



# RETAIL INDUSTRY LEADERS ASSOCIATION

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March 7, 2023

**Via Online Submission**

The Honorable Katherine Tai  
United States Trade Representative  
Office of the United States Trade Representative  
600 17th Street NW  
Washington, DC 20006

**Re: Interim Extension and Request for Comments on COVID-Related Product Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation (Docket No. USTR-2023-0001)**

Dear Ambassador Tai,

The Retail Industry Leaders Association (RILA) appreciates the opportunity to comment on the Interim Extension and Request for Comments on COVID-Related Product Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation (Docket No. USTR-2023-0001) issued by the Office of the United States Trade Representative (USTR) on February 7, 2023. While we understand the administration intends to end the public health emergency for COVID-19 in May, new variants will continue to threaten American lives. Medical care products currently excluded from the section 301 tariffs will continue to be essential for combatting COVID-19, as well as other viruses that have become more unpredictable in recent years. This winter's triple-demic of respiratory syncytial virus (RSV), influenza, and COVID-19 demonstrated the critical role these medical care products play in battling viruses of all kinds. For these and other reasons, we urge the Office of the U.S. Trade Representative (USTR) to extend the section 301 product exclusions for medical-care products needed to keep Americans safe.

RILA is the trade association of the world's largest, most innovative, and recognizable retail companies and brands. We convene decision-makers, advocate for the industry, and promote operational excellence and innovation. Our aim is to elevate a dynamic industry by transforming the environment in which retailers operate. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs, and more than 100,000 stores, manufacturing facilities, and distribution centers domestically and abroad. RILA's membership includes some of the largest importers in the U.S.

**I. USTR should seek alternatives to the 301 tariffs.**

RILA supports the Administration's efforts to hold our trading partners accountable and using targeted trade remedies against intellectual property theft, illegal dumping or subsidies, and other proven trade violations consistent with international rules. However, we remain opposed to the use of section 301 tariffs, more specifically tariffs on consumer products, as a method to gain leverage over another country. We recognize that USTR is undergoing a thorough review of the



section 301 tariffs on imports from China to assess their impact and effectiveness in combatting China's unfair trade practices. We refer USTR to our [comments](#) submitted on January 11, 2023, as part of the review process in which we detail the impact of the section 301 tariffs on retailers, the U.S. economy, and American businesses and workers, as well as suggest alternative actions the Biden-Harris Administration could take to more effectively address China's unfair trade practices and support U.S. competitiveness.

## II. USTR should extend the 81 exclusions for medical-care products.

In December 2020, USTR granted 99 exclusions from the section 301 tariffs for medical-care products related to the COVID-19 pandemic. These exclusions were subsequently extended in September 2021, and exclusions for 81 of these products were extended in November 2021, June 2022, and November 2022. In each of these instances, the Administration implicitly concluded that these products could not be sourced sufficiently outside of China and that domestic markets are not able to produce the necessary quantities to meet U.S. demand. **That fact has not materially changed for the products we have identified in Attachment A and for which we urge an extension.**

### A. Shifting supply chains is difficult, and in some cases, not possible.

The COVID-19 pandemic underscored the significant role diverse supply chains play in maintaining U.S. economic stability and national security. In response, leading retailers have prioritized and accelerated plans to diversify their supply chains to make them more resilient to unexpected disruptions – whether that be future pandemics, natural disasters, geopolitical events, or other occurrences. Despite these concerted and ongoing efforts, some products and inputs still cannot be sourced outside of China, and where alternative sourcing does exist, moving supply chains takes considerable time and resources. In many cases, relocating supply chains requires identifying producers that meet leading retailers' quality, safety, and capacity requirements; vetting new producers for compliance with other U.S. laws; ensuring adequate infrastructure; constructing new facilities; purchasing machinery; assessing workforce availability and skillset; and training a new workforce where needed.

### B. Medical care products help keep Americans safe from COVID-19 and other viruses.

We understand the designation of COVID-19 as a public health emergency will end on May 11, 2023. Nevertheless, the virus will remain an evolving challenge for Americans as evidenced by the wave of new Omicron variants last winter. The winter wave was further complicated by the unprecedented surge in RSV and influenza – creating a "triple-demic" that health professionals had not predicted. This generated a new surge in demand for critical personal protective equipment (PPE) and medical-care products to help protect Americans from these viruses. Having efficient, predictable, and affordable access to these medical products will help ensure the U.S. is prepared for future public health emergencies.

For example, hand sanitizer is an initial line of defense in staving off viruses and remains widely used in homes, businesses, and medical facilities across the United States. But hand sanitizer will be subject to a 25 percent tariff if the exclusion is allowed to expire in May – making it less



affordable and accessible to American families. Face masks, a vital protective barrier in the battle against COVID-19 as highlighted by the Centers for Disease Control and Prevention (CDC) and still a requirement in many American hospitals and medical facilities, will also be subject to higher costs if the current exclusion is allowed to expire. Another defense mechanism for preventing infection is PPE that medical professionals desperately need to safely care for patients. Many PPE products such as gloves and safety glasses are currently subject to an exclusion from the section 301 tariffs but could be subject to an additional 25 percent tariff if the exclusion is allowed to expire.

Further, the primary tool for Americans to self-diagnose and determine if they are infected – thermometers – are also subject to the section 301 tariffs. Fever is a common symptom of COVID-19 and many other illnesses, and Americans need access to thermometers to determine whether they are ill and should seek medical treatment. Additional medical products such as blood pressure monitors and pulse oximeters allow Americans to monitor their oxygen levels at home, preventing unnecessary trips to overwhelmed hospitals – something we witnessed during the Omicron wave and again during the height of the recent triple-demic. **In addition to extending the exclusions for blood pressure monitors and pulse oximeters, USTR should modify these exclusions to remove the "for use by medical professionals" restriction.** U.S. Customs and Border Protection (CBP) interprets that phrase strictly and will not apply the exclusion to those devices put up for retail sale, even when the products are functionally identical to those sold to clinicians.

In addition to American families, COVID-related product exclusions are critical for the safety of American workers. The retail industry is one of the largest employers in the nation – employing tens of millions of Americans – and our members are working tirelessly to protect their workers. Retail workers served on the frontlines of the pandemic to ensure that Americans had access to vital necessities.

Retail companies have completely transformed their stores since the pandemic began, from social distancing layouts to sanitizing stations to increased disinfectant protocols, all to ensure the safety of workers and consumers. Examples of essential items that retailers are relying on to keep their stores clean include disinfectants, dispensers of hand sanitizers, and hand pumps designed for the dispensing of liquid hand soaps and sanitizers. The finished products into which the pumps are incorporated, deep cleansing hand soap and anti-bacterial hand sanitizers, are fundamental tools for retailers to prevent the spread of the COVID-19 virus and other viruses through contact. Retailers are also reliant on the importation of the plastic pumps to meet the ongoing demand for soap and sanitizer sold here in the U.S. and exported globally. Re-imposing the 25 percent tariff on pumps would increase the cost of the finished products for consumers at a time when they are still essential to limit the spread of COVID-19 and other viruses.

### C. An unpredictable exclusions process creates business uncertainty.

We encourage USTR to move swiftly in making its determination whether to extend the 81 medical-care related product exclusions. Up until this point, the unpredictable and ad hoc process for granting and extending exclusions for medical-related products – including no insight into why certain exclusions were granted and others denied, whether or when exclusions would be



extended, or whether a process would continue to be available – makes business planning extremely difficult. The inconsistent exclusions process contributes to disruptions in retail supply chains and creates uncertainty for American businesses, leaving retailers unable to plan ahead and ensure that product availability meets demand. Retailers make business decisions months, and in some cases years, in advance. Last-minute decision-making regarding the continuation of existing product exclusions only complicates business planning and reduces accessibility to the critical goods that American families rely on for their health. We urge USTR to review these exclusion extension requests thoughtfully but swiftly so that American businesses can plan accordingly.

### III. Conclusion

In conclusion, we strongly urge the Administration to extend the exclusions for medical-care products that are essential for keeping Americans safe. COVID-19 remains unpredictable, and the pandemic illustrates the importance of public health preparedness. Limiting barriers to these critical products will prevent America from being caught flat-footed by the evolving nature of COVID-19 and other viruses and ensure the U.S. is better prepared for future public health crises. **We therefore urge USTR to extend the section 301 exclusions for medical-care products, and in particular urge the extension of products identified in Attachment A, which contains RILA's priority HTS codes for exclusion extensions.**

Thank you for the opportunity to provide these comments on behalf of our membership.

Sincerely,



Blake Harden  
Vice President, International Trade  
Retail Industry Leaders Association

