

August 8, 2018

The Honorable Robert Lighthizer  
United States Trade Representative  
600 17th Street NW  
Washington, DC 20508

**RE: Multi-Industry Association Recommendations on the China Section 301 Tariff Product Exclusion Process**

The undersigned organizations representing U.S. manufacturers, farmers and agribusinesses, retailers, technology companies, natural gas and oil companies, importers, exporters, and other supply chain stakeholders are writing to share our recommendations regarding the China Section 301 product exclusion process to ensure basic due process and procedural fairness to our members and all stakeholders. The 25 percent tariffs on List 1 (applied July 6) and the proposed 25 percent tariff on List 2 and proposed tariff increase to 25 percent on List 3 apply to overly broad 8-digit product categories and will negatively impact U.S. economic growth and jobs. To mitigate the negative impact of these broad tariffs, establishing an expedited and fair process to exclude products from these and future lists will be critically important.

On June 18, 2018 the President issued a statement indicating that additional tranches of tariffs on Chinese products covering hundreds of billions of dollars of trade could follow that further emphasize the importance of developing a workable and credible product exclusion process. The Administration's objective to address valid concerns with Chinese intellectual property, technology transfer, and innovation practices should not unduly harm U.S. workers, consumers, businesses, and farmers. But without a well-designed and well-run product exclusion process, the negative costs on the U.S. economy and Americans will be more pronounced.

In the Federal Register Notice posted June 20, 2018, you stated that USTR "will establish a process by which U.S. stakeholders may request that particular products classified within an HTSUS subheading listed in Annex A (initial list of \$34 billion of Chinese goods subject to new 25% tariff) be excluded from these additional duties." On July 11, USTR published a follow up notice with the specifics of the exclusion process. We appreciate the publication of the process. We would like to recommend adopting the following procedures and substantive criteria to continue to help guide the process.

Proposed Product Exclusion Request Procedures

- 1) A determination to grant a product exclusion and not apply the additional 25% tariff should extend to all U.S. importers who import the same product from China. For example, if USTR grants a product exclusion at a 10-digit HTS level for a particular product category within an 8-digit product category currently subject to the Section 301 25% tariff, then any U.S. importer bringing in that same product at the 10-digit HTS level would also be granted the exclusion and not be subject to the additional 25% tariff.

- 2) A determination to grant a product exclusion and not apply the additional 25% tariff to a specific product should not be time-limited but continue through the duration of the China Section 301 tariff process, i.e., valid from July 6, 2018 until Section 301 tariffs are no longer levied.
- 3) A determination to grant a product exclusion should retroactively grant tariff relief as of the date that the tariffs were applied on July 6, 2018. Customs and Border Protection (CBP) should issue guidance to allow importers to file a request with CBP to receive refunds of tariffs paid on those products excluded from the 25% tariff effective the date of the earliest submission filed.
- 4) Applicants may file one submission covering multiple 10-digit HTS product lines that fall within one 8-digit HTS product category now subject to the new 25% tariff to minimize duplication of product exclusion requests as well as expedite and streamline the review process.
- 5) USTR should consolidate applications for product exclusions for the same product into one review and case file. The issuance of a final determination should resolve all pending related applications. Any tariff relief granted should apply retroactively to the date the tariffs were applied on July 6.
- 6) Applicants can provide evidence of existing contracts and receive retroactive and prospective exemption from the additional 25% tariff through the term of the contract.
- 7) Sensitive business information and trade secrets should be protected, and applicants will be provided notice of process to protect confidentiality of information shared.
- 8) Establish dedicated website to process product exclusion requests and to provide applicants with timely updates on the status of their application and the review process. Expediently post notifications on the website of application filings, opposition filings, and final determinations.
- 9) Establish procedures to ensure USTR and agency staff reviewing product exclusion requests and opposition filing apply common criteria consistently and that internal recommendations are reviewed to ensure consistency and procedural fairness prior to final determinations being made.
- 10) Publish an “FAQ” page clarifying the exclusion request process in plain language, including who must file, what should be included in supplemental materials, how to protect sensitive information and trade secrets, and differences with the separate Section 232 steel and aluminum tariff process.
- 11) Provide notice to product exclusion applicants of any opposition submissions, and also share information about who filed the opposition and what basis they provided to oppose the product exclusion request. Provide the product exclusion applicant sufficient time to respond to the opposition filing before a final determination is reached.

- 12) Define, per the proposed criteria below, and make public the substantive criteria that USTR will use to evaluate product exclusion requests.
- 13) Provide companies comprehensive and timely explanations, according the substantive criteria below, regarding the basis for USTR ruling on product exclusion requests.

#### Proposed Substantive Criteria to Evaluate Product Exclusion Requests

- 1) Availability of the product outside China at a cost-competitive price at commercial scale.
- 2) Ability of alternative countries and suppliers to meet U.S. companies' own exact quality or performance standards and/or U.S. government safety, consumer protection, environmental, and other compliance standards, deferring to a companies' own quality or performance standards when those exceed regulatory or industry approved standards.
- 3) Availability of customized made-to-order products outside of China.
- 4) Impact of additional 25% tariff on seasonal goods already en route to United States.
- 5) Impact on U.S. manufacturers and farmers that rely upon those products as inputs subject to the additional 25% tariff.
- 6) Impact on the U.S. consumer of the additional 25% tariff on the product.
- 7) Nexus to sectors identified in the China Made in 2025 plan and other strategic sectors.
- 8) Net impact on U.S. economy, U.S. jobs, and U.S. downstream users of the additional 25% tariff on the product.
- 9) Date of a company's binding "signed purchase order" to procure products from a supplier in China: granting relief when this date pre-dates the implementation of Section 301 tariffs on July 6, 2018.
- 10) Objections – automatically granting relief to petitions to which there are no objections or no objections based on the criteria above.
- 11) Exclude all listed goods as U.S. origin when manufactured and substantially-transformed into a different product in a U.S. foreign-trade zone (FTZ).

As evidenced by the confusion, delays, and consternation that have arisen from the Section 232 steel and aluminum product exclusion process run by the Department of Commerce, we request that you consider and adopt our procedural and substantive criteria recommendations for the China Section 301 product exclusion process to avoid similar problems. The Administration should ensure a workable process to reduce the negative impacts of the new China Section 301 tariffs on U.S. workers, farmers, businesses, and consumers. We believe we have a shared interest

to expedite and consolidate product exclusion request reviews, consideration, and final determinations and to ensure fair and transparent outcomes.

Thank you for your consideration of our recommendations.

Sincerely,

Accessories Council  
Agriculture Transportation Coalition (AgTC)  
American Apparel & Footwear Association  
American Association of Exporters and Importers  
American Bakers Association  
American Beverage Association  
American Chemistry Council  
American Coatings Association  
American Down and Feather Council  
American Import Shippers Association (AISA)  
American Lighting Association  
American Petroleum Institute  
American Pyrotechnics Association  
American Rental Association  
Association of Home Appliance Manufacturers  
Association For Creative Industries (AFCI)  
Association for Print Technologies  
Auto Care Association  
Coalition of New England Companies for Trade (CONNECT)  
Computer & Communications Industry Association  
Consumer Technology Association  
Council of Fashion Designers of America (CFDA)  
Fashion Accessories Shippers Association (FASA)  
Fashion Jewelry and Accessories Trade Association (FJATA)  
Footwear Distributors & Retailers of America (FDRA)  
Foreign Trade Association (FTA)  
Fuel Cell and Hydrogen Energy Association  
Grocery Manufacturers Association  
Halloween Industry Association (HIA)  
Hardwood Federation  
Home Fashion Products Association  
International Bottled Water Association (IBWA)  
International Foodservice Distributors Association  
International Housewares Association  
International Wood Products Association  
Internet Association  
Juice Products Association  
Juvenile Products Manufacturers Association  
Methanol Institute

Missouri Retailers Association  
Motor & Equipment Manufacturers Association  
National Association of Chemical Distributors  
National Association of Foreign Trade Zones (NAFTZ)  
National Association of Music Merchants  
National Candle Association  
National Confectioners Association  
National Lumber and Building Material Dealers Association  
National Marine Manufacturers Association  
National Retail Federation  
Natural Products Association  
New Jersey Retail Merchants Association  
North-American Association of Uniform Manufacturers & Distributors (NAUMD)  
North Carolina Retail Merchants Association  
Ohio Council of Retail Merchants  
Pacific Coast Council of Customs Brokers and Freight Forwarders Assns. Inc. (PCC)  
Pennsylvania Retailers' Association  
Personal Care Products Council  
Petroleum Equipment & Services Association  
Plumbing Manufacturers International  
Power Tool Institute, Inc (PTI)  
Promotional Products Association International (PPAI)  
Retail Industry Leaders Association  
Security Industry Association (SIA)  
SEMI  
Snowsports Industries Association  
Society of Chemical Manufacturers & Affiliates  
Software & Information Industry Association (SIIA)  
Specialty Equipment Market Association  
Telecommunications Industry Association (TIA)  
Texas Retailers Association  
The Fashion Jewelry & Accessories Trade Association  
The Household & Commercial Products Association  
Toy Association  
Travel Goods Association  
Truck & Engine Manufacturers Association  
United States Fashion Industry Association  
US Chamber of Commerce  
US-China Business Council  
Virginia Retail Merchants Association  
Washington Retail Association  
WineAmerica