



September 20, 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-2019-0015)

BSA | The Software Alliance (BSA) appreciates the opportunity to provide comments to the United States Trade Representative (USTR) on the USTR's August 28, 2019 request for comments through the Federal Register ("FR") 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.¹ The proposed modification would increase to 30 percent the rate of additional duties imposed on approximately \$250 billion in Chinese imports that were encompassed within so-called Lists 1, 2, and 3 (pursuant to actions first taken in June, August, and September 2018).

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.² 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 occupations — and expands America's economic potential across numerous sectors.³ The

¹ 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, Docket No. USTR-2019-0015 (August 28, 2019), available at: https://ustr.gov/sites/default/files/enforcement/301Investigations/Request_for_Comments_Concerning_Proposed_Modification.pdf.

² 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.

³ 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.

software industry also invests more than \$63 billion in research and development (R&D) in the United States.⁴

BSA appreciates the Administration's efforts to address longstanding issues the software and other innovative industries face in China. However, we are concerned that the proposed modification will negatively impact US economic growth, jobs, and innovation – compounding broader economic impacts that have begun to manifest themselves as a result of US-China trade tensions. The proposed tariff increases will raise costs and reduce competitiveness for the US software industry and beyond.

BSA has made submissions in response to USTR's prior requests for comment relating to the ongoing section 301 investigation of China. To the extent that USTR's August 28, 2019 FR notice covers product categories or topics at issue in prior FR notices, we incorporate by reference BSA's prior submissions. Those submissions are listed below:

- BSA Comments on China's Acts, Policies and Practices Related to Technology Transfer, Intellectual Property, and Innovation (Sept. 28, 2017)⁵
- BSA Comments on Proposed Determination of Action Pursuant to Section 301 (May 11, 2018)⁶
- BSA Comments on Proposed Modification of Action Pursuant to Section 301 (Sept. 5, 2018)⁷
- BSA Comments on Proposed Modification of Action Pursuant to Section 301 (June 17, 2019)⁸

BSA members have seen first-hand the evolution of China's policies in the technology sector and the challenges these policies impose on US firms. For this reason, BSA continues to support the resolution of longstanding market access challenges through bilateral dialogue that produces a sound foundation for bilateral digital trade relations.⁹

BSA cautions against the proposed imposition of 30 percent tariffs on \$250 billion in Chinese imports. Prior rounds of tariff increases, and the repeated leveling and withdrawal of tariff-based threats, have not produced constructive results. On the contrary, the cycle of escalating trade tensions and retaliatory measures has imposed harms on all sectors of the US economy. These harms extend to the US enterprise software industry, as well as consumers across the global economy who rely on these high technology products. This pattern of escalation has negatively affected US enterprises' operations around the world, as US export competitiveness is impaired due to rising costs and due to increasing doubt regarding the reliability of the United States as a trading partner.

BSA thanks USTR for the opportunity to share these perspectives.

⁴ *Id.*

⁵ See <https://www.bsa.org/files/policy-filings/09282017BSAUSTR301CommentsChina.pdf>

⁶ See <https://www.bsa.org/files/policy-filings/05112018BSACommentsChinaProductTariffList.pdf>

⁷ See <https://www.bsa.org/files/policy-filings/09052018BSASection301Letter.pdf>

⁸ See <https://www.bsa.org/files/policy-filings/06172019bsasection301list4submission.pdf>

⁹ In prior submissions, BSA has identified several specific areas of concern in China: (a) foreign direct investment restrictions, including policies relating to Value-Added Telecommunications Services (VATS); (b) restrictions on cross-border data transfers; (c) requirements for source code and enterprise standard disclosure; and (d) reliance on indigenous technical standards.