment on whether to extend particular exclusions granted in September 2019 for up to 12 months. This notice announces the U.S. Trade Representative's determination to extend certain exclusions through December 31, 2020.

DATES: The product exclusion extensions announced in this notice apply as of September 20, 2020, and extend through December 31, 2020. 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 Associate General Counsel Philip Butler or Assistant General Counsel Benjamin Allen, 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 Annexes to this notice, contact 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 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), 84 FR 52553 (October 2, 2019), 84 FR 69011 (December 17, 2019), 85 FR 10808 (February 25, 2020), 85 FR 24076 (April 30, 2020), 85 FR 28691 (May 13, 2020), 85 FR 38237 (June 25, 2020), 85 FR 38243 (June 25, 2020), 85 FR 43291 (July 16, 2020), and 85 FR 45949 (July 30, 2020).

Effective August 23, 2018, the U.S. Trade Representative imposed additional 25 percent duties on goods of China classified in 279 eight-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 \$16 billion action). The U.S. Trade Representative's determination included a decision to establish a process by which U.S. stakeholders could request exclusion of particular products classified within an eight-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 product exclusions and opened a public docket. *See* 83 FR 47236 (the September 18 notice).

In September 2019, the U.S. Trade Representative granted a set of exclusion requests, which expire on September 20, 2020. *See* 84 FR 49600 (the September 20 notice). On June 25, 2020, the U.S. Trade Representative invited the public to comment on whether to extend for up to 12 months, particular exclusions granted in the September 20 notice. *See* 85 FR 38237 (the June 25 notice).

Under the June 25 notice, commenters were asked to address whether the particular product and/or a comparable product is available from sources in the United States and/or in third countries; any changes in the global supply chain since August 2018 with respect to the particular product, or any other relevant industry developments; and efforts, if any, importers or U.S. purchasers have undertaken since August 2018 to source the product from the United States or third countries.

In addition, commenters who were importers and/or purchasers of the products covered by an exclusion were asked to provide information regarding their efforts since August 2018 to source the product from the United States or third countries; the value and quantity of the Chinese-origin product covered by the specific exclusion request purchased in 2018 and 2019, and whether these purchases are from a related company; whether Chinese suppliers have lowered their prices for products covered by the exclusion following the imposition of duties; the value and quantity of the product covered by the exclusion purchased from domestic and third country sources in 2018 and 2019; the commenter's gross revenue for 2018 and 2019; whether the Chinese-origin product of concern is sold as a final product or as an input; whether the imposition of duties on the products covered by the exclusion will result in severe economic harm to

the commenter or other U.S. interests; and any additional information in support or in opposition of the extending the exclusion.

The June 25 notice required the submission of comments no later than July 30, 2020.

B. Determination to Extend Certain Exclusions

Based on an evaluation of the factors set out in the September 18 and June 25 notices, 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 extend certain product exclusions covered by the September 20 notice, as set out in the Annexes to this notice.

The June 25 notice provided that the U.S. Trade Representative would consider extensions of up to 12 months. In light of the cumulative effect of current and possible future exclusions or extensions of exclusions on the effectiveness of the action taken in this investigation, the U.S. Trade Representative has determined to extend the exclusions in the Annexes to this notice for less than 12 months - through December 31, 2020. To date, the U.S. Trade Representative has granted more than 6,800 exclusion requests, has extended some of these exclusions, and may consider further extensions of exclusions. The U.S. Trade Representative will take account of the cumulative effect of exclusions in considering the possible further extension of the exclusions covered by this notice, as well as possible extensions of exclusions of other products covered by the action in this investigation. The U.S. Trade Representative's determination also takes into account

advice from advisory committees and any public comments concerning extension of the pertinent exclusion.

In accordance with the September 18 notice, the exclusions are available for any product that meets the description in the Annexes, 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 headings and product descriptions in the Annexes to this notice, and not by the product descriptions set out in any particular request for exclusion.

Joseph Barloon
General Counsel
Office of the United States 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 20, 2020 and before 11:59 p.m. eastern daylight time on December 31, 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 9903.88.59 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	
“9903.88.59	Effective with respect to entries on or after September 20, 2020, and through December 31, 2020, articles the product of China, as provided for in U.S. note 20(III) 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(III) to subchapter III of chapter 99 in numerical sequence:

“(III) 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 20(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. 47326 (September 18, 2018). Pursuant to the product exclusion process, the U.S. Trade Representative has determined that, as provided in heading 9903.88.59, 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) Acrylic acid-2-acrylamido-2-methylpropanesulfonic acid-acrylic ester (AA/AMPS/HPA) terpolymers, presented in dry form (described in statistical reporting number 3906.90.5000)
- (2) Molded acrylonitrile-butadiene-styrene (ABS) tubes, of a kind used to effect the sterile transfer of fluid from a bag or vial to another container, each tube measuring 7.5 cm or more but not exceeding 23 cm in length, with an inner diameter of less than 0.65 cm and an outer diameter of less than 9 cm, one end having been angle-cut to form a spike, and having an integrated flange, less than 3 cm in diameter (splash guard) near the spike end

- and removable polyethylene caps on each end, put up in sterile packing (described in statistical reporting number 3917.29.0090)
- (3) Electrical tape of polyvinyl chloride, in rolls, measuring not more than 2 cm in width, not more than 20.2 m in length, and not more than 0.18 mm in thickness (described in statistical reporting number 3919.10.2020)
 - (4) Transparent tape of plastics with an acrylic emulsion adhesive, in rolls measuring not over 4.8 cm in width, valued not over \$.25 per square meter (described in statistical reporting number 3919.10.2030)
 - (5) Rolls of polyethylene film coated with a solvent acrylic adhesive (described in statistical reporting number 3919.10.2055)
 - (6) Rolls of polyvinyl chloride, measuring 2.5 cm or more but not exceeding 5.1 cm in width and 182.9 m in length (described in statistical reporting number 3920.43.5000)
 - (7) Films coated on one or both sides with polyvinylidene chloride (PVdC) or polyvinyl alcohol (PVOH), whether or not having a primer layer between the base and coating; any of the foregoing having a total thickness greater than 0.01 mm but not greater than 0.03 mm (described in statistical reporting number 3920.62.0090)
 - (8) Printed film of polyvinyl chloride, laminated with foamed-polyvinyl chloride-coated polyester scrim, in rolls, of a kind used for lining shelves or drawers (described in statistical reporting number 3921.12.1100)
 - (9) Sheets and strips consisting of both cross-linked polyethylene and ethylene vinyl acetate, of a width greater than 1 m but not greater than 1.5 m, and a length greater than 1.75 m but not greater than 2.6 m (described in statistical reporting number 3921.19.0000)
 - (10) Polyethylene sheet and film laminated with spunbond-spunbond-spunbond nonwoven polypropylene fabric, measuring 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, and weighing 55 g/m² or more but not exceeding 88 g/m² (described in statistical reporting number 3921.90.1500)
 - (11) Girders of iron or steel, meeting ASTM standard A572, Grades 50, 65 or 70 (described in statistical reporting number 7308.90.3000)
 - (12) Pipes of iron or steel, with connectors, meeting ASTM standard A572, Grade 50 (described in statistical reporting number 7308.90.3000)
 - (13) Posts of steel pipe and tube, with ball knobs attached (described in statistical reporting number 7308.90.3000)
 - (14) Posts of steel pipe and tube, with sill plates and ball studs attached (described in statistical reporting number 7308.90.3000)
 - (15) Rib nodes of iron or steel, meeting ASTM standard A572, Grades 50, 65 or 70 (described in statistical reporting number 7308.90.3000)
 - (16) Monopolar conductors for a voltage exceeding 1,000 V, other than of copper and not fitted with connectors (described in statistical reporting number 8544.60.6000)
 - (17) Motorcycles with electric power for propulsion, each of a power not exceeding 1,000 W (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)”
3. by amending the last sentence of the first paragraph of U.S. note 20(c) to subchapter III of chapter 99 by:

- a. by deleting “or (4)” and by inserting “(4)” in lieu thereof; and
 - b. by inserting “; or (5) heading 9903.88.59 and U.S. note 20(III) to subchapter III of chapter 99” after the phrase “U.S. note 20(ggg) to subchapter III of chapter 99”, where it appears at the end of the sentence.
4. by amending U.S. note 20(d) to subchapter III of chapter 99 by:
- a. by deleting “or (4)” and by inserting “(4)” in lieu thereof; and
 - b. by inserting “; or (5) heading 9903.88.59 and U.S. note 20(III) to subchapter III of chapter 99” after the phrase “U.S. note 20(ggg) to subchapter III of chapter 99”, where it appears at the end of the sentence.
5. by amending the Article Description of heading 9903.88.02:
- a. by deleting “9903.88.20 or”;
 - b. by inserting in lieu thereof “9903.88.20.”; and
 - c. by inserting “or 9903.88.59,” after “9903.88.54.”.

ANNEX B

The following table is provided for informational purposes only. The table contains a list of the original product exclusions that are being extended by this notice. In addition, the table contains the corresponding subdivisions in new note 20(III) to subchapter III of Chapter 99 and new heading 9903.88.59 for the product exclusions that are being extended by this notice. The original product exclusions expire on September 20, 2020. The exclusions that are being extended are effective from September 20, 2020 through December 31, 2020.

Original Product Exclusions		Corresponding Extension of Product Exclusions	
Note 20 Subdivision	Chapter 99 Heading	Note 20 Subdivision	Chapter 99 Heading
20(v)(1)	9903.88.17	20(III)(1)	9903.88.59
20(v)(6)	9903.88.17	20(III)(2)	9903.88.59
20(v)(15)	9903.88.17	20(III)(3)	9903.88.59
20(v)(16)	9903.88.17	20(III)(4)	9903.88.59
20(v)(17)	9903.88.17	20(III)(5)	9903.88.59
20(v)(19)	9903.88.17	20(III)(6)	9903.88.59
20(v)(25)	9903.88.17	20(III)(7)	9903.88.59
20(v)(27)	9903.88.17	20(III)(8)	9903.88.59
20(v)(34)	9903.88.17	20(III)(9)	9903.88.59
20(v)(36)	9903.88.17	20(III)(10)	9903.88.59

20(v)(40)	9903.88.17	20(III)(11)	9903.88.59
20(v)(41)	9903.88.17	20(III)(12)	9903.88.59
20(v)(42)	9903.88.17	20(III)(13)	9903.88.59
20(v)(43)	9903.88.17	20(III)(14)	9903.88.59
20(v)(44)	9903.88.17	20(III)(15)	9903.88.59
20(v)(83)	9903.88.17	20(III)(16)	9903.88.59
20(v)(86)	9903.88.17	20(III)(17)	9903.88.59