Section 301 Determination: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property and Innovation
Docket No. USTR-2019-0004
US-China Business Council
June 17, 2019

The US-China Business Council (USCBC) represents over 200 American companies engaged in business across all industries and sectors in China, employing millions of Americans across the United States. We appreciate the opportunity to submit our testimony to the Office of US Trade Representative (USTR) on the proposed plan to impose 25 percent tariffs on an additional $300 billion worth of Chinese imports, essentially covering all products imported by the United States from China.

In short: the Administration has identified the right issues that need to be addressed with China, which has led to some progress while negotiations have been underway. The imposition of a final round of tariffs on the equivalent of all remaining imports, however, will halt additional progress and undermine the gains that American companies would make in China, to the benefit of other foreign companies doing business in the market. The tariffs would also harm American consumers and damage American companies' overall competitiveness due to the higher costs that will be associated with American-made products. To this end, we urge the Administration to not implement tariffs on this final proposed list of products.

As noted in USCBC's testimony during prior hearings on the Section 301 investigation launched in August 2017, China's intellectual property (IP) and technology transfer policies are key issues that need to be addressed. The problem of overcapacity in steel, aluminum, and other sectors, exacerbated by Chinese oversupply, also needs to be effectively addressed. China has yet to substantially improve market access and competitive conditions for foreign companies selling to and investing in China. The steps that the US business community wants China to take include increased policy transparency, predictability, and implementation lead times in China, as well as elimination of explicit and implicit localization requirements that often favor domestic companies.

In response to China's unfair and discriminatory trading practices identified in the Office of US Trade Representative's (USTR) Section 301 report, the administration has already imposed tariffs on $250 billion of Chinese imports through three rounds of actions. The existing tariffs imposed through those actions, covering about half of all goods imports into the United States, have done significant damage to US economic interests. Acting unilaterally has made American companies targets of retaliation that has resulted in loss of significant market share to other countries. In response to US tariffs, the Chinese government has imposed its own tariffs on a total of $110 billion worth of US imports into China, an estimated 85 percent of US goods exports to China.

USCBC's recent report on US exports to China by showed the extent of damage. US goods exports to China in 2018 fell by 7 percent from last year's record high. Many states that have historically exported the most to China saw year-over-year decline in their goods exports to that country in 2018. While US services exports to China saw an overall increase in 2017, the latest full year for which data are available, the growth rate slowed, suggesting that they are not immune to trade disputes.

The addition of tariffs on essentially all remaining imports from China will do even more damage to American companies and consumers. The vast majority of products in the proposed list are made by American companies. Increasing tariffs on these products will make it harder for them to compete globally against companies that derive more of their revenues from other markets. While some have suggested that companies simply move parts of their supply chain out of China to other markets, such an approach is not realistic for complex, high-volume chains, such as those used by innovative US consumer electronics companies. It would take years to build a new, secure supply chain for sophisticated consumer electronics—years during which non-American companies will be able to build market share, focus on innovation and efficiency, and outcompete US companies that have been world leaders. In addition, the cost increases associated with the tariffs will inevitably be passed on to American consumers, particularly on products that are largely sourced only from China such as toys, televisions, footwear and apparel. Some economists have found those cost increases will exceed the savings that American families received from tax reforms that were enacted in 2018.

More generally, we are disappointed that both the US and Chinese governments have chosen to escalate their tariff battle rather than work through their differences. More tariffs will not persuade either government to change their positions and will exacerbate the damage being done to American companies and farmers that do business with China. Negotiation is the only way to get these issues back on the right track.

As USCBC has recommended from the outset of the Section 301 investigation, a holistic approach that considers the economic effects of US actions is needed to effectively address China's explicit and implicit trade and investment barriers. We continue to urge USTR to reconsider the possible broad imposition of tariffs to achieve targeted trade goals, and to instead adopt a comprehensive and strategic approach that clearly articulates the goals we are trying to achieve, setting short, medium, and long-term negotiating objectives to address industry concerns and build much-needed confidence that China will follow through on its commitments.

USCBC member companies want an agreement that includes measurable, commercially meaningful outcomes. Any substantive agreement must also include a plan of action as progress is made to reduce and ultimately remove the tariffs that both sides have imposed. Additionally, it must also be detailed, enforceable, time-bound, and result in market-access improvements that have a meaningful impact for American companies, workers, and farmers. Finally, an agreement, if reached by both countries, should not be an end in itself—it must also include a regularized, results-oriented government-to-government dialogue that continues to address the concerns of American companies.

There are real solutions to the challenging issues of intellectual property rights protection and forced technology transfers, which USCBC has detailed in its submissions throughout the Section 301 process. Adopting WTO-consistent criminal penalties for intellectual property rights infringement is a stronger measure that China could take to deter piracy. Eliminating joint venture requirements and installing independent and objective expert panel reviews are additional steps China could take to protect foreign companies from inappropriate requests for technology transfers.

Throughout the negotiations earlier this year, China has introduced a number of measures aimed at addressing those and other issues raised in the Section 301 report. On March 15, China's National People's Congress (NPC) passed the Foreign Investment Law that commits to criminal penalties for public officials who violate protections against intellectual property and technology transfer, as well as equal participation in standards setting and government procurement. On April 23, the NPC Standing Committee (NPCSC) approved amendments to a variety of laws on strengthening intellectual property protection. China's State Council also recently announced several amendments that address China's discriminatory foreign licensing restrictions core to USTR's complaints about China's forced technology transfer regime. Improvements to market access in China's financial services industry have been announced as well.

These actions reflected some of the "early harvest" outcomes that the bilateral negotiations had begun to reap. Without further clarifications and clear guidance to the government agencies that will be tasked with implementing them, however, the progress will be in name only. An escalating tariff battle will limit the United States' ability to ensure the clarifications and guidance that result from China's implementing regulations meet the needs of American companies and address the issues rightly raised in the Section 301 investigation.

USCBC looks forward to working with the Administration to effectively address these issues with China through bilateral dialogues and other means. We continue to believe that to be effective, a comprehensive approach is indeed necessary—one that addresses tariffs, licensing and non-tariff barriers, and prioritizes bilateral trade and investment agreements to create a more level playing field for American companies to protect intellectual property and access the Chinese market.