

June 17, 2019

USTR Docket-2019-0004
Via www.regulations.gov

The Honorable Robert E. Lighthizer
United States Trade Representative
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Docket Identification Number: USTR-2019-0004

Re: Response to the Federal Register Notice (Vol. 84, No. 96, May 17, 2019, Pages 22564-22639) Requesting Comments 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:

Thank you for your leadership at this important time. Decades ago, you challenged the conventional wisdom that supported admitting China to the World Trade Organization and turning a blind eye to its bad behavior. At long last, the United States is fortunate to have your service as the official Trade Representative. The United States Trade Representative (USTR) has investigated, documented, and published extremely valuable and long overdue information about China's abuse of Technology Transfer, Intellectual Property and Innovation. The USTR, along with other branches of government including the Departments of Commerce, Treasury, and Justice, are working to deliver President Trump's campaign promise to stop China's abuse. This is a difficult, complex negotiation, and China is a dangerous adversary. As such, it is commendable that your office has solicited public comment, underscoring the Administration's commitment to the rule of law, due process, and deliberative democracy. This comment supports the policy goal to stop China's abuse, to employ the various policy instruments in effective and complementary ways, and to be mindful of—and to avert—unintended consequences of unwittingly strengthening Chinese firms because of a policy change.

Supply Chain Resilience and Entity List

Based on more than a decade of evidence and reporting from the Five Eyes intelligence agencies, the US military, cybersecurity analysts and other luminaries, President Trump signed an Executive Order (EO) adopting a series of measures to secure the information and communications technology and services supply chain. Additionally, the Department of Commerce placed Huawei Technologies Ltd., among other threatening companies associated with the Chinese government and military, on the Entity list. Already, the long overdue action to address Huawei is having an effect, and the supply chain measure will be implemented in a matter of months. From the point of view of the security and resilience of information communication technology, it is important that these efforts can take effect without delay or distraction and be pursued to the fullest. Notably these efforts are helpful because they target specific firms and products for specific reasons rather than blanket tariffs, which can, unwittingly, impact American consumers and companies and companies from allied countries.

The recent EO and the Entity List designation are crucial displays of leadership which demonstrate to US allies that addressing the resilience of networks requires principled and effective action. In addition to the direct effects of these measures, the indirect effects are that non-Chinese firms are already moving their production out of China.

These policies are undertaken to ensure that America's networks are safe from Chinese espionage, sabotage, surveillance, and hacking. The Trump Administration has a concurrent goal to lead the world in 5G mobile wireless technologies. Fortunately, the intellectual property for 5G is American made (Qualcomm, ARM etc), and Huawei cannot make 5G products without access to these patents. As such, the Entities List instrument is an appropriate response to a vendor with whom trust cannot be secured and which poses a national security risk. A separate but important Trump Administration goal is that the US lead in 5G wireless technologies. This goal requires secure networks, but it also requires that consumers and businesses be able to buy 5G enabled devices. As such, USTR must evaluate its proposed tariffs to see at what degree they could frustrate the policy goal of America leading in 5G.

The Role of Education

While the USTR has displayed its expertise during negotiations, it should also consider the role of consumer and industry education. Tariffs are an inelegant solution to a problem which is more efficiently solved when consumers have the appropriate information to make an informed choice. To be sure, China does a lot to make their products artificially cheaper (devaluing currency, opaque financial reporting etc.). With proper information and accounting of risk, Americans—consumers, chief technology officers, retailers, suppliers, distributors – will come to their own conclusions that security is worth paying for, and that any products and services made by firms affiliated with the Chinese government and military are never worth the purchase. To date, the voracious appetite for cheap Chinese goods has been fueled both by a lack of information about Chinese tech threats, as well as misinformation from earlier policymakers who downplayed threats of China on purpose.

The USTR could consider how education in the form of public explanation and disclosures (for example, warning labels written in plain English attached to products) could support the policy goals. The American people stand with the President on the seriousness of the situation and the importance of stopping China's abuse. USTR could offer constructive guidance on how and where to source products so they avoid the danger of Chinese government and military infiltration. The USTR could consider how to increase awareness among consumers, who will then become more critical of the products and services they consume from China in the future.

Unintended Consequences

As a policy scholar who studies and compares regulatory regimes across countries, I have observed that the law of unintended consequence is a constant feature of policymaking. While the USTR has a vital role vis-à-vis China, the proposed tariffs could unwittingly affect products made by American, European, Japanese, South Korean, Taiwanese firms and firms from countries of non-offending origin—the very countries with whom the US wants to strengthen trade going forward. These companies and countries also have a negative experience with China, and together can make common cause with US against China's abuse.

To illustrate how well-intentioned tariffs could backfire, consider that one formerly US firm, now owned in part by the Chinese-government, Lenovo, reported that they will benefit from the tariffs relative to their US and other country competitors. The company manufactures its products not just in China, but also in other Asian, European and North and South American nations. This setup has allowed Lenovo to ship its products to the US and avoid tariffs, even though Lenovo products have been flagged by the Federal Trade Commission, US State Department, US Navy and Five Eyes intelligence agencies and for their security deficiencies. Under these tariffs, firms such as Lenovo remain unaffected, while smaller, American vendors using items on the tariff list see their operating costs rise, giving Lenovo a competitive advantage.

I hope this concern is taken into consideration and that the Administration continues to perform admirably in sanctioning hostile actors that present risks to supply chains, while refraining from heavy-handed measures that raise the cost of doing business for American firms.

Thank you for considering these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Roslyn Layton", with a long horizontal flourish extending to the right.

Roslyn Layton, PhD
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*Please note that these comments do not necessarily reflect the opinion of the American Enterprise Institute. AEI takes no policy positions. This statement reflects the view of Roslyn Layton based upon her academic research and policy analysis.