



September 6, 2018

The Honorable Robert Lighthizer
United States Trade Representative
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508
Via Electronic Submission – www.regulations.gov

RE: [Docket Number USTR–2018–0026] Notice of Action and Request for Public Comment Concerning Proposed Modification of Action Pursuant to Section 301: China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

Dear Ambassador Lighthizer,

We write today on behalf of a broad range of U.S. energy interests—spanning technologies and services in the energy efficiency, energy storage, demand response, information technology, manufacturing, natural gas, renewable energy and sustainable transportation sectors—to re-iterate our concerns about the negative effects on the clean energy industry of the proposed modification of action on the list of imports from China valued at \$200 billion and the August 1 proposed supplemental action of increasing the *ad valorem* duty from 10 to 25 percent.

We do not believe that these measures resolve China’s violations of intellectual property rights nor the impact to U.S. industry of its *Made in China 2025* program. Our concern is that these tariffs will negatively impact the manufacture of consumer and clean energy products in the United States and threaten American jobs.

We would like to share the following specific concerns of a range of industries. Of note, as diverse business coalitions, not all our members take positions on the issues discussed below.

Electric Vehicles

Lithium-ion secondary cells imported under HTSUS 8507.60.0010 used for medium- and heavy-duty electric buses and coaches should not be added to the supplemental list of proposed tariff subheadings. Such an action would serve to benefit limited interests only, while simultaneously causing significant harm both to the American consumer of electric public transit buses and to U.S. manufacturers of this advanced battery technology.

The imposition of tariffs on lithium-ion secondary cells will increase the cost of batteries in the United States, a necessary component and significant cost associated with electric vehicles. Any fluctuation in price will harm the market and consumers, including numerous municipalities that purchase medium- and heavy-duty vehicles. There is no alternative market and U.S. manufacturing capacity of technically-feasible batteries cannot increase quickly enough to meet the demand for the electric vehicle market.

The electric vehicle market has grown significantly over the past five years with more growth expected. Any increase in prices could harm the development of this important industry to U.S. international competitiveness and consumers at large.

Energy Efficiency & Home Appliances

The inclusion of the following products in the U.S. home appliance sector are of concern: energy-efficient refrigerator (HTSUS 8418.30.11) and dryer (HTSUS 8451.10.00, 8451.21.00, 8451.29.00, 8451.30.00, 8451.40.00, 8451.50.00, 8451.80.00, 8451.90.30, 8451.90.60, and 8451.90.90) models that have received the consumer-friendly ENERGY STAR designation. It is counter-productive to place an additional tax burden on consumers who make energy-efficient choices.

More generally, high-efficiency, variable speed scroll compressors manufactured in China allow original equipment manufacturers in the U.S. to cost-effectively meet the demand for current and upcoming Department of Energy efficiency standards, especially for commercial air conditioning. These compressors are only available from China and cannot be competitively manufactured in the U.S. The proposed tariffs will put products made with these compressors out of the reach of most buyers, who would opt to keep their old, inefficient products. This represents a burden on consumers, as well as a potential significant increase in energy use in U.S. commercial buildings.

Energy Storage

Due to the impact on the energy storage industry in the United States, it is requested that the following products be removed from the Section 301 China import product list: static converters (HTSUS 8504.40.95), which includes inverters, and certain batteries (HTSUS 8507.20.80). The grid battery energy storage industry is a fast-growing source of jobs and capital formation in the United States, enabling a more modern and secure electricity grid. The U.S. battery energy storage industry employed over 50,000 Americans in 2017, with the preponderance of such jobs in project planning, construction and operations.¹

Battery energy storage systems have been identified by policymakers and regulated electric companies around the country as a game-changing new tool for a more resilient, efficient, sustainable and affordable grid. These characteristics have been emphasized by the National Governors Association,² the Secretary of Energy³ and more recently at the July 18, 2018, hearing of the Energy Subcommittee of the Energy & Commerce Committee of the House of Representatives.⁴ The 25 percent tariffs proposed for inverters included under tariff provision HTSUS 8504.40.95⁵ would raise undue uncertainty and costs for inverter-based resources on the electric system, which include all battery storage facilities regardless of

¹ National Association of State Energy Officials and Energy Futures Initiative, *2018 U.S. Energy and Employment Report*, May 2018, available at <https://www.usenergyjobs.org/s/2018-US-Energy-and-Employment-Report-6akj.pdf>.

² National Governors Association, *State Strategies for Advancing the Use of Energy Storage*, October 2016, available at <https://www.nga.org/files/live/sites/NGA/files/pdf/2016/1610StateStrategiesEnergyStorage.pdf>

³ "The holy grail of energy ... is about battery storage. Battery storage changes the world, I would suggest, the same way that hydraulic fracturing and directional drilling has changed the world." See "US DOE's Perry sees storage as potential 'Holy Grail', sings fossil fuels' praises," *Platts*, 2 Nov 2017, available at <https://www.platts.com/latest-news/electric-power/washington/us-does-perry-sees-storage-as-potential-holy-21437709>

⁴ See hearing materials transcript of U.S. House of Representatives Energy & Commerce Committee hearing, "Powering America: The Role of Energy Storage in the Nation's Electricity System," 18 July 2018, available at <https://energycommerce.house.gov/hearings/powering-america-the-role-of-energy-storage-in-the-nations-electricity-system/>

⁵ HTSUS 8504.40.95 refers to static compensators, which includes inverters (HTSUS 8504.40.9570).

chemistry. Given that USTR is already proposing 25 percent tariffs on other grid battery technologies and components in Docket 2018-0018, grid battery project costs and uncertainties would be compounded further with these additional duties on inverters.

The 25 percent tariffs proposed for batteries included under tariff provision HTSUS 8507.20.80 would disadvantage lead-acid batteries versus other battery chemistries, distorting optimal battery technology choices in electric grid applications. Additionally, given that the proposed tariffs have no termination date, innovative companies seeking to commercialize newer forms of lead-acid battery technologies for electric grid functions will face greater uncertainty and the tariffs will ultimately lead to reduced investment and hiring in these domains.⁶

Fuel Cell and Hydrogen Energy

The U.S. fuel cell and hydrogen energy industry are concerned such government action will be detrimental to the United States economy, inflation and export manufacturing, and could suppress the developmental progress of American hydrogen fuel cell technology. Currently, U.S. hydrogen fuel cell companies have a technological advantage over a highly competitive global marketplace with foreign corporations attempting to develop what American hydrogen technology leaders already have. Under the proposed tariff scenario, U.S. fuel cell and hydrogen manufactured goods created for export would become less competitive in the global marketplace, resulting in a widespread impact across this American industry.⁷

Polyisocyanurate Insulation

The proposed supplemental tariff action includes over 1,500 chemicals, many of which are used in the manufacture of energy efficient, clean energy, and renewable energy products. For example, certain chemicals used in the manufacture of building insulation products like polyisocyanurate (polyiso) insulation are currently included on List 3 (HTSUS subheading 3909.31.00). Manufacturers of polyiso insulation rely on imports because domestic demand for critical raw materials exceeds current domestic supply capacity. The proposed tariff action jeopardizes the industry's ability to meet a growing demand for energy efficient building technologies.⁸

Solar Energy

The U.S. solar industry objects to the inclusion of the following HTSUS categories in the Section 301 proposed modification of action:

- 8501.61.00: "AC generators (alternators) of an output not exceeding 75 kVA;"
- 8504.31.40; "Electrical transformers other than liquid dielectric, having a power handling capacity less than 1 kVA;"
- 8504.40.95; "Static converters (for example, rectifiers), 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;"

⁶ Details provided by the Energy Storage Association.

⁷ Details provided by the Fuel Cell & Hydrogen Energy Association.

⁸ The impact of this specific tariff action is described in written comments submitted by the Polyisocyanurate Insulation Manufacturers Association.

- 8507.40.80: “Nickel-iron storage batteries, other than of a kind used as the primary source of power for electric vehicles;” and
- 8507.50.00: “Nickel-metal hydride batteries.”

HTSUS 8501.61.00 includes solar photovoltaic (PV) modules incorporating a microinverter, see description below, which are identified within the solar industry as “AC modules.” HTSUS 8504.31.40 includes transformers which provide galvanic isolation, step up system voltage, and transfer energy to the utility grid. HTSUS 8504.40.95 includes inverters, microinverters, and DC optimizers. Inverters convert direct current (DC) collected by a PV module to alternating current (AC) that can be fed into the electrical grid or used by off-grid electrical networks. Microinverters also convert DC to AC but do so at the individual module level. Optimizers are also module-level devices and convert DC to DC, thereby optimizing the quality of the DC output. Rechargeable storage batteries imported under HTS 8507.20.80, 8507.40.80, and 8507.50.00 are used to store power collected by solar installations to extend the practical use of those systems beyond daylight hours.

The removal of the above-referenced HTSUS categories from any additional Section 301 duties is sought to avoid the burdensome and unnecessary imposition of added costs affecting the U.S. solar industry. Solar cells and modules are already covered by antidumping and countervailing duties against China and Taiwan, Section 201 safeguard measures against all major supplying nations (including China), and Section 301 duties against China (the \$16 billion list). Various items of steel and aluminum used in solar installations are also subject to Section 232 measures and Section 301 duties. Various other products like multimeters used in solar installations and other kinds of batteries used for energy storage are also already subject to Section 301 duties. All these prior measures are contributing to significantly higher costs along the solar energy supply chain. Imposition of additional tariffs on AC modules, transformers, inverters, microinverters, optimizers, and lead-acid, nickel iron, and nickel-metal hydride rechargeable storage batteries in this latest action will further increase the cost of solar installations, making solar less competitive with traditional and other energy sources and putting solar power further out of the reach of many U.S. consumers. The proposed tariff threatens the continued installations of new solar systems and the many American jobs that rely on them.⁹

Wind Energy

The inclusion of the products used in the development of wind energy in this round of tariffs would substantially increase the cost of sourcing products that are essential for American businesses to cost-effectively manufacture, develop, and deliver wind energy. This most-recent Section 301 tariff list includes over 80 wind energy-related product codes, including major wind turbine components such as blades, hubs and gearboxes. The American Wind Energy Association (AWEA) estimates that the proposed tariffs on wind-energy related products and components could increase the cost of developing wind energy by up to five percent and significantly harm domestic manufacturers of wind turbine components. With this cost increase, up to 24 percent of forecasted wind power development over the next decade is at risk, representing tens of billions of dollars of investment and up to 21,000 American jobs. This would be on top of cost increases to wind energy related to the already implemented tariffs from lists 1 and 2, as well as those on steel and aluminum.

⁹ Details provided by the Solar Energy Industries Association.

Conclusion

We appreciate the opportunity to comment in this process. Should you have any questions, please do not hesitate to contact Dylan Reed with Advanced Energy Economy (dreed@aee.net), Dan Bresette with the Alliance to Save Energy (dbresette@ase.org) or Laura Tierney with the Business Council for Sustainable Energy (Ltierney@bcse.org).

Sincerely,

Advanced Energy Economy
Alliance to Save Energy
Business Council for Sustainable Energy