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Filed via www.regulations.gov

May 11, 2018

The Honorable Robert Lighthizer
United States Trade Representative
Office of the U.S. Trade Representative
600 17th St, NW
Washington, DC 20508

Re: USTR-2018-0005; Comments on Proposed Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property and Innovation

Dear Ambassador Lighthizer:

In accordance with the Federal Register notice regarding the above-captioned docket, the National Association of Manufacturers submits these comments to aid in the preparation of the administration's determination of actions to be taken under the Office of the U.S. Trade Representative's Section 301 investigation on China's acts, policies and practices related to technology transfer, intellectual property and innovation, as mandated by the Presidential Memorandum of March 22, 2018 and the *Federal Register* notice (83 FR 14906) of April 6, 2018.

If you have any questions, please do not hesitate to contact me.

Respectfully,

Linda Dempsey

Comments of the National Association of Manufacturers Regarding Proposed Actions Taken Pursuant to Section 301 Investigation on China's Acts, Policies and Practices Related to Technology Transfer, Intellectual Property and Innovation (Docket USTR 2018-0005)

May 11, 2018

The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing over 14,000 manufacturers small and large in every industrial sector and in all 50 states. Manufacturing employs nearly 12.6 million women and men across the country, producing a record $2.25 trillion in output to the U.S. economy annually, over half of which is exported. If U.S. manufacturing were a separate country, it would be the ninth-largest economy in the world. Manufacturers strongly support the rules-based international trading system to promote the role of free market forces and respect for the rule of law, while seeking to eliminate market-distorting governmental intervention.

The NAM welcomes the opportunity to provide input on the Section 301 proposed tariff remedies, including whether such tariffs would be practicable or effective to obtain the elimination of China's acts, policies and practices, and whether maintaining or imposing additional duties on a particular product would cause disproportionate economic harm to U.S. interests, including small- or medium-sized businesses and consumers. This submission is designed to aid the Office of the U.S. Trade Representative (USTR) in assessing the potential imposition of tariff and other remedies proposed by the Presidential Memorandum of March 22, 2018, consistent with the requested areas for comment.[1]

Manufacturers have been energized by the president's commitment to grow manufacturing opportunities across the country. His leadership in securing tax reform and addressing excessive regulation has helped free manufacturers to grow and invest in America. That leadership has also highlighted the urgency of addressing foreign market distortions that have held our manufacturers back for too long. Nowhere is that focus more important than China, which presents both major challenges and opportunities for our manufacturers.

International trade is critical for manufacturers, large and small, across the country as the NAM has detailed in submissions to this administration on the trade deficit and trade agreements and violations.[2] Overall, the United States exports more than half of its total manufacturing output, supporting about six million U.S. manufacturing jobs, representing about half of the U.S. manufacturing workforce that contribute directly to the success of local communities. Imports play a more complicated role, as explained in the NAM's comments on the trade deficit. While some imports are a reflection of these distortive challenges, other imports are helpful to U.S. competitiveness and growth and promote the growth of U.S. manufacturing activity and jobs.

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[1] USTR-2018-0005; Comments on Proposed Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 83 Fed. Reg. 14,906 (April 6, 2018).

[2] NAM Comments on Administration Report on Significant Trade Deficits and Request to Appear at Public Hearing (May 10, 2017), accessed at http://www.nam.org/Issues/Trade/NAM-Comments-on-Trade-Deficit/; NAM Comments on Administration Review and Report on Trade Agreement Violations and Abuses (July 31, 2017), accessed at http://www.nam.org/Issues/Trade/NAM-Submission-on-Trade-Agreements-and-Violations/.

Manufacturing, supported and grown through international trade, provides good, high-paying jobs in the United States. On average, manufacturing jobs pay $82,023 annually in pay and benefits, 27 percent higher than the average wages of $64,609 in all nonfarm industries in 2016.[3] Manufacturing in the United States provides rewarding and meaningful careers and supports communities throughout all 50 states. Manufacturing is also transforming as it adapts to a changing world at home and abroad, taking advantage of new technologies, new production methods and new markets to compete and grow. Notably, export-related jobs have also been demonstrated to pay on average 18 to 20 percent more than jobs not related to exports.[4]

This submission reviews the U.S.-China commercial relationship and the issues requiring resolution, the proposed Section 301 tariffs and the need for a comprehensive and urgent strategic approach.

I. Overview

It's fair to say that our nation's trading relationship with China is complicated.

On the one hand, there are few places in the world where manufacturers sell more or have increased sales. On the other hand, there are few places in the world where trade has proven more challenging for American manufacturing. From the intellectual property (IP) theft and technology transfer issues extensively explored in the underlying Section 301 report to unfair subsidies and other market-distorting policies that shield Chinese companies, manufacturers and workers in the United States face an unfair playing field that harms U.S. manufacturing and holds us back.

There is no doubt that we need to address these challenges. China simply must follow the same rules as everyone else. It simply must be held accountable when it cheats. On this, nearly all parties agree.

The question is how best to go about doing so.

There has been a lot of debate about this for a long time. We at the NAM believe it is time to fundamentally change the contours of that debate. We think a comprehensive strategy will be needed if our country is to truly achieve the best outcomes for American workers and American enterprise. In our view, that means pursuing a modern, innovative and comprehensive bilateral trade agreement that wholly restructures our economic relationship with China. This is at once both a radical idea and, in our estimation, the most pragmatic and effective way forward.

Targeted actions can provide some relief in the short term to some manufacturing industries, but will disproportionately harm others, as discussed below. So, at the end of the day, we think it's best to address the underlying systemic issues that have given rise to the imbalances in the U.S.–China relationship in the first place.

But first, it's important to understand the nature of our trading relationship with China.

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[3] NAM, Top 20 Facts About Manufacturing, accessed at http://www.nam.org/Newsroom/Facts-About-Manufacturing/.

[4] See *e.g.*, U.S. Department of Commerce, "The Role of Exports in the U.S. Economy" (May 13, 2014); Bernard, A. and J.B. Jensen, "Exceptional Exporter Performance: Cause, Effect, or Both?" *Journal of International Economics* 47: 1–25 (1999); Riker, David, "Do Jobs In Export Industries Still Pay More? And Why?" Manufacturing and Services Economics Brief, International Trade Administration, U.S. Department of Commerce (July 2010), accessed at http://www.trade.gov/mas/ian/build/groups/public/@tg_ian/documents/webcontent/tg_ian_003208.pdf.

II. U.S.-China Commercial Relationship

To understand the impact of the proposed remedies and other solutions, it is critical to understand the issues requiring resolution and the broader U.S.-China commercial relationship.

China is the most important foreign market for manufacturers in the United States, and one that presents both opportunities and major challenges.

- There are few places in the world that have created more opportunities for manufacturers in the United States as evidenced by the extraordinary growth in U.S. manufactured goods exports to China. These exports equaled nearly $97 billion in 2017, more than to any other country outside of North American Free Trade Agreement (NAFTA) Canada and Mexico, and those exports support hundreds of thousands of U.S. manufacturing jobs. The substantial growth of U.S. manufactured goods exports to China, which is five times greater than exports in 2001 when China joined the World Trade Organization (WTO), reflects both the major changes China made in joining the WTO and the economic growth associated with its accession. China's WTO accession resulted in significant new market openings for manufacturers to sell more U.S. manufactured goods in China and to participate in foreign projects through lower tariffs, the elimination of many non-tariff barriers and application of other WTO rules. China's economy has more than quadrupled since it joined the WTO, growing by an average of more than nine percent per year. China still boasts the world's largest population, with more than 1.3 billion people and a rapidly expanding middle class that have boosted China to become the top consumer market in the world for products ranging from automobiles to food products. Our manufacturers need to be able continue to tap into that enormous growth and win more sales in China in order to support and create more good-paying manufacturing jobs here at home.

- Yet, China remains one of the biggest global challenges for American manufacturers, due to a wide range of unfair, discriminatory and distortive Chinese government practices, including many of the intellectual property challenges such as innovation-driven industrial policies, induced technology transfer and cyber-related theft that the administration effectively identified in this investigation. These actions have a variety of negative impacts on the U.S. economy, manufacturers and their workers, including through:

    - Limiting U.S. exports;
    - Distorting market conditions in the United States and third countries through unfairly traded and injurious imports; and
    - Resulting in the theft and mistreatment of U.S. property and investment.

  The challenges require urgent solutions.

The NAM has described in greater detail both the growing economic importance of the U.S.-China economic relationship for the U.S. economy and the range of challenges that Chinese policies and practices present manufacturers small and large in documents such as the NAM's submissions to the Special 301 investigation, on China's WTO compliance, and on market access issues in China before the Senate Finance Committee Trade Subcommittee.[5]

[5] NAM Comments on Section 301 Investigation into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property and Innovation (Sept. 28, 2017), accessed at

Given the size and the ties between the two economies, it is critical to get this economic relationship right, with enforceable solutions that solve the significant challenges while positioning manufacturers in the United States to compete on a level playing field for opportunities in the China market. Manufacturers in the United States need to be able to sell more, compete and succeed in one of the largest markets in the world, but to do so, China's distortive actions must be eliminated permanently. In the context of the Section 301 investigation, manufacturers strongly believe that the U.S. government must evaluate potential remedies and adopt approaches that capitalize on the increased evidence and attention generated by the investigation to drive concrete, lasting and enforceable policy changes while minimizing collateral damage back to the U.S. economy.

Prior to this investigation, the United States and manufacturers have taken many actions to address these issues, some successful, others less so, including:

- Filing more than 20 WTO challenges against China, with many resulting in resolution of the underlying distortions, from raw materials and rare earth export restraints to auto part distortions;
- Bringing active domestic enforcement cases, including 150 trade-remedy cases under U.S. law that have resulted in many substantial tariffs being placed on hundreds of distinct types of Chinese imports that were found to be unfairly traded and injurious, and more than 100 Section 337 enforcement cases against IP-infringing Chinese products;
- Holding multiple bilateral negotiations that have addressed and increased pressure on some discrete issues such as market access for agricultural products and local indigenous innovation catalogues; and
- Working with our allies to identify and put pressure for change in China, such as the Global Forum on Steel Overcapacity.

While these approaches must remain part of the solution, they have not proven sufficient to shift Chinese behavior. As this investigation correctly points out, current rules simply do not prohibit many of the distortive and injurious Chinese actions.

III. The Need for Strategies and Call for a Modern, Innovative Bilateral Trade Agreement

To effectively counter the China challenge, the U.S. government needs to seize the moment and shift from narrow remedies to develop and implement a comprehensive strategy to fix long-standing problems in the relationship and accelerate changes to Chinese policies, with mechanisms where the leverage that the administration's tougher approach on China can bear fruit.

As the NAM President and CEO Jay Timmons explained in a letter to the president on January 8,[6] the only effective path forward is a comprehensive and strategic approach that has at its core the conclusion of a modern and innovative bilateral trade agreement that restructures our economic relationship with China. To be successful, a free and fair agreement must:

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http://www.nam.org/Issues/Trade/NAM-Submission-Section-301-Investigation-into-Chinese-Intellectual-Property-and-Technology-Transfer-Issues/; NAM Comments on China's Compliance with its World Trade Organization Commitments (Sept. 20, 2017), accessed at http://documents.nam.org/IEA/NAM_2017_Submission_on_China_WTO_Compliance.pdf?_ga=2.114963214.827370317.1522883036-650731274.1513098292; Testimony before the Senate Finance Trade Subcommittee on Market Access Issues in China (April 11, 2018), accessed at https://www.finance.senate.gov/imo/media/doc/11APR2018DEMPSEYSTMNT.pdf.

[6] Timmons Letter to the President (Jan. 8, 2018), accessed at http://www.nam.org/Advocacy/Sign-On-Letters/Jay-Timmons-Letter-to-President-Trump-on-Trade-Agreement-with-China/.

- Eliminate barriers in China;
- Raise standards and create new rules to prevent the wide range of market-distorting practices that violate free markets and fair competition and hurt American businesses and workers; and
- Create clear mechanisms to mandate strong and binding enforcement of the agreement, providing specific channels for government and industry alike to address cheating and violations.

This approach represents the best way to treat the disease, not just the symptoms. A broad trade agreement provides the U.S. government with the flexibility to cover longstanding China issues such as IP theft, investment restrictions, currency manipulation, labor practices, competition enforcement and industrial policy, and could be developed to ensure that harmful Chinese policies and practices are actionable in ways that they currently are not through existing WTO disciplines.

These negotiations would provide an important structure that would reframe the relationship in a critical way, creating leverage for China to demonstrate clear, regular progress on commercial issues. The U.S. government would then be able to use that leverage to create short-term wins on priority issues while also building toward a larger, comprehensive solution to our issues. This approach, combined with the robust, well-considered use of other important parts of the U.S. toolbox, including domestic trade enforcement proceedings, WTO enforcement, bilateral engagement and coordination with allies to jointly address problematic Chinese behavior, stands the best possible path to resolve longstanding and harmful distortive activity and provide accountable mechanisms that will serve the interests of the United States, its manufacturers and workers over the long term.

We appreciate the administration's efforts to solve these problems, and the clear signals sent during negotiations in Beijing on the need for a strong, enforceable framework with real Chinese commitments. We believe that the best framework remains a free and fair agreement on trade that addresses these and the litany of other trade issues with China.

Some may say the negotiation of such an agreement will take too long or that China will not come to the table. In fact, there is no other viable choice to address the range of problems identified. Nor is there any better time than right now when China's attention, and indeed the world's attention, is focused on these critical issues as a result of the president's leadership. Our nation's manufacturers and workers deserve no less than a real and comprehensive solution.

IV. Proposed Section 301 Remedies

The Section 301 investigation has certainly raised the level of focus, here and in China, that we hope will provide just the opening to move forward aggressively on a strategic new approach.

Yet, the actual imposition of tariffs themselves will not effectively advance the shared goal of changing these harmful Chinese practices. It necessitates no immediate or long-term change in China's behavior, without which the problems will remain and may grow.

All of the proposed tariffs are on manufactured goods. Based on the NAM's analysis, an estimated 48 percent of the value of the products covered are components and inputs, many of which are critical to sustain U.S.-based manufacturing. Another approximately 31 percent of the value of the products are capital goods and other equipment used by manufacturers in the United States in their manufacturing operations.

We are hearing regularly from manufacturers across the country that are deeply concerned about these tariffs and what the actual imposition of tariffs could mean for their ability to continue to manufacture here at home. Specifically, the imposition of a 25 percent tariff on these products and the risk of escalating tariff threats on both sides that these actions could prompt, raises significant concern for the broad manufacturing sector due to the broad potential negative impact of these tariffs on U.S. manufacturing competitiveness, growth and jobs.

- These tariffs would increase direct costs for some manufacturers that rely on those inputs and other goods, particularly small- and medium-sized manufacturers (SMMs), challenging their broad ability to remain competitive here in the United States compared to Chinese and other foreign competitors.

- These tariffs cripple businesses that depend on imports of components and other materials that are not commercially available in the United States, as the tariffs could directly impact their ability to continue operations. This can include:

    - Products or technologies that are only available from Chinese suppliers;
    - Products or technologies in which there are no alternative non-Chinese suppliers with the capacity to meet existing U.S. demand; and
    - Products or technologies that are being produced by a China-based production facility of a U.S. company and integrated into U.S.-manufactured products, meaning that these tariffs serve as an effective corporate tax on U.S. manufacturers.

- Many of these tariffs will also harm U.S. exports, as USTR's tariffs cover and would raise costs for products that are integrated as components into or used in the production of U.S.-manufactured exports that are bound for other markets.

For many manufactured products, particularly complex industrial products that require federal certification, developing an alternative supplier is not a quick process. Indeed, it can take significant time to identify and certify a qualified supplier (or set of qualified suppliers) that can provide appropriate products. Some manufacturers have indicated that this process can take three or more years and could negatively impact the product's safety and reliability during this period. In the meantime, the tariffs applied to these products undercut these companies' competitiveness, providing a clear advantage to competitors in Europe, Japan and elsewhere in global markets, even China.

In short, engagement with NAM members indicates that imposition of tariffs will force manufacturers of final products in the United States using affected inputs to make an unpalatable choice: raise prices on U.S. consumers and likely lose sales, lay off workers to cut costs or shift production of those final products outside of the United States.

Manufacturers will also be injured by the loss of sales if China imposes its proposed retaliatory tariffs on U.S. exports. Nearly 60 percent of the U.S. exports that are being threatened with Chinese retaliation are U.S. manufactured goods:

Manufacturing Category	U.S. Exports to China Targeted
Automobiles	$11.8 billion
Aircraft	$7.5 billion
Plastics	At least $3.4 billion
Chemicals	At least $2.1 billion
Auto Parts	$555 million
Textiles (cotton)	$508 million
Rubber and Related Products	$138 million

Source: U.S. Department of Commerce, 2016 U.S. Exports to China

Three of the top 10 categories of U.S. manufacturing exports to China would be in the crosshairs: aircraft and two categories of automobiles (with different engine sizes). The direct impacts of these retaliatory tariffs would hit SMMs in the United States particularly hard given that more than half of all U.S. exporters in the following main categories being targeted by the Chinese tariffs are SMMs.

Manufacturing Category	Percentage of SMM Exports versus All Exporters
Auto Parts	63%
Plastics	66%
Chemicals	75%
Rubber and Related Products	57%

Source: U.S. Department of Commerce, Exporter Database (2015 Data)

In addition, Chinese-proposed tariffs on U.S. agricultural exports would reduce sales and harm many manufacturers and their workers producing for the U.S. agricultural sector.

These unintended, but heavily disproportionate, negative effects need to be avoided, particularly as the imposition of tariffs will not solve the underlying Chinese distortive behavior.

V. Conclusion

We appreciate the leadership of the president and the work by USTR and the interagency team in highlighting these critical issues for manufacturers across our nation. We look forward to working with the administration to move forward with a strategic, solutions-oriented approach to address once and for all the underlying issues and to put manufacturers and their workers on a fair and competitive playing field with China.