THE US-CHINA BUSINESS COUNCIL
美中贸易全国委员会

US-China Business Council Comments on Proposed Modifications and Machinery Exclusion Process in the Section 301 Investigation: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

Docket ID: USTR-2024-0007

June 28, 2024

The US-China Business Council (USCBC) represents over 270 American companies engaged in business across multiple industries in China. USCBC welcomes the opportunity to submit comments on the proposed tariff modifications and machinery exclusion process in the US Trade Representative's (USTR) Section 301 Investigation into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation.

As noted in our previous submission, USCBC believes the US government and private sector entities should work to ensure that China makes market-based decisions on technology transfer and does not infringe on US intellectual property (IP) rights.[1] Our organization continues to advocate for more progress on these and other issues impacting US companies competing in China and worldwide. However, the Section 301 tariffs have not succeeded in changing China's market practices, so it is unclear how continuing such tariffs will eventually accomplish that goal. This is why USCBC is generally disappointed with the results of USTR's four-year review, as tariffs ultimately make it harder for American companies to compete in the US and abroad, cost American jobs, increase consumer prices during ongoing inflation, and invite Chinese retaliation.

USCBC generally supports efforts by the US government and companies to address the issues identified in the 301 report[2] and applauds the Biden administration's efforts to boost American manufacturing and achieve greater supply chain resiliency. We recognize the challenges China's overcapacity in critical sectors poses to these efforts, not to mention the corresponding challenges for the US economy, companies, and workers. We have stressed the importance of rebalancing China's economy to the country's top leaders[3] and support the Biden administration's efforts to

[1] "USCBC Comments on Four-Year Review of Actions Taken in the Section." 2023. US-China Business Council. January 18, 2023. https://www.uschina.org/advocacy/regulatory-comments-on-china/uscbc-comments-four-year-review-actions-taken-section-301-investigation.
[2] "Four-Year Review of Actions Taken in the Section 301 Investigation: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property." Office of the United States Trade Representative, May 14, 2024. https://ustr.gov/sites/default/files/05.14.2024%20Four%20Year%20Review%20of%20China%20Tech%20Transfer%20Section%20301%20(Final).pdf.
[3] "USCBC Leaders Invited to Discuss Commercial Relations with President Xi." *The US-China Business Council*, March 27, 2024. The US-China Business Council. https://www.uschina.org/media/press/uscbc-leaders-invited-discuss-commercial-relations-president-xi.

engage China to address overcapacity[4] and other important issues.[5] Likewise, we encourage the administration to continue to prioritize working with international partners to address global overcapacity challenges.[6]

USCBC applauds USTR for extending 164 existing Section 301 tariff exclusions,[7] proposing opening a tariff exclusion process for machinery used in domestic manufacturing and proposing excluding certain solar manufacturing equipment from Section 301 tariffs.[8] As noted in our previous comments to USTR, Section 301 tariffs have sometimes prevented companies from increasing manufacturing in the United States. The proposed exclusions are a step in the right direction, but more can be done to encourage domestic manufacturing.

We believe that as the administration addresses challenges stemming from China's trade and economic practices, any tariffs maintained or assessed in response to these challenges must be targeted and designed to modify China's behavior. We are also disappointed by the lack of tariff relief for certain consumer goods and the unexplained exclusion of certain manufacturing inputs from eligibility for consideration under the proposed exclusion process.

USCBC is committed to being a constructive partner with the administration. In this submission, USCBC will (1) address the need to eliminate tariffs on consumer goods and (2) offer suggestions for the proposed tariff exclusion process.

I. Section 301 tariffs on consumer goods should be eliminated to lower costs for American businesses and families

USCBC and its member companies formally request the elimination of tariffs on consumer goods that serve no strategic or national security purpose. The maintenance of tariffs—with no reductions—makes it harder for US companies to compete, costs consumers money, and conflicts with the Biden administration's stated objective of reducing price inflation. Tariffs on consumer goods, including apparel and footwear, aftermarket automotive parts, and consumer electronics such as desktop computers, have not brought jobs back to the United States, nor have they

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[4] "Statement from Secretary of the Treasury Janet L. Yellen on Announcement of New US-China Initiatives Following Meeting with Vice Premier He Lifeng of the People's Republic of China." U.S. Department of the Treasury, April 6, 2024. https://home.treasury.gov/news/press-releases/jy2232.

[5] "Readout of President Joe Biden's Meeting with President Xi Jinping of the People's Republic of China." The White House, November 16, 2023. https://www.whitehouse.gov/briefing-room/statements-releases/2023/11/15/readout-of-president-joe-bidens-meeting-with-president-xi-jinping-of-the-peoples-republic-of-china-2/#:~:text=He%20stressed%20that%20the%20United,or%20a%20new%20Cold%20War.

[6] "G7 Apulia Leaders' Communiqué." The White House, June 14, 2024. https://www.whitehouse.gov/briefing-room/statements-releases/2024/06/14/g7-leaders-statement-8/.

[7] Office of the United States Trade Representative. "Notice of Extension of Certain Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation." *Federal Register* 89, no. 105 (May 30, 2024): 46948, https://www.govinfo.gov/content/pkg/FR-2024-05-30/pdf/2024-11904.pdf.

[8] Office of the United States Trade Representative. "Request for Comments on Proposed Modifications and Machinery Exclusion Process in Four-Year Review of Actions Taken in the Section 301 Investigation: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation." *Federal Register* 89, no. 103 (May 28, 2024): 46252, https://www.govinfo.gov/content/pkg/FR-2024-05-28/pdf/2024-11634.pdf.

brought China back to the negotiating table since the signing of the Phase One Trade Agreement. Rather, they have raised the cost of goods for American families and workers and encouraged consumers to purchase directly from Chinese online retailers rather than US online and brick-and-mortar retailers.

According to a report published by Trade Partnership Worldwide, LLC in 2023, Section 301 tariffs have led to increased consumer costs on apparel, footwear, travel goods, and furniture.[9] These cost increases directly impact consumers, as the tariffs are more likely to be passed on to them rather than incentivize supply chain shifts. For example, one USCBC member company, which sources backpacks and stress balls, among other products from China for major US brands and retailers, reported passing on increased costs from Section 301 tariffs to their customers. Most recently, following USTR's announcement that tariff exclusions for constant velocity (CV) axles (a safety-critical automotive component) would expire on June 14, 2024, end-market prices rose to offset the impact of new tariffs imposed on US importers.

Section 301 tariffs on consumer goods have disproportionately impacted low-income families (single-parent families in particular), given that they spend a greater percentage of their income on home necessities, such as clothes and shoes.[10] American low- and middle-income families have suffered the most from inflation and benefitted the least (if at all) from rising real estate and investment values in recent years. While inflation has decreased from the historic levels reached in 2022[11], it continues to remain high.[12] The core consumer price index, which excludes food and energy, was up 3.4 percent year on year in May. According to the Peterson Institute for International Economics, lowering import prices through easing tariffs could reduce inflation by a quarter of a percentage point. [13] Although it is a modest reduction, American families would have more money to save and increased spending power without the regressive tariffs.

USCBC favors efforts to diversify supply chains to make them more resilient and meet national security needs. Most consumer goods, however, do not involve US national security interests. In many instances, it is also not feasible to move supply chains out of China, especially without positive incentives to do so in the form of trade agreements. While production sources may exist in third countries, those sources often lack the capacity to produce sufficient quantities of goods

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[9] Impacts of Section 301 tariffs on imports from China, January 2023. https://tradepartnership.com/wp-content/uploads/2023/01/China-301-Tariff-Costs-Joint-Association-Study-FINAL.pdf.

[10] Gresser, Ed. "Trade Policy, Equity, and the Working Poor: United States MFN Tariffs Are Regressive Taxes Which Help Few Workers and Harm Many." Progressive Policy Institute, April 2022. https://www.progressivepolicy.org/wp-content/uploads/2022/04/Trade-Policy-Equity-and-the-Working-Poor-ITC-Report_FINAL.pdf.

[11] "Consumer Prices up 9.1 Percent over the Year Ended June 2022, Largest Increase in 40 Years." U.S. Bureau of Labor Statistics, July 18, 2022. https://www.bls.gov/opub/ted/2022/consumer-prices-up-9-1-percent-over-the-year-ended-june-2022-largest-increase-in-40-years.htm.

[12] Rugaber, Christopher. "US Inflation Cooled in May in a Sign That Price Pressures May Be Easing." AP News, June 12, 2024. https://apnews.com/article/inflation-prices-rates-economy-federal-reserve-biden-8e1d14563d83f55e1773bcddd622bb2b.

[13] Gary Clyde Hufbauer, Megan Hogan, and Yilin Wang, "For Inflation Relief, the United States Should Look to Trade Liberalization," *Peterson Institute for International Economics*, March 2022, https://doi.org/https://www.piie.com/publications/policy-briefs/inflation-relief-united-states-should-look-trade-liberalization.

cost-effectively within a reasonable amount of time—and hence are not realistic alternatives. According to a USCBC member company, manufacturing certain consumer products outside of China can take more than three times longer and may not result in a better-quality product. On top of that, the cost of manufacturing in third-country locations can be up to 100 percent higher.

With these considerations in mind, USCBC strongly urges the administration to reconsider its decision not to eliminate tariffs on certain consumer goods. Reducing tariffs on such goods would not impact national security interests and aligns with the administration's goal of lowering costs for American households and combating inflation. The administration can implement policies that provide consumers with relief while addressing China's unfair trade practices and overcapacity. These objectives need not be mutually exclusive. Lowering tariffs on specific consumer goods is a prudent starting point.

II. The proposed tariff exclusion process should be expanded to make US manufacturers more competitive

USCBC applauds USTR's proposal to open a tariff exclusion process for machinery used in domestic manufacturing and its proposal to exclude certain solar manufacturing equipment from Section 301 tariffs. In previous comment submissions over the last several years, we have stressed the need for USTR to reopen an exclusion process to mitigate tariffs' adverse impacts on US companies' competitiveness. USTR's proposals represent steps in the right direction, but the tariff exclusions are too limited in scope, and the exclusion process is not sufficiently defined. USCBC makes the following suggestions to improve the exclusion process:

1. USTR should expand the scope of the exclusion process to consider all inputs used in domestic manufacturing

   In one case, a USCBC member company that manufactures automotive and consumer magnets and magnetic assemblies has seen two of its European competitors become much more competitive due to the Section 301 tariffs. The cost of the tariffs has been partially absorbed by the American manufacturer and partially by its customers.[14] Additionally, the proposed 25 percent tariff increase on permanent magnets will lead to significant price hikes for a wide range of products that utilize these magnets, including but not limited to automobiles, consumer appliances, medical devices, and toys. While domestic manufacturers of these goods are working, with the help of the US government, to increase domestic production capacity, US entities will need to rely on offshore sources of magnets, including China, until the United States and other countries can produce magnets in sufficient quantities.

   In another case, a USCBC member company has paid tens of millions of dollars in tariffs for low-end inputs used in manufacturing high-end mainframe computers in the United States. These imports do not represent high-value technology products. They are necessary inputs for

[14] One American manufacturer: Doug Barry, "Magnets Attracted Indiana Engineer to China," The US-China Business Council (USCBC 50 States 50 Stories, October 19, 2022), https://www.uschina.org/50-states-50-stories/magnets-attractedindiana-engineer-china.

US-made systems and include printed circuit board assemblies, mechanical parts, fans, power distribution units, power supplies, and cables— primarily available only from Chinese sources. The company has taken significant steps to diversify its sourcing, but many commoditized inputs are currently only available from China. It is simply not economically feasible for the United States to manufacture these inputs competitively. Ensuring the United States remains a leader in advanced high-tech manufacturing should be the primary focus of US trade and innovation policy. Exclusions covering inputs into high-end information and communications technology manufacturing in the United States should, therefore, be covered in an exclusion process.

In yet another case, a USCBC member company that manufactures electric forklift batteries reported that they would soon have to pay tariffs on battery inputs, which their Canadian and European competitors are not subject to. Many of the inputs that go into the batteries they make are not available domestically and will not be for several more years. Inputs that cannot be purchased economically and at scale for US manufacturing should be able to receive exclusions with a specific and reasonable end date.

2. USTR should establish a transparent and efficient process by which importers can apply for exclusions

   USTR should provide clear exclusion application instructions, an outline of the exclusion review process, and a clear outline of considerations for granting exclusions. Considerations should include:

   (1) The extent to which the product is needed to support US initiatives in strategic sectors, employment of US workers, and decarbonization

   (2) The extent to which the tariff makes US manufacturers less competitive

   (3) Availability of safe and comparable quality products from sources outside of China

   (4) Attempts by the importer to source the product from the United States or third countries

   (5) The extent to which the assessment of Section 301 tariffs on the product would cause severe economic harm to the importer or other US interests

3. USTR should keep the exclusion process ongoing so long as Section 301 tariffs remain in place

   The exclusion process should remain open to support future US government initiatives to boost US manufacturing in strategic sectors and meet the needs of US manufacturers starting or expanding production at different times. Making the exclusion process time-limited favors established companies and products over innovative ones that may come to market after the eligibility period closes. An open process would create greater certainty for the range of projects under consideration and likely to be implemented in the United States but on a broader timeline (5-7 years), particularly given permitting requirements and other due diligence obligations. Machinery needs are likely to evolve over the life of a project.

4. USTR should incorporate aspects of past Section 301 and Section 232 exclusion processes into the new Section 301 exclusion process

   USTR should establish a process by which US manufacturers can apply for exclusions, concerned parties can file objections, and applicants can file rebuttals. Decision memos outlining USTR's decision to grant or deny exclusions should be posted to the exclusion portal and made public.

USCBC and its member companies believe our two formal requests in this letter are reasonable and easily implemented. However, our focus on these mechanisms does not imply that USCBC opposes other market-opening reforms and methods to address trade issues with China. The Biden administration should continue to prioritize high-level negotiations with their Chinese counterparts to manage the relationship and avoid conflict while ensuring US entities have access to this critical market. Emphasizing mutual benefits through constructive dialogue de-escalates tensions and fosters a more stable trading environment. The United States should also strengthen its alliances with key allies and global players. A balanced geopolitical environment and restraint from unilateral actions ensure US companies remain competitive and on a level playing field with foreign companies.

USCBC appreciates the opportunity to comment on the proposed modifications and exclusion process. We hope USTR sees USCBC's recommendations as constructive, and we look forward to working with USTR to advance the interests of US companies, the American workers they employ, and their families. Please get in touch with USCBC Vice President of Government Affairs Richard Harper (rharper@uschina.org) for any clarification on or further discussion of these public comments.