Public Testimony of

The Electronic Transactions Association

Regarding The

Section 301 Investigation Into

China's Acts, Policies, and Practices

Related to Technology Transfer,

Intellectual Property and Innovation

Docket No. USTR-2018-0005

Panel 12 at 3.45 PM

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Testimony Made by

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A. Who We Are

- To the Members of the Section 301 Committee, the Electronic Transactions Association ("**ETA**") appreciates the opportunity to submit this statement for the record.
- ETA is an international trade association representing more than 500 companies in the payments industry worldwide.
- Given time constraints, we respectfully refer you to our written comments, which provider greater detail than I am able to provide in these five minutes.

B. ETA's Position

- ETA opposes increased tariffs on a single tariff line – cash registers and point-of-sale terminals (HTSUS 8470.50.00) – for two reasons.
  - First, it would have no effect on China's policies; and
  - Second, it would cause disproportionate economic harm to U.S. interests, in particular small- or medium-sized businesses and U.S. consumers.

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C. ETA's Reasons

Reason 1: No Effect

- Three points:
  - U.S. demand is shrinking;
  - Production is staying in China; and,
  - This one tariff line has no impact on China.

i. Shrinking Demand

- Recent data show that manufacturers shipped 54.2 million payment card authorization terminals with integrated chip and/or magnetic stripe card readers.[1]
- Only 5 million of these devices were shipped to the U.S. market.
- So the U.S. market represents less than ***10 percent*** of worldwide market share.[2]
- Significantly, The Asia-Pacific region has seen an ***uptick*** in worldwide market share for the Devices and

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[1] The Nilson Report, Issue 1114 (July 2017) at 1 (the leading publication covering payment systems worldwide).

[2] *Id.* at 10 (Chart showing POS Terminal Shipments by Region for 2016).

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a ***28.3 percent*** increase in units.[3]

- By contrast, the market share of the United States declined over the same period, with Latin America and the Caribbean ***overtaking*** the United States in shipments of new POS terminals.[4]

- The conclusion: any further downturn in sales to the United States will be absorbed elsewhere, in particular Asia.

  - There is a growing demand for these Devices in ***non-***U.S. markets.

  - Chinese manufacturers ***are already*** shifting production to alternative markets.

ii. Production Is Staying In China

- 95 percent to 100 percent of ETA members' products are manufactured in China (and use a mixture of U.S. ***as well as European*** intellectual property).

- Shifting production to the United States is not an

[3] *Id.* at 11. ("The Asia-Pacific region received 31.7 million POS terminals in 2016, up 28.3%, an increase of 7.0 million units")

[4] *Id.*

option.[5]

- U.S. inventories will last roughly three to four months, and any shift to a third country market would take at least 12 to 18 months.[6]

- Any shift in production, if one even occurs, would happen eight months to fourteen months after U.S. inventories are exhausted and would result in increased costs of ten to fifteen percent (as opposed to the tariff's twenty-five percent increase).[7]

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[5] ETA members do not point primarily to increased labor and other costs, although these costs matter. Rather most cite a lack of secondary facilities and infrastructure to support production in sufficient quantities, which means that the increased fixed manufacturing costs required to ramp up production do not justify a shift.

[6] The costs associated with shifting production would be in the millions of dollars per manufacturing line. This cost would be multiplied significantly by the number of lines utilized by each manufacturer. Aside from these other costs, the primary technical issue associated in shifting production is the complex EMV certification and approval requirements. EMV certification and approval generates millions of dollars in internal engineering expense per ETA member to certify different hardware.

[7] It will not result in increased U.S. production. It would impact less than 10 percent of worldwide demand (making an actual shift less likely). It would result in increased internal certification and approval expenses (in the short term). And, if it does happen, it would not be to the United States and would result

- All increased costs would be passed on directly to the retailer who purchases the product, as the margins in the industry prevent such increased costs from being absorbed by the manufacturer.

iii. No Impact on China

- Imposing a 25 percent tariff on these Devices accounts for ***less than one-quarter of one percent of*** the overall impact of the proposed measure.[8]

- Including these products does nothing to influence

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in an estimated 10 to 15 percent year-on-year cost increase due to various factors and depending on which products lines are moved (in the long term and for the foreseeable future).

[8] Assume an average price of $100 per cash register or point-of-sale terminal and total U.S. annual imports of 5,000,000. This results in imports valued at $500,000,000. A 25 percent *ad valorem* tariff generates $125,000,000 in revenue. The $125,000,000 value is 0.25% of the proposed $50 billion in tariffs proposed by the administration. Note: this is a conservatively high percentage. The average price for the Devices may be lower depending on the specific devices purchased during the relevant period, and this assumes all imports are from China (whereas a very limited number – less than five percent – may be from other countries).

China.

- But it has significant ramifications on businesses and consumers here at home.

Reason 2: Disproportionate Impact Here

- EMV® is a global standard for credit and debit payment cards based on chip card technology and refers to the card schemes Europay, MasterCard, and Visa, which are the original card schemes that developed it.
- Large retailers have already upgraded their POS terminals to meet the new EMV card liability shift.[9]
- As small- and medium-sized businesses move to upgrade to new devices, any price increase disproportionately impacts them.
- Like the manufacturers, these businesses do not have the margins to absorb a 25 percent cost increase.[10]

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[9] The Nilson Report, Issue 1114 (July 2017) at 11 ("[l]arge retailers had already upgraded their POS terminals in 2015 to meet the EMV card liability shift. Many small businesses still had not upgraded to EMV terminals by the end of 2016.").

[10] ETA references the written comments submitted into the record at regulations.gov by Marc Sherman from Vermont. *See* USTR-2018-0005-0250, Tracking Number 1k2-92r5-momt. Mr. Sherman describes himself as a retailer and small business owner. He employs "up to 25 staff members including several high school and college students who

- Either they will not purchase these devices or will pass on the increased costs to U.S. consumers in the form of increased prices.[11]
- If they do not buy updated devices, U.S. consumers could encounter any number of issues, such as greater risk of identity card theft, longer lines at stores, *etc.*[12]

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are in their very first job." Concerned about the proposed tariffs, he warns that, "my business, my employees and my customers can not [sic] absorb more cost increases" and he cautions that a combination of "slimmer margins" and the increased tariffs could "jeapordiz[e] the viability of my business."

[11] ETA shares the concerns expressed also by the National Retail Federation (**NRF**) and the Retail Industry Leaders Association (**RILA**), both of which argue against imposing a measure that results in higher prices for U.S. consumers. *See* NRF summary testimony at USTR-2018-0005-0328, Tracking Number 1k2-92r9-pzu1 ("The tariffs will result in increased costs which will be passed along to the retailer and then ultimately the consumer.") and RILA summary testimony at USTR-2018-0005-0275, Tracking Number 1k2-92r8-pq4v ("We agree that punishing American working families with higher prices on household basics like clothing, shoes, electronics, and home goods is not a solution.").

[12] For example, if retailers decide to have only 4 checkout lanes rather than 5 because of the increased costs.

D. Conclusion

- As proposed, the 25 percent tariff increase on HTS 8470.50.00 (cash registers and point-of-sale terminals) will have no discernible impact on China's acts, policies or practices.
- But it will disproportionately impact small- and medium-sized businesses.
- For these reasons, ETA respectfully requests that this sole tariff line be excluded from any remedy.
- ETA stands ready to work with the interagency Section 301 Committee cooperatively toward our common goal of influencing China to curb its policies.

Thank you for your time and consideration. I welcome any questions you may have.

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