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Requests for Exclusion from Section 301 Tariff Action (https://exclusions.ustr.gov)

Submitter Information

USTR Exclusion Request ID
USTR-2019-0017-48999

Full Organization Legal Name
U.S. Energy Storage Association (“ESA”)

Third Party
Yes

Third Party Organization Name
Akin Gump Strauss Hauer & Feld LLP

Product Description

HTSUS Item Number
8507600020

Product Name
Lithium-Ion Energy Storage Batteries

Product Description
This request concerns lithium-ion batteries packaged in modules and designed for stationary applications in the power grid, power plants, and in electrical supply systems of buildings. Each module is equal to or greater than the following dimensions: 37 cm in width, 44 cm in length, 5 cm in height, and 30 kg in weight. Modules are integrated with a battery rack and/or a battery management system and may be shipped in a rack or metal container. This product is unsuitable for use in vehicles.

Product Function, Application, and Principal Use
Lithium-ion batteries store energy. ESA members import such batteries for stationary energy storage applications in the power grid, power plants, and electrical supply systems of buildings. Energy storage systems support power grid reliability, grid and customer resilience to power loss, energy security for critical facilities and infrastructure, and operations of renewable and distributed energy sources. See attachments for illustrative information.

Is this product subject to an antidumping (AD) or countervailing duty (CVD) order issued by the U.S. Department of Commerce?
No

Please provide any additional comments regarding AD or CVD orders.

Submitter Arguments

Requestor's relationship to the product
Industry Association

Is this product, or a comparable product, available from sources in the United States?
No

Public summary of availability argument from the United States

ESA members cannot obtain the same product or comparable products from sources in the United States due to fungibility, supply, and technology constraints.

Unlike alkaline batteries that may be purchased from a neighborhood hardware store, lithium-ion batteries are not fungible. ESA members purchase lithium-ion batteries designed for specific applications and uses in electric power systems, which vary significantly depending on customer needs. Each application and use requires that the batteries meet certain performance standards, which in turn requires specific chemical compositions and physical characteristics. For example, some members use lithium iron-phosphate electrochemistries, while other members use lithium nickel-manganese-cobalt electrochemistries. Thus, the market is not characterized by a "standard" lithium-ion battery that participants may utilize across applications and customer needs.

Supply constraints also hamper the ability of ESA members to obtain lithium-ion batteries in the United States. Few manufacturers produce lithium-ion batteries in the United States. Nearly all of those producers dedicate their output of lithium-ion batteries for use in electric vehicles. Such batteries have different performance demands and therefore are not used in stationary energy storage systems. Although one U.S. producer manufactures lithium-ion batteries for stationary energy storage systems, that manufacturer captively consumes such batteries in its product lines.

Finally, technological constraints prevent ESA members from developing alternative battery supply sources in the United States. The development of new battery supplies requires significant time and investment. The batteries must undergo design validation testing, as well as meet performance and safety requirements. That process would take 18-24 months or longer, depending on the application. Battery production also requires access to specific resources, including chemical processing equipment that may not be available in the United States or would otherwise take considerable time and expense to procure. Thus, ESA members lack viable sourcing alternatives in the United States.

Is this product, or a comparable product, available from source in third countries?	No
Public summary of availability argument from a third country	The same fungibility, supply, and technology constraints discussed in response to the previous question likewise hamper the ability of ESA members to obtain lithium-ion batteries for energy storage systems from affiliated and non-affiliated companies in third countries. In particular, ESA members report that supply constraints in Korea and Japan have prevented ESA members from obtaining needed volumes of lithium-ion batteries produced outside of China.
Please discuss any attempts to source this product from the United States or third countries	For information on attempts by ESA members to source lithium-ion batteries from the United States or third countries, please see the responses above to the two previous questions. With respect to the import values and volumes of lithium-ion batteries from China and third countries, ESA has collected the requested information from the U.S. International Trade Commission's DataWeb under HTSUS 8507.60.0020 and provides such information below. The DataWeb information inflates the value and volume of ESA members' imports of lithium-ion batteries from affiliated and non-affiliated companies in at least two ways. First, the DataWeb information covers imports of lithium-ion batteries by all U.S. importers, not just ESA members. Second, as evidenced by the numerous exclusion requests filed to date for products imported under HTSUS 8507.60.0020, the DataWeb information covers products other than lithium-ion batteries for stationary energy storage. Nevertheless,

than lithium-ion batteries for stationary energy storage. Nevertheless, consistent with the terms of HTSUS 8507.60.0020, ESA identifies “batteries” as the appropriate unit of measure.

Is the Chinese-origin product of concern sold as a final product or an input used in the production of a final product or products?	Input

Summary of Requestor Argument

The President confirmed in a recent executive order the importance of “promoting the development of new energy infrastructure.” Exec. Order No. 13,868, 84 Fed. Reg. 15,495. The imposition of additional duties on lithium-ion batteries conflicts with this and other U.S. energy security policy goals.

Administration officials have identified energy storage systems as a game-changing new tool for a more resilient electric system. Former Secretary of Energy Rick Perry emphasized that energy storage is equivalent in importance to horizontal drilling and hydraulic fracturing for natural gas. “US DOE's Perry sees storage as potential 'Holy Grail', sings fossil fuels' praises” (Nov. 2, 2017), https://www.platts.com/latest-news/electric-power/washington/us-does-perry-sees-storage-as-potential-holy-21437709. Moreover, Federal Energy Regulatory Commission Chairman Neil Chatterjee led the approval of Order 841 to remove barriers to energy storage in electricity markets and championed the transformative impact of energy storage for resilience. “Heinrich, Chatterjee, Speakes-Backman discuss future of energy storage” (Feb. 28, 2019), https://dailyenergyinsider.com/news/17905-heinrich-chatterjee-speakes-backman-discuss-future-of-energy-storage/; Order No. 841, 83 Fed. Reg. 9580.

Over the past several years, the U.S. Department of Defense (“DOD”) and the U.S. Department of Energy (“DOE”) have identified stationary energy storage systems as vital components to new energy grids that advance U.S. national security interests and energy policy goals.

Additional duties inhibit the DOD’s ability to develop a deft military force that employs totally deployable, self-sustaining power systems. The DOD has concluded that energy storage promotes energy resilience and independence. It has issued “energy resilience” and “energy independence” policies and developed dozens of projects across the United States, including “microgrids” that use energy storage systems. Energy Resilience Initiatives, https://www.acq.osd.mil/eie/IE/FEP_Energy_Resilience.html. Four of the five armed service branches have either built or made plans for these energy resilience facilities with energy storage. Beyond the Fence Line: Strengthening Military Capabilities Through Energy Resilience Partnerships at 4, https://www.defensecommunities. org/wp-content/uploads/2015/01/Beyond-The-Fence-Line.pdf. The military installations with these projects span the nation, operating or undergoing development in Alabama, Alaska, Arizona, Florida, Georgia, Kansas, Louisiana, Michigan, Minnesota, Mississippi, North Carolina, Oklahoma, South Carolina, Virginia, Wisconsin, and Utah, among other states. In the DOD’s view, these projects will help the U.S. military determine how to best protect its access to “{e}nergy,” which “is the lifeblood of military installations.” Environmental Security Technology Certification Program—Large Scale Energy Storage and Microgrids, http://energystorage.org/system/files/resources/fy19_estcp_federal_outside_dod_ew_topic_b9_energy_storage.pdf.

DOE officials have asserted that energy storage is a technology of national interest and the backbone of a future resilient energy system. Testimony of Bruce J. Walker, U.S. Senate Committee on Energy & Natural Resources, Subcommittee on Energy (July 9, 2019). According to the DOE, energy storage systems manage peak demands on the electric system and help integrate diverse electric supply resources. Energy Storage,

	https://www.energy.gov/oe/activities/technology-development/energy-storage. The DOE's "Energy Storage Systems" program works in collaboration with industry, academia, and government institutions to increase the reliability, performance, and competitiveness of storage systems, both standalone and integrated into electricity generation and transmission. Energy Storage System Program, https://www.sandia.gov/ess/. Additional duties conflict with the DOE's mission to safeguard the economic and energy security of the United States through the increased use of energy storage systems. Finally, Congress has proposed legislation to incentivize the increased use of energy storage systems for these same reasons. Better Energy Storage Technology Act, S. 1602 & H.R. 2896, 116th Cong. (2019) (establishing a research, development, and demonstration program for energy storage systems); Energy Storage Tax Incentive and Deployment Act of 2019, S. 1142 & H.R. 2096, 116th Cong. (2019) (providing tax credits for energy and battery storage technologies). Senate Energy & Natural Resources Chair Lisa Murkowski has also held hearings on promoting U.S. energy storage deployment for resilience and other electric system benefits. Opening Statement, Oversight Hearing on Expanding Grid-Scale Energy Storage (June 19, 2019), https://www.energy.senate.gov/public/index.cfm/files/serve?File_id=D564FDF2-EF44-486D-BC3F-DACD980870DB. Thus, lithium-ion batteries for stationary energy storage should be excluded from additional duties.
Did you submit exclusion requests for the section 301 $34 billion (Docket ID: USTR-2018-0025) and/or the $16 billion (Docket ID: USTR-2018-0032) tariff actions?	No
Please comment on whether the particular product of concern is strategically important or related to "Made in China 2025" or other Chinese industrial programs. You must explain in the box below why you believe the product of concern is or is not strategically important or related to "Made in China 2025" or other Chinese industrial programs.	Lithium-ion batteries used in stationary energy storage systems are not strategically important or related to "Made in China 2025" or other Chinese industrial programs. In its March 2018 report, USTR found that "the Chinese government uses foreign ownership restrictions, such as formal and informal {joint venture} requirements, and other foreign investment restrictions to require or pressure technology transfer from U.S. companies to Chinese entities." U.S. TRADE REPRESENTATIVE, Findings of the Investigation into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation Under Section 301 of the Trade Act of 1974 at 19 (Mar. 22, 2018) ("Section 301 Report"), https://ustr.gov/sites/default/files/Section%20301%20 FINAL.PDF. However, USTR did not identify the stationary energy storage system industry as belonging to the industrial groups in which China has engaged in extensive conduct actionable under Section 301 of the Trade Act of 1974. Although USTR noted that "China has sought to develop expertise in the manufacture of new energy vehicles . . . , which includes plug-in hybrids, electric batteries and fuel cell vehicles," USTR did not find that China extended those activities into the energy storage system industry. Id. at 30.

Exclusion Request Attachments

USTR-2019-0017-48999-AT-59708-Public Document	(/sfc/servlet.shepherd/document/downl
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