Proposed Modification of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation
Docket No. USTR-2019-0015
US-China Business Council
September 20, 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 the US Trade Representative (USTR) on the proposed plan to increase the tariff rate from 25 percent to 30 percent on approximately $250 billion worth of Chinese imports currently subject to tariff actions taken in June, August, and September 2018.

USCBC is pleased the United States chief negotiators plan to continue discussions with China in early October, and that the decision to impose these tariff increases has been delayed to create a favorable environment for those meetings. We hope those discussions will be productive and bring an end to the cycle of escalating tariffs and retaliatory actions from both sides.

As we have noted in previous submissions, USTR's Section 301 investigation has identified the right issues that need to be addressed—namely, China's intellectual property (IP) and technology transfer policies. Tariffs, however, will not help resolve these issues that harm American companies, and have not proven effective at producing meaningful negotiations or concessions from either government. We therefore urge the administration to not increase tariffs on $250 billion worth of Chinese imports.

Tariffs are a tax on the US economy. Continuing tariff escalations will only exacerbate and expand the damage to more US economic interests, including businesses, farmers, workers, and families. Unilaterally imposing tariffs has made American companies the targets of retaliation and damaged their overall global competitiveness. The administration's ad hoc decision-making and constant threat of new and higher tariffs is creating business uncertainty that further undermines the confidence that drives investment in the US economy.

USCBC's recent report on US exports to China by state and district shows the extent of the damage. US goods exports to China in 2018 fell by 7 percent, or $9 billion, from last year's record high. Many states that have historically exported the most to China saw a 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. Increasing the tariff rate on $250 billion worth of goods—covering half of all Chinese goods imported into the United States—will do even more damage to American companies, farmers, and consumers. These high-level tariffs, whether increased or not, will not only further undermine the competitiveness of US

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manufacturers around the world, but the increasing costs will inevitably be passed on to American business partners and consumers as companies struggle to absorb the costs.

To be clear, the Section 301 investigation launched in August 2017 into China's IP and tech transfer policies accurately identified the key issues that need to be addressed. The problem of overcapacity in steel, aluminum, and other sectors, exacerbated by China's 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. Unilateral tariffs will not address these issues, and escalating the tariff battle will exacerbate the real economic harm inflicted on US businesses and consumers. A better approach would be to work with like-minded countries to develop common or parallel approaches rather than to singularly expose US companies and workers to retaliation. Working with our trading partners will also keep the focus where it should be: resolving China's problematic policies in ways that will bring positive change in the commercial relationship.

The administration's planned actions in response to the 301 investigation results also include investment restrictions. USCBC is pleased that the administration will use existing tools for investment reviews and technology export controls to manage the concerns about technology transfers to China. At the same time, we need to ensure that we have the right balance between our national security and economic interests. Inbound and outbound investment are important drivers of employment, economic growth, and tax base expansion in the United States. As USCBC said in testimony during previous phases of this case, national security restrictions on economic activity, including investment, should be as narrowly applied as possible and tied to credible, identified security risks. Implementation of revisions to US foreign investment review mechanisms, once passed by Congress, and the review of US export controls, should maintain this approach and incorporate the best advice from all stakeholders, including the business community.

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 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 would address industry concerns and build much-needed confidence that China will follow through on its commitments. We encourage and would support the negotiators reaching an interim agreement that includes the delay and roll back of some US tariffs in exchange for China undertaking IP commitments and resuming certain purchases this October in order to pave the way for a substantive, long-term agreement.

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 measurable and commercially meaningful impact for American companies, workers, and farmers. Finally, an agreement 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 IP rights protection and forced technology transfers, which USCBC has detailed in its submissions throughout the Section 301 process. Adopting WTO-consistent criminal penalties for IP 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 IP and technology transfer, as well as equal participation in standards setting and government procurement. On April 23, the NPC Standing Committee approved amendments to a variety of laws on strengthening IP protection. China's State Council also 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. However, China's reform progress stalled significantly after the negotiations broke down in April. Without further clarifications and clear guidance to the government agencies that will be tasked with implementing these reforms, 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 actually meet the needs of American companies and address the issues 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 in the Chinese market.