

CLIENT ALERT

January 2, 2019

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US Trade Representative Announces its Determination to Grant First Round of Product Exclusions

美国贸易代表办公室宣布批准301条款下首批产品关税豁免申请

On December 21, 2018, the Office of the U.S. Trade Representative announced its determination to grant nearly 1,000 product exclusion requests from the first tranche of Section 301 tariffs, which went into effect on July 6, 2018 on approximately \$34 Billion worth of imports from China.

2018年12月21日，美国贸易代表办公室宣布其决定将批准于2018年7月6日生效的301条款下第一批价值340亿美元的中国产品关税清单中近1000项产品的关税豁免申请。

Based on the evaluation of the three factors set out in its July 11 Notice, as well as advice from advisory committees and any public comments on the pertinent exclusion requests, the U.S. Trade Representative granted the above-referenced product exclusions and submitted for publication a Federal Register Notice ("Notice") to modify the Harmonized Tariff Schedule in order to implement the product exclusions set out in the Annex to the Notice.

美国贸易代表办公室根据对其在2018年7月11日发布的公告中所列举的三个因素的评估以及来自咨询委员会的建议和对相关豁免申请的公开建议和讨论，美国贸易代表办公室批准了上述产品的关税豁免申请并且发表了联邦记事公告修改协调关税表以实施对公告附件中所列出的产品关税豁免申请的批准。

As set out in the Annex to this Notice, the exclusions are established in two different formats: (1) as an exclusion of an existing 10-digit subheading from within an 8-digit subheading covered by the \$34 billion action, covering 918 separate exclusion requests, or (2) as an exclusion reflected in specially prepared product descriptions covering approximately 66 different exclusion requests. In particular, the exclusions take the form of seven 10-digit HTSUS subheadings, and 24 specially prepared product descriptions, which can be located at the Annex.

正如公告附件所述，产品关税豁免的批准根据如下两个原则：(1) 从价值340亿美元的中国产品关税清单中，以八位协调代码为基础的现有的十位关税协调代码中排除部分代表相应产品的代码，在此原则下涵盖了918个单独的产品关税豁免申请；或者(2) 根据特别准备的产品描述排除部分产品，在此原则下涵盖了大约66个不同的产品关税豁免申请。具体来说，此次批准的产品关税豁免申请包括了7个十位协调代码和24个特别准备的产品描述下的中国产品，这些信息都可以在公告的附件中找到。

In accordance with the July 11 Notice, the exclusions are available for any products that meet the descriptions in the Annex of the Notice, regardless of whether the importer filed an exclusion request or not. Further, the scope of each exclusion is governed by the scope of the 10-digit headings and product descriptions in the Annex to the Notice, and not by the product descriptions set out in any particular request for exclusion.

与7月11日发布的联邦公告相一致，对于符合此公告附件中描述的任何产品，无论进口商是否提交了产品关税豁免申请，都可以免除关税。此外，每项豁免的范围均受公告附件中十位协调代码和特别准备的产品描述的约束，而不受任何特定的产品关税豁免申请中的产品描述的约束。

The exclusions will apply retroactively as of the July 6, 2018 effective date of the \$34 billion action, and extend for one year after the publication of the Notice. U.S. Custom 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—meaning that requests not granted in the current Notice could still be granted at a later time.

所获得豁免批准将追溯至2018年7月6日340亿美元下中国商品额外关税生效之日，并在此公告生效一年内有效。美国海关和边境保护局将就商品入境指导和实施发布指示。美国贸易代表办公室将继续定期对未在此公告中批准的产品关税豁免申请进行裁决——这意味着在当前公告中未授予批准的申请仍有可能在以后被批准。

Dickinson Wright PLLC will continue tracking the USTR's actions and determinations of exclusion requests. If you have any questions or need any assistance with tariff issues, please contact us at your earliest convenience.

迪克森律师事务所将继续关注美国贸易代表办公室的相关行动以及对产品关税豁免申请的裁决。如果您对关税有任何问题或需要任何帮助，请随时联系我们。

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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 product exclusions.

SUMMARY: Effective July 6, 2018, the U.S. Trade Representative (Trade Representative) imposed additional duties on goods of China with an annual trade value of approximately \$34 billion (the \$34 billion action) 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 Trade Representative's determination included a decision to establish a product exclusion process. The Trade Representative initiated the exclusion process in July 2018, and stakeholders have proceeded to submit requests for the exclusion of specific products. This notice announces the Trade Representative's determination to grant certain exclusion requests, as specified in the Annex to this notice. The 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 July 6, 2018 effective date of the \$34 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 Arthur Tsao or Megan Grimbball, 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), and 83 FR 40823 (August 16, 2018), 83 FR 47974 (September 21, 2018), and 83 FR 65198 (December 19, 2018).

Effective July 6, 2018, the Trade Representative imposed additional 25 percent duties on goods of China classified in 818 8-digit subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of \$34 billion. *See* 83 FR 28710. The 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 \$34 billion action from the additional duties. The Trade Representative issued a notice setting out the process for the product exclusions, and opening a public docket. *See* 83 FR 32181 (the July 11 notice).

Under the July 11 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 \$34 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 had 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 only is available 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 July 11 notice stated that the Trade Representative would take into account whether an exclusion would undermine the objective of the Section 301 investigation.

The July 11 notice required submission of requests for exclusion from the \$34 billion action no later than October 9, 2018, and noted that the Trade Representative would periodically announce decisions. The Trade Representative regularly updates the status of each pending request and posts the status at <https://ustr.gov/issue-areas/enforcement/section-301-investigations/request-exclusion>.

B. Determination to Grant Certain Exclusions

Based on the evaluation of the factors set out in the July 11 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 Trade Representative has determined to grant the product exclusions set out in the Annex to this notice. The 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 to this notice, the exclusions are established in two different formats: (1) as an exclusion of an existing 10-digit subheading from within an 8-digit subheading covered by the \$34 billion action, or (2) as an exclusion reflected in specially prepared product descriptions. In particular, the exclusions take the form of seven 10-digit HTSUS subheadings, and 24 specially prepared product descriptions.

In accordance with the July 11 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 10-digit headings and product descriptions in the Annex to this notice, and not by the product descriptions set out in any particular request for exclusion.

The exclusions in the Annex cover approximately 1,000 separate exclusion requests: the excluded 10-digit subheadings cover 918 separate requests, and the 24 specially drafted product descriptions cover approximately 66 separate requests.

As stated in July 11 Notice, the exclusions will apply as of the July 6, 2018 effective date of the \$34 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 Trade Representative will continue to issue determinations on pending requests on a periodic basis.

Stephen Vaughn
General Counsel
Office of the U.S. Trade Representative.

ANNEX

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 July 6, 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 9903.88.05 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled “Heading/Subheading”, “Article Description”, “Rates of Duty 1-General”, respectively:

Heading/ Subheading	Article Description	Rates of Duty		
		1		2
		General	Special	
“9903.88.05	Articles the product of China, as provided for in U.S. note 20(h) 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(h) to subchapter III of chapter 99 in numerical sequence:

“(h) The U.S. Trade Representative determined to establish a process by which particular products classified in heading 9903.88.01 and provided for in U.S. notes 20(a) and 20(b) could be excluded from the additional duties imposed by heading 9903.88.01. See 83 Fed. Reg. 28710 (June 20, 2018) and 83 Fed. Reg. 32181 (July 11, 2018). Pursuant to the product exclusion process, the U.S. Trade Representative has determined that the additional duties provided for in heading 9903.88.01 shall not apply to the following particular products, which are provided for in the enumerated statistical reporting numbers:

- (i) 8412.21.0075
- (ii) 8418.69.0120
- (iii) 8480.71.8045
- (iv) 8482.10.5044
- (v) 8482.10.5048
- (vi) 8482.10.5052
- (vii) 8525.60.1010
- (viii) Spark-ignition engines for marine propulsion, outboard, each rated at not less than 29.83 kW but not more than 44.74 kW (described in statistical reporting number 8407.21.0080)
- (ix) Welded hydraulic linear acting (cylinders) engines and motors, each with piston bore of 12.7 mm or more but not over 34.6 mm, with stroke not over 11.43 m, overall length not over 15.24 m and rod diameter not over 1.219 m (described in statistical reporting number 8412.21.0030)

- (x) Stretchers of stainless steel, designed to move rollers to adjust tension of paper fabric to be dried, each with a pivoting arm with an actuator, linear rail movement with an actuator, and front and back units with mounting holes for tube roll bearing housings (described in statistical reporting number 8419.90.2000)
- (xi) Roller machines with dies for embossing paper, manually powered (described in statistical reporting number 8420.10.9080)
- (xii) Salad spinners of plastics, with capacity of at least 2.4 liters but not more than 3.8 liters (described in statistical reporting number 8421.19.0000)
- (xiii) Nonelectric water filtration apparatus consisting of three cylinder-shaped filter cartridges, each measuring 6.35 cm by 26.67 cm, having water storage tank and plastic tubing measuring 0.63 cm or more but not over 0.95 cm, presented with installation kit (described in statistical reporting number 8421.21.0000)
- (xiv) Winches, each having a winch frame with a corrosion resistant coating and stainless steel mandrel with nylon bushings, operated manually by a worm gear mechanism (described in statistical reporting number 8425.39.0100)
- (xv) Elevators, comprising L-shaped steel buckets bolted to a steel chain, with guide rollers and a drive system (described in statistical reporting number 8428.32.0000)
- (xvi) Belt conveyors, each comprising a frame with leveling feet, electric motor and food grade plastic conveyor belt (described in statistical reporting number 8428.33.0000)
- (xvii) Belt conveyors, each comprising a welded frame with leveling feet and casters, electric motor and food grade plastic modular conveyor belt (described in statistical reporting number 8428.33.0000)
- (xviii) Guards of stainless steel, designed to shield operators of papermaking machines from moving or rotating equipment, each with dimensions ranging from 30 cm by 30 cm by 50 cm to 50 cm by 50 cm by 4 m, weighing 30 kg or more but not over 100 kg (described in statistical reporting number 8439.99.1000)
- (xix) Scrapers ("doctors") of stainless steel, designed to scrape impurities from the rotating roll surface of the forming and press sections of papermaking machines, each comprising a beam with a blade of non-symmetrical cross section, long aspect ratio, and mounting journals and turning devices on either end, with dimensions ranging from 50 cm by 50 cm by 8 m to 60 cm by 6 m by 11 m, weighing 1 metric ton or more but not over 3 metric tons (described in statistical reporting number 8439.99.1000)
- (xx) Frameworks of the forming and press section of papermaking machines, of stainless steel or clad mild steel with stainless or acid proof steel, each with dimensions ranging from 1 m by 1 m by 1 m to 2.3 m by 2.3 m by 12 m, weighing 500 kg or more but not over 40 metric tons (described in statistical reporting number 8439.99.1000)
- (xxi) Guides of stainless steel, designed for locating conveyer belts on papermaking machines, each with a moving arm with an actuator and front and back units with mounting holes for tube roll bearing houses, each with dimensions ranging from 40 cm by 50 cm by 30 cm to 1 m by 1 m by 50 cm, weighing 300 kg or more but not over 500 kg (described in statistical reporting number 8439.99.1000)
- (xxii) Rollers of steel and cast iron ("nip rollers") with bearing journals on either end, designed for use in paper manufacturing to mechanically compress paper web to

- remove water or impart desired mechanical properties in paper web, each with a polymer cover, the foregoing with length of 7 m or more but not over 12 m, with diameter of 1 m or more but not over 1.5 m, weighing 15 metric tons or more but not over 30 metric tons (described in statistical reporting number 8439.99.1000)
- (xxiii) Open containers (“savealls”) of stainless steel, designed to catch water run off generated in the papermaking process, constructed of large square shaped plates and flat constructions with mounting holes on ends, each with dimensions ranging from 50 cm by 50 cm by 50 cm to 1.5 m by 1 m by 10 m, weighing 50 kg or more but not over 2 metric tons (described in statistical reporting number 8439.99.1000)
 - (xxiv) Stretchers of stainless steel, designed to move rollers of papermaking machines to adjust tension of fabric, each with a pivoting arm with an actuator, linear rail movement with an actuator and front and back units with mounting holes for tube roll bearing housings (described in statistical reporting number 8439.99.1000)
 - (xxv) Suction boxes of stainless steel, which remove water from paper web or papermaking fabrics during papermaking, each with dimensions ranging from 50 cm by 50 cm by 8 m to 1 m by 1 m by 10 m, weighing 1.5 metric tons or more but not over 2 metric tons (described in statistical reporting number 8439.99.1000)
 - (xxvi) Rollers of stainless steel or cast iron, designed for use in paper manufacturing to support and convey papermaking cloth (i.e. fabric) or the paper web, each weighing 7 metric tons or more but not over 20 metric tons, measuring 7 m or more but not over 12 m in length, with diameter of 40 cm or more but not over 1.5 m, presented with bearing journals on either end and a polymer cover (described in statistical reporting number 8439.99.1000)
 - (xxvii) Workstands designed to use with miter saws, each with metal tube frame, 4 metal legs and 2 metal extension arms (described in statistical reporting number 8466.92.5010)
 - (xxviii) Workstands designed for use with miter saws, each with wheels to make workstand mobile and with sides that fold up to extend the work area (described in statistical reporting number 8466.92.5010)
 - (xxix) Angle cock handle assemblies, of iron and steel, each measuring 11.43 cm by 21.59 cm by 5.08 cm and weighing 0.748 kg (described in statistical reporting number 8481.90.9040)
 - (xxx) Radiation therapy systems, each encased by steel-based structural shell with gantry cover comprising three pairs of plastics-based panels (described in statistical reporting number 9022.14.0000)
 - (xxxi) Thermostats designed for air conditioning or heating systems, not designed to connect to the internet, the foregoing designed for wall mounting (described in statistical reporting number 9032.10.0030)
3. by amending the last sentence of the first paragraph of U.S. note 20(a) to subchapter III to chapter 99 by inserting after the phrase “imposed by heading 9903.88.01” the following phrase:

“, except products of China granted an exclusion by the U.S. Trade Representative and provided for in heading 9903.88.05 and U.S. note 20(h) to subchapter III of chapter 99”;

4. by amending the first sentence of U.S. note 20(b) to subchapter III to chapter 99 by inserting after the phrase “the following 8-digit subheadings” the following phrase:
“, except products of China granted an exclusion by the U.S. Trade Representative and provided for in heading 9903.88.05 and U.S. note 20(h) to subchapter III of chapter 99”;
and
5. by amending the Article Description of heading 9903.88.01:
 - a. by deleting: “Articles the product of China,” and
 - b. inserting in lieu thereof: “Except as provided in heading 9903.88.05, articles the product of China,”.