



June 28, 2024

The Honorable Katherine Tai
United States Trade Representative
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20506

Via Electronic Submission

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 (Docket Number USTR-2024-0007)

Dear Ambassador Tai:

On behalf of Autos Drive America's members, I appreciate the opportunity to submit the following comments in response to the Proposed Modifications to the Section 301 Investigation FRN (Docket Number USTR-2024-0007).¹ Autos Drive America represents 13 international automakers and suppliers operating 31 manufacturing facilities where nearly half of all American-made vehicles are produced annually. International automakers employ over 156,000 Americans, support over 2.3 million jobs, have invested over \$107 billion in the United States, and exported 695,000 U.S.-built vehicles to over 130 markets last year.

Autos Drive America agrees that U.S. trade policy must prioritize strong, enforceable intellectual property protections and address unfair practices abroad that seek to coerce or compel technology from manufacturers around the world, including those of China.

The automotive industry is undergoing a significant transformation towards greener products and more sustainable practices. The push for electrified vehicles (Hybrids, Plug-in Hybrids, and Battery Electric Vehicles) and the adoption of advanced technologies aimed at reducing carbon emissions are central to this transition. However, the immediate imposition of tariffs on critical components and materials used in EVs and

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. 46,252 (May 28, 2024).

battery production hinders this progress. Many of these components are not yet produced domestically at the scale needed to meet demand, and tariffs will increase costs, slowing consumer adoption of EVs and undermining the nation's decarbonization goals.

While the automotive industry recognizes the importance of diversifying supply chains to avoid future disruptions and to ensure its health, the immediate imposition of tariffs is counterproductive to achieving this goal. The automotive industry relies on a complex global supply chain, and imposing tariffs on imports, particularly on batteries and their related supply chain without current viable alternatives, reduces the industry's overall competitiveness. Additionally, tariffs divert investments toward the payment of duties rather than toward accelerating investment in U.S. manufacturing, delaying efforts to reshore key production processes.

The new tariffs also have broader economic implications. Increased production costs due to tariffs lead to higher prices for vehicles, reducing demand and negatively impacting sales -- including demand for and sales of electrified vehicles. Autos Drive America's member companies are investing billions of dollars in U.S. EV and battery production facilities, but those investments are premised on market projections that will only be met if the market for electrified vehicles has developed sufficiently. Suppressing demand through higher production costs and therefore higher sticker prices before the nascent domestic EV supply chains have been established, will slow the development of those supply chains.

U.S. EV Battery Industry Highly Exposed to Market Forces and Shocks.

Tariff increases on batteries, modules, cells, and critical minerals, especially on both natural and synthetic graphite, at this nascent stage of the transition to EVs, will have a chilling effect on the U.S. production of batteries and EVs. Several U.S. automakers must rely on imports until their battery investments come online. Maintaining certainty in the cost structures of battery cells and modules will contribute to establishing domestic supply chains as automakers have built their near-term pricing models factoring in tariffs as they were established prior to August 1, 2024, when these proposed tariff increases were not in effect. Maintaining current tariff rates through at least 2027 allows automakers to fulfill investments in U.S. production and to bolster consumer adoption. U.S. automakers' ability to produce globally competitive vehicles is critical to the future success of the industry.

China’s EV Battery Competitive Advantage is Not Solely Based on Price, but Rather Scale and Technology.

The competitive gap is closing as the United States’ industrial base scales up. Globally, North America is second only to China in terms of economic competitiveness for EV battery production, ahead of both Europe and Asia (exc. China).²

That competition has created American manufacturing jobs in connection with lithium-iron phosphate EV batteries (LFP). LFPs became a popular chemistry for lower-priced EVs over the last few years due to cost and cycle life, despite lower energy density. At the time, the U.S. auto industry was not geared toward producing LFP batteries domestically (nor were other major auto industries in Europe or Asia), so several automakers sourced LFPs from abroad for their North American made EVs while



preparing projects to build dedicated LFP battery production facilities. One of the primary reasons there are multiple U.S. LFP EV battery facilities being planned is due to auto manufacturers having access to the hypercompetitive Chinese battery market. By having a globally flexible EV battery supply chain, U.S. automakers were better able to

² “How Much Cheaper Are Chinese Lithium-Ion Battery Cells?” Benchmark Source, August 14, 2023. <https://source.benchmarkminerals.com/article/how-much-cheaper-are-chinese-lithium-ion-battery-cells>.

adapt to EV battery innovations, provide affordable EV options to consumers, and create American manufacturing jobs.³

2028 is Seen as the Most Likely Inflection Point for when the U.S. Industry will be Less Harmfully Impacted by Section 301 Tariff Increases on EV Batteries.⁴

Battery production investments in the U.S. and North America as a whole, along with continued unfettered access to EV battery markets not currently impacted by Sec. 301 tariffs, will allow U.S. EV producers to become insulated from the negative effects of increased Sec. 301 tariffs on EV batteries by 2028.

Increased tariffs on batteries, which account for between 20-40% of the production cost of an EV, would be felt by cost-conscious consumers. Levying heavier tariffs on EV batteries right as the industry has achieved sub-\$100 per kWh EV battery levels and producing more affordable battery prices, would be immensely disruptive to the EV market.⁵

In addition, increased costs on inputs not domestically available or not available at scale place U.S. automakers at a competitive disadvantage compared to manufacturers that are not subject to similar tariffs. Such a disadvantage ultimately affects the global competitiveness of the U.S. automotive industry, without resolving any of the concerns that they were designed to combat.

Autos Drive America urges USTR to delay imposing tariffs on batteries and the battery supply chain until at least 2027, when projected domestic battery production will be more fully developed. A delay until 2027 would align the administration's trade policies more closely with the Department of the Treasury's (Treasury) final rule for the Clean Vehicle Tax Credit (30D), rather than working at cross purposes with those incentives. In Treasury's Sec. 30D final rule, *impracticable-to-trace battery materials* are subject to Foreign Entity of Concern (FEOC) restrictions beginning on January 1, 2027. This provision allows manufacturers to exclude low-value minerals from their FEOC due-diligence requirements due to current supply chain dynamics. Graphite, both natural and synthetic, is covered under this provision and thereby not subject to tracing until 2027. However, the Sec. 301 update will impose tariff increases on many of these *impracticable-to-trace* materials prior to the effective date of Treasury's final rule.

³ "The Rise of LFP Batteries Outside of China | Benchmark Source," Benchmark Source, n.d., <https://source.benchmarkminerals.com/article/the-rise-of-lfp-batteries-outside-of-china>.

⁴ Based on informal surveys of association members.

⁵ "Increase in Battery Prices Could Affect EV Progress" BloombergNEF, December 9, 2022, <https://about.bnef.com/blog/increase-in-battery-prices-could-affect-ev-progress/>.

Alternatively, USTR could implement a limited Sec. 301 exclusion process for EV batteries that allows for partial or temporary “stopgap” supply from China if supply from outside of China is insufficient to meet the demand of all automakers.

Disruptions Due to Retaliation

Automakers are also concerned about the potential for retaliation in response to the new tariffs. Retaliation methods have grown more sophisticated, where rather than taking direct action against goods from the United States, the use of more indirect tools, such as increasing export licensing hurdles for critical inputs for both the United States and its allies are being utilized. This will make it more difficult to get inputs that are needed for production that are unavailable elsewhere. Such measures could exacerbate existing supply chain challenges, increasing production costs and reducing the global competitiveness of U.S. automakers.

Conclusion

Autos Drive America urges the administration to collaborate with Congress to achieve bipartisan consensus on a long-term strategy to balance trade, industrial, and climate objectives. As such, finalizing critical minerals agreements with key partners, like the European Union, the United Kingdom, and other critical mineral producing states are important steps in reducing industry reliance on a single source. Further, the administration should work with Congress to develop durable sectoral agreements aimed at creating a supply chain network with reliable partners that create viable alternatives for sourcing EV materials, as mentioned in a brief recently published by the Center for Strategic and International Studies.⁶

Autos Drive America also urges USTR to implement a Sec. 301 tariff exclusion process that recognizes the efforts automakers and suppliers are making to diversify their supply chains through the:

- Publication of the process and basis for each USTR determination to grant, deny, or extend tariff exclusions.
- Additional criteria regarding sourcing beyond consideration of whether a particular product is only available from China -- specifically exclusions for companies that have made verifiable investments to diversify sourcing away from China but cannot yet fully procure inputs from domestic or other sources.
- Ongoing or more frequent opportunities to keep an exclusion list current and responsive to changes in global supply chain networks.

⁶ <https://www.csis.org/analysis/friendshoring-lithium-ion-battery-supply-chain-final-assembly-and-end-uses>



- Adherence to consistent timelines for determinations.
- Reduced burdens on small and medium-sized automotive suppliers in providing documentation and information in support of the information required by USTR.
- Longer exclusion periods that reflect the market realities of the timelines involved in making significant changes to automotive supplier relationships.

An ongoing exclusion process that is responsive to industry needs and fully scrutinizes claims of domestic production will prevent disruptions and unnecessary cost increases, especially where supply-chain diversification efforts are already underway. Thank you again for the opportunity to submit comments and please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Jennifer M. Safavian".

Jennifer M. Safavian
President and CEO