



National Fireworks Association

Executive Director

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June 17, 2019

William L. Busis
Chair, Section 301 Committee
United States Trade Representative
Office of the United States Trade Representative
600 17th ST. NW
Washington, D.C. 20508

Re: USTR-2019-0004- 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; Comment Submission

Dear Mr. Busis:

On behalf of the National Fireworks Association ("NFA"), I respectfully submit these comments pursuant to the United States Trade Representative's ("USTR's") Federal Register notice dated May 17, 2019.¹ Specifically, NFA seeks the exclusion of certain fireworks and pyrotechnic articles, which presently appear on the list of products to be subject to additional duties under the Administration's Section 301 action. These products are properly classified under HTS subheading 3406.10.90, providing for "fireworks, nesoi (including Class 1.4G)"; HTS subheading 3604.10.10, providing for "display or special fireworks (Class 1.3G)"; and HTS subheading 3604.90.00, providing for "signaling flares, rain rockets, fog signals and other pyrotechnic articles, excluding fireworks."

NFA's membership is largely comprised of distributors and retailers, the vast majority of which are small family-run businesses and non-profit organizations. Many of the fireworks stands and tents found in grocery store parking lots and seen on the side of the road in rural America serve

¹ 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, 84 Fed. Reg. 22,564 (May 17, 2019).

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as fundraising opportunities for school booster programs, churches and veterans' groups. The NFA provides a forum for manufacturers, distributors, exhibitors and the public that enjoys using fireworks for the exchange and dissemination of knowledge and the positive promotion of the fireworks industry in a fair and equitable manner. The NFA works to improve the business conditions of the U.S. fireworks industry, address the needs of companies operating in a highly seasonal market and to preserve the tradition of buying, manufacturing, selling, using and watching fireworks on Independence Day as well as other celebrations and holidays.

NFA respectfully requests that fireworks and certain pyrotechnic articles not be included on the most recent list of products for which the U.S. Trade Representative has proposed for the application of additional duties up to 25 percent. Imposing tariffs on these products at any amount will cause harm not only to the network of U.S. retailers and distributors who supply fireworks, but also consumers who enjoy them.

While NFA supports the Administration's objective to combat China's unfair intellectual property practices, the Association is concerned that the present approach will have unintended consequences for its member companies and their employees. Many of our members import fireworks and pyrotechnic articles in the absence of a substitutable domestic product, or where domestic production falls short of demand. The proposed tariffs would limit access to crucial supplies, or result in significant cost increases that would be harmful to domestic companies. Trade policy should not be carried out on the backs of small business. NFA does not believe this is the Administration's intention, but it will be the effect.

Fireworks have not been made in the United States in commercially significant quantities to support domestic consumer demand since the early 1990s. Firework production is labor intensive and highly regulated – these two factors have made it increasingly difficult and cost-prohibitive for these products to be made in the United States. Over the last several decades, domestic companies have exited the market or scaled back production significantly, ceding market share to imports. The vast majority of firework and pyrotechnic retailers and distributors now import these goods and many have forged long-standing relationships with foreign suppliers. Of the few companies that do produce their own fireworks and pyrotechnics in the U.S., many are firework display companies producing for their own internal use. Others companies must supplement their domestic production with imports, and many retailers and wholesalers solely rely on imports.

Overwhelmingly, China is the top supplier of fireworks and pyrotechnics. In 2018, U.S. imports of display or special fireworks (Class 1.3G) from China was 7,901,055 kilograms, or 95 percent of all imports. For imports of fireworks including Class 1.4G, 36,011,586 kilograms, or 98 percent of all imports were from China. The trend was similar for signaling flares, rain rockets,

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fog signals and other pyrotechnic articles imported during the same time period – 852,767 kilograms were imported from China, amounting to 88 percent of all imports. There simply is not enough volume from domestic sources – or imports from all other countries combined – to substitute China-origin fireworks and pyrotechnic articles at the level of current demand.

For the fireworks industry as a whole, the situation is concerning. The consumer fireworks industry has an estimated economic impact of \$900 million a year, supporting retail and restaurant sales as well as local business sales in small communities throughout the country. The proposed tariff increases are estimated to result in over \$200 million. For an industry that operates with razor-thin margins, this means many of our members will have no choice but to pass-on the increased costs in their entirety to the consumer. Fireworks retailers and distributors operate in a business environment that is “hyper” seasonal. For many fireworks distributors, 85 percent of annual revenues are made in one month – July. For retailers, approximately four-fifths of annual revenue is made in five days or fewer in that same month. As a result, retailers cannot afford to spread out cost increases a few times over the year, these costs must be passed on once.

Our members estimate that the cost increase to consumers could be upwards of 20 percent at the point of sale – and there is reason to believe those cost increases could be seen as early as this year. Fireworks distributors and wholesalers prepare for the Fourth of July and summer season ordering products a year in advance, typically August and September, which means the fireworks that will be sold this year will not be subject to additional tariffs. However, the prospect of tariffs applying to next year’s inventory has concerned many wholesalers who are considering whether to increase prices this year in order to have cash on hand to cover the anticipated increased tariff-associated costs next year. If they do decide to hedge the possibility of tariffs, American consumers will either pay more for fireworks this Fourth of July season, or buy less fireworks.

Cost increases aside, our industry has already experienced disruptions. The constant threat of tariffs has created an unprecedented level of business uncertainty. Responding to the proposed tariff increases has meant that NFA members have been distracted from the day-to-day management and operational activities of their small businesses and have had to expend or divert limited resources to address the pending threat.

NFA appreciates the Administration’s efforts to address unfair Chinese intellectual property practices and support domestic manufacturing, but believes the policy will result in unintended consequences for American retailers and consumers. As much as many of our members support efforts to revive domestic firework production, the application of prohibitive tariffs on imported fireworks will not bring U.S. industry back when domestic regulations present the significantly higher barrier. Without options to source fireworks and other pyrotechnic articles domestically or from other third countries, the harm caused by the proposed tariff increase could

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be potentially irreparable. Many of our member organizations are small businesses that have been family-run in this country for generations and are not in a position to absorb these costs for any length of time, let alone the few days they have to earn the vast majority of their annual revenues.

For the reasons set forth above, NFA urges the Administration to exclude the fireworks and pyrotechnic articles described herein from the final list of products to be subject to additional duties under the Administration's Section 301 action.

Respectfully submitted,



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National Fireworks Association