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September 6, 2018

Via: www.regulations.gov

Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

ATTN: Ambassador Robert Lighthizer, U.S. Trade Representative

Re: Extension of Public Comment Period Concerning Proposed Modification of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

Docket No.: USTR-2018-0026

Dear Ambassador Lighthizer:

On behalf of the American Association of Exporters and Importers (AAEI), we respectfully submit the comments below for consideration concerning the modification of the Section 301 action against China's trade policies and practices concerning technology transfer, intellectual property, and innovation published by the U.S. Trade Representative (USTR) in the Federal Register, 83 Fed. Reg. 38760 (August 7, 2018). This notice modifies the original FRN issued on July 17, 2018 setting out Chinese products subject to 10% ad valorem duties. See, 83 Fed. Reg. 33608.

AAEI has been a national voice for the international trade community in the United States since 1921. AAEI represents the entire spectrum of the international trade community across all industry sectors. Our members include manufacturers, importers, exporters, wholesalers, retailers and service providers to the industry, which is comprised of customs brokers, freight forwarders, trade advisors, insurers, security providers, transportation interests and ports. Many of these enterprises are small businesses seeking to export to foreign markets. AAEI promotes fair and open trade policy. We advocate for companies engaged in international trade, supply chain security, export controls, non-tariff barriers, import safety and Customs and Border Protection issues. AAEI is the premier trade organization representing those immediately engaged in and directly impacted by developments pertaining to international trade. We are recognized as the technical experts regarding the day-to-day facilitation of trade, including the administration of and compliance with customs laws of the United States.

General Comments

Since our initial set of comments filed in May, we have seen a cascading effect resulting from the imposition of and pending tariffs on Chinese products as these costs ripple through the supply chain:

- Assessments of duty impact on public company financials and projected earnings are being reported by CEOs on quarterly earning teleconferences with financial analysts which have negatively impacted companies' stock prices.

- Many companies find themselves in the odd situation of having to pay duties on their own products simply because they are manufactured in China, and thus raising costs of their products.

- Companies are forced to expedite shipments (e.g., ship by air) to enter goods before the tariffs take effect in order to keep U.S. production on schedule.

- Supplier solvency concerns have arisen when small and medium enterprises (SMEs) cannot absorb the additional duties levied on raw materials or inputs. In some cases, larger U.S. companies are absorbing the additional costs of duties from their SME suppliers in order to maintain their network of current suppliers.

- When duties are increased, U.S. Customs and Border Protection (CBP) requires importers to increase their customs bonds. The bond is a financial guarantee and, in some cases, it is likely that collateral may be required for some importers in order to obtain the bond as required by regulation. For such companies, especially those that are small businesses, this can constitute a financial hardship. Dramatic increases in the amount and cost of bonds impedes the facilitation of trade, enforcement of law and the collection of revenue.

- Another unintended consequence of Section 301 tariffs is the possibility for an increase in bad actors engaging in fraudulent transshipping. Transshipment occurs when an importer ships through another country with a lower duty rate and claims that country as the country of origin. Transshipment is already a significant customs enforcement problem, which is exacerbated by thus tariff action.

Specific Comments

We understand that you are seeking comments on the following points:

- The specific tariff subheadings to be subject to increased duties, including whether the subheadings listed in the Annex should be retained or removed, or whether subheadings not currently on the list should be added.

- The level of the increase, if any, in the rate of duty.

- The appropriate aggregate level of trade to be covered by additional duties

While AAEI is not responding specifically to tariff items on behalf of members, we do need to advise the Administration about the impact of the President's trade action on the velocity, cost and resource burdens of the global supply chain.

Any product that is regulated by multiple federal agencies (e.g., chemicals, food, medical devices, pharmaceuticals, etc.) may require government approval for one or more nodes in its supply chain, which are not easy to change. For example, the U.S. Food and Drug Administration approves or certifies specific manufacturing facilities based on its standards (i.e., good manufacturing practices), and such approval takes a significant investment of time and resources, requiring FDA inspection before approval is issued by the FDA. For other products, there may be a limited number of licensed manufacturers based on specific government approval (e.g., alcohol-based products including flavorings used in a wide variety of foods). The Food Safety Modernization Act requires that importers to verify that their foreign suppliers of food for human and animal consumption meet FDA safety standards under the Foreign Supplier Verification Programs (FSVP). Other types of products (such as chemicals) not only require government license for manufacture and distribution, but the mode and method of their transport requires use of government approved carriers. All of these government mandated requirements due to health or safety public policy goals impose significant costs on the parties in these supply chains who cannot be easily substituted.

Since 9/11, most companies that import and export a significant volume of goods have joined CBP's Customs-Trade Partnership Against Terrorism (C-TPAT), a voluntary program designed to strengthen global supply chains to mitigate the risk that a weapon of mass destruction is delivered through international shipping. Such programs, even if voluntary, require significant investment to vet a secure network of supply chain partners.

Therefore, it is very difficult to easily or quickly change the source, suppliers, and shippers of products which are regulated by governments.

AAEI has been tracking the additional costs resulting from the President's trade policies, specifically this Section 301 action against China. Our survey of AAEI's members, who are trade compliance professionals responsible for exporting goods from and/or importing to the United States, reveal the following:

- Two-thirds of AAEI's members responded that the President's trade policies (i.e., trade actions, free trade agreement renegotiations) has created uncertainty resulting in disruption of their company's trade plans (e.g., investments to expand in particular markets, adjustments in trade operations to serve regions or markets).

- Twenty-five (25%) percent have indicated that their company's leadership has placed investments on hold due to trade policy uncertainty.

- Sixty-five (65%) percent of the respondents indicated that their companies have incurred costs (e.g. hired consultants, outside experts) or diverted internal resources from tasks associated with the company's core business to deal with trade policy uncertainty. Among the examples of resources that AAEI members identified as being diverted to deal with the trade policy uncertainty are:
  - "We have a dedicated resource at all times monitoring trade and reviewing impact based upon each new FRN notice. When list 3 was published it required 2.5 internal resources."
  - "Global is now dedicating resources to review sourcing and development plans."
  - "We have had to redirect product development to better understand the risks and to help our customers understand and deal with the risks."
  - "Legal counsel costs"
  - "Hundreds of hours researching import history and assessing moves to supply chain."
  - "Hundreds of hours seeking meetings with policymakers to show costs of trade policy."
  - "Diversion of senior level resources from other business priorities to deal with daily trade wars, which are a moving target. Spending 70% of time on these issues at present, while other projects suffer. Postponed implementation of corporate strategies (manufacturing, supply chain) due to uncertainty. Incurred significant costs in efforts to mitigate impact."
  - "Internal review by multiple departments: Customs & Trade Compliance, Legal, Government Affairs, Procurement & Supply Chain."
  - "It has been internal cost so far by diverting internal resources to fully understand the impact to our company. In addition, resources have been deployed to identify strategies to mitigate the impact."

- o “Diverted internal resources from tasks associated with the company’s core business to understand and/or assess risks related to uncertain trade policy signals.”

Another impact of these tariffs is the strain it places on corporate information technology systems. Most companies that import and export goods have automated trade compliance programs to reduce errors in the applicable tariff classification, valuation, origin, and marking of the goods. Products subject to section 301 tariffs require companies to use a Chapter 99 tariff number under the Harmonized Tariff Schedule of the United States (HTSUS) to enter the goods, and thus, necessitate reprogramming of company information technology systems which cannot be done quickly and is an additional cost to companies.

In particular, we note that:

- Interfaces between the importer and its service providers, global trade management companies and customs brokers, with managing additional tariff numbers (i.e., the normal HTSUS number applicable to the goods and the Chapter 99 HTSUS number applying the section 301 duties) increases information technology costs even for highly automated multi-national companies, requiring a diversion of resources. This undermines the Administration’s efforts to reduce costs on businesses through regulatory reform.

- Quantity-based restrictions are difficult for companies to monitor and manage because of the short notice for such restrictions.

Finally, but certainly not least, is the impact that these tariffs have on U.S. exports, particularly those products subject to retaliatory duties imposed by our training partners. When U.S. companies access a foreign market, they are able to hold or expand that market if they are stable supplier based on price and volume. If a U.S. exporter becomes an unreliable supplier to world markets, it will lose distributors and customers, resulting in a loss of market share in that foreign market. Once a company loses market share, it is very difficult to get it back.

Conclusion

We believe that real evidence is starting to mount concerning the negative impact and economic costs imposed on the U.S. from these tariffs, and we hope that these comments provide USTR with comments concerning tangible impact resulting from the section 301 tariffs against China’s trade policies and practices concerning technology transfer, intellectual property, and innovation. AAEI welcomes the opportunity to lend our expertise to USTR officials to discuss these issues in more detail.

Sincerely,

Marianne Rowden

Marianne Rowden
President & CEO