Consumer Technology Association™

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ELECTRONIC SUBMISSION TO https://www.regulations.gov

Ambassador Katherine Tai
U.S. Trade Representative
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Re: Consumer Technology Association
Comments on USTR's Request for Comments on Proposed Modifications of Section 301 Tariffs (USTR-2024-0007)

Dear Ambassador Tai:

The Consumer Technology Association ("CTA") submits these comments in response to the Office of the U.S. Trade Representative's ("USTR") May 28, 2024, request for comments on its proposed modifications to the Section 301 tariffs on products of China.[1]

CTA represents over 1,300 companies from every facet of the consumer technology industry, which supports 18 million U.S. jobs and relies on broader supply chains built upon strategic arrangements with trusted U.S. trading partners. We also own and produce CES®, the world's most powerful technology event and in 2024, attracted more than 145,000 people, including 50,000-plus international visitors. Throughout its 100-year existence, CTA has remained steadfast in its mission to promote American innovation and the adoption of new technologies that address significant global challenges. Indeed, CTA partners with the United Nations to catalyze technologies that can meet fundamental human securities, including access to health care, food, and clear air and water.

USTR has continuously ignored comments from the private sector regarding the true harms of the Section 301 tariffs. The recent necessity review results are merely the latest example of this willful blindness. USTR's necessity review Report admitted that the tariffs did nothing to change China's unfair trade practices and policies while simultaneously stalling U.S. innovation,

[1] *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 Fed. Reg. 46,252 (May 28, 2024) ("*Proposed Modifications*").

harming U.S. businesses and workers, and contributing to rising inflation.[2] CTA therefore takes this opportunity to highlight the inconsistencies and flaws in USTR's reasoning for maintaining the Section 301 tariffs. CTA strongly urges USTR to reconsider the tariffs, broaden the scope of available exclusions, and utilize more effective trade tools otherwise available.

I. The Section 301 Tariffs Are Not Effective, But Other Trade Tools Could Be

Time has proven that the Section 301 tariffs have been ineffective in achieving either objective put forward by USTR or the White House—the tariffs have neither changed China's unfair acts or practices nor supported U.S. workers or the U.S. economy. Despite having numerous other, more effective, trade tools at its disposal, the necessity review simply revealed that USTR stubbornly refuses to give up its addiction to tariffs.

A. <u>USTR Admitted that the Section 301 Tariffs Were Not Effective</u>

The results of the necessity review plainly illustrate that tariffs remain an improper tool to address China's forced technology-transfer practices – let alone to rebalance the U.S.-China trade relationship and protect American workers. By concluding that China has continued (or escalated) its efforts to transfer technology from U.S. companies, USTR admits that the Section 301 tariffs were not successful in curbing China's practices that were the focus of the original Section 301 investigation.

While USTR claims that China has taken certain steps following the imposition of the tariffs to reduce forced technology transfer practices, USTR itself admits that these amount to "superficial measures aimed at addressing negative perceptions" of China's behavior rather than "fundamental reform."[3] Further, USTR suggests that any progress attributed to the tariffs are offset by China's intensified aggression in its attempts to acquire foreign technology, "particularly through cyber intrusions and cybertheft."[4] Notwithstanding the fact that such practices were not considered in the underlying investigation, USTR's acknowledgement of the failure of the tariffs to effect significant and sustained change in China's behavior directly undermines USTR's assertion that the Section 301 duties are necessary to "maintain the current leverage" and encourage China to eliminate its technology transfer-related acts, policies, and practices.

The tariffs also did nothing to encourage bilateral dialogue, to raise specific issues or concerns, or to negotiate amicable solutions in accordance with the Phase One Agreement. Instead, the tariffs fueled hostility and further deepened the rift in U.S.-China relations with thoughtless tit-for-tat retaliatory measures. The latest action is no exception: China has already indicated that

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[2] *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*, Office of the U.S. Trade Representative (May 14, 2024) ("*USTR Report*") at 10-15.
[3] *USTR Report* at 14.
[4] *Id.*

it will take retaliatory actions on multiple occasions.[5] And although this absurd dispute is between two governments, the effects of the resulting misunderstanding and conflict are borne completely by private U.S. businesses, U.S. workers, and U.S. consumers.

For example, USTR's Report suggested that the tariffs were effective to some degree because they reduced the exposure of U.S. companies to China's acts, practices, and policies by incentivizing supply chain shifts away from China. Even assuming this is a legitimate policy goal supported by the underlying Section 301 investigation – itself a questionable proposition – the simultaneous use of tariffs to punish a government's policies and to induce U.S. firms to shift production capacity out of China is a flawed approach. Studies have demonstrated that companies have already begun supply chain diversification for a multitude of reasons unrelated to tariffs, including the shocks caused by the COVID-19 pandemic and the Russia-Ukraine war, among others.[6] Some of the top reasons behind decisions to reshore/nearshore manufacturing footprints in these studies were also increased sales, improved total landed cost, and improved fill rates.[7] Increased tariffs (and other costly trade barriers) jeopardize these supply chain transitions by increasing costs for U.S. companies, who must raise prices as a result, thereby harming consumers and depressing demand. In other words, the maintenance of the tariffs does not serve to accelerate manufacturing shifts out of China. Worse, they delay.

B. <u>USTR Has Trade Tools that are More Effective in Achieving Its Objectives</u>

The United States possesses tools that would be far more effective in addressing China's unfair trading practices and protecting American interests. For example, rather than further taxing U.S. companies while they attempt to diversify their supply chains, trade and investment policies should embrace U.S. allies and trading partners in strengthening supply chains, mitigating risks, and lowering costs. As such, CTA believes that a multi-geography "team approach" is a more effective tool to encourage production shifts, and thereby reduce U.S. companies' exposure to China's technology transfer-related acts, policies, and practices.

Currently, the tariffs on inputs from China only serve to undermine the ability of U.S. companies to manufacture finished goods domestically. Given the tariffs, manufacturing of finished goods, which once took place in China, is simply moving to third countries that have no tariffs on inputs from China, directly undermining USTR's policy goals to support U.S. workers and rebuild U.S. manufacturing capacity. This dynamic will continue if the tariffs on inputs from China are in place. USTR should instead focus on shifting the manufacturing of inputs to third countries. This approach will be more effective than traditional trade barriers, such as the Section 301 tariffs, as it will accelerate supply chain diversification for U.S. businesses thereby lessening their reliance on inputs from China while maintaining costs at reasonable levels. Agreements with allies – both old and new – are the key to this approach.

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[5] *Foreign Ministry Spokesperson Wang Wenbin's Regular Press Conference on May 14, 2024*, FMPRC (May 14, 2024); *Foreign Ministry Spokesperson Wang Wenbin's Regular Press Conference on May 15, 2024*, FMPRC (May 15, 2024).
[6] *Supply Chains and US Inflation: Short-Term Gains, Long-Term Pains?*, GOLDMAN SACHS (Nov. 21, 2022).
[7] *Made in America: Here to stay?*, KEARNEY (2024) ("*Kearney 2024 Reshoring Index*").

The Biden Administration should prioritize international coordination to promote supply chain diversification by supporting the production capacities of the United States and third-party countries, rather than resorting to the use of tariffs. Without engaging others, unilateral efforts by the United States to shift supply chains away from China and promote their resilience will be futile. The White House has already recognized that "[w]hile expanded domestic production of critical goods must be part of the solution to America's supply chain vulnerabilities, the United States cannot manufacture all needed products at home."[8] Further, the White House conceded in its 100-day supply chain reports that the U.S. government has historically underinvested in "international diplomatic efforts to develop collective approaches to supply chain security" despite its "strong national interest in U.S. allies and partners improving the resilience of their critical supply chains in face of challenges such as the COVID-19 pandemic, extreme weather events due to climate change, and geopolitical competition with China—that affect both the United States and our allies."[9] The Biden Administration would do well to revisit these important observations.

By prioritizing the reduction of trade costs, the elimination of barriers to trade, and the pursuit of high standard, comprehensive free trade agreements with treaty allies and trade partners, USTR may not only prevent serious disruptions that may arise during the shift away from China, but may also find willing partners for concerted action against China's unfair trade practices. Building coalitions of like-minded allies and trading partners through the multi-geography team approach will allow the United States to confront China's unfair trade practices in a trade-neutral fashion and avoid tit-for-tat retaliation.

II. USTR Admitted that the Section 301 Tariffs Had Substantial Detrimental Effects on the U.S. Economy

At the outset of the imposition of the Section 301 tariffs, USTR assured the public that the duties would "target products that benefit from China's industrial plans while minimizing the impact on the U.S. economy."[10] It is readily apparent that the tariffs strayed from these initial parameters, as they have contributed to wide-scale consequences such as rising inflation, depressed investment, and a relative loss of manufacturing employment. The U.S. economy has suffered under the Section 301 tariffs, with little to show for it. The effects have been neither "small" or "short term," as USTR falsely claimed. The proposed modifications will only worsen the situation.

A. <u>The Section 301 Tariffs Harmed U.S. Employment</u>

While the tariffs have done little to meaningfully change China's policies, they have cost American jobs. USTR itself acknowledged that the higher input prices and retaliatory tariffs triggered by the 2018-2019 tariff actions led to a relative loss of overall manufacturing

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[8] *Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growths: 100-Day Reviews under Executive Order 14017*, The White House (June 2021) at 12.
[9] *Id.*
[10] Press Release, *Under Section 301 Action, USTR Releases Proposed Tariff List on Chinese Products*, Office of the U.S. Trade Representative (Apr. 3, 2018).

employment that "more than offsets the small employment gain from import tariff protection."[11]

Studies have also revealed that job losses related to tariffs are not mitigated by local gains in other sectors.[12] For example, the Federal Reserve Board report concluded that the tariffs "have not led to increased activity in the U.S. manufacturing sector" and that "a small boost from the import protection effect of tariffs is more than offset by larger drags from the effects of rising input costs and retaliatory tariffs."[13] Others have shown that U.S. consumers and importers, not foreign governments, bear the costs of U.S. tariffs. For example, the Tax Foundation determined that U.S. tariffs would reduce "long-run U.S. GDP by 0.21 percent, wages by 0.14 percent, and employment by 166,000 full-time equivalent jobs" whereas retaliatory tariffs by trading partners will reduce "U.S. GDP by 0.04 percent ($9.4 billion) and reduce full-time employment by 29,000 full-time equivalent jobs."[14]

Thus, the tariffs have had the opposite of their intended effect – rather than countering the "diver[sion] of American jobs to workers to China" brought upon by the unfair trade practices,[15] the Section 301 actions have contributed to further losses of employment across the economy.

B. The Section 301 Tariffs Harmed U.S. Consumers and Producers

Numerous studies have shown that tariffs have doubled the trade-weighted average tariff rates Americans pay for imports since 2017.[16] As a result, consumers have borne the burden of the Section 301 tariffs. Reports have indicated that while one might have expected that Chinese exporters of tariff-affected goods would be forced to lower their prices somewhat to compete in the U.S. market, thereby sharing in the costs of the tariffs, there has been no realized decline in the prices of imported goods from China that faced tariffs.[17] Moreover, studies found that tariffs enabled both domestic producers and non-Chinese exporters to the U.S. market to opportunistically raise their prices as well.[18] The American Action Forum concluded that the U.S. tariffs have increased annual consumer costs by more than $51 billion, which is equivalent to more than $400 in cost for U.S. households annually.[19] Thus, the tariffs have passed through

[11] *USTR Report* at 74.
[12] *Id.*
[13] Aaron Flaaen and Justin Pierce, *Disentangling the Effects of the 2018-2019 Tariffs on a Globally Connected U.S. Manufacturing Sector*, U.S. FEDERAL RESERVE BOARD OF GOVERNORS (Dec. 2019) ("*Federal Reserve Board Report*") at 20-21.
[14] Erica York, *Tracking the Economic Impact of U.S. Tariffs and Retaliatory Actions*, TAX FOUNDATION (July 7, 2023).
[15] *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*, Office of the U.S. Trade Representative (Mar. 22, 2018) ("*Section 301 Investigation*") at 4.
[16] Tori Smith and Tom Lee, *Section 301 (China) Tariffs Causing a Fourfold Increase in Tariff Rates*, AMERICAN ACTION FORUM (July 18, 2022).
[17] *The Effect of Tariffs on Government Revenue, Growth, and Inflation: Lessons From the Last Trade War*, GOLDMAN SACHS (Apr. 6, 2024) at 7.
[18] *Id.*
[19] Tom Lee and Jacqueline Varas, *The Total Cost of U.S. Tariffs*, American Action Forum (May 10, 2022).

entirely to domestic prices, and they were amplified by other producers raising prices in turn to take advantage of the protection from import competition.

Turning to CTA's sector, American technology companies alone have paid an estimated $55 billion in Section 301 tariffs alone from July 2018 to date – approximately one quarter of the total amount of Section 301 duties assessed to date. A majority of those costs had to be passed on to U.S. consumers through higher prices. This increase in prices in turn contributed to the ongoing inflation in the United States. USTR acknowledged and cited some of these studies in its Report, acknowledging that the tariff actions had "negative effects on the U.S. aggregate economic welfare and real incomes."[20] Despite the overwhelming literature supporting these conclusions, USTR was quick to dismiss the negative effects of the 301 tariffs on the U.S. economy as "small" or "short term."[21] They are not.

For example, the U.S. International Trade Commission ("USITC") (in a report that USTR cited) estimated an aggregate overall increase in the value of domestic U.S. production for directly affected industries, with the rise being "driven in part by a 0.2 percent increase in the price of domestically produced affected products."[22] These costs were "fully absorbed" by industrial importers of intermediate inputs and exporters of products that incorporate imported inputs.[23] Although retail prices may not have risen in the short-run,[24] the decrease in U.S. export competitiveness caused by the tariffs will ultimately lead to costs being passed down to consumers.

Further, the tariffs were responsible for depressed investment growth in the United States.[25] This trend is irreconcilable with the original stated intentions of the Section 301 tariffs, which was to address China's laws, policies, and practices that "negatively affect[ed] American economic interests."[26] Instead of rectifying the economic harms caused by China's practices, the tariffs themselves have multiplied them.

USTR questioned the value of studies uncovering the economic consequences of the tariffs by arguing that they fail to account for the tariffs' potential benefits, such as U.S. IP protection and strengthened supply chain resilience, yet USTR acknowledged that even those marginal benefits are slim and not entirely attributable to the tariffs. CrowdStrike's 2021 report found that Section 301 tariffs "had relatively little impact on China's cyber operational tempo" when it came to IP theft.[27] With respect to supply chain shifts, USTR conceded that companies modify production locations for a multitude of reasons beyond the Section 301 tariffs, including labor costs, tax

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[20] *USTR Report* at 68-69.
[21] *Id.*
[22] *USTR Report* at 68; *see Economic Impact of Section 232 and 301 Tariffs on U.S. Industries*, U.S. International Trade Commission (May 2023) ("*USITC Report*").
[23] *USTR Report* at 74-75 (citing Fajgelbaum et al., *The Return to Protectionism;* Mary Amiti, Stephen J. Redding, David Weinstein, NBER, WHO'S PAYING FOR THE U.S. TARIFFS? A LONGER-TERM PERSPECTIVE, Working Paper No. 26610 (2020); *Federal Reserve Board Report*; and the *USITC Report*).
[24] *USTR Report* at 68.
[25] *USTR Report* at 69.
[26] *Section 301 Investigation* at 4.
[27] *USTR Report* at 21 (citing *Nowhere To Hide: 2021 Threat Hunting Report*, CROWDSTRIKE (2021) at 37).

rates, proximity to customers, workforce skills, access to raw materials, infrastructure conditions, shipping times and costs, and production scale and speed. Thus, it is unlikely that any of the benefits USTR alleged resulted from the Section 301 tariffs outweigh the overall consequences to economic welfare.

C. Forced Supply Chain Shifts Will Harm Small- and Mid-Sized Companies

By increasing Section 301 tariff rates on "strategic sectors," USTR is forcing U.S. companies, especially in the consumer technology sector, to rapidly pull production from China without viable sourcing alternatives immediately available. This has been the case since the imposition of List 1 in 2018.

USTR must recognize that private sector companies, not governments, create and operate supply chains. U.S. companies and their foreign partners prioritize the reduction of time, costs, and uncertainty of moving goods across borders to deliver high quality technology products to as many consumers as possible around the world. Thus, companies are already engaging in gradual supply chain shifts out of China, motivated by factors including rising labor costs and concerns about political and economic stability. However, the reality is that supply chain transitions require adequate time and resources. Tariffs create sourcing challenges for companies that have been forced to depend on Chinese inputs, which in turn reduces the competitiveness of U.S. businesses.

The proposed modifications will only heighten these challenges for the consumer technology sector given USTR's inclusion of lithium-ion non-electrical vehicle batteries (classified in HTSUS subheading 8507.60.0020) on the list of proposed rate increases. These batteries are found in a wide array of consumer technology goods, from smart smoke detectors to wireless headphones. The lithium-ion battery supply chain spans the globe, yet some critical inputs are only produced in a handful of countries.[28] China is particularly dominant in several stages of the technology's production. China's hold over the lithium supply chain is no accident – the White House has reported that the Chinese government funneled billions into subsidies, rebates, and tax exemptions to Chinese companies to dominate the global lithium refining industry.[29] The solution to China's dominance in the battery market is not the imposition of trade barriers, but instead efforts to lower costs and improve the efficiency of battery supply chains elsewhere. Until battery manufacturers in the U.S. and third countries can compete with China in key stages of production – including the supply of raw materials and capacity for purifying and refining those inputs[30] – they will not be able to offer prices that are comparable to China. Thus, merely forcing companies to shift sourcing of batteries from China to the U.S. or third countries is not a sustainable remedy.

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[28] *Friendshoring the Lithium-Ion Battery Supply Chain: Final Assembly and End Uses*, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES (Jun. 2024) at 1.

[29] *Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth: 100-Day Reviews under Executive Order 14017*, WHITE HOUSE (June 2021) at 92-93.

[30] *Id.* at 93-94.

Even if demand for alternative sources of batteries rises in response to tariffs, significant input and processing costs will keep prices perpetually high. Rather than raising tariffs and thereby burdening producers and consumers by increasing costs on a wide array of consumer technology goods, the Biden Administration should work to reshore and "friendshore" lithium-ion battery production, focusing on reducing costs of raw materials and building out processing capacity of such inputs. The United States can engage with partners such as Japan, South Korea, and the European Union – all of which have growing battery manufacturing capacity – to expand lithium mining and refining industries domestically and in third party countries. By doing so, the United States and its partners would be able to acquire inputs more efficiently to strengthen manufacturing capacity, while avoiding collateral harms to businesses and consumers. For example, one CTA member reported that had the proposed tariffs on non-EV lithium-ion batteries been in place during Q1 and Q2 of this year, they would have seen a Section 301 duty assessment of $175,000 on this product alone. Without taking proactive measures to sustainably assist industry in shifting supply chains for these batteries to other locations, the proposed tariff increases will simply be yet another 25% tax on innovative U.S. businesses and U.S. consumers.

Businesses must expend additional time and resources to change existing supply chains and production processes. Yet, USTR's decision to terminate nearly all of the Section 301 exclusions and increase existing tariffs will certainly result in additional burden on businesses forcing them to divert their scarce resources and time to go through the tariff processes. Businesses could make better use of their scarce resources and time to shift supply chains away from China, invest in R&D, and strengthen existing supply chains.

The sourcing challenges created by USTR's proposed modifications will disproportionately harm small- and mid-sized companies that often find themselves pushed to the back of the supply line because they do not have the order size, capital, or relationships needed to take priority over their larger counterparts.[31] The tariffs may create pressure to reshore supply chains, but U.S. production is unlikely to meet buyers' demands within the short timeframe that USTR has set before the modifications come into effect. This is particularly true given the lack of domestic capacity and increased reliance on sourcing from China in recent years. As a result, small- and mid-sized companies will be ill-equipped to suddenly compete with multinational firms for scarce alternative sourcing options in the United States and third countries.

For instance, USTR's report recognizes that China currently accounts for more than 80 percent of the world's share of battery manufacturing capacity.[32] Given the low probability that alternative sources will meet China's current supply levels in the time that USTR has set for the modifications, batteries will become increasingly difficult for U.S. companies to obtain. Small- and mid-sized businesses will have only two options – continue to source from China and accept the tax, or alternatively, struggle to compete with large firms in obtaining batteries from scarce

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[31] Amy Haimeri, *Weary of Snarls, Small Businesses Build Their Own Supply Chains*, N.Y. TIMES (Oct. 19, 2022).

[32] *USTR Report* at 16.

alternative sources. Either way, these small- and mid-sized businesses will inevitably face higher production costs for even basic inputs.

The experiences of CTA's member companies demonstrate the consequences of the Section 301 tariffs on the supply chains of tech startups and small- and medium-sized enterprises. For example, Austere, a U.S. technology accessories company, absorbed the costs associated with Section 301 tariffs, as were so many other U.S. companies. Austere had to find (without government assistance) alternative sources outside of China and at the same time to stay competitive, even while paying a 25% tax on its products. While Austere has been able to find alternative sources for some products, it was unable to abandon the China market entirely. Thus, Austere is subject to what it must assume is a permanent 25% tax on its activities in that market. Other U.S. companies have faced similar issues.

Another CTA member may have to reduce employment at its largest facility in a midwestern state due to both the expected tariff rate increases and the expiration of certain exclusions on June 14. They are no longer able to retain these unionized employees in the face of higher tariff payments. This company manufacturers marine engines for the U.S. marketplace and is the only U.S. manufacturer of outboard engines. Its competitors in other non-China markets do not have to pay tariffs for the inputs they need to manufacture engines and are able to ship those engines to the United States duty-free, out-marketing U.S. manufacturers and redirecting business out of the United States. Thus the Section 301 tariffs, the expired exclusions, and the tariff rate increases on non-EV lithium-ion batteries all have created significant competitive disadvantages for this U.S. manufacturer. The disadvantage is so significant that it cannot sell its new electric engines in the United States at competitive prices. This outcome is the exact oppositive of what the Biden Administration intends for the electrification of the U.S. economy.

D. <u>USTR's Proposed Tariff Increases Will Worsen Economic Conditions</u>

Studies examining potential consequences of increased Section 301 tariffs have demonstrated that the direct impact on GDP is likely to be modestly negative, with the drag from the tax-like effect of tariffs on real incomes and consumer spending outweighing the boost to net trade from a reduction in imports of tariff-affected goods.[33] Further, the experience of the 2018-2019 tariff rounds suggests that there would be negative indirect effects, including the reaction of financial markets, a deterioration in business sentiment, increases in trade policy uncertainty on investment, and supply chain disruptions.[34] When USTR has recently touted its efforts to increase supply chain resiliency, maintaining (and increasing) the Section 301 tariffs makes little sense.

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[33] *The Effect of Tariffs on Government Revenue, Growth, and Inflation: Lessons From the Last Trade War*, GOLDMAN SACHS (Apr. 6, 2024) at 5.

[34] *Id.*

III. USTR's Proposal to Maintain and Increase the Section 301 Tariffs Ignores International Law

Despite the numerous admissions by the USTR regarding the ineffectiveness of the Section 301 tariffs, USTR has unjustifiably determined to maintain or increase them for an indefinite period. The proposed actions – which USTR predetermined given that they come into effect a mere month after the conclusion of this comment period – are neither strategic nor lawful.

A. The Section 301 Tariffs Are Not "Strategic"

In its Fact Sheet released on May 14, 2024, the Biden Administration stated that the results of the Section 301 necessity review were "carefully targeted at strategic sectors . . . such as steel and aluminum, semiconductors, electric vehicles, batteries, critical minerals, solar cells, ship-to-shore cranes, and medical products."[35] However, this statement is far from the truth and is inconsistent with the approach that USTR took with regard to the Section 301 tariffs.

There is nothing "strategic" about maintaining all Section 301 tariffs imposed by the former Trump Administration, most which impact goods outside of these "strategic" sectors.[36] There is also nothing "strategic" about removing needed product exclusions while further increasing tariffs on certain product groups. There is nothing "strategic" about clinging onto ineffective and harmful measures that do little other than deteriorate the economic welfare of U.S. workers. USTR's protectionist actions will eventually backfire.

For instance, USTR has proposed increasing the tariff rate on lithium-ion non-electrical vehicle batteries from 7.5% to 25%, yet the category identified is far too broad (even at the 10-digit HTSUS level) to be "strategic." Subheading 8507.60.0020 covers all lithium-ion batteries, including those for consumer use and replacement purposes. It includes batteries used in an expansive array of household, business, and public services applications. Essentially any rechargeable electrical item likely contains a li-ion battery covered by this HS code, including 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 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.

The overbroad nature of this category will detrimentally affect the consumer technology sector, which incorporates lithium-ion non-electrical vehicle batteries into a vast array of retail products. The tariff increase on these batteries would cover more than $10 billion in trade value, comprising over half of the nearly $18 billion in trade volume affected by the proposed increases. At best, a tripling of tariffs on li-ion batteries used in the applications outlined above 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

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[35] *FACT SHEET: President Biden Takes Action to Protect American Workers and Businesses from China's Unfair Trade Practices*, WHITE HOUSE (May 14, 2024).
[36] *Proposed Modifications* at 46,254.

shortening of the lifespan of products, resulting in unnecessary generate of waste, as the cost of replacing batteries becomes equal to or higher than that of discarding and replacing a product altogether.

China presently accounts for over 70 percent 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 small portions of U.S. imports.

Production of batteries used in non-EV applications is also exceedingly challenging to diversify. Production of such batteries occurs in tandem with the product that will contain them. The vast diversity of these products makes is all but impossible to generate segregated production lines for batteries alone (unlike the case for batteries and cells used in EVs).

Most importantly, inclusion of this HS code in the proposed increases does not relate to the objectives of the Section 301 tariff adjustments set out by the White House. It has neither a nexus to strategic sectors such as EVs, semiconductors, steel, or solar; nor is it tied to major U.S. public investment projects. And it is not associated with allegations of predatory Chinese industrial policy.

Through this tariff rate increase on non-EV lithium-ion batteries, USTR is proposing that the budgets of households, contractors, and providers of public services should bear more than half the cost of the Administration's proposed adjustment of the Section 301 tariffs.

Moreover, USTR is going beyond its purview by unreasonably directing private sector companies where and how to invest while burdening them with additional tariffs.[37] USTR's recommendations in its Report appear to suggest that USTR, other U.S. government agencies, and the U.S. Congress are the parties, not the private sector companies, that are responsible to "assess approaches to shifting supply chains away from China and enhancing the supply chain impacts of the tariffs."[38] Private sector companies, not governments, create and operate supply chains. They are in the best position to assess the strengths and weaknesses of their supply chains and make decisions to shift them in efficient and effective manner.

During these disruptive actions and additional taxes, USTR also had the audacity in its Report to recommend that the private sector increase its expenditures on the infrastructure and services related to cyber defenses. This suggestion is disingenuous and smacks of victim-blaming.

Yet, USTR's evident distrust of the private sector to manage supply chains and the resulting imposition of tariffs are not only misplaced but will delay and impede the private sector companies' efforts to move their supply chains. Ironically, USTR's proposed actions closely resemble the behaviors by China that USTR intends to restrict.

[37] *USTR Report* at 87-88.
[38] *Id.* at 88.

Worse, USTR has also been entirely nontransparent about its decisions to maintain or remove certain tariff lines. As noted above, the rationales levied to maintain the Section 301 tariffs in USTR's Report are both internally inconsistent and inconsistent with the reasoning offered by the White House. USTR admitted that the Section 301 tariffs had no effect on changing China's behavior, yet concluded that they are necessary to "maintain the current leverage and encourage China to eliminate" its unfair acts, policies, and practices.[39] This absurd and incoherent conclusion only amplifies the fact that USTR lacks any reasonable or justifiable rationale to keep the Section 301 tariffs that have no practical purpose and are harmful to the U.S. economy.

Rather than maintaining, increasing, or adding further harmful tariffs, USTR should consider alternative approaches to achieve whatever objective it aims to achieve, including taking the multi-geography team approach as discussed in Section II above.

B. <u>The Proposed Tariff Modifications Violate International Obligations</u>

USTR's Report (unsurprisingly) makes no mention of the effect of the proposed modifications on the rules-based trading system. In doing so, the Biden Administration ignores the standing of the United States as a leader in global legal order, and instead submits to the ill-considered demands of strategic competition. The need for the rule of law is especially vital in the multilateral trading system, but the United States sets a fearful example when it continues to partake in unilateral protectionism in violation of World Trade Organization (WTO) rules and prior panel reports. Namely, a WTO panel already determined that the Section 301 tariffs contravened U.S. obligations under Articles I and II of the General Agreement on Tariffs and Trade 1994 (GATT 1994).[40] By continuing to ignore this decision, the United States has signaled to other countries that they also need not respect their international law obligations.

By continuing to impose the Section 301 tariffs in an unjustifiable manner, USTR is not only damaging the United States's reputation as a responsible stakeholder in the multilateral trading system but is also inciting other countries to pursue similar protectionist trade policies.

CTA urges USTR to stop with its overreliance on ineffective tariffs that amounts to an unhealthy addiction and recognize that it has alternate, more effective measures at its disposal. Rather than employing tariffs to address China's trade behavior that the United States finds objectionable, USTR can apply any or all of the following:

- Extend trade agreements with treaty allies and trading partners that are comprehensive and enforceable and honor their commitments to each other. Relative to many of its treaty allies and trading partners, the United States has low tariff rates for a range of consumer technology products. Through expanding the scope of bilateral and plurilateral trade agreements, the United States could increase access to capabilities in other geographies by reducing their barriers to trade. CTA supports high standard,

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[39] *Id.* at 84.
[40] Panel Report, *United States – Tariff Measures on Certain Goods from China*.

comprehensive, binding, and enforceable U.S. free trade agreements with the United Kingdom, Japan, and Southeast Asian nations (among others) to reduce trade costs and barriers to trade and strengthen the rule of law.

- Encourage investments through incentives in capabilities at these treaty allies and trading partners to strengthen each participating geography's manufacturing capability, skilled workforce, and infrastructure.

- Cooperate with allies and partners to strengthen the WTO and explore multilateral and regional trade and investment efforts, such as further accessions to the WTO Information Technology Agreement and its 2015 expansion as well as expansion of product covered by the Agreement, to eliminate tariffs on consumer technology products and inputs.

- Collaborate with allies and partners to prevent the implementation and enforcement of disruptive and harmful unilateral enforcement actions. The United States could lead by example through offering to make the next set of Section 301 exclusions permanent or at least effective for a longer period.

- Ensure that incentives available to domestic industries are also available to industries from allies and partners.

- Allow free flow of goods and data across borders of allies and partners that will enable businesses to secure diversified supply sources. In this regard, the United States should engage in two separate but joint courses of action. First, the United States continue to support the continuance of the WTO moratorium on e-commerce past the 14th WTO Ministerial Conference in 2026 in Cameroon to ensure the free flow of data across borders of allies and partners, data that are crucial to supply chain resilience. Second, the United States should work toward making the WTO moratorium on e-commerce permanent through the ongoing plurilateral Joint Statement Initiative on E-commerce ("E-commerce JSI"). Both actions are necessary, as not all WTO Members are part of the E-commerce JSI and not all E-commerce JSI participants may sign onto the final products.

- Engage in open and honest discussions with allies and partners to promote higher labor, environmental, and fair-trade standards.

- Confirm that measures directed at foreign countries of concern, such as China, do not harm allies and partners, including those that already have free trade agreements with the United States (i.e., USMCA).

- If China has indeed become more aggressive, the solution is to better enforce U.S. law against those individuals and entities doing such practices, rather than undermining the very multilateral partnerships that the United States once helped flourish.

C. USTR’s New Exclusion Process is Arbitrary and Capricious

USTR has routinely ignored calls for tariff relief, including those supported with substantial evidence, and has proposed only an unduly narrow exclusion process that does not reflect the complexity of the U.S. economy. This decision, coupled with the fact that no reduction in tariffs was proposed, suggests that continues to be comfortable USTR ignoring the results of notice-and-comment process altogether and solely relying on comments from a protectionist-driven few.

As discussed above and repeated in numerous comments to USTR over the past six years, the Section 301 tariffs have been proven to be ineffective to curb China’s unfair acts, policies, and practices. Yet, USTR decided not only to maintain and increase these tariffs but also remove nearly all exclusions that provided much needed relief to U.S. companies and consumers. Not only is this decision outrageous, but the fact that USTR has not provided any reasons why it decided to allow most product-specific exclusions to lapse after May 31, 2025, is arbitrary and capricious. Moreover, USTR’s provided reasons for declining to extend many of the exclusions have little to do with strategic competition between the United States and China. The tariff increases and the lack of meaningful relief will only add to the current inflation and harm U.S. workers and consumers.

Further, USTR has left the public in dark as to why it pre-selected only (1) a small group of Chapter 84 and 85 HTSUS subheadings to be eligible for exclusions through some yet-untold process and (2) a handful of solar machinery items to be eligible for pre-baked exclusions that USTR did not offer to any other U.S. industry.

USTR should broaden the proposed exclusion process significantly, particularly with respect to consumer technology and inputs for manufacturing consumer technology in the United States. This should, at minimum, include other machinery, parts/repair, commodity grade inputs unavailable in the United States or third countries, and key components for incorporation into finished goods in the United States.

By allowing nearly all exclusions to lapse, the Biden Administration has ensured that the Section 301 tariffs are currently at their maximum extent, beyond what they ever were under the Trump Administration. This makes the Administration’s claims that the tariffs are targeted or strategic ring particularly hollow.

D. USTR Should Reconsider Its Deadlines for Imposing the Proposed Tariff Increases

USTR “proposed” (in name only) that the tariff increases for many items will become effective on August 1, with all remaining increases effective by January 1, 2025, and 2026. Today’s consumer technology supply chains consist of a complex network that involves thousands of inputs and materials from a vast array of suppliers around the world. As CTA has previously pointed out, shifting supply chains out of China will result in a series of complex adjustments to existing and future supplier relationships, investments, and manufacturing capabilities. These changes do not and cannot happen overnight.

Requiring and expecting companies to make these changes within such a short time for compliance proposed by USTR only demonstrates that the Biden Administration has no substantial understanding of the realities of current supply chains. Further, burdening companies with the additional tariffs without considering the difficulties and time needed to make major shifts in supply chains will only result in increased prices and decreased demand. Such an outcome only undercuts USTR's goal to shift supply chains in a sustainable manner. USTR should indefinitely pause the imposition of these increases, at the very least while it takes a long, hard look at the public comments.

IV. Conclusion

For the reasons set forth above, CTA opposes USTR's decision to maintain and increase tariffs. As time has proven, they will not be effective in changing China's behavior but only deteriorate the welfare of U.S. businesses and workers. We maintain our position that the Administration should abandon the Section 301 tariffs, which would boost the U.S. economy, mitigate inflation, and create a more positive relationship between the United States and the rest of the world. Further, we urge the Administration to reconsider all the recommendations that CTA and other organizations offered on other actions the Administration could take to address the identified IP theft, forced technology transfer, and innovation practices in China. These actions would be far more effective than the Section 301 tariffs – no matter how high the tariff rates are.

Regarding the proposed tariff rate increases, CTA strongly urges the Administration to indefinitely pause their implementation dates to give ample time for the business community to prepare and reorient their supply chains accordingly. We reiterate our call for the Administration to open a comprehensive, fair, and transparent exclusions process for U.S. companies to petition the government for tariff relief. The process that USTR has proposed falls far short of this recommendation.

CTA is committed to serving as a resource for the Administration during its ongoing efforts to address harmful and predatory practices in China. Thank you again for the opportunity to submit comments.

Sincerely,

Ed Brzytwa
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Consumer Technology Association

Michael Petricone
Senior Vice President of Government Affairs
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ANNEX 1

CTA members identified the following HTSUS subheadings of concern from Annex A of USTR's proposed modifications. CTA requests that USTR refrain from imposing Section 301 duties on these items for the reasons discussed in the comments above.

HTSUS Subheading	Description
7212.40.10	Iron/nonalloy steel, width less th/300mm, flat-rolled products, painted, varnished or coated w/plastic
7212.50.00	Iron/nonalloy steel, width less th/600mm, flat-rolled products, plated or coated nesoi
7604.10.10	Aluminum (o/than alloy), profiles
7604.10.50	Aluminum (o/than alloy), bar and rods, other than with a round cross section
7604.21.00	Aluminum alloy, hollow profiles
7606.11.30	Aluminum (o/than alloy), plates/sheets/strip, w/thick. o/0.2mm, rectangular (incl. sq), not clad
7606.12.30	Aluminum alloy, plates/sheets/strip, w/thick. o/0.2mm, rectangular (incl. sq), not clad
8505.11.00	Permanent magnets and articles intended to become permanent magnets after magnetization, of metal
8507.60.0020	Lithium-ion batteries: Other
8507.90.40	Parts of lead-acid storage batteries, including separators therefor
8541.10.00	Diodes, other than photosensitive or light-emitting diodes
8541.21.00	Transistors, other than photosensitive transistors, with a dissipation rating of less than 1 W
8541.29.00	Transistors, other than photosensitive transistors, with a dissipation rating of 1 W or more
8541.30.00	Thyristors, diacs and triacs, other than photosensitive devices
8541.49.80	Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes (LED): Other: Other: Optical coupled isolators
8541.90.00	Parts of diodes, transistors, similar semiconductor devices, photosensitive semiconductor devices, LEDs and mounted piezoelectric crystals
8542.31.00	Electronic integrated circuits: processors and controllers
8542.32.00	Electronic integrated circuits: memories
8542.33.00	Electronic integrated circuits: amplifiers
8542.39.00	Electronic integrated circuits: other
8542.90.00	Parts of electronic integrated circuits and microassemblies

ANNEX 2

CTA members identified the following HTSUS subheadings that were **not** included in USTR's Annex B. CTA requests that USTR consider adding these subheadings to Annex B such that they may be eligible for the forthcoming exclusion process for the reasons discussed.

HTSUS Subheading	Description
8419.89.95	Industrial machinery, plant or equipment for the treatment of materials, by process involving a change in temperature, nesoi
8421.21.00	Machinery and apparatus for filtering or purifying water
8454.90.00	Converters, ladles, ingot molds and casting machines, of a kind used in metallurgy or in metal foundries, and parts thereof: Parts USTR should include subheading 8454.90.00 within the scope of items eligible for an exclusion because subheading 8454.90.00 includes "parts of" casting machines that are themselves classified in subheading 8454.30.00, a provision which USTR already included in Annex B. These casting machines – and their parts – include the world's largest aluminum die casting machines, which represent a critical innovation in "giga casting" used by numerous U.S. automotive manufacturers. The machines produce single-piece aluminum die castings that form the underbody of a vehicle, which allow manufacturers to conserve material, utilize more sustainable and lower-emission processes, and reduce production costs, while also resulting in higher quality, lighter weight, and safer parts. For these casting machines to be useful for domestic automotive manufacturing, they must continually be in working order. Because "giga casting" involves high-pressure, high-speed casting of molten metal in closed die cavities, components of the casting machines must be repaired frequently through a refurbishment process. This refurbishment process requires the use of numerous components, many of which are classified in subheading 8454.90.00. While these "giga casting" machines of subheading 8454.30.00 are not produced in China, there is a limited group of suppliers – less than ten globally – that produce the highly specialized parts consumed through the refurbishment process. Depending on lead times and repair needs, it can be necessary to procure certain parts from Chinese suppliers to ensure that line stoppages are minimized, thereby ensuring continued employment for U.S. automotive workers. Accordingly, USTR should include subheading 8454.90.00 within the scope of Annex B and allow for exclusion requests addressing these parts in its forthcoming exclusion process.
8475.90.90	Parts of machines for additive manufacturing, other
8479.90.95	Parts of machines and mechanical appliances having individual functions, not specified or included elsewhere in chapter 84, nesoi
8480.71.80	Molds for rubber or plastics, injection or compression types, other than for shoe machinery or for manufacture of semiconductor devices
8481.80.50	Taps, cocks, valves & similar appliances for pipes, boiler shells, tanks, vats or the like, hand operated, not copper, iron or steel, nesi

8481.80.90	Taps, cocks, valves & similar appliances for pipes, boiler shells, tanks, vats or the like, other than hand operated, nesi
8485.10.01	Machines for additive manufacturing by metal deposit
8485.20.00	Machines for additive manufacturing by plastics or rubber deposit
8485.30.00	Machines for additive manufacturing by plaster, cement, ceramics or glass deposit
8485.80.00	Other machines for additive manufacturing, not by metal, plastic, rubber, plaster, cement, ceramics or glass, nesoi
8485.90.10	Parts of machines for additive manufacturing by plastics or rubber deposit
8485.90.90	Other parts of machines for additive manufacturing, not by plastics or rubber deposit
8503.00.95	Other parts, nesoi, suitable for use solely or principally with the machines in heading 8501 or 8502
8505.19.30	Permanent magnets and articles intended to become permanent magnets after magnetization, other than of metal, nesoi
8543.70.98	Other electrical machines and apparatus, having individual functions, NESOI
8547.20.00	Insulating fittings for electrical machines, appliances or equipment, of plastics

ANNEX 3

CTA members identified the following product-specific exclusions that have now expired but merit reexamination and further extension by USTR for the reasons discussed in the comments above.

HTSUS Subheading	Description
3801.10.5000	Artificial graphite, in powder form (described in statistical reporting number 3801.10.5000)
3801.10.5000	Artificial graphite, in powder or flake form, for manufacturing into the lithium-ion anode component of batteries (described in statistical reporting number 3801.10.5000)
3801.90.0000	Natural graphite, in powder form (described in statistical reporting number 3801.90.0000)
8302.50.0000	Flat panel display mounting adapters of base metal (described in statistical reporting number 8302.50.0000)
8516.60.4070	Portable countertop air fryers of a kind used for domestic purposes (described in statistical reporting number 8516.60.4070)
8418.50.0080	Upright coolers incorporating refrigerating equipment, each measuring not more than 77 cm in width, not more than 78 cm in depth and not more than 200 cm in height, weighing not more than 127 kg, with one swing-type transparent glass door (described in statistical reporting number 8418.50.0080)
9405.40.8440	Flexible strips, each having embedded light-emitting diodes electrically connected to a molded electrical end connector, each strip wound onto a reel measuring not more than 25 cm in diameter and not more than 1.5 cm in width (described in statistical reporting number 9405.40.8440 prior to January 27, 2022; described in statistical reporting number 9405.42.8440 effective January 27, 2022)

CTA members also identified the following product-specific exclusions that USTR extended until May 31, 2025, but which merit permanent exclusion from the tariffs for the reasons discussed in the comments above.

HTSUS Subheading	Description
7007.19.0000	Screen protectors of tempered safety glass, transparent, cut, and treated, with adhesive on one side, in rectangular sheets, each weighing at least 6 g but not more than 77 g, each measuring not

	less than 2.8 cm but not more than 28 cm in height, not less than 1.9 cm but not more than 21 cm in width, and not more than 0.1 cm in thickness (described in statistical reporting number 7007.19.0000)
8473.30.5100	Parts and accessories of machines of heading 8471, whether or not incorporating fan hubs or LEDs but not incorporating other goods of heading 8541 or 8542 (described in statistical reporting number 8473.30.5100)
8544.42.2000	Insulated electric conductors for a voltage not exceeding 1,000 V, fitted with connectors of a kind used for telecommunications, each valued over $0.35 but not over $2 (described in statistical reporting number 8544.42.2000)