

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Modification: China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice of modification of actions.

SUMMARY: In a notice published on September 18, 2024, the U.S. Trade Representative proposed additional modifications to the actions taken in the Section 301 investigation of China’s acts, policies, and practices related to technology transfer, intellectual property, and innovation. Specifically, the U.S. Trade Representative proposed increasing Section 301 tariff rates on five subheadings of the Harmonized Tariff Schedule of the United States (HTSUS) covering certain tungsten products, wafers, and polysilicon. In a notice published on September 24, 2024, USTR announced the opening of an electronic portal for interested parties to submit comments on the proposed tariff increases. This notice announces the U.S. Trade Representative’s determination to modify the actions being taken in this investigation by increasing tariff rates on the five subheadings.

DATES: January 1, 2025, at 12:01 a.m. EST: Tariff increases on the tariff subheadings set out in the Annex to this notice are applicable with respect to products that are entered for consumption, or withdrawn from warehouse for consumption, on or after January 1, 2025.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Philip Butler and Megan Grimball, Chairs of the Section 301 Committee

at 202.395.5725. For specific questions on customs classification, contact traderemedy@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see the prior notices including 82 FR 40213 (August 24, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), and 83 FR 40823 (August 16, 2018).

On September 8, 2022, USTR announced that in accordance with Section 307(c)(3) of the Trade Act (19 U.S.C. 2417(c)(3)), the U.S. Trade Representative would conduct a review of the two actions taken, as modified, in this investigation. *See* 87 FR 55073. Based on information obtained during the review, USTR, in consultation with the Section 301 Committee, prepared a comprehensive report that included findings on the effectiveness of the actions taken in this investigation in achieving the objectives of the investigation, other actions that could be taken, and the effects of such actions on the United States economy, including consumers. The report, *Four-Year Review of Actions Taken in the Section 301 Investigation: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation* (Report), was published on May 14, 2024, and is available on the USTR website.

On May 14, 2024, taking into consideration the U.S. Trade Representative's findings in the Report and recommendations, the President issued a Memorandum (President's Memorandum) that directed the U.S. Trade Representative to: "maintain, as appropriate and consistent with this memorandum, the *ad valorem* rates of duty and lists of products subject to the [actions] taken under the Section 301 investigation" and "[t]o

further encourage China to eliminate the acts, policies, and practices at issue, and to counteract the burden or restriction of these acts, policies, and practices, the Trade Representative shall modify the [actions taken in the investigation] to increase Section 301 *ad valorem* rates of duty” for certain specified products of China. *See* <https://www.whitehouse.gov/briefing-room/presidential-actions/2024/05/14/memorandum-on-actions-by-the-united-states-related-to-the-statutory-4-year-review-of-the-section-301-investigation-of-chinas-acts-policies-and-practices-related-to-technology-transfer-intellectua/>. In particular, the President’s Memorandum specified 14 categories of products for proposed tariff increases, tariff rates for those products, and year for tariff increases.

Consistent with the President’s direction, USTR issued a *Federal Register* notice with proposed modifications, including proposed increases in Section 301 duties on 382 HTSUS subheadings and 5 statistical reporting numbers of the HTSUS, with an approximate annual trade value of \$18 billion (2023). *See* 89 FR 46252 (May 28, 2024) (May 28 notice). In accordance with Section 307(a)(2) of the Trade Act (19 U.S.C. 2417(a)(2)), USTR invited comments from interested persons and opened a 30-day docket on May 29, 2024 (USTR–2024–0007). *See* May 28 notice.

On September 18, 2024, the U.S. Trade Representative announced modifications to the actions, including certain adjustments to the modifications proposed in the May 28 notice. *See* 89 FR 76581 (September 18, 2024) (September 18 notice). Additionally, and based on comments requesting that certain HTSUS subheadings be added to the 382 HTSUS subheadings proposed for tariff increases, the U.S. Trade Representative

proposed increasing Section 301 duties on 5 additional HTSUS subheadings covering certain tungsten products, wafers, and polysilicon.

In accordance with Section 307(a)(2) of the Trade Act, USTR invited comments from interested persons and opened a 30-day docket on September 24, 2024 (USTR–2024–0016). *See* 89 FR 77958 (September 24, 2024) (September 24 notice).

B. Determination to Modify the Actions

Pursuant to Sections 307(c) and 307(a)(1) of the Trade Act (19 U.S.C. 2417(c), (a)(1)), the U.S. Trade Representative may modify or terminate any action, subject to the specific direction, if any, of the President with respect to such action, that is being taken under Section 301 if the burden or restriction on U.S. 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) and no longer is appropriate.

As previously discussed, modification of the actions is warranted under Section 307(a)(1)(B) and Section 307(a)(1)(C). *See* 89 FR 76581 (September 18, 2024). The modifications to the actions are set out in the Annex to this notice. The U.S. Trade Representative’s determination takes account of the public comments, the President’s Memorandum and the policy rationale underlying the President’s direction, as well as the advice of the interagency Section 301 committee and appropriate advisory committees.

Any product listed in the Annex to this notice, which is subject to the additional duties imposed by this determination, and that is admitted into a U.S. foreign trade zone, except any product that is eligible for admission under “domestic status” as defined in 19 CFR 146.43, only may be admitted as “privileged foreign status,” as defined in 19 CFR 146.41, effective as of the date that the additional duties are imposed. Products of China

that are provided for in headings 9903.91.11 and listed in subdivision (j) of U.S. note 31 to subchapter III of chapter 99 of the HTSUS, which are admitted into a U.S. foreign trade zone on or after 12:01 a.m. eastern daylight time on January 1, 2025, only may be admitted as “privileged foreign status.” All such products will be subject upon entry for consumption to any *ad valorem* rates of duty or quantitative limitations related to the classification under the applicable HTSUS subheading.

C. USTR’s Responses to Significant Comments

As discussed above, in light of comments requesting that certain HTSUS subheadings be added to the 382 HTSUS subheadings proposed for tariff increases, the U.S. Trade Representative proposed increasing Section 301 duties on 5 additional HTSUS subheadings falling under 2 of the 14 categories of products proposed for tariff increases. Specifically, the U.S. Trade Representative proposed increasing tariffs to 25 percent for 3 additional subheadings under “other critical minerals” covering certain tungsten products and proposed increasing tariffs to 50 percent for 2 additional subheadings under “solar cells” covering wafers and polysilicon. *See* 89 FR 76581.

Tungsten Subheadings: Consistent with the President’s Memorandum to increase tariffs on other critical minerals to 25 percent, the U.S. Trade Representative proposed increasing tariffs to 25 percent on 3 additional subheadings covering certain tungsten products: 8101.94.00 (Tungsten, unwrought (including bars and rods obtained simply by sintering)); 8101.99.10 (Tungsten bars and rods (o/than those obtained simply by sintering), profiles, plates, sheets, strip and foil); and 8101.99.80 (Tungsten, articles nesoi).

Comments supporting increases primarily assert that increasing tariffs on tungsten products is vital to the security and the resilience of domestic supply chains for critical U.S. industries, including aerospace, automotive, defense, medical, and the oil and gas industries. Some supporting comments recommend tariff rates as high as 75 percent to address China's efforts to dominate and undercut domestic production.

Comments opposing increases primarily assert limited availability of tungsten products outside of China, estimating that China accounts for approximately 80 percent of global tungsten reserves, and insufficient quantities available from third country sources. These comments express concerns that increased tariffs on tungsten will increase production costs, exacerbate inflation, harm U.S. competitiveness, and decrease U.S. market share. One comment encouraged USTR to take alternative actions to tariffs.

Considering the comments and the advice of the Section 301 Committee, and consistent with the President's direction to increase tariffs on other critical minerals to 25 percent, the U.S. Trade Representative has determined to increase tariffs on the 3 tungsten subheadings to 25 percent beginning in 2025. Continued reliance on China for tungsten products leaves U.S. supply chains vulnerable and puts U.S. national security at risk. Imports from China continue to undercut domestic production, and increasing tariffs will make domestic producers more competitive, which will increase leverage on China to eliminate its harmful acts, policies, and practices, and reduce vulnerability to those harmful acts, policies, and practices. Increasing duties on these products will support current investments, stimulate greater domestic production, and spur additional investments in domestic capacity.

Polysilicon and Wafer Subheadings: Consistent with the President's Memorandum to increase tariffs on solar cells to 50 percent, the U.S. Trade Representative proposed increasing tariffs to 50 percent on 2 subheadings covering polysilicon and wafers: 2804.61.00 (Silicon containing by weight not less than 99.99 percent of silicon); and 3818.00.00 (Chemical elements doped for use in electronics, in the form of discs, wafers etc., chemical compounds doped for electronic use).

Nearly all comments support increasing tariffs on polysilicon, noting the importance of the tariffs in helping to ensure the development and growth of the domestic industry producing polysilicon and downstream products and develop alternative supply chains outside of China. Specifically, the comments assert that the tariffs help to support recent investments by the domestic industry and increasing the tariffs to 50 percent will further support additional domestic production scheduled to come online in 2025. USTR received one comment opposing the tariff increase. The comment asserts that Section 301 tariffs have not resulted in changing China's behavior and increasing the tariff will only increase prices for domestic companies.

The majority of comments support increasing tariffs on wafers. The comments note that increasing tariffs will increase the effectiveness of the actions, provide additional support to the domestic industry, including recent investments, and help to strengthen alternative supply chains. Specifically, commenters note that higher tariffs will counteract China's unfair practices, which have allowed Chinese companies to dominate supply chains, and allow domestic producers to increase production, and continue to invest in additional capacity. To give domestic producers time to increase production, some of the comments supporting higher tariffs either suggest delaying the tariffs or

allowing for certain exclusions. Other comments supporting higher tariffs suggest increasing tariffs immediately. Comments opposing the tariffs generally assert that the tariffs have not been effective and only negatively impacted the U.S. economy. One comment opposing the tariff increase suggests delaying the increase until domestic production has increased.

Considering the comments and the advice of the Section 301 Committee, and consistent with the President's direction to increase tariffs on solar cells to 50 percent, the U.S. Trade Representative has determined to increase tariffs on polysilicon and wafers to 50 percent in 2025. Increasing tariffs on polysilicon and wafers will complement recent investments, encourage diversification away from Chinese sources, provide additional leverage with China to eliminate the investigated acts, policies, and practices, and reduce vulnerability to those harmful acts, policies, and practices. While increasing tariffs may result in higher prices initially, the tariffs are necessary to allow domestic producers to compete against China's massive excess capacity, defend recent investments, and encourage more domestic manufacturing.

The U.S. Trade Representative will continue to consider the actions taken in this investigation. In the event that further modifications are appropriate, the U.S. Trade Representative intends to take into account the extensive public comments provided in response to the May 28 notice and the September 24 notice.

D. Technical Correction

In the September 18 notice, USTR announced that it had determined to increase the rate of additional duties on medical gloves of vulcanized rubber, other than hard

rubber, to 50 percent in 2025 and to 100 percent in 2026. The additional 100 percent duties that were to be effective on January 1, 2026, were provided for in HTSUS heading 9903.91.08. Due to a publishing error in the Federal Register notice, heading 9903.91.08 did not contain the additional duties in the Rates of Duty 1 – General column. To correct this error, USTR is making a technical correction to heading 9903.91.08 in Annex B(4) to insert the additional 100 percent duties that are to be effective on January 1, 2026.

ANNEX A – Tariff Increases

| HTSUS subheading | Product Description | Rate (%) | Timing |
|------------------|--|----------|--------|
| 8101.94.00..... | Tungsten, unwrought (including bars and rods obtained simply by sintering | 25 | 2025 |
| 8101.99.10..... | Tungsten bars and rods (o/than those obtained simply by sintering), profiles, plates, sheets, strip and foil | 25 | 2025 |
| 8101.99.80..... | Tungsten, articles nesoi | 25 | 2025 |
| 2804.61.00..... | Silicon containing by weight not less than 99.99 percent of silicon | 50 | 2025 |
| 3818.00.00 | Chemical elements doped for use in electronics, in the form of discs, wafers etc., chemical compounds doped for electronic use | 50 | 2025 |

ANNEX B – Changes to Harmonized Tariff Schedule of the United States

1. 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 January 1, 2025, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

A. by inserting the following new heading 9903.91.11 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”, “Rates of Duty 1-Special” and “Rates of Duty 2”, respectively:

| Heading/ Subheading | Article Description | Rates of Duty | | |
|------------------------|---|---|---------|---|
| | | 1 | | 2 |
| | | General | Special | |
| “9903.91.11 | Effective with respect to entries on or after January 1, 2025, articles the product of China, as provided for in subdivision (j) of U.S. note 31 to this subchapter | The duty provided in the applicable subheading + 25%” | | |

B. by inserting the following new subdivision (j) to note 31 to subchapter III of chapter 99 of the HTSUS:

“(j) Heading 9903.91.11 applies to products of China that are classified in the following 8-digit subheadings, 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 January 1, 2025:

(1) 8101.94.00

(2) 8101.99.10

(3) 8101.99.80”.

C. Subdivision (a) of note 31 to subchapter III of chapter 99 of the HTSUS is modified by deleting “and 9903.91.08” in six instances and inserting “, 9903.91.08 and 9903.91.11” in lieu thereof in those six instances.

2. 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 January 1, 2025, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:
 - A. by deleting “2804.61.00” and “3818.00.00” from subdivision (f) of note 20 to subchapter III of chapter 99 of the HTSUS; and
 - B. subdivision (f) of note 31 to subchapter III of chapter 99 of the HTSUS is modified by inserting “(1) 2804.61.00” and “(2) 3818.00.00” in numerical order and by renumbering the remaining subheadings listed in subdivision (f) of note 31 in numerical order, beginning with “(3) 4015.12.10”.
3. Effective on January 1, 2026, subdivision (f) of note 31 to subchapter III of chapter 99 of the HTSUS is modified by deleting “(3) 4015.12.10”.
4. The Rates of Duty 1-General column of heading 9903.91.08 is modified by inserting “The duty provided in the applicable subheading + 100%”.

Juan Millan,
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Office of the United States Trade Representative.