



1919 S. Eads St.
Arlington, VA 22202
703-907-7600
CTA.tech

September 10, 2024

Ambassador Katherine Tai
The Office of the U.S. Trade Representative
600 17th St. NW
Washington DC, 20508

Re: Request for Comments and Notice of Public Hearing Concerning China's Compliance With WTO Commitments (Docket Number USTR-2024-0012)

Dear Ambassador Tai:

The Consumer Technology Association appreciates the opportunity to submit written comments regarding China's compliance with its World Trade Organization (WTO) commitments. This letter and its annex constitute CTA's written comment for the 2024 WTO Compliance Report that U.S. statute requires USTR to issue on an annual basis. We welcome your notice of a public hearing on this topic as well and respectfully request to testify on September 24.

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 for their streamlined movement of goods and services. 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. CTA promotes the Human Security For All (HS4A)¹ mandate of the United Nations, catalyzing technologies that can meet fundamental human securities. 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.

The consumer technology industry has historically utilized production locations in China for manufacturing many products for the U.S. market. For more than a decade, though, and especially since USTR's imposition of tariffs under Section 301 of the Trade Act of 1974 in 2018 and 2019, consumer technology firms have begun to find new sourcing opportunities in other markets. The deteriorating business and legal environment in China, the difficulties surrounding the COVID-19 pandemic, and increasing geopolitical risk have undergirded this shift. CTA's landmark study on "Building a Resilient Consumer Technology Supply

¹ CES 2025, CTA, <https://www.ces.tech/topics/human-security-for-all.aspx>.

Chain"², which we have shared with USTR in our written comments on supply chain resilience, underscores these points.³

However, the cost and uncertainty of moving or reconstructing consumer technology supply chains outside of China are exceedingly high for many companies. For some, sourcing from China and paying the Section 301 tariffs to access the U.S. market can be a more certain proposition compared to the further diversification of supply chains. As a result, many consumer technology firms remain exposed to China's non-market economy and unfair trading practices.

USTR has claimed that the Section 301 tariffs on imports from China, particularly the List 3 and 4a tariffs, are designed to change China's behavior regarding its harmful intellectual property theft, forced technology transfer, and innovation practices. However, as USTR itself noted in its most recent report detailing the results of the necessity review of the tariff actions, China's behavior has only marginally changed in some areas but has persisted or become even worse in other areas.⁴

As CTA's past comments to USTR on these matters have stated, including our June 2024 comments to USTR regarding the proposed tariff rate increases,⁵ the Section 301 tariffs on imports from China are a failed policy. They have not changed China's behavior. They instead have contributed to inflation in the United States and have harmed U.S. companies and ultimately consumers, who have paid higher prices for items necessary for their businesses and households. For the consumer technology industry, the tariffs have not led to greater production or employment in the United States, as outlined in our "Analysis of Section 301 Tariff Impacts on Imports of Consumer Technology Products"⁶ from July 2022.

In CTA's view, USTR's unilateral tariff only strategy is not a sufficient means of pressuring China to comply with its WTO commitments. CTA has offered many suggestions on other actions that the United States could take to change China's behavior, particularly in our January 2023 comments to USTR for the necessity review.⁷ One of those actions is offensive dispute settlement cases at the WTO. Prior to USTR's decision to

² Press Release, "Landmark Study Shows Bringing All Tech Manufacturing Back to U.S. Not Feasible," CTA (Oct. 4, 2023), <https://www.cta.tech/Resources/Newsroom/Media-Releases/2023/October/Landmark-Study-Shows-Bringing-All-Tech-Manufacturi>.

³ Letter to Ambassador Katherine Tai, "Consumer Technology Association, Post-Hearing Written Comments to USTR's Request for Comments on Promoting Supply Chain Resilience (USTR-2024-0002)," (June 4, 2024), [https://cdn.cta.tech/cta/media/media/advocacy/pdfs/final-cta-comments-to-ustr-on-promotion-of-supply-chain-resilience-20240604-with-short-version-of-annex-2-\(1\).pdf](https://cdn.cta.tech/cta/media/media/advocacy/pdfs/final-cta-comments-to-ustr-on-promotion-of-supply-chain-resilience-20240604-with-short-version-of-annex-2-(1).pdf).

⁴ *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.

⁵ Letter to Ambassador Katherine Tai, "Consumer Technology Association, Comments on USTR's Request for Comments on Proposed Modifications of Section 301 Tariffs (USTR-2024-0007)," (June 28, 2024), <https://cdn.cta.tech/cta/media/media/pdfs/cta-final-comments-to-ustr-on-china-section-301-tariff-rate-increases-and-exclusion-process-20240628.pdf>.

⁶ Report, *Analysis of Section 301 Tariff Impacts on Imports of Consumer Technology Products*, CTA and Trade Partnership Worldwide, LLC (July 2022), https://www.wita.org/wp-content/uploads/2022/08/CTA_Section-301-Tariff-Whitepaper.pdf.

⁷ Letter to Ambassador Katherine Tai, "Consumer Technology Association Comment to Docket USTR-2022-0014, 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," (Jan. 17, 2023), <https://cdn.cta.tech/cta/media/media/pdfs/final-cta-comments-to-ustr-for-four-year-review-of-china-section-301-tariffs-20230117.pdf>.

disable the Appellate Body (AB) by blocking the appointment of new AB members, the U.S. government had a solid track record of using the dispute settlement system to address China's WTO-inconsistent practices. The best example of using this process is the case that the United States, the European Union, and Japan prosecuted successfully together as co-complainants on China's export restraints on rare earths and other critical minerals.⁸ China lost this case across the board, did not appeal, and changed the measures that the dispute settlement panel found to be inconsistent with its WTO commitments, including those under the Protocol of China's Accession to the WTO.

USTR, unfortunately, never deployed this highly successful model again. During the prior administration, USTR did launch one case against China concerning the protection of intellectual property rights in March 2018 (see DS542: *China — Certain Measures Concerning the Protection of Intellectual Property Rights*).⁹ However, after the composition of a dispute settlement panel in January 2019, USTR made a request of the Dispute Settlement Body (DSB) to suspend the panel's work in 2020. The DSB accepted this request and the authority for the panel's establishment lapsed in 2021. Since then, USTR has only been on the defensive against China at the WTO concerning offensive cases that China has taken against U.S. measures, including the Section 301 tariffs¹⁰, the tariffs imposed on imports of steel and aluminum under Section 232 of the Trade Expansion Act of 1962¹¹, and more recently the U.S. tax credits for electric vehicles provided through the Inflation Reduction Act of 2022¹².

USTR's zeal for tariffs has hidden its failure to leverage other tools in its toolbox to address barriers to trade. Offensive dispute settlement cases at the WTO have fallen out of the toolbox entirely, not just regarding China but all other WTO Members. Since 2019, USTR has forgone critical opportunities to hold China and other WTO members to account regarding their WTO commitments and increase U.S. leverage in negotiations to address barriers to trade through dispute settlement proceedings. Consequently, USTR is losing its muscle memory on how to pursue offensive cases at the WTO, which will impair the agency's ability to pursue its mission in the future.

CTA acknowledges that there are legitimate concerns about AB overreach on WTO jurisprudence. But holding the dispute settlement system at the WTO hostage weakens the ability of the United States to address China's bad behavior through WTO means. It also deprives the United States of an avenue to work with its allies and present a united front on China's compliance with its WTO commitments. A rational outside observer can assume that USTR believes that working with our allies is too difficult and time-consuming and that unilateral action is easier and faster.

What USTR is missing is that offensive cases at the WTO, if pursued successfully, increase the odds that China will engage in meaningful negotiations, either with the United States alone but preferably with the United States and its allies and partners together. China purports to be a strong supporter of the rule of law and the multilateral trading system. Offensive cases at the WTO will increase the pressure on China to back up its rhetoric with changes in behavior if it loses those cases. If the United States and its allies do not hold

⁸ *China — Rare Earths*, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds431_e.htm.

⁹ *China — Intellectual Property Rights II*, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds542_e.htm.

¹⁰ *US — Tariff Measures (China)*, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds543_e.htm.

¹¹ *US — Steel and Aluminium Products (China)*, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds544_e.htm.

¹² *US — IRA (China)*, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds623_e.htm.

China to account regarding its WTO commitments, Beijing will assume that no one cares about international trade rules. It will then run wild over them and shape the multilateral trading system in its image, where governments can pursue non-market economy practices without limits.

CTA therefore urges USTR to initiate offensive dispute settlement cases against China at the WTO once again, where possible in concert with its key allies as co-complainants. It is possible for USTR to do this while working to revise the dispute settlement system. Other WTO members are pursuing offensive cases even as they negotiate revisions to the dispute settlement system. USTR should join them rather than sit on the dispute settlement sidelines.

In this light, CTA offers perspectives on measures in China that could be inconsistent with its WTO commitments, including measures related to its WTO accession protocol. We outline these measures in the Annex to these comments according to the areas that USTR specified in its Federal Register notice for this consultation.

Thank you again for the opportunity to submit these comments. CTA is happy to serve as resource for USTR as it examines China's compliance with its WTO commitments. We look forward to testifying at the public hearing on September 24.

Sincerely,



Ed Brzytwa
Vice President, International Trade
Consumer technology Association



Michael Petricone
Senior Vice President, Government Affairs
Consumer Technology Association

Annex - CTA comments on specific issues pertaining to China's compliance with its WTO commitments

C. Export regulation.

China's government agencies have started to aggressively enforce its "Unreliable Entity List" (UEL), which prohibits companies and individuals in China from export, import, and related transactions with listed companies and imposes punitive measures for violations at any level of the supply chain for products to US defense companies listed on the UEL. However, the enforcement process of the UEL in China has been highly opaque and lacks clear guidance and definition in the scope of compliance responsibility.

D. Internal policies affecting trade (e.g., subsidies, standards and technical regulations, sanitary and phytosanitary measures, government procurement, trade-related investment measures, taxes and charges levied on imports and exports).

CTA members urge China's full implementation of the WTO Technical Barriers to Trade (TBT) Agreement. China's regulatory-making process still lack full transparency, and in some instances have seen decreased transparency where new requirements are released without advance notice, documentation, or adequate opportunity to comment. Chinese government agencies should develop better pre-ruling processes to provide clarifications, adopt feedback, and allow for a sufficient timeframe for public comments on proposed rules and regulations.

Specifically, the creation of unique Chinese standards continues to be a significant barrier in the IT sector. For example, a requirement that computer processors pass a security test, which many Western companies are not comfortable disclosing for intellectual property protection and security reasons, means that only Chinese local processors can be sold into products for public procurement and is very likely to extend into broader sectors of the economy, including consumer.

As a member of the WTO, China is bound by the principle of national treatment. However, Chinese authorities continue to use a variety of laws, regulations, and other policy tools to compel U.S. IT companies to license or otherwise transfer valuable U.S. technologies and know-how to Chinese entities at below-market rates, and to exclude U.S. companies from full and equal participation in the Chinese market.

CTA members are especially concerned regarding China's discriminatory market access measures targeting hardware and software procurement. China's public procurement policies in the technology sector have increasingly afforded preferential treatment to national companies. As an example, the "Build in China, buy China" (Xinchuang) policy is intended to promote national tech champions, encourage domestic consumption, and likely substitute out foreign players, including U.S. companies. The policy is expected to expand to state-owned enterprises and "critical sectors" including a broad spectrum of the economy beyond government procurement - financial services, transportation, telecom, education, healthcare, aerospace, and energy.

It is expected that more "qualified suppliers" lists will be released by the Chinese authorities, continuing to effectively bar U.S. company participation. Requirements that SOEs, CIOs, and public sector entities

procure “Build in China, buy China” products exist in four areas: IT infrastructure, basic software, applications, and information security. Foreign invested companies, including U.S. firms, are impacted in the above four areas. Over time, preferential public sector treatment of Chinese national champion technology companies could also be adopted by private Chinese firms through regulatory restrictions, perceived security concerns, or trickle-down branding and reputation impact.

China’s “Build in China, buy China” policy, subsequent procurement directives, and planned expansion create a WTO-inconsistent market access barrier to U.S. technology companies. CTA members encourage the U.S. government to raise national treatment concerns to Chinese authorities.

F. Services.

Since 2017, China has been developing and implementing a comprehensive cyber and data regulatory framework, which has placed onerous and vague compliance requirements on U.S. technology companies. Moreover, the Chinese laws, regulations, policies and proposals making up this framework have introduced measures which erect substantial market access barriers counter to China’s WTO commitments.

- China’s 2017 Cybersecurity Law (CSL) is broadly written and imposes a complex and burdensome cybersecurity review on companies. It also serves as China’s legal justification behind certain regulations, such as the Multi-Level Protection Scheme 2.0, which restrict usage of foreign technology products;
- The Data Security Law introduces stringent data localization requirements for Critical Information Infrastructure Operators (CIIOs), as well as compliance requirements for overseas transfer of important data. The broad and vague definition of what constitutes as CIIOs, as well as important data, means that U.S. technology companies continue to face high costs to comply with the law;
- The Personal Information Protection Law and the Outbound Data Transfer Security Assessment Measures build on the CSL and the DSL in imposing onerous measures on the cross-border transfer of data, while also containing – in many instances – opaque or incomplete guidance.

These four measures take a broad view of national and data security, place shifting goalposts on compliance and high costs on U.S. technology companies while contracting the spirit of China’s WTO commitments. These mandates—which require data localization and pose restrictions to cross-border data transfer—impede free flow of trade, including for e-Commerce. While China has recently clarified and loosened some aspects of its cross-border data transfer policies, China’s overall restrictive and sovereignty-based approach to data flow continues to negatively impact companies that rely on the international flow of data to operate. They also erect substantial market access barriers by imposing indigenous technology requirements, mandating the use of “secure and controllable” technologies, and defining this term in ways that disadvantage or exclude foreign products and suppliers.

CTA members recommend the U.S. to continue to pressure China to adopt laws and regulations consistent with international laws and rulemaking bodies and to suspend measures involving trade-restrictive technology standards and data-related requirements which have discriminatory impacts against U.S. technology companies.