TESTIMONY BEFORE THE U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Hearing: "Key Economic Strategies for Leveling the U.S.-China Playing Field: Trade, Investment, and Technology"

May 23, 2024

Jamieson L. Greer

I am here today to discuss the very serious dependencies and imbalances in U.S.-China trade relations and how to manage these risks.[1, 2] I will also review historic and recent U.S. trade and investment policies toward China and their impacts. Finally, I will highlight a few areas where Congress can act to strengthen the U.S. economy, protect American workers, reinvigorate the country's industrial base, and protect national security. These objectives should form the core of the U.S. approach to an increasingly ambitious and confrontational PRC.

I. The U.S.-China Trade and Investment Landscape Before 2017

For many years following the normalization of diplomatic relations between the United States and the PRC, bilateral trade flows were minimal. China benefitted from most-favored nation ("MFN") tariffs for imports into the United States, but this status had to be reauthorized annually by the President. This was a condition of the Jackson-Vanik Amendment passed by Congress restricting trade with "nonmarket economies," which were largely communist countries.[3] Annual renewal of MFN tariffs for China became more contentious after the 1989 events at Tiananmen Square, so there was little certainty that investing in China to produce goods for export to the United States was a durable business model.[4]

Bilateral U.S.-China trade began growing more substantially in the mid-1990s. China, with certain allies in Congress and the U.S. business community, lobbied for and eventually obtained admission to the World Trade Organization ("WTO") and legislation providing it with permanent MFN status (*i.e.*, "permanent normal trade relations" ("PNTR")). Advocacy for granting MFN status to China was premised on a number of arguments, including its proponents' assertions that taking this step would decrease the U.S. trade deficit with China and provide U.S. companies with a way to ensure fair treatment in the Chinese market.[5]

Neither prediction was accurate. Between 2012 and 2016 – over a decade after China's admission to the WTO – U.S. companies operating in China named "inconsistent regulatory interpretation and unclear laws" among the top two concerns for doing

[1] I am appearing today in my personal capacity and not on behalf of any current or former employer or client.
[2] References to "China" are references to the People's Republic of China ("PRC") or instrumentalities thereof.
[3] *See The Jackson-Vanik Amendment and Permanent Normal Trade Relations*, Congressional Research Service (Dec. 20, 2023), *available at* https://crsreports.congress.gov/product/pdf/IF/IF12556#:~:text=In%201974%2C%20the%20Jackson%2DVanik,free%20emigration%20of%20its%20citizens.
[4] Robert E. Lighthizer, *Testimony Before the U.S.-China Economic and Security Review Commission: Evaluating China's Role in the World Trade Organization Over the Past Decade*, June 9, 2010, at 1-2, *available at* https://www.uscc.gov/sites/default/files/6.9.10Lighthizer.pdf.
[5] *Id*. at 3-7.

business in the country.[6] And the trade deficit from China increased from $83.8 billion in 2000 to $346.8 billion in 2016.

Despite the hopeful engagement of this period, the Office of the U.S. Trade Representative repeatedly found that China failed to abide by its WTO commitments. In its 2016 report on China's compliance with WTO obligations, USTR observed that "a wide range of Chinese policies and practices continued to generate significant concerns among U.S. stakeholders, as did the continuing abuse of administrative processes by Chinese government officials."[7] Efforts to hold China accountable under WTO dispute mechanisms were largely unfruitful.[8] China doubled down on its non-market economic practices, providing subsidies and pursuing programs to develop national champions to displace U.S. and other Western companies.

Before 2016, the U.S. government typically relied on traditional trade measures and policy tools such as antidumping and countervailing duty ("AD/CVD") laws – which are self-initiated by private parties – and relatively narrow export controls to manage these risks of Chinese trade. However, U.S. trade policy generally was trending the opposite direction: many in the United States were pushing for a bilateral investment treaty with China, and Obama-era export control reform loosened controls on many items on the U.S. Munitions List and the Export Administration Regulations.

U.S. trade policy toward China prior to 2016 ultimately was very harmful. As discussed in more detail in Section III.A below, the economic data from this period demonstrate how trade with China had a negative impact on U.S. manufacturing and our industrial base. Although this policy of openness allowed some companies to increase exports to China and others to lower their production costs, this came at a high price: the United States' manufacturing base and employment declined, the country became very dependent on China for critical inputs, and China leveraged the economic benefit of the relationship to undermine U.S. global leadership.

II. The U.S.-China Trade and Investment Landscape After 2017

In 2017, after many years of pursuing trade and investment policies toward China that harmed U.S. economic and national security, the U.S. government embarked on a new approach toward China. The Trump Administration rejected the previous strategy of engaging in interminable "dialogues" with Chinese officials where macroeconomic issues were discussed and the United States accepted the PRC's framing of issues. Instead, the U.S. government adopted an enforcement posture toward China to level the

[6] 2016 China Business Climate Survey Report, AmCham China (2016), at 18, *available at* http://www.iberchina.org/files/2016/amchan_china_climate_2016.pdf.
[7] 2016 Report to Congress On China's WTO Compliance, USTR (Jan. 2017), at 4, *available at* https://ustr.gov/sites/default/files/2016-China-Report-to-Congress.pdf.
[8] *Id*. at 40-41.

playing field and potentially create an environment where negotiations for improved terms of trade were possible. Some of the more significant measures pursued by the Trump Administration included the following:

- Section 301 Action. The Trump Administration completed an investigation under Section 301 of the Trade Act of 1974 ("Section 301") regarding forced technology transfer by China. The 2018 report by the Office of the U.S. Trade Representative ("USTR"), "Technology: Protecting America's Competitive Edge" ("Section 301 Report"), identified several ways that China effectuates forced technology transfer. These include foreign ownership restrictions and administrative Review and licensing processes, discriminatory licensing restrictions, strategic outbound investment, and intrusion into U.S. commercial computer networks and cyber-enabled theft of intellectual property and sensitive commercial information.[9] China also achieves forced technology transfer through pretextual national security or cybersecurity measures, inadequate intellectual property protection, talent acquisition programs, and abuse of anti-monopoly and standardization laws.[10] In response to these findings, USTR recommended (1) the imposition of tariffs as a responsive action in the absence of a change to these policies and practices, (2) the commencement of a WTO dispute settlement proceeding with respect to intellectual licensing practices, (3) enhancing investment screening for transactions involving Chinese investors, and (4) enhancing export controls to further limit the acquisition of sensitive technology. USTR carried out the first two recommendations under its statutory authorities by imposing a 25 percent tariff on $40 billion worth of Chinese imports and initiating a WTO dispute. Following repeated retaliation by the PRC, USTR ultimately increased the product coverage of the tariffs to apply to $250 billion in imports from China. For the latter two recommendations, the Treasury Department and Commerce Department, respectively, worked with Congress to implement enhanced CFIUS and export control authorities consistent with relevant legislation passed with bipartisan support.
- Phase One Agreement. The Trump Administration also concluded a Phase One trade agreement with China pursuant to which the Chinese government agreed to modify its practices related to forced technology transfer, intellectual property rights and enforcement, agricultural import regulations, currency practices, and financial services market access. The PRC also agreed to expand its purchases of U.S. goods according to a two-year schedule, and to continue increasing imports

[9] Section 301 Report at 5 and 177-180.
[10] *Id*. at 180-182; Jamieson Greer, Written Testimony Before the U.S. House of Representatives Judiciary Committee, Subcommittee on Courts, Intellectual Property, and the Internet (Mar. 8, 2023), *available at* https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/greer-testimony.pdf.

thereafter. Finally, the PRC agreed that the United States could keep the Section 301 tariffs in place and agreed to establish a dispute settlement process that provided the United States with broad authority to enforce the agreement, including in a unilateral way, if warranted.

- Section 232 Action. The Trump Administration imposed additional duties on steel and aluminum under Section 232 of the Trade Expansion Act of 1962. Pursuant to this action, the Commerce Department conducted a review and found that steel and aluminum imports into the United States threatened to impair the national security. Specifically, Commerce found that an import surge threatened to severely harm the domestic industries producing steel and aluminum, and that such harm would negatively impact national security. The remedy imposed under Section 232 was global, but covered Chinese steel and aluminum as well as products from third countries that, in many cases, were shipped to the United States due to displacement by Chinese steel and aluminum in those third country markets.

- Export Controls. The Trump Administration also expanded export controls on China by pioneering a novel combination of the Entity List (*i.e.*, prohibition on the export of U.S. items to a listed entity) and the foreign direct product rule ("FDPR") (*i.e.*, extension of export controls to items made abroad using certain U.S. inputs). The U.S. Commerce Department ("Commerce") applied this approach to Huawei and several of its foreign subsidiaries. Commerce added several other Chinese companies in the semiconductor supply chain to the Entity List as well. In addition, the U.S. government began treating Hong Kong as part of China for purposes of export control regulations.

- Investment Controls. CFIUS took a much more aggressive posture on Chinese investment, aided by passage of the Foreign Investment Risk Review Modernization Act of 2018. The Trump Administration also identified a number of "Communist Chinese Military Companies" and prohibited U.S. persons from trading in the public securities of such companies and their subsidiaries.

- Technology Competition. The Trump Administration prevented and discouraged the widespread adoption of Huawei information technology equipment in the United States. U.S. officials also worked with foreign governments to discourage the spread of Huawei information technology in third countries.

- Forced Labor. The Trump Administration increased enforcement of forced labor laws, including issuing a number of Withhold Release Orders to prohibit the import of goods from companies found to use forced labor in their supply chains. China was one target country in these efforts.

- Information and Communications Technology and Services ("ICTS") Supply Chain Rule. President Trump issued an executive order empowering the Secretary of Commerce to review and mitigate ICTS transactions that pose a risk to national security. This broad authority could prevent a wide variety of covered transactions involving China, such as imports, installations, and supply agreements.

This approach and related measures garnered substantial bipartisan support, and many aspects of these policies have been continued by the Biden Administration. Indeed, in some cases, the Biden Administration has even expanded upon Trump Administration policies:

- Section 301 Action. The Biden Administration retained the Section 301 tariffs and declined to re-open an exclusion process. The Biden Administration also increased tariffs on a narrow set of goods subsequent to the statutory four-year review (*e.g.*, electric vehicles ("EVs") and EV batteries). However, the Biden Administration failed to enforce China's failure to fully comply with the Phase One Agreement.
- Section 232 Action. The Biden Administration retained the Section 232 tariffs on steel and aluminum, including on products from China. It also increased tariffs on Chinese steel and aluminum as a result of the Section 301 review process. However, the Biden Administration conducted limited enforcement of Section 232 tariffs on steel and aluminum imports from third countries, which in some cases are displaced to the U.S. market by overcapacity from China and other countries.
- Export Controls. The Biden Administration expanded export controls on China, using the Entity List and the FDPR to limit China's access to sensitive technology. The Biden Administration's October 2022 export control rules restricted Chinese entities' ability to obtain advanced semiconductor technology and production equipment.
- Investment Controls. The Biden Administration has made liberal use of "non-notified transaction" authority to seek out and investigate Chinese investment in the United States that did not undergo CFIUS review. In addition, the Biden Administration issued a proposed rule to control outbound investment from the United States into China with respect to a small handful of critical industries: semiconductors, artificial intelligence, and quantum computing.
- ICTS Rule. The Biden Administration maintained President Trumps executive order on the ICTS supply chain and recently initiated a rulemaking to explore any national security risk posed by connected vehicles. It is transparent that this

proposed rule largely is directed at Chinese EVs, and if implemented, likely would result in restrictions on the sale or use of Chinese EVs in the United States.

- Domestic Investment. Congress passed the Bipartisan Infrastructure Law, the Inflation Reduction Act, and the CHIPS and Science Act, all of which provide grants, loans, guarantees, or tax incentives to increase domestic manufacturing in relation to the construction of public infrastructure or certain manufacturing and energy facilities.

In sum, U.S. policy toward China has shifted to a much more pragmatic and active approach since 2017. This new strategy is much more in line with objectives such as growing the manufacturing base, increasing employment opportunities for the working class, and protecting American technology and national security.

III. Effects of Recent U.S. Trade and Investment Policies Toward China

Substantial information and data are available regarding the effect of U.S. trade and investment policies toward China. These data show that China benefitted greatly from U.S. trade and investment policies, while the United States suffered substantial negative impacts. The period between China's admission to the WTO and receipt of permanent normal trade relations ("PNTR"), in particular, reflects the results of U.S. policy toward China. However, beginning with a concrete shift in policies toward China in 2017, certain of these trends began to reverse course. Both periods are discussed below.

A. From PNTR to 2016

With respect to pre-2017 policies, U.S. economic openness toward China was a key driver in substantially increasing that country's GDP. China took full advantage of this openness by leveraging state-directed capital investments and subsidies, industrial overcapacity, abysmal labor and environmental standards, forced technology transfer, and countless protectionist measures. At the same time, U.S. industries and workers experienced the "China Shock" and its follow-on effects, a phenomenon whereby regions sensitive to increased import competition suffered from job losses. This dynamic, in turn, has contributed to the extremely large and persistent U.S. trade deficit with China.

A number of data points illustrate the results of U.S. policymakers' decision to open our economy to China despite China's continued failure to open its economy to U.S. companies. The trends below of course are not entirely attributable to the U.S.-China trade relationship, but certainly are manifestations of the vast imbalance and shift in manufacturing and investment to China from the United States.

- U.S. goods imports from China increased from $100 billion in 2000 to $462.4 billion in 2016.[11] This increase was driven by a variety of categories, dominated by (1) Computer & Electronic Products, (2) Miscellaneous Manufactures, (3) Electrical Equipment, Appliances & Components, and (4) Machinery, except Electrical.[12]
- U.S. goods exports to China increased from $16.2 billion in 2000 to $115.6 billion in 2016.[13] This increase was driven by goods categories such as Transportation Equipment, 2) Agricultural Products, 3) Computer & Electronic Products, and 4) Chemicals.[14]
- The U.S. trade deficit in goods with China ballooned from $83.8 billion in 2000 to $346.8 billion in 2016.[15]
- China's GDP rose from approximately $1.2 trillion in 2000 to approximately $11.2 trillion in 2016 – a feat that took the United States over 30 years to accomplish.[16]
- China's global share of global manufacturing GDP increased from approximately 6 percent in 2000 to about 24 percent in 2016. During that same period, the U.S. share of global manufacturing GDP dropped from about 26 percent in 2000 to about 17 percent in 2016.[17] China's increase in manufacturing has come at the expense of the United States (and other G7 countries).
- U.S. manufacturing employment fell from (on average) 17.3 million jobs in 1999 to 12.3 million jobs in 2016, for a net loss of 5 million jobs.[18]

[11] U.S. Import and Export Merchandise Trade Statistics, U.S. Census Bureau: Economic Indicators Division USA Trade Online, available at https://usatrade.census.gov/ (*accessed* May 15, 2024).
[12] TradeStats Express – U.S. Trade by Partner (Countries and Regions), International Trade Administration, available at https://www.trade.gov/data-visualization/tradestats-express-us-trade-partner-countries-and-regions (*accessed* May 15, 2024).
[13] U.S. Import and Export Merchandise Trade Statistics, U.S. Census Bureau: Economic Indicators Division USA Trade Online, available at https://usatrade.census.gov/ (*accessed* May 15, 2024).
[14] TradeStats Express – U.S. Trade by Partner (Countries and Regions), International Trade Administration, available at https://www.trade.gov/data-visualization/tradestats-express-us-trade-partner-countries-and-regions (*accessed* May 15, 2024).
[15] U.S. Import and Export Merchandise Trade Statistics, U.S. Census Bureau: Economic Indicators Division USA Trade Online, available at https://usatrade.census.gov/ (*accessed* May 15, 2024).
[16] World Bank, Gross Domestic Product for China [MKTGDPCNA646NWDB], retrieved from FRED, Federal Reserve Bank of St. Louis, available at https://fred.stlouisfed.org/series/MKTGDPCNA646NWDB (*accessed* May 15, 2024).
[17] Richard Baldwin, "China is the world's sole manufacturing superpower: A line sketch of the rise," CEPR (Jan. 17, 2024) (citing OECD data), *available at* https://cepr.org/voxeu/columns/china-worlds-sole-manufacturing-superpower-line-sketch-rise.
[18] U.S. Bureau of Labor Statistics, All Employees, Manufacturing [MANEMP], retrieved from FRED, Federal Reserve Bank of St. Louis available at https://fred.stlouisfed.org/series/MANEMP (*accessed* May 14, 2024).

- Approximately 54,000 factories closed in the United States between 2001 (397,522 annual average) and 2016 (343,687 annual average).[19]
- Between 2000 and 2016, U.S. real median household income remained relatively flat, growing from $67,470 to $70,840[20] – an increase of about 5 percent over 16 years – while global GDP more than doubled over that period.[21]

During the period of the United States' aggressive economic engagement with China, it appears that economic benefits to the U.S. economy generally were far outstripped by the enormous gains realized by China.

B. From 2017 to the Present

As described above, in 2017, the United States began to change its economic relationship with China by imposing measures to manage the downsides of trade and investment. However, U.S. trade measures on China have not slowed the U.S. economy. To the contrary, these measures have been instrumental in improving U.S. competitiveness and diversifying supply chains in a healthy way. This is apparent from macroeconomic data as well as data relevant to specific trade measures.

- Manufacturing employment rose from 12.3 million jobs in 2016 to 12.8 million jobs right before the pandemic for a gain of about 500,000 manufacturing jobs between 2016 and 2019. Today, four years later, that number is hovering around 12.9 million jobs.
- U.S. real median household income increased from $70,840 in 2016 to $78,250 by the end of 2019 and prior to the COVID-19 pandemic.[22] This reflects a gain of about $7,500 to U.S. households during the period of the imposition of strong trade measures against China. Since 2019, U.S. real median household income has declined somewhat to $74,580, although it remains above pre-2016 levels.
- GDP in the United States grew from $18.8 trillion in 2016 to $27.4 trillion in 2023, reflecting an increase of $8.6 trillion.[23] Among the G7, the United States

Number of Establishments in Private NAICS 31-33 Manufacturing for All establishment sizes in U.S. TOTAL, NSA, U.S. Bureau of Labor Statistics, available at https://www.bls.gov/iag/tgs/iag31-33.htm (*accessed* May 15, 2024).

[19] Number of Establishments in Private NAICS 31-33 Manufacturing for All establishment sizes in U.S. TOTAL, NSA, U.S. Bureau of Labor Statistics, *available at* https://www.bls.gov/iag/tgs/iag31-33.htm (*accessed* May 15, 2024).

[20] Real Median Household Income in the United States, Federal Reserve Bank of St. Louis – Economic Data, *available at* https://fred.stlouisfed.org/series/MEHOINUSA672N (*accessed* May 16, 2024).

[21] GDP (current US$), World Bank ($33.9 trillion GDP in 2000 versus $76.52 trillion GDP in 2016), *available at* https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?end=2016&start=2000 (*accessed* May 16, 2024).

[22] Real Median Household Income in the United States, Federal Reserve Bank of St. Louis – Economic Data, *available at* https://fred.stlouisfed.org/series/MEHOINUSA672N (*accessed* May 16, 2024).

[23] Gross Domestic Product, Federal Reserve Bank of St. Louis – Economic Data, *available at* https://fred.stlouisfed.org/series/GDPA (*accessed* May 16, 2024).

has both the highest GDP growth rate and the strongest trade measures against China.[24]

- The U.S. trade deficit with China fell from $375 billion in 2017 to $279 billion in 2023 – a 25.6 percent decline.[25] Notably, this reflects not only decreased imports from China, but also increased exports from the United States. U.S. imports from China fell from $505 billion in 2017 to $427 billion in 2023, while U.S. exports to China increased from $130 billion in 2017 to $148 billion in 2023. For 2024, the trade deficit with China is tracking to annualize at $243 billion, which would be the lowest level since 2009. Thus, the shift in U.S. trade policy toward China has been accompanied by a marked improvement in the terms of trade between the United States and China.
- The Section 301 tariff program has been an important driver of this trend and has reduced U.S. reliance on China. As noted above, the Section 301 tariffs were complemented in January 2020 by a "Phase One" trade agreement with China, which permitted the United States to maintain tariffs on Chinese imports while committing China to make a number of structural changes with respect to agricultural regulations, intellectual property rights and enforcement, financial services access, and other matters. The Phase One agreement also required China to substantially increase its purchases of goods from the United States. The combination of the Section 301 tariffs and the Phase One agreement combined to improve the terms of trade between the United States and China. A Wall Street Journal analysis observed that "[t]he increase in shipments to China was led by products such as soybeans, crude oil, cotton and corn—all covered by the purchase agreements under the so-called Phase One trade pact implemented a year ago under Mr. Trump."[26]
    - One very concrete example of the success of the Section 301 tariffs is the domestic market for EVs. In 2018, the United States imported very few EVs from China. Nevertheless, anticipating an eventual surge in production and export of EVs from China, the Trump Administration imposed a 25 percent tariff on imported Chinese EVs as part of the Section 301 action, on top of the 2.5 percent MFN duty rate. The Biden Administration just announced an increase of the Section 301 tariff on Chinese EVs to 100 percent. As Chinese exports of EVs rapidly increased

[24] Neil Irwin, "U.S. Winning World Economic War," Axios (Jan. 31, 2024), *available at* https://www.axios.com/2024/01/31/us-economy-2024-gdp-g7-nations.
[25] "Trade in Goods With China," U.S. Census Bureau, *available at* https://www.census.gov/foreign-trade/balance/c5700.html.
[26] Yuka Hayashi, "U.S. Trade Balance With China Improves, but Sources of Tension Linger," Wall Street Journal (Feb. 5, 2021), *available at* https://www.wsj.com/articles/u-s-trade-deficit-narrowed-in-december-as-exports-outpaced-imports-11612532757?mod=article_inline.

over the past few years – reaching 4.1 million units in 2023[27] valued at $34.1 billion[28] – the U.S. market was largely insulated by the cumulative 27.5 percent tariff on such vehicles. U.S. imports of Chinese EVs in 2023 were valued at only $358 million.[29] By contrast, the European Union began to be inundated with Chinese EVs, accounting for 40 percent of Chinese EV exports.[30] Protecting the U.S. EV market from distortive Chinese imports has proven critical to providing breathing space for the U.S. industry.

- The Section 301 tariffs have also proven effective in decreasing U.S. dependence on critical technology products. The Section 301 tariffs were focused on products that fall within the PRC's "Made in China 2025" strategy.[31] The U.S. International Trade Commission ("ITC") found that U.S. imports of items subject to the Section 301 tariffs declined substantially, falling from $345.4 billion in 2017 to $265.1 billion in 2021.[32]
- The ITC report also found that for the ten U.S. industries most affected by the Section 301 program, the tariffs "increased the value of domestic production by between 1.2 percent for Computer Equipment and 7.5 percent for Household and Institutional Furniture and Kitchen Cabinets in 2021."[33] In other words, the ten most affected sectors all benefitted from increased domestic production value. In the aggregate across all products covered by the Section 301 tariffs, the ITC observed a net positive increase in the value of domestic production of such products.[34]

---

[27] Ken Moritsugu, "Chinese auto exports rose 64% in 2023, with strong push by EVs, as makers expanded overseas," Associated Press (Jan. 11, 2024), *available at* https://apnews.com/article/china-auto-exports-ev-hybrid-7d553c31597125d6702b6691a8542cb1.

[28] Joseph Webster, "China has become an electric vehicle export behemoth. How should the US and EU respond?," Atlantic Council (Feb. 29, 2024), *available at* https://www.atlanticcouncil.org/blogs/new-atlanticist/china-has-become-an-electric-vehicle-export-behemoth-how-should-the-us-and-eu-respond/.

[29] *Id.*

[30] *Id.*

[31] Robert Lighthizer, *No Trade Is Free: Changing Course, Taking On China, and Helping America's Workers* (2023) at 148 ("The proposed list of products was based on extensive interagency economic analysis and targeted products benefiting from China's industrial plans such as the Made in China 2025 plan.").

[32] "Economic Impact of Section 232 and 301 Tariffs on U.S. Industries," U.S. International Trade Commission Pub. 5405 (May 2023) at 137, *available at* https://www.usitc.gov/publications/332/pub5405.pdf; *see also* Chad Bown, "Four years into the trade war, are the US and China decoupling?," Peterson Institute for International Economics (Oct. 20, 2022), *available at* https://www.piie.com/blogs/realtime-economics/four-years-trade-war-are-us-and-china-decoupling ("As expected, the trade war has had the largest impact on imports from China of products hit with the highest US tariffs. US imports from China of goods currently facing a 25 percent duty (Lists 1, 2, and 3) remain 22 percent below pre-trade war levels (figure 2). . . . US imports from China of products currently subject to 7.5 percent tariffs (List 4A) remain 3 percent below levels in August 2019 (right before imposition of tariffs on those products)").

[33] *Id.* at 147.

[34] *Id.* at 149.

- At the same time, the Section 301 tariffs appear to have had no material impact on inflation. The Section 301 tariffs were imposed between July 2018 and September 2019.[35] Inflation was very low during that time period and the following years. In fact, the U.S. inflation rate dropped from 2.44 percent to 1.81 percent from 2018 to 2019, and dropped again to 1.23 percent in 2020.[36] Inflation did not begin its steep increase until after that, which some economists attribute to "volatility of energy prices, backlogs of work orders for goods and service caused by supply chain issues due to COVID-19, and price changes in the auto-related industries"[37] – but not the Section 301 tariffs.[38]
- I would also note that some observers have dismissed the effect of the Section 301 tariffs by noting that in certain instances, Chinese companies have moved elements of their production operations to other countries. This likely is true. However, even incremental movement of supply chains out of China are preferable to the *status quo ante*. From a more practical perspective, this indicates that the Section 301 remedy may need to be modified to prevent third-country workarounds by extending the effect of the measures to imports from Chinese headquartered companies or adjusting the rule of origin for goods subject to the Section 301 tariffs.
- The Section 301 tariffs slowed down China's exploitation of the United States' otherwise open economy. The Wall Street Journal has reported that "[t]he economic cost to Beijing of Trump's tariffs, retained by Biden, is real. Chinese companies slapped with tariffs exported less to the U.S., reduced hiring, spent less on research and development and were less likely to start new ventures, according to research from economists at Peking University, Fudan University and other leading Chinese universities. Overall, the damage to China's gross domestic product from the trade war was three times as high as the hit to the U.S., according to some Chinese economists."[39]

---

[35] "China Section 301-Tariff Actions and Exclusion Process," Office of the U.S. Trade Representative (May 14, 2024), *available at* https://ustr.gov/issue-areas/enforcement/section-301-investigations/tariff-actions.
[36] "Inflation, consumer prices for the United States," Federal Reserve Bank of St. Louis, *available at* https://fred.stlouisfed.org/graph/?g=lXs0 (*accessed* May 14, 2024).
[37] "What caused inflation to spike after 2020?," U.S. Bureau of Labor Statistics Monthly Labor Review (Jan. 2023), *available at* https://www.bls.gov/opub/mlr/2023/beyond-bls/what-caused-inflation-to-spike-after-2020.htm.
[38] One vocal critic of Section 301 tariffs estimated that they only contributed between 0.3 and 0.5 percent to the 7 percent spike in inflation in 2021. Ed Gresser, "Trade Fact of the Week: Estimates of 'Section 301' Contribution to U.S. Inflation Rate; Rane of Estimates: 0.3% to 1.3%?," Progressive Policy Institute (Apr. 27, 2022), *available at* https://www.progressivepolicy.org/blogs/trade-fact-of-the-week-estimates-of-section-301-contribution-to-u-s-inflation-rate-range-of-estimates-0-3-to-1-3/.
[39] Lingling Wei, "Beijing Braces for a Rematch of Trump vs. China," Wall Street Journal (May 1, 2024), *available at* https://www.wsj.com/world/china/trump-china-rematch-beijing-0b0a9c6e?mod=Searchresults_pos2&page=1.

- The Section 232 tariffs have also been effective in deterring imports of steel from China as well as imports of other foreign steel displaced into this market by Chinese exports to third country markets.
    - In the years leading up to the Section 232 action, U.S. steel production and employment was under substantial threat from import surges. Monthly new orders for domestic manufacturers had fallen to their lowest levels since the Great Recession.[40] The Section 232 tariff regime played a central role in the industry's ability to withstand the flood of steel imports generated by non-economic production capacity outside the United States. Thus, the survival of the U.S. steel industry is, on its own, indicative of the efficacity of the Section 232 tariffs.
    - In 2016, U.S. imports of steel products from China totaled approximately 800,000 MT. By the end of 2020, such imports fell to 350,000 MT. Imports from China increased again in subsequent years, but have remained below 600,000 MT. These numbers on direct imports from China are relatively low given the extensive AD/CVD orders on Chinese steel products.
    - The broader import data on steel may be more representative of the effectiveness of the Section 232 tariffs given the effect of Chinese overcapacity on third country markets. In 2017, the first year of the Trump Administration, there were 34.7 million MT of steel imports into the United States. By 2019, that fell by 27 percent to 25.4 million MT – a drop of 10 million MT. (In 2020, that number dropped to 20 million MT, although demand factors likely were at play due to the COVID-19 pandemic.) In 2021, imports increased to 28.6 million MT and have remained roughly at that level throughout his term. There were 25.6 million MT of imports last year, and we are on track for 27.2 million MT on an annualized basis.[41]
    - Finally, it should be noted that the Biden Administration's recent decision to increase Section 301 duties on Chinese steel products should further reduce imports of such products.[42]

[40] Manufacturers' New Orders: Iron and Steel Mills and Ferroalloy and Steel Product Manufacturing, Federal Reserve Bank of St. Louis, *available at* https://fred.stlouisfed.org/series/A31ANO (*accessed* May 16, 2024).
[41] U.S. Steel Import Monitor, U.S. Department of Commerce, *available at* https://www.trade.gov/data-visualization/us-steel-import-monitor (*accessed* May 14, 2024).
[42] "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," The White House (May 14, 2024), *available at* https://www.whitehouse.gov/briefing-room/presidential-actions/2024/05/14/memorandum-on-actions-by-the-united-states-related-to-the-statutory-4-year-review-of-the-section-301-investigation-of-chinas-acts-policies-and-practices-related-to-technology-transfer-intellectua/.

- Robust use of CFIUS authorities has deterred Chinese investment in key sectors and geographic locations in the United States. 2016 and 2017 were record years for Chinese foreign direct investment in the United States, totaling $48.4 billion and $36.8 billion, respectively.[43] However, these figures declined markedly in ensuring years, falling to less than $5 billion in 2022.[44] This trend is also reflected in CFIUS data, which show a decline in notices filed with the committee for Chinese purchases of U.S. assets from 2018 to 2021, with a resurgence in notices involving China in 2022 and 2023.[45] In light of the declining Chinese investment in the United States, this recent increase in CFIUS filings likely reflects investors' increased awareness of the sensitivity of such investment, the growing use of CFIUS' authority to investigate "non-notified" transactions, and efforts by investors to obtain the certainty of CFIUS clearance.

In sum, the implementation of robust U.S. trade measures to manage trade and investment with China have not slowed down or undermined the U.S. economy. Rather, such measures have strengthened the resilience of the U.S. economy and incentivized production in the United States. Numerous factors are at play in U.S. economic expansion over the past few years, and disentangling our supply chains from China have certainly been part of that dynamic.

IV. Proposals for U.S. Trade and Investment Policies Toward China

Designing and implementing optimal policy prescriptions for the U.S.-China economic relationship depend on fully appreciating the extent of the challenge posed by China for the United States. Those who assess that China does not pose a significant economic or security threat will have different views on appropriate trade policy toward China.

Speaking for myself, I view China's stated ambitions and observed actions as a generational challenge for the United States. Trade and investment with China not only have failed to live up to expectations, but they have also actively harmed U.S. economic and national security interests. China itself has focused on decoupling for many years, importing from the United States only what it really needs and seeking to dominate its domestic and international markets, particularly in strategic sectors. Indeed, China repeatedly has implemented its "playbook" of excluding foreign companies from their domestic market, creating overcapacity, and flooding global markets with its goods.

---

[43] *See* The U.S.-China Investment Hub, Rhodium Group, *available at* https://www.us-china-investment.org/fdi-data.
[44] "Vanishing Act: The Shrinking Footprint of Chinese Companies in the US," Rhodium Group (Sept. 7, 2023), *available at* https://rhg.com/research/vanishing-act-the-shrinking-footprint-of-chinese-companies-in-the-us/.
[45] *See, e.g.*, "Committee on Foreign Investment in the United States: Annual Report to Congress, CY 2020," at 35, *available at* https://home.treasury.gov/system/files/206/CFIUS-Public-Annual-Report-CY-2020.pdf; "Committee on Foreign Investment in the United States: Annual Report to Congress, CY 2022," at 39, *available at* https://home.treasury.gov/system/files/206/CFIUS%20-%20Annual%20Report%20to%20Congress%20CY%202022_0.pdf.

China has done this in sectors such as steel, solar cells and modules, chemicals, consumer goods, and electronics, and now it is seeking to achieve the same in sectors such as pharmaceuticals, semiconductors, automobiles, and aircraft. Moreover, trade and investment with China remain very difficult for American businesses trying to participate in the Chinese market. In the most recent business climate survey by the American Chamber of Commerce in China, one-third of the survey participants still invested in China reported "experiencing unfair treatment compared to local competitors."[46]

These unfair trading practices by China have resulted in decades of U.S. trade deficits in goods and has negatively impacted our industrial base. This is particularly concerning China's increased militarism – its buildup of conventional and strategic capabilities combined with its assertion of authority in the South China Sea and aggressive territorial claims in Taiwan, the Philippines, India, Japan, and elsewhere. China is also engaged in a long-standing pattern of undermining human rights, basic freedoms, and democracy, and it uses its economic power to pursue these goals.

It is very important for the American people – and our allies – that the United States have a robust manufacturing base. I believe the stakes of losing this competition with China are very high. As a result, strong action on a number of fronts – including international trade – is essential to protect the economic and national security of the country. This does not mean the United States should attempt to harm the Chinese people or constrain Chinese growth for its own sake. Nor does it mean that all U.S.-China trade should be cut off. Rather, the focus should be on ensuring economic opportunity and mobility for American workers and their families, defending against Chinese unfair trading practices, and preventing Chinese military or technological dominance. The United States should implement a trade policy that includes these objectives. Below, I briefly outline a handful of recommendations on trade policy for consideration by Congress.

- PNTR. Congress should begin the process of revoking PNTR with China and creating a new tariff column with elevated tariffs applicable to Chinese goods. This is consistent with recommendations from the United States House Select Committee on Strategic Competition between the United States and the Chinese Communist Party.[47] As part of this, Congress should empower the President to

[46] Giulia Interesse, "AmCham China Business Climate Survey 2024: Key Takeaways," China Briefing (Feb. 7, 2024), *available at* https://www.china-briefing.com/news/amcham-china-business-climate-survey-2024-key-takeaways/.

[47] "Reset, Prevent, Build: A Strategy to Win America's Economic Competition with the Chinese Communist Party," United States House Select Committee on Strategic Competition between the United States and the Chinese Communist Party (Dec. 12, 2023), at 14, *available at* https://selectcommitteeontheccp.house.gov/sites/evo-subsites/selectcommitteeontheccp.house.gov/files/evo-media-document/reset-prevent-build-scc-report.pdf.

modify tariffs on China where appropriate for economic and national security purposes.

- Customs Rules. Congress should pass legislation prohibiting preferential duty treatment under free trade agreements with third countries or other preference programs where (1) Chinese content in relevant imports exceeds a *de minimis* level and (2) the goods were produced by a Chinese company or its subsidiary or branch in the third country.
- Counteracting Economic Coercion. Congress should pass legislation to reduce the vulnerability of U.S. companies to economic coercion or retaliation by China. For example, such legislation could provide that revenue from tariffs on Chinese goods be disbursed to workers and companies harmed by Chinese retaliation. Further, Congress could authorize action by the President against companies from third countries that take advantage of Chinese retaliation against the United States by backfilling into the Chinese market.
- Outbound Investment Controls. Congress should pass legislation establishing review of outbound U.S. investment into China in a broad variety of sectors that have economic and strategic significance. This regime should empower the Executive Branch to take action to prevent or otherwise mitigate such investment where it would harm the economic or national security of the United States.
- Support for Critical Manufacturing and Research and Development. Congress should assess whether additional sectors should receive incentives along the lines of those in the CHIPS and Science Act or Inflation Reduction Act. Incentives should be considered for pharmaceuticals, robotics, medical devices, aircraft, automotive, energy products, telecommunications, electronics, and other sectors.
- Trade Remedy Laws. Congress should enhance trade remedy laws to ensure enforcement for the benefit of domestic manufacturers. Where courts or agencies have failed to protect domestic industries, Congress should improve the existing legal regime to deter repeat offenders, crack down on duty evasion, and account for market distortions that give foreign producers an edge over U.S. producers. Previously introduced bills such as the Leveling the Playing Field Act are a step in the right direction.
- Export Controls. Congress should require the appropriate agencies to enhance export controls on China with respect to a broader range of critical industries, such as aircraft, transportation equipment, and legacy semiconductor manufacturing equipment.
- Sanctions. Congress should pass legislation directing the U.S. Treasury Department to establish a China-specific sanctions program based on policies and practices related to international security, human rights, and other issues.

- Government Procurement. Congress should build upon previous efforts to restrict the use of government funds, loans, or grants to obtain goods and services from Chinese companies.

It should be noted that political will to enforce U.S. trade laws is the basis for any effective strategy to manage threats posed by China. There are a number of existing international trade and national security statutes and authorities that give the President substantial power to deal with the China challenge. But if a President is not committed to fundamentally changing the U.S. trade relationship with China, no amount of existing or new tools will make a difference.

Any policies enacted to rise to the challenge posed by China will have costs and benefits. Thus, the measures described above should be accompanied by competitive policies in adjacent issues areas such as energy, fiscal, and monetary policy. This can help U.S. companies and workers become more competitive and facilitate the United States' economic disentanglement from China. There is no silver bullet, and in some cases the effort to pursue strategic decoupling from China will cause short-term pain. However, the cost of doing nothing or underestimating the threat posed by China is far greater. Implementing these suggested policies will better equip the United States to grow its industrial base, provide meaningful employment for Americans, and establish secure and reliable supply chains.