June 28, 2024

Via USTR Comment Portal

The Honorable Katherine Tai
United States Trade Representative
600 17th Street NW
Washington, DC 20508

RE: 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 (89 FR 46252, May 28, 2024); Docket Number USTR-2024-0007

Dear Ambassador Tai:

The National Foreign Trade Council (NFTC) is pleased to provide the comments below in response to the above referenced Federal Register Notice. As a multi-sectoral business association, NFTC does not intend to provide granular comments on individual tariff lines. However, we appreciate the opportunity to share our thoughts more broadly on the proposed modification and important factors to consider regarding the potential effects on competitiveness and U.S. business interests.

About NFTC

NFTC, based in Washington, DC, is the premier association for leadership and expertise on international tax and trade policy issues. We believe trade and tax policies should foster fair access to the opportunities of the global economy and advance global commerce for good. NFTC serves as a nimble and effective forum for businesses to engage critical and complex issues together and to foster trust with governments to improve policy outcomes in the United States and around the world. Leveraging its broad membership and expertise, the NFTC contributes to a greater understanding of the critical role that an open, rules-based international economy plays in the success of American businesses, entrepreneurs and workers and shared global prosperity.

Section A: Comments on Proposed Modifications to the Section 301 Actions

For the tariff code provided, please discuss whether the proposed modification would enhance the effectiveness of the tariff actions in obtaining the elimination of or in

counteracting China’s acts, policies, and practices related to technology transfer, intellectual property and innovation.

The proposed tariff increases will not be effective in securing changes to China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. Tariffs on $550 billion in U.S. imports from China have been imposed since 2018, resulting in almost $220 billion in tariffs collected since that time. (U.S. Customs and Border Protection Trade Statistics, June 19, 2024). If tariffs could achieve meaningful changes to China’s acts, policies, and practices relating to tech transfer, intellectual property (IP) and innovation, they would have achieved that result by now.

In Section II.B of the *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* (“Report”) USTR suggests that the Section 301 tariffs led to a limited number of actions by China to address the findings from the original investigation. However, the Chinese actions cited in the Report largely took place during the Trump Administration when the tariffs were first imposed. Since the publication of the *Special Administrative Measures (Negative List) for the Access of Foreign Investment* in December of 2021, USTR was unable to identify any more recent indication that maintaining the Section 301 tariffs has had a continuing effect in inducing further changes to China’s relevant measures. To the extent that the Section 301 tariffs had any success in inducing Chinese action, they achieved whatever impact they could by the end of 2021 and should have been removed as a result.

Indeed, Section II.C of the Report outlines in extensive detail the wide range of areas on which China still has not adjusted its measures. At more than 35 pages, Section II.C dwarfs the discussion of the tariffs’ success in Section II.B, which only required five pages to lay out. The evidence that tariffs are an ineffective too for inducing changes to China’s measures vastly outweighs the minimal actions taken.

In sum, the evidence in the Report supports what many in the business community have said all along: tariffs were not the appropriate tool to address decades-long, complex Chinese economic behavior. To the extent the tariffs had any effect at all on China’s measures identified in the initial Section 301 investigation, it was minimal and ended years ago.

In an attempt to bolster the “success” of the Section 301 tariffs, USTR created two new measures of their effectiveness not found in the Section 301 statute. First, Section II.D of the Report argues that the tariffs were effective in reducing China’s share of U.S. imports and disincentivizing U.S. investment in China. Section II.E argues the tariffs helped to reduce the exposure of U.S. IP to risks in China. Section 301 (19 U.S. Code § 2411) directs USTR to take action “to obtain the elimination of that act, policy, or practice.” This, or enforcing rights under a trade obligation, are the only reasons that action under Section 301 is authorized. Even if USTR believes that the new tariffs proposed in this modification would be effective in adversely affecting U.S. imports or reducing foreign investment in China, those factors cannot be a factor in assessing the modification.

Increasing tariffs on the list of products in Annex A as proposed in the Federal Register notice will not be effective in securing any additional modifications of China's measures targeted in the 301 investigation. The trade covered by the proposed modification totals only $18 billion in U.S. imports. Given the scope and scale of the tariffs imposed to date, there is no reason to believe that tariffs on an additional $18 billion could achieve what six years of tariffs on $550 billion in imports could not.

For the tariff code provided, please discuss the likely impact of the proposed modification on the U.S. economy, including U.S. consumers?

The proposed modifications would cause significant negative effects on American manufacturers and consumers.

The primary effect of the Section 301 tariffs has been a dramatic increase in the cost of goods from China in the U.S. U.S. Customs and Border Protection reports nearly $220 billion in Section 301 tariffs have been collected since 2018. Each dollar of this tariff revenue represents a tax ultimately borne by U.S. consumers. A similar impact would be expected for the modifications proposed.

Experience under the existing 301 tariffs also suggests that even if manufacturers of the products in Annex A could relocate production or source outside of China, there would still be a cost increase for importers even though the direct cost of the tariff is avoided. Reduced economies of scale, production capacity limitations, and additional logistics costs all lead to higher prices for nonchains production. This is especially true for intra-company supply chains where manufacturers own factories in China to provide components for use in their own U.S. factories. In this scenario, there are no other suppliers available anywhere else to provide a seamless transition away from China. Companies must bear the full cost of the 301 tariffs at the same time they are making significant capital investments elsewhere to replace the Chinese production. USTR should treat these intra-company supply chains differently since they support U.S. manufacturing jobs. Additionally, goods subject to standards and safety approvals must undergo new, extensive, and expensive retesting when the country-of-origin changes.

For many products, China remains the only source, including for both finished goods and key parts and materials. That is expected to remain true for many of the products proposed in Annex A. For these products, the cost increases associated with the 301 tariffs make companies that rely on those products as inputs for manufacturing in the U.S. less competitive than their competitors from outside the United States.

As a result of the existing 301 duties, many U.S. companies have noted lost sales to producers in third markets because of higher materials costs in the U.S. When U.S. suppliers are not able to provide competitive pricing, their customers select producers in other markets and must invest in time and money qualifying those new suppliers. Once customers have completed this time-consuming and expensive process, U.S. companies report they rarely return to their U.S. suppliers in the future.

The cost pressure from Section 301 tariffs - including those proposed in this modification - encourage U.S. manufacturers to move offshore where they can manufacture products and sell back into the United States on a level playing field with competitors in other markets. USTR recognizes that the new Section 301 tariffs will have an effect on sourcing opportunities and competitiveness and proposes to delay the negative effects by pushing out the effective date of tariffs for certain industries until 2025 or 2026, while other products become subject to the tariffs immediately.

Additionally, importers of all goods in Annex A are likely to face difficulty obtaining consistent sources of nonchains supply. As demand for non-Chinese goods increases, third-country suppliers have leverage to choose larger contracts and charge higher prices. Where contract terms specify the use of a particular supplier (which is common for highly regulated products that must meet strict standards), manufacturers can't quickly shift to non-Chinese suppliers. Qualifying a potential new supplier requires consent from the customer and additional qualification testing and approval that can take 12-18 months. Importers currently sourcing products in Annex A from China will not be able to easily switch to non-Chinese suppliers - especially for products that become subject to the new tariffs in August 2024 or January 2025 - and must pay the tariff cost or pass it on to their customer.

Increasing U.S. manufacturers' costs on the products proposed in Annex A makes it difficult for companies to expand or maintain current employment levels or raise wages. It also reduces the funds available for employers to invest in developing employee skills and providing other training and benefits.

Finally, the proposed modified tariffs could result in retaliation by the Chinese government. When the previous Section 301 tariffs were imposed, China's retaliatory tariffs mad U.S. exports uncompetitive in the Chinese market. In the agriculture sector alone, the U.S. Agriculture Department reported in January 2022 that Chinese retaliation resulted in a loss of over $25.7 billion in U.S. agricultural exports in just the first 18 months 301 duties were in effect. Further retaliation by China in response to the proposed modification would do even more harm U.S. exporters.

Conclusion

Companies have been making strides with supply chain diversification, including reshoring manufacturing to the United States and shifting production to other locations. But this is a complex effort that takes time. The proliferation of national security sourcing restrictions and domestic content requirements add further cost and complexity to this effort and investments under the measures such as the Inflation Reduction Act and the CHIPS and Science Act will take years to scale to meet the demands of industry and new investments are needed for other commodities. During this transition, tariffs and tariff increases only add to the complexity by driving up the input costs and prices for consumers and businesses.

NFTC thanks you for the opportunity to share our views. I would be happy to respond to any questions or provide additional information.

Sincerely,

Tiffany Smith
Vice President Global Trade Policy