



[Billing Code 3290-F9]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**Notice of Modification of Section 301 Action: 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 modification of action.

SUMMARY: In accordance with the direction of the President, the U.S. Trade Representative (Trade Representative) has determined to modify the action being taken in this Section 301 investigation by increasing the rate of additional duty from 10 percent to 25 percent for the products of China covered by the September 2018 action in this investigation. The Trade Representative has further determined to establish a process by which interested persons may request that particular products classified within a tariff subheading covered by the September 2018 action be excluded from the additional duties.

DATES: The rate of additional duty will increase to 25 percent with respect to products covered by the September 2018 action on May 10, 2019.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, contact Associate General Counsel Arthur Tsao, Assistant General Counsel Philip Butler, or Director of Industrial Goods Justin Hoffmann at (202) 395-5725. For questions on customs classification or implementation of additional duties on products covered by the September 2018 action, contact traderemedy@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

A. September 2018 Action

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).

In a notice published on September 21, 2018 (83 FR 47974), the Trade Representative, at the direction of the President, announced a determination to modify the action being taken in the investigation by imposing additional duties on products of China with an annual trade value of approximately \$200 billion. The rate of additional duty initially was 10 percent. Those additional duties were effective starting on September 24, 2018, and currently are in effect. Under Annex B of the September 21 notice, the rate of additional duty was set to increase to 25 percent on January 1, 2019. In the September 21 notice, the Trade Representative stated that he would continue to consider the actions taken in this investigation, and if further modifications were appropriate, he would take into account the extensive public comments and testimony previously provided in response to the notices published on July 17, 2018 (83 FR 33608) and August 7, 2018 (83 FR 38760).

On September 28, 2018 (83 FR 49153), the Trade Representative issued a conforming amendment and modification of the September 21 notice. The current notice refers to the September 21 notice, as modified by the September 28 notice, as the ‘September 2018 action.’

On December 19, 2018 (83 FR 65198), in accordance with the direction of the President, the Trade Representative determined to modify the September 2018 action by

postponing until March 2, 2019, the increase in the rate of additional duty to 25 percent. The Annex to the December 19 notice, which superseded Annex B to the September 21 notice, amended the Harmonized Tariff Schedule of the United States (HTSUS) to reflect this postponement of the increase in the rate of duty applicable to the September 2018 action.

On March 5, 2019 (84 FR 7699), in accordance with the direction of the President, the Trade Representative determined to modify the September 2018 action by postponing until further notice the increase in the rate of additional duty to 25 percent. Annex B of the September 21 notice (83 FR 47974) and the Annex to the December 19 notice (83 FR 65198) were rescinded. In accordance with Annex A of the September 21 notice, the rate of additional duty under the September 2018 action remained at 10 percent until further notice.

B. Determination to Further Modify September 2018 Action

The United States is engaging with China with the goal of obtaining the elimination of the acts, policies, and practices covered in the investigation. The leaders of the United States and China met on December 1, 2018, and agreed to hold negotiations on a range of issues, including those covered in this Section 301 investigation. *See* <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-regarding-presidents-working-dinner-china/>. Since the meeting on December 1, the United States and China have engaged in additional rounds of negotiation on these issues, including meetings in March, April, and May of 2019. In the most recent negotiations, China has chosen to retreat from specific commitments agreed to in earlier rounds. In light of the

lack of progress in discussions with China, the President has directed the Trade Representative to increase the rate of additional duty to 25 percent.

Section 301(b) of the Trade Act of 1974, as amended (Trade Act), provides that the Trade Representative “shall take all appropriate and feasible action authorized under [Section 301(c)] to obtain the elimination of [the] act, policy, or practice [under investigation].” Section 307(a)(1) of the Trade Act authorizes the Trade Representative to modify or terminate any action being taken under Section 301, subject to the specific direction, if any, of the President if “the burden or restriction on United States commerce . . . of the acts, policies, and practices, that are the subject of such action has increased or decreased, or such action is being taken under Section [301(b)] of this title and is no longer appropriate.” In light of the lack of progress in the additional rounds of negotiations since March 2019, and at the direction of the President, the Trade Representative has determined that it is appropriate for the rate of additional duty under the September 2018 action to increase to 25 percent on May 10, 2019.

The Trade Representative’s decision to modify the September 2018 action takes into account the extensive public comments and testimony, as well as advice from advisory committees, concerning the actions proposed in the notices issued in advance of the September 2018 action (83 FR 33608 and 83 FR 38760). Those notices, among other things, requested comments on whether the rate of additional duties should be 10 percent or 25 percent. The Trade Representative’s decision also reflects the advice of the interagency Section 301 Committee.

The Annex to this notice amends the Harmonized Tariff Schedule of the United States to provide that the rate of additional duties for the September 2018 action will increase to 25 percent on May 10, 2019.

Pursuant to Sections 301(b), 301(c), 304(a), and 307(a) of the Trade Act, the Trade Representative has determined that the Office of the United States Trade Representative (USTR) will establish a process by which interested persons may request that particular products classified within an HTSUS subheading covered by the September 2018 action be excluded from the additional duties. USTR will publish a separate notice describing the product exclusion process, including the procedures for submitting exclusion requests, and an opportunity for interested persons to submit oppositions to a request.

ANNEX

Effective with respect to goods (i) entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on May 10, 2019, and (ii) exported to the United States on or after May 10, 2019, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified:

1. by amending U.S. Note 20(e) to subchapter III of chapter 99 by deleting “10 percent” each place that it appears, and inserting “25 percent” in lieu thereof;
2. by amending U.S. Note 20(g) to subchapter III of chapter 99 by deleting “10 percent” each place that it appears, and inserting “25 percent” in lieu thereof;
3. by amending the Rates of Duty 1-General column of heading 9903.88.03 by deleting “10%”, and inserting “25%” in lieu thereof; and

4. by amending the Rates of Duty 1-General column of heading 9903.88.04 by deleting “10%”, and inserting “25%” in lieu thereof.

Joseph Barloon
General Counsel

Office of the U.S. Trade Representative.

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