Testimony of
Nathan Bowen, Executive Director, Public Policy
National Association of State Departments of Agriculture

As submitted to the
Section 301 Committee Public Hearing on China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

May 15, 2018
Main Hearing Room
U.S. International Trade Commission
500 E Street SW, Washington D.C. 20436

Statement of Interest

The National Association of State Departments of Agriculture (NASDA) appreciates the opportunity to provide the following comments regarding the request for public comment concerning the proposed determination of action pursuant to "Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation." While NASDA fully appreciates and agrees with the Administration's findings of China's restrictive economic and trade policies, we believe bilateral negotiations and engaging a coalition of like-minded countries, will more effectively advance the Administration's goal of free and fair trade with China, while minimizing the risk to agriculture. United coalitions will ultimately prove more successful to resolving these outstanding issues while at the same time not endangering the U.S. agricultural industry.

About NASDA

NASDA represents the Commissioners, Secretaries, and Directors of the state departments of agriculture in all fifty states and four U.S. territories. State departments of agriculture are responsible for a wide range of programs including food safety, combating the spread of disease, and fostering the economic vitality of our rural communities. NASDA members are also responsible for promoting their states' products in international markets, as well as managing regulatory and certification programs that facilitate agriculture and food exports. Because of this, and because of the important role exports play in ensuring a prosperous agriculture sector, promoting exports and increasing international trade is a top priority for NASDA.

In addition, NASDA members lead significant engagement on trade-related matters with the Canadian provincial ministers of agriculture and the Mexican state secretaries of agriculture via the Tri-National Agricultural Accord (Accord). The Tri-National Agricultural Accord represents a longstanding commitment among the senior state and provincial agricultural officials of North America to work together collaboratively on agricultural trade and development issues.

International Trade, China, and U.S. Agriculture: Opportunities

In 2015, U.S. food, agriculture, and related industries contributed $992 billion to U.S. gross domestic product (GDP), a 5.5-percent share. The industry is also a leading employer, supporting 21 million full- and part-time jobs at 11.1 percent of the U.S. workforce.[1] This contribution to the U.S. economy is supported and enhanced by the access that U.S. agricultural producers and food companies have to the global marketplace through the U.S.'s free trade agreements and other international trading agreements.

Thanks in large part to implementation of free trade agreements and the industry's efficient and innovative nature, U.S. food and agricultural exports have produced a trade surplus for nearly fifty years. Consistent growth over this period has resulted in over $152 billion worth of exports and, in 2016, created $193 billion in additional U.S. economic activity. These growing exports, particularly the Chinese market, have increasingly become a vital share and important source of value to U.S. production.

It is imperative that U.S. producers not lose ground in the vital Chinese market. While challenges and barriers currently exist to fully accessing the Chinese market, China was the second largest export market for U.S. agricultural products in 2017 as the U.S. sent more than $19.6 billion in exports to China (second only to Canada at $20.5 billion). In regards to U.S. farm production, U.S. agricultural exports to China represented 5% of U.S. cash receipts in 2017. Specifically, the export-cash receipt ratio is 29% for soybeans and 51% for sorghum, making China a vital market for these two commodities and the hardworking American farmers who produce them.[2] China also represents one of our best (if not *the* best) opportunity for major export growth in the near and long-term future.

The Chinese market has radically changed since China began its ascension to the World Trade Organization (WTO) in 1994. When China joined the WTO in 2001, its GDP was only $1.3 trillion; China's GDP is now $12.3 trillion, second only to the United States. As part of this growth in GDP, not only has the size of China's agricultural market made it attractive to American farmers and ranchers, but its expanding middle-class and increasingly sophisticated consumers, who demand a wide range of products, make it the attractive market it now is.

International Trade, China, and U.S. Agriculture: Challenges

While U.S. agriculture has largely benefited from a more open Chinese market, serious barriers and challenges to fully accessing the market still exist. For instance, the U.S. is currently using the WTO dispute settlement process to address China's grain policies as China continues to overly subsidize its domestic production while continuing to restrict imports.

On September 13, 2016 the U.S. requested consultations with China regarding the level of domestic support it provides for its wheat, rice, and corn producers. Since that time, the European Union (EU), Australia, Canada, and Thailand have joined the consultations, and it was announced on February 22, 2018 that the Dispute Settlement Body (DSB) will likely release a report no earlier than the third-quarter of

[1] United States Department of Agriculture, Ag and Food Sectors and the Economy, accessed at: https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/ag-and-food-sectors-and-the-economy.aspx.
[2] Farm Credit Administration, Major U.S. Agricultural Export Markets: China, Canada, and Mexico, accessed at: https://www.fca.gov/Download/EconomicReports/MajorUSAgriculturalExportMarkets.pdf

2018.[3] Later in 2016, on December 15, the U.S. requested consultations with China concerning the administration of its tariff rate quotas, including those for wheat, rice, and corn. On February 12, 2018 the WTO Director-General composed a panel to review the case.[4]

Secondly, China's approval process for imports of products developed using biotechnology continues to act as a significant barrier to U.S. agricultural goods. China continues to restrict imports of U.S. poultry, and U.S. rice is still not eligible to be shipped to China despite a 2017 import protocol. Finally, China bans the use of certain veterinary drugs and growth hormones deemed safe under international standards, restricting U.S. livestock exports.[5]

While these challenges exist to this day, we applaud the administration's efforts last year to reach an agreement with China on easing certain restrictions on U.S. agricultural products and biotechnology. As a result of the administration's negotiations, American beef became available in Chinese stores and restaurants, a market worth $2.6 billion, for the first time since 2003. While more progress should have been made and needs to be made in China's approval of U.S. biotechnology, the Chinese did approve two traits in June, 2017 for cotton and two traits in July, 2017 for corn.[6]

The discussion around U.S. agriculture and the opportunities and challenges it faces in accessing the Chinese market is germane to the discussion around China's acts, policies, and practices toward intellectual property and innovation because it demonstrates how through sustained bilateral negotiations with China, while also enlisting the help of our allies, the U.S. can ensure U.S. farmers and workers are treated fairly.

Real and Potential Threats to U.S. Agriculture

Agricultural goods and products are often the first line of attack for countries the U.S. enters into trade disputes with, and the current trade dispute with China has not proved an exception.[7] China has retaliated this year against U.S. agriculture after U.S. Section 201 and Section 232 enforcement as well as the threat of more tariffs under this investigation.

Section 201 Retaliation

On February 5 of this year, just days after the U.S. imposed Section 201 tariffs on solar panels and washing machines produced in China, the Chinese government launched an investigation into U.S. sorghum imports. Then, on April 17, the Chinese Ministry of Commerce announced the imposition of 179 percent preliminary anti-dumping duties on U.S. sorghum, citing substantial damage to its domestic

[3] https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds511_e.htm
[4] https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds517_e.htm#
[5] United States Department of Agriculture, Despite Continued Challenges, China Offers Huge Potential for U.S. Farm Exports, accessed at: https://www.fas.usda.gov/newsroom/despite-continued-challenges-china-offers-huge-potential-us-farm-exports
[6] https://gain.fas.usda.gov/Recent%20GAIN%20Publications/Agricultural%20Biotechnology%20Annual_Beijing_China%20-%20Peoples%20Republic%20of_12-29-2017.pdf
[7] https://www.farmersforfreetrade.com/wp-content/uploads/2018/02/The-Cost-of-Retaliation.pdf

industry. As China was the destination for nearly 80 percent of U.S. sorghums exports, totaling $867 million, American sorghum farmers are severally hurt by this action. As cargos en route to China have scrambled to identify new, less lucrative markets, U.S. agricultural commodities trader Archer Daniels Midland Co. reported on May 1 that it will take a $30 million hit to its profits this second quarter due to the sorghum trade dispute.

Section 232 Retaliation

In response to U.S. tariffs imposed on steel and aluminum under Section 232 trade enforcement action announced on March 23, the Chinese on April 2 announced additional tariffs on roughly $2 billion in U.S. food and agricultural exports. Fresh fruits, dry fruits, nut products, wine, modified ethanol, and ginseng are now all facing an additional 15 percent tariff while pork and pork products are facing an additional tariff of 25 percent.[8] These tariffs increase the costs of exporting, depress prices of farm futures, and incentivizes China to look for other import markets.

Potential Section 301 Retaliation

In the same week China increased tariffs on $2 billion worth of U.S. food and agricultural goods, the Chinese proposed levying additional tariffs of 25 percent on U.S. agricultural and food products, impacting approximately $16.5 billion worth of imports from the U.S. The announcement came just hours after the U.S. proposed implementing $50 billion worth of tariffs in response to the affirmative findings of the Section 301 investigation. The following goods and products are being targeted: soybeans, corn and corn products, wheat, sorghum, cotton, beef and beef products, cranberries, orange juice, and tobacco and tobacco products.[9] Of these, soybeans represent the U.S.'s single largest agricultural export to China, as U.S. soybean farmers exported nearly one-third of the country's 2017 soy production to China. At a time when crop prices are down 40 percent since 2013 and farm income has fallen 50 percent, farmers cannot afford additional tariffs. While China has not yet implemented these proposed tariffs, American agriculture is already starting to see signs of obstruction in the market place.

It was reported on May 2 that China has virtually stopped importing U.S. soybeans as the Chinese are deliberately, exclusively relying on Canadian and Brazilian soybeans at this time (USDA data shows that China canceled a net 62,690 metric tons of U.S. soybean purchases in the two weeks ending on April 19).[10] Additionally, Chinese customs are ramping up checks on fresh fruit imports from the U.S., which could delay U.S. shipments (previously, the Chinese inspected only 30 percent of shipments).[11] Similarly, Chinese customs is also ramping up its checks on U.S. pork imports as they are now sampling from about 20 percent of U.S. pork shipments instead of the previous 5 percent. What's just as significant is that

[8] https://www.fas.usda.gov/data/china-china-imposes-additional-tariffs-selected-us-origin-products
[9] https://www.fas.usda.gov/data/china-china-responds-us-section-301-trade-action-announcement
[10] https://www.bloomberg.com/news/articles/2018-05-02/china-has-stopped-buying-u-s-soybean-supplies-bunge-ceo-says
[11] https://www.reuters.com/article/us-usa-trade-china-fruits/china-customs-expands-checks-on-u-s-fruit-imports-sources-idUSKBN1I428K

there has been no change in the level of checks on similar imports from other countries, including Canada and the EU. [12]

Section 301 Products, Duty Rates, and Aggregate Level of Trade

NASDA notes the "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," and understands there are legitimate commercial concerns that need to be addressed. However, NASDA strongly believes that all bilateral and multilateral negotiating opportunities should be exhausted before the USTR imposes an additional duty of 25 percent on selected Chinese products. We urge the U.S. government to negotiate with China to gain agreement to cease the unlawful commercial activities, thereby avoiding a trade confrontation and eliminating the need to impose tariffs.

Thus, in regards to "the specific products to be subject to increased duties, including whether products listed in the Annex should be retained or removed, or whether products not currently on the list should be added," we believe **none of the products should be subject to increased duties**.

Similarly, in response to the request to comments on the "level of the increase, if any, in the rate of duty," NASDA recommends there **be no increase in the rate of duty at this time**.

Finally, concerning the "appropriate aggregate level of trade to be covered by additional duties," NASDA repeats its belief that there should **be no additional duties levied at this time**.

Trade actions that trigger retaliation threaten rural jobs and fall disproportionately on agriculture, with immediate adverse effects that greatly outweigh benefits.

Changing the Status Quo

NASDA is acutely aware of, and acknowledges, the long-standing challenges and obstacles that U.S. companies, manufacturers and their workers confront when doing business with China and your Administration's desire to meaningfully address actions by China that impede U.S. trade and investment.

Tariffs may provide some short term relief to a few industries in the short term, but they will also increase consumer and business costs and lead to retaliatory tariffs. Instead of such a limited yet potentially detrimental targeted action, NASDA urges and stands ready to support intense and timely bilateral negotiations to avoid the negative impacts of increased tariffs or other restrictions on economic engagement with China.

Moreover, NASDA urges the administration to pursue full enforcement of existing international and domestic trade rules, including the initiation of additional WTO cases, engaging and coordinating with our trade partners and through regional and global channels, such as the Asia-Pacific Economic Cooperative

[12] https://uk.reuters.com/article/uk-usa-trade-china-pork-exclusive/exclusive-china-ramps-up-checks-on-u-s-pork-imports-in-potentially-costly-slowdown-idUKKBN1I91IV

Forum and G20 in order to reduce and eliminate serious and inappropriate trade and investment impediments deployed by China.

Conclusion

NASDA appreciates the opportunity to comment on the Administration’s proposed trade enforcement actions. While there are legitimate issues for the administration to address with China, it is imperative these issues be addressed with a coalition of likeminded countries in order to ensure U.S. agricultural producers are able to continue to take advantage of export opportunities with this vital export market. A stable trade policy environment helps facilitate predictable, rules-based trade while minimizing protectionist tariffs and disruptions to trade.