AMERICAN AUTOMAKERS

AAPC

AAPC Response to Request for Comments on Tariff Rate Modifications and Other Actions Proposed by USTR for Section 301 Investigation of China

Federal Register Docket ID: USTR-2024-0007

The American Automotive Policy Council (AAPC), representing the common public policy interests of American Automakers – Ford Motor Company, General Motors Company and Stellantis – submits the following views and recommendations to the Office of the United States Trade Representative (USTR). This submission responds to the request for comments on proposed actions to be taken by USTR under section 301 of the Trade Act of 1974 (Section 301). These new Section 301 actions follow the completion of USTR's statutorily mandated four-year review[1] of the actions taken in connection with the Section 301 investigation into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, which began in 2017.[2]

Shortly after the release of USTR's four-year review findings, President Biden issued a May 14, 2024, Memorandum (Presidential Memorandum),[3] which directed USTR to take certain new tariff actions through the agency's Section 301 authority. The Presidential Memorandum included tariff rate modifications for new tariff lines (Proposed Modifications) and a new exclusion process for certain types of machinery used in domestic manufacturing.

In parallel with the four-year review and the Presidential Memorandum, USTR made other tariff rate changes under Section 301 through a separate action, as set forth in a Federal Register Notice dated May 30, 2024.[4] That USTR action included the "reinstatement" of Section 301 tariffs on certain products and materials from China, including artificial graphite (Reinstatement Actions, and, together with the Proposed Modifications, the Proposed 301 Actions), with some of the Reinstatement Actions made effective as soon as August 1, 2024.

Importance of U.S. Auto Industry

The U.S. automotive industry plays a pivotal role in our nation's manufacturing sector and is investing heavily in the electrification transition. Supporting nearly 10 million American jobs and nearly 5% of our nation's GDP,[5] the U.S. auto industry is a significant engine of economic growth and job creation. American Automakers drive much of that job creation, employing about six out of every ten autoworkers in the United States,[6] with a majority of their global workforce based domestically. A majority of

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[1] *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*, 89 Fed. Reg. 46252 (May 28, 2024).

[2] *Initiation of Section 301 Investigation; Hearing; and Request for Public Comments: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 82 Fed. Reg. 40213 (Aug. 24, 2017).

[3] *Memorandum on Actions by the United States Related to the Statutory 4-Year Review of the Section 301 Investigation of China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 89 Fed. Reg. 44541 (May 14, 2024).

[4] *Notice of Extension of Certain Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 89 Fed. Reg. 46948 (May 30, 2024).

[5] Alliance for Automotive Innovation: *Driving Force: 2022 Industry Report*.

[6] American Automotive Policy Council, *AAPC 2024 State of the U.S. Automotive Industry*.

American Automakers' workforces are also unionized, providing hundreds of thousands of well-paying jobs and excellent benefits for these autoworkers and their families.

In addition to its role in job creation, American Automakers' extensive U.S. and North American supply chains support a host of other domestic manufacturing industries. Each year, AAPC's member companies purchase hundreds of billions of dollars' worth of American steel, glass, rubber, iron, and, increasingly, EV batteries and battery materials, much of which is union-made. AAPC member companies will soon be the manufacturers of those batteries, creating jobs in the United States.

American Automakers have also helped establish the U.S. as one of the world's leading hubs for research and development (R&D) for an array of automotive and auto-related technologies including cutting edge autonomous driving and electrification technology. American Automakers collectively rank among the top global investors in R&D, with each company investing at least $7 billion annually in global R&D.[7]

Additionally, American Automakers are making enormous capital investments in the United States, spurred by the Inflation Reduction Act clean energy and EV incentives (IRA). Over the past five years alone, AAPC's member companies have committed a combined $65 billion to expand and modernize their U.S. manufacturing plants and equipment; this is in addition to the $111 billion in U.S. investments that American Automakers have already made in their U.S. operations since 2011.[8] These investments not only enhance their production capabilities and help American Automakers reach their climate goals, the investments have also placed our industry at the forefront of technological innovation in automotive manufacturing.

A crucial factor in meeting those climate goals – and in meeting the updated, more stringent CAFE and GHG emissions rules approved recently by NHTSA and EPA, respectively – will be a smooth transition to clean vehicles in the U.S. market and for export. That transition, however, will largely depend on our industry's ability to produce EVs on a level playing field and procure an adequate, reliable, and affordable supply of the critical minerals and rare earth materials needed to produce the advanced batteries that power today's EVs.

General Comments on Section 301 Actions

AAPC fully understands that Section 301 and other trade tools alone will not solve our nation's EV battery supply chain challenges; rather, these tools are designed to be used in conjunction with other tools to reach long-term policy solutions. In the near-term, however, AAPC fully supports USTR's recommendation for increased funding to help U.S. Customs and Border Protection enforce Section 301.

AAPC and its member companies also understand the challenges posed in crafting policies that strike an appropriate balance between – on the one hand – America's national and economic security interests, our mutually held climate goals and a rapid transition to our EV future, and – on the other hand – the realities of today's EV battery supply chains and the intense competition the U.S. auto industry faces globally.

A prime example of this difficult "balancing act" is found in the U.S. government's simultaneous implementation of the IRA, the new CAFE and GHG emissions rules, and the Proposed 301 Actions. In short, AAPC and its member companies recognize the extremely difficult task with which USTR has been charged in crafting the Proposed 301 Actions.

[7] European Commission Joint Research Centre, *2023 EU Industrial R&D Investment Scoreboard*
[8] *AAPC 2024 State of the U.S. Automotive Industry*

Limited Comments on Proposed Section 301 Actions

Artificial & Natural Graphite

AAPC recommends aligning the Reinstatement Action on artificial graphite, as well as the Proposed Modification to the Section 301 tariffs on natural graphite, with the newly-released interpretive guidance on the IRA, which recognizes the unique composition – and attendant sourcing challenges – for graphite in the context of EV battery supply chains.

Because each plays a vital role in lithium-ion (li-ion) EV batteries, certain temporary flexibilities were provided for both types of graphite in connection with the IRA until 2027. Both graphite types are essential for the li-ion batteries that power most EVs, but are currently unavailable in sufficient quantities outside of China. Therefore, access to a secure, reliable, and competitively priced supply of both graphite types is crucial for EV battery makers and, in turn, EV manufacturers.

While efforts to strengthen our domestic graphite supply chains are underway – spurred in part by the IRA – achieving the necessary scale to produce domestic graphite to power the EV transition, both artificial and natural, will require several more years of sustained investment. AAPC urges USTR and the Administration to ensure consistency in the treatment of natural and artificial graphite by aligning the timing of the tariffs in the Proposed 301 Actions with recent guidance from the Treasury Department-Internal Revenue Service (Treasury-IRS) regarding the compliance rules for the IRA.

Under the interpretive guidance issued by Treasury-IRS on May 5, 2024, a temporary exemption for certain "impracticable-to-trace battery materials", including "graphite contained in anode materials (both synthetic and natural)." AAPC requests that the Reinstatement Action that would eliminate the Section 301 exclusion for artificial graphite this year, as well as the Proposed Modification – which would impose a 25% Section 301 tariff on natural graphite beginning January 1, 2026 – should both be adjusted so each will go into effect at the same time that the Treasury-IRS exemption expires: January 1, 2027.

Permanent Magnets

Pursuant to Section 1(a) of the Presidential Memorandum, USTR has been directed to impose a 25% tariff on permanent magnets (a/k/a "rare earth magnets") from China. These magnets are typically made from rare earth minerals like terbium, dysprosium, praseodymium, and, most notably, neodymium. For many of the same reasons described above in the context of graphite, AAPC seeks alignment between the Proposed Modification for permanent magnets and the Department of Commerce (Commerce) findings and recommendations following its Section 232 investigation into the domestic supply chains for permanent magnets.

In its final report on the investigation, Commerce determined that imposing Section 232 tariffs on these rare earth magnets and/or neodymium were not in the best interest of the United States.[9] Instead, Commerce provided alternative recommendations, which were aimed at fostering a domestic supply chain for rare earth magnets led by the U.S. and its allies, while also reducing our dependence on foreign sources for these magnets and the rare earths they require.

[9] U.S. Dept. of Commerce, Bureau of Industry and Security, Office of Technology Evaluation: *The Effect of Imports of Neodymium-Iron-Boron (NdFeB) Permanent Magnets on the National Security*, Sept. 21, 2022.

The President agreed with the Secretary's determination, and the Administration expressed confidence that these recommended measures could significantly diminish import penetration by 2026.[10] One senior Administration official stated that: "According to the Commerce Department's findings, the efforts we've already taken, as well as the efforts that we're directing coming out of this report, could lead to a significant decline in import penetration by 2026."[11] Accordingly, USTR should consider aligning the Proposed Modification for permanent magnets with the findings in Commerce's report.

Conclusion

AAPC supports USTR's ongoing efforts to address unfair trade practices in coordination with trading partners. Consideration of the minor adjustments set forth in these comments will provide space for American Automakers to continue to build a secure clean vehicle industry and compete globally on a level playing field.

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[10] Politico: "*U.S. decides against national security tariffs on rare earth magnets from China, Japan, EU*", Sept. 21, 2022.