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May 10, 2018

The Honorable Robert E. Lighthizer  
U.S. Trade Representative  
Office of the United States Trade Representative  
600 17<sup>th</sup> Street, NW, Room F516  
Washington, D.C., 20508

**Re: Docket No. USTR-2018-0005  
Proposed Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices  
Related to Technology Transfer, Intellectual Property, and Innovation.**

Dear Ambassador Lighthizer,

The Associated General Contractors of America ("AGC") respectfully submits the following comments in response to the Request for Public Comment and Notice of Public Hearing issued by the Office of the United States Trade Representative ("USTR") in the above-referenced proceeding (83 Fed. Reg. 14,9006 (USTR Apr. 6, 2018)) and 19 U.S.C. § 2414 (b). Furthermore, AGC respectfully requests that specific items posing potentially serious harm to the construction industry be **removed from the list of proposed tariff increases** laid out in USTR Docket 2018-0005-0001, Section 301.

### **Background**

AGC of America is the nation's leading construction trade association, representing more than 27,500 member-companies in 51 U.S. states. AGC's 6,700 general contracting firms, more than 9,000 specialty contracting firms, and almost 12,000 service providers and suppliers are engaged in all forms of nonresidential construction and consist primarily of small and medium-sized businesses. Our members are dedicated to rebuilding America's infrastructure that the U.S. economy needs if it is to remain competitive on the global stage.

AGC commends USTR's willingness to confront the Government of China over its practice of forced technology transfers, intellectual property theft, and acts/policies threatening American innovation. State-directed Chinese firms have unfairly profited from American ingenuity, and U.S. companies should not be punished for entering the Chinese market. The issues addressed in the Section 301 investigation are alarming and warrant strong, deterrent action.

Despite this, AGC is intensely concerned that USTR's proposed response could cause undue injury to American construction firms, which may include driving up prices for essential equipment/products and further harming an industry that is already facing cost increases under the steel and aluminum tariffs. USTR's proposed 25 percent *ad valorem* rate on 1,333 Chinese products includes an array of products necessary to carrying out a wide variety of construction projects. Moreover, these products—many of them non-automated—seem to fall outside the scope of USTR's stated aim of countering the Chinese Government's "Made in China 2025" Notice. AGC of America strongly urges that the U.S. construction sector's long-term health be considered with great care when finalizing a response.

## **Beyond the Scope**

USTR’s Section 301 investigation into the “laws, policies, practices, or actions of the Government of China that may be unreasonable or discriminatory and that may be harming American intellectual property rights, innovation, or technology development,” resulted in a list of 1,333 Chinese products that specifically profit from, or advance, the Government of China’s “industrial policies, including Made in China 2025.”

The Made in China 2025 Notice (MIC 2025) identifies 10 key sectors of the Chinese economy for prioritization, as the country seeks to gain a competitive edge over the United States by 2025. Those sectors include: (1) next generation information technology; (2) high-end numerical control machinery and robotics; (3) aerospace and aviation equipment; (4) maritime engineering and high-tech vessel manufacturing; (5) advanced rail equipment; (6) energy-saving and new-energy vehicles; (7) electrical equipment; (8) new materials; (9) biomedicine and high performance medical devices; and (10) agricultural equipment. As such, it is wholly unclear how “concrete or mortar mixers” (84743100) “benefit from Chinese industrial policies, including Made in China 2025.” Please refer to **Figure I**, for a robust, but by no means comprehensive, list of other construction-related items warranting further review and subsequent exclusion.

AGC urges USTR to more closely review the list of HTS subheadings in Figure I and exclude products that do not benefit from MIC2025, contribute to China’s successful execution of its MIC2025 aims, or result from “laws, policies, practices, or actions” that harm “American intellectual property rights, innovation, or technology development.”

## **Price Increases**

Tariffs of 25 percent on the proposed construction-related equipment/materials injects pricing uncertainty into an industry that depends on long-term planning. Without stable pricing, the industry faces the prospect of project delays and project cancelations. Additionally, cost increases would most adversely affect small and medium-sized companies, which are more likely to lose project bids to larger construction firms that can more easily absorb cost increases. This is in direct conflict with USTR’s stated goal of avoiding the imposition of “additional duties” on “particular product[s]” that “would cause disproportionate economic harm to U.S. interests, including small- or medium-size businesses and consumers.”

Cost increases affect both private and public construction projects. If bid prices rise, public owners with fixed budgets may be forced to reduce the number and/or scope of projects they put out, including schools, highways and bridges. Some private projects could also be negatively affected, as construction cost increases make them uneconomic. Increased infrastructure investment—a key plank of President Trump’s campaign platform—would also likely be hindered by increased project cost estimates from rising equipment/material prices.

These proposed tariffs could further exacerbate the outsized effect that the Administration’s 25 percent steel and 10 percent aluminum tariffs have already had on the construction industry. The steel and aluminum tariffs have triggered a surge of orders that mills say they cannot fill on a timely basis, causing prices for certain aluminum and steel products to rise sharply. Operations and financing of current, budgeted projects are already being disrupted, and AGC members are reporting instances of 30 percent price increases for certain, vital steel products. This has, in turn, made certain existing projects unprofitable. To impose additional tariffs on essential construction equipment/materials, would only intensify the economic harm caused by the steel and aluminum tariffs.

## **Employment**

The proposed tariffs list could also have a direct and negative impact on construction employment. According to a new study jointly published by the National Retail Federation and the Consumer Technology Association, USTR's proposed \$50 billion worth of tariffs could put 23,468 construction jobs at risk.<sup>i</sup> That figure does not account for any Chinese retaliatory action. Should the Government of China follow through on its threat to impose \$50 billion worth of retaliatory tariffs, that number rises to 29,455. Most concerning, should the China-U.S. trade spat accelerate and the tit-for-tat trade dispute unfold in full, the construction industry could see 135,779 jobs threatened, more than any other sector except agriculture. For an industry already experiencing chronic worker shortages, a trade skirmish of the sort described above could prove irrevocably detrimental, as American workers will enter other, more stable sectors.

In the short-term, the proposed list of tariffs could also compound projected employment losses brought about by the steel and aluminum tariffs. The projected number of jobs that could be affected by the metals tariffs is staggering. According to a Trade Partnership Worldwide report prepared for the Business Roundtable, 66,022 construction jobs could be at risk.<sup>ii</sup> The Coalition for a Prosperous America (CPA), a domestic agriculture, manufacturer and union coalition, puts that figure at 10,635 construction jobs.<sup>iii</sup> AGC urges USTR to de-escalate this trade conflict as cleanly and as swiftly as possible, to shield the American construction sector from significant job losses.

## **Conclusion**

Again, we commend your willingness to hold the Chinese government accountable for unfair and unlawful trade practices, but we also implore you to consider what effect the proposed tariffs will have on construction firms trying to rebuild the nation's crumbling infrastructure. Tariffs on essential construction products undercuts your commitment to bolster American competitiveness, and many of the listed products do not pose an imminent risk of aiding China in advancing its "Made in China 2025" vision.

More targeted tariffs would diminish negative effects on the US economy and limit the construction industry's losses. AGC appreciates your willingness to review these comments and looks forward to ongoing consultation with you and your colleagues as USTR moves forward to address China's unfair acts, policies, and practices.

While we urge that no tariffs be imposed on products essential to the industry, if action must be taken, we recommend that USTR scrutinize its list with greater care to ensure that industry-essential equipment and products be struck from the final tariffs list.

Sincerely,



Jimmy Christianson  
Vice President, Government Relations

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<sup>i</sup> Francois, Joseph and Baugham, Laura: "Tariffs on Imports from China: The Estimated Impacts on the U.S. Economy," The Trade Partnership, April 30, 2018.

<sup>ii</sup> Francois, Joseph and Baugham, Laura: "Round 2: Trading Partners Respond, The Estimated Impacts of Tariffs on Steel and Aluminum," The Trade Partnership, March 13, 2018.

<sup>iii</sup> Ferry, Jeff: "Steel & Aluminum Tariffs Produce Minimal Impact on Jobs, GDP: CPA Economic Model Refutes Alarmist Trade Partnership Study," Coalition for a Prosperous America, March 20, 2018.

**Figure I**

**HTS**                      **Product Description**  
**Subheading**

84253901 ...	Winches nesi, and capstans, not powered by electric motor
84261200 ...	Mobile lifting frames on tires and straddle carriers
84264100 ...	Derricks, cranes and other lifting machinery nesi, self-propelled, on tires
84264900 ...	Derricks, cranes and other lifting machinery nesi, self-propelled, not on tires
84269900 ...	Derricks, cranes and other lifting machinery nesi
84272040 ...	Self-propelled works trucks not powered by an electric motor, rider type forklift trucks
84272080 ...	Self-propelled works trucks not powered by an electric motor, fitted with lifting and handling equipment, nesi
84283100 ...	Continuous-action elevators and conveyors, for goods or materials, specially designed for underground use
84283200 ...	Bucket type continuous-action elevators and conveyors, for goods or materials
84283300 ...	Belt type continuous-action elevators and conveyors, for goods or materials
84283900 ...	Continuous-action elevators and conveyors, for goods or materials, nesi
84289002 ...	Machinery for lifting, handling, loading or unloading, nesi
84292000 ...	Self-propelled graders and levelers
84294000 ...	Self-propelled tamping machines and road rollers
84295110 ...	Self-propelled front-end shovel loaders, wheel-type
84295250 ...	Self-propelled machinery with a 360 degree revolving superstructure, other than backhoes, shovels, clamshells and draglines
84301000 ...	Pile-drivers and pile-extractors
84303100 ...	Self-propelled coal or rock cutters and tunneling machinery
84303900 ...	Coal or rock cutters and tunneling machinery, not self-propelled
84304100 ...	Self-propelled boring or sinking machinery
84304980 ...	Boring or sinking machinery, not self-propelled, nesi
84305050 ...	Self-propelled machinery for working earth, minerals or ores, nesi
84306100 ...	Tamping or compacting machinery, not self-propelled
84306901 ...	Machinery for working earth, minerals or ores, not self-propelled, nesi
84311000 ...	Parts suitable for use solely or principally with the machinery of heading 8425
84312000 ...	Parts suitable for use solely or principally with the machinery of heading 8427
84313100 ...	Parts suitable for use solely or principally with passenger or freight elevators other than continuous action, skip hoists or escalators
84313900 ...	Parts suitable for use solely or principally with the machinery of heading 8428, nesi
84314100 ...	Buckets, shovels, grabs and grips suitable for use solely or principally with the machinery of headings 8426, 8429, or 8430
84314200 ...	Bulldozer or angledozer blades suitable for use solely or principally with the machinery of heading 8426, 8429 or 8430
84314380 ...	Parts for boring or sinking machinery of 8430.41 or 8430.49, nesi
84314910 ...	Parts suitable for use solely or principally with the machinery of heading 8426, nesi
84314990 ...	Parts suitable for use solely or principally with the machinery of heading 8429 or 8430, nesi
84612040 ...	Shaping or slotting machines for working by removing metal or cermets, numerically controlled
84613040 ...	Broaching machines for working by removing metal or cermets, numerically controlled
84614010 ...	Gear cutting machines for working by removing metal or cermets
84614050 ...	Gear grinding or finishing machines for working by removing metal or cermets
84662010 ...	Work holders for machine tools used in cutting gears
84662080 ...	Work holders for machine tools other than those used in cutting gears, nesi
84669330 ...	Certain specified parts and accessories of metal working machine tools for cutting gears
84742000 ...	Crushing or grinding machines for earth, stones, ores or other mineral substances
84743100 ...	Concrete or mortar mixers
84743900 ...	Mixing or kneading machines for earth, stones, ores or other mineral substances, nesi
84749000 ...	Parts for the machinery of heading 8474
84821050 ...	Ball bearings other than ball bearings with integral shafts
84822000 ...	Tapered roller bearings, including cone and tapered roller assemblies
84823000 ...	Spherical roller bearings
84824000 ...	Needle roller bearings
84825000 ...	Cylindrical roller bearings nesi
84828000 ...	Ball or roller bearings nesi, including combined ball/roller bearings
84829100 ...	Balls, needles and rollers for ball or roller bearings
84829905 ...	Inner or outer rings or races for ball bearings
84829915 ...	Inner or outer rings or races for taper roller bearings
84829925 ...	Inner or outer rings or races for other bearings, nesi
84829935 ...	Parts of ball bearings (including parts of ball bearings with integral shafts), nesi
84829945 ...	Parts of tapered roller bearings, nesi
84829965 ...	Parts of other ball or roller bearings, nesi
85301000 ...	Electrical signaling, safety or traffic control equipment for railways, streetcar lines or subways
85308000 ...	Electrical signaling, safety or traffic control equipment for roads, inland waterways, parking facilities, port installations or airfields
85309000 ...	Parts for electrical signaling, safety or traffic control equipment

\*\*construction-related machines under headings 8456-8465