US-China Business Council Comments on 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

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The US-China Business Council (USCBC) represents nearly 280 American companies engaged in business across industries and sectors in China, employing millions of Americans across the United States. We appreciate the opportunity to submit commentary as part of the Four-Year Review of Actions Taken in the Section 301 Investigation into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation.

As we have noted in previous submissions, ensuring market-based decisions on technology transfer and protecting intellectual property (IP) are priorities for USCBC and our members. While USTR's Section 301 investigation identified important issues to be addressed, the tariffs implemented in response have by and large failed to address these issues. Instead, these tariffs have harmed American interests. American families and producers are paying more for everyday goods, American exporters are disadvantaged compared to their foreign competitors, and American companies are disincentivized from moving manufacturing to the United States.

In this submission, USCBC will: (1) outline the negative impact the tariffs have had on US families, US businesses, and the US economy; (2) discuss the limited impact the tariffs have had in changing China's behavior; and (3) offer recommendations for the Biden administration to consider, including reopening a tariff exclusion process that remains operational as long as the tariffs remain in place.

I. Impact of the Section 301 Tariffs on US Interests

Section 301 tariffs were implemented by President Trump in 2018 to address harm to the American economy caused by China's unfair trade practices and seek changes to these practices.[1] Rather than address these issues, the tariffs have instead harmed American families, businesses, and the economy.

[1] "Federal Register," Federal Register § (2018), https://ustr.gov/sites/default/files/2018-13248.pdf.

A. Impact of the Section 301 Tariffs on US Families

Treasury Secretary Janet Yellen explained the situation well in July 2021 when she noted "tariffs are taxes on consumers."[2] Candidate Joe Biden also echoed this in 2019 when he tweeted: "Trump doesn't get the basics. He thinks his tariffs are being paid by China. Any freshman econ student could tell you that the American people are paying his tariffs."[3] The numbers have proven Biden and Yellen to be correct.

Section 301 tariffs have led to an annual consumer cost increase of over $48 billion according to an analysis by the American Action Forum.[4] In 2020, the Congressional Budget Office estimated that tariffs, a significant majority of which are Section 301 tariffs, would cost the average American household nearly $1,300 that year.[5]

In addition to paying higher costs, American families have been harmed by jobs lost due to tariffs, including Section 301 tariffs and Chinese retaliatory tariffs. A joint report by USCBC and Oxford Economics highlights how the trade war and tariffs reduced US economic growth and employment, resulting in an estimated peak loss of 245,000 jobs. The January 2021 report found:

> Even a moderate rollback in tariffs could increase economic growth and stimulate employment growth. Under our trade war de-escalation scenario, where both governments gradually scale back average tariff rates to around 12% (compared with around 19% now), the US economy produces an additional $160 billion in real GDP over the next five years and employs an additional 145,000 people by 2025. US household income would be $460 higher per household as a result of increased employment and incomes as well as lower prices.[6]

Additionally, the administration can take immediate steps to relieve increasing inflationary pressures and rising prices for all Americans by reducing these tariffs. According to the Peterson Institute for International Economics, lowering import prices through easing tariffs could lower inflation by a quarter of a percentage point. While it is a modest reduction, consumers would have more spending power on other goods.[7]

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[2] Alan Rappeport and Keith Bradsher, "Yellen Says China Trade Deal Has 'Hurt American Consumers'," The New York Times (The New York Times, July 16, 2021), https://www.nytimes.com/2021/07/16/us/politics/yellen-us-china-trade.html.

[3] Joe Biden, "Trump Doesn't Get the Basics. He Thinks His Tariffs Are Being Paid by China. Any Freshman Econ Student Could Tell You That the American People Are Paying His Tariffs.the Cashiers at Target See What's Going on – They Know More about Economics than Trump. #TeamJoe," Twitter (Twitter, June 11, 2019), https://twitter.com/joebiden/status/1138506137697959939.

[4] Tom Lee and Jacqueline Varas, "The Total Cost of U.S. Tariffs," AAF (American Action Forum, May 10, 2022), https://www.americanactionforum.org/research/the-total-cost-of-tariffs/#_ftn6.

[5] "The Budget and Economic Outlook: 2020 to 2030," Congressional Budget Office, n.d., https://www.cbo.gov/publication/56073.

[6] "The US China Economic Relationship; A Crucial Partnership at a Critical Juncture," January 2021, https://doi.org/https://www.uschina.org/sites/default/files/the_us-china_economic_relationship_-_a_crucial_partnership_at_a_critical_juncture.pdf.

[7] Gary Clyde Hufbauer, Megan Hogan, and Yilin Wang, "For Inflation Relief, the United States Should Look to Trade Liberalization," *Peterson Institute for International Economics*, March 2022,

B. Impact of the Section 301 Tariffs on US Businesses

Section 301 tariffs continue to exact a substantial toll on US manufacturers, service providers, and businesses. Due to the tariffs, US industries face increased costs to manufacture products and provide services domestically, making their exports of these products and services less competitive abroad. They also must deal with international competitors who do not face increased tariffs on inputs from China or higher tariffs on their exports to China.

A 2021 analysis from Moody's also shows that American importers have absorbed a far greater share of the costs resulting from the tariffs than have Chinese exporters. American importers are paying around 18.5 percent more for affected Chinese products while Chinese exporters receive just 1.5 percent less on the same product. A worker-centered trade agenda should account for the costs that US and Chinese tariffs impose on Americans at home while removing tariffs that harm overall US interests.[8]

Some sectors and products have been hit specifically hard by the Section 301 tariffs. According to the Consumer Technology Association, consumer technology products like desktops, digital cameras, phone chargers, earbuds, headsets, vacuum cleaners, and electrical cables have all seen their prices get significantly more expensive as US importers have paid more than $32 billion in additional tariffs on these products from China between 2018 and 2021.[9] Companies in other sectors have seen their manufacturing costs increase as much as $200 million, giving them no choice but to increase prices for consumers.[10]

Tariffs have also hit small businesses exceedingly hard. USCBC's subnational program promotes small businesses that import an array of goods from China. Many small- and medium-sized enterprises that USCBC is connected to have had to increase prices and cut employment because of Section 301 tariffs. One packaging supplier had to increase their prices numerous times to deal with a 25 percent tariff increase and inform their clients that the subsequent price increases were directly caused by the Section 301 tariffs.[11] For one enterprise that employed only 17 people, sales fell over 10 percent.[12] In another example, an engineering firm that imports intermediate products from China has absorbed about $500,000 worth of tariffs since

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https://doi.org/https://www.piie.com/publications/policy-briefs/inflation-relief-united-states-should-look-trade-liberalization.

[8] Yen Nee Lee, "U.S. Companies Are Bearing the Brunt of Trump's China Tariffs, Says Moody's," U.S. companies are bearing the brunt of Trump's China tariffs, says Moody's (CNBC, May 18, 2021), https://www.cnbc.com/2021/05/18/us-companies-bearing-the-brunt-of-trumps-china-tariffs-says-moodys.html.

[9] "Analysis of Section 301 Tariff Impacts on Imports of Consumer Technology Products," July 2022.

[10] Joe Deaux, "Caterpillar Will Raise Prices to Combat $100 Million Tariff Hit," Chicago Tribune, July 30, 2018, https://www.chicagotribune.com/business/ct-biz-caterpillar-earnings-20180730-story.html.

[11] Doug Barry, "New Jersey Packaging Supplier Gets Wrapped up in Trade Conflict," The US-China Business Council (USCBC 50 States 50 Stories, October 31, 2022), https://www.uschina.org/50-states-50-stories/new-jersey-packaging-supplier-gets-wrapped-trade-conflict.

[12] Doug Barry, "Welding Together Business in Alabama and China," The US-China Business Council (USCBC 50 States 50 Stories, n.d.), https://www.uschina.org/50-states-50-stories/welding-together-business-alabama-and-china.

the United States increased its tariff rate in 2018. The owner highlights that instead of using this money to hire more US-based engineers and grow his business, he is stuck paying the high tariff rate.[13]

C. Impact of the Section 301 Tariffs on the US Economy

Over the past four years, American importers have been assessed close to $167 billion in Section 301 tariffs, the majority of which have been assessed during the Biden administration according to data from US Customs and Border Protection.[14] The tariffs harm the American economy at every level. At the macro level, Section 301 tariffs and the broader trade war have erased market capitalization for US-listed firms, in addition to reducing long-term GDP, wages, and employment. At the micro level, they raised prices for consumers and producers, placed exporters at a disadvantage, and disincentivized companies from developing manufacturing capacity in the United States. Some examples:

- New York Federal Reserve researchers estimate that the trade war with China erased a total of $1.7 trillion in market capitalization for US-listed firms between March 2018 and August 2019.[15]
- The Tax Foundation estimates a 0.21 percent reduction in long-term GDP, a 0.13 percent reduction in wages, and a net loss of 160,000 full time equivalent jobs due to Section 301 tariffs assessed on Chinese imports.[16]
- Trade Partnership Worldwide estimates that both sides removing their tariffs could boost the US economy by $75 billion, with some of that money returning to American pocketbooks.[17]

II. Impact of the Section 301 Tariffs on Changing Practices of China

USTR's 2018 Section 301 investigation found that China's policies and practices related to technology transfer, intellectual property, and innovation were unreasonable and discriminatory. However, the Section 301 tariffs have been ineffective in pressuring China to change its practices. Secretary Yellen was also correct in July 2021 when she said that the prior actions

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[13] Doug Barry, "Magnets Attracted Indiana Engineer to China," The US-China Business Council (USCBC 50 States 50 Stories, October 19, 2022), https://www.uschina.org/50-states-50-stories/magnets-attracted-indiana-engineer-china.
[14] "Trade Statistics," U.S. Customs and Border Protection (U.S. Customs and Border Protection, January 5, 2023), https://www.cbp.gov/newsroom/stats/trade.
[15] Mary Amiti, Sang Hoon Kong, and David Weinstein, "The Investment Cost of the U.S.-China Trade War," *Liberty Street Economics*, May 2020, https://doi.org/https://libertystreeteconomics.newyorkfed.org/2020/05/the-investment-cost-of-the-us-china-trade-war/.
[16] Erica York, "Tracking the Economic Impact of Tariffs," Tax Foundation, September 28, 2022, https://taxfoundation.org/tariffs-trump-trade-war/.
[17] "Tariffs on China Weigh on the American Economy at a Critical Time," The US-China Business Council, August 18, 2020, https://www.uschina.org/tariffs-china-weigh-american-economy-critical-time.

the Trump administration took “didn’t address in many ways the fundamental problems we have with China.”[18]

While China has, on paper, implemented limited reforms in the areas of technology transfer and IP protection since the tariffs were instituted, many of the reforms, particularly within the realm of IP, were implemented due to the interests of domestic companies in China, which are more reliant on IP than ever as they become increasingly advanced. According to data collected for the USCBC Annual Member Survey, the percentage of foreign companies that have been asked to transfer technology to China is about the same as it was when tariffs were first implemented. In 2022, 14 percent of survey respondents reported being asked to transfer technology to China compared to 13 percent in 2018, when tariffs were first imposed. Likewise, the percentage of respondents reporting concern about IP protection in China has remained the same at 88 percent.

When it comes to innovation policy, numerous Chinese policies and practices continue to provide advantages to both state-owned and private domestic companies over foreign ones, an issue that 37 percent of the respondents to USCBC’s 2022 Member Survey say affects their companies. This includes direct benefits and support from various levels of the government, as well as favorable licensing decisions, restrictions on foreign investment, and preferential treatment in enforcement actions.[19]

China has utilized a wide range of industrial policy tools aimed at bolstering “indigenous innovation.” Tools include direct subsidization, government guidance funds, below-market-rate loans, preferential land sales, tax reductions, and government-organized meetings to couple favored firms. The year 2021 also saw the creation of the “specialized, new, and refined” class of SMEs, commonly referred to as little giants. Little giant SMEs are primarily in high tech fields such as semiconductors, advanced materials, and software. China aims to cultivate 10,000 little giant SMEs within the next three to five years. As of September 2022, there are 8,997 centrally recognized little giants, with more at the local level. Policy support for little giants includes the supportive measures listed above, and provincial authorities have also curated lists of discounted digital services exclusively for little giants. Most recently, Chairman Xi Jinping’s October 2022 Report to the 20th National Congress of the Communist Party of China emphasizes technological self-reliance. The report calls for establishing a system of national laboratories, expanding science and technology exchanges with other countries, and strengthening the protection of intellectual property rights. Notably, the report articulates China’s plan to launch a number of strategic national projects, though the report does not specify what those projects will be. [20]

[18] Alan Rappeport and Keith Bradsher, “Yellen Says China Trade Deal Has 'Hurt American Consumers',” The New York Times (The New York Times, July 16, 2021), https://www.nytimes.com/2021/07/16/us/politics/yellen-us-china-trade.html.

[19] The US-China Business Council, “Member Survey 2022,” n.d., https://www.uschina.org/reports/uscbc-2022-member-survey.

[20] Xi Jinping, “Report to the 20th National Congress of the Communist Party of China,” Report to the 20th National Congress of the Communist Party of China § (2022), https://english.news.cn/20221025/8eb6f5239f984f01a2bc45b5b5db0c51/c.html.

After four years of tariffs, areas of long-standing issues that remain unaddressed include state subsidies; government and state-owned enterprise procurement; cybersecurity, digital trade, and data governance; licensing of services; competition policy; regulatory data protection for new drugs, biological products, and other items; Chinese domestic standards-setting; agricultural biotechnology; and continued market access barriers for US-manufactured goods. The Section 301 tariffs have not led China to address these issues.

III. Recommendations

USCBC urges the Biden administration to work with their Chinese counterparts on a plan to roll back and eliminate as many of the harmful tariffs imposed by both sides as possible. Finding a near-term path to unwind the Section 301 tariffs imposed by the United States and the retaliatory tariffs imposed by China is critical in reducing the overwhelmingly negative impacts Section 301 tariffs have had on US consumers, US business, and the broader US economy. If the Biden administration will not work to reduce the Section 301 tariffs in the near term, we strongly encourage them to adopt two further recommendations.

First, USCBC recommends that USTR, in a timely manner, expend the time and resources required to read and give fair consideration of the information provided to it through this comment period and other engagements with US stakeholders. As you know, GAO found inconsistencies in the reviews of tariff exclusion requests conducted during the previous administration. This four-year review process provides USTR the opportunity to finely tune the overly broad Section 301 tariffs and eliminate some of the more backward outcomes these tariffs have resulted in. For example, in some cases, American companies are disincentivized from bringing back or adding additional manufacturing capacity to the United States because of Section 301 tariffs on equipment and inputs. One USCBC member company would like to move its manufacturing of high-tech consumer devices to the United States, but the Section 301 tariffs on the manufacturing equipment it would require makes such a move cost prohibitive. In another case, a company that conducts final assembly in the United States, employing American workers, is hit by tariffs on components from China while their competitor is able to import tariff-free finished products from China. We urge the Administration to review these actions based on a meaningful commercial viewpoint. Any tariffs that remain following the statutory review should be focused and targeted. Section 301 tariffs on other products and inputs have resulted in the loss of US jobs, delayed US investments, and a reduction in research and development.

Second, USCBC recommends that USTR establish a clear and comprehensive tariff exclusion process that remains in place as long as the Section 301 tariffs are imposed. We are confident the comments submitted as part of the current four-year review will provide USTR with endless new examples of how specific Section 301 tariffs have negatively impacted US businesses and other stakeholders, which highlights the value of establishing a process for USTR to receive this type of information on a rolling basis. For the majority of products impacted by the Section 301 tariffs, the last opportunity businesses had to submit formal comments was in 2018. Until now, businesses have had no formal mechanism to request new exclusions from the US Section 301 tariffs even as their supply chains were impacted by the spread of COVID-19, skyrocketing shipping container costs, and rising inflation.

USCBC appreciates the opportunity to highlight the impact the Section 301 tariffs have had on our member companies. We hope USTR sees USCBC's recommendations as constructive steps in addressing China's practices without harming US businesses and consumers. That is why USCBC is eager to work with USTR in shaping a permanent exclusion process that is easy to follow for US businesses and not too burdensome for USTR to review. Please contact Rory Murphy (rmurphy@uschina.org) for clarification on any point referenced above and for further USTR and USCBC collaboration.