

[Billing Code 3290-F0]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**Notice of Product Exclusion 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 exclusion and amendments.

SUMMARY: In September 2018, the U.S. Trade Representative imposed additional duties on goods of China with an annual trade value of approximately \$200 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 a product exclusion process in June 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 an additional exclusion request, as specified in the Annex to this notice, and corrects technical errors in previously announced exclusions.

DATES: The product exclusions announced in this notice will apply as of September 24, 2018, the effective date of the \$200 billion action, and extend to August 7, 2020. The amendments announced in this notice are retroactive to the date that the original exclusions were published.

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 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 47974 (September 21, 2018), 83 FR 49153 (September 28, 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 38717 (August 7, 2019), 84 FR 46212 (September 3, 2019), 84 FR 49591 (September 20, 2019), 84 FR 57803 (October 28, 2019), 84 FR 61674 (November 13, 2019), 84 FR 65882 (November 29, 2019), 84 FR 69012 (December 17, 2019), 85 FR 549 (January 6, 2020), 85 FR 6674 (February 5, 2020), 85 FR 9921 (February 20, 2020), 85 FR 15015 (March 16, 2020), 85 FR 17158 (March 26, 2020), 85 FR 23122 (April 24, 2020), 85 FR 27489 (May 8, 2020), and 85 FR 32094 (May 28, 2020).

Effective September 24, 2018, the U.S. Trade Representative imposed additional 10 percent *ad valorem* duties on goods of China classified in 5,757 full and partial subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of \$200 billion. *See* 83 FR 47974, as modified by 83 FR 49153. In May 2019, the U.S. Trade Representative increased the additional duty to 25 percent. *See* 84 FR 20459. On June 24, 2019, the U.S. Trade Representative established a process by which stakeholders could request exclusion of particular products classified

within an eight-digit HTSUS subheading covered by the \$200 billion action from the additional duties. *See* 84 FR 29576 (the June 24 notice).

Under the June 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 HTSUS subheading covered by the \$200 billion action. Requestors also had to provide the ten-digit HTSUS subheading 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 June 24 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 June 24 notice required submission of requests for exclusion from the \$200 billion action no later than September 30, 2019, and noted that the U.S. Trade Representative periodically would announce decisions. In August 2019, the U.S. Trade

Representative granted an initial set of exclusion requests. *See* 84 FR 38717. The U.S. Trade Representative granted additional exclusions in September, October, November and December 2019, and January, February, March, April and May 2020. *See* 84 FR 49591; 84 FR 57803; 84 FR 61674; 84 FR 65882; 84 FR 69012; 85 FR 549; 85 FR 6674; 85 FR 9921; 85 FR 15015; 85 FR 17158; 85 FR 23122; 85 FR 27489; and 85 FR 32094. 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-2019-0005>.

B. Determination to Grant Certain Exclusions

Based on evaluation of the factors set forth in the June 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 exclusion set forth 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 forth in the Annex, the exclusion is reflected in one specially prepared product description, which responds to one exclusion request.

In accordance with the June 24 notice, the exclusion is available for any product that meets the description in the Annex, regardless of whether the importer benefitting from the product exclusion filed an exclusion request. Further, the scope of the exclusion is governed by the scope of the product description in the Annex, and not by the product description found in any particular request for exclusion.

Paragraph A, of the Annex contains a conforming amendment to the HTSUS reflecting the modifications made by the Annex.

Paragraph B of the Annex makes technical corrections to certain notes of the HTSUS. Specifically, paragraph B, subparagraph (1), corrects a typographical error in the product descriptions contained in U.S. note (20)(mm)(30), published at 84 FR 61674. Paragraph B, subparagraphs (2)-(5), make technical corrections to the specially prepared product descriptions in certain notes to the HTSUS, specifically, U.S. notes (20)(xx)(17) and (47), published at 85 FR 23122 (April 24, 2020), and U.S. notes (20)(yy)(54) and (65), published at 85 FR 27489 (May 8, 2020).

As stated in the September 20, 2019 notice, the exclusions will apply from September 24, 2018 to August 7, 2020. 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.

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 24, 2018, and before August 7, 2020, U.S. note 20(aaa) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified by inserting the following exclusions in numerical order after exclusion (78):

(79) Motorboats with displacement hulls of reinforced fiberglass and wood, each motorboat measuring not less than 14.47 m and not more than 36.57 m in length and weighing not less than 28 t and not more than 363 t, powered by inboard engines, other than inboard/outdrive (described in statistical reporting number 8903.92.0065)

- B. 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 24, 2018, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

- a. U.S. note 20(mm)(30) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “Ratcheting chain hoists,” and inserting “Ratcheting chain, rope or cable hoists,” and by deleting “such chain hoists not powered by an electric motor” and inserting “such hoists not powered by an electric motor” in lieu thereof.
- b. U.S. note 20(xx)(17) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “not more than 123 cm in length” and inserting “not more than 185 cm in length” in lieu thereof.
- c. U.S. note 20(xx)(47) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “measuring not less than 15 cm in width by 21 cm depth but not more than 41 cm in width by 25 cm in depth” and inserting “measuring not less than 15 cm in width by 20 cm depth but not more than 41 cm in width by 32 cm in depth” in lieu thereof.
- d. U.S. note 20(yy)(54) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “, each measuring at least 610.1 cm by 10.1 cm by 10.1 cm but not more than 16.6 cm by 7.7 cm by 10.2 cm and weighing at least 0.4 kg but not more than 1.4 kg, conforming to Association of American Railroads (“AAR”) specifications S-491, M-601 and RP-5595”.
- e. U.S. note 20(yy)(65) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting “not more than 25.4 cm by 15.3 cm by 17.8 cm and weighing at least 9 kg and not more than 20.5 kg,” and inserting “not more than 42 cm by 34 cm by 115 cm and weighing at least 4 kg and not more than 22 kg,” in lieu thereof.

Joseph Barloon
General Counsel
Office of the United States Trade Representative.