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Re: Request for Comments on Proposed Modifications and Machinery Exclusion Process in 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 (USTR–2024–0007)

On behalf of the Competitive Enterprise Institute (CEI), we respectfully submit the following comments in response to the United States Trade Representative (USTR) Modifications and Machinery Exclusion Process in 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.[1] CEI urges USTR to remove the discriminatory tariff rate of 25 percent across the board on Chinese products, particularly with respect to facemask and steel and aluminum products.

CEI is a Washington-based free-market public policy organization, founded in 1984, that studies the effects of regulations on job growth and economic well-being. Our mission is to advance the freedom to prosper for American consumers, entrepreneurs, and investors striving for a better life for themselves and their families.

These comments are thus submitted with a great deal of concern about the effects of the proposed rule that will harm American manufacturers and consumers. The tariffs will increase prices, decrease competitiveness, and reduce supplies for all affected products. CEI has long supported competition, with an emphasis on consumer choice and consumer welfare, and has highlighted government regulatory barriers that have inhibited competition.

In 2018, the USTR cited four areas in which the agency found China's policies to be unreasonable, discriminatory and burdensome on U.S. commerce and thus actionable under Section 301. These are:

1. China uses foreign ownership restrictions, such as joint venture requirements and foreign equity limitations, and various administrative review and licensing processes, to require or pressure technology transfer from U.S. companies.
2. China's regime of technology regulations forces U.S. companies seeking to license technologies to Chinese entities to do so on non-market-based terms that favor Chinese recipients.
3. China directs and unfairly facilitates the systematic investment in, and acquisition of, U.S. companies and assets by Chinese companies to obtain cutting-edge technologies and intellectual property and generate the transfer of technology to Chinese companies.

[1] 89 Fed. Reg. 46,252 (May 28, 2024). I would like to acknowledge the invaluable assistance in preparing these comments of CEI Attorney David S. McFadden

4. China conducts and supports unauthorized intrusions into, and theft from, the computer networks of U.S. companies to access their sensitive commercial information and trade secrets.[2]

The USTR requested comments on six matters related to its proposed modifications. We address the following four of them.

Section 1: The proposed modification specifically on facemask and steel and aluminum products do not involve China's acts, policies, and practices related to technology transfer, intellectual property, and innovation.

While tariffs on products such as electric vehicles (EVs), EV batteries, semiconductors, and solar panels are related to technology transfer, intellectual property, and innovation, tariffs on facemasks, steel, and aluminum do not share this relationship.

Facemasks (6307.90.98) are a critical public health tool, especially during pandemics and other health crises. Increasing tariffs on facemasks will not address issues related to technology transfer, intellectual property, or innovation. Instead, it may exacerbate public health challenges by making essential health supplies more expensive and less accessible. The link between facemasks and technology transfer policies is tenuous at best, and targeting such products does not align with the objectives of the Section 301 actions.

The effectiveness of tariff actions on steel and aluminum products (7206.10.00) should be assessed based on their effects on market freedoms and consumer choice. Tariffs on steel products increase production costs for American businesses, making them less competitive globally. These measures do not address the core issues of technology transfer and intellectual property and, therefore, are not an effective solution.

Moreover, China's production of facemasks and steel and aluminum has no relationship to any of the four areas in which the USTR found China's policies to be unreasonable, discriminatory, and burdensome on U.S. commerce. Therefore, imposing tariffs on these products does not effectively address the underlying concerns identified in the investigation.

Section 2: The effects of the proposed modification on the U.S. economy, including consumers.

Increasing tariffs on facemasks will raise costs for essential medical supplies. During health emergencies, such as the COVID-19 pandemic, demand for facemasks surges. Higher tariffs lead to increased prices, which can strain healthcare providers and result in higher medical costs for consumers. This can also lead to shortages, exacerbating public health crises and putting lives at risk. Higher tariffs on steel and aluminum products will result in increased costs for industries reliant on steel, such as construction and manufacturing. These increased costs will be passed on to consumers, resulting in higher prices for goods and services.

[2] 83 Fed. Reg. 14,906, 14,906-7 (Apr. 6, 2018).

Section 3: Tariff rates for facemasks, medical gloves, syringes and needles should not be higher than the proposed rates.

Similar to facemasks, medical gloves (4015.12.10), syringes, and needles (9018.31.00) are essential medical supplies. Their tariffs should not be increased because they also do not address the core issues of technology transfer or intellectual property theft. Increasing tariffs will lead to higher healthcare costs and potential shortages, affecting the ability of healthcare providers to deliver essential services. Despite large investments in domestic production of masks, hospitals and other healthcare buyers are returning to foreign-based supplies due to production costs.[3] These items are crucial for patient care and public health and should be exempt from tariffs. The proposed tariffs will significantly impact the healthcare and life sciences sectors, which are heavily dependent on Chinese imports for essential medical equipment and supplies. In 2024, U.S. imports of medical equipment from China increased to $14.9 billion from $14 billion in the previous year, highlighting the sector's reliance on these imports.[4] Imposing additional tariffs could exacerbate these problems, potentially leading to supply chain disruptions and increased costs for healthcare providers and patients alike.

Section 4: The tariff subheadings identified for each product and sector do not adequately cover the products and sectors included in the President's direction to the USTR.

The fact that a diverse array of products all have identical 25 percent rates shows that USTR likely did not attempt to minimize domestic harms while maximizing their effect on improving China's behavior.

Different products have different substitutability, different elasticities of demand, and different supply chains. These differences imply that different products should have different tariff rates if the goal is to best achieve their objectives abroad while causing the least possible damage at home. The tariff subheadings for the Section 301 tariffs in this docket cover vastly different product categories. Yet, each of these categories and their subcategories have an identical 25 percent tariff rate.

Furthermore, the Section 301 tariffs in this docket are discriminatory, affecting companies that do not engage in bad behavior, as well as those who do. The technology transfer, intellectual property, and innovation issues USTR points to are legitimate. Across-the-board tariffs will not solve those problems. In cases like this, a scalpel is a more appropriate tool than a blanket. If USTR must take action, it should take specific actions against known violators of treaties and leave non-offenders alone.

For example, in 2018, the U.S. imported cooking appliances and plate warmers made of iron or steel. These goods are worth $423 million, with 97% of these imports coming from China.[5] The implementation of tariffs on these essential household items would not only increase manufacturing

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[3] Bob Tita, "The U.S. Invested Millions to Produce Masks at Home. Now Nobody's Buying," *The Wall Street Journal*, February 4, 2024, https://www.wsj.com/health/healthcare/the-u-s-invested-millions-to-produce-masks-at-home-now-nobodys-buying-fee1c49f.

[4] Amanda Laskey and Danny Schmidt, "New tariffs on medical equipment could strain health care and life sciences supply chains," RMS, May 15, 2024, https://realeconomy.rsmus.com/new-tariffs-on-medical-equipment-could-strain-health-care-and-life-sciences-supply-chains/.

[5] U.S. Census Bureau.

costs but also raise prices for American consumers. These products have little or no technology transfer, intellectual property, or innovation issues covered under Section 301.

Facemasks are essential healthcare supplies, and steel and aluminum products are critical for everyday American consumer goods and household. Both sectors should be excluded from increased tariffs as they do not directly relate to the technology transfer, intellectual property, and innovation issues that the Section 301 actions aim to address.

Conclusion:

The USTR needs to consider the broader economic and societal impacts of its tariffs. It is also important to note that these tariffs are being considered at a time when consumer price inflation is at its highest rate since the early 1980s.[6] The tariffs will cause domestic harm while not addressing USTR's legitimate claims about China's problems with forced technology transfers, intellectual property theft, and slowing innovation.

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[6] Ryan Bourne and Sophia Bagley, "No, the Meaning of Inflation Hasn't Changed," Cato Institute, June 1, 2024, https://www.cato.org/commentary/no-meaning-inflation-hasnt-changed.