

September 20, 2019

**VIA REGULATIONS.GOV****PUBLIC DOCUMENT**

The Honorable Robert E. Lighthizer  
United States Trade Representative  
Office of the U.S. Trade Representative  
600 17th Street, N.W.  
Washington, D.C. 20508

Re: **Request for Comments 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-2019-0015**

**The Proposed Increase In the Rate Of Additional Duties From 25 Percent to 30 Percent**

Dear Ambassador Lighthizer:

The Electronic Transactions Association (“**ETA**”) respectfully submits these comments in the above-referenced matter.<sup>1</sup> We appreciate the tremendous amount of time and energy that the interagency Section 301 Committee (“**Committee**”) has devoted to the China Section 301 investigation. We know that you have worked diligently in the negotiations China, including in March, April, May, and July 2019, and we understand the perception that rather than addressing the underlying problems raised by the United States that, instead, China has increased tariffs and adopted or threatened additional retaliation to further protect the unreasonable acts, policies, and practices identified in the investigation.

### **Who We Are**

The ETA is the global trade association of the payments technology industry. ETA represents over 500 companies involved in electronic transactions processing products and services. ETA’s membership spans the breadth of the payments industry to include independent sales organizations (“**ISOs**”), payments networks, financial institutions, transaction processors, mobile payments products and services, payments technologies, and software providers (“**ISV**”) and hardware suppliers.

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<sup>1</sup> See 84 Fed. Reg. 46212 (September 3, 2019).

## Prior Committee Appearances

The ETA appeared before the Committee on May 16, 2018, to oppose the inclusion of one specific HTS item—8470.50.00, cash registers and point-of-sale terminals—on List 1.<sup>2</sup> The ETA appeared again before the Committee on August 9, 2018, to oppose the inclusion of 12 specific items on List 3.<sup>3</sup> Those items fall, basically, into two categories.

- The first are items like HTSUS 8471.90.00 (Magnetic or optical readers, nesoi; machines for transcribing data on data media in coded form and machines for processing such data, nesoi) and HTSUS 8517.62.00 (Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing appa [sic])<sup>4</sup> (collectively, “**POS Products**”). POS Products are standalone products used in the payments industry to facilitate or execute a transaction.
- The second are items like HTSUS 8442.50.10 (Printing plates); HTSUS 8471.60.90 (Other input or output units of digital ADP machines, nesoi, not entered with the rest of a system); HTSUS 8473.29.00 (Parts and accessories of machines of headings 8470, nesoi); HTSUS 8473.30.11 (Printed circuit assemblies, not incorporating a cathode ray tube, of the machines of 8471); HTSUS 8473.30.51 (Parts and accessories of the ADP machines of heading 8471, not incorporating a CRT, nesoi); HTSUS 8504.40.95 Static converters (for example, rectifiers), nesoi; HTSUS 8531.20.00 (Indicator panels incorporating liquid crystal devices (LCD’s) or light emitting diodes (LED’s)); HTSUS 8544.42.10 (Insulated electric conductors nesoi, for a voltage not exceeding 1,000 V, fitted with modular telephone connectors); HTSUS 8544.42.20 (Insulated electric conductors nesoi, used for telecommunications, for a voltage not exceeding 1,000 V, fitted with connectors); and, HTSUS 8544.42.90 (Insulated electric connectors nesoi, for a voltage not exceeding 1,000 V, fitted with connectors, nesoi) (collectively, “**Parts**”). Parts are accessories or replacement items that are essential components to the effective functioning of POS Products. Parts may also be used to upgrade security protocols without the need to replace the entire device.

## Our Position

ETA opposes increasing the rate of additional duties from 25 percent to 30 percent, as proposed. Pursuant to Section 307(a)(1) of the Trade Act, as U.S. Trade Representative, you may modify a Section 301 action if the burden or restriction on United States commerce associated with the acts, policies, and practices at issue has increased. 19 U.S.C. § 2417(a)(1)(B). Here, while ETA understands that China has taken retaliatory steps to address the additional tariffs already imposed by the United States, ETA does not believe that further increasing the additional tariffs from 25 percent to 30 percent would be practicable or effective to obtain the elimination of China’s acts, policies, and practices. Rather ETA is concerned that such action

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<sup>2</sup> See 83 Fed. Reg. 28710 (June 20, 2018) (exempting point-of-sale terminals (“POS Terminals”) from additional duties). Unfortunately, POS Terminals were included in the most recent action, *i.e.*, List 4A (which became effective September 1, 2019). See 84 Fed. Reg. 43304 (August 20, 2019). Such products are now subject to additional duties at a 15 percent *ad valorem* rate. 84 Fed. Reg. 45821 (August 30, 2019). ETA strongly opposes the inclusion of POS Terminals on List 4A, items which were specifically exempted from List 1. ETA urges the release of procedures for an exclusion process without delay in order to address the additional duties for POS Terminals.

<sup>3</sup> See 84 Fed. Reg. 29576 (June 24, 2019). The twelve items were all included on the final List 3 and are now subject to additional tariffs of 25 percent.

<sup>4</sup> This is a broad HTS heading which includes cameras used in other electronic devices, such as video conference systems or Bluetooth wireless earphones.

during the course of ongoing negotiations may trigger increased retaliation, which would serve to only broaden the existing gap between the parties and make any negotiated settlement that much harder to achieve.

In particular, the ETA believes that increasing the rate of additional duties on POS Products or Parts (collectively, “**the Devices**”), *i.e.*, those products that affect the payments technology industry, would cause disproportionate economic harm to U.S. interests, including small- or medium-sized businesses and consumers.<sup>5</sup> The Devices are critically important to the U.S. economy. ETA members power the U.S. economy by providing secure and reliable payments technology. Last year ETA members processed nearly seven trillion dollars in electronic payments on behalf of our merchant customers in North America. More than 70 percent of the U.S. GDP is retail spending in the United States. And more than 70 percent of retail spending is done by consumers via electronic payments. The Devices enable U.S. consumers to purchase products securely and cost-effectively. In turn, this helps to drive the U.S. economy. The proposed tariffs will dramatically increase the price of POS Products and Parts in the United States. This impacts their availability which, in turn, negatively impacts U.S. consumers and makes it harder for small businesses to succeed. Amidst concerns of a recession, the ETA urges strongly against actions that would negatively impact efforts to safeguard consumer confidence and retail spending.

Please do not hesitate to contact me should you have any questions or requests for clarification.

Respectfully submitted,



Scott Talbott  
Senior Vice President of Government Affairs  
Electronic Transactions Association

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<sup>5</sup> In addition, the proposed increase will have no impact in effecting a change in China’s discriminatory policies. Many of our members that manufacture in China report that their products are manufactured primarily using a mixture of U.S. as well as European intellectual property. Regarding POS Products, as other markets are increasing their demand for these products, in particular those in Asia, Chinese manufacturers are increasingly able to transfer sales to non-U.S. markets with little or no effort. Regarding Parts, payments technology manufacturing is a small industry leveraging the consumer electronics massive supply chain and, unlike the massive consumer electronic supply chain, the payments technology supply chain has little leverage with Chinese contract manufacturers. Accordingly, the proposed increase on the Devices would have no impact on encouraging Chinese manufacturers to urge a change in China’s policies.