RETAIL INDUSTRY LEADERS ASSOCIATION

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January 13, 2023

<u>Via Online Submission</u>

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 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 (Docket No. USTR-2022-0014)

Dear Ambassador Tai,

The Retail Industry Leaders Association (RILA) appreciates the opportunity to submit comments on the Request for Comments 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 (Docket No. USTR-2022-0014).

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 United States.

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 trade violations consistent with international rules. However, we remain opposed to the broad use of tariffs, and especially broad tariffs on consumer products, which have proven to be a harmful and ineffective method to address unfair trade practices. We urge USTR to rescind the section 301 tariffs and describe below the economic harm caused to the retail industry by the tariffs over the last four years. We also suggest other actions that could be taken by the Biden-Harris administration to address China's unfair trade practices more effectively.

I. USTR's 2018 Findings on China's Unfair Trade Practices and Actions Taken

In August 2017, the U.S. Trade Representative (USTR) launched a broad investigation into China's acts, policies, and practices related to technology transfer, intellectual property, and innovation under section 301 of the Trade Act of 1974. The following March, USTR released its findings from the investigation and in particular noted four unfair trade practices that are unreasonable or discriminatory and burden or restrict U.S. commerce:

> First, China uses foreign ownership restrictions, including joint venture requirements, equity limitations, and other investment restrictions, to require or pressure technology transfer from U.S. companies to Chinese entities. China also uses administrative review and licensing procedures to require or pressure technology transfer, which, inter alia, undermines the value of U.S. investments and technology and weakens the global competitiveness of U.S. firms.
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> Second, China imposes substantial restrictions on, and intervenes in, U.S. firms' investments and activities, including through restrictions on technology licensing terms. These restrictions deprive U.S. technology owners of the ability to bargain and set market-based terms for technology transfer. As a result, U.S. companies seeking to license technologies must do so on terms that unfairly favor Chinese recipients.
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> Third, China directs and facilitates the systematic investment in, and acquisition of, U.S. companies and assets by Chinese companies to obtain cutting-edge technologies and intellectual property and to generate large-scale technology transfer in industries deemed important by Chinese government industrial plans.
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> Fourth, China conducts and supports unauthorized intrusions into, and theft from, the computer networks of U.S. companies. These actions provide the Chinese government with unauthorized access to intellectual property, trade secrets, or confidential business information, including technical data, negotiating positions, and sensitive and proprietary internal business communications, and they also support China's strategic development goals, including its science and technology advancement, military modernization, and economic development.[1]

USTR noted that these four unfair trade practices "are an important element of [China's] strategy to become a leader in advanced technologies and strategic sectors." That strategy – China's "Made in China 2025" program – involves

> government intervention to foster technology transfer and substantial government financial and other support to ten strategic industries: (1) advanced information technology (IT); (2) robotics and automated machine tools; (3) aircraft and aircraft components; (4) maritime vessels and marine engineering equipment; (5) advanced rail equipment; (6) new energy vehicles; (7) electrical generation and transmission

[1] President, Memorandum of March 22, 2018, (83 Fed. Reg. 13099, Mar. 27, 2018).

equipment; (8) agricultural machinery and equipment; (9) new materials; and (10) pharmaceuticals and advanced medical devices.[2]

As a result of USTR's findings, then-President Trump directed his administration to take three actions. Primarily, President Trump ordered the U.S. Trade Representative (USTR) to "take all appropriate action under section 301 of the Act [Trade Act of 1974] (19 U.S.C. 2411) to address the acts, policies, and practices of China that are unreasonable or discriminatory and that burden or restrict U.S. commerce," including placing increased tariffs on Chinese goods.[3] USTR subsequently issued a Federal Register notice proposing a 25 percent tariff on "approximately $50 billion of products from China that are strategically important to, and benefit from, the 'Made in China 2025' program and other Chinese industrial policies."[4] This was followed by a sequence of events leading to the imposition of tariffs on Chinese imports valued at more than $350 billion, as well as the imposition of retaliatory tariffs on U.S. exports. The tariff escalation ceased with the signing of the Phase One agreement with China, but tariffs on products in lists 1 through 4A remain in place.

We examine the impact of the section 301 tariffs on Americans in Section II. In Section III, we discuss alternatives to tariffs, and in Section IV, we emphasize two important procedural steps that USTR should consider before it concludes the necessity review.

II. Tariffs Have Been Harmful to Americans and Failed to Achieve Their Goals

The section 301 tariffs on goods from China have now been in place for more than four years, triggering the statutorily required review under section 307 of the Trade Act of 1974 to determine their effectiveness in compelling changes in China's behavior and whether other actions are warranted. The statute requires USTR to proceed with a review of the tariff actions after having received a request by a representative of the domestic industry that the tariffs remain in place. USTR indicated that it received hundreds of such requests.

RILA and our members do not believe the tariffs have been effective in remedying the unfair trade practices outlined by USTR in its 2018 report. Tariffs are a blunt tool, especially when applied broadly, with significant downsides for Americans. And because the U.S. acted unilaterally, Chinese suppliers found other markets or other suppliers for their imports and exports. The tariffs have resulted in pain only for American businesses, workers, and exporters and harmed U.S. competitiveness, not China's.

The facts have proven the tariffs have had a limited impact on China and caused disproportionate harm to Americans. We agree with senior administration officials who made clear statements

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[2] USTR Executive Summary, "Findings of the Investigation into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation Under Section 301 of the Trade Act of 1974," (March 22, 2018).

[3] Presidential Memorandum of March 22, 2018.

[4] Ibid.

about the tariffs – particularly those on products bought by everyday Americans – that they lack strategic focus and continue to impact Americans more than China.

For example, last spring, Deputy National Security Adviser Daleep Singh said the tariffs "'served no strategic purpose' in most cases and should be 'reframed' so that they advance 'real strategic priorities,' such as fortifying supply chains or maintaining U.S. leadership in technology." He questioned why the U.S. imposed tariffs on products like bicycles, apparel, and underwear. "There are a whole host of goods – think lists 3 or 4(a) – where it's not obvious, to me at least, what strategic purpose they're serving." Shortly thereafter, then-Press Secretary Jen Psaki was asked about Singh and Yellen's comments and responded that "some of the tariffs implemented by the previous administration were not strategic and instead raised costs on Americans." In June 2022, Secretary of Commerce Gina Raimondo stated during an interview on CNN's State of the Union that tariffs on products such as household goods and bicycles do not serve a national security purpose and lifting these tariffs "may make sense." Similarly, when Secretary of the Treasury Janet Yellen testified before the House Ways & Means Committee in June 2022, she said the tariffs "really ended up being paid by Americans, not by the Chinese, hurt American consumers and businesses." Secretary Yellen further stated that the "Administration inherited a set of 301 tariffs imposed by the Trump administration that I think really weren't designed to serve our strategic interests."

The section 301 tariffs are bad policy, lack strategic focus, and harm U.S. workers, consumers, manufacturers, and businesses. For these and other reasons, USTR should abandon this unsuccessful policy.

A. Tariffs Are Taxes on American Businesses, Consumers, and Workers

What do coffee makers, vacuum cleaners, and backpacks have in common? They are all products sold by retailers and found in American households. They are also all products subject to section 301 tariffs. The giftbags, giftboxes, and giftwrap that Americans purchased at their local retailer and used over the holiday season are also subject to section 301 tariffs. Americans who adopted a pet during the pandemic or received a pet as a gift during the holidays are paying more for collars, crates, puppy pads, pet beds, dog waste bags, cat litter, aquarium ornaments, and pet water fountains because they, too, are subject to section 301 tariffs. When the temperatures dropped to historic lows across the United States during the holiday season, Americans shopping for warm weather apparel had to pay more for the sweaters, hats, blankets, and children's clothes they needed because both the product themselves and the security hard tags attached to clothing items are subject to the section 301 tariffs. In fact, security hard tags are tariffed multiple times since they are attached to garments in the factory and imported with the garment, taken off at the store when a customer buys the garment, and then sent back overseas to be re-attached to additional garments. This cycle of importing, exporting, and reimporting subjects the tags to multiple rounds of tariffs.

It is abundantly clear the tariffs on consumer products such as glasses, cotton swabs, and lamps have no impact on making the U.S. more secure vis-à-vis China or changed China's behavior. Neither have the high tariffs on lightbulbs, air fresheners, luggage, and bookcases. And the tariffs on consumer products have done nothing to impede China's ability to achieve its Made in 2025 goals. Critically, no administration official has asserted the ongoing tariffs are having the effect of eliminating the harmful Chinese practices that served as the basis for the section 301 tariff actions. Instead, the only outcome of the tariffs about which there is no doubt is that they have increased costs for Americans. Since the tariffs were first imposed over four years ago, U.S. Customs and Border Protection (CBP) has assessed more than $166.6 billion in tariffs on American companies who import products from China. That amount grows each day the tariffs remain in place.

According to a report by Moody's Analytics, American companies assumed more than 90 percent of the cost of U.S. tariffs on Chinese goods.[5] Consider a recent study by the Trade Partnership Group, which made the following findings regarding the tariffs' economic impacts:

- Section 301 tariffs on apparel products from China "affected nearly 90% of apparel imported from China" and "imposed an annual direct cost on importers of over $1 billion, escalating every year."[6]
- Section 301 tariffs on footwear from China "imposed an annual direct cost on importers of over $250 million, escalating every year to over $450 million in 2022."[7]
- Section 301 tariffs on travel goods "resulted in growing a direct cost to importers, reaching nearly $800 million in 2022."[8]
- Section 301 tariffs on furniture "imposed an annual direct cost on importers of over $1 billion."[9]

Further, a recent study by the American Action Forum found that "based on 2021 data, U.S. consumers paid $48 billion in Section 301 tariffs to import goods from China." These higher costs include:

- Costs associated with shifting – or attempts to shift—sourcing out of China to other countries (including the United States);
- Costs associated with administrative burdens and uncertainty surrounding the tariff exclusions process; and
- Costs associated with the expiration of the tariff exclusions.[10]

In the case of consumer goods, the section 301 tariffs have also "had a host of significant indirect costs that have found their way into prices or have proven to be hits to the companies' bottom line."[11]

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[5] Yen Nee Lee, *U.S. companies are bearing the brunt of Trump's China tariffs, says Moody's*, CNBC (May 18, 2021)

[6] *See* Attachment B at p. 3 - Impacts of Section 301 Tariffs on Imports from China: Case Studies of Apparel, Footwear, Travel Goods and Furniture, The Trade Partnership Group, (Jan. 2023) [hereinafter "Trade Partnership Study"].

[7] Ibid. at 8.

[8] Ibid. at 11.

[9] Ibid. at 13.

[10] Ibid. at 17-19.

[11] Ibid. at 17.

In other words, American companies and consumers, not China, are bearing the economic brunt of the tariffs. These tariffs force American companies to pay the federal government billions of dollars[12] that could be going towards preserving jobs, paying suppliers and fixed costs, and investing in their businesses to compete globally. Further, tariffs burden American families by forcing them to pay more for those goods. According to a study by the National Bureau of Economic Research, one year of a 10-percentage-point increase in tariffs is associated with a 0.44% increase in the price of a good. A report by the Progressive Policy Institute found that tariffs on consumer goods are discriminatory and regressive because low-income Americans are disproportionately impacted by these tariffs, especially single-parent families and people of color.

The section 301 tariffs harm American businesses, consumers, and workers and provide no benefit to the U.S. economy. The Peterson Institute for International Economics estimates that China purchased only 57% of the total U.S. goods and services exports over 2020-2021 that it had committed to buy in the Phase One Deal. While China should be held accountable for not meeting its Phase One commitments, the original stated purpose of the tariffs was "to obtain elimination of China's harmful acts, policies, and practices" [13] as it relates to forced technology transfer and the theft of intellectual property. Despite four years of tariffs on more than $300 billion worth of Chinese imports, these fundamental issues remain unresolved. In other words, the tariffs have failed to deliver meaningful changes in China's unfair trade practices while harming Americans.

B. Tariffs Cost U.S. Jobs

The section 301 tariffs also hurt American workers by impacting U.S. jobs. For example, the Trade Partnership study found that "U.S. apparel production did not benefit from a return of sourcing to the United States" as a result of the tariffs.[14] The study analyzed U.S. apparel employment data and found that "U.S. apparel manufacturers' shipments dropped precipitously after the tariffs were imposed" and "that the tariffs had no net positive impact on U.S. manufacturers or their employees."[15] In the case of travel goods, small, medium and large companies responding to the survey reported "that little to no travel goods sourcing could be transferred to U.S. manufacturers"[16] for various reasons, including the lack of equipment (tooling), high costs, and volume requirements. The study further analyzed U.S. employment data for the furniture sector and concluded "that U.S. workers did not benefit from any return of furniture sourcing to the United States after the tariffs were imposed."[17] These are just a few examples of how section 301 tariffs on consumer products failed to boost U.S. employment.

According to a study by Oxford Economics, a rollback in tariffs could increase economic growth and stimulate employment growth in the United States. If both the U.S. and China "gradually

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[12] In fact, the section 301 tariffs have become so entrenched that lawmakers are beginning to see the tariffs as a permanent source of revenue to the federal government that can be tapped to fund other legislative priorities. *See,* e.g., *Western Hemisphere Nearshoring Act*, H.R. 7579.
[13] 83 Fed. Reg. 28710 (June 20, 2018).
[14] Trade Partnership Study at 5.
[15] Ibid.
[16] Ibid at 13.
[17] Ibid. at 15.

scale back average tariff rates to around 12% (compared with around 19% now), the U.S. economy produces an additional $160 billion in real GDP over the next five years and employs an additional 145,000 people by 2025." In this de-escalation scenario, the income for U.S. households "would be $460 higher per household as result of increased employment and incomes as well as lower prices." In 2019, exports of goods and services to China supported nearly 1 million U.S. jobs according to the U.S.-China Business Council's 2021 State Export Report.

C. Tariffs Contribute to Inflation

The section 301 tariffs are an unnecessary contributor to inflationary pressures in the U.S. economy. According to a recent Peterson Institute 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." At a time when inflation is at a 40-year-high and increasing the cost of everyday staples for American families, the Administration should be leveraging every available tool to lower inflation.

We agree with Treasury Secretary Janet Yellen's statement that tariffs on Chinese goods "impose more harm on consumers and businesses" and that tariffs "aren't very strategic in the sense of addressing real issues we have with China – whether it concerns supply chain vulnerabilities, national security issues, or other unfair trade practices."

D. Tariffs Disrupt U.S. Supply Chains

The section 301 tariffs also create uncertainty and make business planning difficult, exacerbating supply chain challenges and reducing accessibility to the goods that American families rely upon. The unpredictable and ad hoc process for granting exclusions over the last four years – 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 – has disrupted many retail supply chains as businesses scramble to find alternative sourcing options when exclusions are allowed to lapse or are extended at the final hour. The opaqueness of the tariff exclusion process left 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 from the administration only complicates business planning.

Also, the COVID-19 pandemic taught us that diverse supply chains play an important role in U.S. national security; this has only been reinforced by recent geopolitical events. In response, leading retailers have prioritized diversifying their supply chains to make them more resilient to unexpected disruptions. However, some products and inputs simply cannot be sourced outside of China (as evidenced by the billions of dollars that have continued to be paid in tariffs), 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[18], and

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[18] Ibid. at 7 ("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

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.

In examining the impact of the section 301 tariffs on imports of apparel, footwear, travel goods, and furniture, the Trade Partnership study found that a number of these factors impacted whether a supply chain could shift out of China.

- Apparel products that require specialized inputs that were already set up to be supplied by Chinese producers could not easily move out of China, where those input supply chains did not exist. A large retailer reported that products it still must source from China include those whose "main feature is complex fabrics, heavy weight fabrics and [those that] need short production time, for example, outerwear, heavy sleepwear." Apparel fashion accessories like head and hand items that require skilled labor could not be sourced at competitive prices outside China.[19]
- 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.
- In the case of footwear, some types that require "special machinery or production expertise to manufacture had to remain in China despite the added costs of the tariffs to protect product quality."[20]
- For furniture products, "a large obstacle to moving away from China has been that comparable volume production levels are not easy to find elsewhere."[21]

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. For example, "[a]pparel subject to small 'minimum quantity orders' often had to continue to be supplied by Chinese producers able to meet U.S. buyer needs for these lower quantity orders" because "alternatives like Vietnam 'won't take small runs.'"[22]

For travel goods, the expiration of the Generalized System of Preferences (GSP) on December 31, 2020, impacted sourcing – resulting in sourcing moving *back* to China. In its study, the Trade Partnership found that "[f]rom 2015 to 2020, U.S. imports from China dropped from $7.2 billion to $2.2 billion while U.S. imports from GSP countries grew to about $2 billion annually." [23] But since

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that meet U.S. safety standards. That production and manufacturing expertise is not easily moved to new suppliers in a timely manner.")

[19] Ibid.

[20] Ibid. at 9.

[21] Ibid. at 14.

[22] Ibid. at 7.

[23] Ibid. at 12.

the expiration of GSP, which resulted in a substantial duty increase on products from GSP beneficiary countries, U.S. travel goods imports "from China have increased substantially.[24]"

Also, retailers who operate on a global scale must source for their stores worldwide, and for many items, there could be a single supplier globally for lower-selling or lower-volume goods. Currently many of these suppliers are located in China.[25]

III. Moving Beyond Tariffs

Section 301 tariffs, by their design, are intended to "serve as negotiating leverage to eliminate those [trade] barriers to, and other distortions of trade which Title I of this bill gives the President broad authority to harmonize, reduce or eliminate on a reciprocal basis."[26] But four years into the tariffs, China has yet to abandon its unfair trade practices. Instead, the section 301 tariffs have failed to bring about the desired change in China's behavior while causing disproportionate harm to Americans. Accordingly, we believe the tariffs should be rethought entirely and replaced with a more strategic and less destructive approach. And in particular, tariffs on consumer products – which created an additional cost burden of $16.7 billion for Americans in 2021 alone[27] – should be removed going forward. We refer USTR to Attachment A of our submission, which contains a list of consumer products that should be prioritized for removal from the section 301 tariff lists.

Consumer products have no nexus to the underlying USTR 301 investigation into China's unfair trade practices that gave rise to the tariff actions. These products are not linked to China's Made in 2025 program and do not fall within the strategic or critical sectors that are the focus of USTR's 301 report. In other words, these products are not linked to U.S. national security or strategic competition with China. Moreover, leading retailers are generally not the victims of the four unfair trade practices described in USTR's 301 report. Because consumer products are not strategically linked to China's high-tech ambitions, tariffs on these products have failed to compel change in China's behavior. Therefore, we urge the Biden administration to abandon this unsuccessful tariff policy – and tariffs on consumer products especially – and to consider other tools to bring about change to China's behavior, including tools outside USTR's purview. We encourage the administration to devise a strategy to address China's unfair trade practices by leveraging not just USTR's authorities, but also the vast authorities of other U.S. federal agencies to achieve a better result.

As is often forgotten, President Trump took steps in 2018 to leverage authorities beyond tariffs in response to USTR's findings in its 301 report. In addition to tariffs, President Trump directed USTR to "pursue dispute settlement in the World Trade Organization (WTO) to address China's discriminatory licensing practices," including cooperating with allies "to address China's unfair

[24] Ibid.
[25] Ibid. at 14-15.
[26] U.S. Senate Committee on Finance, "Trade Reform Act of 1974: Report of the Committee on Finance, United States Senate, Together with Additional Views on H.R. 10710," Report No. 93-1298, 93rd Congress, 2nd Session, November 26, 1974.
[27] Tom Lee and Tori Smith, "Section 301 China Tariffs by End Use, American Action Forum (Jan. 11, 2023).

trade practices."[28] USTR dutifully pursued WTO dispute settlement with respect to certain Chinese measures pertaining to the protection of intellectual property rights.[29] It also launched a trilateral dialogue with the European Union and Japan to address "the unfair competitive conditions caused by large market-distorting subsidies and state-owned enterprises."[30] However, the WTO dispute settlement proceeding was suspended at the request of the United States in June 2020 and the trilateral dialogue with the EU and Japan appears to have decelerated.

In addition, President Trump directed the Secretary of the Treasury to propose executive action "to address concerns about investment in the United States directed or facilitated by China in industries or technologies deemed important to the United States."[31] The administration's efforts eventually focused on implementing investment restrictions through quick passage of the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), which was signed into law on August 13, 2018. FIRRMA reformed the CFIUS review process "to address national security concerns more effectively, including by broadening the authorities of the President and CFIUS to review and to take action to address any national security concerns arising from certain non-controlling investments and real estate transactions involving foreign persons."[32] This amounted to tightening scrutiny of Chinese investments in the services sector, among others, in the United States. Treasury finalized regulations to implement the changes that FIRRMA made to CFIUS's jurisdiction and processes in February 2020.

These actions demonstrate that the U.S does have other tools at its disposal to address each of China's unfair trade practices in a more targeted fashion. We believe this type of approach should be pursued in lieu of section 301 tariffs going forward.

For example, the Biden administration could leverage the State Department's authorities to lead discussions with the Chinese and negotiating diplomatic outcomes – not unlike some of the progress that was announced as an outcome of the Biden-Xi meeting on the sidelines of the G20 in November. Without discounting the many other dynamics at play in the broader U.S.-China relationship that impact the U.S. China strategy, keeping the lines of communication open with China is critical to creating space for potential resolution to the ongoing tariffs. In addition, we urge the administration to continue working with allies – as this administration has done from the outset to resolve other trade disputes – to ensure that the U.S. is acting in concert with like-minded countries to address China's unfair trade practices. We urge the U.S. not to act unilaterally, but rather to lead.

In addition, the administration could leverage the Intelligence Community's authorities and capabilities to address ongoing concerns regarding China's forced technology transfer practices and cyber-intrusions. And the Departments of Commerce and Treasury should have a larger role in evaluating whether proposed or continued section 301 tariffs on products made from China are

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[28] Presidential Memorandum of March 22, 2018.
[29] At the request of the United States, the WTO Panel suspended work on the proceedings in June 2020.
[30] EU-Japan-US Scoping Paper, Joint Statement on Trilateral Meeting of the Trade Ministers of the United States, Japan, and the European Union (May 31, 2018).
[31] Presidential Memorandum of March 22, 2018.
[32] CFIUS, https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius.

strategically linked to China's Made in 2025 ambitions and whether any continued tariffs would harm American workers, consumers, and businesses.

President Biden has also focused in on more surgical tools to address China's unfair trade practices. For instance, in September 2022, President Biden issued an Executive Order (EO) further addressing national security threats posed by foreign investment, including national security risks that "may arise from foreign investments involving 'a country of special concern that has a demonstrated or declared strategic goal of acquiring a type of critical technology or critical infrastructure that would affect United States leadership in areas related to national security." In particular, the EO instructs CFIUS to consider five national security factors in its reviews: (1) supply chain security; (2) technological leadership; (3) investment trends; (4) cybersecurity; and (5) sensitive data.

The Biden-Harris administration has also been in discussions with Congress regarding additional scrutiny of outbound U.S. investment in areas of "national critical capabilities" to adversarial countries like Russia and China. As the Congress and administration consider the various aspects of pursuing such a policy, the Commerce Department's Bureau of Industry and Security (BIS) issued additional export controls aimed at restricting China's ability to obtain advanced computing chips, develop and maintain supercomputers, and manufacture advanced semiconductors.

Think tanks and other members of the private sector have offered additional suggestions for addressing China's unfair trade practices by means other than tariffs. For example, last November, the Information Technology and Innovation Foundation (ITIF) issued a new paper recommending reforms to section 337 of the Tariff Act of 1930 "to, among other things, make it easier to impose exclusion orders against imports from companies systematically supported by unfair trade practices in non-market, non-rule-of-law economies such as China."[33] This would, according to ITIF, limit China's gains from its unfair trade practices. Pursuing this type of tool would allow the administration to address China's unfair practices more surgically without the type of collateral damage and harmful economic effects that broad tariffs create.

In addition, leveraging and reforming existing tools and continuing to discuss the creation of new ones, we urge USTR to pursue a proactive trade agenda that puts the U.S. on offense in creating 21st century trade rules. Blunting the market-distorting effects of China's unfair trade practices requires the U.S. to engage in every corner of the globe, including on trade negotiations that provide market access for American businesses and set high ambition trade rules that reflect the United States' core values. A recent report released by two former U.S. trade officials and the Asia Society provides a potential roadmap for how the U.S. could pursue a reimagined Trans-Pacific Partnership (TPP) agreement that addresses previous concerns with prior U.S. trade agreements. Rejoining an updated TPP would be a strong U.S. move to counter China's influence in the Asia-Pacific. The U.S. should move quickly and aggressively to reassume its role as a global leader in setting high ambition trade rules that enhance U.S. competitiveness and security.

[33] Robert D. Atkinson, "How to Mitigate the Damage from China's Unfair Trade Practices by Giving USITC Power to Make Them Less Profitable," Information Technology and Innovation Foundation (Nov. 21, 2022).

IV. Process Considerations Moving Forward

Finally, we urge USTR to take two important procedural steps before it concludes the necessity review.

First, we urge USTR to hold a public hearing for stakeholders to present testimony. Each tariff action put into place under section 301 has been accompanied by an opportunity to provide written comments and testimony at a public hearing. This gave stakeholders from all sides an opportunity to describe their views and gave the interagency Section 301 Committee an opportunity to ask questions and seek clarification on points raised in the written comments. We believe the importance and magnitude of this review requires at least the same level of inclusive consultation by USTR. Further, we note that the U.S. International Trade Commission successfully held a three-day public hearing last summer on the economic impact of the section 232 and 301 tariffs. USTR should follow suit.

Second, we expect that it may take USTR many months to conduct this statutory review. It took USTR nearly five months to review 549 product exclusions in October 2021, and the four-year review is far greater in scope – covering more than 10,000 HTS lines. Given that USTR is unlikely to reach a decision quickly on whether the tariffs will be continued, listed, or modified, we urge USTR to reinstate a fair, transparent, and predictable section 301 product exclusion process. This process should be announced immediately and available for every product subject to the section 301 tariffs. As long as section 301 tariffs remain in place, we believe that a functioning product exclusion process should be available for those who may wish to seek targeted relief.

V. Conclusion

In conclusion, the section 301 tariffs on Chinese imports have caused disproportionate economic harm to American businesses, consumers, and workers – and consequently, the U.S. economy. While Americans continue to pay the tariffs, China's behavior has not changed. In short, the tariffs have been ineffective – especially tariffs on consumer goods, which have no nexus to the underlying 301 report or to China's technology ambitions. We urge the Administration to abandon this unsuccessful policy by rolling back the tariffs and pursuing a new and more effective strategy. Finally, should USTR not fully rescind the tariffs, we refer USTR to Attachment A of our submission, which contains RILA's priority HTS codes for removal from the tariff lists.

Thank you for the opportunity to provide insight on behalf of our membership. We look forward to the outcome of USTR's review.

Sincerely,

Blake Harden

Blake Harden
Vice President, International Trade
Retail Industry Leaders Association

Attachments (2)
Attachment A - RILA Priority HTS Codes for Removal from 301 Lists
Attachment B - Study on the Impacts of Section 301 Tariffs on Imports from China: Case Studies of Apparel, Footwear, Travel Goods and Furniture