



June 14, 2019

The Honorable Robert E. Lighthizer
U. S. Trade Representative
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: Docket No. USTR-2019-0004; Comments Concerning Proposed Modification of Action Pursuant to Section 301; Request to Remove HTS 3604.10.10 (Display or Special Fireworks, Class 1.3G) and HTS 3604.10.90 (Fireworks, nesoi, including Class 1.4G)

Dear Ambassador Lighthizer:

The American Pyrotechnics Association (APA)¹ and its member companies appreciate the opportunity to submit comments in response to the Office of the U.S. Trade Representative's (USTR) proposed modification of action, pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, to impose up to an additional 25 percent *ad valorem* tariffs on the final proposed list of \$300 billion worth of imports from China.²

We share the Administration's efforts to negotiate meaningful, binding and long-term solutions with the Chinese government; however the broad scope of the most recently proposed \$300 billion list of Chinese imports would significantly impact the U.S. fireworks industry, U.S. consumers and U.S. jobs. With a few exceptions for high-end, expensive, specialty fireworks products, fireworks used and sold by APA members can only be sourced from China. Tariffs on fireworks and other pyrotechnic products would raise the costs on American businesses which rely on imports from China, and their downstream customers. Uniquely, in our case, nonprofits and small municipalities nationwide will suffer significantly and may be forced to forego their Independence Day fireworks displays.

The APA formally requests that the HTS subheadings for Professional Display Fireworks and Consumer Fireworks be removed from the proposed list of products subject to increased tariffs set forth in USTR's May 17, 2019, Notice. These products, imported under HTS subheadings 3604.10.10 and 3604.10.90 are critical not only to the livelihood of the small family businesses who comprise the APA membership, but to millions of families and thousands of municipalities across our great Nation celebrating our Independence Day.

¹ The APA is the principal safety and trade association of the fireworks industry representing manufacturers, importers, distributors, retailers, suppliers, and professional display companies. Founded in 1948, APA's mission is to encourage safety in the design and use of all types of fireworks, to provide industry information and support to its members, and to promote responsible regulation of the fireworks industry. The APA has over 250 member companies. Along with their subsidiaries, APA's member companies are responsible for ninety (90) percent of the fireworks manufactured, imported, distributed and professionally displayed in the United States.

² 84 FR 22564. May 17, 2019.

Preserving & Promoting an American Tradition

7910 Woodmont Ave., Suite 1220 • Bethesda, MD 20814 • (301) 907-8181 • FAX (301) 907-9148

In the Federal Register Notice, USTR asked that two specific questions be addressed in written comments:

First, whether maintaining or imposing additional duties on a particular product would cause disproportionate economic harm to U.S. interests, including small-or-medium-size businesses and consumers, and

Second, whether imposing increased duties on a particular product would be practical or effective to obtain the elimination of China's acts, policies, and practices.

The APA offers the following comments responsive to USTR's questions with regard to the proposed 25% tariff on fireworks, HTS 3604.10.10 and 3604.10.90.

1. Additional Duties on Fireworks Would Cause Disproportionate Economic Harm to U.S. Small-to-Medium-Size Businesses and Consumers

The proposed 25% tariff on fireworks would cause severe economic harm to the industry, nonprofits, and municipalities nationwide. Ninety-eight percent of APA member companies are classified as small businesses by the U.S. Small Business Administration (SBA). These small businesses are multi-generation family businesses, many of which are fourth, fifth and sixth generation with strong ties to their communities providing thousands of full-time and part-time local jobs. The fireworks industry, because of its seasonal nature, provides hundreds of thousands of jobs during the peak Fourth of July season. These seasonal employees run distribution centers, staff thousands of temporary stands, tents and retail stores, provide transportation services, and work as pyrotechnicians to ensure that over 16,000 Independence Day fireworks shows light up the skies across the country in small townships, municipalities and major cities.

Higher Tariffs Would Undermine Consumer and Non-Profit Organizations Sales

The economic impact of the proposed tariffs on the fireworks industry would be devastating. Industry revenues annually as a whole are just \$1.3 billion³ and profit margins are extremely narrow given the high costs of regulatory compliance associated with a stringently regulated industry. A 25% indiscriminate tariff would negatively impact the American economy as this tax would need to be completely passed along to the customer at retail, to the nonprofits who rely upon fireworks sales as their sole fundraiser, and to the cash strapped townships and municipalities who already struggle to fund their Independence Day fireworks celebrations.

Backyard consumer fireworks are thought of as affordable family entertainment. Millions of Americans purchase consumer fireworks to celebrate their pride and patriotism on the Fourth of July. These families represent the heartland of America and have well defined budgets when they shop for their backyard fireworks celebrations. A 25% increase in the cost of their consumer fireworks, simply means that the family will get less for their budgeted dollars and be disappointed by the tariff surcharge.

3

<https://www.americanpyro.com/assets/docs/FactsandFigures/Fireworks%20Revenue%20by%20Industry%20Segment%201998-18.pdf>

Consumer fireworks sales support thousands of non-profit organizations across the country that rely upon fireworks sales as their sole fundraising activity. These nonprofit groups include churches, veteran's groups, youth sports, band boosters, Boys and Girls Clubs, Jaycee's and many other philanthropic groups. A 25% hike in price will severely hurt their fundraising abilities. For example, one of our member companies supplies over 3,400 non-profits in over 750 cities and those nonprofits will lose substantial funds because of a reduction in sales brought about by an increase in prices on products sold due to the proposed tariffs.

Higher Tariffs Would Curtail Expansion Plans and Result in Employee Layoffs

APA member company consumer fireworks importers represent 85% of the fireworks retailers in the U.S. employing thousands of full-time and part-time personnel nationwide. With the liberalization of state fireworks laws during the past two decades, forty-nine states plus the District of Columbia and Puerto Rico allow the sale and use of some types of consumer fireworks creating a dramatic increase in the consumption of consumer fireworks. This increase in consumption has significantly expanded the number of retail locations selling fireworks which has greatly increased U.S. jobs. These companies will no doubt need to curtail current plans for expansion as they contemplate how to adjust their business model to address an additional 25% tax on the products that they import. In turn, they will likely consider store closures and personnel layoffs as they attempt to manage a 25% hit on their already small profit margins.

The vast majority of professional fireworks displays across the county are small municipal and nonprofit sponsored displays costing in the range of \$7,500 - \$15,000. By volume, 75% of all fireworks displays nationwide are in this price range. The small municipalities contracting these displays are already cash strapped and struggle year after year to secure funding to put on their community Fourth of July displays. For those municipalities and towns that may have multiple year contracts, the proposed 25% tariff will impact the display company's ability to make up the cost increase for displays that have already been planned for and in most cases municipalities would no longer be able to afford an Independence Day fireworks display rendering the skies dark on America's birthday. Like the consumer fireworks segment of the industry, the professional fireworks display companies employ thousands of part-time pyrotechnicians to produce the sheer volume of displays that occur around the Independence Day holiday. If municipalities can no longer afford their Fourth of July display, countless pyrotechnicians will be out of part-time employment.

Large fireworks displays generate significant dollars supporting local economies and tourism. *Thunder Over Louisville*, one of the country's largest fireworks displays, generates more than \$56 million for the local economy per an economic study conducted by the Kentucky Derby Festival.⁴ Nashville's *Let Freedom Sing* brings in over \$15 million for downtown Nashville businesses; San Diego's annual *Big Bay Boom* creates over \$10.6 million for the local economy; Red White & Boom!, Columbus, Ohio has a \$15 million economic impact and Addison Kaboom Town! in Addison, Texas generates between \$2.5 and \$5 million annually for the local economy. Additionally, fireworks displays enhance events that might otherwise struggle to attract crowds like minor league baseball games, county fairs and festivals. New taxes on these fireworks events will eat into these essential revenue streams.

⁴ <https://thunderoverlouisville.org/113-2/>

China is the Only Source of Fireworks

The U.S. enjoyed a period of fireworks manufacturing in the late 1800's through the 1950's thanks to the early Italian settlers who brought the fireworks trade with them from Europe. However, with the onslaught of new environmental and occupational safety and health regulations driving small businesses to adapt to heightened regulatory oversight during the 1970's, manufacturing operations began to curtail and companies began to rely upon imported fireworks from China. The U.S. imported 29 million pounds of fireworks in 1976 when the nation celebrated its bicentennial. That figure grew to over 152 million pounds for the millennium celebrations and as of last year, 2018; over 277 million pounds of fireworks were imported from China.

Assumptions that U.S. companies can simply move their production out of China are incorrect. Global supply chains are extremely complex and in the case of our industry, the U.S. fireworks industry is solely reliant on fireworks manufactured in China. China is the leading global supplier of fireworks – not just to the U.S., but worldwide. Our reliance on China manufacturing has evolved over a period of more than four (4) decades as has the relationships between our member companies and the leading China fireworks factories. These strong U.S. - China fireworks industry relationships have resulted in the highest quality and safest fireworks ever made. As a result of industry's commitment to product quality and safety, we have achieved a dramatic decline in consumer fireworks-related accidents. Safety is, and has always been, our industry's number one priority. Because of our commitment to product quality and safety, members of the industry frequently travel to China to meet directly with their China manufacturers and work closely to develop fireworks products that are custom designed and often branded. The serious decades-long relationships with leading China fireworks manufacturers are irreplaceable.

Fireworks cannot be produced elsewhere. The ability of the U.S. and third-country manufacturers to produce fireworks in the volume that would be necessary to replace China's capacity is impossible in the foreseeable future. Ninety-nine (99) percent of the backyard consumer fireworks sold in the U.S. are imported from China. Seventy-five (75) percent of the professional display fireworks used in the U.S. are imported from China. The U.S. maintains a 5% domestic production of professional display fireworks, primarily large aerial shells that are difficult, if not impossible, to export from China because of their transportation hazard class and the lack of ocean carriers willing to accept that commodity as well as the lack of U.S. ports willing to accept those products. The remaining 20% of display fireworks are imported from Japan, Italy, Spain, and Germany, and are specialty devices that uniquely enhance a public display.

The APA and its member companies have expended significant resources over the course of more than four decades working with China fireworks factories to perfect, and ensure that the fireworks devices that we import to the U.S. meet all current U.S. regulatory requirements and are safe for transport, storage and use. The U.S. fireworks industry enjoys an impeccable safety record in regard to multi-modal transportation, storage and use – which is commendable for any product made by hand. We are incredibly proud of our safety record and work tirelessly to make certain that that record continuously demonstrates our industry commitment to good product stewardship and safety in the design, handling and use of our products.

During the past several years, due to constant uncertainties in doing business with China including a reduction in the number of factories permitted to manufacture fireworks, port restrictions and closures for the transit of fireworks to the U.S., work stoppages due to hot weather and high-profile government meetings, the industry has explored fireworks production in other countries such as Vietnam, Cambodia, India and Mexico for export to the U.S. None of these countries can manufacture fireworks in any measurable quantity or quality to supply the U.S. market for consumer or display fireworks and it would

take a 10-15 year period to transition some meaningful production to one of these regions. Fireworks are not widgets. Fireworks manufacturing requires highly-skilled and well-trained personnel to process energetic materials that are friction sensitive. Safety in the manufacturer, handling, transportation and use of fireworks is critical.

2. Increased Duties on Fireworks Would Have Zero Impact on China's Acts, Policies and Practices

Fireworks are not high tech products covered by Chinese industrial policy, including it's Made in China 2025 plan. In fact, China is credited with the development of fireworks dating back to the second century B.C. and the discovery of gun powder sometime between 600-900 AD. Fireworks do not represent new intellectual property or significant innovation. The formulas used to manufacture fireworks as well as the manufacturing process itself remain relatively unchanged since the mid-1900s. Fireworks are made by hand involving a highly-skilled, well-trained, labor intensive process.

That manufacturing process, combined with excessive regulations in the U.S. drove a once thriving U.S. manufacturing base following the end of WWII to rely solely on imported products. Since 1976, China has been the dominate manufacturer and supplier of fireworks for the U.S. and world. The U.S. will never be able to manufacture in the quality or quantity of fireworks that the U.S. market demands even if the industry desired to do so. The U.S. imports more than 270 million pounds of fireworks from China annually⁵, nearly ten times greater than 1976 import levels.

Because fireworks do not represent new technology or innovation, the imposition of the proposed tariffs on fireworks will have zero impact on China's intellectual property debate or its future actions on industrial growth plans under Made in China 2025.

U.S. Customs Agents Can Easily Identify Fireworks

Fireworks are classified by the U.S. Department of Transportation (DOT) as explosives and are subject to specific markings on shipping cartons and container placarding for multi-modal shipments. All fireworks containers received at U.S. Ports of entry must have proper shipping manifests including the United Nations (UN) identification number, proper shipping name and hazard classification. For fireworks, these include:

UN0336, Fireworks 1.4G (*this represents the proper shipping name for consumer fireworks*)

UN0337, Fireworks 1.4S (*this represents the proper shipping name for novelty devices such as Sparklers and Party Poppers*)

UN0335, Fireworks 1.3G (*this represents the proper shipping name for display fireworks*)

UN0431, Articles Pyrotechnic 1.4G (*the represents the proper shipping name for additional professional devices used in displays*)

During the past three decades, the U.S. Customs and Border Protection (CBP) has worked closely with the U.S. Consumer Product Safety Commission (CPSC), the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the DOT in inspecting fireworks containers received at U.S. ports of entry. This long-standing surveillance program has thoroughly familiarized customs agents with both professional display fireworks and consumer fireworks, thus making any enforcement of an exemption for fireworks from the tariffs quite easy to ascertain at U.S. ports of entry.

⁵ <https://www.americanpyro.com/assets/docs/FactsandFigures/Fireworks%20Consump.%20Figures%202000-18.pdf>

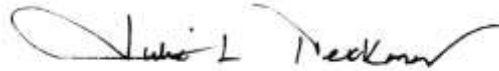
Conclusion

The APA supports the Administration's efforts to negotiate meaningful long-term solutions with the Chinese government; however, the broad scope of the proposed tariffs is harmful to the small family businesses that comprise the APA membership. Fireworks are not high-tech products covered by Chinese industrial policy. China is the global supplier of fireworks and currently, there are no other countries that can safely manufacture these types of products in the volume that the U.S. market demands.

Ambassador Lighthizer, we urge you to remove HTS 3604.10.10 Display Fireworks 1.3G and HTS 3604.10.90 Fireworks nesoi including 1.4G Consumer Fireworks from the proposed list of products subject to increased tariffs on List 4.

Respectfully submitted,

American Pyrotechnics Association

A handwritten signature in black ink, appearing to read "Julie L. Heckman". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

Julie L. Heckman
Executive Director