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Vice President
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July 23, 2018

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

Re: USTR-2018-0018; Notice of Action and Request for Public Comment Concerning 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 is pleased to submit these comments to inform the administration’s determination on additional proposed actions under the Office of the U.S. Trade Representative’s (USTR) Section 301 investigation on China's acts, policies and practices related to technology transfer, intellectual property and innovation.

These comments address questions about whether such tariffs would be a practicable or effective strategy to obtain the elimination of China's acts, policies and practices that have impacted manufacturers. Comments also consider whether maintaining or imposing additional duties on a particular product would cause disproportionate economic harm to U.S. manufacturing interests, including small- or medium-sized companies and consumers. This submission is designed to aid USTR in assessing the potential imposition of tariffs and other remedies, in line with the president’s announcement on May 29, 2018, and the *Federal Register* notice (83 FR 28710) of June 20, 2018.

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

Respectfully,

Linda Dempsey

NATIONAL ASSOCIATION OF Manufacturers

Comments of the National Association of Manufacturers Regarding Proposed Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation (Docket USTR-2018-0018)

July 23, 2018

The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing more than 14,000 manufacturers small and large in every industrial sector and in all 50 states. Manufacturing employs 12.7 million women and men across the country and produced a record $2.25 trillion in output to the U.S. economy in 2017, over half of which is exported to critical overseas markets. Those exports directly support about 6 million U.S. manufacturing jobs and help to keep U.S. manufacturing companies and workers globally competitive, supporting U.S. competitiveness and good paying manufacturing jobs. Manufacturing jobs pay 27 percent more in salary and benefits than jobs in all nonfarm industries,[1] and export-related jobs have also been demonstrated to pay on average 18 percent to 20 percent more than jobs not related to exports.[2]

Manufacturers remain 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 in China, which presents both major challenges and opportunities for our manufacturers.

Our relationship with China is complicated, with China representing both one of the biggest business opportunities for manufacturers due to its market openings, and one of their biggest business challenges due to a wide array of unfair, market-distorting policies and practices. Manufacturers in the United States sell more to China than to any other country outside of Canada and Mexico, with exports that directly support hundreds of thousands of U.S. manufacturing jobs that otherwise would not exist. U.S. manufactured goods exports to China have grown five-fold since 2001, due to both to major market-oriented changes China has made since joining the World Trade Organization (WTO) and the economic growth associated with its accession. With China now positioned as the world's top consumer market for cars, food and many other products, our manufacturers need to be able to compete for that growth to support and create more good-paying manufacturing jobs here at home.

However, they must be able to compete fairly. Manufacturers in the United States have long faced a wide range of distortive activities in China, including many of those extensively documented in the Office of the U.S. Trade Representative's (USTR) Section 301 investigation. These barriers limit U.S. exports, distort market conditions in the United States and third countries and result in the theft and mistreatment of U.S. property and investment. Those

[1] NAM, Top 20 Facts About Manufacturing, accessed at http://www.nam.org/Newsroom/Facts-About-Manufacturing/.
[2] 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.

activities have long had negative impacts on manufacturers and their workers in the United States. In short, China cheats, and manufacturers want to see China held accountable.

The question facing all stakeholders – including government officials, manufacturers, workers and other stakeholders – is *how* to address these behaviors. Stakeholders agree that China must follow the same rules as everyone else and must be held accountable when it does not.

The United States is not defenseless, and has taken many actions to address these challenges, including more than 20 WTO challenges, 150 trade-remedy cases, more than 100 section 337 intellectual property actions, bilateral negotiations and coordinated approaches with allies who face similar challenges. Each of these tools is a critical component of the toolbox, a lever to be pulled as part of a coherent strategy to make real, concrete changes that would level the playing field. Yet our history shows that these tools alone are not sufficient to fix the challenges our manufacturers face with China and that the current rules that govern the U.S.-China commercial relationship need to be updated.

Manufacturers believe it is time to fundamentally change the game. The administration must seize the moment it has created and rewrite the rules with China to address its concerns. As NAM President and CEO Jay Timmons explained in a letter to the president on January 8, 2018, the most effective path forward is a comprehensive and strategic approach that has at its core a modern, innovative and bilateral trade agreement to restructure our economic relationship with China. This approach must eliminate Chinese barriers, raise Chinese standards with new rules to prohibit market-distorting practices and create binding and neutral enforcement to address cheating and violations.

Broad-based tariffs cannot and will not solve the existing problems in China, and the ones that have been imposed are already negatively impacting manufacturers across the United States. The proposed List 2 tariffs will expand the harmful — albeit unintended — impacts on many manufacturers and their workers throughout the United States.

Both the already-imposed List 1 tariffs and the proposed List 2 tariffs are disproportionately harmful to manufacturers in the United States. The vast majority of products on these lists, for which tariffs have been or may be imposed, are industrial manufacturing components and capital equipment used by manufacturers. The NAM estimates that roughly 95 percent of tariff lines in List 2 apply to intermediate goods or capital equipment critical for manufacturers trying to continue manufacturing here in the United States.

Based on conversations with manufacturers about the impact of Section 301 tariffs and Chinese retaliation, many manufacturers are reporting that U.S. tariffs already imposed and those being proposed in List 2 weaken manufacturing in the United States, forcing manufacturers to make difficult, if not impossible, choices:

- Raise prices, which increases costs for consumers, reducing demand for many products and sales by producers in the United States in the face of other foreign competition and leading to less domestic production, fewer American jobs and less investment.
- Cut costs by scaling back on worker or pay expansion or new capital investment, which means smaller paychecks and fewer American jobs and less investment for our country.[3]
- Mitigate costs by shifting manufacturing operations to overseas facilities to remain competitive in some product lines.

[3] Many manufacturers that sell their products through industrial contracts are locked into a price and cannot even raise prices to cover tariffs that exceed their margins, forcing them to look at cost-cutting measures.

All of these choices make both individual manufacturers' operations and manufacturing in the United States more broadly less competitive against foreign competition and more vulnerable to job loss. These negative impacts will in many cases be felt hardest by small- and medium-sized manufacturers, which often have fewer choices, challenging their ability to remain competitive at home or abroad against Chinese and other foreign firms. Additionally, some manufacturers are also reporting that the products being hit by tariffs, including those proposed in List 2, incorporate substantial U.S. content, where the innovative products are designed and formed in the United States with more basic, less technologically sophisticated finishing operations occurring in China. The burden of U.S. tariffs in these cases will be felt most directly by manufacturers and their workers here in the United States. In other cases, manufacturers are reporting that the products being imported are from wholly owned operations, in which there is no Chinese partner or unfair practice involved. In those cases, again, the harm will fall squarely on businesses and manufacturers here in the United States.

Many manufacturers are also being hit by Chinese retaliatory tariffs that are cutting into critical exports that support American workers here at home. This is particularly concerning given that export jobs pay more than other jobs throughout the economy.

Manufacturers across the country are deeply concerned about the impacts that the imposition of proposed tariffs are already having on manufacturing and jobs in the United States. If tariffs escalate, so will the harm to manufacturers and their workers. Without a clear negotiating plan that leads to a bilateral agreement, ratcheting up tariffs will continue to undermine manufacturing in the United States without solving the real issues.

As NAM President and CEO Jay Timmons stated on July 10, 2018 when USTR published an additional list of $200 billion in U.S. imports from China that may face tariffs, "The last thing America's manufacturing workers need is an escalating trade war. America has China's attention, so instead of more tariffs, the U.S. and China should immediately begin working toward a fair, bilateral, enforceable, rules-based trade agreement to end China's market-distorting activities. We can't afford to wait any longer." We urge the administration to seize the moment created by the Section 301 investigation to advance 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.