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June 17, 2019

Ambassador Robert Lighthizer
United States Trade Representative
Office of the United States Trade Representative
600 17th Street NW
Washington, D.C. 20508
301investigation@ustr.eop.gov

Re: Comment in Docket USTR-2019-0004 on Proposed Modification of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

Dear Ambassador Lighthizer:

The U.S. Energy Storage Association ("ESA") respectfully requests the removal of lithium-ion batteries (HTSUS 8507.60.00) and containers (HTSUS 8609.00.00) from the Section 301 China import product list proposed on May 17, 2019. These products are vital to the production of battery energy storage systems. Both the Administration and Congress have recognized that such systems are critical to the Nation's national and energy security interests. Higher costs and uncertainty will reduce deployment of battery storage on the electric system at a time when improving resilience is of great concern.

ESA is the national trade association working toward a more resilient, efficient, sustainable and affordable electricity grid enabled by energy storage technologies. With more than 170 member companies, ESA represents a diverse group of power sector stakeholders, including independent power producers, electric utilities, energy service companies, financiers, insurers, law firms, installers, manufacturers, component suppliers and integrators involved in deploying energy storage systems, both in the U.S. and around the globe. ESA members work with a range of energy storage technologies, including battery storage systems, and many of our members work with batteries and containers imported from China.

The core energy storage technologies designed, built, installed, and serviced by ESA member companies are deployed throughout the United States on the electric grid, in homes and businesses, integrated into critical infrastructure and in military installations. These systems contain many U.S.-designed and U.S.-made components, although many companies rely substantially on imports of Chinese-made lithium-ion batteries, which are not available from U.S. manufacturers to a meaningful degree.[1] In the case of the specialized containers used to house energy storage systems, China is the only meaningful supplier country.

[1] ESA notes that lithium-ion grid batteries include lithium nickel-manganese-cobalt (NMC), lithium iron-phosphate (LFP), and related electrochemistries. NMC batteries are used for electric grid, vehicle, and consumer device

The ESA membership is part of the success story of American economic growth. Our industry is a fast-growing source of jobs and business formation in the United States, and is transforming the way Americans generate, distribute and consume electricity. In 2017, the entire U.S. energy storage industry (e.g., for grid service, for electric vehicles, and for consumer devices) employed over 70,000 Americans—with the preponderance of such jobs in project planning, construction, and operations—and represented the single fastest growing segment of the U.S. energy sector, with an 18 percent growth from 2017 to 2018.[2] We estimate that, in 2019, installations of energy storage systems in the U.S. electric system will account for $950 million in economic activity.[3] Based on the number of projects in the pipeline today, we expect this activity to accelerate into 2020, and reach $2.5 billion that year.

Energy storage systems have been identified by Administration officials as a game-changing new tool for a more resilient electric system. The critical importance of energy storage has been emphasized by Secretary of Energy Rick Perry,[4] as well as by Federal Energy Regulatory Commission Chairman Neil Chatterjee.[5] Members of Congress have reached the same conclusion, including Chairman Lisa Murkowski in hearings of the Senate Energy and Natural Resources Committee,[6] as did members of the Energy Subcommittee of the House Energy & Commerce Committee.[7] The National Governors Association also has touted the economic and

applications. LFP batteries are used primarily for electric grid and vehicle applications.

[2] National Association of State Energy Officials and Energy Futures Initiative, *2018 U.S. Energy and Employment Report,* May 2018, available at https://www.usenergyjobs.org/s/2018-US-Energy-and-Employment-Report-6akj.pdf.

[3] GTM Research, *U.S. Energy Storage Monitor: Q2 2019*, June 2019, available at https://www.greentechmedia.com/research/report/u-s-energy-storage-monitor-q2-2019.

[4] "The holy grail of energy … is about battery storage. Battery storage changes the world, I would suggest, the same way that hydraulic fracturing and directional drilling has changed the world." See "US DOE's Perry sees storage as potential 'Holy Grail', sings fossil fuels' praises," *Platts*, 2 Nov 2017, available at https://www.platts.com/latest-news/electric-power/washington/us-does-perry-sees-storage-as-potential-holy-21437709

[5] "I believe in the potential of storage to be a transformative technology for our grid. Storage is a game changer. I see exciting potential to lower costs and enhance reliability for customers." See "Heinrich, Chatterjee, Speakes-Backman discuss future of energy storage," *Daily Energy Insider*, 28 Feb 2019, available at https://dailyenergyinsider.com/news/17905-heinrich-chatterjee-speakes-backman-discuss-future-of-energy-storage/

[6] See hearing materials transcript of U.S. Senate Energy & Natural Resource Committee hearing, "Full Committee Hearing to Examine Expanded Deployment of Grid-Scale Energy Storage," 4 June 2019, available at https://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=83B728AC-6708-40D6-9B96-CC007F5B5906

[7] See hearing materials transcript of U.S. House of Representatives Energy & Commerce Committee hearing, "Powering America: The Role of Energy Storage in the Nation's Electricity System," 18 July 2018, available at

security gains achieved by increased use of battery energy storage systems.[8] Recognizing this indisputable trend, the White House has indicated energy storage as a priority for public investment in its FY2020 budget request.[9]

The Department of Energy has identified electric grid resilience as a priority,[10] with Assistant Secretary Bruce Walker stating that battery energy storage is the newest tool for electric utilities and their customers to achieve greater energy security and resilience.[11] ESA member companies are installing battery storage directly on the U.S. electric grid and integrating them into power plants. These members also have sited battery storage systems at critical infrastructure, Department of Defense installations, industrial facilities, and commercial & residential buildings to ensure greater resilience to electric service disruptions—an issue of particular concern as more and more businesses rely on electricity and computerized systems to function.

The application of 25% ad valorem tariffs to Chinese lithium-ion batteries and containers will raise costs to utilities and electric customers using battery energy storage for electric system modernization and resilience. The energy storage industry is characterized by long-term contracts and supply and service arrangements, which cannot be changed overnight with the sudden imposition of major cost increases from new import duties. Many large-scale projects are contracted years in advance to meet regulatory requirements for utility procurements, and their performance depends on commercial and policy certainty. The proposed duties would

https://energycommerce.house.gov/hearings/powering-america-the-role-of-energy-storage-in-the-nations-electricity-system/

[8] National Governors Association, *State Strategies for Advancing the Use of Energy Storage,* October 2016, available at https://www.nga.org/files/live/sites/NGA/files/pdf/2016/1610StateStrategiesEnergyStorage.pdf

[9] "The [Advanced Energy Storage Initiative] is a coordinated effort across DOE that will accelerate the development of energy storage R&D as key to increasing energy security, reliability, resilience, and system flexibility technologies. The ASEI will focus DOE's efforts to take a broad, more holistic view of energy storage as a set of capabilities with temporal flexibility in the conversion of energy resources to useful energy services. The initiative will develop a coordinated strategy for aligning DOE R&D for cost competitive energy storage services." See Testimony of Rick Perry, Secretary of Energy, to the Senate Committee on Appropriations, 27 March 2019, available at https://www.appropriations.senate.gov/download/032719_-perry-testimony&download=1

[10] See Department of Energy, "Staff Report to the Secretary on Electricity Markets and Reliability," Aug 2017, available at https://www.energy.gov/downloads/download-staff-report-secretary-electricity-markets-and-reliability.

[11] "You've heard the secretary [Rick Perry] reference storage as the 'holy grail,' and we believe that. It's about having storage capability during times of emergency, during times of crisis, even during normal course of business when you are running peak load. It's really just to provide another tool in the toolbox that improves our capacity as an industry to operate during blue sky days and black sky days." See "Trump administration: Energy storage boosts renewables, national security," *Washington Examiner*, 12 June 2019, available at https://www.washingtonexaminer.com/policy/energy/daily-on-energy-trump-administration-sees-energy-storage-as-a-national-security-tool

severely strain the intricate arrangements that have already been agreed upon, potentially disrupting procurements by U.S. electric utilities to meet reliability and resilience needs.

Imposition of duties on key components required for the U.S. energy storage industry would constitute a major – *and a completely unnecessary* – step backwards in achieving the U.S. energy policy goal of a more secure grid for all Americans.

USTR has already recognized the importance of maintaining adequate supplies of goods critical to battery energy storage systems, as evidenced for example by its exemption of containers from so-called "List 2" and rare earths from the proposed Section 301 China import product list. Lithium-ion batteries, built with several such rare earths and also produced at scale in China, are of parallel importance for U.S. energy security. The same is true for containers, given that no U.S. company produces those products.

Moreover, tariffs on lithium-ion batteries and containers imported from China will have adverse impacts on the hiring and investment of the U.S. grid storage industry. A number of ESA member companies are providing separate testimonies and public comments describing the adverse impact of proposed tariffs on their businesses.

ESA respectfully requests that USTR avoid slowing the use of battery storage to enhance U.S. electric grid resilience and energy security by removing lithium-ion batteries and containers from the proposed Section 301 import list. We thank you for your consideration of this request and your support of the fast-growing, job-creating U.S. energy storage industry.

Sincerely,

Kelly Speakes-Backman
Chief Executive Officer
Energy Storage Association