



June 28, 2024

Submitted via <https://comments.ustr.gov>

Juan Millan  
Acting General Counsel  
Office of the United States Trade Representative  
600 17<sup>th</sup> St, NW  
Washington, DC 20508

Re: Docket No. USTR-2024-007, Request for Comment on Proposed Modifications and Machinery Exclusion Process in Four-Year Review of Actions Taken in the Section 301 Investigation:

Dear Mr. Millan:

The American Chemistry Council (“ACC”) would like to submit some additional comments in response to the Office of the United States Trade Representative’s (“USTR”) request on the Four-Year Review of Section 301 tariffs (e.g. Docket Number USTR-2024-007). ACC represents the leading companies engaged in the multibillion-dollar business of chemistry and ACC members apply the science of chemistry to make innovative products, technologies and services that make people’s lives better, healthier, and safer. We believe that if America is to remain a country that innovates and competes globally, it must do so with a thriving American chemical industry. Protecting that unique role drives everything we do.

ACC supports the Administration’s intent and the intent of the Four-Year Review report (“report”) to address China’s technology transfer-related acts, policies and practices as well as other unfair trade and pricing practices. Our industry has been affected by many of these policies and practices which we have highlighted in [previous comments](#), some of which were mentioned in the report. ACC also supports several of the report’s recommendations including greater collaboration between private companies and government authorities to combat these practices and approaches to support diversification of supply chains to enhance supply chain resilience. In [previous comments](#), we have outlined specific suggestions on how to use U.S. trade and investment policy, in conjunction with relevant domestic incentive measures, to promote supply chain resiliency in the chemical and plastics sector, as well as for downstream products

which use U.S. chemicals as critical inputs. A sectoral approach focused on chemicals, including sectoral agreements with trusted trade partners who share our concerns about these policies and practices, is highly recommended.

ACC has several suggestions to improve the implementation of some of the recommendations in the report. Many of the recommendations raised more questions than answers and we would welcome a greater explanation or justification on several recommendations. After carefully reviewing this report and its recommendations, USTR should provide additional time for industry and other stakeholders that are impacted by these recommendations to respond to this request as well as schedule a public hearing to allow stakeholders to present their views on the proposed modifications and exclusions, as was done for previous 301 recommendations.

### **1. Publish a current and updated list of goods subject to 301 tariffs**

Publishing and regularly updating a single and comprehensive list of all goods subject to 301 tariffs would greatly improve our understanding of which products (by HTS code and product description) are currently subject to the additional 301 tariffs, their current total tariff rates, expiration dates, whether they are subject to any exclusions, and when such exclusions expire. Chemicals and plastics are often in separate 301 “lists” making it difficult to understand the full list of products, as well as other key inputs used to produce chemicals and plastics currently subject to such tariffs. While USTR provide a search function of such lists by HTS code, producers are often unaware of such codes for all products in the chemical supply chain and a single, comprehensive list would improve feedback on any current or future proposed modifications or exclusions.

### **2. Reform the Section 301 process to better target chemicals where there are concerns about China’s unfair trade practices.**

Chemicals and plastics remains one of the largest product categories subject to the U.S. 301 tariffs. According to USTR, the rationale for the inclusion or exclusion of chemical products is whether such products accounted for less or more than 90 percent or more of U.S. imports, purportedly indicating a lack of availability outside of China and/or possible disruptions to the U.S. economy. However, such a rationale is often arbitrary, subject to change, and may have little connection with the chemical products that China is trying to build a competitive advantage through its technology transfer-related acts, policies and practices. In fact, almost 82 percent of eligible Miscellaneous Tariff Bill (MTB) HTS codes are covered by the Section 301 tariffs, which may be one of the reasons why the current Section 301 actions have not been as effective in changing China’s unfair trading practices. While ACC supports the intention of the Administration to target China’s unfair trading practices, a reform of the Section 301 process to better analyze and target products that are especially vulnerable to such practices would be a



more effective and industry supported approach to counteract China's actions. Even by targeting the most vulnerable imports from China or eliminating the least important imports where the U.S. has little or no vulnerability to China would result in a much more targeted and effective list of Section 301 products.

**3. Reform the proposed Section 301-exclusion process to include other inputs needed to produce U.S. chemicals and plastics, especially inputs that are not produced domestically or in sufficient quantities.**

While there are products where the U.S. chemical industry may be especially vulnerable to China's actions, there are other inputs which U.S. manufacturers need to produce chemicals and plastics to compete with China and other countries. Many of these inputs are not produced domestically or in sufficient quantities, and as chemicals are often intermediate inputs to downstream products, certain tariffs may make U.S. chemical producers more vulnerable to China's practices if they cut domestic chemical manufacturers out of these supply chains. While we welcome the inclusion of a new exclusion process from the Section 301 tariffs, such a process should be expanded to include inputs to make U.S. chemicals and plastic products beyond certain machinery products in HS Chapters 84 or 85 and certain solar equipment. Many key inputs needed to make U.S. chemical and plastic products are classified outside these chapters and previous Section 301 exclusions often included such inputs. Such reforms would not necessarily broaden the number of Section 301 exclusions, but rather, combined with a more focused 301 inclusion process, help to decrease vulnerability to China's unfair trading practices.

**4. Extend the Section 301-exclusion process on a periodic basis instead of a single exclusion process and provide greater clarification for any denials or non-continuations of exclusions**

The report's recommendations propose a single, limited exclusion process from the 301 tariffs that expires in less than a year (May 31, 2025). However, U.S. producers may not be aware of the demand for certain inputs until well after the limited time for this single exclusion process closes and China often changes its acts, policies and practices in response to 301 tariffs and other policies, making it difficult to identify, at one point of time, all products where exclusions should be considered or denied. Asking producers to wait until arbitrary and infrequent exclusion processes will make it difficult for stakeholders to adequately respond to, and for the government to target, such policies and practices. Therefore, we would recommend a more regular, periodic process for requesting and receiving exclusions from the 301 tariffs and if exclusions are granted, they should be applied retroactively. In its denial of extension of current 301 exclusions, USTR neither provided a specific reasoning for each denial nor an appeals or rectification process. This lack of transparency makes the exclusion process seem arbitrary and more difficult to target the 301 tariffs to decreasing vulnerabilities to China's policies and practices. Therefore,



we also recommend that USTR provide a more detailed justification for denial of any proposed exclusions, including any denials of any extensions of such exclusions.

**5. Negotiate new agreements with trusted trade partners and implement additional trade and tax incentives to stimulate U.S. investments and production of chemicals.**

The 301 tariffs should not be seen as the sole recourse to address or decrease our vulnerability to China's unfair trade practices. USTR should use current trade agreements and negotiate new agreements with likeminded countries to combat anticompetitive practices and strengthen our regulatory cooperation so that we are less dependent on countries that do not share our trade and supply chain objectives. In fact, for chemicals we already have a template for such agreements [under the USMCA Annex on Chemical Substances](#), which has specific improvements over NAFTA to facilitate supply chain resiliency, including ways to support and develop deliverables for existing North American working groups on supply chain resilience (including specific products like semiconductors and critical minerals) and infrastructure.

We would also recommend a review of the Advanced Manufacturing Production Tax Credit under section 45X of the Internal Revenue Code, the Advanced Manufacturing Credit as Modified by the CHIPS Act under section 45D, and the Section 30D New Clean Vehicle Credit, to ensure that any implementing rules and guidance documents do not exclude chemicals and that the proposed rules do not exclude production costs from qualifying for the statutory credit, limiting incentives to produce U.S. chemicals. The proper implementation of these tax provisions will lessen our dependency on imports from countries that do not share our supply chain objectives as well as on trade measures that unnecessarily distort markets for materials which our producers need to produce domestically. This should be combined with reduction and elimination of a focused set of tariffs for materials necessary for our members to make highly advanced and often environmentally sustainable chemicals right here at home that will improve our competitive position with respect to other countries

**6. USTR should align the 301 recommendations with other Administration policy priorities and incentive opportunities.**

As indicated in the report, the effectiveness of the 301 tariffs in addressing China's acts, policies, and practices has often been nominal and even with the announcement of additional 301 products, is unlikely to significantly decrease our vulnerabilities to such practices. ACC has provided specific suggestions on how other aspects of trade policy, tax incentives, regulatory reform, and supply chain initiatives can be used to decrease such vulnerabilities and address these practices. "Falling back" or "doubling down" on tariffs or trade remedy actions, if not carefully targeted, can unnecessarily distort markets and cause retaliation on U.S. chemical and



plastic exports, as also indicated in the report. As this four-year review of the 301 tariffs took an extended period of time with limited recommendations, we would recommend USTR, and the Administration, also look at other policy approaches. [The U.S. lags on approvals of many new chemicals](#), many of which are critically important to our supply chain resiliency and are key inputs for products that are a focus of the President's February 2021 Executive Order on America's Supply Chains as well as other Administration and Government initiatives on Supply Chain Resiliency and Security. An efficient new chemical review and approval process would help our producers become less dependent on China and less subject to its practices. Enhancing regulatory cooperation with allies and liked minded countries is also a way to make U.S. chemical manufacturers less dependent on China and Chinese practices. Many non-U.S. chemical manufacturers experience similar concerns about Chinese practices and working with our allies on remove unjustified barriers to trade will help make our supply chains more resilient and less vulnerable to such practices. Pursuing cooperative workstreams and WTO-plus commitments in regulatory cooperation, Technical Barriers to Trade (TBT), Sanitary and Phytosanitary Standards (SPS), and capacity-building into existing and new regional economic frameworks, bilateral economic arrangements, and existing and new free trade agreements, as well as the Administration's WTO reform engagement strategy will provide greater incentives for China to change its actions without singling out and negatively affecting businesses.

We hope that these recommendations are useful, and we stand ready to work with you to improve the effectiveness of the Section 301 regime and implementation of the report's recommendations. If you have any questions or would like to follow-up, please feel free to contact us through e-mail at [Jason\\_Bernstein@americanchemistry.com](mailto:Jason_Bernstein@americanchemistry.com)

Sincerely,



Jason Bernstein  
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