



## DHH WASHINGTON DC LAW OFFICE

**Docket No. USTR-2018-0005**

**RE: Proposed Testimony of DHH Washington DC Law Office P.C. in Response to the Request for Public Comment Concerning the Proposed Determination of Action Pursuant to 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 (the "Report")**

NOW COMES DHH Washington DC Law Office P.C., a U.S. law firm registered in the District of Columbia ("DHH"), to present the following oral testimony (the "Testimony") in front of the Section 301 Committee at the public hearing to be held at 500 E Street SW, Washington DC 20436 ("Hearing"). Our scheduled time is with Panel 6 on May 15, 2018 beginning at 5:15 P.M..

The Testimony will be provided by the following persons on behalf of DHH:

Name: John Tang, Esq. Male, admitted to DC Bar  
U.S. Citizen  
Address: 1300 Pennsylvania Ave., NW, Suite 700  
District of Columbia 20004  
Phone: 1-202-204-3077  
Email: johntang@deheng.com

Through our Testimony, DHH pleads with the Committee to re-evaluate its proposed determination of action on behalf of itself and its clients. The proposed additional 25% tariff across the board on approximately 1,300 products from China, approximately \$50 billion in new taxes, would be detrimental to the U.S. economy, not only to Chinese exporters. Compounded with the fact that these actions would not resolve the alleged intellectual property violations in the Report, we respectfully request that this Committee reconsider the onerous, unjust, arbitrary taxation proposed in the Report.

DHH is the Washington D.C. branch office of Beijing DHH Law Firm. Located in the Ronald Regan Building of International Trade, we have been established in Washington D.C. for over 3 years. With over 1,100 attorneys and over 30 offices worldwide, we are a full service business firm representing clients from Fortune 500 companies to small and medium sized enterprises. Many of our clients are involved in the back and forth trade between the United States and China,

whether that is importing from or exporting to China. Therefore many of our clients, as well as DHH, have a vested interest in this Hearing and the outcome.

First, the proposed actions in the Report does not address the alleged intellectual property issues identified in the Report. As an U.S. licensed attorney with many Western clients in China, I believe that intellectual property protection is one of the most important aspects of doing business anywhere. My colleagues and I have relied upon the Chinese legal system to protect our clients' intellectual property more frequently as intellectual property protection continues to grow in China. Admittedly there are concerns amongst some Western and Chinese companies regarding various aspects of intellectual property rights addressed in the Report (although some alleged violations are unfounded and are just baseless acquisitions), but there is absolutely no correlation between the proposed additional tariffs and the alleged intellectual property issues in the Report. In fact, the methodology of developing the list of 1,300 products to tax is as follows:

“Trade analysts from several U.S. Government agencies identified products that benefit from Chinese industrial policies, including Made in China 2025. The list was refined by removing specific products identified by analysts as likely to cause disruptions to the U.S. economy, and tariff lines that are subject to legal or administrative constraints. The remaining products were ranked according to the likely impact on U.S. consumers, based on available trade data involving alternative country sources for each product. The proposed list was then compiled by selecting products from the ranked list with lowest consumer impact.”

No where in the above calculation was protecting intellectual property rights, technology transfers, or innovation, which is the main point to the 301 investigation, ever considered. In other words, the proposed “remedy” does not address the issues presented. Instead, those companies that are subject to the additional 25% tax, their downstream customers, and the end-user/consumer all have to be punished for and burden with the additional 25% tax for nothing they did wrong.

For example, I have a client that manufactures Electro Hydraulic Steering Pump Assembly (HTS Code: 8413.60.0030 – Other rotary positive displacement pumps, Hydraulic fluid power pumps: Gear type), and ships to its own subsidiary in the U.S., which is then finished and supplied ultimately for use in the Jeep Wrangler. This client employs 26 people in the suburbs of Detroit, Michigan and has already invested over \$6 million in its operations. This client is an active member of the community and does not participate in any of the alleged intellectual property issues identified in the 301 investigations. Yet, this client will face a serious challenge when its U.S. operations will no longer be profitable due to the proposed additional 25% tax. This client will either have to withdraw its investments in the U.S., which means job losses in one of the

toughest cities in America, or pass on the cost to its customer, which ultimately mean an increase in price of the Jeep Wrangler. My client is just one example in one industry.

Second, the proposed actions in the Report would not resolve the issues identified in the Report. Given that the proposed additional taxes does not address the intellectual property issues addressed by the 301 investigation, we would have to assume that this Administration hopes that the additional 25% tax somehow pressures the Chinese government to deviate from their alleged intellectual property violations. This premise is flawed in that it is based on flawed presumptions and ignores the facts.

The main flaw is the presumption that the Chinese government controls the actions of the Chinese companies. The flawed theory then deduces that if we pressure the Chinese government through trade sanctions, we will get cooperation on intellectual property protection; or, vice versa, if we pressure the Chinese government on intellectual property protection, we will be able to lower our trade deficit. Chinese investment in U.S. technology, Chinese acquisition of U.S. technology, the formation of joint venture partnerships between U.S. and Chinese counterparts are based on a market driven need: U.S. companies often need capital infusion and Chinese companies often need new product lines. A report by the Rhodium Group found that in 2017, private investors from China accounted for about 90% of investment in the U.S. The Chinese government does not have direct control over this market. Therefore, pressuring the Chinese government may not be the best way to achieve protection of intellectual property, technology transfer and innovation.

As a side note, if these tariffs were to actually succeed in limiting Chinese investment in U.S. technology, this result would be counter productive to the fostering of innovation and intellectual property in the U.S.. A joint report by the National Committee on US-China Relations and the Rhodium Group found that since this dispute has carried on, Chinese investment in the U.S. dropped by more than 90% year-on-year in 2017. Chinese investments are a major source of capital in the venture capital market in the U.S., especially in Silicon Valley. If this source of capital is stopped, then many innovations will not even have a chance to to be “stolen” by the Chinese.

Third, the proposed actions will be detrimental to the U.S. economy. Aside from not actually addressing or resolving the issues identified in the 301 investigations, the proposed action would be detrimental to the U.S. economy. The retaliatory sanctions from the Chinese on American agricultural, chemicals, cars and aircraft products would be felt throughout the U.S. China has already imposed tariffs on about \$3 billion worth of U.S. products, but another \$50 billion retaliatory tariffs are being considered on 106 U.S. products. As Ken Jarrett, President of the American Chamber of Commerce in Shanghai warned in his comments to the Section 301 Investigation late last year, “Politically driven actions such as imposing broad tariffs are likely to

result in equally broad counteraction by the Chinese government. A tit-for-tat trade war would be damaging for all parties.”

For example, one of the most prominent product that the Chinese will put restrictions on is soybeans. Reuters report that in April China’s soybean imports already fell by 13.7% from a year ago to 6.9 million tonnes. China is the largest soybean importer in the world with \$34 billion worth last year. A third of that, \$12.4 billion, was from the U.S., making it the second most valuable U.S. export to China (after aircrafts). However, the looming 25% import tax on U.S. soybean imports will harm states like Illinois, Iowa, Minnesota, Indiana, Nebraska and Ohio, where soybean exports are either the top export or in the top 3. Meanwhile, Brazilian soybean exporters are flocking to China to seize this opportunity to gain market share (Brazil is the second largest exporter of soybeans globally). Our Chinese clients have seen a significant increase in South-American sellers visiting China. Even a short-term trade dispute between U.S. and China can lead to long lasting market damages.

Additionally, as previously addressed, the American consumer will be the ultimate payer of the increase of 25% tariff on these Chinese imports. For example, according to the U.S. Consumer Technology Association (CTA), about 47% of all TVs sold in the U.S. are imported from China. After the proposed tariffs, American shoppers could expect to pay about 23% more for their TVs. In dollar figures that means U.S. consumers could pay an additional \$711 million a year for their TVs. Other items important include computer components, LED lights, batteries, toys, textiles, etc. The key point is that the American consumer is writing the check for the proposed additional 25% tax on approximately 1,300 Chinese products.

In conclusion, our law firm as a small representation of the Chinese investments in the U.S., really urge this panel to consider the negative effects of the proposed actions have on us, as U.S. taxpayers and businesses and urge an alternative negotiated resolution with the Chinese government over the intellectual property concerns.

Thank you again for this opportunity to provide my comments and would be happy to offer further assistance in any areas that this Committee finds appropriate.



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John Tang, Esq.  
DHH Washington Law Office P.C.