AMERICANS FOR
FREE ★ TRADE

August 26, 2022

David Johanson
Chair
U.S. International Trade Commission
500 E Street, SW
Washington, D.C. 20436

RE: Economic Impact of Section 232 and 301 Tariffs on U.S. Industries, Investigation No. 332-591

Dear Chairman Johanson:

The Americans for Free Trade coalition, a broad alliance of American businesses, trade organizations, and workers united against tariffs, respectfully submits this written submission to include in the public record of Investigation No. 332-591, *Economic Impact of Section 232 and 301 Tariffs on U.S. Industries.* We appreciate the opportunity provide this written submission as a supplement to our prehearing statement filed on July 8, 2022. Below we further elucidate how the Section 301 tariffs have harmed businesses across the U.S. economy.

By way of background, Americans for Free Trade represents every part of the U.S. economy including manufacturers, farmers and agribusinesses, retailers, technology companies, service suppliers, natural gas and oil companies, importers, exporters, and other supply chain stakeholders. Collectively, we employ tens of millions of Americans through our vast supply chains. Our coalition was formed in 2018, when the Section 301 tariffs on imports from China were first imposed. While we support efforts to hold China accountable for failure to safeguard intellectual property rights and innovation through forced technology transfers, we raised concerns that imposing tariffs would have little positive impact on Chinese behavior and disproportionate negative economic impacts on American businesses, workers, and consumers. Over the last four years, that concern has become a reality.

In the last four years, U.S. Customs and Border Protection has assessed nearly $150 billion dollars in Section 301 tariffs on American companies who import products from China. These taxes create tremendous uncertainty, increase the cost of doing business in the United States, and place a financial burden on American businesses – negatively impacting their ability to invest in their companies, hire more American workers, and remain competitive globally. For many companies, the tariffs are a primary impediment to growing their businesses in the United States and harm their competitiveness globally. More recently, American companies have faced increased uncertainty as a result of the COVID-19 pandemic, historic supply chain disruptions, rising energy costs, and runaway inflation. And the tariffs result in increased prices for goods that American families need. In short, tariffs have had a negative impact across the U.S. economy, as further illustrated below by excerpts from testimonials provided by businesses representing a variety of industries.

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<u>Tariffs Make U.S. Manufacturers Less Competitive</u>

The Section 301 tariffs were first imposed for the stated purpose of obtaining the "elimination of China's harmful acts, policies, and practices" [1] as it relates to forced technology transfer and the theft of intellectual property. No doubt, the purpose of the tariffs morphed as the trade war escalated unnecessarily. Today, many proponents of the tariffs claim that lifting the tariffs – and even offering a targeted product exclusions process – would harm domestic manufacturing. While protecting domestic manufacturing was never the stated purpose of the Section 301 tariffs – unlike, for instance the Section 232 tariffs – we nevertheless disagree. Rather, the tariffs have been harmful to manufacturers by taxing inputs they need to produce more here at home.

Consider the case of one manufacturer who has been producing speakers in the United States since 1949. This manufacturer produces speakers for nearly every audio application - mass transit, aerospace, medical equipment, professional audio, motorcycles, home audio, etc. Because it is one of the last companies that still builds speakers in the United States, the company has been unable to find domestic suppliers who can produce the specialty parts required for the speakers. To be globally competitive, the company must buy its components primarily from China where their global competitors purchase their parts. Unfortunately, these parts are on List 3 and are subject to an additional 25% tariff. The company described this as "a direct addition of 25% to our cost of goods sold." The company further stated that its competitors who import completed speakers made in China only pay a 7.5% tariff. The company said this makes it "less competitive than [its] USA competitors who import complete products made in China with no USA labor content" and that it is essentially "penalized for building speakers in America."

Because of the significant impact to its ability to compete, the company said it is now "moving more manufacturing out of the USA." In other words, the tariffs have *disincentivized* manufacturing in the United States.

An information technology company told us something similar. This American business pays tariffs on parts and components listed on Lists 3 and 4a and initially paid over $350 million per year in Section 301 tariffs. The company moved some of its supply chain from China to Mexico to reduce that duty burden by a little more than half, but these increased costs were eventually passed along to customers through price increases. The company previously sought product exclusions on key parts and components under the Trump Administration – a process which no longer exists – but was denied. Because the company cannot source the parts and components from anywhere other than China, it is now considering whether to move its manufacturing to Mexico and then import the products into the United States duty-free – putting 1,300 American jobs in jeopardy.

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[1] 83 Fed. Reg. 28710 (June 20, 2018).

The tariffs have also prevented small American businesses from growing. We spoke with a company that produces home theater accessories, and it described the impact of the tariffs on its products – which are on List 3 – as follows:

> *The tariff impacted us in three major ways. 1. The best manufacturers are all located in China for our products. Finding new manufacturers, even here in the US, was difficult to secure due to the premium level of our technology and design. Also with COVID happening immediately after List 3 was released, traveling abroad to find other manufacturers was impossible. 2. If we did find a manufacturer that was at our standard, the additional cost of building new tools, that had already been made and paid for in China, was a very hard burden on our small company. Also, we have to certify a good portion of our goods and any new product created from a new tool has to go through recertification at a cost that was also unbearable to our small business. 3. Being a brand new business, we secured funding to build and grow our brand, and immediately 20% of the funding went to a cost via the tariff that I had slated for new technology and product development, employees, and programs with our retail partners. It stunted our growth. Though there are more, these three actions have cost us in multiple ways the ability to grow and compete with businesses that have been around much longer.*

Another small business we spoke with imports industrial magnets from China that are incorporated into devices that work in vehicle engines to conserve fuel. The business owner produces these devices in the United States. The business owner told us that the Section 301 tariffs have added a million dollars to his costs in the past several years. He described the impact as follows: "With this money I could have added at least one more engineer and support staff in the US. I also have European competitors who don't have the extra 25% cost. It's throwing money down a hole and makes no sense."

We spoke with another American manufacturer that produces a plastic material used in the development of U.S.-made parts for autos, farm equipment, transportation equipment and more. The value of the material comes largely from two key properties – hardness and rigidity. But to achieve these two key properties, the material must first be mixed with a specific chemistry that cures, or hardens, the final product. That essential hardening chemistry is not produced in the United States; it must be imported. Approximately 40 to 80 percent of the import is produced in China, with the balance produced in Japan and Taiwan. But there is not enough capacity in Japan and Taiwan to supplant the supply from China. Therefore, applying the Section 301 tariff to this import does not hurt China – it hurts U.S. businesses which have no choice but to pay the tariff anyway to continue to enhance the competitiveness of their American made products.

These examples illustrate how the tariffs have both impacted small businesses and will continue to impact American businesses for as long as they remain in place. Consider the example of a small flower seed business that has paid "nearly $1.5 million in tariffs for seed produced in China." The company said that this money could have been used "for further investment in our technology, improving customer service or increasing seed quality." Because the seeds they cultivate "do well in that environment" (China), the business has not invested in making additional seed because of the tariffs. This small business also has European and Asian competitors who do not pay the tariffs, so it has been forced to absorb most of the costs to remain competitive. Most concerning, the business is considering moving jobs to China, which would also require transferring proprietary technology, to cope with the increased costs:

> *We have been exploring options to make better use of the farm and are looking at shipping seed that is produced in China to other markets to avoid the tariffs. This is rather cumbersome because we need to manage separate inventories, we need to much more carefully plan what we can place in China and it has caused us to move some jobs from the US to China to deal with this. If we ramp the activity up we will need to transfer some proprietary technology from the US to China or other countries which we prefer not to do.*

The Section 301 tariffs have harmed, and continue to harm, U.S. manufacturers and make them less competitive vis-à-vis their competitors and China. They should be lifted immediately.

<u>Tariffs Increase Costs for American Consumers and Contribute to Inflation</u>

Proponents of the tariffs also ignore the very real contribution tariffs have had on inflation. While cutting tariffs alone cannot resolve ongoing inflation, it can certainly help.[2] Time and again, we have heard from businesses of all kinds that they were forced to pass along the increased costs associated with the tariffs directly to their customers. Consider the statements we received from coalition members below:

> *There's a 25% supplemental tariff on our new product, [a type of lamp], we have to pass on the cost to customers (total tariff of 28%). We would lower the price right away if the Trump tariff were removed.*
>
> \- Consumer Electronics Company

> *We were impacted by Lists 3 and 4a, initially paying over $350M per year in tariffs. Supply chain moves - mostly from China to Mexico - cut that to where we are paying just over $150M per year today (2022). We immediately passed on the costs to our customers through price increases, which of course, is inflationary.*
>
> \- Information Technology Company

> *The 25% tariff (tax) has been nothing but that, a tax or penalty on us as a small US based business. The Chinese do not pay the tariff or any portion of it! We do not have the gross profit margins to absorb this tariff so as a result we need to*

[2] See the list of resources detailing the tariffs' impact on the U.S. economy which was submitted as an attachment to our prehearing submission.

incorporate this into what we charge our customer - more US based small businesses harmed by these tariffs/taxes.

- Lighting Manufacturer and Distributor

The tariffs on our China origin goods has [sic] directly impacted or [sic] business strategy regarding the place of production for certain vegetable seed crops such as Cucumber, Melon, Tomato and Watermelon seeds. Producing hybrid vegetable seeds takes years of experience and knowledge. Weather, climate, and drought conditions are major factors especially as we are facing the global climate crisis. There are very few options for qualitied and trusted growers. Our Chinese suppliers have an excellent reputation and service levels sealed with production contracts that are reviewed by legal and signed each year. Who pays the price for these high tariff rates on China origin seeds? It is the American people who pay in the form of higher prices for healthy food in the US market place.

- Vegetable Seed Business

Rolling back the Section 301 tariffs will not solve inflation, but it is an immediate action the Biden Administration can take to help ease cost pressures on U.S. businesses and bring down prices for American consumers.

Tariffs Create Uncertainty

In addition to imposing direct costs on American companies – and by extension their customers – the tariffs have had indirect costs as well. Many of these costs were associated with the uncertainty created by the rapid escalation of the tariffs when they were first imposed, whether they would remain in place, and whether targeted relief mechanisms – like a fair, transparent, and comprehensive exclusions process – would be available to minimize the economic harm to American businesses.

The rapid escalation of the Section 301 tariffs throughout 2018 and 2019 is well documented. This created tremendous uncertainty for companies trying to navigate the changing trade environment, make business decisions to minimize impact, and understand the near, medium, and long-term impact the tariffs may have on their business operations.

In fact, several thousand plaintiffs are now challenging USTR's processes for imposing Lists 3 and 4a of the tariffs on statutory grounds as well as under the Administrative Procedures Act (APA). While that case is ongoing, the Court of International Trade (CIT) has found that USTR did not meet its obligations under the APA when it failed to explain why some products were included on the lists and some were not. This included a failure by USTR to address the comments submitted in response to notice of proposed rulemakings concerning "the legality and efficacy of the tariffs, the potential for damage to the U.S. economy, and whether alternative measures would be more effective."[3] The CIT stated that "[h]aving requested comments on a

[3] Court No. 21-00052-3JP, p. 51 (April 1, 2022)

range of issues, the USTR had a duty to respond to the comments in a manner that enables the court to understand 'why the agency reacted to them as it did.'"[4] This lack of explanation and transparency added to the uncertainty faced by businesses. It also demonstrates that USTR failed to consider what the Commission has now been directed by Congress to study: the economic impact of the tariffs on the U.S. economy.

But the uncertainty did not end with the imposition of the final tariff lists in 2019. It continued throughout the product exclusions process, which was rife with inconsistency and contributed to the prolonged uncertainty that companies faced. During the exclusions process, USTR provided no insight as to why some exclusions were granted and others were denied, and the exclusions themselves were temporary. For example, USTR denied approximately 87 percent of the exclusion requests it received and when those were up for renewal, USTR declined to extend 75 percent of the product exclusions originally granted. The challenges presented by the now defunct exclusions process is well documented by the Government Accountability Office in a July 2021 report.[5] We urge the Commission to review that report during its investigation.

The uncertainty caused by the tariffs continues, with no end in sight. Most of the exclusions previously granted have expired, leading to more tariff payments by U.S. companies. And while USTR has maintained that the tariffs create negotiating leverage with China, it does not appear that any negotiations are actually taking place. Other senior officials within the Biden Administration have acknowledged publicly that the tariffs have adversely affected U.S. businesses, contributed to inflation, and may not serve a strategic purpose. Yet they have not moved to eliminate these tariffs despite active reporting that this is under consideration by President Biden. Even if some action is announced, it is also expected that any rollback of some tariffs would be accompanied by a new Section 301 investigation on China's industrial subsidies as an excuse to maintain and even increase some of the existing tariffs.

Simultaneously, USTR has said it will conduct a "necessity review" of the tariffs required by statute. This process is still in the phase of seeking comments from domestic stakeholders who would like the tariffs to continue. Despite hundreds of such comments being filed,[6] USTR has not made any of them public. USTR also has not provided any additional information on what the next steps are and when they might take place, so that other stakeholders can participate openly and fully in the process.

[4] *Id*. at 55.
[5] *See* "U.S.-China Trade: USTR Should Fully Document Internal Procedures for Making Tariff Exclusion and Extension Decisions," GAO Report 21-506 (July 28, 2021). ("GAO reviewed selected exclusion case files and found inconsistencies in the agency's reviews."
[6] *See* July 6, 2018 Action, as Modified – Request for Continuation of Action (Docket USTR-2022-0007), where 333 comments were filed; and August 23, 2018 Action, as Modified – Request for Continuation of Action (Docket USTR-2022-0009), where 121 comments have been filed.

In short, the tariffs have created a tremendous amount of uncertainty since their announcement, and continuing through their implementation, the product exclusions process, and today. We urge the Commission to take this uncertainty into account as it compiles its report.

Tariffs Harm American Families

Tariffs harm American families by raising prices on consumer products, and this is felt most acutely by low-income families. We spoke with a small American business that produces baby products, including a portable crib that it developed to promote a safe sleeping environment for infants and that is also subject to the Section 301 tariffs. The company has distributed thousands of these cribs to low-income families for over 20 years through a non-profit organization, directly contributing to the reduction in infant deaths from Sudden Infant Death Syndrome (SIDS) and Accidental Suffocation and Strangulation in Bed (ASSB). The company stated that all proceeds from the sales of these cribs go back into the non-profit so that it can continue to provide its "partners with the tools to educate their communities about the importance of infant safe sleep." When asked about the impact of the tariffs on its mission, the company said this:

> *Until the tariffs were imposed, we prided ourselves on providing a safety approved crib … to our partners for under $50. Because of the 25% tariff and the increase in shipping from China, that was imposed on the [crib], we had to raise the price of our unit from $49.99 to $69.99, resulting in a decrease in the number of [cribs] that our partners were able to purchase since 2019 by well over 25%. What that means is 25% fewer infants have been able to sleep in a safe sleeping environment and babies lives have been put at risk. We know you can not effect immediate change in the high cost of shipping, however, by relieving us of the $25% tariff on our [crib] we will be able to reduce its price and assure that more babies lives will be saved from SIDS or ASSB.*

This baby products company ended its testimonial with a plea that the Administration consider the request that the tariffs be lifted to help "low-income parents throughout the country, and of course, the babies!"

This example could not be starker. The tariffs are harming U.S. businesses and Americans in ways large and small, including impacting the ability of small businesses and non-profits to get life-saving baby products into the hands of low-income families.

Conclusion

We reiterate our call for an end to the China Section 301 tariffs, which have had a disproportionate economic impact on American companies, consumers, and workers across the U.S. economy. We believe the Commission's investigation will reach similar conclusions and look forward to its forthcoming report in March of 2023.

If you have any questions, please reach out to Jon Gold, Vice President, Supply Chain and Customs Policy, National Retail Federation (GoldJ@nrf.com, 202-626-8193) or Blake Harden, Vice President, International Trade, Retail Industry Leaders Association (blake.harden@rila.org, 202-869-0157).

Sincerely,

Blake Harden

on behalf of Americans for Free Trade