

May 11, 2018

The Honorable Robert E. Lighthizer  
Ambassador  
Office of the United States Trade Representative  
600 17<sup>th</sup> Street NW  
Washington, DC 20006

**RE: Notice of Determination 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 (Docket No. USTR-2018-0005)**

Dear Ambassador Lighthizer:

On behalf of the Retail Industry Leaders Association (RILA), thank you for the opportunity to comment on the Notice of Proposed Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation (Notice of Proposed Action) (Docket No. USTR-2018-0005) issued by the Office of the United States Trade Representative (USTR) on April 6, 2018.

In the Notice of Proposed Action, USTR proposes to self-impose an additional duty of 25 percent on a list of products imported from China, which reflected nearly 1,300 products defined by the Harmonized Tariff Schedule of the United States (HTS).

By way of background, RILA is the trade association of the world's largest and most innovative retail companies. RILA promotes consumer choice and economic freedom through public policy and industry operational excellence. Its members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs, and more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad. Retail provides more than 42 million American jobs throughout our supply chain.

As the trade association representing major U.S. retail companies, RILA appreciates the opportunity to express our shared concerns about China's acts, policies, and practices that have harmed U.S. businesses. We support holding our trading partners accountable because our companies and employees thrive in a rules-based globalized economy where markets are open, trade rules and obligations are met, and governance is fair and transparent.

We recommend the Administration remove the products as listed in the attached appendix. We also implore you avoid adding other consumer products, whether in this proposed action or any future Administration actions, and to avoid taxing middle-class American families through the imposition of tariffs. We welcome the opportunity to share with you how our supply chains work and include us in your decision-making. While trade data may provide insight into alternative sourcing opportunities or substitutable products, a dialogue with sophisticated and experienced partners would have resulted in a list that does not include the products listed.

The Administration made the promise to “put maximum pressure on China, minimum pressure on U.S. consumers.” Unfortunately, based on the current list of proposed HTS codes to be impacted, this promise will be broken. The Notice of Proposed Action proposes a 25 percent tariff on nearly 100 HTS codes covering hundreds of consumer products, which would hit American families with higher prices on those products. In addition, the Administration’s proposed imposition of unilateral tariffs would not address the improper transfer of technology to China and would do greater harm to U.S. economic interests and would not be effective in eliminating China’s discriminatory behavior against U.S. companies. The use of tariffs is not an appropriate method to ensure Chinese compliance with the international norms at issue. We strongly encourage the Administration to not impose any tariffs while the United States and China are working on a negotiated settlement.

The Administration’s algorithm used to develop the list of HTS codes is flawed if the purpose was to minimize pain on U.S. consumers. Our understanding of the Administration’s algorithm, which was intended to exclude all consumer products, would automatically remove imports from China that currently have a 33 percent market share or greater or if there were no alternative source for such products. Unfortunately, there are many consumer products on the list of \$50 billion in goods that would be subject to these additional tariffs. If enacted, the proposed tariffs will cause serious disruptions to the American economy and impact nearly every American family across our country. For several products on the proposed list, there is no alternative source other than China to source these consumer products. The Administration must do more to ensure that consumer products remain off the tariff list to prevent harm to American consumers.

While we believe the punishment should fit the crime, forcing American consumers to pay for China’s bad behavior is not the answer. Tariffs, which are assessed on merchandise upon importation into the United States, are paid by U.S. businesses. Any increases in tariffs are reflected in the final sales price as retail margins are thin.

If America’s retailers face any increase in the cost of products in the form of a tariff, it would mean higher prices at the checkout for American consumers. For example, a recent study indicated that prices on televisions (HTS 8528.72.64) would increase by 23 percent, or an increase of \$711 million over the next year.<sup>1</sup> Make no mistake, higher tariffs will mean higher costs to businesses and, in turn, higher prices for American families. We support the Administration’s decision to hold China accountable but implementing the proposed tariffs on these products will mean higher prices for consumers, particularly lower and middle-income families who can ill-afford to pay more for every day consumer goods.

Competition to provide value to American families in the retail sector is fierce. The two major factors in maintaining a strong, secure supply chain are certainty and cost. Retailers need assurances that the products they sell can be made at the quality, quantity and cost our customers demand. Trustworthy suppliers are also critical to maintaining a dependable supply chain that not only meet our business needs, but also our business values. Shifting changing supply chains will increase risk, and ultimately drive up costs throughout the supply chain resulting in higher costs to consumers.

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<sup>1</sup> “Estimated Impacts of Proposed Tariffs on Imports from China: Televisions, Monitors, Batteries, and Printer Cartridges,” The Trade Partnership Worldwide, LLC, April 11, 2018.

The cost to substitute or source products from an alternative country requires a thorough process that cannot be rushed. Similarly, there may be the challenge of capacity as there may only be one alternative source, which puts increased pressure on maintaining a high level of quality and safety in producing these products. For example, one product purchased at retail by consumers, including homeowners and small business owning electricians, is voltage testers (HTS 9030.33.34). Similarly, homeowners and handymen purchase miter saw stands and other tool accessories (HTS 8466.92.50). For a retailer to shift production from China to another country would require up to a two-year process to ensure that quality and sourcing standards were all met. In the meantime, prices for the new homeowner, the new apprentice electrician, or an American entrepreneur would be faced with higher costs. For those reasons, we recommend those products included in the attached appendix be removed from the list.

Where there may be production of like or similar products, they are not substitutable. While China is a major producer of televisions (HTS 8528.72.64), where a very large percentage of total U.S. consumption of flat panel TVs are coming from, several factors prevent retailers from sourcing from any other country. One major issue is substitutability. China produced TVs tend to be smaller, designed for lower and middle-income families compared to televisions produced in other countries. Therefore, these products are not easily substitutable when consumers are deciding whether they can afford this key household consumer good. For those reasons, we recommend those products included in the attached appendix be removed from the list.

Similarly, for several products on the proposed list, there is no alternative source other than China for these consumer products. The Administration's algorithm considered whether China had a 33 percent market share for certain products. If the product met that criteria, it was removed from the list. Unfortunately, we know that for several products, the only major source is China. For example, mini refrigerators (HTS 8418.69.01) are produced by a limited number of manufacturers who can produce at the scale necessary for retailers. Thus, the entire supply chain has become integrated where the component parts for the mini refrigerator, such as compressor, screws, hinges, nuts, and bolts, are dependent upon one another for manufacturing. This evolution of manufacturing mini refrigerators has made it nearly impossible to move the production elsewhere without significantly erasing years of efficiencies and increasing costs to manufacturers, retailers, and, ultimately, the consumer. For those reasons, we recommend those products included in the attached appendix be removed from the list.

For some items on the list, the U.S. global value chain supports good paying jobs here in the United States and any additional duties put on products, such as automatic thermostats (HTS 9032.10.00), would increase costs and put at risk well-paying American jobs. For example, U.S. companies have led the way in innovating technologically advanced thermostats, of which there are an estimated 120 million thermostats installed in the United States today. Consumers purchase approximately 17 million thermostats per year for residential use. Smart thermostats have saved households money in energy costs and supported efficiency and reliability of the electrical grid. The proposed duties would not only dampen the thriving market for smart thermostat products for innovators and retailers, it would also impact the ecosystem of installers and other partners who have benefited from the rapid innovation in this sector. For those reasons, we recommend those products included in the attached appendix be removed from the list.

While there is no good time for increased tariffs, the Administration will conclude public input at the end of May. Should the determination of tariffs be made following this process, there is significant risk for these proposed tariffs to hit American families at the worst time of year – back-to-school and holiday season. The ripple effect this would have to the U.S. economy could ruin holidays for American families across this country.

Retailers are also concerned about the lack of transparency with respect to the addition of new products to the Notice of Proposed Action. Adding new products without full transparency and the opportunity to comment would be a misstep for this process. Given the challenges in using only trade data and not real-world experiences, it is critical to provide the opportunity for the public to comment on a final list before it is to take effect, particularly for any new products that may be added.

The Administration is right to consider its broad authorities to leverage to change China's behavior. The alternative solutions include working multilaterally as U.S. companies and entrepreneurs are not the only ones experiencing these challenges in China. As demonstrated through the recent World Trade Organization case filed against China on their licensing practices, our other trading partners are willing and ready to join the United States in pressuring China to change their practices. We also believe certain investment restrictions are reasonable considerations.

While these comments are focused on the Notice of Proposed Action, we cannot miss the opportunity to also express our significant concerns about the potential for the additional \$100 billion product list to include other consumer products. If tariffs are applied on consumer products such as apparel, footwear, toys, consumer electronics, and home goods, it would be a devastating blow to American consumers and retailers. China is a top supplier of these items to the United States by far and thus would significantly disrupt the flow of trade and raise costs on every day essentials.

We want to be a partner with the Administration in holding China accountable for their actions; however, we cannot support these actions if American families, our customers, are bearing the burden of China's bad behavior. We ask that you remove the consumer products from the Notice of Proposed Actions. We look forward to working with you as you update this list based on our comments and we hope to provide additional input to you prior to finalizing it. As you do so, please think of the millions of U.S. consumers, our customers, who effectively pay the price of any increases on tariffs.

Thank you for the consideration of our views and the impact of USTR's proposal on the retail industry. Please feel free to contact me at [hun.quach@rila.org](mailto:hun.quach@rila.org) or (703) 600-2041 if you have any questions.

Sincerely,



Hun Quach

Vice President, International Trade  
Retail Industry Leaders Association (RILA)

## APPENDIX

<b>HTS</b>	<b>Product</b>
30021200	Pregnancy, drug, ovulation tests
30044900	Bug bite pen
30049092	Acne pads, anti itch, diaper rash, muscle rub gel; Medicaments nesoi, in dosage form and packed for retail
40091200	Rubber Air hoses
40094200	Air Hoses
40169915	Plastic Door and Sink Stoppers
73181600	Zinc-Plated Hex Nut, Galvanized Steel Hex Nut
73202050	Helical spings
76051900	Speaker Wire
76052900	Aluminum Decorative Wire
84131900	Transfer pumps and related items
84135000	Pumps
84137020	Outdoor Fountains, Centrifugal pumps for liquids, not fitted with a measuring device, nesi
84137020	Fountains
84138100	Aquarium pumps for liquids - Other
84143040	Refrigerator compressor part
84149041	Air or gas compressors
84186901	Water dispenser, drinking water cooler, kegerator, beer growler beer tap, ice maker, compact refridgerator, ice cream maker, refridgerating or freezing equipment nesi
84193901	Nail Polish Heat Lamp
84198190	Popcorn Makers
84201090	Laminators, papercrafting devices, rolling machines for pasta, clay; Calendaring or other rolling machines, other than for metals or glass
84209990	Parts of calendering or other rolling machines, other than for metals or glass, nesi
84211900	Centrifuges, other than cream separators or clothes dryers
84212100	Water Filter Pitchers, Water filter cartridges for refridgerators, wicking filter, charcoal filter, pool vacuum, pool cleaner, aquarium water filtering or purifying machinery; Machinery and apparatus for filtering or purifying water
84213980	Air Purifiers, Tower air purifier; Filtering or purifying machinery and apparatus for gases, other than intake air filters for internal combustion engines or catalytic conv.
84219900	Air Purifier Parts, Aquarium Filter Cartridges, parts of water filtering or purifying machinery, Vacuum Hose
84221100	Dishwasher, Portable Dishwasher, Compact Dishwasher
84223091	Vacuum Sealers
84241000	Fire extinguishers
84271040	Forklifts, other work trucks; Self-propelled works trucks powered by an electric motor, rider type forklift trucks
84271080	Forklifts, other work trucks; Self-propelled works trucks powered by an electric motor, fitted with lifting and handling equipment
84272040	Forklifts, other work trucks; Self-propelled works trucks not powered by an electric motor, rider type forklift trucks

84272080 Forklifts, other work trucks; Self-propelled works trucks not powered by an electric motor, fitted with lifting and handling equipment, nesl

84302000 Snowplows and snowblowers

84328000 Spreader

84368000 Pruners, hedge trimmers and similar tools

84419000 Parts for machinery used in making up paper pulp, paper or paperboard, including cutting machines; Surface Carve Kit, Tool holders and self-opening dieheads for use solely or principally with machines of headings 8456 to 8465, nesoi

84439945 Parts and accessories of copy machines

84659200 Amp Planer

84659300 Belt/Disc Sander

84661001 Screwdriver Set, Ratchet Screwdriver Set, Socket Set, Mechanics Tool Set, Project Kits, Ratchet Handle, BIT Driver, Magnetic Bit Holder, Ratchets; Screwdriver

84663060 Router tables and related items

84669250 Miter Saw Stand, Super Clamp

84671150 Air tool kits, impact wrenches and related items

84678950 Caulk Gun

84705000 Cash registers

84717060 LCD digital photo frame

84717090 Memory card reader

84813090 Aquarium Check Valves of Plastic

84821050 Radial bearings

84834030 Gear boxes

84834090 Gears

84839010 Parts of bearing housings

85051910 Dry Erase Boards, Flexible Magnets, Magnet Sheets; Flexible permanent magnets, other than of metal

85059040 Electromagnetic or permanent magnet work holders and parts thereof

85065000 Non-reusable lithium batteries, Button Cell Lithium Batteries; Lithium primary cells and primary batteries

85073080 Lithium Battery, Drill with Batteries

85151100 Soldering Iron

85232910 Audio cassette, cassette tape

85234930 Laser lens cleaner

85234930 Blank CDR

85255070 Handsfree Bluetooth Car FM Transmitter With USB Charger; Player

85256020 Wireless rear speaker hub

85269250 Presenter, Remote, Radio remote control apparatus other than for video game consoles

85279915 Stereo receiver, speaker tower; Radio receivers, NESOI

85279915 Speaker Tower

85285925 Monitor

85287264 Smart LED TV, IHD CTV, HD TV, UHD TV, FHD TV

85299093 TV mount

85361000 Fuses, Christmas Replacement Fuse, Accessories

85362000 Automatic circuit breakers, for a voltage not exceeding 1,000 V

85365090 Metallic AC Disconnects and related electrical items

85366940 Alligator test clips, coax & HDMI wall plate, headphone splitter, connects, quick connects, ring connects, splice connects, wire splice connectors; Connectors: coaxial, cylindrical multicontact, rack and panel, printed circuit, ribbon or flat cable, for a voltage not exceeding 1,000 V

85366940 Audio Splitter

85369085 Floor box kit and related electrical items

85389081 Strain Relief Connectors and other similar items

85392930 Electrical filament lamps nesi, designed for a voltage not exceeding 100 V, excluding ultraviolet and infrared lamps

85414020 Light-emitting diodes (LED's)

85414095 Winding wire

85441100 Speaker cable

85443000 Amp Kit; Auto Drive Wire Harness

85447000 Optic Cable, Fiber Optical Cable with Mini Adapter

90132000 Laser Pointers

90158080 Water stations, weather stations; Surveying, hydrographic, oceanographic, hydrological, meteorological or geophysical instruments and appliances, nesi, nonoptical

90183900 Lancet

90185000 Optical Equipment

90211000 Finger splints; Orthopedic or fracture appliances, and parts and accessories thereof

90214000 Hearing Aids

90258035 terrarium hygrometer

90258050 terrarium thermometer, barometer, other measuring instruments in combination

90262080 Tire Gauge, Instruments and apparatus, other than electrical, for measuring or checking the pressure of liquids or gases

90275040 Laser temp gun and related items

90303334 AC Voltage Detector, Electrical Tester, Voltage Tester, Outlet Tester, Digital Voltage Tester, Multimeter, Battery Tester

90303338 Battery check, circuit tester, Christmas light accessories; Other instruments and apparatus, nesi, for measuring or checking electrical voltage, current, resistance or power, without a recording device

90304000 Wire Tracers and other instruments and apparatus specially designed for telecommunications

90314990 Laser Levels

90318080 Level, torpedo level, plastic drill gauge, ramp type feeler gauge, stud finder; Measuring and checking instruments, appliances and machines, nesoi

90319059 Laser level tripods and related items

90321000 Automatic Thermostats

90329061 Thermostat Guards and related items