ELECTRONIC TRANSACTIONS ASSOCIATION

1620 L Street NW, Suite 1020
Washington, DC 20036

202.828.2635
electran.org

June 17, 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-2019-0004

HTSUS Nos. 8470.50.00 and 8517.62.00.90
Written Comments of the Electronic Transactions Association

Dear Ambassador Lighthizer:

The Electronic Transactions Association ("**ETA**" or "**the Company**") respectfully submits these written comments in the above-referenced matter. These comments are submitted in response to the notice published in the *Federal Register* on May 17, 2019,[1] which requires that these comments be submitted no later than June 17, 2019. Accordingly, these comments are timely.

A. 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, payments networks, financial institutions, transaction processors, mobile payments products and services, payments technologies, software providers and hardware suppliers.

Last year our members processed nearly seven trillion dollars in electronic payments. That figure applies to payments processed ***in North America alone***. As more than 70 percent of U.S. gross domestic product is retail spending, and the vast majority of that is via electronic payments, our members play a significant role in the continued success of the U.S. economy.

---

[1] *Notice of 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*, 84 Fed. Reg. 22564 (May 17, 2019) ("**List 4**").

B. Our Position

This is the third time that the ETA is submitting written comments to the interagency Section 301 committee ("**Committee**").[2] We did so first in response to proposed tariffs on List 1.[3] The second was in response to proposed tariffs on List 3.[4] Despite List 4 covering all remaining Chinese imports, we are limiting these comments to only two discrete tariff subheadings, namely:[5]

- **HTSUS 8470.50.00** (cash registers and point-of-sale terminals); and,
- **HTSUS 8517.62.00.90** (machines for the reception, conversion and transmission or regeneration of voice, images or other data, nesoi).

Our arguments regarding these two tariff subheadings are not new to the Committee.

- On May 16, 2018, we argued against the inclusion on List 1 of HTSUS 8470.50.00.[6]
- On August 21, 2018, we argued against the inclusion on List 3 of HTSUS 8517.62.00.[7]
- Both of these subheadings cover products used to facilitate or execute a transaction, referenced here as point-of-service products or "**POS Products**." ETA's prior detailed, written comments regarding the HTSUS subheadings are attached hereto and incorporated by reference into these written comments as **Exhibits 1 and 2**, respectively.[8] ETA will appear before the Committee to

[2] ETA did not appear or submit written comments regarding List 2, *i.e.*, *Notice of Action and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301: China's Act, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 83 Fed. Reg. 28710 (June 20, 2018) ("**List 2**").

[3] *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*, 83 Fed. Reg. 14906 (Apr. 6, 2018) ("**List 1**").

[4] *Notice of 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*, 83 Fed. Reg. 33608 (July 17, 2018) ("**List 3**").

[5] While not on proposed List 4, ETA remains particularly concerned about additional duties on 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) pursuant to List 3. ETA members will submit exclusion requests concerning this HTSUS subheading, and the ETA strongly urges that the Committee expedite its review of them. *See* Requests for Emergency Clearance of a Collection of Information by the Office of Management and for Comments, 84 Fed. Reg. 23145, 23146 (May 21, 2019) ("USTR anticipates that the window for submitting exclusion requests will open on or around June 30, 2019" and including copy of 301 Exclusion Request Form to be filed).

[6] *See* https://www.regulations.gov/document?D=USTR-2018-0005-3075 at 298-304.

[7] *See* https://www.regulations.gov/document?D=USTR-2018-0026-6100 at 193-199.

[8] *See* List 1 Written Comments of the Electronic Transactions Association filed pursuant to Regulations.Gov Docket No. USTR-2018-0005 (May 9, 2018) at https://www.regulations.gov/document?D=USTR-2018-0005-1836 and List 3 Written Comments of the Electronic Transactions Association filed pursuant to Regulations.Gov Docket No. USTR-2018-0026 (September 4, 2018) at https://www.regulations.gov/document?D=USTR-2018-0026-3817.

ELECTRONIC TRANSACTIONS ASSOCIATION
1620 L Street NW, Suite 1020
Washington, DC 20036
202.828.2635
electran.org

testify on June 19, 2019, against their inclusion on List 4.

The POS Products on proposed List 4 are the ***same items*** for which we appeared and testified in the past and submitted written comments for your consideration. Both times the Committee ***agreed*** that an exemption from any additional tariffs was justified. The POS Products were ***removed*** when Lists 1 and 3 were finalized, and they are not currently subject to an additional 25 percent tariff. The reasons for exempting POS Products from additional tariffs have not changed – keeping them on List 4 has no impact on China but has a huge negative impact on U.S. businesses and consumers.[9]

C. Discussion

Rather than repeat the detailed arguments contained in our prior written comments (which are attached and incorporated herein), we highlight the following key points for your consideration:

1. Keeping POS Products on List 4 Has No Impact on China

There is very little risk posed to China of including POS Products on List 4. Chinese manufacturers are already shifting their POS Product sales to non-U.S. markets. Any further U.S. downturn in sales will be readily absorbed elsewhere, in particular in Asia and likely with lower costs and higher profit margins given shorter shipping distances. So there is very little risk posed to Chinese contract manufacturers of including POS Products on List 4. Doing so would certainly ***not*** result in increased bargaining leverage that would somehow encourage them to lobby the Chinese government to change its policies. To put the impact of the proposed additional tariffs into context, ***the overall import value of POS Products account for less than 2 percent of the proposed $300 billion of additional tariffs, i.e., they are de minimis***.[10] And vis-à-vis List 3, including HTSUS 8517.62.00.90 on List 4 exerts no real additional pressure on China and runs counter to a specific, intended effort by the Committee to exempt these duties from additional tariffs.[11] But while their import values are trivial to the total Section 301 proceeding and will have no impact in effecting a change in the discriminatory policies identified in USTR's Section 301 Findings, they are extremely important to

[9] *See* List 4 at 22565 (Section D - Request for Public Comments) ("In commenting on the inclusion or removal of particular tariff subheadings [on the list of products subject to the proposed additional duties], USTR requests that commenters address specifically whether imposing increased duties on a particular product would be practicable or effective to obtain the elimination of China's acts, policies, and practices, and whether maintaining or imposing additional duties on a particular product would cause disproportionate economic harm to U.S. interests, including small- or medium-size businesses and consumers."); *see also*, Findings of the Investigation Into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation Under Section 301 of the Trade Act of 1974 published by the Office of the United States Trade Representative dated March 22, 2018 (the "**USTR's Section 301 Findings**") (detailing the acts, policies, and practices of China related to technology transfer, intellectual property and innovation that the Section 301 action is attempting to curb or eliminate).

[10] CY 2018 imports by value from China total $4,969,796,924 ($249,335,936 and $4,720,460,988 for HTSUS 8470.50.00 and 8517.62.00.90, respectively). Imports by value from China account for 1.66% of the proposed $300 billion.

[11] List 3 applies to HTSUS 8517.60.00, which is a broad HTS heading which includes cameras used in other electronic devices, such as video conference systems or Bluetooth wireless earphones, ***except for*** 8517.62.0090 – OTHER (with switching and routing apparatus, and modems of a kind used with data processing machines of heading 8471 being subject to additional duties and other products ***not*** being subject to additional duties).

ELECTRONIC TRANSACTIONS ASSOCIATION
1620 L Street NW, Suite 1020
Washington, DC 20036
202.828.2635
electran.org

retailers, the modern payment ecosystem, and the U.S. economy.

2. Keeping POS Products on List 4 Will Have A Disproportionately Huge Negative Impact on Retailers, the Modern Payment EcoSystem, and the U.S. Economy

Additional tariffs on POS Products risk a security gap among smaller retailers. It would delay their shift to EMV technology[12] and other upgraded security protocols. EMV requires a chip. Most large retailers have upgraded and are now using EMV and other advanced security protections. But the process continues for many small and medium-sized businesses. Take gas stations, for example. The have until October 1, 2020, to install upgraded technology payment terminals. Now is precisely the time gas stations – and other smaller merchants – can most ill-afford to have additional tariffs on POS products at ***any*** level, let alone at 25 percent.

3. This Committee Agreed to Exempt POS Products from Additional Tariffs

- ***This Committee*** agreed that exemptions were warranted. And it did so on two separate occasions. The Committee listened carefully to the testimony, evaluated the detailed submissions, and promptly removed POS Products from additional tariffs. It was the correct decision at that time, and we urge you to do so again now.

- We should be able to end these written comments here. But an additional reason since we presented our List 1 and 3 arguments for exempting POS Products warrants consideration – additional tariffs on POS Products pose a threat to national security.

[12] EMV® is a global standard for credit and debit payment cards based on chip card technology and refers to the card schemes Europay, Mastercard, and Visa, which are the original card schemes that developed it.

ELECTRONIC TRANSACTIONS ASSOCIATION
1620 L Street NW, Suite 1020
Washington, DC 20036
202.828.2635
electran.org

4. Additional Tariffs Pose a Threat to National Security

On May 15, 2019, the President issued an Executive Order[13] seeking to secure our information and communications technology and services supply chain (the "**Order**"). The Order cautions that U.S. reliance on certain technology developed by "foreign adversaries" helps those bad actors to exploit vulnerabilities in such technology, thereby constituting "an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States."[14] The U.S. Department of Commerce has until October to produce rules that identify "particular countries or persons" as "foreign adversaries." POS Product hardware contract manufactured in China for U.S. companies uses ***U.S. software***. Additional tariffs will make such products more expensive and less competitive. It is expected that Chinese manufacturers will be subsidized in the event of additional tariffs, and they install ***Chinese software*** on POS Products used in the United States. Besides harming U.S. businesses, if China is determined to be a "foreign adversary," additional tariffs pose a threat to national security.

5. ETA Supports the Administration's Goals But Respectfully Urges Removing POS Products From Any Increased Tariff

Like the administration as well as other U.S. businesses that innovate and seek to protect their intellectual property assets, ETA's members are concerned about China's growing use of trade and investment policies which place innovative companies at a competitive disadvantage. While the ETA strongly supports efforts to address discriminatory practices, we do not support the proposal to impose an additional 25 percent tariff on these two specific tariff subheadings. The increased tariffs would not be practicable or effective to curb or eliminate the acts, policies, and practices identified in USTR's Section 301 Findings. But, if implemented, this measure would negatively impact not only our members and U.S. consumers but threaten U.S. national security.

The ETA appreciates the administration's efforts to ensure that businesses are able to compete fairly and effectively on a global stage. We understand also the concerns that some of our fellow participants in the Section 301 proceedings have raised about intellectual property theft and about the ability to enter the Chinese market. Our purpose in submitting these written comments is not to, in any way, minimize the administration's efforts or the concerns expressed by others throughout this detailed process. But for the

[13] *See* Executive Order on Securing the Information and Communications Technology and Services Supply Chain dated May 15, 2019 at https://www.whitehouse.gov/presidential-actions/executive-order-securing-information-communications-technology-services-supply-chain/.

[14] *Id.* ("find[ing] that foreign adversaries are increasingly creating and exploiting vulnerabilities in information and communications technology and services, which store and communicate vast amounts of sensitive information, facilitate the digital economy, and support critical infrastructure and vital emergency services, in order to commit malicious cyber-enabled actions, including economic and industrial espionage against the United States and its people ... [and further] find[ing] that the unrestricted acquisition or use in the United States of information and communications technology or services designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries augments the ability of foreign adversaries to create and exploit vulnerabilities in information and communications technology or services, with potentially catastrophic effects, and thereby constitutes an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States.")

ELECTRONIC TRANSACTIONS ASSOCIATION
1620 L Street NW, Suite 1020
Washington, DC 20036
202.828.2635
electran.org

reasons stated herein, we respectfully request that POS Products be removed from any increase in tariffs.

D. Conclusion

ETA stands ready to work with the Committee cooperatively towards our common goal of influencing China to curb its policies. But for the reasons provided in response to List 1, for the reasons provided in response to List 3, and for additional reason provided here in response to proposed List 4, we respectfully request that these two discrete tariff subheadings be exempted again from any remedy.

Respectfully submitted,

Amy Zirkle
Interim CEO
Electronic Transactions Association

46976318

EXHIBIT 1

List 1 – ETA Written Comments

ELECTRONIC TRANSACTIONS ASSOCIATION
1620 L Street NW, Suite 1020
Washington, DC 20036
202.828.2635
electran.org

May 9, 2018

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: **Section 301 Investigation: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property and Innovation**
Docket No. USTR-2018-0005
Written Comments of the Electronic Transactions Association

Dear Ambassador Lighthizer:

The Electronic Transactions Association ("**ETA**") respectfully submits these written comments in the above-referenced matter. These comments are submitted in response to the notice published on April 6, 2018,[1] which requires that comments be submitted no later than May 11, 2018. Accordingly, these comments are timely.

A. 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.

B. Our Position

The ETA opposes the imposition of duties on HTSUS 8470.50.00 (cash registers and point-of-sale terminals, collectively "**the Devices**"). ETA's position is that imposing the proposed duties on the Devices (i) would not be practicable or effective to curb or eliminate the acts, policies, and practices of China related to technology transfer, intellectual property and innovation;[2] and (ii) would cause disproportionate economic harm to U.S. interests, including small- or medium-size businesses and consumers.

C. Discussion

[1] *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*, 83 Fed. Reg. 14906 (Apr. 6, 2018) ("**USTR's Section 301 Notice**"). On April 18, 2018, ETA submitted a timely request to appear and testify at the hearing on May 15, 2018. These comments supplement the summary of testimony submitted with the April 18 request.

[2] *See* Findings of the Investigation Into China's Acts, Policies, and Practices Related to Technology Transfere, Intellectual Property, and Innovation Under Section 301 of the Trade Act of 1974 published by the Office of the United States Trade Representative dated March 22, 2018 (the "**USTR's Section 301 Findings**").

ELECTRONIC TRANSACTIONS ASSOCIATION
1620 L Street NW, Suite 1020
Washington, DC 20036
202.828.2635
electran.org

These comments explain why the ETA opposes the imposition of an additional 25 percent tariff against cash registers and point of sale terminals.[3]

1. The ETA Supports the Administration's Goals But Respectfully Urges Removing Cash Registers and Point-of-Sale Terminals From Any Increased Tariff

Like the administration and other U.S. businesses that innovate and seek to protect their intellectual property assets, the ETA is concerned about China's growing use of trade and investment policies which place innovative U.S. companies at a competitive disadvantage. While the ETA strongly supports efforts to address such discriminatory practices, our members do not support the proposal to impose an additional 25 percent tariff on cash registers and point-of-sale terminals. If implemented, this measure would negatively impact U.S. businesses and consumers immediately yet have no discernable impact on encouraging China to change its practices. For the reasons stated herein, we respectfully request that cash registers and point-of-sale terminals be removed from any increase in tariffs.

2. Cash Registers And Point-Of-Sale Terminals Should Be Excluded From Any Tariff

ETA members power the U.S. economy by providing secure and reliable payments technology. Cash registers and point-of-service terminals 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 cash registers and point-of-sale terminals in the United States. This impacts their availability, because some business will be unable to purchase the Devices. For those that do, they will pass on such costs to consumers, which results in higher prices to U.S. consumers. Yet the increased tariffs will have little impact, if any, in effecting a change in China's discriminatory policies. Significantly, 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 (and, likely, with lower costs and higher profit margins given shorter shipping distances). Finally, POS terminals are necessary to continue moving the economy towards digital / electronic payments.

a. Retail Sales Drive The U.S. Economy – Increased Tariffs Would Hurt Such Sales

At a macro-economic level, increased tariffs make the Devices more expensive. This affects trade flows, which reduces the availability of the goods in the U.S. market. A reduction in supply with constant demand results in increased prices. Those increased prices will either be paid by the retailers who require the Devices, passed on to the ultimate consumer, or forgone altogether should the retailer elect not to purchase the Device at all (which would result in longer lines at check-outs, for example). When the goods are purchased, a spike in pricing independent from typical inflationary pricing pressures results in increased

[3] *See* USTR's Section 301 Notice at 10 (Section E - Request for Public Comments) ("In commenting on the inclusion or removal of particular products on the list of products subject to the proposed additional duties, USTR requests that commenters address specifically whether imposing increased duties on a particular product would be practicable or effective to obtain the elimination of China's acts, policies, and practices, and whether maintaining or imposing additional duties on a particular product would cause disproportionate economic harm to U.S. interests, including small- or medium-size businesses and consumers.").

ELECTRONIC TRANSACTIONS ASSOCIATION
1620 L Street NW, Suite 1020
Washington, DC 20036
202.828.2635
electran.org

retail prices for consumers as retailers seek to recoup their additional costs. Ultimately this hurts our economy and has the significant potential not only to dampen retail sales and but increase inflationary pressures. Accordingly, this action directly and negatively impacts a key component of our consumer-driven economy.

b. Sales Are Increasing in Asia and Elsewhere – Increased Tariffs Will Have Little Impact On Encouraging China To Eliminate Its Acts, Policies, And Practices

While the tariff impacts U.S. prices, it will not be practicable or effective in obtaining the elimination of China's acts, policies, and practices identified in USTR's Section 301 Findings. Based on recent data, in 2016 manufacturers worldwide shipped 54.2 million payment card authorization terminals with integrated chip and/or magnetic stripe card readers.[4] Only 5 million of these devices were shipped to the U.S. market, which represents less than 10 percent of worldwide market share.[5] Significantly, The Asia-Pacific region has seen an ***uptick*** in worldwide market share for the Devices and a ***28.3 percent*** increase in units.[6] The Middle East – Africa was the only other region that had an increase in market share over the same period. By contrast, the market share of the United States declined over the same period, with Latin America and the Caribbean ***overtaking*** the United States in shipments of new POS terminals.[7] The conclusion is that any further downturn in sales to the United States will be readily absorbed elsewhere in the world, in particular Asia. The growing demand for these Devices in non-U.S. markets suggests that China will not be significantly harmed or influenced by the imposition of the additional 25 percent tariff on cash registers and point-of-sale terminals. Rather Chinese manufacturers are already shifting production to alternative markets. Finally, assuming an average price for each cash register and point-of-sale terminal of one hundred dollars ($100), the inclusion of these Devices on the list of products subject to the proposed additional duties accounts for less than one-quarter of one percent of the overall impact on China.[8] The overall impact of including these products is *de minimus* and does nothing to influence China. But it has huge ramifications on businesses here at home.

c. Small- and Medium-Size Businesses – Increased Tariffs Will Cause Disproportionate Economic Harm to Such Businesses and Consumers

Significantly, small- and medium-size businesses will be adversely impacted by imposition of the increased tariffs on cash registers and point-of-sale terminals. Part of the decline in sales of the Devices to the United States may be attributable to the fact that "[l]arge retailers had already upgraded their POS terminals in

[4] The Nilson Report, Issue 1114 (July 2017) at 1 (the leading publication covering payment systems worldwide).

[5] *Id.* at 10 (Chart showing POS Terminal Shipments by Region for 2016).

[6] *Id.* at 11. ("The Asia-Pacific region received 31.7 million POS terminals in 2016, up 28.3%, an increase of 7.0 million units")

[7] *Id.*

[8] Assume an average price of $100 per cash register or point-of-sale terminal and total U.S. annual imports of 5,000,000. This results in imports valued at $500,000,000. A 25 percent *ad valorem* tariff generates $125,000,000 in revenue. The $125,000,000 value is 0.25% of the proposed $50 billion in tariffs proposed by the administration. Note: this is a conservatively high percentage. The average price for the Devices may be lower depending on the specific devices purchased during the relevant period, and this assumes all imports are from China (whereas a very limited number – less than five percent – may be from other countries).

ELECTRONIC TRANSACTIONS ASSOCIATION
1620 L Street NW, Suite 1020
Washington, DC 20036
202.828.2635
electran.org

2015 to meet the EMV card liability shift.[9] Many small businesses still had not upgraded to EMV terminals by the end of 2016."[10] The result is that, as small- and medium-size businesses move to upgrade to new Devices, any increase to the price of such cash registers and point-of-sale terminals will disproportionately impact them. With this in mind, ETA references the written comments submitted into the record at regulations.gov by Marc Sherman from Vermont.[11] Mr. Sherman describes himself as a retailer and small business owner. He employs "up to 25 staff members including several high school and college students who are in their very first job." Concerned about the proposed tariffs, he warns that, "my business, my employees and my customers can not [sic] absorb more cost increases" and he cautions that a combination of "slimmer margins" and the increased tariffs could "jeapordiz[e] the viability of my business." The ETA is keenly concerned about small retailers like Mr. Sherman.[12] Given existing data, it is precisely small- and medium-size businesses that need to purchase new cash registers and point-of-sale terminals and, therefore, precisely small- and medium-size business that will be adversely impacted by the proposed increase. The administration recognizes the importance of such businesses, which employ 48 percent of our nation's labor force and are responsible for creating two-out-of-three net new, private-sector jobs in the United States.[13] Immediately on the heels of celebrating such entrepreneurs,[14] USTR and the administration will consider these written comments and testimony and decide whether to maintain the proposed measures on cash registers and point-of-sale terminals. As you do so, please recall the President's clear statement in his proclamation lauding small busineses: "my Administration will continue to implement a pro-growth agenda based on policies that ***champion*** small business creation and growth, giving more Americans the opportunity to start, scale, and succeed in businesses of their own."[15] The proposed tariff increases on cash registers and point-of-sale terminals is not a policy that champions small business creation and growth – it impairs it. And, realistically, if the proposed measures are imposed, unfortunately ETA members are in no position to avoid an adverse impact on U.S. small businesses.

[9] EMV® is a global standard for credit and debit payment cards based on chip card technology and refers to the card schemes Europay, MasterCard, and Visa, which are the original card schemes that developed it.

[10] *Id.*

[11] *See* USTR-2018-0005-0250, Tracking Number 1k2-92r5-momt.

[12] The ETA is equally concerned about the impact on larger retailers and notes the summary testimony provided by the National Retail Federation ("**NRF**") and the Retail Industry Leaders Association ("**RILA**"), both of which argue against imposing a measure that results in higher prices for U.S. consumers. *See* NRF summary testimony at USTR-2018-0005-0328, Tracking Number 1k2-92r9-pzu1 ("The tariffs will result in increased costs which will be passed along to the retailer and then ultimately the consumer.") and RILA summary testimony at USTR-2018-0005-0275, Tracking Number 1k2-92r8-pq4v ("We agree that punishing American working families with higher prices on household basics like clothing, shoes, electronics, and home goods is not a solution.").

[13] Presidential Proclamation 9730 of April 27, 2018, 83 Fed. Reg. 19425 (May 2, 2018) (declaring April 29 through May 5, 2018, as National Small Business Week, 2018) ("For this reason, my Administration worked with the Congress to enact a tax relief plan that provides small businesses with hundreds of billions in additional tax cuts. Moreover, we remain focused on eliminating unnecessary and unduly burdensome regulations, which hurt hardworking Americans. Across the Nation, we are enabling entrepreneurs to invest more of their time and hard-earned profits into growing their businesses and delivering better value for American consumers.").

[14] *Id.* ("This week, we celebrate all the entrepreneurs who have taken a risk to start and grow a small business. They are driven by a belief that they can do something better, smarter, and more efficient than what has been done before. They make our neighborhoods vibrant places to live and work. They invest in their neighbors and employ millions of Americans. When they succeed, we all succeed.")

[15] *Id.* (emphasis added).

ELECTRONIC TRANSACTIONS ASSOCIATION
1620 L Street NW, Suite 1020
Washington, DC 20036
202.828.2635
electran.org

d. Realistically There Are No Alternative Sources of Supply Other Than China – Increased Tariffs Will Be Passed On To Customers On a 1:1 Basis

Based on information provided by our members, 95 percent to 100 percent of our members' products are manufactured in China.[16] The products are manufactured primarily using a mixture of U.S. ***as well as European*** intellectual property. Shifting production to the United States is not an option, not only because of increased labor and other costs, but because of a lack of secondary facilities and infrastructure to support production of these specific devices in sufficient quantities to justify the increased fixed manufacturing costs required to ramp up production. In general, U.S. inventories will last roughly three to four months, and a shift to a third country market for production would take roughly 12 to 18 months. The costs associated with doing so would be in the millions of dollars per manufacturing line, which would be multiplied significantly by the number of lines utilized by each manufacturer. Plus, aside from these other issues, the primary technical issue associated in shifting production is the complex EMV certification and approval requirements. This process would generate perhaps millions of dollars in internal engineering expense per manufacturing ETA member to certify different hardware. In short, the 25 percent increased tariff may trigger ***consideration*** of a shift in production. But any such shift would not result in increased U.S. production, would impact less than 10 percent of worldwide demand (making an actual shift less likely), would result in increased internal certification and approval expenses (in the short term), and would result in an estimated 10 to 15 percent year-on-year cost increase due to various factors and depending on which products lines are moved (in the long term and for the foreseeable future). All of these costs would be passed on directly to the retailer who purchases the product, as the margins in the industry prevent such increased costs from being absorbed by the manufacturer, and it is expected that the increased costs paid by the retailer would similarly be passed on to the U.S. consumer for the same reason. So likely production would remain in China, the increased tariff would not be practicable or effective to curb or eliminate the acts, policies, and practices identified in USTR's Section 301 Findings, U.S. small businesses would suffer disproportionate economic harm, and U.S. consumers would ultimately bear the tariff in the form of increased prices. In addition, U.S. consumers likely would see impacts with new store openings in the form of longer lines, *e.g.*, if retailers decide in a new store to have only 4 lanes of checkout rather than 5 because of the increased cost of the cash registers or point-of-sale terminals.

[16] For the perhaps five percent or less of products not sourced in China, in general our members report that the products are not positioned appropriately for the U.S. market (for example, such products have more expensive "chip and PIN" card readers which come at a premium price that is not generally marketable in the United States other than to limited market segments, have increased incidents of product quality issues in the field, or struggle to provide basic U.S. requirements, *e.g.*, EMV solutions).

D. Conclusion

As proposed, raising the cost of cash registers and point-of-sale terminals by 25 percent will cause severe economic harm to U.S. companies, particularly small and medium-size businesses. It will result ultimately in a tax on U.S. consumers. And it will have no discernible impact on China's acts, policies or practices and account and accounts for less than one-quarter of one percent of the overall proposed tariff. For these reasons, the ETA urges that HTS 8470.50.00 (cash registers and point-of-sale terminals) be excluded from any proposed tariff increase.

Respectfully submitted,

Jason Oxman
CEO
Electronic Transactions Association

EXHIBIT 2

List 3 – ETA Written Comments

ELECTRONIC TRANSACTIONS ASSOCIATION
1620 L Street NW, Suite 1020
Washington, DC 20036
202.828.2635
electran.org

September 4, 2018

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: **Section 301 Investigation: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property and Innovation**

Docket No. USTR-2018-0026

HTSUS Nos. 8442.50.10; 8471.60.90; 8471.90.00; 8473.29.00; 8473.30.11; 8473.30.51; 8504.40.95; 8517.62.00; 8531.20.00; 8544.42.10; 8544.42.20; and, 8544.42.90.

Written Comments of the Electronic Transactions Association

Dear Ambassador Lighthizer:

The Electronic Transactions Association ("**ETA**") respectfully submits these written comments in the above-referenced matter. These comments are submitted in response to the notices published on July 17, 2018, and August 7, 2018,[1] which require that comments be submitted no later than September 6, 2018. Accordingly, these comments are timely.

[1] *Notice of 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*, 83 Fed. Reg. 33608 (July 17, 2018) ("**July Notice**") (maintaining original $34 billion action and the proposed $16 billion action and proposing a modification to take further action in the form of an additional 10 percent *ad valorem* duty on products of China with an annual trade value of approximately $200 billion) and *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*, 83 Fed. Reg. 38760 (August 7, 2018) ("**August Notice**") (extending certain comment periods set out in the July notice because the U.S. Trade Representative announced on August 1, 2017, that the President had directed the U.S. Trade Representative to consider raising the level of the additional duty in the proposed supplemental action from 10 percent to 25 percent); *see also*, *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*, 83 Fed. Reg. 14906 (Apr. 6, 2018) ("**April Notice**") (original $34 billion action) and *Notice of Action and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301: China's Act, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 83 Fed. Reg. 28710 (June 20, 2018) ("**June Notice**") (proposed $16 billion action). On July 17, 2018, ETA submitted a timely request to appear and testify at the hearing on August 20, 2018.

ELECTRONIC TRANSACTIONS ASSOCIATION
1620 L Street NW, Suite 1020
Washington, DC 20036
202.828.2635
electran.org

A. 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.

B. Our Position

The ETA opposes the imposition of duties on twelve HTSUS tariff subheadings. The tariff subheadings 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])[2] (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

ETA's CEO, Jason Oxman, testified as a member of Panel 12 on August 21, 2018. These comments supplement such testimony.

[2] This is a broad HTS heading which includes cameras used in other electronic devices, such as video conference systems or Bluetooth wireless earphones.

Products. Parts may also be used to upgrade security protocols without the need to replace the entire device.

POS Products and Parts are referred to herein as "**the Devices.**" ETA's position is that imposing the proposed duties on the Devices: (i) would not be practicable or effective to curb or eliminate the acts, policies, and practices of China related to technology transfer, intellectual property and innovation;[3] and, (ii) would cause disproportionate economic harm to U.S. interests, including small- or medium-size businesses and consumers.

C. Discussion

These comments explain why the ETA opposes the imposition of an additional 25 percent tariff against the Devices.[4]

1. The ETA Supports the Administration's Goals But Respectfully Urges Removing The Devices From Any Increased Tariff

Like the administration and U.S. businesses that innovate and seek to protect their intellectual property assets, the ETA is concerned about China's growing use of trade and investment policies which place innovative U.S. companies at a competitive disadvantage. While the ETA strongly supports efforts to address such discriminatory practices, our members do not support the proposal to impose an additional 25 percent tariff on the Devices. If implemented, this measure would negatively impact U.S. businesses and consumers immediately yet have no discernable impact on encouraging China to change its practices. For the reasons stated herein, we respectfully request that the Devices be removed from any increase in tariffs.

---

[3] *See* Findings of the Investigation Into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation Under Section 301 of the Trade Act of 1974 published by the Office of the United States Trade Representative dated March 22, 2018 (the "**USTR's Section 301 Findings**").

[4] *See* July Notice at 33609 (Section D - Request for Public Comments) ("In commenting on the inclusion or removal of particular products [on the list of products subject to the proposed additional duties], USTR requests that commenters address specifically whether imposing increased duties on a particular product would be practicable or effective to obtain the elimination of China's acts, policies, and practices, and whether maintaining or imposing additional duties on a particular product would cause disproportionate economic harm to U.S. interests, including small- or medium-size businesses and consumers.").

2. Keeping the Devices on List 3 Has No Impact on China

The increased tariffs 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 (and, likely, with lower costs and higher profit margins given shorter shipping distances).[5]

- Regarding Parts, payments technology manufacturing is a small industry leveraging the consumer electronics massive supply chain, which is based predominantly in Asia and is resident primarily in China. Unlike the massive consumer electronic supply chain, the payments technology supply chain has little leverage with Chinese contract manufacturers. Such Chinese enterprises are efficient, high-tech, and assuming *arguendo* that manufacturing for the payment industry is forced out of China, the Chinese contract manufacturers would be able to quickly sell available capacity on their manufacturing line.

- Regarding the Devices, in general, shifting production to the United States is not an option. This is not only because of increased labor and other costs but because of a lack of secondary facilities and infrastructure to support production of the Devices. This commercial infrastructure gap in the United States hampers the ability to produce the Devices in sufficient quantities to justify the increased fixed manufacturing costs required to ramp-up production. In general, U.S. inventories will last roughly three

[5] In 2016 manufacturers worldwide shipped 54.2 million payment card authorization terminals with integrated chip and/or magnetic stripe card readers. *See* The Nilson Report, Issue 1114 (July 2017) at 1 (the leading publication covering payment systems worldwide). Only 5 million of these devices were shipped to the U.S. market, which represents less than 10 percent of worldwide market share. *Id.* at 10 (Chart showing POS Terminal Shipments by Region for 2016). Significantly, The Asia-Pacific region has seen an ***uptick*** in worldwide market share for the POS terminals and a ***28.3 percent*** increase in units. *Id.* at 11. ("The Asia-Pacific region received 31.7 million POS terminals in 2016, up 28.3%, an increase of 7.0 million units"). The Middle East – Africa was the only other region that had an increase in market share over the same period. By contrast, the market share of the United States declined over the same period, with Latin America and the Caribbean ***overtaking*** the United States in shipments of new POS terminals. *Id.* The conclusion is that any further downturn in sales to the United States will be readily absorbed elsewhere in the world, in particular Asia. The growing demand for these POS terminals in non-U.S. markets suggests that China will not be significantly harmed or influenced by the imposition of the additional 25 percent tariff on POS Products. Rather Chinese manufacturers are already shifting production to alternative markets.

> months, and a shift to a third country market for production would take roughly 12 to 18 months on average, as reported by our members. The costs associated with doing so would be assessed per manufacturing line per product, which would be multiplied significantly by the number of lines utilized by each manufacturer. Plus, aside from these other issues, the primary technical issue associated in shifting production for the POS Products is the complex EMV certification and approval requirements.[6] This process would be very costly in terms of internal engineering expenses and requires the ETA member to certify different hardware.[7] In short, the 25 percent increased tariff may trigger ***consideration*** of a shift in production. But, we are told, any such shift would not result in increased U.S. production, would impact less than 10 percent of worldwide demand (making an actual shift less likely), would result in increased internal certification and approval expenses (in the short term), and would result in an estimated 10 to 15 percent year-on-year cost increase due to various factors and depending on which products lines are moved within Asia (in the long term and for the foreseeable future).

Accordingly, there is very little risk posed to Chinese contract manufacturers of including the Devices on List 3. Doing so would have very little impact on their decisions, if any, and would certainly ***not*** result in increased bargaining leverage that would somehow encourage such Chinese manufacturers to lobby the Chinese government to change its policies regarding intellectual property.

3. Keeping the Devices on List 3 Has A Huge Negative Impact on the United States

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. 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. This is why the Devices – and their exclusion from List 3 – is so important.

[6] EMV® is a global standard for credit and debit payment cards based on chip card technology and refers to the card schemes Europay, Mastercard, and Visa, which are the original card schemes that developed it.

[7] On average, ETA members advise that the cost of shifting production to the United States, if even possible, would result in approximately 25 to 30 percent additional expense, at a minimum.

a. Keeping the POS Products on List 3 Continues a Security Gap Among Smaller Retailers, Like Gas Stations, and Delays the Shift to EMV Technology

As the margins in the industry prevent the 25 percent additional duties from being absorbed by the manufacturer, the increased costs of including the Devices on List 3 would be passed on directly to the retailer who wants to purchase the product. This places the retailer in a very difficult position. Either the retailer forgoes purchasing the POS Product or attempts to pass on the increased costs to the U.S. consumer. As explained above, most large retailers have upgraded and are now using the EMV chip-card certification, whereas most small- and medium-sized businesses have not.

The security risk posed by not having EMV chip-card readers is perhaps most readily apparent when one drives to the pump.[8] Gas stations originally had until October 1, 2017, to ensure that their pumps accept chip-embedded cards. Because of the high costs of conversion and for other reasons, however, that deadline was extended in December 2016. Now gas stations have until October 1, 2020, to install chip technology payment terminals.[9] If a customer uses a chip card at a pump that does not process chip transactions after that date, the gas station will bear the costs of the fraud. So now is when gas stations are trying to upgrade their security protections. Gas stations are just one example of the myriad small- and medium-sized business that are wrestling with the need and expense of upgrading to EMV-enabled POS terminals. Accordingly, now is precisely the time gas stations – and other when small- and medium-sized business – can most ill-afford to have POS Products included on List 3.[10] Adding 25 percent to the cost of the Devices forces many small- and medium-sized businesses to push-off implementing the EMV upgrade, which harms us all given the existing security gap.

---

[8] Robin Sidel, "Credit-Card Fraudsters Pump Gas Stations for Profit Credit-Card Fraudsters Pump Gas Stations for Profit," Wall Street Journal (Sept. 3, 2015), available at: << https://www.wsj.com/articles/credit-card-fraudsters-pump-gas-stations-for-profit-1441253132 >> (describing the "gaping hole" in gas station security).

[9] Robin Sidel, "Card Companies Give Gas Stations Three Extra Years to Install Chip Technology," Wall Street Journal (Dec. 1, 2016), available at: << https://www.wsj.com/articles/visa-gives-gas-stations-three-extra-years-to-install-chip-card-equipment-1480600735?ns=prod/accounts-wsj>>.

[10] The same reasoning applies to certain Parts. For example, replacing a circuit board with a replacement Part could upgrade an existing POS terminals' security protocol without the need and expense of replacing the entire unit.

PUBLIC DOCUMENT

b. Keeping the Parts on List 3 Threatens U.S. Jobs

For those who have a malfunctioning POS Product,[11] increased costs would make it uneconomical to fix such devices. As ETA members support repair facilities in the United States, an increase in the cost of parts necessary to make such repairs has a direct relationship to a decrease in the demand for such repairs. A decrease in the demand for repairs results in a decrease in the number of jobs in that industry. So if the demand for repairs declines, the need for repair jobs will similarly decline. In other words, there is a direct correlation between increased costs of repair components and job elimination in that market. Lost U.S. jobs does not advance the interests of the administration, particularly when typically such jobs are located in more economically challenged areas throughout the United States as opposed to major metropolitan centers.

c. Keeping The Devices on List 3 Makes It Harder For Small Businesses To Succeed

The administration understands that when small businesses succeed, America succeeds.[12] However, an additional 25 percent duty on the Devices will hamper the ability of small- and medium-sized businesses to succeed. Small- and medium-sized businesses employ 48 percent of our nation's labor force and are responsible for creating two-out-of-three net new, private-sector jobs in the United States.[13] In order to get paid, such enterprises in the Business-to-Consumer ("**B to C**") marketplace need POS Products. And they need Parts to fix their devices when they break. The President's clear message is "to implement a pro-growth agenda based on policies that ***champion*** small business creation and growth, giving more Americans the opportunity to start,

[11] In addition, note that POS Terminals (HTSUS 8470.50.00 - cash registers and point-of-sale terminals) were removed from List 1 for many of the same reason articulated herein. In short, the interagency Section 301 Committee decided – correctly in ETA's view – that such items should not be subject to 25 percent additional duties. It would make little sense to use List 3 now to make the parts necessary to repairing such essential devices so expensive that it is uneconomical for U.S. workers in the United States to repair them.

[12] Presidential Proclamation 9730 of April 27, 2018, 83 Fed. Reg. 19425 (May 2, 2018) (declaring April 29 through May 5, 2018, as National Small Business Week, 2018) ("This week, we celebrate all the entrepreneurs who have taken a risk to start and grow a small business. They are driven by a belief that they can do something better, smarter, and more efficient than what has been done before. They make our neighborhoods vibrant places to live and work. They invest in their neighbors and employ millions of Americans. ***When they succeed, we all succeed***.") (emphasis added).

[13] *Id.* ("For this reason, my Administration worked with the Congress to enact a tax relief plan that provides small businesses with hundreds of billions in additional tax cuts. Moreover, we remain focused on eliminating unnecessary and unduly burdensome regulations, which hurt hardworking Americans. Across the Nation, we are enabling entrepreneurs to invest more of their time and hard-earned profits into growing their businesses and delivering better value for American consumers.").

ELECTRONIC TRANSACTIONS ASSOCIATION
1620 L Street NW, Suite 1020
Washington, DC 20036
202.828.2635
electran.org

scale, and succeed in businesses of their own."[14] Keeping the Devices on List 3 is not a policy that champions small business creation and growth – it impairs it. And, realistically, if the proposed measures are imposed, unfortunately ETA members are in no position to avoid an adverse impact on U.S. small businesses.

D. Conclusion

If the Devices remain on List 3 as proposed, likely production would remain in China, the increased tariff would not be practicable or effective to curb or eliminate the acts, policies, and practices identified in USTR's Section 301 Findings, U.S. small businesses would suffer disproportionate economic harm, and – where such businesses are able to pass on the costs – U.S. consumers would ultimately bear the tariff in the form of increased prices. For these reasons, the ETA urges that the Devices be excluded from any proposed tariff increase.

Respectfully submitted,

Jason Oxman
CEO
Electronic Transactions Association

21100640

[14] *Id.* (emphasis added).