



National Electrical Manufacturers Association

KEVIN J. COSGRIFF

President and Chief Executive Officer

July 23, 2018

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

Re: 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 USTR-2018-0018

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 June 20, 2018, solicitation 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 planned testimony during the July 24 public hearing in this proceeding.

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 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**

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. Placing a 25 percent tariff on over 25 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 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 would hope the use of tariffs would 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?

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. 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.

Consultations with NEMA Member companies and product groups on USTR actions and proposed action in this case have uncovered and recalled additional concerns and allegations of unfair competition from Chinese entities in the U.S. market. We recognize and respect that the tariff proposals at issue in this matter are designed 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 tariffs on Chinese-made parts and components as well as 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 284 Harmonized System entries included in USTR June 15 proposal, at least 31 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 \$2 billion or one-eighth of the entire \$16 billion in imports targeted by the proposals at issue here. Writ large, if the 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 \$500 million. These tariffs would be in addition to the \$2 billion in U.S. tariffs implemented on approximately 100 types of Chinese-made products and inputs on July 6.

The disadvantageous effects of the tariffs would take several forms:

- First, by placing a 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 from China at a cost disadvantage relative to offshore, (including Chinese) manufacturing operations whose inputs are not subject to 25 percent tariffs.
- Third, 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 and 10 percent tariffs on aluminum items.
- Finally, we are mindful and wary that imposition of 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.

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 no one wants.

The tariffs 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 the electrical grid and hospitals. While in some cases China is not the only or top source of imports for specific targeted items, in some cases they are both.

Should the Administration decide, despite the concerns outlined above, to proceed with the application of tariffs 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 do 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 wireless lighting controls in the U.S. rely exclusively on suppliers of very specific electronic components classified under HS 8536.50.70 that are only available from suppliers in China and that are included in the proposed target list. These specific components are small and inexpensive, but they are not widely available commodities that are easily replaced. They are necessary to meet high quality standards and achieve customer satisfaction.

The situation is very similar for certain NEMA Member manufacturers of industrial automation products that rely on specific electronic integrated circuits and parts thereof (HS 8541, 8542, 8543) that are "designed-in" (and in some cases custom designed) to meet high performance standards and achieve differentiation in the competitive marketplace.

In both examples, 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 resources away from activities that support U.S. jobs. Transitions are even more challenging in the current supply-constrained market environment for electronic components.

We continue to consult with our Members about the impact these tariff proposals could have on U.S.-based manufacturing of other products, including electric motors and generators and electricity meters.

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 new taxes on our Member companies.

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?

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
3911.90.90	Polysulfides, polysulfones & other products specified in note 3 to chapter 39, nesoi
3917.40.00	Fittings of plastics, for plastic tubes, pipes and hoses, nesoi
7614.10.10	Aluminum, stranded wire, cables & the like w/steel core, not electrically insulated, not fitted with fittings & not made up into articles
7614.90.20	Aluminum, elect. conductors of stranded wire, cables & the like (o/than w/steel core), n/elect. insulated, n/fitted w/fittings or articles
8501.10.20	Electric motors of an output of under 18.65 W, synchronous, valued not over \$4 each
8501.10.60	Electric motors of an output of 18.65 W or more but not exceeding 37.5 W
8501.20.40	Universal AC/DC motors of an output exceeding 74.6 W but not exceeding 735 W
8501.31.40	DC motors, nesoi, of an output exceeding 74.6 W but not exceeding 735 W
8501.31.80	DC generators of an output not exceeding 750 W
8501.32.20	DC motors nesoi, of an output exceeding 750 W but not exceeding 14.92 kW
8501.32.60	DC generators of an output exceeding 750 W but not exceeding 75 kW
8501.33.20	DC motors nesoi, of an output exceeding 75 kW but under 149.2 kW
8501.33.30	DC motors, nesoi, 149.2 kW or more but not exceeding 150 kW
8501.52.40	AC motors nesoi, multi-phase, of an output exceeding 750 W but not exceeding 14.92 kW
8501.53.60	AC motors, nesoi, multi-phase, 149.2 kW or more but not exceeding 150 kW
8503.00.95	Other parts, nesoi, suitable for use solely or principally with the machines in heading 8501 or 8502
8536.30.80	Electrical apparatus for protecting electrical circuits, for a voltage not exceeding 1,000 V, nesoi

8536.50.70	Certain specified electronic and electromechanical snap-action switches, for a voltage not exceeding 1,000 V
8537.10.30	Electric control panels, for a voltage not exceeding 1,000, assembled with outer housing or supports, for goods of 8421, 8422, 8450 or 8516
8541.10.00	Diodes, other than photosensitive or light-emitting diodes
8541.40.60	Diodes for semiconductor devices, other than light-emitting diodes, nesoi
8542.31.00	Electronic integrated circuits: processors and controllers
8542.32.00	Electronic integrated circuits: memories
8542.33.00	Electronic integrated circuits: amplifiers
8542.39.00	Electronic integrated circuits: other
8543.70.45	Other electric synchros and transducers; defrosters and demisters with electric resistors for aircraft
8543.70.99	Other machinery in this subheading
8544.49.10	Insulated electric conductors of a kind used for telecommunications, for a voltage not exceeding 80 V, not fitted with connectors
8544.49.20	Insulated electric conductors nesoi, for a voltage not exceeding 80 V, not fitted with connectors
8544.60.60	Insulated electric conductors nesoi, not of copper, for a voltage exceeding 1,000 V, not fitted with connectors
9028.30.00	Electricity supply or production meters, including calibrating meters thereof