

**Hearing before the
United States House of Representatives
Committee on Ways and Means, Trade Subcommittee**

“American Trade Enforcement Priorities”

February 25, 2025

Chairman Smith, Ranking Member Sanchez, and Members of the Subcommittee, I appreciate the opportunity to appear today to discuss American Trade Enforcement Priorities. My comments today are informed by my time serving as General Counsel at the Office of the U.S. Trade Representative (“USTR”) in the Biden Administration, as Senior International Trade Counsel on the Senate Finance Committee, and as an attorney bringing trade disputes on behalf of the United States in the Office of the General Counsel at USTR. My views are my own and do not reflect those of my firm or clients.

The Subcommittee is addressing a critical topic for U.S. manufactures, farmers, services providers, and workers who face a myriad of unfair trade practices. These practices can take the form of discriminatory barriers to trade that keep U.S. interests from competing abroad or unfairly traded imports undermining American industries here in the domestic market. The tools at the United States’ disposal to address on the two fronts have some overlap, but there are also differences, and a comprehensive trade enforcement agenda must address both.

U.S. exporters of goods and services seeking access to other markets face a variety of barriers, ranging from sanitary and phytosanitary (or “SPS”) measures that are not based on science and keep out our agricultural products, to discriminatory regulations on our digital companies, to overly burdensome customs procedures. USTR has a variety of tools to address these issues. Most often, barriers are addressed and resolved through engagement with trading partners, but USTR can also employ disputes under applicable trade agreements or Section 301 of the Trade Act of 1974 (“Section 301”) to address unfair trade practices.

With respect to unfairly traded imports coming into the United States, the same tools of bilateral engagement, dispute settlement proceedings, and Section 301 are available to USTR, but Congress has given the U.S. government and the private sector even greater tools to police unfair trade domestically, recognizing the importance of maintaining fair competition for U.S. firms in the U.S. market. These additional tools include the U.S. trade remedy laws to address subsidized and dumped imports and Section 337 of the Trade Act of 1930, which allows for the blocking of imports that infringe U.S. property rights and prohibits other unfair trade practices. The tools also include additional trade agreement enforcement mechanisms whose inclusion was spearheaded by Congress, and this Subcommittee in particular – namely the U.S.-Mexico-Canada Agreement (“USMCA”) Rapid Response Mechanism (“RRM”) and the Peru Trade Promotion Agreement Forest Sector Annex. Critically, Congress has acted on a bipartisan basis in the last decade to step up enforcement on forced labor, first by closing the loophole in the prohibition against imports of goods made with forced labor and then by passing the Uyghur Forced Labor Prevention Act (“UFLPA”).

Keeping in mind that a comprehensive trade enforcement agenda must address both trade barriers U.S. exporters face in foreign markets, as well as unfairly traded goods imported into the United States, I would like to highlight three overarching priorities with respect to U.S. trade enforcement.

- First, the United States must have adequate tools and resources to fight the fight. This means that the United States must have the statutory authorities and agreement mechanisms that confront the challenges we have today. It also means that the United

States must ensure that it has sufficient enforcement personnel to use those tools in defense of U.S. industries and workers and to break down trade barriers abroad.

- Second, the United States must have a comprehensive, all-of-the-above strategy to confront the greatest challenge to the United States in today’s global economy – the nonmarket policies and practices of the People’s Republic of China (“PRC” or China). China has targeted strategic sectors for dominance, undermining critical industries of the United States and its partners, and pursued an economic policy of exporting its way to growth at the expense of the rest of the global economy.
- Third, the United States must advance an enforcement agenda that promotes U.S. economic security and leadership across the board. This means promoting a strong manufacturing base and a vibrant agricultural sector and continuing to lead the world in services and digital trade. To meet the multifaceted nature of the trade landscape, an enforcement strategy must have clear and calculated objectives, adapt to challenges across all sectors of the U.S. economy, and maintain U.S. leadership in international fora.

I will unpack each of these elements to explain how they form a U.S. trade enforcement agenda that works for all parts of the economy and promotes U.S. competitiveness at home and abroad.

I. Resources and Tools to Fight the Fight

A. Enforcement Tools

First, the United States must be well equipped to address trade challenges. This includes a trade enforcement toolkit that is updated to address the challenges of today as well as sufficient resources to ensure effective implementation of those tools at every stage.

On the tools side, many of our trade authorities are 50, 60, or almost 100 years old. Although they have served us well, the U.S. and global economies have changed at an increasingly rapid pace. If the United States doesn’t move forward, we will fall behind in our ability to address unfair trade practices.

Congress, and this Subcommittee in particular, has been on the cutting edge of creating new tools, both in our laws and in our agreements. One shining example has been with respect to labor. As a matter of not only fairness in competition, but also of the promotion of basic human rights, Congressional leadership to crack down on trade in products made with forced labor has been critical. Congress first tightened the prohibition on imports of goods made with forced labor by closing the “consumptive demand” loophole and demanding that Customs and Border Protection (“CBP”) step up its enforcement. It then passed UFLPA to prohibit goods made with forced labor in the Xinjiang Uyghur Autonomous Region of China from entering the U.S. market. This legislative action has helped keep our workers and industries from being undercut by this most egregious practice.

This Committee has also updated the enforcement toolkit through its role in providing input in trade negotiations. In particular, it demanded that the renegotiation of USMCA include the

groundbreaking RRM, which provides any interested party with the ability to petition the U.S. government to investigate denials of workers' rights at a specific facility in Mexico. The RRM was used 27 times in the Biden Administration with respect to facilities spanning the automotive, garments, mining, food manufacturing, and services sectors. Those investigations directly benefited over 36,000 Mexican workers, but more importantly, greater enforcement of labor rights in Mexico raises wages and serves to decrease the incentives for companies to move U.S. jobs across the border.

Despite these important updates to our trade tools, there is always more work to be done, and Congress must keep up with the evolving challenges our industries face from unfair trade practices. Perhaps the most timely of these updates is the Leveling the Playing Field 2.0 Act, introduced by Representative Sewell with critical support by Representatives Van Duyne and Miller on this Subcommittee in the last Congress. This bill represents the next front in combatting China's attempts to get around U.S. trade remedy laws by moving production from one country to another and subsidizing production in third countries. I urge this Subcommittee to advance this legislation to better enable U.S. industries to defend themselves against China's ever-changing tactics.

Congress should also consider how to scale up and adapt enforcement mechanisms like the RRM for other unfair practices and agreement types. Tools like the RRM that give U.S. workers and industries the ability to call out unfair practices and drive enforcement actions help to leverage the resources of the U.S. government and focus them on where stakeholders see impacts of unfair trade practices, whether it be the failure to enforce labor rights, disregarding environmental standards, or other practices.

Finally, Congress has been considering other novel legislation, including to respond to the growing adoption and consideration of carbon border mechanisms around the world. It is critical that the United States (1) be on the offensive, and not just play defense, as the European Union and others push out their models and methodologies; (2) exploit the U.S. advantage in cutting edge technologies and low-emissions production; and (3) not become a dumping ground for products produced with low-cost, high-pollution methods.

These are just some examples of initiatives that this Subcommittee can advance and consider to support trade enforcement. Congress has a continuous role in ensuring that the United States has tools that are adapting to the trade barriers and unfair practices our industries and workers face today and in the future.

B. Enforcement Resources

The second key ingredient in a strong U.S. trade enforcement agenda is resources. Put simply, U.S. industries and workers cannot be defended from unfair trade practices or break down barrier abroad if there is no one there to do it. Personnel across the Department of Commerce ("DOC"), the U.S. International Trade Commission ("ITC"), CBP, and USTR are tasked with ensuring that U.S. trade remedy laws are fully enforced; that imports are legal, safe and comply with all trade enforcement actions; and that we are using all tools effectively to combat barriers abroad and unfair imports into the domestic market.

With respect to trade remedies, the effective implementation of these laws is vital to ensuring U.S. industries are not undermined by dumped and subsidized imports from sources like China. Recently, U.S. companies have been forced to bring rising numbers of trade cases to respond to the increase in market-distorting practices abroad. Domestic industries filed 117 antidumping and countervailing duty petitions with DOC's International Trade Administration ("ITA") and the ITC in fiscal year 2024, nearly double the average annual petitions filed between 2015 and 2024, which was 67.4. This increase shows no sign of stopping and is already straining the agencies' ability to meet deadlines. Decreasing the staff would amount to a surrender to exporters in China looking to exploit the U.S. market. Trade remedies laws are an excellent bargain for the U.S. government. Companies invest their own money in these cases, putting together petitions to demonstrate the existence of unfair trade practices that are injuring U.S. industries. When U.S. industries prevail, it results in higher duty collections that go into the coffers of the U.S. government.

CBP also has a critical function on the frontline of trade enforcement. First, it makes sure that all duties imposed and owed under trade remedies laws and other authorities are actually collected. There is a strong incentive for imports subject to enforcement actions to be misclassified or to claim a false country of origin to avoid the higher duties, and CBP is tasked with policing those practices. In addition, CBP enforces a host of laws, including those that protect the health and safety of U.S. consumers from fraudulent products and those that skirt U.S. standards. It also investigates and administers bans on products made with forced labor and screen shipments for fentanyl and other illegal drugs and prohibited imports.

On top of this, the Administration has announced the elimination of *de minimis* treatment on shipments from China under the President's action to impose additional duties on goods pursuant to the International Emergency Economic Powers Act ("IEEPA"), and this Subcommittee has considered various proposals to similarly restrict the application of *de minimis*. Given the large volume of low-value shipments that are now part of global economic activity, the demands on CBP will only grow when it is required to more closely scrutinize those packages.

Finally, USTR is a small agency with an outsized remit in U.S. trade policy that would be severely hampered if there were reductions. USTR is tasked by Congress with developing trade policy, leading trade negotiations, enforcing U.S. trade agreements, including the USMCA and its RRM, and administering Sections 201 and 301 of the Trade Act of 1974, among other functions. It is our primary interlocuter with foreign governments across the world to resolve trade issues through informal consultations and negotiations, the way many concerns get addressed. USTR does all this with fewer than 300 staff, and given the lean staffing, any reductions in staffing will seriously impact its ability to respond to U.S. industries that are impacted by unfair trade practices at home and abroad.

Our trade agencies have been doing more work with essentially flat funding for years. To set them, and by extension U.S. industries and workers, up for success Congress should ensure that resources keep up with workloads and demands. Any reductions would seriously hamper the ability of the United States to address trade barriers and unfair trade practices. Together with

maintaining adequate tools, ensuring that the United States is dedicating the resources to fight unfair trade is critical.

II. China and Trade Enforcement

The next overarching U.S. enforcement priority that I would like to address is the continued and growing challenge posed by China's nonmarket policies and practices. This Subcommittee has led the way in highlighting China's tactics to dominate key sectors and the effects on U.S. industry, from steel and aluminum to shipbuilding, solar panels, electric vehicles, semiconductors, batteries and more. This dominance has been built on the back of U.S. technology that China has acquired through forced technology transfer and theft – taking innovations born in the United States and decimating our industries in the process. Technology transfer is coupled with a full suite of support directly from China, including through the government's control and direction of China's economic actors. Given this backdrop, I will discuss where we are today, what the challenges are, and what an all-of-the-above China enforcement agenda looks like.

As an initial matter, it is important to recognize that the China challenge is not a bilateral trade challenge and hasn't been for a while. China's economic policies are displacing manufacturing capabilities not just in the United States, but also globally. As demonstrated by the history of overcapacity in steel, aluminum and solar, for example, China's strategy has been to build up production far beyond what the demand in China or the world can sustain, flooding the market and driving producers out of business not just here, but also in the European Union, Canada and beyond. This has resulted in other countries adopting policies to support industries crushed under the weight of China's supply, further contributing to a distorted marketplace in the industries that China has targeted.

The global implications of China's economic strategy have only become more acute post-pandemic, as China has doubled down on its strategy of exporting its way to growth. China's trade surplus in manufactured goods is greater than any the world has ever seen and has been growing by over \$150 billion a year, at a rate three times as fast as global trade.¹ Even as the world's largest economy, the United States cannot wall itself off from the impact of China's distortive impacts on trade. China's manufacturing output is roughly equivalent to that of the United States, Japan, Germany, and India combined.² Unchecked, its global share of manufacturing will only increase, while industries in the United States and its partners would whither.

It is against this bigger picture is that the United States must use every tool available – both defensive and offensive – to combat China's practices and their distortive effects. These tools certainly include existing, improved and new bilateral enforcement tools. As discussed above, trade remedies laws are a cornerstone of the United States' ability to protect sectors that are injured by China's unfair practices, and robust enforcement of those laws will continue to be

¹ Brad Setser, Xi is Making the World Pay for China's Mistakes, Opinion, N.Y. TIMES, Feb. 18, 2025.

² Safeguard Global, Top 10 Manufacturing Countries in the World in 2024, *available at* <https://www.safeguardglobal.com/resources/top-10-manufacturing-countries-in-the-world/> (last visited Feb. 22, 2025).

critical. Also, as noted, thanks to Congress, prohibitions on forced labor are a meaningful tool with respect to trade with China.

Section 301 of the Trade Act of 1974 has also been a powerful bilateral tool. With tariffs put in place in the first Trump Administration in response to China's forced technology transfer and expanded in targeted ways in the Biden Administration, we have seen some shifts toward more domestic production and diversification away from China.

However, Section 301 can and should be used to address targeted sectoral issues with tailored remedies. Sector-based Section 301 investigations can lead to the development of remedies – whether tariffs or otherwise – that respond to the specific actions China has taken to target an industry and the unique features of that industry. The last Administration initiated two such investigations with respect to China: one focusing on China's targeting of the maritime, logistics and shipbuilding sectors for dominance, and a second on China's targeting of the semiconductor industry. The Trump Administration on Friday proposed a set of actions related to the shipbuilding investigation, reflecting the need for unique remedies in an industry where the product is not generally imported into the United States, but rather accesses our ports. The semiconductor investigation is at an earlier stage but would also aim to address the particular challenges in that sector, namely the fact that semiconductors are incorporated in a vast array of downstream products which are then imported into the United States.

As ongoing Section 301 investigations illustrate and the larger picture of China's economic policies indicate, broad tariffs on China are not, alone, the answer. Another facet of the challenge is that China has increasingly moved production offshore to avoid both trade remedies and Section 301 tariffs – a problem that the bipartisan Leveling the Playing Field 2.0 Act would help to address.

Even as the United States takes further actions to protect our own market, China looks to increase its import penetration in third country markets around the world. This has follow-on impacts on the United States. For example, dumped steel from China may be incorporated into manufactured goods in Canada which are then imported into our market, competing with American downstream producers. Electric vehicles surging into the European market force those producers to rely more on the United States as an export destination.

Of course, we could try to shut down all of these sources of distortion from China, essentially ceding foreign markets to China and walling ourselves off from the global economy. However, a more impactful strategy would be to work *with* allies and partners to collectively stand up to the predatory, beggar thy neighbor strategies. Rather than fighting amongst each other for diminishing market shares left over from China's harmful state-controlled economic policies, we could work together to combat China's distortions on a global level. This is what the Biden Administration attempted to accomplish in the Global Arrangement on Sustainable Steel and Aluminum negotiations with the European Union. At the end of the day, the EU did not come to the table with the ambition that we needed, but the United States must stay engaged with our partners as they come to appreciate that greater protection against China is in their own self-interest. When the Trump Administration pursues negotiations with partners, asking partners to do more to stand up to China could be a powerful component of that engagement.

Enforcement in the China context is usually thought of as defensive, especially as U.S. industries have increasingly given up on seeking a fair entry into China's market. However, when we talk about an "all of the above" China strategy, the United States must also have a strong offensive game. China's offensive strategy has included a host of domestic supports enabled and enhanced by the government's intervention and direction of economic actors. As a free market, the United States does not have the command and control over the direction of economic activities and investments as China does. However, our super-powers are the innovation, entrepreneurship and dynamic competition that permeates throughout our economy. We need to ensure that this is unleashed and given strategic support to allow full and fair competition with China.

The recent game-changing investments made through the Bipartisan Infrastructure Law, CHIPS and Science Act, and Inflation Reduction Act promise to give the extra boost needed to overcome China's unfair advantages. There are also areas of improvement and lessons to be learned as Congress looks ahead. For example, the United States should ensure that Chinese companies cannot set up production in the United States to benefit directly from these incentives. A smart offensive strategy takes a page out of China's playbook, by targeting key industries of growth where the United States can be competitive, tailoring the benefits to meet the U.S. industries' needs, and coupling these policies with tariffs that incentivize moving away from a China supply chain as the U.S. investments and manufacturing come online.

For all these reasons, the United States cannot rely on broad tariffs alone as a comprehensive strategy to position itself for success and prosperity in light of China's continued trajectory of oversupplying the world with manufactured goods and targeting strategic products like semiconductors and growth sectors like batteries. Relying on a broad and high wall of tariffs alone is the equivalent of burying our heads in the sand – we would be ignoring what is happening in the rest of the world as China remakes the global economy in its image. Rather, we need to constantly support the ability of our companies to bring product-specific trade remedies, create remedies tailored to the unique attributes of specific sectors, recruit allies and partners in countering distortions from China, and have a smart offensive strategy that leverages U.S. advantages. To all of this, I would note that export controls, inbound and outbound investment restrictions, and other national security tools round out a comprehensive China strategy.

III. Across the Board Trade Enforcement Strategy

The final fact of U.S. trade enforcement strategy I will address is the criticality of advancing an enforcement agenda that promotes U.S. economic security and leadership across the board – which includes a strong manufacturing base, a vibrant agricultural sector, and a services and digital trade sector that continues to lead the world in innovation. Barriers and unfair trade practices take many forms and vary by sector, and successful strategies to counter those barriers are just as varied. To meet the multifaceted nature of the trade landscape, an enforcement strategy must have clear and calculated objectives, adapt to challenges across all sectors of the U.S. economy, and maintain U.S. leadership in international fora.

To accomplish its goals, an enforcement strategy must have clear objectives. Whatever tool is utilized, the objective, for example removal of specific barrier to a foreign market, must be clear.

In addition, the tool used should be calculated to achieve that objective. Tariffs are the outcome of many tools, but it is not the case that they are the objective themselves – what U.S. industry seeks is a change in behavior of the trading partner and resulting market conditions. Section 301, for example, is driven toward the “elimination” of the distortive “act, policy, or practice,” and in fact negotiations were undertaken in the first Trump Administration to obtain the elimination of such practices. Ultimately, as USTR has repeatedly found across administrations, China has shown little interest in fundamentally changing its unfair technology transfer practices, and in those circumstances, it is appropriate to continue the action. The Section 232 steel and aluminum actions could also be placed in this category. Both Administrations relaxed the tariffs from the initial levels based on negotiations with partner countries, but those outcomes made the action ineffective in combatting the impact of global steel and aluminum overcapacity on U.S. industries, leading to the recent tightening by the current Administration. Even trade remedies can only be kept in place so long as the dumping or subsidies are likely to continue to injure U.S. industries, meaning that they are contingent on the continued unfair trade practices of the foreign entity.

Although tariff actions have been front and center in recent year, the long-term imposition of tariffs is the exception, not the rule, in trade enforcement actions. For the many trade barriers that span the 400-plus pages of USTR’s annual National Trade Estimate Report on Foreign Trade Barriers, which catalogues the major barriers to U.S. companies in foreign markets, simply imposing tariffs, without a strategy as to how the tariffs will address the barriers, will not help our industries sell more into those markets. Tariffs alone will not lead to more agricultural sales or fair treatment of our digital companies. Positive results on these issues can only come from changes that trading partners agree to make – trade tools that lead to tariffs may or may not be part of the strategy, but they are a means to an end, and not the end itself.

One example of this is the Section 301 investigations of various countries’ Digital Services Taxes (“DSTs”) started in the first Trump Administration. The Biden Administration continued those actions, proposing tariffs which were then suspended as a result of an agreement under the Organization for Economic Cooperation and Development to (1) stop the spread of DSTs around the world, and (2) roll back existing DSTs as part of global tax negotiations. Ultimately, those negotiations fell apart, and countries like Canada moved forward over U.S. objections. The President has directed USTR to determine whether to renew those Section 301 investigations and whether to launch an investigation into Canada’s newly adopted DST. As with many other trade barriers, the goal needs to be the ultimate removal of the DSTs, and I would encourage the Trump Administration to pursue a strategy that leads to that result, and not one where we have DSTs, tariffs on partners, and potentially retaliatory tariffs on U.S. products in perpetuity. Difficult issues, like DSTs, and protections on agricultural products, may take several tries to knock down a barrier and establish a fair competitive environment for U.S. interests, but the objective – removal of the barrier – should drive the strategy.

Another component of an across-the-board trade strategy is that the United States must seek enforcement across all sectors and recognize that they are not the same. For example, certain segments of the diverse U.S. agricultural sector face the greatest challenges from unfair imports, while others have greater challenges in the form of barriers in export markets. This means a trade

strategy is not a “cut and paste” such that the same tools and methods for the manufacturing sector applies to agricultural interests, or even that one crop is the same as others.

Stepping back, if your greatest concern is unfairly traded imports coming into the United States undermining our manufacturers and producers, we have a set of tools and solutions that can directly address the problem, by raising specific tariffs to level the playing field. Causing a foreign country to change its domestic practices that amount to unfair barriers for our farmers is less straightforward, and can be a more difficult and complex path, particularly if the barrier is entrenched in the foreign market’s policies or politics. That said, recent advances are instructive on how the U.S. can achieve wins in export markets. Much of this happens through negotiations, which the last Administration accomplished through revising Japan’s beef safeguard mechanism; gaining greater access for potatoes to Mexico; and lifting restrictions on U.S. poultry and poultry products in South Africa and Colombia. The Biden Administration settled six WTO disputes with India, leading to the lifting of retaliatory tariffs on a host of products. Disputes can also provide a constructive role, for example in the USMCA dispute with Mexico over restrictions on genetically engineered corn, in which the United States prevailed. Sometimes, however, disputes are not the end of the story. For example, a USMCA panel refused to find that Canada’s implementation of its dairy tariff rate quota system is inconsistent with the agreement. As a result, the United States will need to address this and other issues in the upcoming USMCA review process.

A final part of an effective U.S. enforcement strategy is the need to assert U.S. leadership internationally in all trade-related bodies. Many nontariff barriers are the subject of discussion, debate, and consensus-building internationally, and the United States should not only be at the table but should also be fiercely advocating for U.S. economic interests. These international bodies address topics as varied as technical standard-setting, food health and safety, intellectual property, customs regulations and carbon intensity measurements. The United States may not always agree with the remit and agenda of these organizations, but it cannot deny that other countries tactically engage to set the default parameters for the approval and use of goods and services to their own advantage. China and Europe are both adept at using standards and other international rulemaking to their own advantage, which can result in shutting the United States out of key markets. The United States needs to be at the table to counter these practices.

Being at the table is also critical in the digital trade space. If the trade landscape has evolved at an ever-increasing rate, digital trade has been moving at lightspeed. Domestic regulation of the digital ecosystem, whether around privacy, competition, or data flows, brings its own policy challenges and debates. However, that cannot keep us from participating in the international discussion as norms and rules are developed. The U.S. leadership in the digital economy is too important, and the implications for our future prosperity too great, to take a back seat.

Finally, the United States must actively participate in the World Trade Organization (“WTO”), which has value far beyond the dispute settlement function. It is a mistake and fundamentally short-sighted to dismiss participation and discount the value of U.S. engagement in this body. As already discussed, the global economy has changed dramatically in the last 50 years, with change seeming to accelerate over time. The United States and its laws and policies have had to adapt, and the WTO should as well – with the United States leading its transformation. Importantly the

WTO can serve as a forum to bring transparency to trade practices and policies; raise emerging issues, including trade irritants; and provide venues for exchanges that can lead to collective solutions. The world needs the WTO as an open line of communication among all members of the global trade system as we collectively deal with the most significant trade challenges before us, including growing global overcapacity in key manufacturing industries, the economic impacts of climate change, and the transition being pursued by many countries to lower-carbon economies.

IV. Conclusion

In our global economy, the United States must have a trade enforcement strategy that is up to the task in addressing the challenges we face today. This includes having the tools and people to effectively administer trade authorities that keep the playing field level here at home and tear down barriers abroad. The United States must also have a clear-eyed all-of-the above strategy to confront the challenges posed by China's non-market policies and practices, one that looks beyond across-the-board tariffs to find solutions for specific sectors, leverage cooperation with allies and partners, and go on the offense. Finally, the United States must promote U.S. economic security and leadership across the board. To do this, it must have clear and calculated objectives, adapts to challenges across all sectors of the U.S. economy, and maintain U.S. leadership in international fora.

Thank you again for the opportunity to provide input into the important work of the Subcommittee.