

January 24, 2022

The Honorable Richard Neal
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Kevin Brady
Ranking Member
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Neal and Ranking Member Brady:

We write regarding the House's efforts to pass legislation to increase our nation's competitiveness with China in the face of decades of economic espionage, theft of trade secrets and Intellectual Property (IP), state support for key industries, and forced technology transfers by the Chinese government. While we wholeheartedly support efforts to counter the economic threats posed by the Chinese Communist Party (CCP), we regret to convey that Division G of the Senate's *U.S. Innovation and Competition Act* (USICA), titled "The Trade Act of 2021", is in fact a gift to the CCP, and would have the effect of disarming our country's leverage to deal with China's efforts to undermine U.S. economic and national security, while providing billions of dollars to multinational importers of Made-in-China merchandise and punishing companies that responsibly shifted their sourcing out of China.

The Trade Act of 2021 damages U.S. economic and national security by:

1. Rewarding the CCP and multinational importers sourcing from CCP-controlled businesses by dismantling our Section 301 tariffs against merchandise from China;
2. Stripping authority from the President and hands it to international lawyers;
3. Providing a direct financial windfall to multinational importers of Made-in-China merchandise, sending them checks from the U.S. Treasury; and
4. Weakening across the board a host of critical U.S. trade programs, including Section 301, the Generalized System of Preferences (GSP), the Miscellaneous Tariff Bill (MTB), and the U.S. government's current ban on forced labor imports.

USICA's Trade Act of 2021 on Section 301 and China

Sec. 73001 is an all-out assault against the ability of any President to use Section 301 tariffs against China. It imposes burdensome requirements on the United States Trade Representative (USTR) in executing a Section 301 proceeding, putting the entire onus on government staff to 'prove their case' against every importer seeking a tariff waiver.

The section also defines "Severe Economic Harm" to mean that an importer's Made-in-China merchandise is now "unprofitable" to import. Making this unsubstantiated claim then shifts the entire burden to USTR to defend that tariff. This is outrageous, and unacceptable. Many responsible businesses have shifted their supply chains out of China in response to our Section 301 proceeding. Allowing waivers for unsubstantiated claims of unprofitability makes a mockery of those businesses that did the right thing.

This is only the beginning of the problems. Sec. 73001(a)(2) of USICA, under “Retroactive Application for Certain Liquidations and Reliquidations”, commands the U.S. Treasury to begin issuing checks to importers of Chinese merchandise within 90 days of the Act’s passage. This amount could easily be in the tens of billions of dollars. Those who invested in moving their supply chains receive nothing.

These sections were pushed by Senator Mike Crapo (R-ID), in exchange for Republican votes for USICA. However, Amb. Lighthizer, in the *New York Times*, has decried the Trade Act of 2021 as being a gift to the CCP.¹

Our Section 301 tariffs were imposed to counter the unfair trade advantages the CCP accrued thanks to their decades-long brazen IP theft and blatant disregard for American IP rights. USTR found, among other things, that the Chinese government deprived U.S. companies of the ability to set market-based terms in licensing and other technology-related negotiations with Chinese companies. In the last year, the Chinese government has further ramped up its discriminatory forced localization practices, now through their courts by way of anti-injunction suits to force American businesses to license their IP.

We urge the House to leave Section 301 as is, and not include any of the amendments in Sec. 73001 of USICA that significantly weaken this important and vital provision of U.S. trade law.

USICA’s Trade Act of 2021 weakens America’s ability to police forced labor imports

Sec. 71001 of USICA attacks U.S. Customs & Border Protection’s (CBP’s) ability to block imports made with forced labor. Our longstanding ban on imports of forced labor goods, required under Section 307 of the Tariff Act of 1930, has always been a law enforcement exercise. At the behest of importers with exposure to forced labor concerns, the Trade Act of 2021 entangles this law enforcement exercise into larger ‘diplomatic concerns’. Rather than simply blocking forced labor goods where they find them, CBP would be required to undergo an inter-agency process ranking the relative degree of forced labor abuses as compared to other countries. This is absurd, and designed to make issuing Withhold Release Orders more difficult.

The previous administration took steps to stop the importation of forced labor goods to the U.S., and the Biden administration has continued these important efforts — including, in many ways, strengthening them. Additionally, Congress passed in overwhelming bipartisan fashion the *Uyghur Forced Labor Prevention Act* (117-78), which was signed by President Biden last December. Clearly, there is strong, bipartisan consensus to prevent goods made with forced labor in China from reaching the U.S. market. Passing Sec. 71001 would significantly weaken these important efforts.

USICA’s Trade Act of 2021 weakens America’s ability to pursue our policy goals in the Generalized System of Preferences (GSP) and with the Miscellaneous Tariff Bill (MTB)

Sec. 74001 of USICA diminishes Presidential authority to hold GSP beneficiary countries accountable for the expectations Congress has set. The section will be a boon to multinational

¹ <https://www.nytimes.com/2021/07/27/opinion/us-china-trade-tariffs.html>

corporations that have an army of D.C. lawyers on retainer and who will be able to represent foreign nations in new GSP regulatory proceedings. These lawyers will have new procedural arguments to make alleging that USTR failed to properly account for records and hearings in decision making. This is dangerous territory. The section is effectively taking away Presidential authority on foreign relations, and making it subject to public hearing and record requirements overseen by D.C. lawyers. Indeed, it is likely to inflame international relations as decisions that currently flow from Presidential proclamations instead become the result of agency fact finding.

Sec. 75471 reauthorizes two new MTB cycles using the same template that was used in 2016, thus squandering the opportunity to improve the MTB following what was learned from the increased transparency of the last two cycles.

Chairman Blumenauer has introduced excellent legislation that the House must prioritize

Fortunately, Representative Earl Blumenauer (D-OR), Chairman of the Trade Subcommittee, has introduced legislation that would modernize GSP and MTB, greatly improving these programs.² Important new criteria are introduced for GSP, without stripping Presidential authority. MTB will be immeasurably improved by ensuring the original policy goal – assistance for American manufacturers – is the focus. Currently, importers of finished goods who compete with American manufacturers are benefiting from unwarranted tariff cuts.

In addition, Chairman Blumenauer has introduced critical legislation, the Import Security and Fairness Act, to reform Section 321 of the Tariff Act of 1930. This is must pass legislation to stop the rampant exploitation of the de minimis threshold, which allows counterfeit and dangerous goods flowing with little scrutiny from China.³ Currently, over two million packages per day enter the United States pursuant to Section 321. The majority of these are from China, and evade all taxes and tariffs that would otherwise be applicable.

For the reasons outlined above, we urge you to include the trade policy reforms introduced by Chairman Blumenauer, and reject the destructive provisions of Senator Crapo's Trade Act of 2021.

Thank you for your attention to this serious matter.

Sincerely,



Zach Mottl, Chairman
Coalition for a Prosperous America



Michael Stumo, CEO
Coalition for a Prosperous America

² <https://waysandmeans.house.gov/media-center/press-releases/ways-and-means-democrats-introduce-legislation-reform-and-renew-key-us>

³ <https://prosperousamerica.org/cpa-applauds-chairman-blumenauer-bill-to-fix-rampant-abuse-of-de-minimis-import-loophole/>