

[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 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 2019, the U.S. Trade Representative granted exclusion requests. This notice announces the U.S. Trade Representative's determination to grant certain exclusion requests, as specified in the Annex to this notice. The U.S. 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), 84 FR 29576 (June 24, 2019), and 84 FR 37381 (July 31, 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 Harmonized Tariff Schedule of the United States (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 may 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 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 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 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 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 89 specially prepared product descriptions, which cover 400 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, 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.

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 U.S. 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 9903.88.17 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	
“9903.88.17	Articles the product of China, as provided for in U.S. note 20(v) 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(v) to subchapter III of chapter 99 in numerical sequence:

“(v) 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. 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) 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) Copolymers of acrylic acid and 2-acrylamide-2-methylpropanesulfonic acid, valued at \$5.40 to \$5.60 per kg (described in statistical reporting number 3906.90.5000)
- (3) Granular hydrocarbon resins, each pellet not larger than 1 cm in any dimension and having a melting point greater than 95 degrees C but not greater than 105 degrees C, presented in immediate packings of paper,

- paperboard or kraft paper weighing with their contents greater than 23 kg but not greater than 27 kg (described in statistical reporting number 3911.10.0000)
- (4) Profile shapes, of a kind used in producing door jambs, composed of a composite of polyvinyl chloride, calcium carbonate and sawdust (described in statistical reporting number 3916.20.0020)
 - (5) Hose of braided polyvinyl chloride, having crimped fittings, designed to carry water, valued not over \$2.00 per kg (described in statistical reporting number 3917.23.0000)
 - (6) 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)
 - (7) Polymer strips curled in helical fashion to form a flexible tube having a constant circular cross-section with a diameter not exceeding 2 cm (described in statistical reporting number 3917.29.0090)
 - (8) Drinking straws, of plastics, each straw 8 mm or more in outside diameter and 20 cm or more in length (described in statistical reporting number 3917.32.0050)
 - (9) Bulkhead fittings, each comprising a hollow, threaded cylindrical body with a hexagonal or octagonal head on one end, of a length 9.53 cm or more but not exceeding 23.5 cm and having an inside diameter of 1.27 or more but not exceeding 15.24 cm, a polymer gasket and a hexagonal or octagonal tightening nut (described in statistical reporting number 3917.40.0090)
 - (10) Polyacetal brackets for connectors, of a length measuring 3.84 cm or more but not exceeding 4.57 cm, a width of 0.838 cm and a height of 2.15 cm (described in statistical reporting number 3917.40.0090)
 - (11) Polyacetal filters measuring 3.76 cm x 3.76 cm x 0.31 cm (described in statistical reporting number 3917.40.0090)
 - (12) Polyacetal hose barb fittings, with a length of 2.27 cm, width of 0.99 cm and height of 2.29 cm (described in statistical reporting number 3917.40.0090)
 - (13) Tube, pipe and hose couplings and connectors of plastics, with maximum outside dimensions of 6.5 cm by 6.35 cm by 6.35 cm (described in statistical reporting number 3917.40.0090)
 - (14) Y-shaped fittings of plastics, each measuring 6.99 cm in length and 3.18 cm or more but not exceeding 3.81 cm in width and height, incorporating a valve stem of plastics and brass in its center (described in statistical reporting number 3917.40.0090)

- (15) 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)
- (16) 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)
- (17) Rolls of polyethylene film coated with a solvent acrylic adhesive (described in statistical reporting number 3919.10.2055)
- (18) Heat-sealable printed films, of plastics, having a thickness of more than 20 microns but not more than 30 microns, in rolls wider than 15 cm but not more than 20 cm (described in statistical reporting number 3920.20.0055)
- (19) 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)
- (20) Sheets of polyvinyl chloride, in rolls measuring 1.5 m or more in width, printed in various colors, valued at \$1.60 to \$1.90 per kg (described in statistical reporting number 3920.43.5000)
- (21) Sheets of polyvinyl chloride, measuring 2.44 mm or more but not exceeding 3.66 m in width, 3.05 or more but not exceeding 5.18 m in length and 0.5 cm in thickness (described in statistical reporting number 3920.43.5000)
- (22) Sheets of polyvinyl chloride, measuring 47.5 cm in width, 61.0 cm in length and 24 mm in thickness, coated on both sides with a printable primer (described in statistical reporting number 3920.43.5000)
- (23) Sheets of transparent (double polished or super double polished) polyvinyl chloride, whether or not with an integrated pattern, in rolls, measuring 1.37 m or more but not exceeding 1.83 m in width, not more than 54.9 m in length, and 0.075 mm or more but not exceeding 0.51 mm in thickness, valued at \$2.35 or more but not exceeding \$3.35 per square meter (described in statistical reporting number 3920.43.5000)
- (24) Uncoated polyvinyl chloride (PVC) film, containing by weight less than 6% of plasticizers, less than 0.07 mm in thickness, in rolls weighing 1 t or more (described in statistical reporting number 3920.49.0000)
- (25) 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)
- (26) Sheets of transparent polyurethane, measuring 112 cm in width and 112 cm or more but not exceeding 168 cm in length, whether or not put up in sterile packaging (described in statistical reporting number 3920.99.2000)
- (27) 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)

- (28) Three-ply polyvinyl chloride film laminated with nonwoven polyester scrim, in rolls, measuring not more than 5 m in width and not more than 91.5 m in length, valued at \$2.10 or more but not exceeding \$2.40 per square meter (described in statistical reporting number 3921.12.1100)
- (29) Sheets of foamed polyvinyl chloride combined with a non-textile moisture barrier, in rolls, measuring 45.7 cm in width and 1.83 m in length, each roll weighing not more than 0.39 kg (described in statistical reporting number 3921.12.5000)
- (30) Synthetic leather sheeting, comprising three layers of polycarbonate-type polyurethane, the outer layer surface treated, the middle layer of foamed polyurethane, and the bottom adhesive layer combined with a support layer of polyester knit fabric, weighing 441 g or more but not exceeding 539 g per square meter, in rolls, measuring 1.4 m or more but not exceeding 1.5 m in width and 20 m or more in length (described in statistical reporting number 3921.13.1500)
- (31) Cellular regenerated cellulose plates (blocks), measuring 99.1 cm by 99.1 cm by 35.6 cm (described in statistical reporting number 3921.14.0000)
- (32) Non-adhesive translucent ethylene-vinyl acetate, in sheets or rolls, of a kind used for shelf liners (described in statistical reporting number 3921.19.0000)
- (33) Plates composed of layers of closed-cell ethylene-vinyl acetate and polyethylene foam, in rectangular shapes, each having a surface area of 2 m² or more but not greater than 2.25 m² (described in statistical reporting number 3921.19.0000)
- (34) 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)
- (35) Sheets of noncellular polyvinyl chloride combined with man-made textile fabric, valued at \$6.15 or more but not exceeding \$6.30 per square meter (described in statistical reporting number 3921.90.1100)
- (36) Polyethylene sheet and film laminated with spunbond-spunbond-spunbond nonwoven polypropylene fabric, measuring 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 weighing 55 g/m² or more but not exceeding 88 g/m² (described in statistical reporting number 3921.90.1500)
- (37) Plastics sheeting made up of plain-woven, high-density polyethylene fabric coated on both sides with low-density polyethylene, in rolls measuring 5 m in width (described in statistical reporting number 3921.90.1950)
- (38) Sheets of transparent (double polished or super double polished) laminated polyvinyl chloride, whether or not with an integrated pattern, in rolls, measuring 1.37 m or more but not exceeding 1.83 m in width, not more than 54.9 m in length, and 0.075 mm or more but not exceeding 0.51 mm in

- thickness, valued at \$2.35 or more but not exceeding \$3.35 per square meter (described in statistical reporting number 3921.90.4090)
- (39) Sheets of transparent (double polished or super double polished) polyvinyl chloride, whether or not with an integrated pattern, in rolls, measuring 1.37 m but not exceeding 1.83 m in width, not more than 54.9 m in length, and 0.075 mm but not exceeding 0.51 mm in thickness, valued at \$2.35 or more but not exceeding \$3.35 per square meter (described in statistical reporting number 3921.90.4090)
 - (40) Girders of iron or steel, meeting ASTM standard A572, Grades 50, 65 or 70 (described in statistical reporting number 7308.90.3000)
 - (41) Pipes of iron or steel, with connectors, meeting ASTM standard A572, Grade 50 (described in statistical reporting number 7308.90.3000)
 - (42) Posts of steel pipe and tube, with ball knobs attached (described in statistical reporting number 7308.90.3000)
 - (43) Posts of steel pipe and tube, with sill plates and ball studs attached (described in statistical reporting number 7308.90.3000)
 - (44) Rib nodes of iron or steel, meeting ASTM standard A572, Grades 50, 65 or 70 (described in statistical reporting number 7308.90.3000)
 - (45) Steel upstand support members (described in statistical reporting number 7308.90.3000)
 - (46) Angle feed racks of galvanized steel, designed for use in the feeding of livestock (described in statistical reporting number 7308.90.9590)
 - (47) Animal kennels of iron or steel (described in statistical reporting number 7308.90.9590)
 - (48) Balusters or spindles, of iron or steel, designed for use in handrails (described in statistical reporting number 7308.90.9590)
 - (49) Chain link fence panels, and fence panel stands and bases, of iron or steel (described in statistical reporting number 7308.90.9590)
 - (50) Elongated half loops of galvanized steel (described in statistical reporting number 7308.90.9590)
 - (51) Gazebos, pergolas and trellises of iron or steel (described in statistical reporting number 7308.90.9590)
 - (52) Lockup frames of galvanized steel, of a length exceeding 3.0 m, designed for use in controlling the movement of livestock (described in statistical reporting number 7308.90.9590)
 - (53) Steel plate assemblies conforming to ASTM A709 Grade 50 (described in statistical reporting number 7308.90.9590)
 - (54) Tubes of galvanized steel, coped (notched) on one end, of a length not exceeding 1.0 m (described in statistical reporting number 7308.90.9590)
 - (55) Structural angles of aluminum, in a V shape with a 90 degree angle, for sliding or rolling driveway gates, in packages containing 2 or 3 angles, with each piece of a length exceeding 1.5 m but not exceeding 2.0 m and a width

- exceeding 4 cm but not exceeding 8 cm (described in statistical reporting number 7610.90.0080)
- (56) Spark-ignition reciprocating or rotary internal combustion piston engines, to be installed in agricultural or horticultural machinery or equipment, each rated at less than 4,200 W (described in statistical reporting number 8407.90.1010)
 - (57) Spark-ignition reciprocating or rotary internal combustion piston engines, not elsewhere specified or included, each rated at 4,476 W or more but not exceeding 18.65 kW, with an engine displacement of not more than 690 cc (described in statistical reporting number 8407.90.9060)
 - (58) Cold plates for preparing tissue samples (described in statistical reporting number 8419.89.9540)
 - (59) Quenching devices designed to lower the temperature of steel plate using water, each consisting of top cooling headers, bottom cooling headers, a side sweep header, a common control manifold that feeds all the headers, a main supporting frame to support all bottom headers and bottom rolls, a top header supporting sub-frame to support the top headers and top rolls, five top and five bottom rolls, neck bearings, drives and on board piping (described in statistical reporting number 8419.89.9540)
 - (60) Cold plate machines, each incorporating a flat heat-absorbing metal plate capable of lowering the temperature of paraffin from a liquid to a solid phase, designed for use with microtomes (described in statistical reporting number 8419.89.9585)
 - (61) Walk behind rotary tillers, electrically powered, each weighing less than 16 kg (described in statistical reporting number 8432.29.0060)
 - (62) Scarifiers (described in statistical reporting number 8432.29.0090)
 - (63) Tile saws (described in statistical reporting number 8464.10.0100)
 - (64) Band saw guards (described in statistical reporting number 8466.30.8000)
 - (65) Grinder stands, pedestal rollers and other tool and workpiece stands, supports and platforms (described in statistical reporting number 8466.30.8000)
 - (66) Power tool mounts (described in statistical reporting number 8466.30.8000)
 - (67) Machines for manufacturing laminated or insulated glass, each machine valued over \$100,000 (described in statistical reporting number 8475.29.0000)
 - (68) Plain shaft bearings and bushings, without housings, each valued not over \$3 (described in statistical reporting number 8483.30.8090)
 - (69) Parts and accessories, not elsewhere specified or included, each valued not over \$2800 (described in statistical reporting number 8486.90.0000)
 - (70) Brushless DC motors, rated at 24V, designed for use in saltwater aquariums (described in statistical reporting number 8501.10.6040)
 - (71) DC motors, each of an output exceeding 25 W but not exceeding 2.0 kW (described in statistical reporting number 8501.32.2000)
 - (72) DC motors, each of an output not exceeding 25 W (described in statistical reporting number 8501.32.2000)

- (73) DC motors, of an output exceeding 750 W but not exceeding 14.92 kW, each with attached actuators, crankshafts or gears (described in statistical reporting number 8501.32.2000)
- (74) Parts of generators (other than parts of general use as defined in note 2 to section XV), each valued not over \$10 (described in statistical reporting number 8503.00.9550)
- (75) Electronic AC lighting control switches, for dimming and turning lights on and off, packaged for retail sale (described in statistical reporting number 8536.50.7000)
- (76) Surface-mount glass passivated rectifiers with a rectified output current not exceeding 1.25 A (described in statistical reporting number 8541.10.0080)
- (77) Surface-mount transient voltage suppressors having a peak pulse power capacity not exceeding 5 A (described in statistical reporting number 8541.10.0080)
- (78) Zener diodes having an admissible zener current of not more than 0.15 A at 25 degrees C (described in statistical reporting number 8541.10.0080)
- (79) Crystalline silicon photovoltaic cells of a kind described in statistical note 11 to chapter 85, made up into panels with a surface area not exceeding 3,061 cm² (described in statistical reporting number 8541.40.6015)
- (80) Solar panels, each of a surface area not exceeding 3,100 cm² (described in statistical reporting number 8541.40.6015 and 8541.40.6035)
- (81) 16-gauge 2-conductor wire, not fitted with connectors, for a voltage not exceeding 80 V (described in statistical reporting number 8544.49.2000)
- (82) Electric conductors, not fitted with connectors, for a voltage not exceeding 80 V, each overmolded with polypropylene (described in statistical reporting number 8544.49.2000)
- (83) 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)
- (84) Truck bolsters for railway cars, each weighing more than 650 kg (described in statistical reporting number 8607.19.3010)
- (85) Truck side frames for railway cars, each weighing more than 400 kg (described in statistical reporting number 8607.19.3020)
- (86) 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)
- (87) Skateboards with electric power for propulsion, of a power not exceeding 250 W (described in statistical reporting number 8711.60.0050)
- (88) Three-wheeled carriages for disabled persons, with electric power for propulsion, each carriage having a second passenger seat capable of being stowed and a foot-operated brake (described in statistical reporting number 8713.90.0030)

(89) Thermometers comprising cable assemblies with sensors, suitable for use in swimming pools, not combined with other instruments, valued not over \$10 each (described in statistical reporting number 9025.19.8080)”

3. by amending the last sentence of the first paragraph of U.S. note 20(c) to subchapter III of chapter 99 by inserting after the phrase “imposed by heading 9903.88.02” the following phrase:

“, except products of China granted an exclusion by the U.S. Trade Representative and provided for in: (1) heading 9903.88.12 and U.S. note 20(o) to subchapter III of chapter 99; or (2) heading 9903.88.17 and U.S. note 20(v) to subchapter III of chapter 99”;

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

a. deleting the phrase “provided for in heading 9903.88.12 and U.S. note 20(o) to subchapter III of chapter 99”; and

b. inserting in lieu thereof the phrase “provided for in: (1) heading 9903.88.12 and U.S. note 20(o) to subchapter III of chapter 99; or (2) heading 9903.88.17 and U.S. note 20(v) to subchapter III of chapter 99”

5. by amending the Article Description of heading 9903.88.02:

a. by deleting “heading 9903.88.12,”; and

b. by inserting in lieu thereof “headings 9903.88.12 or 9903.88.17,”.