CONSUMER BRANDS ASSOCIATION

Re: Docket Number USTR-2022-0014

The Consumer Brands Association champions the industry whose products Americans depend on every day, representing more than 1,700 iconic brands. From household and personal care to food and beverage products, the consumer packaged goods ("CPG") industry plays a vital role in powering the U.S. economy, contributing $2 trillion to U.S. gross domestic product and supporting more than 20 million American jobs. Consumer Brands appreciates the opportunity to provide comments to the Office of the United States Trade Representative (USTR) in assessing the effectiveness of Section 301 tariffs, other actions that could be taken, and the effects of such actions on the United States economy, including on consumers. Consumer Brands Association believes that continuation of such tariffs will disrupt global supply chains, increase the cost of everyday essentials for hardworking families and jeopardize positive economic gains achieved through tax reform.

We suggest that tariffs enacted on imports be targeted and aligned to key objectives rather than scattershot, and recommended the adoption of processes enabling food, beverage and consumer product manufacturers and their suppliers to seek exclusions on packaging and ingredient materials with no national security application. Food and agriculture sectors have faced significant retaliation from foreign trading partners in the past when the U.S. has implemented similar policies, and there are already strong indications that this will continue to happen if the tariffs remain in place. Section 301 tariffs have a unique impact on everyday essentials, acting as a tax on consumers and creating competitive dislocations in the marketplace. We support USTR's efforts to strengthen the U.S. domestic manufacturing base, but the current global tariffs injure downstream purchasers of these products and add hundreds of millions of dollars in added costs to food and beverage manufacturing operations. Resources that would have gone into investments in innovation, equipment and workforce expansion have instead been diverted to offset additional manufacturing costs.

Consumer Brands continues to review how the breadth of 301 tariffs affect our member companies. The number of ingredients impacted makes it challenging to unpack those effects at a singular product level. What is clear is that trade barriers and tariffs certainly are not helping companies or consumers cope with rising costs and inflation. While broad reconsideration of heavy handed 301 tariffs remains the preference of industry, the aforementioned exclusions process likely represents the most impactful way USTR can provide the necessary flexibility to help the Biden administration draw down rising costs while preserving national security and domestic competitiveness.

Suggestions

<u>Retroactive Relief</u>

Currently, refunds of Section 301 Tariffs may be available to importers who file claims with the International Trade Court (ITC). Due to the nature of U.S. law, if the challenge is upheld, retroactive relief will only be available to those importers and/or partings that have filed claims with the ITC. We suggest that this process be simplified and more transparent so more importers and member companies would be able to benefit from this relief.

Specifically, there was a period of refunds allowed for specific COVID-related products. Many of the COVID-related exclusions first granted in December 2020 were extensions of previously granted exclusions. For those exclusions, the December 2020 action had the effect of granting forward-looking relief as well as retroactive relief back to the time when the earlier exclusions had expired. However, a subset of those COVID-related exclusions was granted for the first time in

December 2020. With no earlier exclusion to extend, those exclusions were forward-looking only, leaving the importers responsible for paying tariffs on pre-January 1, 2021 imports despite the products' essential role in addressing COVID-19 in 2020.

USTR's failure to make all December 2020 COVID-related exclusions retroactive rewarded companies that had been importing from China prior to the COVID-19 pandemic for reasons unrelated to the pandemic and punished many companies that had long avoided offshoring to China and instead invested in building manufacturing facilities in the U.S. The U.S. Innovation and Competition Act (S. 1260) included provisions related to exclusions from the Section 301 China tariffs, including Section 73001, which provided retroactive tariff relief to certain non-COVID exclusions. This legislation, or legislation akin to this, should be expanded upon for more specific, transparent retroactive relief opportunities for the private sector and this industry.

Simplified and Transparent Exclusion and Phase-Down Process

The intent of Section 301 is not as a permanent fixture, but as a temporary tariff tool to remedy specific security and market concerns. Specific to a phase down process, USTR should consider publishing a timeline to review the impacts of tariffs, outlining an exclusions process and an intent to drawn down tariffs, as well as specific markers that would coincide with a phase down. This would outline the specific goals for a drawn down and simplified exclusions process, and when and how that process would unfold.

Proposed Product Exclusion Request Procedures

To mitigate the negative impact of these broad tariffs, establishing an expedited and fair process to exclude products from current and future lists remains critical.

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.

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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 eight-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, 2018.

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 a dedicated website to process product exclusion requests and to provide applicants with timely updates on the status of their application and the review process. Expeditiously 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 all tariffs.

11) Provide notice to product exclusion applicants of any opposition submissions and share information about who filed the opposition and what basis they provided to oppose the product exclusion request.

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 to the substantive criteria below, regarding the basis for USTR ruling on product exclusion requests.

<u>Proposed Substantive Criteria to Evaluate Product Exclusion Requests</u>

1) Availability of the product outside China at a cost-competitive price at commercial scale.

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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 from 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).

Bilateral Trade Agreement

The objective to address valid concerns with Chinese intellectual property, technology transfer and innovation practices should not unduly harm U.S. workers, consumers, businesses or famers. But without a well-designed and well-run exclusion process, the negative costs on the U.S. economy and Americans will continue to be more pronounced. There is no question that China possesses unfair trade practices and that intellectual property theft hurts America's manufacturing workers. To put an end to these threats and redefine the U.S.-China economic relationship, industry suggests consideration of a new path forward – a fair, binding and enforceable trade agreement. Manufacturers have concerns that the tariffs cause more problems than they solve – they are taxes paid directly by the U.S. companies, not China. Ultimately, the goal should be a strategic solution, not just a heavy-handed tariff.

Trade war dynamics do not benefit anyone. Rather than pursuing a piecemeal tariffs approach, now is the time to seize the opportunity before us and work toward a U.S.-China trade agreement that will benefit American workers for generations to come. A reset of trade strategy broadly should be considered. Charting a course toward more sophisticated deployment of tariffs and other trade tools as a part of a broader, strategic policymaking approach would foster geopolitical competitiveness, ensure supply chain performance and strengthen the availability, affordability and accessibility of products to U.S. consumers, in turn protecting the U.S. economic interests holistically.

Summary & Conclusion

Consumer Brands urges USTR to recognize that the tariff strategy started by the Trump Administration and continued under President Biden is deeply flawed. The 301 tariffs contribute to inflationary pressures, exacerbate supply chain challenges and continue to raise prices of everyday products and necessities purchased by American families.

Higher import costs on a broad array of ingredients and inputs deeply impact American consumers in the form of more expensive everyday essentials, with little to no corresponding benefit on security or national competitiveness. The Administration should ensure a workable process to reduce the negative impacts of the 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. Tariffs should be drawn down and there needs to be a shift to a more strategic approach with China in lieu of such tariffs and Trump-era trade policy. We hope USTR will respond thoughtfully to industry comments and conclude that evidence and private sector feedback supports this new approach.

Sincerely,

Tom Madrecki
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Consumer Brands Association