Submission of the

U.S. Chamber of Commerce

for the

Proposed Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

Docket Number: USTR-2018-0018

July 23, 2018

The U.S. Chamber of Commerce, the world's largest business organization representing the interests of more than three million businesses and organizations of all sizes, sectors, and regions, appreciates the opportunity to once again comment on actions by the United States related to the Section 301 investigation of China's laws, policies, practices, or actions related to technology transfer, intellectual property, and innovation.

Many of our members derive significant value from U.S.-China commercial engagement. The U.S. Chamber of Commerce is committed to working constructively towards building mutually beneficial ties and realizing the full potential of our relationships. Nevertheless, the U.S. Chamber has been consistent in expressing our concerns over many years regarding China's ongoing intellectual property rights violations, forced technology transfers, and state interventions. These policies are resulting in harm to U.S. companies, workers, consumers, and our competitiveness. We hope the Administration can act now to negotiate strong outcomes with China on priority systemic concerns before further escalation has unintended impacts. In addition to advocating the elimination of policies that act to coerce technology transfers, and on behalf of those firms and workers who are adversely affected, the U.S. Chamber has long urged China to adopt systemic reforms that go beyond limited actions to gradually open select industries—and for the United States to align its own policies to those we seek in China—including by:

- Adopting a "negative list" approach to restricting foreign ownership of Chinese enterprises, limited to a carefully defined and narrow list of specific exceptions for sensitive sectors comparable in number and scope to U.S. restrictions;
- Dramatically curtailing state financial support and regulation that distorts market competition across numerous sectors in China and globally, including under guiding frameworks such as Made in China 2025, and establishing guardrails on

excessive provincial and municipal investment in strategic sectors to limit unintended development of overcapacity in such sectors;

- Adjusting “secure and controllable” and other technology policies that discriminate against foreign information communication technology (ICT) companies to ensure such policies are as least trade-restrictive as possible; and
- Establishing a presumption that all categories of data can be transferred across borders without restriction, subject only to a narrowly defined national security exemption.

Notwithstanding our serious concerns about Chinese policies and practices and our alignment with many of the findings of the Administration’s Section 301 investigation to date, we reiterate our strong opposition to the Administration’s imposition of unilateral tariffs as a policy response to the challenges posed by China’s approach to technology transfers, intellectual property, and innovation. We believe that the tariffs already imposed under the Office of the United States Trade Representative’s (USTR) June 15th determination, the tariff list in Annex C of USTR’s proposed determination of additional action, and the escalating tariff threats made by the Administration will not effectively address or advance our shared goal of changing these harmful Chinese practices. Instead, it will prove to be counterproductive for the following reasons:

Tariffs are hidden, regressive taxes that are being paid by U.S. businesses and consumers, paradoxically harming U.S competitiveness.

- According to a recent study from the National Retail Federation and the Consumer Technology Association, cumulative tariffs on $50 billion of Chinese imports coupled with retaliation by China, would reduce gross domestic product by nearly $3 billion and destroy 134,000 American jobs. Given comparative advantages of other markets, it is highly unlikely that production of imported goods subject to any such tariffs would move back to the United States, but would instead migrate to other jurisdictions. Plans for additional tariffs on $16 billion and $200 billion of Chinese imports would only exacerbate these challenges further.

- Tariffs on products in Annex C of USTR's proposed determination would have a significant, adverse impact on a broad range of sectors across the U.S. economy, including agricultural machinery, medical technology, consumer goods, and semiconductors.
- High-technology sectors, particularly semiconductors (8542.31.00, 8542.32.00, 8542.33.00, 8542.39.00, 8542.90.00), are critical to both U.S. national security and economic competitiveness. However, the majority of U.S. semiconductor company research, design, and/or manufacturing is performed in the United States, not China, and the U.S. maintains a trade surplus globally, including a $2 billion surplus with China, in semiconductors. Taxing American semiconductor companies—who perform the significant majority of their core work and create 90 percent of the value of their semiconductor chips in the U.S.—would directly and significantly harm the U.S. semiconductor industry by forcing U.S. chip-makers to pay tariffs on their own products at a time when the Chinese government is providing major subsidies to domestic companies to catch up with the United States.
- Import of electrical machines and apparatuses involved in semiconductor manufacturing (8486.20.00) is essential to the complex, global supply chains utilized by the semiconductor industry. Semiconductors are key components in the manufacture of many advanced information communication technologies used by consumers and businesses today. The imposition of tariffs on these inputs and processes would represent a tax on U.S. manufacturers, workers, and on the products they build and export. This would potentially make these products more expensive, raising the price of finished goods and negatively impacting U.S. jobs.

- Tariffs on consumer products imported from China such as pulse oximeters (9029.20.40), solar pack power kits (8501.31.80), smart light switches (8536.50.70), electric motobikes (8711.60.00), stereo equipment (8543.70.99), garden equipment (8432.29.00), and thermometers (9025.19.80) would raise prices for American families. In reality, if production of these products is moved outside of China then it would most likely be directed towards other countries in Southeast Asia—not back to the United States and without any appreciable impact on the overall U.S. trade deficit.
- Tariff increases would also impact the ability of small manufacturers to use new, innovative technologies. Taxes on tools for 3D printing (3916.90.30), which have the potential to revolutionize production in the U.S. particularly for small, innovative U.S. businesses, will raise costs associated with utilizing this technology and limit its potential benefits.
- The impact of tariffs would also be felt by companies selling products and services to American farmers and ranchers. Taxes on gas engines used as inputs in agricultural machinery (8407.90.90) would only increase the costs of doing business in the agriculture sector which already operates under thin margins and is enduring stress brought on by Chinese retaliatory tariffs against American farmers' exports.
- We are also concerned about application of tariffs on medical technologies and the corresponding impact on public health and U.S. competitiveness. Imposing an import tax on medical technology could be disruptive to U.S. patient access in some areas, especially if the tariff were to be imposed for a lengthy period. When a 25 percent tax is introduced on medical technologies, those costs have to be absorbed somewhere—by the manufacturer, the distributor, the customer (hospital/lab), or the patient. In the U.S. healthcare system—with payments for medical technology largely coming indirectly from insurance companies, Medicare, and out-of-pocket patient expenses—manufacturers have very limited ability to

pass on cost increases. A 25 percent tax would put pressure on the U.S. healthcare system and could force the industry to cut costs to compensate in areas such as R&D and jobs right here at home.

- Annex 1 of this submission includes a list of products (broken down by HTS code) where we have already heard concerns from American businesses regarding increased costs and disrupted supply chains resulting from the proposed tariffs. We expect that this list will only continue to grow as more businesses realize the negative impacts that will result from these new tariffs. We recommend not moving forward with this tariff proposal.

U.S. tariffs, together with Chinese retaliation, are disrupting global trade and supply chains, further damaging American businesses, workers, farmers, ranchers and investors.

- U.S. exports of goods to China have grown by 86 percent over the last decade, while exports to the rest of the world have grown by only 21 percent. That growth is now threatened as China is retaliating against U.S. tariffs, leading to billions in losses for American workers, farmers, and manufacturers, who rely on the ability to export their crops and products to China for their livelihood.
- In the ongoing trade dispute with China, American farmers have already become some of the first casualties of retaliation. According to a study by Farmers for Free Trade, the tariff impacts for U.S. almond, walnut, pork, wine, cherry, and many other commodity producers—totaling $2.6 billion in exports to China in 2017—resulting from China's retaliation against U.S. steel and aluminum tariffs are significant.
- U.S. farmers, ranchers, and food producers are now also enduring further retaliatory actions from China in response to the tariffs already levied on $34 billion of U.S. imports from China. Roughly 40 percent of China's retaliatory

tariffs so far target agriculture and food products, and the price of soybeans has dropped nearly 17 percent over the past few months over tariff fears.

- Additional retaliation by China, both quantitative and qualitative, is sure to ensue in the face of $16 billion in tariffs under Annex C of this proposed determination as well as the Administration's proposed tariffs to be levied on $200 billion of additional imports from China. The impacts of follow-on retaliation would be felt broadly across the U.S. economy by companies large and small that export to, source from, and operate in China—all to the advantage of non-U.S. foreign competitors selling to China.
- Supply chain disruptions are a likely outcome of qualitative retaliation by the Chinese government. However, products that have met rigorous quality control and compliance requirements to be a part of U.S. manufacturing supply chains cannot be easily replaced, particularly for specialized parts or for products for which global supply is already capacity constrained. Placing tariffs on those industrial parts for which non-Chinese alternatives are not available or feasible is already driving up U.S. production costs and impairing the competitiveness of U.S. businesses and their workers. Tariffs on critical manufacturing inputs are prompting businesses to locate production facilities outside the United States, undermining the U.S. economy, jobs, and exports, as well as the health of the U.S. supplier base.
- Because China is the second largest economy in the world and an important market for U.S. businesses, many American companies have established wholly-owned facilities there, in part to more effectively penetrate the Chinese market. Putting tariffs on manufactured inputs made in those U.S.-owned facilities is hurting the affected U.S. businesses—as well as their U.S. facilities, workers, and suppliers, who rely on competitive access to them—while generating no meaningful leverage on China to reform its trade and investment policies.

- U.S. services exports to China surpassed $50 billion for the first time in 2016, the most recent complete year of available data. China has committed to open certain areas of its services market, including financial services, to U.S. firms. Imposition of unilateral tariffs by the United States has increased the possibility that retaliatory Chinese actions would limit the ability of U.S. service providers in liberalized areas to access this large and growing market.

Unilateral tariff strategies have no record of historical success and have always led to unintended consequences:

- President George W. Bush's tariffs on steel resulted in 200,000 job losses and $4 billion in lost wages in 2002.
- President Obama's tariffs on tires imported from China resulted in 2,500 job losses and cost American consumers $1.1 billion in 2011.
- The Smoot-Hawley Tariff Act of 1930 helped fuel the Great Depression, and President Nixon's 10 percent import surcharge contributed to the stagflation of the 1970s.
- New tariffs on steel and aluminum are projected to cost consumers $3.2 billion per year and result in 18 job losses for every one job gained.

Imposition of tariffs is negating gains, at least in part, for American workers from U.S. tax reform and deregulation.

- Since President Trump's election, the U.S. economy has made tremendous progress.
- The current and proposed tariffs and the ongoing trade war puts at risk the economic momentum achieved through the Administration's tax and regulatory reforms, and undermine the Administration's commitment to drive the U.S. economy to over 3 percent growth or continue to create jobs.

There are better alternatives to address China's policies and practices that would not have the same adverse impacts on U.S. consumers, businesses, and local communities or undermine the benefits of the tax reform. In particular, it is critically important that the Administration work constructively with like-minded partners to address common concerns with China's trade and investment policies. Imposition of unilateral tariffs by the Administration is playing into China's hands by splitting the United States from its allies, hindering joint action to effectively address shared challenges, and ensuring that non-U.S. companies fill the vacuum left by displaced American companies, farmers and ranchers as China retaliates against U.S. tariffs. Notwithstanding frustration regarding China's tariff and non-tariff barriers, China is an important market for U.S. companies. U.S. exports to China contribute to U.S. growth and jobs. The Administration has attempted to assure Americans that it has a strategy to resolve trade frictions with China without excessive collateral damage to U.S. economic interests. However, these assurances lack the coherence that would provide comfort to those businesses, farms, and workers whose livelihoods are being put at risk.

The U.S. Chamber supports the Trump Administration's focus on China's industrial policies and unfair trade practices, but tariffs are not the answer. The time is now for serious bilateral discussions that can identify solutions and forestall unintended impacts. We urge the Administration to work with the business community and like-minded allies to resolve the real concerns raised by China's policies and actions.

ANNEX 1: PRIORITY LIST OF PRODUCT CATEGORIES FOR REMOVAL FROM TARIFF LIST

Sector	HTSUS Subheading	Description
Agricultural Machinery	8407.9090	ENG, OTH, NSPF, OVER 18.65KW
	8529.1091	ANTENNAS/ANTENNAS REFLECTOR,OH
	8483.3080	PL SHFT BEARNG,W/O HOUS,OTHER
	8483.3080	BALL/ROLLER BEARING HOUSING
Consumer Goods	8424.8990	FOG MACHINES
	9025.1980	MEAT THERMOMETERS/SMART THERMOMETERS
	9029.2040	PULSE OXIMETERS
	8543.7099	STROBE LIGHTS, CHRISTMAS LIGHTS, DIRECT TV REMOTE CONTROL
	7308.9095	GAZEBO/SHED IN THE BOX
	8501.3180	SOLAR PACK POWER KIT
	8711.60.0000	MOTORCY/CYCL W ELECT MOT P
	8543.70.9960	ELECTRIC MACHINE,APPARTUS
	8419.89.9540	OTH,REACTORS/COOLING,FOOD/
	8536.50.7000	ELEC AC SWITCHES,OPTICALY
	7308.90.9590	STRUCT,IRN/STL:OTHER,OTHER,OTH
	8432.29.0060	ROTARY TILLERS, WALK BEHIND
Consumer Technology, ICT, & Semiconductors	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
	8486.90.0000	PARTS AND ACCESSORIES OF THE MACHINES AND APPARATUS FOR THE MANUFACTURE OF SEMICONDUCTOR DEVICES, ELECTRONIC INTEGRATED CIRCUITS AND FLAT PA

Sector	HTSUS Subheading	Description
Consumer Technology, ICT, & Semiconductors (continued)	8486.20.0000	MACHINES AND APPARATUS FOR THE MANUFACTURE OF SEMICONDUCTOR DEVICES OR ELECTRONIC INTEGRATED CIRCUITS
	8486.40.0010	MACHINES AND APPARATUS FOR THE MANUFACTURE OR REPAIR OF MASKS AND RETICLES
	8486.40.0030	MACH & APPS FOR LIFTING, HANDLING, LOADING/UNLOADING OF BOULES, WAFERS, SEMICONDUCTOR DEVICES, ELECTRONIC INTEGRATED CIRCUITS & FLAT PANEL DISPLAYS
	8536.50.7000	ELECTRONIC AC SWITCHES W/ OPTICALLY COUPLED INPUT/OUTPUT CIRCUITS; ELECTRONIC SWITCHES; ELECTROMECHANICAL SNAP-ACTION SWITCHES FOR A CURRENT LT=11 AMP
	8486.30.0000	MACHINES AND APPARATUS FOR THE MANUFACTURE OF FLAT PANEL DISPLAYS
	8536.30.8000	ELECTRIC CIRCUIT PROTECTION APPARATUS, OTHERS
	3917.32.0050	TUBES, PIPES & HOSES, NOT RIGID, NOT REINFORCED OR OTHERWISE COMBINED WITH OTHER
	8543.70.9960	ELECTRICAL MACHINES AND APPARATUS, HAVING INDIVIDUAL FUNCTIONS, OTHERS
	9025.19.8080	THERMOMETERS, NOT COMBINED WITH OTHER INSTRUMENTS, OTHERS
	9025.19.4000	PYROMETERS NOT COMBINED WITH OTHER INSTRUMENTS
	8419.89.9540	INDUSTRIAL MACHINERY, PLANT OR EQUIPMENT DESIGNED FOR COOLING, OTHERS
	8543.70.4500	ELECTRIC SYNCHROS AND TRANSDUCERS, DEFROSTERS AND DEMISTERS WITH ELECTRIC RESISTORS FOR AIRCRAFT, OTHERS
	3917.32.0020	TUBES, PIPES & HOSES, NOT RIGID, NOT REINFORCED OR OTHERWISE COMBINED WITH OTHER MATERIALS, WITHOUT FITTINGS OF POLYETHYLENE
	3917.40.0090	OTHER FITTINGS FOR TUBES, PIPES & HOSES, OF PLASTIC

Sector	HTSUS Subheading	Description
Consumer Technology, ICT, & Semiconductors (continued)	3919.90.5060	SELF-ADHESIVE PLATES, SHEETS, FILM, FOIL, TAPE, STRIP & OTHER FLAT SHAPES OF PLASTICS, WHETHER OR NOT IN ROLLS, OTHERS
	8483.30.8090	PLAIN SHAFT BEARINGS, WITHOUT HOUSING, EXCEPT SPHERICAL
Medical Technology	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
	3920.10.00	NONADHESIVE PLATES, SHEETS, FILM, FOIL AND STRIP, NONCELLULAR, NOT REINFORCED OR
	3919.90.50	COMBINED WITH OTHER MATERIALS, OF POLYMERS OF ETHYLENE
	3917.40.00	SELF-ADHESIVE PLATES, SHEETS, OTHER FLAT SHAPES, OF PLASTICS, NOT HAVING A LIGHT-REFLECTING SURFACE PRODUCED BY GLASS GRAINS, NESO
	8419.89.95	FITTINGS OF PLASTICS, FOR PLASTIC TUBES, PIPES AND HOSES, NESOI
	8501.10.60	INDUSTRIAL MACHINERY, PLANT OR EQUIPMENT FOR THE TREATMENT OF MATERIALS, BY PROCESS INVOLVING A CHANGE IN TEMPERATURE, NESOI
	8543.70.45	ELECTRIC MOTORS OF AN OUTPUT OF 18.65 W OR MORE BUT NOT EXCEEDING 37.5 W
	8541.10.00	OTHER ELECTRIC SYNCHROS AND TRANSDUCERS; DEFROSTERS AND DEMISTERS WITH ELECTRIC
	8542.90.00	RESISTORS FOR AIRCRAFT