



National Electrical Manufacturers Association

KEVIN J. COSGRIFF

President and Chief Executive Officer

September 6, 2018

The Honorable Robert Lighthizer
United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: Proposed Modification of Action Pursuant to Section 301: China's Acts, Policies, and Practices
Related to Technology Transfer, Intellectual Property, and Innovation
Docket USTR-2018-0026

Dear Ambassador Lighthizer,

As the leading trade association representing the manufacturers of electrical and medical imaging equipment, the National Electrical Manufacturers Association (NEMA) provides the attached comments in response to the July 17, 2018, solicitation – as modified by the August 7 notice – of public input on the proposed determination of further action pursuant to Section 301 of the Trade Act of 1974. These comments are aligned with and expand on NEMA testimony during the August 21 session of the six-day public hearing.

NEMA represents nearly 350 electrical equipment and medical imaging manufacturers that make safe, reliable, and efficient products and systems. Our combined industries account for 360,000 American jobs in more than 7,000 facilities covering every state. Our industry produces \$106 billion shipments of electrical equipment and medical imaging technologies per year with \$36 billion exports.

We are open to discussing these attached comments further and providing additional details at your request. Our Member companies count on your careful consideration and we look forward to outcomes that meet their expectations.

If you have any questions on these comments, please contact Craig Updyke of NEMA at 703-841-3294 or craig.updyke@nema.org.

Sincerely,

A handwritten signature in black ink that reads 'Kevin J. Cosgriff'. The signature is written in a cursive, flowing style.

Kevin J. Cosgriff

President and Chief Executive Officer

Attachment

**NEMA Comments on Proposed Modification of Action Pursuant to Section 301:
China's Acts, Policies, and Practices Related to
Technology Transfer, Intellectual Property, and Innovation**

Executive Summary

- As stated previously, NEMA shares the concerns of the Office of the U.S. Trade Representative (USTR) regarding China's intellectual property practices and the exclusionary nature of the Made in China 2025 program. U.S. electrical and medical imaging manufacturers support a comprehensive approach to international trade that results in free and open global markets.
- The outcomes of discussions between China and the U.S., as well as other countries and trade groups with whom the U.S. is engaged, should assure a more level playing field through the application of clear, binding, and enforceable trade rules and compliance with international norms of intellectual property protection.
- While some NEMA Member companies manufacture their own products in China, many others source finished goods as well as components from contractual partners in China. In particular, many companies source components from China into the U.S. to support their U.S. manufacturing operations. Many NEMA Members are already faced with 25 percent additional tariffs on needed imports from China. Placing a 10 or 25 percent tariff on over 70 additional product types within or adjacent to NEMA scope – as well as many other items that are inputs to U.S.-based manufacturing within NEMA scope – will not help support and could further materially injure the global competitiveness of our industries, their U.S. manufacturing operations and/or their U.S. employees. In particular, tariffs on imported components will impose a cost burden on U.S. manufacturers competing against unencumbered imports of finished goods from offshore.
- The imprecision of broad-based tariffs – such as those proposed – is accompanied by collateral damage up and down global supply chains that is better avoided. If tariffs on additional products are judged by the Administration to be a necessary, attention-getting tool in bringing about changes to support U.S. companies trying to do business in China, we urge the use of tariffs to be much narrower than proposed, exclude items where tariffs would do significant and disproportionate harm to NEMA Members' U.S. operations and exports, and be very short-lived. Specifically, if the tariffs are intended to bring China to the negotiating table, when can industry expect those negotiations to begin in earnest?

Discussion

USTR Investigation and Determination

NEMA does not dispute the findings of the Section 301 investigation into China's acts, policies and practices related to technology transfer, intellectual property and innovation. NEMA welcomes the continued attention by the Administration to China's acts, policies and practices, since they affect our Member companies' and their affiliates' abilities to compete fairly and succeed now, as well as in the future. NEMA supports the high priority the Administration has given to seeking and securing a level playing field for U.S. companies in China and in the global economy.

NEMA Scope and Objectives

NEMA represents nearly 350 electrical equipment and medical imaging manufacturers that make safe, reliable, and efficient products and systems. Our combined industries account for 360,000 American jobs in more than 7,000 facilities covering every state. Our industry produces \$106 billion shipments of electrical equipment and medical imaging technologies per year with \$36 billion exports.

Representing our Member companies, NEMA believes in global free enterprise based on a solid legal infrastructure with due process to define and protect property rights as well as ensure adherence to trade agreements. NEMA strives to eliminate barriers to international trade such as tariffs, quotas, and technical regulations that unfairly limit market access.

NEMA companies have remained competitive in the open global economy of the 21st century by investing in extensive international supply chains. Companies have reengineered processes to manufacture and assemble products in various international locations based on comparative advantages. In many cases, international operations are used to supply component assemblies to support domestic manufacturing facilities. Wider market access has fostered innovation, productivity, and growth opportunities for manufacturers able to service a larger, more diverse customer base and tap the highest quality inputs. These developments have benefitted consumers in the United States and around the world.

Such benefits of openness to international trade are diminished to the extent that trading partners violate internationally agreed trade rules and norms. Consequently sovereign countries may on occasion take actions to restrict access to their market in order to defend their markets from unfair practices. Such restrictions should minimize collateral damage and be narrowly targeted and time-limited. If disputes among trading partners cannot be settled through government-to-government negotiations, a preferred resolution method relies on internationally agreed dispute settlement mechanisms, such as the World Trade Organization.

We recognize and respect that the tariff proposals at issue in this matter are intended to incentivize changes to specific acts, policies and practices in China and are not on their face designed or intended to provide remedies for pricing of Chinese competitors or other complaints. However, some of our Member

companies support placing tariffs on specific Chinese-made products – included on the product list at issue in this docket – in order to correct for market effects of earlier trade initiatives, including the July 6 and August 23 tariffs on Chinese-made parts and components as well as U.S. tariffs on steel and aluminum imports.

The Tariff Proposals

Put simply, all NEMA Member companies are operating in the global economy and thus engaged with Chinese counterparts as competitors, but many Member companies are also engaged with Chinese entities as commercial and supply chain partners developed over the last few decades.

- Manufacturer: Some of our Member companies manufacture finished products or parts in their own factories in China, in addition to selling them in China and other international markets, import them into the U.S. either for sale in the U.S. or incorporation in their own U.S.-based production.
- Contract Manufacturer: Some of our Member companies contract with companies in China to manufacture finished products to U.S. specifications and import them for sale in the U.S. under U.S. brands.
- Supplier: Many Member companies import inputs and components from China into the U.S. to support their U.S. manufacturing locations producing items that are not targeted for tariffs. Some of these components are not available from any other source country. There are alternative country sources for others, but making adjustments to complex industrial supply chains is a lengthy and costly process.

Of the approximately 6,000 Harmonized System entries included in July 17 proposal, at least 70 items fall directly within or adjacent to the NEMA product scope, including inputs and components as described in general above. The list appended here includes both types of entries, but is not exhaustive.

In total, the 2017 value of Chinese shipments of the listed items was approximately \$21.7 billion or more than one-tenth of the entire \$200 billion in imports targeted by the proposals at issue here¹. Writ large, if 10 or 25 percent tariffs were to be implemented as proposed, they would represent an additional tax increase on U.S. electroindustry companies and their industrial, commercial and residential customers of approximately \$2.2 – 5.4 billion. These tariffs would be in addition to the \$2 billion in U.S. tariffs implemented on Chinese-made products imported under approximately 100 8-digit Harmonized System codes on July 6 as well as \$500 million in tariffs begun on 31 Harmonized System codes on August 23.

The disadvantageous effects of the tariffs would take several forms:

¹ With additional input from our companies, the appended product list has expanded and the associated import value total has increased from \$18 billion since August 21, when NEMA testified at the public hearing in this proceeding.

- First, by placing a 10 or 25 percent tax on their supply chains, either on a finished good or on one or more inputs or components. Companies that import more than one targeted product could see their manufacturing costs increased significantly by the tariffs, with secondary effects on investment spending and employment decisions.
- Second, by placing U.S. manufacturing operations that source inputs and components from China at a cost disadvantage relative to offshore, (including Chinese) manufacturing operations whose inputs are not subject to 10 or 25 percent tariffs.
- Third, additional proposed tariffs on imports from China increase the tax burden on those U.S. manufacturing operations that are already facing 25 percent tariffs on imported steel inputs, 10 percent tariffs on aluminum items, and 25 percent tariffs on many items from China covered on the first two target lists (implemented July 6 and August 23, respectively).
- Finally, we are mindful and wary that imposition of further tariffs could invite further retaliatory actions by China and create greater turmoil, increase imports of finished goods or materials not impacted by the tariffs, and fuel uncertainty that threatens to materially disadvantage our Member companies in the Chinese and global markets. China has threatened to place tariffs of 5, 10, 20 or 25 percent on approximately \$60 billion in U.S. shipments, of which approximately \$3.3 billion are within NEMA scope.

In summary, imposition of additional tariffs on many of the listed products would make the U.S. a less attractive location for electroindustry manufacturing, an outcome that runs counter to the President's stated intent.

To review: The 25 percent tariffs implemented on July 6 and August 23 are materially injuring the global competitiveness of many of our Member companies and their U.S. manufacturing operations, with implications for their employees and communities. Of the \$50 billion in products targeted in the first two "tranches" of tariffs, approximately \$10 billion are within or adjacent to NEMA scope.

The additional tariffs at issue will not only impact electroindustry manufacturers' supply chains, but also may be passed on to their customers' supply chains and the broader U.S. industrial and infrastructure base. Many of the targeted products help support capabilities and operations of many other manufacturing sectors and the built infrastructure, including electrical grids, hospitals, schools and commercial / industrial, governmental and residential buildings. While in some cases China is not the only or top source of imports for specific targeted items, in some cases they are both. In cases where the market environment does not permit passage of some or any of the tariff cost from the NEMA Manufacturer through to their customer, our Members must "eat" the import tax.

Collectively, under the tariffs on Chinese goods already in place under Section 301, \$2.5 billion must be earmarked by U.S. electroindustry companies to pay tariffs and be diverted away from other activities, including hiring and training new workers, conducting research and development activities, or finding new markets. In order to lower or avoid this tariff burden in the future, companies must undertake long and costly processes to find and qualify new suppliers. The only constants for U.S. manufacturers are

increasing material input costs, international competition, and the uncertainty arising from U.S. and other governments' trade actions. Specifically, China has implemented or proposed its own tariffs of as much as 25 percent on many NEMA Member exports, effectively precluding our companies' participation in a challenging but growing market.

Should the Administration decide, despite the concerns outlined above, to proceed with the application of tariffs on additional products in this matter, NEMA recommends any tariffs be applied for as short a time period as possible, as a precursor to a negotiated outcome that addresses the Chinese practices outlined in the Section 301 report.

NEMA also urges the Administration to narrow the scope of the proposed tariff list so it does not disproportionate harm to NEMA Members' U.S. production, including through the exclusion from the tariff list of inputs for which non-Chinese substitutes are not readily available (or able to meet U.S. manufacturer or Federal standards); inputs that come from wholly-owned U.S. facilities within China (since those reflect regular commercial decisions rather than China's efforts to force technology transfer and the impact would be to disproportionately hurt U.S. rather than Chinese businesses); and inputs from China that have a high percentage of U.S.-made content.

As an example of the first case, several NEMA Member companies that manufacture and assemble – in the U.S. – insulators for high-voltage electric power lines rely exclusively on suppliers in China of very specific components classified under HS 8546.10.0000, 8546.20.0000, and 8546.90.0000 as well as metal parts imported under 7325.99.1000 and 7326.90.8688. Domestic manufacturing jobs in the high-voltage insulator industry are being called into question by these tariffs and U.S. electric utilities face a constrained market for these as well as other vital components of their systems.

The situation is similar for certain NEMA Member manufacturers of industrial automation products and systems that rely on Ethernet switches classified in HS 8517.62.0050 that are custom-designed to meet precise performance standards and specifications.

In each example, transitioning to alternative suppliers outside of China would be very challenging, costly and time consuming (12-24 months) and require U.S. companies to divert additional resources away from activities that support U.S. jobs. In some cases, manufacturers who import electronic component parts for assembly into U.S. manufactured goods are now considering shifting assembly to other countries not impacted by tariffs, ultimately at the expense of current U.S. jobs. Transitions are even more challenging in the current supply-constrained market environment for components. Moreover, as electrical products get more efficient and "smarter", the demand for electronic components continues to rise. Tariffs will put U.S. manufacturers at a disadvantage versus foreign competitors and could have secondary effects on U.S. businesses seeking to upgrade their systems.

We continue to consult with our Members about the impact the third round of tariff proposals could have on U.S.-based manufacturing of other products, including industrial and utility controls and lighting fixtures.

In addition, inasmuch as NEMA Members export roughly one-third of their U.S. production, we reiterate that it is only fair that duty drawback be available to exporters for any Section 301 tariffs, including those at issue in this proceeding, so the tariffs do not undermine U.S. products' competitiveness in global markets and do harm to the U.S. manufacturing base and employment.

Conclusion

In conclusion, although NEMA supports the aims of the Administration to influence China to change its acts, policies and practices on intellectual property, as a broad industry association NEMA does not support the proposals by USTR to place even more new taxes on our Member companies, especially in cases of components or parts used in the domestic manufacturing of final products.

As discussed above, the imprecision of broad-based tariffs would be accompanied by collateral damage up and down our Member companies' global supply chains, including small and medium sized businesses. If tariffs are perceived by the Administration to be a necessary tool in bringing about changes to support U.S. companies trying to do business in China, we would hope the use of tariffs would be much narrower than proposed and very short-lived. Specifically, if the tariffs are intended to bring China to negotiations, when can industry expect those negotiations to begin in earnest? We urge the talks resumed in August 23 in Washington, DC, to ramp up quickly and chart a path to success.

Should the Administration decide to proceed with the application of tariffs on additional products, NEMA recommends any tariffs be applied for as short a time period as possible, as a precursor to a negotiated outcome that addresses China's practices outlined in the Section 301 report.

We look forward to further dialogue with USTR and other members of the Section 301 Committee on these proposals and urge the Administration to consider and pursue alternative measures to bring about discussions that lead to real change in Beijing's strategic and entrenched industrial policies.

END NARRATIVE

PRODUCT LIST BEGINS ON NEXT PAGE

Illustrative List of Targeted Products of Interest to NEMA Members

HS Code	Product Description
3926.90.45	Gaskets, washers and other seals, of plastics
4016.93.50	Gaskets, washers and other seals, of noncellular vulcanized rubber other than hard rubber, not for use in automotive goods in C87.
7325.99.10	Cast iron (o/than nonmalleable cast iron), articles nesoi
7325.99.50	Steel, cast articles nesoi
7326.90.86	Iron or steel, articles, nesoi
7616.99.51	Aluminum, articles, nesoi
8482.10.10	Ball bearings with integral shafts
8483.10.50	Transmission shafts and cranks other than camshafts and crankshafts
8483.40.50	Fixed, multiple and variable ratio speed changers, not imported for use with machines for making cellulosic pulp, paper or paperboard
8483.40.70	Speed changers other than fixed, multiple and variable ratio speed changers
8501.40.20	AC motors nesoi, single-phase, exceeding 37.5 W but not exceeding 74.6 W
8501.40.40	AC motors, nesoi, single-phase, exceeding 74.6 W but not exceeding 735 W
8501.40.50	AC motors, nesoi, single-phase, exceeding 735 W but under 746 W
8501.40.60	AC motors nesoi, single-phase, of 746 W or more
8501.61.00	AC generators (alternators) of an output not exceeding 75 kVA
8504.10.00	Ballasts for discharge lamps or tubes
8504.31.20	Unrated electrical transformers other than liquid dielectric, having a power handling capacity not exceeding 1 kVA

8504.31.40	Electrical transformers other than liquid dielectric, having a power handling capacity less than 1 kVA
8504.31.60	Electrical transformers other than liquid dielectric, having a power handling capacity of 1 kVA
8504.40.60	Power supplies suitable for physical incorporation into automatic data processing machines or units thereof of heading 8471
8504.40.70	Power supplies for automatic data processing machines or units thereof of heading 8471, nesoi
8504.40.85	Static converters (for example, rectifiers) for telecommunication apparatus
8504.40.95	Static converters (for example, rectifiers), nesoi
8504.50.40	Other inductors for power supplies for ADP machines and units of heading 8471 or for telecommunication apparatus
8504.50.80	Other inductors, nesoi
8505.11.00	Permanent magnets and articles intended to become permanent magnets after magnetization, of metal
8505.19.20	Composite goods containing flexible permanent magnets, other than of metal
8505.19.30	Permanent magnets and articles intended to become permanent magnets after magnetization, other than of metal, nesoi
8506.10.00	Manganese dioxide primary cells and primary batteries
8506.30.10	Mercuric oxide primary cells and primary batteries having an external volume not exceeding 300 cubic cm
8506.30.50	Mercuric oxide primary cells and primary batteries having an external volume exceeding 300 cubic cm
8506.80.00	Primary cells and primary batteries, nesoi
8507.20.80	Lead-acid storage batteries other than of a kind used for starting piston engines or as the primary source of power for electric vehicles

8507.40.80	Nickel-iron storage batteries, other than of a kind used as the primary source of power for electric vehicles
8507.50.00	Nickel-metal hydride batteries
8513.90.20	Parts of flashlights
8513.90.40	Parts of portable electric lamps designed to function by their own source of energy, other than flashlights
8517.62.00	Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing appa.
8531.10.00	Electric burglar or fire alarms and similar apparatus
8531.20.00	Indicator panels incorporating liquid crystal devices (LCD's) or light emitting diodes (LED's)
8531.90.15	Printed circuit assemblies of the panels of subheading 8531.20
8531.90.30	Printed circuit assemblies of electric sound or visual signaling apparatus, nesoi
8531.90.75	Parts of the panels of subheading 8531.20, other than printed circuit assemblies
8531.90.90	Parts of electric sound or visual signaling apparatus, nesoi
8533.39.00	Electrical wirewound variable resistors, including rheostats and potentiometers, for a power handling capacity exceeding 20 W
8534.00.00	Printed circuits, without elements (other than connecting elements) fitted thereon
8535.40.00	Lightning arrestors, voltage limiters and surge suppressors, for a voltage exceeding 1,000 V
8536.61.00	Lampholders for a voltage not exceeding 1,000 V
8536.69.80	Plugs and sockets for making connections to or in electrical circuits, for a voltage not exceeding 1,000 V, nesoi
8537.10.91	Other boards, panels, consoles, desks, cabinets, etc., equipped with apparatus for electric control, for a voltage not exceeding 1,000, nesoi

8538.90.10	Printed circuit assemblies of an article of heading 8537 for one of the articles described in additional U.S. note 12 to chapter 85
8538.90.30	Printed circuit assemblies, suitable for use solely or principally with the apparatus of heading 8535, 8536 or 8537, nesoi
8539.10.00	Sealed beam lamp units
8539.21.20	Tungsten halogen electrical filament lamps, designed for a voltage not exceeding 100 V
8539.21.40	Tungsten halogen electrical filament lamps, designed for a voltage exceeding 100 V
8539.31.00	Fluorescent, hot cathode discharge lamps, other than ultraviolet lamps
8539.32.00	Mercury or sodium vapor discharge lamps or metal halide discharge lamps (other than ultraviolet lamps)
8539.39.90	Other electrical discharge lamps, other than fluorescent (hot cathode), mercury or sodium vapor, metal halide or ultraviolet lamps
8539.49.00	Ultraviolet or infrared lamps
8543.70.71	Electric luminescent lamps
8543.90.88	Parts (other than printed circuit assemblies) of electrical machines and apparatus, having individual functions, nesoi
8544.20.00	Insulated (including enameled or anodized) coaxial cable and other coaxial conductors
8544.42.90	Insulated electric conductors nesoi, for a voltage not exceeding 1,000 V, fitted with connectors, nesoi.
8545.11.00	Carbon electrodes of a kind used for furnaces
8545.19.20	Carbon electrodes of a kind used for electrolytic purposes
8545.19.40	Carbon electrodes of a kind used for electrical purposes, other than those used

	for furnaces or for electrolytic purposes
8545.20.00	Carbon brushes of a kind used for electrical purposes
8545.90.20	Arc light carbons of a kind used for electrical purposes
8545.90.40	Lamp carbons, battery carbons and articles of graphite or other carbon nesoi, of a kind used for electrical purposes
8546.10.00	Electrical insulators of glass
8546.20.00	Electrical insulators of ceramics
8546.90.00	Electrical insulators of any material, other than glass or ceramics
8547.10.80	Insulating fittings for electrical machines, appliances or equipment, of ceramics nesoi
8547.20.00	Insulating fittings for electrical machines, appliances or equipment, of plastics
8547.90.00	Electrical conduit tubing and joints therefor, of base metal lined with insulating material; insulating fittings for electrical goods nesoi
8548.90.01	Electrical parts of machinery or apparatus not specified or included elsewhere in chapter 85
9405.40.40	Electric lamps and lighting fixtures nesoi, of brass
9405.40.60	Electric lamps and lighting fixtures nesoi, of base metal (o/than brass).
9405.40.84	Electric lamps and lighting fixtures nesoi, not of base metal
9405.91.10	Parts of lamps, lighting fittings, illuminated signs & the like, globes and shades, of lead crystal glass
9405.91.30	Parts of lamps, lighting fittings, illuminated signs & the like, globes and shades, of glass (o/than lead crystal)
9405.91.40	Parts of lamps, lighting fittings, illuminated signs & the like, chimneys, of glass
9405.91.60	Parts of lamps, lighting fixtures, illuminated signs & the like, of glass nesoi

9405.92.00	Parts of lamps, lighting fixtures, illuminated signs & the like, of plastics
9405.99.20	Parts of lamps, lighting fixtures, illuminated signs & the like, of brass
9405.99.40	Parts of lamps, lighting fixtures, illuminated signs & the like, not of glass, plastics or brass