Testimony in response to Proposed Modification of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation
Docket Number USTR-2018-0026

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On behalf of the National Foreign Trade Council, thank you for the opportunity to testify again on the Administration's proposed action pursuant to its Section 301 investigation.

About NFTC

NFTC is dedicated to making America more successful in the global economy by ensuring the adoption of competitive tax and trade policies, strengthening the global rules-based trading system and opening foreign markets to U.S. products and services. The Council's membership spans the breadth of the national economy. It includes sectors such as energy products, aerospace, capital goods, transportation, consumer goods, technology, healthcare products, services, e-commerce and retail. Our companies account for more than $3 trillion in total sales worldwide, employ over five million Americans and produce a huge share of our nation's total exports. We and our members have significant interests in ensuring a healthy U.S. economy and promoting America's global leadership.

Imposing additional tariffs is unlikely to change China's behavior

The goal of the current Section 301 investigation should be to bring China to the negotiating table and achieve an agreement to change their objectionable practices and policies.

Section 301 authority was never intended to result in the United States imposing long-term trade barriers to imports.

Imposing tariffs on $200 billion of Chinese goods, or placing tariffs on an additional $300 billion worth of goods as contemplated by the President,[1] is unlikely to change China's behavior or practices and would dramatically increase the harm to U.S. consumers, innovation and competitiveness resulting from recent trade tensions.

Imposing tariffs on an additional $200 billion, or $500 billion, of Chinese imports will simply create a new status-quo of higher trade barriers.

[1] Trump says U.S. tariffs could be applied to Chinese goods worth $500 billion, David Lawder and Elias Glenn, Reuters, 4 July 2018, available at: https://www.reuters.com/article/us-usa-trade-china/trump-says-u-s-tariffs-could-be-applied-to-chinese-goods-worth-500-billion-idUSKBN1JV063

American businesses and consumers will face higher costs for Chinese products, while U.S. businesses and farmers will face retaliatory tariffs in China. China is an important market for many American companies and farmers. Even a temporary boost in tariffs can impose long-term pain on American exporters as China finds new suppliers from other countries who may keep those markets even after tariffs are removed.

The Administration must negotiate directly with China and continue to work with U.S. allies to resolve these concerns and to ensure that tariffs are not a long-term solution.

Harm to U.S. interests from the proposed modification of action

As detailed below, imposing tariffs on the products listed in USTR's July 17 Federal Register notice would raise the costs for U.S. manufacturers and give a leg up to foreign competitors. They would also negatively impact businesses who use and supply U.S. cloud and telecommunications services and undermine U.S. innovation, including in artificial intelligence and Internet of Things technologies. These tariffs would raise costs for consumers and working families on a long list of essential products from air conditioners to bicycles to furniture as well as a massive range of internet-connected consumer devices, including smart speakers.

We are continuing to consult with our member companies on the full range of products and HTSUS subheadings that would negatively impact their ability to innovate and compete. We anticipate providing a list in a follow up filing to this testimony.

The remainder of my testimony will highlight in more detail the harm that tariffs on particular products would cause to U.S. businesses and consumers.

Harm to consumers and working families

The list of $200 billion in imports subject to the proposed 10 or 25% duty includes a massive range of consumer products, which would raise the cost of household products, homewares, electronics and connected technologies. These tariffs will lead to consumers paying more for everyday products as well as a reduction of retail margins.

Examples of these products include –

- **Apple juice (2009.71.00 and 2009.79.00) and other imported juices (2009.11.00 through 2009.90.40):** Tariffs on juices are likely to lead to higher prices for working families, which could put juices out of reach for some consumers and could contribute to a shortfall in key nutrients. For many consumers, particularly children and the elderly, juice is one of the primary ways that they obtain their daily required servings of fruits and vegetables.

- **Baby and children's items** including Toddler seats (9401.61.40), Child High Chairs (9401.79.00), Infant and Child Car Seats (9401.80.60), and Infant and child pack and play, patio furniture (9403.89.60) would raise the cost of everyday items that moms and dads need to support their families. Many of these products are regulated by the U.S.

Consumer Product Safety Commission (CPSC), which will make it more difficult and time-consuming – or in some cases impossible –for retailers to identify and qualify new suppliers.

- **Bicycles and bike parts (8712.00.15):** Tariffs on bikes and bike parts will negatively impact U.S. bike manufacturers and increase the cost of bikes for American children and families. Finished bicycles from China already face an 11% tariff. Adding up to a 25% additional tariff will increase costs and lower demand for bikes. We are unaware of any alternative sourcing option outside of China that has the supply chain and capacity to produce this volume of low cost mass bikes effectively.

- **Electronics, IoT and connected media devices:** Tariffs on transmission devices (8517.62.00), printed circuit board assemblies and key server components (8473.30.11, 8473.30.51, and 8473.30.91), HDMI cables, video cables, extension cords, auxiliary cords (8544.42.20) and other electronics products, parts, components and accessories will increase the costs that hundreds of millions of American consumers and businesses pay for a range of products including data and infrastructure equipment, game consoles, connected devices, computer memory, voice assistants and connected home products, Bluetooth and smart speakers, smartwatches, and digital media devices.

- **Home appliances, homewares and furniture:** Tariffs will increase the cost of everyday products including air conditioners (8415.10.30), furniture (9403.20.00, 9403.60.80, 9401.30.80, 9401.80.40, 9403.89.60), vacuum cleaners (8508.11.00), gas grills (7321.11.60), futons and mattresses (9401.40.00, 9404.21.00), surge protectors (8537.10.91), paper shredders (8472.90.90), pet products (7323.99.90), pressure washers (8424.30.90), travel goods, luggage, backpacks and handbags (4202.12.21, 4202.12.81, 4202.22.15, 4202.22.45/81, 4202.92.31).

Harm to U.S. technology innovation

The U.S. is home to the world's leading technology companies and tariffs on several key HTS subheadings – including 8517.62.00, 8473.30.11, 8473.30.51, and 8473.30.91 – will create trade barriers that will diminish U.S. competitiveness in technology innovation, including innovating around cloud technology, Artificial Intelligence, and internet-connected devices. Tariffs will directly increase the cost and difficulty of building data centers in the United States and will move manufacturing and jobs outside the United States. These tariffs will also raise costs for American small businesses that rely upon cloud services to export to global customers.

Our member companies import parts and components from China, which are used in American manufacturing facilities from Wisconsin to Texas to manufacture innovative, American-made technology products, including servers, that power everything from data centers to Artificial Intelligence applications.

Tariffs on key components, including transmission devices (8517.62.00), printed circuit board assemblies and key server components (8473.30.11, 8473.30.51 and 8473.30.91), memory modules (8473.30.1140), controllers (8471.80.1000), switch power supplies (8504.40.8500), processing units (8471.50.01), heat sinks (8473.30.5100), HDDs (8471.70.5065), battery back up (8504.40.7018), and DAC cables (8544.42.9090 and 8544.42.2000) would undermine the competitiveness of American businesses and harm American innovation.

Harm to U.S. small businesses and farmers

Small businesses and farmers who rely on internet connectivity and connected technologies will be negatively impacted by tariffs. Companies in every industry utilize cloud computing technologies to access global markets, improve productivity and run their business on a global basis. Small businesses in particular benefit tremendously from being able to access cloud technologies.[2] As noted below, small businesses will also be harmed by tariffs on postage meters and parts.

In addition, data centers and internet-enabled technologies have also been key drivers of innovation for farmers. For example, American farmers are utilizing smart devices and cloud-based analytics software to virtualize their crops and increase their yields and efficiency.[3]

I want to focus in particular on two HTS subheadings critical to American technology innovation and adoption:

Transmission Devices (8517.62.00)

HTS 8517.62.00 is a critical tariff line for enabling internet connectivity. Products covered by this subheading enable devices to connect with one another. Increasing tariffs on this line would significantly harm American manufacturers and technology providers who are developing connected devices in the United States, and it would put a tax on U.S. consumers seeking to connect to the internet or use internet-enabled technologies that are enabled by the products under this subheading.

American companies rely on optical transceivers, line cards, and other transmission devices to enable connectivity at data centers and Internet Service Provider switching stations, all of which are covered by 8517.62.00.

Tariffs on this subheading would negatively impact the competitiveness of American technology companies who are leading worldwide innovation in consumer and corporate technology, and will give their foreign competitors a significant cost advantage over U.S. technology options.

As noted above, the consumer impact would also be significant, as tariffs would impact a wide spectrum of internet-connected consumer devices largely developed by American companies,

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[2] For examples of American small businesses and startups who are using technology to access global markets, see The New Faces of American Trade: Exploring the role of internet platforms and cloud technologies in the global success of small businesses, Global Innovation Forum, 2017, available at: http://www.globalinnovationforum.com/reports/new-faces-of-american-trade/

[3] Big Data in Agriculture: Lessons from the Field, Intel, available at: https://www.intel.com/content/www/us/en/big-data/lessons-from-the-field.html

including modems and routers, internet-connected devices, streaming devices for your TV, e-readers, bluetooth and other smart speakers, wireless headphones, smart watches and fitness trackers.

Printed Circuit Board Assemblies (8473.30.11)

Items that fall under HTS 8473.30.11 items build the necessary infrastructure of U.S. technology companies. Products under the subheading cover most of the core inputs to data centers and other U.S. digital infrastructure, including memory modules and other printed circuit board assemblies (PCBAs).

PCBAs are present within all computers, servers, and phones, as well as almost all electronic devices. PCBAs are critical components for building all technology, including developing Artificial Intelligence applications. Taxing these components would make it more difficult and costly to build and operate data centers, manufacturing facilities, and other technical facilities in the United States.

In order to build state-of-the-art data centers and technology products in the United States, American companies source some commodity inputs, including PCBAs and memory modules, from China. If tariffs are imposed on this subheading, companies will be incentivized to move manufacturing and final assembly of servers and other cloud infrastructure overseas to avoid these tariffs, which would cost American jobs and negatively impact American manufacturing, assembly, and testing operations. These tariffs would also cause U.S. companies to shift sourcing suppliers, which could take years due to contractual arrangements and would raise the cost of key inputs for American manufacturers and technology companies.

Imposing duties on this subheading would negatively impact American technology leadership in cloud technologies. Commercial enterprises, start-ups, universities, and a wide range of other institutions across the globe are actively migrating to cloud computing to meet their information technology needs, and they are turning to U.S. cloud providers in the process. Tariffs threaten to undermine U.S. global competitiveness in cloud services at a time when the market is growing rapidly.

Finally, PCBAs are heavily commoditized inputs and are not key to China's Made in 2025 strategy.

Harm to U.S. competitiveness

Tariffs will also negatively impact a host of American industries that employ hundreds of thousands of Americans and a a critical part of the U.S. industrial and export base, including:

- **U.S. food and beverage companies:** Increased costs due to tariffs on apple juice (2009.71.00 and 2009.79.00) would have significant adverse effects on the competitiveness of U.S. food and beverage companies. China is the top supplier of apple juice consumed in the United States, and tariffs could raise input costs for food and beverage suppliers.

- **U.S. oil and gas industry:** Imposing tariffs on Barite or Natural Barium Sulfate (2511.10.10 and 2511.10.50) threatens to undermine U.S. oil and natural gas production. China owns the largest amount of Barite reserves in the world, and the majority of this material is exported. Barite is by far the best option as a weighting agent in drilling fluids for oil and gas exploration for the U.S. oil and gas industry from technical and cost standpoints. It is non-toxic, chemically and physically unreactive, non-metallic, and has low abrasiveness. Alternative minerals for weighting agent application are cost prohibitive and typically metallic in nature, which decreases drilling productivity.

  The effect of tariffs would be to drive up the price of imported Barite for U.S. Oil & Gas operators while foreign oil and gas competitors benefit from lower prices from Chinese suppliers. This could result in reduced oil & gas exploration and production in the United States. Based on this potential reduction, the market share for excess capacity of oil and gas production would likely shift to OPEC members and Russia. Ultimately, U.S. jobs may be lost as a result of the financial impact due to decreased activity at U.S. processing plants.

- **U.S. wind power turbine manufacturers, and business and consumer users of wind energy:** Tariffs on parts used in the U.S. manufacture of wind turbines (8412.90.90, 8483.40.50, 7326.90.86, and 8504.40.95) would affect the cost and competitiveness of U.S. wind turbine manufacturers, undermining the ability of wind turbines made in the United States to compete with foreign-made wind turbines and seriously harming the competitiveness of the U.S. renewable energy industry. The current global supply of these wind turbine parts and components from outside of China is insufficient to meet U.S. and other global demand over the next several years. Putting tariffs on the imports of these components from China before alternative sources of supply could be brought on line would disrupt and slow the adoption of renewable energy by U.S. power companies. This would affect billions of dollars of already planned wind power investments in the United States, and potentially affect the cost of power for American businesses and consumers.

- **U.S. technology companies**: Imposing tariffs will harm U.S. technology and cloud companies, whom are the global leaders in their space. This is particularly troublesome as Chinese cloud and technology companies are the biggest competitors to U.S. companies and the tech industry. These tariffs, which are meant to address China's unfair trading practices would *help* Chinese and hurt U.S. companies, including their corresponding manufacturing and jobs. We therefore strongly urge the Administration to remove HTS subheadings 8517.62.00, 8473.30.11, 8473.30.51, 8473.30.91, 8473.30.1140, 8471.80.1000, 8504.40.8500, 8473.30.5100, 8471.70.5065, 8504.40.7018, and 8544.42.9090 and 8544.42.2000.

- **U.S. postage machine manufacturers and users, including small businesses and the USPS:** Tariffs on postage meter machines (9470.90.01) and parts and accessories (8473.29.00) would harm U.S. businesses against international competitors, as well as more than 700,000 small and medium businesses who use these products and the U.S. Postal Service. The additional costs of a postage meter would be passed through to the more than 700,000 small, medium and large businesses that use postage meters.

The postage meter is an integral component of small office equipment that is used by hundreds of thousands of businesses across the United States to communicate efficiently by mail with customers, suppliers and service providers. In many cases, the postage meter is the enabling technology that ensures businesses can send their merchandise to customers and coordinate payment in return. The postage meter is a key connection point between small business and the U.S. Postal Service and helps businesses spend more than $10 billion per year in postage to ensure businesses can adequately and cost effectively communicate with their clients and suppliers. Imposing a 10 or 25% tariffs on these machines and parts would give a competitive advantage to competitor companies based in France and Germany.

Increasing the level of tariffs from 10% to 25% creates additional harm and uncertainty

The damage to American businesses and consumers would be even greater if the Administration decides to impose a 25% tariff instead of a 10% tariff, and would be further exacerbated if the Administration proceeds with tariffs on up to $500 billion of Chinese imports.

Tariffs are slowing decision-making and will harm U.S. economic growth

Rising trade tensions – precipitated by successive rounds of unilateral U.S. tariffs on imports from China coupled with tariffs on steel and aluminum – are harming American companies and benefitting overseas competitors. Ultimately, tariffs will slow U.S. economic growth as businesses grapple with uncertainty as well as retaliatory tariffs in key export markets while consumers contend with higher prices.

Conclusion

In conclusion, we continue to believe that imposing unilateral tariffs on products from China is unlikely to change their behavior and will harm U.S. competitiveness and economic growth as well as consumers and working families.

We ask USTR to remove the HTS subheadings referenced above from the list of products subject to tariffs.

And we continue to urge the U.S. Government to seek to resolve outstanding concerns through direct consultations with the Chinese Government while working with its allies to apply pressure jointly on China to reform its practices and policies.

We strongly encourage the U.S. Government to refrain from further retaliatory tariffs against China, which will increase the harm to American businesses and consumers.

Thank you for your consideration of these comments and for the opportunity to testify.