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Testimony

of Linda Menghetti Dempsey
Vice President, International Economic Affairs

National Association of Manufacturers

Before the

U.S.–China Economic and Security Review Commission

on U.S. Tools to Address Chinese Market Distortions

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Chairman Cleveland, Vice Chairman Bartholomew and members of the commission, thank you for the opportunity to testify on manufacturers' views on U.S. tools to address Chinese market distortions.

The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing 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, contributing \$2.25 trillion to the U.S. economy annually. The NAM is committed to achieving a policy agenda that helps manufacturers here in the United States grow and create jobs. Manufacturers very much appreciate your interest in and support of the manufacturing economy.

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).¹ 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 in the U.S. economy, as explained in the NAM's comments on the trade deficit. While some imports compete with domestic manufacturing activity, other imports are helpful to U.S. competitiveness and growth and promote the growth of U.S. manufacturing activity and jobs.

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 pay of \$64,609 in all nonfarm jobs.² 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.³

¹ 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/>.

² NAM, Top 20 Facts About Manufacturing, accessed at <http://www.nam.org/Newsroom/Facts-About-Manufacturing/>.

³ 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

U.S.–China commercial and trade relations are a top priority for manufacturers in the United States given both the challenges and opportunities this relationship presents. I appreciate the opportunity to testify today to discuss how to restructure the U.S.–China relationship through improving U.S. tools to address Chinese market distortions.

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 products or have increased sales by a higher amount. Indeed, manufacturers in the United States export more goods to China than any other market outside of our North American Free Trade Agreement (NAFTA) partners in North America—to the tune of nearly \$96 billion in 2017—which, in turn, supports hundreds of thousands of U.S. manufacturing jobs here at home. Exports of “Made in the USA” manufactured goods to China have grown by more than \$76 billion since 2002—and that's more than to any other country except Canada and Mexico. This is especially important considering that more than half of American manufacturing workers depend on exports for their paychecks.

On the other hand, there are few places in the world where fair competition and trade have proven more challenging for American manufacturing. From unfair import and export subsidies to intellectual property (IP) theft and 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. The United States has, and is, using a wide range of tools to address market-distorting practices that manufacturers face in China. Many have been quite successful in stopping unfairly traded or IP-infringing products from entering the United States. Yet, these tools have not addressed or been able to resolve fully the systemic underlying issues that are spurring in market-distorting activities. While we must continue to use effective tools, the United States needs a comprehensive strategy to achieve the best outcomes for American workers and American enterprise. In our view, that means that the United States must actively and urgently pursue a modern, innovative and comprehensive bilateral trade agreement that wholly restructures our economic relationship with China. This may seem like a radical idea, but in our estimation it represents the most pragmatic and effective way forward to fight for manufacturers.

Imposing tariffs on imports from China will not effectively advance U.S. goals. While such tariffs might provide short-term relief for some, the imposition of the tariffs being considered, as well as the retaliatory measures from China that these tariffs will trigger, will harm the broad U.S. manufacturing sector, undermine its competitiveness, put manufacturing jobs at risk and fail to solve the underlying systemic distortions.

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. That's what I look forward to discussing with you further a little later in my testimony.

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

II. The U.S.–China Commercial Relationship

The U.S.–China commercial relationship has grown substantially over the past several decades following China's accession to the World Trade Organization (WTO) in 2001. China is the United States' largest goods trading partner, the largest source of U.S.-manufactured goods imports and the third-largest export market for U.S.-manufactured goods:

- U.S.-manufactured goods exports to China grew from \$19 billion to nearly \$96 billion between 2002 and 2017, faster than nearly any other major market.
- U.S. imports of manufactured goods from China have grown even more, from \$122 billion in 2002 to nearly \$496 billion in 2017.

In joining the WTO, China agreed to abide by the WTO agreements that were largely created in the Uruguay Round talks that ended in 1994, as well as some specific requirements in its protocol of accession. In subsequent years, China also agreed to new, targeted agreements, including the Trade Facilitation Agreement (TFA) to cut red tape at the border and regularize customs processing as well as the 2015 expansion of the Information Technology Agreement to cut tariffs on information- and communications-technology products. Unlike some of the original WTO members, most notably Brazil and India, China joined the WTO on much stricter tariff terms, agreeing to cut tariffs to an average rate of 10 percent without any of the flexibility to raise tariffs that Brazil, India and other countries retained. China also changed thousands of regulations, laws and guidelines. Additionally, China's protocol of accession outlined many other requirements specific to China, including some requirements to address distortive activities by state-owned enterprises (SOEs) and unfair government involvement in commercial transactions. While China implemented many of these provisions fully, there are gaps in its implementation and there are issues that were not fully covered by the WTO requirements.

China's economy has more than quadrupled since it joined the WTO nearly 20 years ago, 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, as well as a rapidly expanding middle class that has boosted China to become the top consumer market in the world for products ranging from automobiles to food products. In a fiercely competitive global marketplace, 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.

As a result of the implementation of many of its WTO commitments—and the economic growth associated with China's accession—there are few places in the world that have created more opportunities for manufacturers in the United States. U.S. manufactured goods exports to China grew approximately five-fold since 2001, equaling a record \$95.5 billion in 2017. U.S. manufactured goods exports more to China than to any other country outside of North American Free Trade Agreement (NAFTA) partners Canada and Mexico, and those exports support hundreds of thousands of U.S. manufacturing jobs.

Notably, China is the single largest foreign purchaser of U.S.-manufactured goods outside of North America, and U.S.-manufactured goods exports account for approximately 11

percent of all of China's imports. Among the U.S. manufacturing sectors that have seen the largest growth are:

- Transportation equipment, including aerospace products and parts, motor vehicles, auto parts and related products, railroad rolling stock and ships and boats; overall, U.S. transportation equipment exports increased by nearly \$26 billion between 2002 and 2017;
- Chemical products, which have increased by nearly \$12 billion since 2002;
- Computer and electronic products, including semiconductors, measuring and medical control equipment, and computer and communications equipment; overall, U.S. computer and electronic product equipment exports to China increased by nearly \$12 billion between 2002 and 2017; and
- Machinery, such as industrial machines, engines and power transmission equipment; overall, U.S. machinery exports increased by more than \$6 billion between 2002 and 2017.

Other areas of strong U.S. export growth, such as agricultural products, have also fueled manufacturing growth and jobs here at home. Manufacturers of agricultural equipment, from tractors and seeds to farming implements, grain storage structures and fertilizers, have directly benefited from strong growth of exports to China of products ranging from soybeans to almonds. Indeed, U.S. agricultural exports to China have grown to nearly \$18 billion in 2017, from a base of less than \$1.5 billion in 2002. China is the largest single country purchaser of U.S. farm products.

The U.S.–China investment relationship is also substantial, totaling more than \$68 billion in 2016. U.S. manufacturing investment in China equaled \$47 billion in 2016, up from just under \$6 billion in 2002, and equal to just seven percent of worldwide U.S. foreign direct investment in manufacturing (\$667 billion in 2016). Sales by U.S. manufacturing affiliates in China equaled \$283 billion in 2015, compared to only \$9 billion in U.S. exports by those same affiliates. Chinese foreign direct investment in U.S. manufacturing totaled nearly \$21 billion that same year, up from just \$215 million in 2002.

While there have been significant improvements in the U.S.–China commercial relationship, the Chinese market remains one of the most frequently cited trouble spots for manufacturers in the United States, and challenges continue to rise. The market-distorting and damaging industrial policies and other measures negatively impacting manufacturers in the United States include the following:

- **Localization Policies:** Manufacturers in the United States have seen in recent years a resurgence of discriminatory policies, particularly those that have a differential impact on products and technologies produced by domestic versus foreign companies, even if they do not explicitly treat domestic and foreign companies differently. These policies are often as problematic for foreign companies as explicit discrimination and should be eliminated. Particularly concerning are localization policies related to production or technology that mandate local testing and certification requirements for products in the information, communications and telecommunications (ICT) and medical sectors as well as policies requiring companies to store China-generated data on local servers and prohibiting their transfer overseas.

One policy area of significant concern is China's "Made in China 2025" initiative, an ambitious 10-year plan designed to upgrade China's manufacturing economy. The plan sets specific targets for domestic manufacturing (40 percent domestic content of core components and materials by 2020 and 70 percent by 2025), focusing on 10 priority sectors,

such as information technology, new energy vehicles, agricultural equipment and robotics. While the plan's broad objective of promoting smart manufacturing policies in China is common to many countries, the specific implementation and localization targets of the plan raise significant concerns for manufacturers in the United States. In particular, the plan's focus on building globally competitive Chinese companies through specific government policies and financial support raise concerns that the plan's effect will be to benefit Chinese manufacturers over foreign ones, raising significant questions about the consistency of policies with China's WTO commitments.

Examples of other policies with localization elements include:

- Cybersecurity policies that pressure companies to localize technology;
 - Data flow restrictions/internet controls; and
 - Expedited product approvals for innovative medical device products.
- **IP Rights:** China has increasingly recognized the value of innovation and IP rights and enforcement, with some steps being taken to upgrade IP laws and regulations, promote IP awareness and tackle IP enforcement. Many manufacturers, however, continue to face significant challenges enforcing their IP in China, pointing to the need for much more work on an issue critical to manufacturers of all sizes and types. Among the areas of most concern that impede U.S. market access and fair competition in the Chinese market are:
 - High levels of counterfeiting, piracy and trade secret theft, both physically and online;
 - Structural barriers to strong IP enforcement, such as value thresholds that effectively preclude criminal enforcement;
 - Policies designed to push companies to localize R&D and technology and promote the development of Chinese IP-intensive industries and companies;
 - Policy developments in areas such as competition, standards and product price controls that undercut U.S.-generated IP;
 - Cybertheft that has targeted U.S. companies; and
 - Weak enforcement fed by inadequate resources and a lack of political will.
 - **Subsidies and Other Measures:** Manufacturers in the United States continue to be concerned about a range of other Chinese government actions that have led to market distortions, such as subsidies and state-owned enterprise (SOE) supports that have fueled massive overcapacity in key sectors. Steel and aluminum are front and center, but overcapacity is also a problem in industries such as chemicals, fertilizer, concrete, agricultural processing and semiconductors. More broadly, Chinese government agencies continue to utilize a variety of export policies, particularly export restraints and subsidies, to promote or restrict the growth and export of priority products and sectors to provide an advantage to Chinese producers reliant on various metals and raw materials. While the United States has brought and won WTO cases on some of these policies, others continue to pop up. These actions both undermine U.S. market access in China and distort competition in U.S. and third-country markets, all to the disadvantage of manufacturers and their workers in the United States.
 - **Investment Restrictions:** Manufacturers also face investment caps in key manufacturing sectors, such as agricultural processing, automotive and telecommunications, forcing them to form joint ventures with domestic companies under the Catalogue Guiding Foreign Investment. Problematically, this allows government and company stakeholders leverage to seek concessions from foreign companies, including investment commitments, local sourcing and access to capital and technology, in exchange for investment approval. In a series of changes over the past few years, China has made some revisions to its main

foreign investment laws, expanded investment openings in its free trade zones (FTZs) and promised other investment openings. While these moves are broadly welcome, they do not fully address remaining concerns from manufacturers in the United States about continued investment caps in critical sectors, efforts to build a national security review system for foreign investment and broader regulatory concerns that disproportionately impact foreign-invested enterprises. Given the role of investment overseas in helping manufacturers reach foreign customers and participate in foreign resource and infrastructure projections, these rules negatively impact market access for manufacturers in the United States.

- **SOEs:** During China's WTO accession, China made a number of commitments related to the activities of SOEs and state-invested enterprises (SIEs), including agreeing that those firms would make purchases and sales based solely on commercial considerations and not be influenced by the government. Despite that commitment, the Chinese government has not fully followed through, and the state continues to play a strong hand in SOE and SIE management and decision-making and pressures these firms to support government priorities. Efforts to strengthen SOEs have only accelerated under President Xi Jinping, with plans that have generally focused not on SOE reform, but on small changes to strengthen SOEs such as promoting mixed-ownership structures, addressing corruption and reforming executive board operations.
- **Import Regulation:** From tariffs and customs barriers to differential import procedures, manufacturers in the United States face a number of border barriers in China that impede U.S. exports and limit market access:
 - While China reduced tariffs as part of its WTO implementation on a broad range of manufacturing products, the process did not eliminate all of China's burdensome tariffs, including some high tariff rates in key manufacturing sectors.
 - While China ratified the WTO's TFA in September 2015, it will not implement its Schedule B commitments, including implementation of a "single window" system for customs clearance, publication of average customs release times or customs cooperation, until 2020. As a result, U.S.-manufactured goods face higher costs and red tape as well as delays in exporting to China.
 - Inconsistencies in customs-related regulations and enforcement create unnecessary challenges for U.S. exporters. Particularly concerning are different customs clearance proceedings and regulations between different ports, different agencies and even different customs agents as they seek to get products cleared, including customs classification, customs valuation procedures and clearance requirements.
 - In addition, China's current import clearance regime unnecessarily complicates trade and restricts low-value shipments (including shipments of manufactured goods sent through e-commerce channels) from benefitting from expedited shipments treatment, as envisioned in the TFA. Although China's complex import clearance procedures can clear products through one of three channels (including an e-commerce category), burdensome requirements to utilize the e-commerce channel prevent many products from benefitting from this option.
 - Manufacturers in the United States are seeing the misuse of Chinese trade laws to retaliate against U.S. industries and limit U.S. imports unfairly.
 - Import bans and other regulatory limits have also undermined U.S. access to China's market, including bans on remanufactured products and units and a July 2018 ban on 24 types of materials, including scrap paper and plastic.
- **Standards, Technical Regulations and Conformity Assessment Procedures:** Manufacturers in the United States continue to experience a variety of challenges related to standards and technical regulations in China, ranging from inadequate channels for

participation in standard-setting processes, treatment of IP in standards setting and Chinese efforts to promote standards, both at home and abroad, that do not harmonize with international standards. China's new Standardization Law includes some reforms to streamline the standards system and create more space for private sector standards development, but has also raised new challenges related to association and enterprise standards that could threaten companies' IP. All of these regulations and requirements can add significantly to the cost of manufacturing products for export to China and limit the ability of U.S.-manufactured products to compete fairly in China. Among the areas where manufacturers in the United States are facing challenges include electric vehicles, medical equipment, and hazardous substances in electric and electronic products.

- **Transparency and the Rule of Law:** Despite Chinese commitments during its accession to a range of reforms related to the rule of law, including regulatory transparency and consistent implementation of laws and regulations, China continues to struggle with many of these areas in ways that have a significant negative impact on the ability of manufacturers in the United States to navigate China's regulatory framework and participate on a level playing field in the Chinese market. Among the most concerning areas are:
 - A lack of full regulatory transparency regarding laws and regulations, where new rules are implemented with limited notice and input from the private sector; and
 - A lack of fair and open processes regarding regulatory approvals.

The NAM has described these issues in greater detail in several of the NAM's submissions to this administration, including in the administration's investigations related to intellectual property and WTO compliance.⁴

III. U.S. Tools to Address Chinese Market Distortions

Given the size and the ties between the United States and China, 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 fairly 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, the trading relationship must be fair and open and must tackle persistent, systemic barriers.

Manufacturers strongly believe that the U.S. government must undertake a comprehensive and strategic approach to drive concrete, lasting and enforceable policy changes while minimizing collateral damage to the U.S. economy. In particular, manufacturers firmly believe that a strategic approach must include the following:

- The negotiation of a modern and innovative bilateral trade agreement that will restructure the economic relationship with China;
- Intensified work with allies to address common challenges; and
- Strategic use of existing domestic and multilateral tools, and creation of new tools, that will be effective in addressing some issues in a targeted manner.

⁴ 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 <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.

At the same time, the imposition of broad tariffs on imports from China is not the solution, but rather will undermine U.S. manufacturing and competitiveness and put U.S. jobs at risk, while failing to solve the underlying systemic problems that have given rise to unfair trade, IP infringement and market distortions. Each of these issues is discussed below.

A. Negotiation of an Innovative New Bilateral Trade Agreement with China

As the NAM President and CEO Jay Timmons explained in a letter to the president on January 8,⁵ “a long-term strategy will be needed if our country is to tackle our challenges with China comprehensively and achieve the best outcomes for American workers and American enterprise.” As part of that strategy, the United States should negotiate a modern, innovative and comprehensive agreement with China that is “crafted specifically to achieve fairness and reciprocity for both countries by setting new rules and demanding accountability.” To be successful, a free and fair agreement must:

- 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, that could be developed to ensure that harmful Chinese policies and practices are actionable in ways that they are not through existing WTO disciplines.

In the absence of other bilateral dialogues or negotiating mechanisms, these negotiations would provide an important structure that would reframe the relationship, creating leverage for China to demonstrate clear, regular progress on commercial issues while also providing a focal point for the U.S. government to use leverage generated through use of other trade tools. These negotiations would provide a clear channel to generate 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, and coordination with allies to jointly address problematic Chinese behavior), provides 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 the plethora of trade barriers and problems that China presents, and the clear signals sent during negotiations in Beijing on the need for a strong, enforceable framework with real Chinese commitments. A free and fair agreement on trade that addresses these and the litany of other trade issues with China is the best framework to do just that.

⁵ 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/>.

Some may say that the negotiation of such an agreement would take too long to produce wins, or that China will might come to the table. In fact, we believe both points are red herrings. This negotiating structure provides a clear, straightforward way to address issues systematically and demonstrate clear wins. As for China's interest, there is no better time to bring China to the table than a moment when its 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.

B. Intensified Work with U.S. Allies

Another important part of any comprehensive strategy is for the United States to continue to intensify engagement and coordination with trading partners and allies. Such engagement already takes place through existing regional and global channels, such as the Asia-Pacific Economic Cooperation forum and G20, as well as sector-specific activities, such as the Global Forum on Steel Overcapacity. The United States, European Union and Japan also announced—in December 2017 at the WTO Ministerial in Buenos Aires—joint work to address foreign trade distorting activity, work that continued with last week's trilateral meeting on the sidelines of the Organisation for Economic Co-operation and Development (OECD) Forum in Paris. More work in all of these fora, as well as the consideration of others to address specific sectoral or systemic issues, should also be explored to advance U.S. goals to address market distortions. In addition, this work should be expanded to consider more direct ways in which work with U.S. allies can translate to direct, enforceable action.

C. Continued Use and Improvement of Existing Trade Tools

The United States has numerous existing tools, both in U.S. law and through international agreements, to address Chinese market-distorting activities. Some of these tools have been used very effectively to address specific problematic behavior with particular products that are injuring manufacturing industries in the United States. Notably, the United States has taken more than 20 WTO challenges against Chinese practices, 150 trade remedy cases to put tariffs on unfairly traded imports, and IP cases to block infringement by hundreds of Chinese companies. Last year alone, the United States seized hundreds of millions of dollars in IP-infringing Chinese products at the U.S. border. Several of these tools can be improved as noted below. While these tools have provided important relief from many unfair Chinese practices, they simply cannot solve or prevent the underlying Chinese practices that have given rise to market distortions. That is why it is critical for the United States and China to engage in full-scale negotiations for a comprehensive and enforceable bilateral trade agreement.

1. Use of WTO Dispute Settlement

As described above, China's accession to the WTO brought China into the rules-based trading system, requiring China to make substantial changes to lower its tariffs and to change thousands of regulations, laws and guidelines. While China implemented many of these requirements, it has not always fully implemented its WTO commitments, to which the United States and other countries have responded by filing challenges through the WTO's dispute settlement mechanism.

The United States has filed more than 20 WTO challenges against Chinese practices since 2001, with many resulting in resolution of the underlying distortions—from raw materials and rare earth export restraints to auto part distortions—and has a strong track record in these cases. While, as discussed above, there are issues that are not adequately addressed through WTO rules currently in place, WTO enforcement has proven a useful channel to address key areas of problematic behavior and its core rules have been critical in curbing Chinese activity

that distorts commerce.⁶ The United States should ensure full enforcement of existing WTO rules and bring additional WTO cases in areas where China is falling short of its commitments. It is critical, therefore, that the WTO dispute settlement mechanism continue its full operation, while manufacturers also welcome constructive efforts to improve the timeliness of WTO dispute settlement enforcement and other advancements that can improve its operation.

2. U.S. and Global Identification of Trade-Distorting and IP-Infringing Activities

Annually, the United States seeks and develops reports that identify trade barriers and IP-infringing activities. In recent years, China has figured prominently in those reports, which identify a broad range of actions that undermine a fair and level playing field.⁷ Additionally, the United States evaluates China's compliance as part of an annual report⁸ and the WTO reviews each country's compliance with WTO rules as part of its own Trade Policy Review Mechanism. The most recent report regarding China was issued in October 2016, with an additional review planned for next month.⁹ These reviews of China's activities and compliance with international rules are critical to identify key issues that require resolution.

3. U.S. Trade Law Investigations

There are multiple U.S. trade statutes that have been used to address some of the key import-related concerns about Chinese activity. Those actions that are focused on unfairly traded or IP-infringing products have been most effective in addressing concrete concerns of manufacturers. Among the most used in the U.S. toolkit are:

- a. Enforcement of Antidumping and Countervailing Duty Investigations: There have been 150 antidumping and countervailing duty investigations undertaken pursuant to Title VII of the Trade Act of 1930, as amended, resulting in substantial tariffs being placed on hundreds of distinct types of Chinese imports. Such actions are country-specific (sometimes being brought against imports from just China or imports from China and other countries at the same time) and assess both market-distorting practices (unfairly traded imports based on comparisons of market prices or an evaluation of subsidies) and actual injury, or the threat thereof, to domestic industries. In 2016, Congress passed new trade enforcement tools to combat evasion of trade remedy laws, known as the Enforce and Protect Act, as part of the Trade Facilitation and Trade Enforcement Act (TFTEA). These provisions have already been successfully used to stop Chinese exporters from evading U.S. orders

⁶ As explained in the NAM's submission for the administration's review on trade agreement violations and abuses on "trade agreement violations and abuses," as required by Executive Order 13796 of April 29, 2017, manufacturers in the United States have experienced enormous growth and new opportunities as a result of WTO agreements and see the WTO dispute settlement mechanism "as an important advancement ensuring that countries refusing to meet their commitments either come into compliance or pay a severe penalty." 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/>.

⁷ See, e.g., USTR, **2018 National Trade Estimate Report on Foreign Trade Barriers** (March 2018); USTR, **2018 Special 301 Report** (April 2018).

⁸ See e.g., USTR, **2017 Report to Congress on China's WTO Compliance** (Jan. 2018), accessed at <https://ustr.gov/sites/default/files/files/Press/Reports/China%202017%20WTO%20Report.pdf>.

⁹ WTO Secretariat, **Trade Policy Review: China** (Oct. 12, 2016), accessed at [https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=\(%20@Symbol=%20wt/tpr*%20or%20press/tprb/*%20\)%20and%20\(%20@Title=%20china%20not%20\(macao%20or%20\(hong%20kong%20china\)%20or%20\(macao%20china\)\)\)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(%20@Symbol=%20wt/tpr*%20or%20press/tprb/*%20)%20and%20(%20@Title=%20china%20not%20(macao%20or%20(hong%20kong%20china)%20or%20(macao%20china)))&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#).

- against unfairly traded imports by shipping products through third countries although there is interest in more timely investigations and actions.
- b. Section 301 Investigations: Section 301 of the Trade Act of 1974, as amended, provides for action to address concerns that U.S. rights under a trade agreement have been violated or when acts, policies and practices of foreign countries are unjustifiable and burden or restrict U.S. commerce. As seen in the current Section 301 investigation with respect to intellectual property and technology practices by China, this type of investigation provides for country-specific inquiries that examine underlying market-distorting practices, and have primarily been used since the creation of the WTO to provide a basis for WTO dispute settlement cases.
 - c. Actions to Stop IP Infringement: The United States has multiple levers to block IP-infringing imports into the United States, including the enforcement of U.S. customs law. U.S. law with regard to these issues was modernized as part of the TFTEA legislation in 2016, which provides new tools to address IP-infringement at the border and to focus U.S. government resources on identifying and addressing IP theft, although not all of these tools have been fully implemented. Last year, U.S. Customs and Border Protection (CBP) seized more than \$554 million in IP-infringing merchandise imported from China and another \$386 million in IP-infringing merchandise from Hong Kong.¹⁰ In addition, Section 337 of the Trade Act of 1930, as amended, provides for additional action in response to foreign unfair methods of competition and IP infringement. Since January 2008, U.S. industry has brought more than 157 cases involving Chinese respondents alleged to be exporting IP-infringing products into the United States, representing nearly one-third of the 487 cases filed since 2008. Of those, 46 cases have resulted in exclusion orders against 194 Chinese respondents, with many other cases settled. Additional work in this area, as well as quicker actions to remedy infringement, is welcome.
 - d. Section 201 Safeguard Investigations: Section 201 of the Trade Act of 1974, as amended, provides for action to facilitate adjustments by domestic industry to foreign competition where product-specific imports on a global basis have increased and have been found to be a substantial cause of serious injury to a domestic industry. Notably, this type of action does not provide the ability to consider imports from a particular country, such as China, and examines only whether imports have increased, not whether the imports are unfairly traded or subsidized. Two Section 201 investigations have been completed during the last two years.
 - e. Section 232 National Security Investigations: Section 232 of the Trade Expansion Act of 1962, as amended, provides for action with respect to imports that threaten U.S. national security. These investigations are global in nature but there is flexibility for remedies to focus on specific countries of concern.

These investigations and remedies should also be used strategically to push back on unfair and market-distortive practices while considering the impacts on domestic manufacturers and consumers. The United States' Section 301 investigation into intellectual property and technology transfer practices in China has certainly raised the level of focus, both here and in China, and we hope it will ultimately provide just the opening to move forward aggressively on a strategic new approach.

Yet, the actual imposition of broad-based tariffs will not effectively advance the shared goal of changing harmful Chinese practices. The proposed tariffs instead will harm the overall U.S. manufacturing sector, without forcing any immediate or long-term change in China's policies and practices. Tariffs are simply not a solution.

¹⁰ Department of Homeland Security, **Intellectual Property Rights Seizure Statistics Fiscal Year 2017**, accessed at <https://www.cbp.gov/sites/default/files/assets/documents/2018-Apr/ipr-seizure-stats-fy2017.pdf>.

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.

As the NAM detailed in its submission to United States Trade Representative (USTR) as part of the Section 301 action: while some manufacturers may see short-term relief from the imposition of tariffs, the NAM is 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 the NAM's 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. Three of the top 10 categories of U.S. manufacturing exports to China would be in the crosshairs: aircraft and two categories of automobiles.

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

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.

Rather, the United States and China need to move forward aggressively to cement a new bilateral economic relationship that puts fair rules and free trade at its core through a broad, modern and fully enforceable trade agreement.

IV. Conclusion

The U.S.–China commercial relationship is vitally important to get right given both the enormous opportunities and challenges that manufacturers face from our largest trading partners. The United States has successfully used many of the tools already on the table to address some of the most severe market-distorting practices that are harming U.S. industry, but we have not yet been able to address effectively or fully the underlying Chinese practices that continue to give rise to market distortions that are impacting not just U.S.-Chinese commercial relations, but global markets. It is critical, therefore, that the United States pursue a strategic and comprehensive approach that has at its core the negotiation of a new, innovative and enforceable bilateral trade agreement with China that will truly address the underlying systemic practices and restructure the U.S.–China commercial relationship.

Chairman Cleveland, Vice Chairman Bartholomew and members of the commission, thank you for your work on global trade and competitiveness issues and for holding this hearing.