UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS

United States Council for International Business (USCIB) Comments on Proposed Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

Docket No. USTR-2018-0018

July 23, 2018

The United States Council for International Business (USCIB) welcomes the opportunity to provide comments and recommendations on the Proposed Determination of Action Pursuant to Section 301 on China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. USCIB promotes open markets, competitiveness and innovation, sustainable development and corporate responsibility, supported by international engagement and regulatory coherence. Its members include top U.S.-based global companies and professional services firms from every sector of our economy, with operations in every region of the world. As the U.S. affiliate of the International Chamber of Commerce, the International Organization of Employers and the Business and Industry Advisory Committee to the OECD, USCIB has a unique global network through which it provides business views to policy makers and regulatory authorities worldwide, and works to facilitate international trade and investment.

USCIB submitted comments on the proposed 25 percent tariffs on $50 billion worth of Chinese imports on May 11, 2018 for Docket No. USTR-2018-0005. USCIB appreciates that some of the products of interest to our members were taken off that list. However, the majority of the goods of concern to our members were not removed and were affected by the action taken on the list of $34 billion worth of Chinese imports on July 6, 2018. We are hopeful that the Section 301 exclusion process will remedy some of the potential negative consequences.

USCIB and its members continue to be very concerned about the potential unintended negative consequences these proposed tariffs of 25 percent on the additional $16 billion worth of Chinese imports are likely to have, affecting many sectors vital to the U.S. economy and jobs. While the ongoing intellectual property rights (IPR) violations, forced technology transfer requirements, and state interventions harm U.S. companies, workers, consumers, and competitiveness, these sweeping tariffs endanger the U.S. economy in similar ways. Made in China 2025 is certainly an indication that China plans on further advancing in developing their high-tech industries, such as robotics, advanced information technology, aviation, and new energy vehicles, with the eventual goal of global dominance in those industries through uncompetitive means such as subsidies. While this unfair advantage to Chinese companies in this space is a legitimate threat to U.S. leadership in innovation and high-tech, continued engagement in the Chinese market is also very important for U.S. companies in terms of their ability to be globally competitive. Many products on the list have a tenuous relationship to Made in China 2025.

USCIB members are very concerned that these proposed tariffs will stifle the U.S. economy, and not achieve the important goal of changing China's behavior in the space of emerging technologies and intellectual property rights. China's retaliation and future threats of retaliation further exacerbate uncertainties caused by this proposed action. Rather than create more opportunities for U.S. business, sweeping tariffs will stifle U.S. agriculture, goods, and services exports and raise costs for businesses and consumers.

The Administration has stated that the goal of these tariffs is to bring China to the table, indicating that the tariffs are the means to the end of a successful negotiation. We urge the Administration to engage in a dialogue with China to negotiate an outcome. It is important for the Administration to address these issues with a broad view, working collectively with U.S. industry, Congress, and our trading partners, to adequately address China's unfair trade practices and get China to be WTO compliant. USCIB applauds the Administration for also looking at alternative approaches, such as initiating a WTO dispute by requesting consultations with the Government of China regarding certain specific aspects of China's technology regulations considered in the investigation. In addition to engaging the WTO process, this should include developing a strategy with clearly defined objectives, direct negotiating mechanism with the Chinese, targeted deliverables, and deadlines with measurable results. The Administration should also coordinate in various available forums with like-minded trading partners who are similarly afflicted by China's actions on intellectual property rights, forced technology transfer, and discriminatory industrial policies.

Tariffs are a blunt tool with many unintended consequences on U.S. businesses. They will significantly impact U.S. companies' ability to export and create important jobs in the United States. They will also negatively impact U.S. customers, increasing competitiveness in the United States for foreign competitors. The Administration's proposed tariff list was drawn up without significant input from the U.S. business or manufacturing community. The public comment process is the principal means to solicit information from U.S. businesses. Therefore, the Administration must use this process to ensure that its actions in this China 301 process do not inadvertently harm some of the most competitive sectors of the U.S. economy, and the hundreds of thousands of American jobs that depend on them. Tariffs should only be used as leverage toward a negotiated outcome and should not be imposed while negotiations are ongoing.

In addition, USCIB members believe it is critical that duty drawback be available for exported products. Many of the inputs covered by the proposed Section 301 tariffs are incorporated in products made in the United States that are then exported around the world. Unless duty drawback is available for exported products, U.S. exporters will, through these tariffs, face a significant cost disadvantage in competing against foreign products in international markets, undermining U.S. exporters, the U.S. workers employed at their facilities, and the many U.S. suppliers – many of them small and medium sized businesses – that also supply those affected exports.

USCIB members have worked hard to review the impact of these proposed tariffs on their own operations. Most U.S. businesses continue to hope these important issues can be resolved without having to resort to tariffs. Particularly where U.S. businesses can demonstrate that the imposition of a tariff on a particular product from China would disproportionately harm U.S. manufacturing competitiveness, and jobs and exports in the United States, the Administration must be prepared to amend its proposed tariff list, or delay the imposition of that tariff, to reflect that information. The following outlines specific tariff lines and concerns our members have with their inclusion on the tariff list. USCIB therefore recommends these products be taken off the tariff list:

E-Bicycles (HTSUS Subheading 8711.60.00) / E-Scooters (HTSUS Subheading 8711.90.01)

Tariffs on E-Bicycles and E-Scooters will cause disproportionate harm to U.S. consumers, U.S. economic interests, and to small and medium enterprises (SMEs).

- Tariffs on E-Bicycles and E-Scooters will have a direct negative impact on American consumers. At a proposed duty rate of 25 percent, U.S. firms will be unable to absorb the per-unit cost increase and will be forced to pass increased costs onto consumers.

- Tariffs on E-Bicycles and E-Scooters will hurt U.S. innovation and erode U.S. leadership in individual emerging transportation technologies, integrated mobility platforms, and the broader strategic field of smart city development.

- Tariffs at the proposed duty rate of 25 percent will do disproportionate harm to U.S. SMEs. Should SMEs attempt to source E-Bicycles and E-Scooters from countries other than China, they will be at a distinct disadvantage competing against large firms for orders from the extremely limited number of non-Chinese producers. Similarly, small and medium businesses that must continue sourcing from China will face disproportionate difficulty in raising the necessary capital to cover the significant increase in costs due to the proposed 25 percent duty rate.

Consumer Products including Soap Pumps, Gazebos/Sheds in a Box, Wall Decals, Scrapbook Stickers, Labels, Locker Decals, Remotes/Direct TV Remote Control, Strobe Lights, Christmas Lights, Christmas/Halloween Projectors, Hexbug Toys, Cellphone Camera Accessory, Thermometers (Meat thermometers/Smart thermometers), Tool Sets, Fog Machines, Pulse Oximeters, and Solar Power Kits.[1]

There are several consumer products that will be significantly and negatively impacted by the proposed tariffs. American consumers will feel the consequences directly with the cost being passed on to the consumer. Price pass through impact will depend on a number of factors, including *margin, availability of alternative sources, and supplier contract terms*. These considerations include the following impacts:

[1] HTSUS Subheadings 8424.89.90, 7308.90.95, 3919.90.50, 8543.70.99, 9025.19.80, 3917.32.00, 8507.80.81, 3919.10.20, 3901.90.90, 3920.20.00, 3920.71.00, 3903.11.00, 8432.29.00, 9029.20.40, 8501.31.80

- While most of these products could potentially be produced elsewhere, cost, timing, and availability will drive consideration.
- Given that many of these items are low margin, cost increases could be expected, but probably not a one-to-one pass through alternate supply.
- There will be no appreciable impact on trade deficit, since it is likely that Chinese owners would move factories to South East Asia.
- If there is a loss in economies of scale, price consideration may work against shifting production.

Microprocessors, Diodes, and Electronic Integrated Circuits

Companies are also seeing the impact in their supply chains for data centers throughout north America. There are also upstream effects on the suppliers that acquire components, who then pass on those costs to the manufacturers, resulting in higher prices for those goods. The majority of microprocessors imported into the United States are originally manufactured in the United States, the majority of the design, development, and manufacturing intellectual property content being of U.S. origin. The U.S. manufactured microprocessor "die" is then exported to various countries around the world, including China for assembly. The "die" assembled into a package that protects the die. The package/die combo is then tested for functionality as the package delivers critical power and electrical connections when placed directly on a computer motherboard, or into other devices such as cell phones or laptop computers. There is very little intellectual property being transferred as part of the assembly process, thus, the assembly process is not a process step which effectively transfers critical intellectual property and know-how to enable China's Made in 2025 plans. The tariff lines that are going to experience significant negative impact are: HTSUS Subheadings8541.10.00, 8541.40.60, 8542.31.00,8542.32.00, 8542.33.00, 8542.39.00, and 8542.90.00.

Thermometers (HTSUS Subheading 9025.19.80) & Motion Sensors (HTSUS Subheading 8543.70.45)

Placing a 25 percent tariff on thermometers[2] – including those used for everyday household use and in connected home systems – and motion sensors[3] – including those used in home security systems – will negatively impact consumers of connected home devices and other household essentials.

[2] Thermometers, for direct reading, not combined with other instruments, other than liquid-filled thermometers.
[3] Other electric synchros and transducers; defrosters and demisters with electric resistors for aircraft.

These tariffs go against USTR's stated aim in the product selection process of avoiding goods "commonly purchased by American consumers." Moreover, thermometers and motion sensors are not products targeted in China's Made in China 2025 plan, and not part of China's core industrialization strategy. These products are used as parts of thermostat and home security systems used by millions of American families.

Thermometers

- The thermometer tariff line covers a broad range of consumer goods. Tariffs on this line will negatively affect nearly every American household. The common consumer products covered include:
    - Outdoor thermometers, window thermometers, kitchen temperature tools like meat thermometers, digital thermometers that parents use for their children, and temperature sensors that are used as part of household thermostat systems.
- USTR will further harm American households by placing a tariff on temperature sensors, a key part of household thermostat systems. Americans purchase 17 million thermostats each year to help manage energy costs, and thermostats are already subject to a 25 percent tariff (which took effect on July 6). Tariffs will hurt the U.S. consumer by imposing a double burden of (1) higher prices on thermostat systems, a consumer necessity, and (2) higher energy bills because consumers will be less able to afford energy-efficient smart thermostat systems.
- Tariffs will also hurt the retailers who sell these consumer goods. And for temperature sensors, tariffs will hurt the small businesses who install thermostat systems.

Motion Sensors in Security Systems

- The proposed tariffs cover a core part of home security systems that millions of American households purchase to stay safe.
- Motion sensors are a key input to home security systems, a consumer product that reached $4.69 billion in U.S. sales in 2017.[4]
- Tariffs on motion sensors will punish the U.S. consumer, imposing a double burden of (1) higher prices on a consumer necessity, and (2) compromised household safety because consumers will be less able to afford technologically advanced home security systems.
- Tariffs will hurt the retailers and small business installers who sell and install home security systems by increasing prices and depressing demand.

[4] https://www.statista.com/statistics/645392/smart-home-security-revenue-worldwide/

Semiconductor Equipment (HTSUS Subheadings 8486.90.00 and 8486.20.00)

The tariffs on semiconductor equipment under HTSUS Subheadings 8486.90.00 and 8486.20.00 constitute a tax on the exports of high-value-added U.S. goods because that equipment is used by the U.S. semiconductor industry, which has about half of its manufacturing base in the United States, to manufacture semiconductor related products for sale across the world. These tariff lines should therefore be removed from the proposed list of products subject to the Section 301 tariffs.

These tariff lines comprise relatively low value-added items with minimal IP that have little relevance to the Made in China 2025 industrial policy. Exports of the final goods, for which these equipment imports are necessary, support U.S. manufacturing jobs and R&D. There is also significant competition from European and Asian companies in this space. These additional tariffs would undercut U.S. companies, providing advantage to foreign competitors who manufacture such equipment outside of China. The increased cost of the U.S-made equipment would make it less competitive, reducing U.S. exports that support American jobs.

ANNEX

The following are all of the products addressed in our submission, as described in Annex C of the Notice of Determination and Request for Public Comment published in the Federal Register on June 20, 2018 (83 Fed. Reg. 28710).

HTUS Subheading	**Product Description**
3901.90.90	Polymers of ethylene, nesoi, in primary forms, other than elastomeric
3903.11.00	Polystyrene, expandable, in primary forms
3917.32.00	Tubes, pipes and hoses, of plastics, other than rigid, not reinforced or otherwise combined with other materials, without fittings
3919.10.20	Self-adhesive plates, sheets, other flat shapes, of plastics, in rolls n/o 20 cm wide, not having a light-reflecting glass grain surface
3919.90.50	Self-adhesive plates, sheets, other flat shapes, of plastics, not having a light-reflecting surface produced by glass grains, nesoi
3920.20.00	Nonadhesive plates, sheets, film, foil and strip, noncellular, not reinforced or combined with other materials, of polymers of propylene
3920.71.00	Nonadhesive plates, sheets, film, foil and strip, noncellular, not combined with other materials, of regenerated cellulose
7308.90.95	Iron or steel, structures (excluding prefab structures of 9406) and parts of structures, nesoi
8424.89.90	Other mechanical appliances for projecting, dispersing or spraying liquids or powders, nesoi
8432.29.00	Harrows (other than disc), scarifiers, cultivators, weeders and hoes for soil preparation or cultivation
8486.20.00	Machines and apparatus for the manufacture of semiconductor devices or electronic integrated circuits
8486.90.00	Parts and accessories of the machines and apparatus for the manufacture of semiconductor devices, electronic integrated circuits and flat pa
8501.31.80	DC generators of an output not exceeding 750 W
8507.80.81	Other storage batteries nesoi, other than of a kind used as the primary source of power for electric vehicles
8541.10.00	Diodes, other than photosensitive or light-emitting diodes
8541.40.60	Diodes for semiconductor devices, other than light-emitting diodes, nesoi
8542.31.00	Electronic integrated circuits: processors and controllers
8542.32.00	Electronic integrated circuits: memories

8542.33.00	Electronic integrated circuits: amplifiers
8542.39.00	Electronic integrated circuits: other
8542.90.00	Parts of electronic integrated circuits and microassemblies
8543.70.45	Other electric synchros and transducers; defrosters and demisters with electric resistors for aircraft
8543.70.99	Other machinery in this subheading
8711.60.00	Motorcycles (incl. mopeds) and cycles, w/electric motor for propulsion
8711.90.01	Motorcycles (incl. mopeds) and cycles, nesoi
9025.19.80	Thermometers, for direct reading, not combined with other instruments, other than liquid-filled thermometers
9029.20.40	Speedometers and tachometers, other than bicycle speedometers