



June 17, 2019

The Honorable Robert E. Lighthizer  
United States Trade Representative  
600 17th Street, N.W.  
Washington, DC 20508

**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)**

BSA | The Software Alliance (BSA) appreciates the opportunity to provide comments to the United States Trade Representative (USTR) on USTR’s extended request for comments through the Federal Register concerning the proposed modification of action under section 301 of the Trade Act of 1974 (“Section 301”) relating to China’s acts, policies and practices related to technology transfer, intellectual property, and innovation.<sup>1</sup> While we appreciate the Administration’s efforts to address longstanding issues the software and other innovative industries face in China, we are concerned that the proposed modification will significantly and negatively impact economic growth, jobs, and innovation. The proposed tariff increases will raise costs and reduce competitiveness across the international software industry and beyond.

BSA is the leading trade association representing the global software industry before governments and in the international marketplace. Its members are among the world’s most innovative companies, developing cutting-edge solutions in use across the range of information technology (IT) platforms, and are global leaders in advancing cybersecurity.<sup>2</sup>

The US software industry — and millions of American researchers, engineers, and other workers employed in that industry — benefit from American global leadership in the development and provision of software services, including cloud and edge computing services. Software has a profound impact on the American economy. In 2016, the software industry was responsible for \$1.14 trillion of total US value added GDP. The industry supports 2.9 million jobs (directly) and 10.5 million jobs (indirectly) with significant impact in each of the 50 states — jobs that pay significantly better than the national average for all

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<sup>1</sup> See Office of the U.S. Trade Representative, *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).

<sup>2</sup> BSA’s members include: Adobe, Akamai, Apple, Autodesk, Bentley Systems, Box, Cadence, CNC/Mastercam, DataStax, DocuSign, IBM, Informatica, Intel, MathWorks, Microsoft, Okta, Oracle, PTC, Salesforce, ServiceNow, Siemens PLM Software, Sitecore, Slack, Splunk, Symantec, Trend Micro, Trimble Solutions Corporation, Twilio, and Workday.

occupations — and expands America’s economic potential across numerous sectors.<sup>3</sup> In 2013 (the most recent year for which data is available), the software industry invested more than \$63 billion in research and development (R&D) in the United States.<sup>4</sup> This economic progress and R&D investment translates into software serving as a powerful catalyst for economic change — making businesses more effective and the US economy more prosperous. The tariffs proposed under list 4 put the economic growth and jobs generated by software at risk.

BSA member companies are market leaders in providing enterprise software services around the world, including cloud computing<sup>5</sup> and edge computing<sup>6</sup> services. These American companies invest substantial resources into R&D for software solutions that involve artificial intelligence, data analytics, blockchain, and the Internet-of-Things. The global cloud computing service sector alone accounted for \$89.9 billion in revenues in 2016, and 70 percent of global Internet traffic in 2015.<sup>7</sup> BSA member companies are also market leaders in offering productivity software solutions for enterprises, including in the architecture, construction, engineering, finance, human resources, information technology, marketing, manufacturing, and media sectors. BSA members also offer electronics devices — from laptops and tablets to mobile phones and smart watches — that improve the lives of Americans, make businesses of every size more productive, and help make the United States the innovative and competitive economy that it is.

Nevertheless, BSA member companies — including iconic American brands — face intense foreign competition from around the globe, including from China.<sup>8</sup> The tariff increases proposed in the May 17 Federal Register notice would subject US companies and workers to across-the-board increased costs of 25% on laptops and tablets; mobile phones; video game devices and accessories; barcode scanners; and numerous other IOT devices and computer accessories and products classified HTSUS chapters 84, 85, 90, and 95. More specifically, these products are classified under the following HTSUS subheadings: HTSUS 8443.31, 8443.32, 8443.39, 8443.99, 8470.50, 8471.30, 8471.41, 8471.49, 8471.60, 8507.60, 8517.12, 8517.62, 8517.70, 8523.51, 8523.80, 8526.92, 8528.52, 8543.70,

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<sup>3</sup> Software.org, *The Growing \$1 Trillion Economic Impact of Software* (Sept. 2017), available at: [https://software.org/wp-content/uploads/2017\\_Software\\_Economic\\_Impact\\_Report.pdf](https://software.org/wp-content/uploads/2017_Software_Economic_Impact_Report.pdf).

<sup>4</sup> *Id.*

<sup>5</sup> Cloud computing services, which often confer advantages of cost, speed, scalability, reliability, and security vis-à-vis on-premises computing services, include infrastructure-as-a-service (IaaS) (e.g., providing access to physical resources including data storage, servers, operating systems, or networking equipment), software-as-a-service (SaaS) (e.g., hosting and managing software applications over the Internet), and platform-as-a-service (PaaS) (e.g., providing platforms — including infrastructure, databases, and others — over the Internet to allow developers to create and manage web or mobile applications). See U.S. International Trade Commission, *Global Digital Trade 1: Market Opportunities and Key Foreign Trade Restrictions* (August 2017), Inv. No. 332-TA-561, USITC Pub. 4716, p. 19 (*hereinafter* USITC *Global Digital Trade 1 Report*).

<sup>6</sup> Edge computing includes the development and deployment of a “network of connected objects that are able to collect and exchange data via sensors and other devices” performing data analytics at the data source, outside of centralized data centers. See *id.*, p. 24.

<sup>7</sup> See *id.*, p. 20.

<sup>8</sup> See *id.*, pp. 35, 75-77.

9013.80, and 9504.50, as further elaborated in the Annex to this letter. BSA requests that products in all of the foregoing categories be removed from List 4.

These tariffs are taxes on software innovation and technological innovation which will reduce business productivity, dampen economic growth, and threaten America's high-tech leadership. In addition, by reducing demand for computing devices, they will reduce demand for the software that runs on those devices — thereby threatening livelihoods across America's software development ecosystem.

The negative impacts from a 25% increase in cost on productivity-enhancing software and electronics can hardly be overstated. For example, laptops and tablets are widely used in educational and healthcare institutions. Access to these high-technology products are also critical to the productivity of entrepreneurs and micro-, small-, and medium-sized enterprises. The costs of these tariffs will be borne overwhelmingly by Americans, including vulnerable and low-income populations who are least able to sustain the burden.<sup>9</sup> For all of the foregoing reasons, BSA also urges USTR to work expeditiously to establish a streamlined product exclusion process for any new product categories that have been added to the list.<sup>10</sup>

BSA and its member companies are gravely concerned that the emerging cycle of escalating trade tensions and retaliatory measures will end badly for US enterprises, innovators, and workers in the software industry, as well as consumers across the global economy who rely on these high technology products. The proposed tax on innovation will not only affect US enterprises' business in the United States, but also their businesses in China (on account of tariff increases imposed in retaliation by China on imports of products critical to their businesses in China). Additionally, retaliation by China could also have a significant negative impact on American innovation and technology leadership.

Many BSA members have significant and long-standing presences in China and have seen first-hand the evolution of China's policies in the technology sector and the challenges these policies impose on US firms. BSA continues to request that the Administration prioritize bilateral dialogue designed to achieve meaningful solutions to longstanding bilateral problems and a sounder mutual foundation for addressing concerns going forward. BSA thanks USTR for the opportunity to share these perspectives.

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<sup>9</sup> Peter Coy, *Trump's China Tariffs Hit America's Poor and Working Class the Hardest*, Bloomberg (May 14, 2019), available at: <https://www.bloomberg.com/news/articles/2019-05-14/trump-s-china-tariffs-hit-america-s-poor-and-working-class-the-hardest>; Steven Livingston, *Classroom technologies narrow education gap in developing countries*, (August 23, 2016), available at: [www.brookings.edu/blog/techtank/2016/08/23/classroom-technologies-narrow-education-gap-in-developing-countries/](http://www.brookings.edu/blog/techtank/2016/08/23/classroom-technologies-narrow-education-gap-in-developing-countries/); Marcel Trucano, *Big educational laptop and tablet projects -- Ten countries to learn from*, EduTech World Bank Blog (July 31, 2013), available at: <http://blogs.worldbank.org/edutech/big-educational-laptop-and-tablet-projects-ten-countries>; Bruno Galera, *Can Tablets or Laptops Improve Our Education?* (June 8, 2013), available at: [www.techsling.com/2013/06/can-tablets-or-laptops-improve-your-education/](http://www.techsling.com/2013/06/can-tablets-or-laptops-improve-your-education/)

<sup>10</sup> BSA also reiterates the importance of ensuring that the exclusion process for all Lists be administered clearly, impartially, and with expedition.

ANNEX: PRODUCTS FOR WHICH BSA REQUESTS REMOVAL FROM LIST 4

HTSUS	Description
8443.31.00	Multifunction units (machines which perform two or more of the functions of printing, copying or facsimile transmission, capable of connection
8443.32.10	Printer units, capable of connecting to an automatic data processing machine or to a network
8443.32.50	Single function units other than printer units (machines which perform only one of the functions of printing, copying or facsimile transmission
8443.39.90	Other printers, copying machines or facsimile machines, nesoi.
8443.99.50	Parts and accessories of other printing, copying or facsimile machines; nesoi.
8470.50.00	Cash Registers
8471.30.01	Portable automatic data processing machines, not over 10 kg, consisting at least a central processing unit, keyboard and display
8471.41.01	ADP machines, nonportable or over 10 kg, comprise in the same housing least central processing unit and input & output unit
8471.49.00	ADP machines, nesoi, entered as a system (consisting of a central processing unit, an input unit, and an output unit).
8471.60.20	Keyboards for automatic data processing machines not entered with the rest of a system.
8471.60.80	Optical scanners and magnetic ink recognition devices not entered with the rest of a ADP system
8471.41.0150	Other ADP machines
8507.60	Lithium-ion batteries
8517.12	Telephones for cellular networks or for other wireless networks
8517.62.0090	Machines for the reception, conversion and transmission or regeneration of voice, images or other data, NESOI
8517.70	Parts for Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus
8518.30.20	Stereo Headset
8523.51.00	Semiconductor media, solid state non-volatile storage devices.
8523.80.20	Discs, tapes, solid-state non-volatile storage devices, "smart cards" and other media for the recording of sound or of other phenomena
8526.92.10	Radio remote control apparatus for video game consoles
8528.52	Monitors and projectors; Capable of directly connecting to and designed for use with an automatic data processing machine
8543.70.87	Electrical machines w/translation/dictionary; flatpanel displays except for heading 8528 (except 8528.51/61);infrared video game controller
9013.80.90	Liquid crystal devices nesoi, and optical appliances and instruments, nesoi.
9504.50.0000	Video game consoles and some accessories