RETAIL INDUSTRY LEADERS ASSOCIATION

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June 28, 2024

Via Online Submission

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

Re: Request for Comments: Proposed Modifications to Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation (Docket Number USTR-2024-0007)

Dear Ambassador Tai,

The Retail Industry Leaders Association (RILA) appreciates the opportunity to submit comments on the Proposed Modifications to Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation (Docket Number USTR-2024-0007).

RILA is the U.S. trade association for leading retailers. 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 $2.7 trillion in annual sales, millions of American jobs, and hundreds of thousands of stores, manufacturing facilities, and distribution centers domestically and abroad.

I. We Urge USTR to Reconsider Harmful Tariffs on Consumer Goods

We are disappointed in the Biden-Harris Administration's decision to maintain harmful, broad-based section 301 tariffs on consumer goods. As the Office of the U.S. Trade Representative (USTR) acknowledges in the Federal Register Notice (FRN) requesting comments on the proposed modifications,

> China has not eliminated many of its technology transfer-related acts, policies, and practices, which continue to impose a burden or restriction on U.S. commerce. Instead of pursuing fundamental reform, China has persisted, and even become more aggressive, particularly through cyber intrusions and cybertheft, in its attempts to acquire and absorb foreign technology, which further burden or restrict U.S. commerce.

We agree that the tariffs have been ineffective in changing China's behavior. Over the last five years, U.S. businesses and consumers have paid nearly $220 billion in higher tariffs for a failed experiment in

trade policy. Section 301 tariffs have not been effective in holding China accountable for its unfair trade practices, and they have harmed the global competitiveness of U.S. businesses.

Leading retailers have worked hard to bolster their supply chains to be more agile and resilient in the face of uncertain economic conditions, and shield customers from feeling the impact of these high tariffs; but after carrying the weight of section 301 tariffs for over five years, one thing is abundantly clear: tariffs are taxes ultimately paid by American businesses and consumers – not China.

In the FRN, USTR cites a 2023 study on the economic impact of section 232 and 301 tariffs by the U.S. International Trade Commission (USITC) as generally finding "that the Section 301 tariffs have contributed to reducing U.S. imports of goods from China and increasing imports from alternate sources, including U.S. allies and partners, thereby potentially supporting U.S. supply chain diversification and resilience." However, that very survey found that "U.S. importers have borne almost the full burden of section 301 tariffs."

We also disagree with USTR's opinion that "[e]conomic analyses generally find that the duties have had small negative effects on U.S. aggregate economic welfare, positive impacts on U.S. production in the ten sectors most directly affected by the duties, and minimal impacts on economy-wide prices and employment." When in fact, according to a study by Oxford Economics, a rollback in tariffs could increase economic growth and stimulate employment growth in the United States. The Tax Foundation estimates that the tariffs still in effect will reduce long-run GDP by 0.21 percent, wages by 0.14 percent, and employment by 166,000 full-time equivalent jobs. Studies have also shown that the section 301 tariffs are an unnecessary contributor to inflationary pressures in the U.S. economy. According to a Peterson Institute for International Economics study on the impact of tariffs on inflation, "the competitive impact of cutting the China tariffs could eventually lead to about a 1 percentage point reduction in inflation." This translates to approximately "$797 per US household, about half the size of pandemic relief in 2021."

A January 2024 National Bureau of Economic Research study by David Autor found that the 2018–2019 tariffs had "neither a sizable nor significant effect on US employment in regions with newly-protected sectors" and foreign retaliation "by contrast had clear negative employment impacts particularly in agriculture." As the Cato Institute states in its Separating Tariff Facts from Tariffs Fictions publication, "American jobs supposedly saved by import protection have come at an extremely high cost to consumers, ranging from an annual average of $256,000 per job in the 1980s to more than $800,000 per job in the 1990s (all in 2017 dollars). More recently, tire tariffs and steel tariffs have both annually cost US consumers more than $900,000 per job."

Broad-based tariffs are not strategic and will impede U.S. economic growth – ultimately hamstringing American businesses trying to compete globally and negatively impacting the paycheck of American workers. It's past time for the U.S. to explore more strategic avenues for holding China accountable and release U.S. retailers, workers, and the economy at large from the grip of stifling tariffs on consumer products.

II. Reinstating an Exclusion Process Would Provide Targeted Relief to Americans

We are also disappointed by USTR's decision to provide such a limited exclusions process for machinery used in domestic manufacturing and solar manufacturing equipment. We renew our request for USTR to reinstate a fair, transparent, and predictable section 301 exclusion process for products that are not widely available to be sourced from countries other than China. As described in our January 13, 2023, written comments to USTR in response to the four-year review[1], some products and inputs simply cannot be sourced outside of China, and where alternative sourcing does exist, moving supply chains takes considerable time and resources. In many cases, it requires identifying producers that meet leading retailers' quality, safety[2], 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. Moreover, there are limited options for retailers to source certain product categories in the volume needed. What limited capacity exists in other countries was quickly filled by other companies across industry sectors looking to shift sourcing away from China. In other cases, suppliers in other countries will not take smaller orders.

We continue to urge USTR to launch an exclusion process that is available for every product subject to section 301 tariffs. As long as section 301 tariffs remain in place, a functioning product exclusion process should be available for Americans to seek targeted relief.

III. Increased Tariffs on Lithium-ion Non-EV Vehicle Batteries Will Harm Americans

With respect to USTR's proposed modifications to the 301 tariffs, we are particularly concerned about the proposed increase on lithium-ion batteries (8507.60.0020). The Biden-Harris Administration has portrayed its proposed tariff increases as "narrow," "targeted," focused on "industries of the future," and designed to avoid creating hardships for working Americans. Targeting lithium-ion non-electrical vehicle batteries that are found in countless consumer goods is deeply inconsistent with this portrayal.

More specifically, USTR is proposing to more than triple the tariffs of lithium-ion batteries. Importantly, USTR is expressly proposing to increase tariffs on lithium-ion batteries used in applications other than electric vehicles (EVs), despite EV batteries having their own dictated Harmonized Tariff Schedule (HTS) code (8507.20.0010) that would allow the agency to target this segment of the battery market in surgical fashion.

The products included in the non-EV ("other") battery HTS code (8507.60.0020) include batteries used in an expansive array of household, business, and public services applications. Essentially any rechargeable electrical item likely contains a lithium-ion battery covered by this HTS code. This includes smartphones, laptops, tablets, and e-readers; gaming and audio peripherals such as wireless speakers and earphones; power and garden tools such as drills and hedge trimmers; small household appliances such

[1] Submission ID USTR-2022-0014-00034391.

[2] "Impacts of Section 301 Tariffs on Imports from China: Case Studies of Apparel, Footwear, Travel Goods and Furniture," The Trade Partnership Group, p. 7 (Jan. 2023)("Apparel products subject to safety requirements must be produced by manufacturers who understand those concerns, have been vetted over time and even certified as capable of producing product that meet U.S. safety standards. That production and manufacturing expertise is not easily moved to new suppliers in a timely manner.")

as electric toothbrushes and roaming vacuum cleaners; residential smoke and carbon monoxide detectors; radios used by the first responder community; and defibrillators and other medical devices used in various settings.

At best, a tripling of tariffs on lithium-ion batteries used in these applications will significantly increase the cost of using, servicing, maintaining, and repairing an expansive universe of commonly used devices. Such a sharp tariff increase may also result in an artificial shortening of the lifespan of products, resulting in the unnecessary generation of waste, as the cost of replacing batteries becomes equal to or higher than that of discarding and replacing a product altogether.

Raising costs on rechargeable batteries could disrupt the momentum retailers have seen towards cost-parity with gas-powered equivalents. From time to time, consumers may want to purchase new batteries. Given how price sensitive American consumers are right now, they could choose not to purchase battery powered outdoor power equipment (OPEs) due to the replacement cost of batteries and continue to use gas powered OPEs. This could lead to higher greenhouse gas emissions as most OPE engines do not have restrictions on emissions.

Currently, China accounts for over 70% of U.S. imports of non-EV lithium-ion batteries. The proposed increase of tariffs on these imports will therefore have a more significant impact on U.S. prices than tariff increases on products—such as EVs, semiconductors, or steel—in which China currently accounts for relatively very small portions of U.S. imports.

Further, production of batteries used in non-EV applications is exceedingly challenging to diversify, since such batteries are most often produced in tandem with the product in which they are contained. The vast diversity of these products makes it all but impossible to generate segregated production lines for batteries alone (unlike the case for batteries and cells used in EVs).

Moreover, U.S. imports of non-EV lithium-ion batteries from China amounted to more than $10 billion in 2023. This means that USTR is proposing that over half of the total trade value of the administration's proposed tariff increase ($18 billion, according to the White House) will be levied on just one single HTS code. In other words, USTR is proposing that the budgets of households, contractors, and providers of public services be made to bear more than half the cost of the administration's proposed adjustment of the section 301 tariffs. Most importantly, inclusion of this HTS code in the proposed increases bears no evident relation to the objectives of the section 301 tariff adjustments set out by the administration.

Finally, we request that USTR organize a public hearing to allow stakeholders the opportunity to present their views on the proposed tariff modifications and exclusions to the administration directly. A public hearing would be consistent with past USTR practice regarding the section 301 tariff actions, when it organized a hearing to inform its investigation in October 2017 and to receive stakeholder input on each set of proposed tariffs and products in May 2018, July 2018, August 2018, and June 2019. It would also give USTR the benefit of asking questions directly to stakeholders regarding the impacts of the proposed modifications and exclusions.

In conclusion, we urge the administration to reconsider its decision to maintain harmful tariffs on

consumer products, which have no nexus to strategic sectors such as EVs, semiconductors, steel, or solar; are not tied to major U.S. public investment projects; and are not associated with allegations of predatory Chinese industrial policy. We also urge USTR to remove from the proposed tariff increases non-EV lithium-ion batteries, which are in a vast array of consumer products, and which would increase costs for Americans. Finally, we urge USTR to launch an exclusion process that is available to all products subject to section 301 tariffs.

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

Sincerely,

Blake Harden
Vice President, International Trade
Retail Industry Leaders Association