



June 17, 2019

**VIA ELECTRONIC SUBMISSION**

Joseph Barloon  
General Counsel  
Office of the U.S. Trade Representative  
600 17th St. NW  
Washington, DC 20508

**Re: Docket No. USTR-2019-0004: *Comments On Proposed Determination of Action Pursuant to Section 301***

Dear Mr. Barloon:

In accordance with the notice and request for comment published by the Office of the U.S. Trade Representative (“USTR”) on May 17, 2019,<sup>1</sup> Dell Technologies (“Dell”), HP Inc. (“HP”), Intel Corporation (“Intel”), and Microsoft Corporation (“Microsoft”) appreciate the opportunity to submit these joint comments regarding proposed actions to be taken in response to USTR’s findings on Chinese acts, policies, and practices with respect to technology transfer, intellectual property (“IP”), and innovation. As leading U.S. innovators, we recognize the importance of protecting IP and appreciate the Administration’s efforts to address unfair IP practices.

However, the proposed tariffs on laptop computers and tablet devices (hereinafter, “laptops”) threaten to disproportionately harm multiple U.S. interests, including small and medium-sized businesses, a wide range of consumers, and device manufacturers. At the same time, the imposition of tariffs on such products would not address the underlying Chinese trade practices that USTR’s investigation seeks to remedy. Instead, the tariffs will harm U.S. technology leaders, hindering their ability to innovate and compete in a global marketplace.

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<sup>1</sup> *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) (“USTR Notice”).

Accordingly, we respectfully request that USTR remove laptops classified under HTSUS subheading 8471.30.01 from the final tariff list.

## **I. Our Companies Are Leading U.S. Innovators and Job Creators**

As laptop manufacturers, Dell, HP, and Microsoft are worldwide leaders in computer innovation, and according to IDC, collectively account for 52% of the notebooks and detachable tablets sold in the United States. As the world's leading semiconductor company, Intel drives innovation by supplying the microprocessors, memory, and other technologies for laptops.

Dell, HP, Intel, and Microsoft all rely on American workers to fuel the innovation that propels our companies and promotes U.S. economic growth. In 2018, our companies directly employed nearly 200,000 workers in the United States, the vast majority in high-paying, skilled positions. Many of these employees directly support our companies' research and development ("R&D") initiatives. As leading technology firms, we invest heavily in innovation, and together spent more than \$35 billion on R&D in 2018.

## **II. The Imposition of Duties on Laptops Would Disproportionately Harm U.S. Businesses, Consumers, and Schools**

Small and medium-sized enterprises, consumers, and educational institutions are the primary purchasers of laptops in the United States. Small and medium-sized enterprises represent a significant share of U.S. laptop sales, as over half of their workforce—33 million employees—use laptops on a daily basis.<sup>2</sup> Meanwhile, consumers accounted for 61% of the notebook and tablet units sold in the United States in 2018, with sales valued at more than \$25 billion. Additionally, the education sector (K-12 and Higher Education) spent \$6.9 billion on 14.8 million notebook and tablet units in 2018.<sup>3</sup>

U.S. laptop manufacturers currently rely on Chinese suppliers to satisfy U.S. demand for laptop products.<sup>4</sup> Transitioning to alternative supply sources is not feasible in the near term. As a result, the proposed tariffs threaten to substantially increase the cost of laptops in the United States. Higher laptop prices for our customers, including cost-conscious small businesses, families, and students, and even including the U.S. Government, will diminish demand for laptops, which will threaten to impair productivity growth for the U.S. economy as a whole. At the same time, the proposed tariffs will add to the growing tariff burden on our companies and hinder our ability to innovate and maintain U.S. technology leadership. As we describe below,

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<sup>2</sup> Forrester, Business Technographics Survey, 2019; U.S. Small Business Administration, 2018.

<sup>3</sup> IDC, Worldwide Quarterly Personal Computing Device Tracker, June 2019.

<sup>4</sup> A study commissioned for the Consumer Technology Association estimates that China accounts for over 90% of total laptop and tablet imports, with a volume 38 times greater than the next largest supplier, which is Vietnam. See *Estimated Impacts of Proposed Tariffs on Imports from China: Cellphones, Laptops and Tablets, Video Game Consoles and Toy Drones* (June 2019) ("CTA Study"), at 2-3.

this result is inconsistent with USTR's stated intent to avoid tariff increases that cause disproportionate harm to U.S. interests, including consumers and small and medium-sized businesses.<sup>5</sup>

### 1. Harm to U.S. Consumers

Consumer electronics products have low margins and high costs. While our companies have endeavored to absorb as many tariffs as possible to avoid increasing the prices we charge consumers, price stability will no longer be possible if the proposed tariffs are implemented. Indeed, a recent study commissioned by the Consumer Technology Association ("CTA") estimates that U.S. prices for laptops and tablets will rise by at least 19 percent (*i.e.*, around \$120 for the average retail price of a laptop) if the proposed tariffs are implemented.<sup>6</sup> These price increases will hit during peak holiday and back-to-school demand seasons, and will directly affect ordinary consumers such as families, students, school systems, and the U.S. Government.

A price increase of that magnitude may even put laptop devices entirely out of reach for our most cost-conscious consumers.<sup>7</sup> At best, these consumers would continue using older models that do not enable the latest security features. At worst, a price increase would force some consumers to go without laptops altogether. School districts, in particular, operate on fixed budgets that cannot accommodate substantial price increases. Laptops and tablets are key to developing students' skills for the 21<sup>st</sup> century and closing the digital divide. Millions of students live in school districts that are implementing 1:1 device programs. Tariffs threaten to jeopardize these initiatives, causing economic harm to U.S. educational institutions and potentially reducing student access to the latest technologies that facilitate learning.

In sum, while the proposed tariffs will harm all of our customers, our most price-sensitive customers will be among the most significantly impacted.

### 2. Harm to Small and Medium-Sized Businesses

There are approximately 30 *million* small businesses in the United States, employing nearly half of the U.S. workforce.<sup>8</sup> These businesses depend on access to laptops and other computing devices to operate efficiently and remain competitive. If laptops become substantially more expensive through the imposition of Section 301 tariffs, small business

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<sup>5</sup> *USTR Notice*, 84 Fed. Reg. at 22,565 (seeking comments on whether "maintaining or imposing additional duties on a particular product would cause disproportionate economic harm to U.S. interests, including small or medium-sized businesses and consumers").

<sup>6</sup> See CTA Study at 2-3.

<sup>7</sup> The CTA study estimates that aggregate demand will fall 35 percent if tariffs are imposed on laptops. See CTA Study at 2-3.

<sup>8</sup> See U.S. Small Business Administration, *2018 Small Business Profile*, available at <https://www.sba.gov/sites/default/files/advocacy/2018-Small-Business-Profiles-All.pdf>.

owners may delay purchasing additional laptops or upgrading older devices. Reliance upon older devices will deprive small businesses of access to the latest technologies and software, potentially putting their security at risk and inhibiting innovation, productivity, and job creation.

The linkage between productivity and investments in technology is well-established. For example, academic literature has documented the association and causal connection between information technology adoption and greater firm productivity.<sup>9</sup> An exhaustive review of more than 50 studies found that across countries and firms, greater investment in information technology is associated with greater productivity growth.<sup>10</sup> Additionally, a study conducted by the Boston Consulting Group in 2013 surveyed more than 4,000 small and medium-sized businesses in five countries—the United States, Germany, China, India, and Brazil—and found that businesses that led in technology adoption created jobs almost twice as quickly as other small and medium-sized firms, and saw revenues increase 15 percentage points faster per annum than firms that lagged in technology adoption.<sup>11</sup>

Laptops, in particular, provide small and medium-sized businesses with reliable access to the Internet, both in the office and on the road. The benefits of using Internet-based business solutions also have been well documented. For instance, a study of 1,666 small and medium-sized businesses in the United States, Canada, the United Kingdom, France, and Germany found that small firms adopting Internet business solutions enjoyed an increase in revenue of approximately 9 percent.<sup>12</sup> Moreover, among small and medium-sized businesses in the United States and Canada, customer-focused Internet business solutions (*e.g.*, e-commerce, e-marketing) enabled by laptops and other IT products were ranked as the primary drivers of increased revenues and reduced costs of approximately seven percent.<sup>13</sup>

### 3. Harm to U.S. Innovation and Technological Leadership

Beyond harm to consumers and small and medium-sized businesses, the proposed tariffs would adversely impact laptop manufacturers and their ability to maintain U.S. technology leadership. The tariffs, if implemented, are poised to hit during a period of peak holiday and

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<sup>9</sup> See, *e.g.*, Erik Brynjolfsson and Lorin M. Hitt, “Beyond Computation: Information Technology, Organizational Transformation and Business Performance,” *Journal of Economic Perspectives* (vol. 14, no. 4, Fall 2000), pp. 23–48; Sinan Aral, Erik Brynjolfsson, and D.J. Wu, “Which Came First, IT or Productivity? The Virtuous Cycle of Investment and Use in Enterprise Systems.” *Twenty Seventh International Conference on Information Systems* (Milwaukee 2006).

<sup>10</sup> Jason Dedrick, Vijay Gurbaxani, and Kenneth L. Kraemer, “Information Technology and Economic Performance: A Critical Review of the Empirical Evidence,” *ACM Computing Surveys*, 2003.

<sup>11</sup> Boston Consulting Group (BCG), *Ahead of the Curve: Lessons on Technology and Growth from Small-Business Leaders* (October 2013).

<sup>12</sup> Johnston, Wade, and McClean, “Does E-Business Matter to SMEs?” *Journal of Small Business Management*, 45(3):354-61 (July 2007).

<sup>13</sup> *Id.* at 361.

back-to-school demand. Because manufacturers will not be able to fully absorb additional tariffs, price increases are inevitable. Increased prices, in turn, would dampen consumer demand during this important retail season.<sup>14</sup>

In the longer term, tariffs would hinder our companies' ability to innovate and maintain U.S. high technology leadership. Together our firms devote substantial resources to R&D, spending a collective \$35 billion on R&D in 2018 alone. Much of this R&D occurs at U.S. facilities with contributions from American workers.

U.S. based laptop manufacturers use specialized, custom production equipment that currently exists only in China. Moving production outside of China would take considerable time and come at a significant expense.<sup>15</sup> Any modification in the supply chain would necessarily divert resources away from investments in innovation, innovation that is driven by R&D teams throughout the United States.

At the same time, tariffs would provide a windfall to manufacturers based outside the United States. Although all leading laptop makers manufacture nearly all of their laptops in China, foreign competitors have significantly lower exposure to the U.S. market. For instance, as IDC reports, HP, Dell, and Apple derive 30%, 32%, and 43%, respectively, of their global laptop revenues from the United States.<sup>16</sup> By contrast, according to IDC, the same figures for foreign manufacturers Lenovo, Acer, and ASUS are 15%, 20%, and 9%, respectively.<sup>17</sup> Because our foreign competitors are less dependent on U.S. sales, they would be less severely impacted by new tariffs and would be well-positioned to continue investing in R&D during a time when our companies will be forced to reduce R&D expenditures to offset the increased tariff burden.

More generally, economic models suggest that Section 301 tariffs on information technology products will encourage trade diversion to countries other than the United States and China.<sup>18</sup> Consistent with these predictions, laptop and component producers located outside of the United States and China stand to benefit from additional Section 301 tariffs by taking valuable market share away from U.S. manufacturers. The CTA study indicates that the principal beneficiaries will be countries other than the United States, as tariffs divert trade to third countries.<sup>19</sup>

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<sup>14</sup> The retail season is important not just to manufacturers, but also to retailers. If consumers buy fewer laptops, retailers realize fewer profits in what is already a low-margin business.

<sup>15</sup> These costs would not be limited to one-time start-up expenses. For additional, company-specific details regarding the anticipated costs of moving supply chains, please refer to the individual submissions of HP and Dell.

<sup>16</sup> IDC, *Worldwide Quarterly Personal Computing Device Tracker*, May 2019.

<sup>17</sup> *Id.*

<sup>18</sup> Rhodium Group, *Assessing the Costs of Tariffs on the U.S. ICT Industry* (2019), at 30.

<sup>19</sup> *See* CTA Study at 2-3.

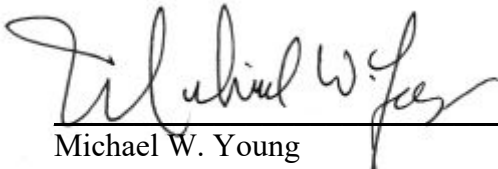
### III. Imposition of Duties on Laptops Will Not Be “Practicable or Effective to Obtain the Elimination” of China’s Unfair Intellectual Property Practices

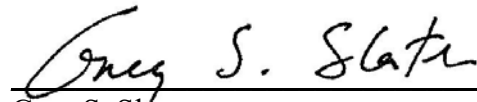
As leading U.S. technology companies, we appreciate the Administration’s commitment to fair trade and the robust protection of IP rights. However, we respectfully submit that imposing additional tariffs on laptops will in practice undermine the Administration’s policy priorities in this China investigation. As explained above, the imposition of tariffs on laptops will require U.S. technology companies like ours to divert resources away from R&D and innovation, negatively impacting our ability to remain technology leaders.

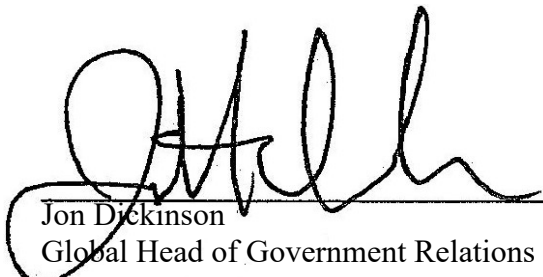
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We appreciate the Administration’s consideration of these comments, and request that laptops classified in HTSUS subheading 8471.30.01 be removed from the final list of proposed Section 301 tariffs. If you have any questions regarding this submission, please do not hesitate to contact us.

Sincerely,

  
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Senior Vice President, Government Affairs  
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Vice President, Global Regulatory Affairs  
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