

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 specific direction of the President, the U.S. Trade Representative has determined to modify the action being taken in this Section 301 investigation by increasing the rate of additional duty from 10 to 15 percent for the products of China covered by the \$300 billion tariff action published on August 20, 2019.

DATES: For products covered by Annex A of the August 20, 2019 notice (84 FR 43304), the rate of additional duty will be 15 percent on the current effective date of September 1, 2019. For products covered by Annex C of the August 20 notice, the rate of additional duty will be 15 percent on the current effective date of December 15, 2019.

FOR FURTHER INFORMATION CONTACT: For questions about this action, contact Associate General Counsel Arthur Tsao or Assistant General Counsel Megan Grimball, or Director of Industrial Goods Justin Hoffmann at (202) 395-5725. For questions on customs classification or implementation of additional duties on products identified in the Annexes to this notice, contact traderemedycbp@dhs.gov.

SUPPLEMENTARY INFORMATION:

A. Prior Determinations in the Investigation

On August 18, 2017, the U.S. Trade Representative initiated an investigation into certain acts, policies, and practices of the Government of China related to technology transfer, intellectual property, and innovation. 82 FR 40213 (August 23, 2017). In April 2018, the U.S. Trade Representative published a notice of a determination that the acts, policies, and practices of China under investigation are unreasonable or discriminatory and burden or restrict U.S. commerce, and are thus actionable under Section 301(b) of the Trade Act of 1974, as amended (Trade Act). 83 FR 14906 (April 6, 2018).

Up through early May 2019, the U.S. Trade Representative, at the direction of the President, determined to take actions resulting in the imposition of an additional 25 percent ad valorem duty on products of China with an aggregate annual trade value of approximately \$250 billion in order to obtain the elimination of China's acts, policies, and practices covered in the investigation. As explained in prior notices, the actions do not relate to China's acts, policies, and practices involving technology licensing, which are being addressed separately in a WTO dispute settlement proceeding.

The U.S. Trade Representative imposed these additional duties in three tranches. Tranche 1 covered 818 tariff subheadings, with an approximate annual trade value of \$34 billion. See 83 FR 28710 (June

20, 2018). Tranche 2 covered 279 tariff subheadings, with an approximate annual trade value of \$16 billion. See 83 FR 40823 (August 16, 2018). Tranche 3 covered 5,733 tariff subheadings, with an approximate annual trade value of \$200 billion. See 83 FR 47974 (September 21, 2018); 83 FR 49153 (September 28, 2018); and 84 FR 20459 (May 9, 2019).

As of mid-May 2019, China's statements and conduct indicated that action at a \$250 billion level was insufficient to obtain the elimination of China's unfair and harmful policies. Accordingly, the President directed the U.S. Trade Representative to consider a possible modification of the action being taken in the form of additional duties of up to 25 percent on products of China with an annual aggregate trade value of approximately \$300 billion. In a notice published on May 17, 2019 (84 FR 22564), the Office of the United States Trade Representative invited public comments and announced a public hearing with regard to the possible imposition of additional duties of up to 25 percent on a specific list of tariff subheadings with an approximate annual trade value of \$300 billion. The notice and comment process concluded in early July 2019.

In August 2019, the U.S. Trade Representative, at the direction of the President, determined to modify the action being taken in the investigation by imposing an additional 10 percent ad valorem duty on products of China with an annual aggregate trade value of approximately \$300 billion. 84 FR 43304 (August 20, 2019). The August 20 notice contains two separate lists of tariff subheadings, with two different effective dates. List 1, which is set out in Annex A of the August 20 notice, is effective September 1, 2019. List 2, which is set out in Annex C of the August 20 notice, is effective December 15, 2019.

B. Modification of Action

The Section 301 statute (set out in Sections 301 to 308 of the Trade Act) (19 U.S.C. 2411-2418) includes authority for the U.S. Trade Representative to modify the action being taken in an investigation. In particular, Section 307(a)(1) authorizes the U.S. Trade Representative to modify or terminate any action 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 the action has increased or decreased, or the action is being taken under Section 301(b) and is no longer appropriate.

The burden or restriction on United States commerce of the acts, policies, and practices that are the subject of the Section 301 action continues to increase. China's unfair acts, policies, and practices include not just its technology transfer and IP policies referenced in the notice of initiation in the investigation, but also China's subsequent defensive actions taken to maintain those unfair acts, policies, and practices as determined in that investigation. China has determined to impose tariffs on a substantial majority of U.S. goods exported to China, with the goal of pressuring the United States to cease its efforts to obtain the elimination of China's unfair policies. China has further taken or threatened to take additional countermeasures, including non-tariff measures, against commerce of the United States. For example, China has taken concrete steps to devalue its currency. See <https://home.treasury.gov/news/press-releases/sm751>. Most recently, shortly following the August 2019 announcement of the \$300 billion action, China responded by announcing further tariffs on

U.S. goods, starting September 1, 2019. In short, instead of addressing the underlying problems, China has increased tariffs and adopted or threatened additional retaliation to further protect the unreasonable acts, policies, and practices identified in the investigation, resulting in increased harm to the U.S. economy.

China's most recent response of announcing a new tariff increase on U.S. goods has shown that the current action being taken is no longer appropriate. 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, 2018, the United States and China have engaged in additional rounds of negotiation on these issues, including meetings in March, April, May, and July 2019. At certain times in these discussions, China has offered specific commitments that were constructive towards reaching a resolution of this matter. However, China more recently has retreated from these commitments, indicating that the action currently being taken is not effective in obtaining the elimination of the unfair acts, policies, and practices covered in the investigation. And as noted, China's specific response to the \$300 billion action at a 10 percent rate of additional duty was not to address U.S. concerns, but rather to impose further retaliatory tariffs on U.S. commerce.

For these reasons, and in accordance with the specific direction of the President, the U.S. Trade Representative has determined to modify the action being taken in the investigation by increasing the rate of additional duty from 10 percent ad valorem to 15 percent ad valorem on the goods of China specified in Annex A and Annex C of the August 20 notice.

As noted above, the May 17, 2019 notice invited public comments on duties of up to 25 percent on the products covered by the proposed \$300 billion action. The current modification in the rate of additional duty takes into account the public comments and testimony, as well as advice from advisory committees and the interagency Section 301 committee, concerning the action proposed in the May 17 notice.

The Annex to this notice amends the Harmonized Tariff Schedule of the United States to provide that the rate of additional duties for the products covered in Annex A and Annex C of the August 20 notice will be 15 percent. This increase in the rate of duty does not change the effective date of Annex A (September 1, 2019) or of Annex C (December 15, 2019).

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 September 1, 2019, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. By amending U.S. Note 20(r) to subchapter III of chapter 99, as established by the U.S. Trade Representative in a determination contained in 84 Federal Register 43304 (August 20, 2019), by deleting ``10 percent'' each place that it appears, and inserting ``15 percent''

in lieu thereof; and

2. by amending the Rates of Duty 1-General column of heading 9903.88.15, as established by the U.S. Trade Representative in a determination contained in 84 Federal Register 43304 (August 20, 2019), by deleting ``10%``, and inserting ``15%`` in lieu thereof.

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 December 15, 2019, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified:

1. By amending U.S. Note 20(t) to subchapter III of chapter 99, as established by the U.S. Trade Representative in a determination contained in 84 Federal Register 43304 (August 20, 2019), by deleting ``10 percent`` each place that it appears, and inserting ``15 percent`` in lieu thereof; and

2. by amending the Rates of Duty 1-General column of heading 9903.88.16, as established by the U.S. Trade Representative in a determination contained in 84 Federal Register 43304 (August 20, 2019), by deleting ``10%``, and inserting ``15%`` in lieu thereof.

Joseph Barloon,
General Counsel, Office of the U.S. Trade Representative.
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<https://www.govinfo.gov/content/pkg/FR-2019-08-30/html/2019-18838.htm>