Congress of the United States
House of Representatives
Washington, DC 20515–4319

May 24, 2024

The Honorable Katherine Tai
U.S. Trade Representative
Office of the United States Trade Representative
600 17th Street N.W.
Washington, D.C. 20508

Dear Ambassador Tai,

We write to request additional information about the May 14, 2024, completion of the statutory *Review of the Section 301 Investigation of China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*. The Section 301 tariff actions, originally enacted during the Trump administration and continued under the Biden administration, have been an important tool to challenge China's unfair trade practices while still ensuring that American producers, manufacturers, and importers can request relief where needed. However, the recent completion of the Four-Year Review process raises questions about the reasoning, timing, expected effectiveness, and potential consequences of the tariff-related actions taken following the investigation.

Most significantly, there is a concerning delta between the report's discussion of China's continued unfair trade practices and its proposed actions. Much of the report focuses on how China continues to engage in state-sanctioned theft of intellectual property and forced technology transfer despite the imposition of the Section 301 tariffs in 2018 and the conclusion of the Phase One Agreement. However, none of the proposed actions appear to be designed to solve these problems. Instead, USTR proposed raising tariffs on a handful of industrial products and creating a narrow exclusion process for certain equipment. Alarmingly, the report gives no evidence of why these tariff increases and decreases will reduce China's cyber-theft and forced technology transfer.

Some tariff increases on imports from China may be well justified, but it is far from clear that increasing tariffs on this select group of products will advance the stated goals of the Section 301 action. For approximately half of the product categories receiving increased duties, China's share of overall U.S. imports is well below 10 percent, including for electric vehicles, semiconductors, critical minerals, steel, aluminum, solar cells, ship-to-shore cranes, syringes, and needles[1]. USTR's report briefly describes why certain goods were selected to receive additional duties and notes that these sectors were chosen because "many of the sectors are targeted by China for dominance or are sectors where the U.S. has recently made significant investments."

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[1] Goujon, R., & Vest, C. (n.d.). US-China trade war, volume 2. – Rhodium Group. https://rhg.com/research/us-china-trade-war-volume-2/

We support bolstering American competitiveness and addressing unfair trade in those and other sectors. However, this action represents the bare minimum. <u>If the administration believes President Trump's broad-based tariffs were necessary but ultimately insufficient to stop China's forced technology transfer agenda, what makes it think that tariffs on a handful of products with relatively little bilateral trade would make a difference?</u> This is all the more true given that the administration has repeatedly declined to enforce the Phase One Agreement—a tool specifically designed for the challenges raised in the Four-Year Review.

In addition, the report and its recommendations do not sufficiently set forth any strategy for mitigating risks associated with the tariffs. The report does not provide insight into the cost-benefit analysis of the effectiveness of these tariffs in preventing Chinese imports into the United States, compared to the potential effects of the retaliatory actions that China may take against American exports. The report does highlight some of the economic impact of China's retaliatory tariffs following the Section 301 duties imposed in 2018 and 2019. However, it fails to address how USTR considered the potential impact of a new round of Chinese retaliatory measures on American producers and consumers. Creating a narrow exclusion process is also concerning because it leaves out other products that may have a good case for exclusion, including products for which exclusions expire at the end of this month.

Therefore, we request to receive your written responses to the following questions by June 14, 2024:

1. Why did USTR decide to enact these tariff-related measures now, rather than closer to 2022 when the original Four-Year Review process was initiated following the 2018 Section 301 tariff actions?
2. Currently, China's share of U.S. imports of electric vehicles, semiconductors, critical minerals, steel, aluminum, solar cells, ship-to-shore cranes, syringes, and needles is well below 10 percent. Can USTR share any data highlighting the potential immediate threat that imports of these goods pose to the American economy?
3. If there is an immediate threat based on China's overcapacity for these sectors where Chinese products account for a low share of all U.S. imports, does USTR also plan to address the potential of China using transshipment in other markets to avoid the increased Section 301 tariffs?
4. U.S. electric vehicle manufacturers, non-electric vehicle manufacturers, and solar producers are currently highly dependent on lithium-ion batteries and graphite imports from China. We share USTR's apparent objective to reduce these sectors' dependencies on China, but USTR's decision to delay the implementation of tariffs for lithium batteries used in non-electric vehicles and graphite to 2026 admits that supply chains may not be ready to adapt to these actions in the short-term. Does the administration plan on working with automotive and solar industry stakeholders to determine solutions to strengthen these supply chains following this decision?
5. What evidence does USTR have that these narrow tariff increases will be more effective than the baseline Section 301 tariffs at addressing China's unfair intellectual property and technology transfer practices?

6. Given that the report notes several instances where China continues to engage in the unfair acts, policies, and practices identified in the original Section 301 investigation, why has USTR declined to initiate enforcement of the Phase One Agreement?
7. How did USTR factor in China's threat of retaliatory tariffs in its decision-making process, particularly for agricultural exports?
8. One benefit of an exclusion process is to reduce tariff impacts to further production and investment in the United States. But the proposed exclusion process for certain machinery and equipment may be too limited to affect that aim overall. In addressing existing and expiring exclusions, did USTR consider how the renewal of certain exclusions will further investment in U.S.-based economic activity?

Sincerely,

Jodey C. Arrington
Member of Congress

Adrian Smith
Member of Congress

Mike Kelly
Member of Congress

Carol D. Miller
Member of Congress

Darin LaHood
Member of Congress

David Schweikert
Member of Congress

David Kustoff
Member of Congress

Mike Carey
Member of Congress