November 8, 2018

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

RE: Letter in Support of the Exclusion of Smart Thermostats from Increased Duties Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation [Docket ID# USTR-2018-0025]

Dear Ambassador Lighthizer:

We write today on behalf of a broad range of U.S. energy interests—spanning technologies and services in the energy efficiency, grid modernization, energy storage, demand response, information technology, manufacturing, natural gas, renewable energy, and sustainable transportation sectors—to express our strong support for the product exclusion request submitted by National Electrical Manufacturers Association (NEMA) for Wi-Fi-enabled smart thermostats, classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9032.10.0030. This HTSUS subheading was included on the final Section 301 list that USTR published on June 20, 2018 (List 1), and the duties took effect on July 6, 2018. NEMA submitted its request on October 8, 2018.

We support efforts to stop anti-competitive practices that harm American businesses and its economic competitiveness, and support protecting U.S. intellectual property. However, we are concerned that the 25 percent duty being imposed on smart thermostats is not helping achieve the goal of changing these harmful practices, and, instead is harming American productivity, and U.S. businesses and consumers, by imposing unduly burdensome costs on these products. This duty is thereby potentially harming industrial growth for these smart technologies.

The United States is transitioning to a truly modern, integrated energy system, in which digital technologies enable power, information, and communications to flow in two directions, if not in multiple directions, rather than in one direction from an electric utility to the consumer. This transformation enables energy companies, businesses, and consumers to have far greater abilities to manage their energy usage and reduce costs.

With the advent of these technologies and capabilities, American ingenuity has advanced the Internet of Things (IoT), smart cities, and a range of smart technologies and capabilities that help us explore, develop, and create in ways never before imagined. Smart thermostats, that can be controlled remotely, are among these relatively new, innovative technologies that help businesses and consumers better manage their energy usage and their comfort, as well as save money on their energy bills. As NEMA's product exclusion request notes, "Thermostats are necessary for virtually every dwelling and

business because they control the single largest operational system in most buildings - the regulation of heating and cooling." Commercial building owners and managers rely on sophisticated building energy management system technologies and capabilities, consisting of controls and other products beyond the scope of NEMA's request, to manage and optimize energy consumption, as well as tenant comfort and productivity. Smart thermostats tend to be a critical component of such systems that are increasingly common in the highest-efficiency commercial buildings. On the residential side, smart thermostats help homeowners and renters lower monthly utility bills by up to 12 percent on heating and 15 percent on cooling.[1]

U.S. energy productivity is surging, and today we are generating twice as much gross domestic product (GDP) per unit of energy consumed as in 1980.[2] A twenty-first century energy system that incorporates smart technologies, such as smart thermostats, as well as a healthy, robust, and competitive U.S. clean energy industry are indispensable elements of a stronger economy that creates jobs, and bolsters economic growth and prosperity.

U.S. trade policy should support the broad growth of American clean, advanced, and efficient energy technologies and resources, such as smart thermostats. The Section 301 duties on smart thermostats are causing negative impacts on American homeowners, consumers, and businesses by putting upward pressure on prices for American customers, thereby also hindering the growth of the U.S. advanced energy and energy efficiency sectors. In addition, the Section 301 duties on smart thermostats are contrary to the goals of the Administration's Section 301 investigation. The research behind smart thermostats largely is conducted, and the software behind these smart thermostats primarily is developed, in the United States. Moreover, the contract manufacturers in China that these duties are designed to penalize are not headquartered in China.

The clean energy industry currently represents $200 billion of economic activity and employs more than 3 million workers across the country. The United States saved more than $800 billion in 2014 due to energy efficiency measures taken since 1980.[3] The U.S. clean energy industry delivers lower costs for American businesses and households while ensuring a reliable and affordable electric grid for our nation and improving consumer choice. As a world leader in clean and "smart" energy technological innovation and manufacturing, the U.S. economy will benefit from having barriers to trade in advanced energy and

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[1] *See* Energy Trust of Oregon, "Smart Thermostat Pilot Evaluation" at 3-2 (March 1, 2016), https://www.energytrust.org/wp-content/uploads/2016/12/Smart Thermostat Pilot Evaluation-Final wSR.pdf. *See also* Cadmus Group, "Indiana: Smart thermostat pilot studies," https://cadmusgroup.com/case-studies/indiana-smart-thermostat-pilot-studies/.

[2] In 1980, the U.S. consumed 78 quads (quadrillion British thermal units (BTUs)) while GDP was $6.4 trillion, which produces an energy productivity ratio of 82.6. This compares to energy productivity of 176.4 in 2017 (i.e., 96.8 quads and GDP of $17 trillion). Energy consumption data is from the Energy Information Administration. GDP (real dollars, 2009) is provided by the Bureau of Economic Analysis.

[3] American Council for an Energy Efficient Economy (AC3E), "Energy Efficiency in the United States: 35 Years and Counting," American Council for and Energy-Efficient Economy, June 30, 2015, available at: https://aceee.org/research-report/e1502.

energy-efficient products and services reduced or eliminated. Doing so will lead to larger markets for U.S. goods and will deepen economic prosperity.

In closing, we oppose the imposition of Section 301 duties that will harm these domestic advanced, clean energy and energy efficiency industries. Unfortunately, the Section 301 duties on smart thermostats are having precisely this effect. Consequently, we urge you to grant NEMA's product exclusion request for Wi-Fi enabled smart thermostats.

Should you have any questions about this submission, please do not hesitate to contact Dylan Reed with Advanced Energy Economy (DReed@aee.net), Dan Bresette with the Alliance to Save Energy (DBresette@ase.org), Maggie Molina with the American Council for an Energy-Efficient Economy (MMolina@aceee.org), Laura Tierney with the Business Council for Sustainable Energy (LTierney@bcse.org) or Ladeene Freimuth with the Gridwise Alliance (lfreimuth@gridwise.org).

Sincerely,

Advanced Energy Economy
Alliance to Save Energy
American Council for an Energy-Efficient Economy
Business Council for Sustainable Energy
Gridwise Alliance

About the Signatories

Advanced Energy Economy is a national association of businesses that are making the energy we use secure, clean, and affordable. Advanced energy encompasses a broad range of products and services that constitute the best available technologies for meeting energy needs today and tomorrow. AEE's mission is to transform public policy to enable rapid growth of advanced energy businesses. AEE and its state and regional partner organizations are active in 27 states across the country, representing more than 1,000 companies and organizations in the advanced energy industry which now employs 3.4 million U.S. workers.

The Alliance to Save Energy is a nonprofit, bipartisan alliance of business, government, environmental and consumer leaders advocating for enhanced energy productivity to achieve economic growth, a cleaner environment, and greater energy security, affordability and reliability.

The American Council for an Energy-Efficient Economy (ACEEE), a nonprofit 501(c)(3) organization, acts as a catalyst to advance energy efficiency policies, programs, technologies, investments, and behaviors. We believe that the United States can harness the full potential of energy efficiency to achieve greater economic prosperity, energy security, and environmental protection for all of its people.

The Business Council for Sustainable Energy (BCSE) is a coalition of companies and trade associations from the energy efficiency, natural gas and renewable energy sectors. Established in 1992, the Council advocates for policies that expand the use of commercially-available clean energy technologies, products and services.

The GridWise Alliance works to advance the modernization of the electric system; its members consist of electric utilities, information technology and communications equipment and service providers, grid modernization technology and equipment manufacturers, National Laboratories, Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs), and academic institutions.[4]

[4] GridWise Alliance signs this letter on behalf of its members, except its National Laboratory and RTO/ISO members, and the Bonneville Power Administration (BPA), which do not participate in advocacy activities.