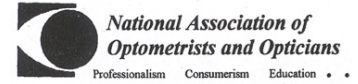




NATIONAL  
ASSOCIATION  
OF VISION  
CARE PLANS



AMERICAN ACADEMY  
OF OPHTHALMOLOGY  
Protecting Sight. Empowering Lives.



June 14, 2019

The Honorable Robert E. Lighthizer  
United States Trade Representative  
Office of the U.S. Trade Representative  
600 17<sup>th</sup> Street N.W.  
Washington, DC 20508

Re: Docket No. USTR-2018-0026  
Public Document  
Comments of The United States Optical Community Regarding Proposed  
301 Tariffs on Spectacles, Spectacle Lenses, Spectacle Frames, Sunglasses,  
Reading Glasses, Absorptive Filters, and Low Vision Optical Telescopes  
U.S. Harmonized Tariff Schedule Subheadings 9001.40.00; 9001.50.00; 9003.11.00; 9003.19.00;  
9003.90.00; 9004.10.00; 9004.90.00; 9005.10.00 9005.80.40

Dear Ambassador Lighthizer:

We the following organizations representing the United States Optical Community respectfully submit the following comments to the proposed rulemaking published on May 17, 2019.<sup>1</sup>

- American Academy of Ophthalmology
- National Association of Opticians and Optometrists
- Opticians Association of America
- National Association of Vision Care Plans
- Prevent Blindness
- OneSight
- The Vision Council

These combined comments address imported Optical Products from China classified in subheadings 9001.40.00; 9001.50.00; 9003.11.00; 9003.19.00; 9003.90.00; 9004.10.00; 9004.90.00; and, 9005.80.40 of the Harmonized Tariff Schedule of the United States (“HTSUS”). For the following reasons, we oppose the proposed imposition of an additional customs duty of up to 25 percent *ad valorem* on the Optical Products, and respectfully requests that these tariff numbers be excluded from the final list of tariff numbers subject to the section 301 tariffs currently being contemplated.

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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. 22564 (May 17, 2019).

## The Tariff Provisions at Issue

The combined Optical Community Associations are commenting on the following tariff provisions:

9001.40.00	Spectacle lenses of glass, unmounted.
9001.50.00	Spectacle lenses of materials other than glass, unmounted.
9003.11.00	Frames and mountings of plastic for spectacles, goggles or the like.
9003.19.00	Frames and mountings, other than of plastics, for spectacles, goggles or the like.
9003.90.00	Parts of frames and mountings for spectacles, goggles or the like.
9004.10.00	Sunglasses, corrective, protective or other.
9004.90.00	Spectacles, goggles and the like, corrective, protective or other, other than sunglasses.
9005.10.00	Binoculars.
9005.80.40	Optical telescopes, including monoculars.

## Comments of The Combined Optical Community

1. The Optical Products are Widely Used Medical Devices. Therefore, the Imposition of Additional Duties Pursuant to Section 301 is a *De Facto* Tax on The Medical Devices.

Arguably, prescription eyeglasses, regulated by the U.S. Food and Drug Administration (FDA), are the most widely used medical device in the United States, if not the world. As of March 2019, approximately **164.4 million Americans -- 64.3 percent of the U.S. population -- wear prescription eyeglasses**, with **78.6 million pairs of new eyeglasses** dispensed to Americans **annually**. There are many different medical reasons Americans wear glasses, but the obvious one is that they help us see better, which in turn contributes to our productivity as a society. If we are farsighted, then we use them to see things close-up to us, like when we are reading. Likewise, if we are nearsighted, glasses help us focus on distant objects, like when driving a car or learning in a classroom.

Any increase in the landed cost of the Optical Products through the imposition of additional Customs duties will inevitably result in higher costs for medical devices designed to provide therapeutic or prophylactic benefits to those with mild to serious visions issues. Any duty-related increase will be passed through the supply chain to the ultimate consumer – the eyecare patient.

This will happen if China 301 tariffs are assessed against Optical Products. Most of the eyeglasses Americans wear are manufactured using components made outside the U.S. The overwhelming majority of spectacle lenses and spectacle frames are imported into the U.S. because no mass spectacle lens or spectacle frame production exists in the U.S. Furthermore, most of these components are produced in China, which is especially true for spectacle frames where 83.4 percent of the units originate. The dominance of China as a producer of over-the-counter reading glasses is even greater than in the prescription eyewear market, where 84.5 percent of production is found. Approximately 13 percent of Americans use reading glasses, resulting in \$958 million in annual sales of these devices. Like prescription glasses, reading glasses purchased without the need of a prescription are medical devices regulated by the FDA.

Likewise, approximately 219 million Americans – 85.7 percent -- wear sunglasses to block ultraviolet (UV) light and reduce glare. Exposure to harmful ultraviolet radiation can harm our eyes, with UV exposure linked to cataracts, macular degeneration and photokeratitis. Parents routinely outfit their children with sunglasses to prevent early exposure to UV. Sunglass production in the U.S. is extremely small and typically consists of assembly of foreign origin components, with 82 percent of sunglasses and sunglass parts manufactured in China.

Approximately 27 million American adults, 8.3percent of the current population, have a visual disability or suffer low vision. Low vision is a medical term that characterizes visual impairment that cannot be corrected with traditional

eyeglasses, contact lenses, medication or eye surgery. People with visual acuity worse than 20/70 in the better eye suffer from low vision, as do those with tunnel vision, blind spots, or legal blindness.<sup>2</sup> Veterans who may have suffered combat injury or developed age-related vision loss represent a large segment of low vision device users, along with the elderly and those on fixed incomes. Devices such as absorptive filters (contrast enhancing filters in sunglass form used by low vision patients) and hand-held or spectacle mounted optical telescopes (devices that allow low vision patients to read things at a distance, like a street sign or blackboard) are medical devices critical to the low vision community. As with the other Optical Products discussed in this letter, these products are not mass produced in the U.S., so low vision users must rely on imports of these important medical devices. Many of these products are produced in China.

Thus, any additional customs duties assessed on Chinese-origin Optical Products functions as a direct tax on some of this country's most widely used medical devices, which, as discussed in this letter, will drive up their costs to be borne by U.S. citizens. The FDA regulates Optical Products as therapeutic ophthalmic medical devices. *See*, 21 CFR 886.5844 (Prescription spectacle lens); 21 CFR 886.5842 (Spectacle frame); 21 CFR 886.5850 (Sunglasses (nonprescription)); 21 CFR 886.5840 (Magnifying spectacles) and 21 CFR 886.5870 (low-vision telescopes). Given the uproar over the 2.3 percent IRS excise tax on the sales of medical devices imposed to support Obamacare, which tax Congress voted twice to suspend at least through the end of this year, it is hard to understand the reasoning behind possibly imposing a potential 25 percent duty directly on medical devices, including Optical Products. The additional punitive burden caused by the proposed China 301 duties on these medical devices is far worse than the one Congress felt compelled to avoid twice so far by legislating moratoria on its enforcement. If the Administration and Congress see direct taxation of medical devices as bad policy for purposes of the IRS excise tax, then that characterization is just as apt for the direct taxation of medical devices like Optical Products through heightened tariffs such as currently contemplated.

## 2. Optical Products Do Not Contain Industrially Significant Technology

A 25 percent tariff on Chinese-origin Optical Products will not be a practical or effective means of eliminating or alleviating China's unreasonable and discriminatory acts, policies and procedures. The section 301 investigation was issued in "response to China's unfair trade practices related to the forced transfer of American technology and intellectual property." The manufacture of Optical Products, however, does not require any significant technology, nor could the manufacturing process be regarded as innovative. To the best of our knowledge, organizations involved with importing or manufacturing Optical Products has ever been forced to share technology with any Chinese partner as a predicate to manufacturing in China. Nor are these products from industry sectors that might contribute to, or benefit from, any Chinese industrial policy, including "Made in China 2025." The Optical Products have no linkage to the underlying problems that section 301 duties can remedy.

## 3. U.S. Interests – Including U.S. Citizens – Will Experience Economic Harm from the Proposed Tariff

Optical product companies who import Optical Products into the United States have informed us that they will experience economic hardship if Optical Products from China are subjected to an additional 25 percent duty, and less hardship if the duty rate is set at a lower amount, such as 10 percent. These companies are U.S. companies that employ American workers. These companies expect that an increase in the landed costs of Optical Products because of the imposition of China duties will result in job loss and stifle business expansion.

Optical Products are already subject to a tariff, at 2 percent or 2.5 percent, except low vision optical telescopes which are dutiable at 8 percent.<sup>3</sup> Adding an additional duty up to 25 percent on top of the existing duties will only punish these U.S. companies by increasing their landed cost of goods to unreasonably high levels. Ultimately these costs will be borne by Americans who purchase the Optical Products, as most of the additional costs will filter through the supply chain to the eyewear customer. Not only will U.S. companies be impacted, but so will millions of American citizens who will pay more for their Optical Products, as will the U.S. Department of Veterans Affairs, which purchases low vision devices for veterans. Other state and federal government agencies that provide these devices as part of vocational rehabilitative services will be impacted, too.

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<sup>2</sup> Legal blindness is defined as visual acuity of 20/200 or worse in the better eye, or a visual field constricted to 20 degrees or less.

<sup>3</sup> The other exception is non-plastic spectacle frames, which are duty-free.

Increasing the costs of these most commonly used medical devices will likely also have a negative public health impact. If the consumer cost of finished eyeglasses goes up as the additional duties are transferred through the supply chain, individuals will refrain from having eye exams. Typical medical insurance coverage does not cover the cost of annual eye exams and Optical Products. Consumers, already confronted with increasing health care costs, will face even greater out-of-pocket medical expenses if additional tariffs are assessed on Optical Products. Not only does this mean that individuals will forego updating their existing prescriptions to reflect their actual corrective needs, but by delaying eye exams other eye-related conditions and diseases diagnosed during checkups will go undiscovered. This could include cataracts, macular degeneration, corneal ulcers, diabetic retinopathy, color blindness and glaucoma.

Additionally, sourcing alternatives are not readily available. China is the main hub of low-cost manufacturing of Optical Products, and we are hard pressed to identify American entities with the capacity and skill to make significant volumes of Optical Products. Sourcing alternatives in Europe or other Southeast Asian countries are already more expensive than China sources, so the imposition of a 25 percent or lower additional duty on Chinese product will provide those competitors opportunity to raise their prices further. Nor do these other country producers have the existing capacity, equipment or components that would be required to meet U.S. demand for Optical Product should production of these medical devices migrate out of China. Building such capacity would take years and great expense, and thus is not a likely option. Also, changing suppliers impacts existing lead times and might require brand approval prior to allowing such changes. Therefore, the ability to shift production out of China is unrealistic in the short term and likely too costly in the long term. Imposition of additional tariffs on Optical Products will not result in repatriation of these industries to the U.S., but instead if production migration were to occur, the likely beneficiaries of those jobs would be other low cost sub-Asian producers.

Finally, organizations involved with the Optical Products derive a large percentage of their annual revenue from sales of these products. Many member companies have business models limited primarily to importing and reselling one or more discrete type of Optical Product. While some of the larger member companies are more horizontally integrated across the field of Optical Products, a typical member company specializes in one or two Optical Products. Thus, certain companies function as U.S.-based frame importing and distributing companies, while others are U.S.-based lens importing and processing companies. It goes without saying that if these U.S. companies cannot pass these costs downstream at this time because of existing contractual obligations or the threat of customer defection, any additional tariff, particularly one as steep as 25 percent, will negatively impact profits. As mentioned above, this will lead to job loss as companies seek to offset these new costs through redundancies and business contraction. If a 25 percent duty is implemented, it is expected that business failures where a company's core business model is limited predominately to importing and reselling a limited range of Optical Products.

In conclusion, the proposed additional duty on Optical Products in subheadings 9001.40.00; 9001.50.00; 9003.11.00; 9003.19.00; 9003.90.00; 9004.10.00; 9004.90.00; 9005.10.00 and, 9005.80.40, HTSUS, accomplishes none of the goals stated in the China 301 investigation, as no sensitive U.S. technology is at risk by making Optical Products in China. Instead, this duty will create a potential financial hardship for U.S. companies engaged in this trade and will likely increase the cost of prescription eyeglasses and other protective or therapeutic eyewear and devices for millions of Americans with vision issues.

Thank you for your consideration of our comments. Please feel free to contact either of the undersigned if you require any more information regarding this submission.

Sincerely,

American Academy of Ophthalmology  
National Association of Opticians and Optometrists  
Opticians Association of America  
National Association of Vision Care Plans  
Prevent Blindness  
OneSight  
The Vision Council