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July 6, 2026

Via: USTR's electronic portal: <https://comments.ustr.gov/s/>

Jamieson Greer  
United States Trade Representative  
600 17th Street NW  
Washington, DC 20508

Re: *Notice of determinations, request for comments, and notice of public hearings, 91 Fed. Reg. 34272 (June 5, 2026), USTR-2026-0265.*

Dear Ambassador Greer:

We write on behalf of the Oregon Attorney General, the California Attorney General, and the Arizona Attorney General, joined by the Attorneys General of Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Rhode Island, Vermont, Virginia, Washington and Wisconsin to oppose the proposed tariffs in the *Notice of Determinations and Request for Comments Concerning Actions in Section 301 Investigations of Acts, Policies, and Practices of Various Economies Related to the Failure to Impose and Effectively Enforce a Prohibition on the Importation of Goods Produced with Forced Labor*, 91 Fed. Reg. 34272 (June 5, 2026) (Proposal). This Proposal, if finalized, would not only continue sweeping and economically harmful tariffs, it would also allow the executive branch to usurp the taxing power of Congress by exceeding the bounds of Section 301 and allowing unjustified tariffs on United States imports from nearly every trading economy. The Proposal violates the Administrative Procedure Act and the Constitution.

The undersigned Attorneys General, as the chief law officers in our states, oppose forced labor in all its forms. Goods made with forced labor should be barred from entry into our ports, and governments, including the United States government, should continue to take steps to eliminate forced labor around the globe. But the Proposal uses forced labor as a pretext to continue an illegal tariff scheme that is so broad that it defies its stated aims. The likely effect of the tariffs is not to change behavior by driving down the use of forced labor—and the Report<sup>1</sup> accompanying

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<sup>1</sup> USTR, *Report in Section 301 Investigations: Acts, Policies, and Practices of Various Economies Related to the Failure to Impose and Effectively Enforce a Prohibition on the Importation of Goods Produced with Forced Labor*

the Proposal does not claim that they will. Rather, the tariffs will make goods more expensive for the states and their residents and will continue the economic devastation that prior tariffs have caused. Accordingly, we oppose the Proposal and will continue to fight the tariffs the President seeks to impose here.

President Trump has demonstrated that he wishes to have unbounded authority to impose tariffs on most of the world. But the Constitution assigns to Congress, not the President, the “Power To lay and collect Taxes, Duties, Imposts and Excises.”<sup>2</sup> Congress has only delegated authority to the President to impose tariffs in limited and carefully defined circumstances.<sup>3</sup>

To implement his chaotic tariff policies, the President first relied on the International Emergency Economic Powers Act (IEEPA), which the Supreme Court then ruled does not authorize tariffs at all.<sup>4</sup> Next, the President invoked Section 122 of the Trade Act of 1974 to achieve the same ends—nearly global tariffs that he can change at his whim. But those tariffs, like the IEEPA tariffs, were found to exceed the statutory authority the President identified.<sup>5</sup> Now, the President has directed the United State Trade Representative (USTR) to implement the same sweeping tariffs through a different mechanism: Title III of the Trade Act of 1974, often referred to as “Section 301.”<sup>6</sup> But Section 301 is specific in its use and rigorous in its requirements. Here, the USTR has failed to provide a sufficient factual or legal basis for imposing tariffs on 60 different economies that by the USTR’s own calculations account for 99.40% of goods imported to the United States. Neither Section 301 nor the record here supports such an action.

## **I. The Report Does Not Support Imposition of Sweeping Tariffs Under Section 301**

On March 12, 2026, the USTR announced it was initiating a Section 301 investigation into 59 countries and the European Union. On June 2, 2026, just two and a half months after announcing this investigation, the USTR published its Report, *Acts, Policies, and Practices of the Various Economies Related to the Failure to Impose and Effectively Enforce a Prohibition on the Importation of Goods Produced with Forced Labor* (the Report). The USTR then published its actionability determination and Proposal to impose global tariffs in the Federal Register.<sup>7</sup>

Both the Report and the Proposal rely on a cursory survey of laws around the globe regarding the prohibition of importation of goods made with forced labor and, for countries that ban importation of goods made with forced labor, conclusory statements that each of those countries

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(2026) (Report), <https://ustr.gov/sites/default/files/files/Press/Releases/2026/USTR%20Report%20Sec%20301%20FL%20301%206-2-26%20FINAL%20for%20upload.pdf>.

<sup>2</sup> U.S. Const. art. I, § 8.

<sup>3</sup> “When Congress grants the power to impose tariffs, it does so clearly and with careful constraints.” *Learning Res., Inc. v. Trump*, 607 U.S. 229, 251 (2026).

<sup>4</sup> See *Learning Res.*, 607 U.S. 229.

<sup>5</sup> *Oregon v. United States*, \_\_\_ F. Supp. 3d \_\_\_, No. 26-01472-3JP, 2026 WL 1257669 (Ct. Int’l Trade May 7, 2026), appeal docketed, No. 26-1804 (Fed. Cir. May 8, 2026).

<sup>6</sup> 19 U.S.C. §§ 2411–2420.

<sup>7</sup> 91 Fed. Reg. 34272.

do not adequately enforce their laws.<sup>8</sup> The Report points to bilateral and multilateral treaties that recognize the need to prevent trade in forced labor goods, including the United States–Mexico–Canada Agreement (USMCA).<sup>9</sup> And it highlights just three examples of goods reported to be produced in part with forced labor: tobacco from Malawi, rice from Burma, and beef from Brazil; together with some basic trading patterns of those goods. The Proposal then points to those examples to justify 10% and 12.5% tariffs on nearly all imports from nearly all economies that were investigated: 10% tariffs for 16 economies (15 countries and the European Union) that either impose a forced labor prohibition or have made commitments as part of their Agreements on Reciprocal Trade regarding forced labor prohibitions, and 12.5% tariffs on the remaining 44 countries. As explained below, the Report does not satisfy the requirements of Section 301 nor the Administrative Procedure Act.

## II. Section 301 Has Strict Limits

As the Supreme Court has made clear, “[t]he power to impose tariffs is very clearly a branch of the taxing power.”<sup>10</sup> The Framers “did not vest any part of the taxing power in the Executive Branch.”<sup>11</sup> Rather, “[t]he whole power of taxation rests with Congress.”<sup>12</sup> “When Congress has delegated its tariff powers, it has done so in explicit terms, and subject to strict limits.”<sup>13</sup> It has capped the amount and duration of tariffs and “conditioned exercise of the tariff power on *demanding procedural prerequisites*.”<sup>14</sup> Congress does not give “the President power to unilaterally impose unbounded tariffs,” which would “represent a ‘transformative expansion’ of the President’s authority over tariff policy, and indeed . . . over the broader economy as well.”<sup>15</sup> Rather, any tariff authority that Congress might delegate to the Executive is subject to, and constrained by, “*significant procedural limitations*” set forth in statute.<sup>16</sup> “To make use of [] delegated power, the President would of course be required to proceed strictly in accordance with the procedures specified in the statutes conferring the delegation.”<sup>17</sup>

Section 301 imposes a number of careful constraints and significant procedural limitations, which—like the previous legal constraints on Presidential authority—the Administration violates in its latest attempt to reimpose its desired tariffs.

The USTR may take action under Section 301(b) only after making a determination under Section 304(a)(1) that an act, policy, or practice of a foreign country is unreasonable or

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<sup>8</sup> See Report at 21–31.

<sup>9</sup> *Id.* at 10.

<sup>10</sup> *Learning Res.*, 607 U.S. at 240 (citation modified).

<sup>11</sup> *Id.* at 241.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 243 (Roberts, C.J., plurality op.).

<sup>14</sup> *Id.* at 244 (emphasis added).

<sup>15</sup> *Id.* at 244.

<sup>16</sup> *Id.* (emphasis added).

<sup>17</sup> *Consumers Union of U.S., Inc. v. Kissinger*, 506 F.2d 136, 142–43 (D.C. Cir. 1974).

discriminatory and burdens or restricts United States commerce.<sup>18</sup> Section 304(a)(1), in turn, provides that the USTR can make such a determination only on the basis of an investigation initiated under Section 302 and “consultations with the foreign country concerned regarding the issues involved in such investigation” under Section 303.<sup>19</sup>

These statutorily required “consultations” require at least “*some* effort by [the USTR] to receive [the foreign country’s] views . . . and then [to] consider such advice.”<sup>20</sup> Significantly, “[c]onsultation is a process that requires reciprocal communication of some substance; it is not satisfied by a rubber stamp or a sign-off on a decision that has already been made.”<sup>21</sup>

If, following the required investigation and consultations, the USTR determines that an act, policy, or practice of the foreign country at issue “is unreasonable or discriminatory and burdens or restricts United States commerce,” and that “action by the United States is appropriate,” Section 301 allows the USTR to take all “appropriate and feasible action . . . to obtain the elimination of that act, policy, or practice.”<sup>22</sup>

In order for an action to be “appropriate,” it must be “one that can end or reverse the investigated conduct.”<sup>23</sup> Consequently, any tariffs imposed under Section 301 “must be tailored to achieve Section 301’s statutory goal of eliminating the investigated conduct.”<sup>24</sup> Nothing in Section 301 allows the USTR “to raise tariffs for any reason” or to raise tariffs beyond the amount that would achieve eliminating the investigated conduct.<sup>25</sup> Section 301 caps the tariffs that may be imposed to only those appropriate to eliminate the foreign practices found to be unfair “after a full investigation.”<sup>26</sup>

Section 301 also does not allow the Executive to impose tariffs against foreign countries en masse. Rather, Section 301 envisions selective investigations regarding specific acts, policies, or practices by a specific individual foreign country. As Congress stated in enacting Section 301, “actions taken by the [Executive] under Section 301 should generally be on a *selective* basis, that is, only against those countries found to discriminate against U.S. commerce.”<sup>27</sup>

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<sup>18</sup> 19 U.S.C. §§ 2411(b), 2414(a)(1).

<sup>19</sup> *Id.* §§ 2412, 2413(a)(1), 2414(a)(1).

<sup>20</sup> *Campanale & Sons, Inc. v. Evans*, 311 F.3d 109, 120 (1st Cir. 2002).

<sup>21</sup> *See, e.g., Doe v. Noem*, \_\_\_ F. Supp. 3d \_\_\_, No. 26 Civ. 2103 (DEH), 2026 WL 1192079, at \*12–13 & n.13 (S.D.N.Y. May 1, 2026) (citing cases).

<sup>22</sup> 19 U.S.C. § 2241(b)(1), (2).

<sup>23</sup> *HTMX Indus. LLC v. United States*, 156 F.4th 1236, 1252 (Fed. Cir. 2025).

<sup>24</sup> *Id.* at 1253.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 1254.

<sup>27</sup> S. Rep. No. 93-1298, at 31 (1974) (emphasis added). Likewise, the statutory text refers to engaging in consultations with “*the* foreign country concerned,” 19 U.S.C. § 2413(a)(1) (emphasis added), and taking actions on a nondiscriminatory basis (which the USTR does not attempt here) or else “solely against *the* foreign country,” 19 U.S.C. § 2411(c)(3)(A) (emphasis added). *Cf. Shum v. Intel Corp.*, 629 F.3d 1360, 1367 (Fed. Cir. 2010) (Congress’s use of the definite article “the” “is evidence that what follows . . . is specific and limited to a single

The Proposal plainly does not comply with these strict procedural constraints. Here, the USTR opened a single blanket “investigation” against 60 economies that account for 99.40% of all U.S. imports.<sup>28</sup> After an abbreviated two-and-a-half-month “investigation,” the USTR proposes to reimpose the same blanket global tariffs (10% against 16 economies and 12.5% against 44 economies) that the Administration had previously tried and failed to impose under IEEPA and Section 122. The Proposal contains no finding explaining why tariffs in the amount of 10% or 12.5% are what is “appropriate” to eliminate the claimed forced-labor-import practices at all, much less why either of these figures is the respective amount “appropriate” for each of the different 60 economies at issue.<sup>29</sup> Among other things, the Proposal’s sweeping tariffs include countries that the USTR expressly notes have *already entered into* Agreements on Reciprocal Trade with the United States regarding forced-labor import prohibitions, i.e., the very conduct that the USTR purports to seek to eliminate.<sup>30</sup> The USTR states that such commitments become operative only in the future,<sup>31</sup> but provides no rationale for any one of these countries that have already made these commitments (with operative dates that the United States itself has negotiated) how an additional 10% tariff is “appropriate” or tailored to achieving Section 301’s statutory goal.

Uncoupling Section 301 from its procedural requirements that actions be selective, appropriate, and tailored—to instead allow the Executive to impose blanket tariffs of 10% or 12.5% on “60 economies from which 99.40 percent of U.S. imports are shipped”—would be to render the Executive “unconstrained by the significant procedural limitations in [Section 301] and free to issue a dizzying array of modifications at will.”<sup>32</sup> “That view, if credited, would represent a transformative expansion of the [Executive]’s authority over tariff policy, and indeed . . . over the broader economy as well.”<sup>33</sup> No previous Administration has ever invoked Section 301 for blanket investigations or blanket tariffs against multiple disparate countries at once, much less against 60 economies from which 99.40% of U.S. imports are shipped, without any finding or

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party”); *Cochise Consultancy, Inc. v. United States ex rel. Hunt*, 587 U.S. 262, 272 (2019) (“the use of the definite article indicates that there is generally only one person covered”) (citation modified) (quoting *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004)).

<sup>28</sup> See 91 Fed. Reg. 12884 (Mar. 17, 2026).

<sup>29</sup> Cf. *HTMX*, 156 F.4th at 1253 (Section 301 actions must be “tailored,” and Section 301 does not allow tariffs by an amount that exceeds what is appropriate to eliminate the investigated conduct); *FCC v. Consumers Rsch.*, 606 U.S. 656, 681–82 (2025) (agency action to raise more revenue that needed “would not be ‘sufficient’ but instead excessive”). The Proposal calls for a blanket 10% on each of 6 different economies that have imposed forced-labor-import prohibitions but supposedly have not enforced them and a blanket 12.5% on each of 54 different economies that have supposedly have not imposed forced-labor-import prohibitions—but the Proposal provides no explanation for why it differentiates and imposes a higher rate for the latter economies or why a lower rate would not be “appropriate” or sufficient to incentivize those economies to also eliminate supposed forced-labor imports. Section 301 tariffs are meant to be prospective, to eliminate unfair practices *going forward*—there is no provision to impose retrospective tariffs for punitive purposes. See *HTMX*, 156 F.4th at 1253–54.

<sup>30</sup> 91 Fed. Reg. 34272, 34274–75 (June 5, 2026).

<sup>31</sup> *Id.* at 34275.

<sup>32</sup> *Learning Res.*, 607 U.S. at 244 (Roberts, C.J., plurality op.).

<sup>33</sup> *Id.* (citation modified).

discussion of how those tariffs are appropriate or tailored for each such economy to achieve the stated goals. “The lack of historical precedent for th[ese] tariffs, coupled with the breadth of authority that the [Executive] now claims, is a telling indication that the tariffs extend beyond the [Executive]’s ‘legitimate reach.’”<sup>34</sup>

### **III. The Proposal is a Pretextual and Unlawful Effort to Allow the Executive Branch Unfettered Tariff Power**

The Report and Proposal are an obvious pretext to continue the tariffs that President Trump sought to impose under IEEPA and, when those tariffs were ruled unlawful, that President Trump sought to reimpose under Section 122 of the Trade Act of 1974, which have now also been ruled unlawful (and which in any event expire after 150 days). In fact, Annex A of the Proposal, which lists goods exempted from the proposed tariffs is identical to Annexes I and II of the Section 122 Proclamation.<sup>35</sup> Even the level of tariffs proposed—10% on the 16 economies that have laws prohibiting the importation of forced labor goods and 12.5% on the remaining 44 economies—are similar to the prior tariff levels.<sup>36</sup> There is no link between forced labor goods and the tariffs imposed, and the Report claims none.

The Report cites a U.S. Department of Labor publication enumerating goods produced with forced labor, but does not explain why certain products listed in that publication are exempted from tariffs in Annex A. In fact, one of the three examples that the Report points to as an example of products involving forced labor is frozen beef from Brazil. But Annex A exempts many beef products from the tariffs, including frozen beef.<sup>37</sup> In addition, Annex A lists exemptions by product, not country, which similarly belies the notion that the tariffs are targeted in any way to change behavior. The U.S. Department of Labor publication includes other products, such as coffee, copper ore, cobalt ore, and other mined elements that are produced with forced labor—all of which are similarly exempted from tariffs in Annex A. The Report does not sufficiently explain why importing these products without tariffs is justified while imposing tariffs on countless other products that bear no risk of being produced with forced labor and that do not, in turn, distort the market.

The speed of the investigations similarly is evidence of their pretextual nature. Typically, Section 301 investigations into a single economy can take twelve to eighteen months.<sup>38</sup> Here, by contrast, USTR conducted a blanket investigation of 60 economies collectively and made its supposed determinations in less than three months in an obvious effort to make Section 301 tariffs go into

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<sup>34</sup> *Id.* at 245–46 (citation modified) (citing *Nat’l Fed’n of Indep. Bus. v. Dep’t of Labor*, 595 U.S. 109, 119 (2022)); *id.* at 250 (majority op.) (“[T]he fact that no President has ever found such power [in claimed tariff statute] is strong evidence that it does not exist.”).

<sup>35</sup> Compare Proclamation No. 11012, Annexes I & II (Feb. 20, 2026), with 91 Fed. Reg. 34277–344.

<sup>36</sup> Compare Proclamation No. 11012, ¶ 13 (imposing 10% ad valorem surcharge), with 91 Fed. Reg. 34274 (listing countries subject to 10% or 12.5% tariffs based on findings purportedly related to forced labor).

<sup>37</sup> See 91 Fed. Reg. 34277–78. While it is possible that some frozen beef from Brazil would be subjected to tariffs, the Report does not distinguish which products those are or why the beef products exempted should not be subject to tariffs.

<sup>38</sup> 19 U.S.C. § 2414(a)(2).

effect before the Section 122 tariffs expire. Such speed undermines the purpose of Section 301, which is to allow the United States to negotiate with trading partners to change behavior.

The scope of the Proposal is also not linked to the scope of harm. The Report estimates that in 2021, 0.22% of the world’s population has been forced to work against their will in the private sector to produce goods.<sup>39</sup> The Report also estimates that the cost to ensure that goods that are at risk of being produced in whole or in part with forced labor from China amounts to roughly a 2.5% tariff on the goods being inspected.<sup>40</sup> However, the Proposal turns around and imposes a 12.5% tariff on nearly *all* goods from 44 economies, and a 10% tariff on nearly *all* goods from the remaining 16 it investigated: those with laws already prohibiting imports of goods produced with forced labor. The Report does not indicate whether or how the tariffs will lead to less need for inspection or any change in behavior; it also does not provide benchmarks or goals for how countries can graduate out of the tariff levels by enforcing forced labor import laws, if at all. The tariff levels therefore are not in any way linked to the scope of harm, further supporting the claim that the Proposal is pretextual.

Finally, administration officials have repeatedly stated that they expect to “continue” global tariffs at the same or similar levels, as it is a priority of President Trump.<sup>41</sup> The Proposal is clearly a method by which the USTR aims to reimpose sweeping tariffs under the pretext of banning imports made with forced labor, via sham Section 301 investigations, and, once tariffs are in place, to adjust the tariff levels at their whim. This is far outside of the scope that the statutory scheme contemplates.

#### **IV. The Initial Comments and Hearing Testimony Highlight the Arbitrary and Capricious Nature of the Proposal**

From the start of its Section 301 investigations, the USTR has received overwhelming public comment opposing the imposition of tariffs, particularly tariffs of the type it now proposes to impose.<sup>42</sup> Those submissions detail the many ways in which imposing tariffs of the sort proposed would be an arbitrary and capricious response to the forced labor concerns identified during the investigation.

A court must “set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”<sup>43</sup> An action is

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<sup>39</sup> Report at 11, *citing* Int’l Lab. Org., *50 Million People Worldwide in Modern Slavery* (Sep. 12, 2022), <https://www.ilo.org/resource/news/50-million-people-worldwide-modern-slavery-0>. The figure here removes forced labor in the private sector dealing with commercial sexual exploitation (23% of all forced labor).

<sup>40</sup> Report at 13–14.

<sup>41</sup> Kevin Breuninger, *Bessent Says Global 15% Tariff Starts This Week, Predicts Trump Duties Will Return to Old Levels Later This Year*, CNBC (Mar. 4, 2026, at 22:04 ET), <https://www.cnbc.com/2026/03/04/bessent-says-global-15percent-tariff-starts-this-week-move-back-to-prior-rates-within-5-months.html> [https://perma.cc/5RQF-SW6H]

<sup>42</sup> More than 30 witnesses spoke against the imposition of tariffs, while at most, 10 spoke in favor. Those numbers count the pro-tariff side generously. Even those in favor generally supported targeted tariffs based on risk rather than the broad tariffs set forth in the USTR Proposal.

<sup>43</sup> 5 U.S.C. § 706(2)(A).

“arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.”<sup>44</sup>

That is the case here, for three reasons. First, as the comments and testimony explain, tariffs bear no reasonable connection to the harms identified in the Proposal, namely forced labor. Although forced labor is a very real problem, the proposed tariffs would not solve it. Second, the tariffs proposed are incoherent in at least two ways. In the Proposal, the USTR proposes to treat countries with and without certain mechanisms to stop forced labor similarly. And within each of those two categories, different nations are treated identically, despite having different challenges in stopping the use of forced labor. Third, the USTR fails entirely to engage with the comments and testimony it received in opposition to the imposition of tariffs.

The record before the USTR therefore shows that imposing tariffs would not advance the statutory objectives of Section 301 and would instead raise costs, reduce domestic production, undermine international cooperation, and disregard viable alternatives. Proceeding would be arbitrary and capricious under the Administrative Procedure Act (APA), 5 U.S.C. § 706(2)(A).

**A. The USTR fails to meaningfully balance the costs and benefits of the proposed tariffs.**

The USTR is required to balance the benefits it expects tariffs to produce with the harms they are likely to impose.<sup>45</sup> But the benefits are illusory, and the harms are real.

**i. The proposed tariffs are not likely to significantly lessen the use of forced labor.**

As witnesses and commentators explained, without meaningful rebuttal in the USTR’s Proposal, the proposed tariffs are not workable solutions to the very real problem of forced labor. Adopting a remedy not meaningfully tied to the problem at hand would be arbitrary and capricious.<sup>46</sup>

The comments and testimony received by the USTR reveal the absence of a meaningful connection between the harms caused by forced labor and tariffs as a solution. An illustrative comment is that of the National Foreign Trade Council (NFTC). NFTC, while recognizing the seriousness of forced labor, urged “government-to-government engagement” to “seek solutions,” “rather than . . . counterproductive and inflationary tariffs.”<sup>47</sup> Tariffs “would disproportionately

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<sup>44</sup> *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

<sup>45</sup> See *Michigan v. EPA*, 576 U.S. 743, 752 (2015).

<sup>46</sup> See *Motor Vehicle Mfrs. Ass’n*, 463 U.S. at 43 (requiring a “rational connection between the facts found and the choice made” (citation omitted)).

<sup>47</sup> NFTC, Comment to USTR Initiation of Section 301 Investigations, 91 Fed. Reg. 12886 (initiated Mar. 17, 2026) (submitted Apr. 15, 2026), at 2, <https://comments.ustr.gov/s/commentdetails?rid=JWRKXB7RPT>.

harm U.S. importers who continue to prioritize investments and other commitments to remove the risk of forced labor in global supply chains.”<sup>48</sup>

Other commenters, including the Information Technology & Innovation Foundation,<sup>49</sup> the Climate Leadership Council,<sup>50</sup> the National Pork Producers Council,<sup>51</sup> and the Cato Institute,<sup>52</sup> commented negatively on the efficacy of tariffs in the context of other components of the investigation. But much of their reasoning applies here: tariffs do not work to force change in other economies, except under narrow conditions. The broad tariffs USTR proposes do not fit those conditions, and cannot.

At the hearings, witnesses across sectors—including manufacturing, import dependent industries, foreign governments, and labor rights organizations—presented extensive, un rebutted evidence that tariffs would not effectively address forced labor concerns and would inflict significant harm on U.S. commercial interests.<sup>53</sup>

Crucially, what emerges from the hearings is that trade with the United States, not its absence, discourages use of forced labor. Tariffs reduce that trade by raising prices of imported goods and so reduce the United States’ positive influence. As a representative of the International Wood Products Association (IWPA) put it, “[a]ccess to the American market is itself a powerful tool against the use of forced labor.”<sup>54</sup> Therefore, “[d]ecoupling from global markets only reduces incentives” to avoid the use of forced labor, so “tariffs would only add to the costs for American businesses and consumers” without producing a corresponding benefit.<sup>55</sup> Tariffs that would work against, not for, USTR’s stated objectives are arbitrary and capricious.<sup>56</sup>

That tariffs would likely fail to achieve the goal of reducing use of forced labor can be seen even more clearly by considering the two categories of economies the USTR proposes to target: those

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<sup>48</sup> *Id.*

<sup>49</sup> Info. Tech. & Innov. Found., Comment to USTR Initiation of Section 301 Investigations, 91 Fed. Reg. 12886 (initiated Mar. 17, 2026) (submitted Apr. 15, 2026), <https://comments.ustr.gov/s/commentdetails?rid=V74YBJVCWH>.

<sup>50</sup> Climate Leadership Council, Comment to USTR Initiation of Section 301 Investigations, 91 Fed. Reg. 12886 (initiated Mar. 17, 2026) (submitted Apr. 15, 2026), <https://comments.ustr.gov/s/commentdetails?rid=HW63WXWRJ9>.

<sup>51</sup> Nat’l Pork Producers Council, Comment to USTR Initiation of Section 301 Investigations, 91 Fed. Reg. 12886 (initiated Mar. 17, 2026) (submitted Apr. 15, 2026), <https://comments.ustr.gov/s/commentdetails?rid=YW7Y2FHHXJ>.

<sup>52</sup> Cato Inst., Comment to USTR Initiation of Section 301 Investigations, 91 Fed. Reg. 12886 (initiated Mar. 17, 2026) (submitted Apr. 15, 2026), <https://comments.ustr.gov/s/commentdetails?rid=QBQFXVM2CD>.

<sup>53</sup> See Transcript of Special 301 Public Hearing, USTR-2026-0067 (Apr. 29, 2026) (“Day 2”), [https://ustr.gov/sites/default/files/files/Issue\\_Areas/Enforcement/Section%20301/Day%202%20Hearing%20Transcript%2004.29.2026.pdf](https://ustr.gov/sites/default/files/files/Issue_Areas/Enforcement/Section%20301/Day%202%20Hearing%20Transcript%2004.29.2026.pdf); Transcript of Special 301 Public Hearing, USTR-2026-0067 (Apr. 28, 2026) (“Day 1”), [https://ustr.gov/sites/default/files/files/Issue\\_Areas/Enforcement/Section%20301/Public%20Hearing%20Transcript.pdf](https://ustr.gov/sites/default/files/files/Issue_Areas/Enforcement/Section%20301/Public%20Hearing%20Transcript.pdf).

<sup>54</sup> Day 2 26:9–10.

<sup>55</sup> *Id.* at 26:11–15.

<sup>56</sup> See *Motor Vehicle Mfrs. Ass’n*, 463 U.S. at 43 (a “clear error of judgment” makes a determination arbitrary and capricious).

that the USTR deemed to have mechanisms to prevent forced labor but less than successful enforcement (16 economies), and those deemed not to have any mechanism at all (44 economies).<sup>57</sup>

First, tariffs are a poor way to assist those economies that are trying but failing to eliminate forced labor in their supply chains. As several witnesses—including those representing Transparentem,<sup>58</sup> the Human Trafficking Legal Center (HTLC),<sup>59</sup> and the Corporate Accountability Lab (CAL)<sup>60</sup>—explained, tariffs on those economies would divert resources away from capacity building, discourage cooperation, and disrupt reform processes. That is why CAL called for international cooperation and support for global institutions, not punishment and coercion.<sup>61</sup> Imposing across the board tariffs could weaken compliance efforts in precisely the jurisdictions the U.S. is attempting to encourage. Failure to account for these foreseeable, adverse impacts on international enforcement cooperation would violate the APA’s requirement of reasoned decision making.<sup>62</sup> Importantly, the Report and Proposal do not engage meaningfully with these comments.

Second, tariffs are also an unworkable solution for encouraging countries to adopt mechanisms to prevent use of forced labor in the first place. The same organizations listed above explained that increasing tariff rates also would not meaningfully incentivize countries to adopt or operationalize forced labor import ban mechanisms and may in fact undermine that objective.<sup>63</sup>

That is because coercive tariff measures do not lead to durable institutional reforms. The adoption of import ban regimes requires legislative action, regulatory development, inter-agency coordination, and worker centered enforcement capacity—none of which can be accelerated by punitive trade restrictions.

The HTLC further emphasized that countries actively building such mechanisms require technical assistance, training, bilateral cooperation, and predictable economic conditions to implement them effectively. But high tariffs divert administrative resources, reduce political space for reform, and destabilize the very institutions responsible for labor rights enforcement.<sup>64</sup> What is more, they may lead countries to reduce their trading partnership with the United

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<sup>57</sup> See Notice of Determinations, 91 Fed. Reg. at 34274.

<sup>58</sup> Day 1 27:6–15.

<sup>59</sup> *Id.* at 22:5–16, 23:10–20.

<sup>60</sup> *Id.* at 33:7–22.

<sup>61</sup> *Id.* at 32:11–21.

<sup>62</sup> See *Judulang v. Holder*, 565 U.S. 42, 55 (2011) (agencies must approach their stated ends in “some rational way”).

<sup>63</sup> See HTLC, Comment to USTR Initiation of Section 301 Investigations, 91 Fed. Reg. 12886 (initiated Mar. 17, 2026) (submitted Apr. 15, 2026), at 2, 8, <https://comments.ustr.gov/s/commentdetails?rid=7TBDBR8TXB>; Transparentem, Comment to 91 Fed. Reg. 12886 (initiated Mar. 17, 2026) (submitted Apr. 8, 2026), at 2, <https://comments.ustr.gov/s/commentdetails?rid=978TX6H9R9>.

<sup>64</sup> HTLC Comment, *supra* n. 63, at 6–8.

States.<sup>65</sup> That would reduce the United States’ ability to build “[c]onstructive engagement,” a key means of reducing the use of forced labor.<sup>66</sup>

These comments also noted that governments facing across the board tariffs often respond by shifting trade to third country routes, altering supply chains on paper rather than improving labor conditions in practice, demonstrating that tariff pressure does not achieve Congress’s intended purpose of inducing genuine forced labor prevention.<sup>67</sup>

Because the record shows that higher tariff rates are unlikely to produce the policy outcomes the agency seeks—and may instead impede them—relying on tariffs as a mechanism to compel foreign regulatory adoption would lack a reasoned basis and further underscore the arbitrary and capricious nature of such action.<sup>68</sup>

**ii. The proposed tariffs pose an unacceptably high risk to the American economy.**

By contrast, the harms caused by the proposed tariffs are well-established. As a representative of the Forced Labor Working Group explained, “tariffs are a tax on U.S. importers, not foreign producers, which means that if tariffs are imposed under this investigation, they would tax the very companies that are doing the right thing, those building and implementing mechanisms and processes to stop forced labor from entering the supply chains.”<sup>69</sup>

Tariffs on goods without domestic substitutes are particularly harmful. So are tariffs on intermediate goods. Yet the USTR’s Proposal includes both, suggesting serious harm to the U.S. economy. What’s more, the punitive tariff rates the USTR proposes would lead to retaliatory tariffs, further punishing domestic producers and consumers.

A number of witnesses testified that U.S. domestic substitutes simply do not exist for many of the imported goods that would be subject to Section 301 tariffs. For example, the representative from the IWPA explained that many globally sourced wood species have no U.S. alternative and cannot be cultivated domestically, and that broad tariffs would cut off essential inputs used by U.S. manufacturers.<sup>70</sup>

Likewise, the Polyurethane Foam Association (PFA) representative noted that severe supply shortages in chemical inputs already exist and that further restricting intermediate inputs would “threaten production continuity” across downstream industries.<sup>71</sup>

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<sup>65</sup> *Id.* at 6–7.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 3; Transparentem Comment, *supra* n. 63, at 3.

<sup>68</sup> See *Judulang*, 565 U.S. at 55.

<sup>69</sup> Day 1 104:2–8.

<sup>70</sup> Day 2 27:6–13.

<sup>71</sup> *Id.* at 51:3–8.

A representative from Chemours similarly warned that tariffs on intermediate goods—many of which are unavailable in the United States at necessary scale or quality—would operate as a “direct tax on U.S. manufacturing,” suppress investment, and undermine domestic production.<sup>72</sup>

NFTC, in its comment, also argued that tariffs posed an unacceptable risk of retaliation. Indeed, “[i]mposing an outcome other than diplomatic engagement would indicate that the U.S. is not compliant with the standards being used for such reviews and become a justification for other countries to take actions against U.S. exports.”<sup>73</sup>

Where, as here, the record shows that U.S. businesses require essential inputs that lack domestic substitutes, imposing tariffs that would predictably raise costs on those U.S. businesses, disrupt supply chains, and impair U.S. productive capacity would be arbitrary and capricious.<sup>74</sup>

This is particularly true because the Proposal is not limited to goods produced in whole or in part with forced labor but instead applies to virtually all goods. As one U.S. manufacturer testified, “if you apply a flat tariff to all products from a particular country, every company may be absolutely disadvantaged, but the comparative benefits secured by those who exploit forced labor still remain. Indeed, exploiting forced labor may become even more lucrative if the legitimate business who spends more to keep their supply chains clean are struggling” because of tariffs.<sup>75</sup> Numerous U.S. companies that import goods that cannot be domestically sourced testified about the work they engage in to ensure that their supply chains do not use forced labor.<sup>76</sup> The proposed tariffs would harm these U.S. companies and their efforts to prevent forced labor and to raise working standards in the economies from which they source their supplies.

## **B. The proposed tariffs would treat unlike cases alike.**

The record also establishes that tariffs USTR proposes would be applied in a nearly uniform manner that fails to account for the very different legal, institutional, and enforcement positions of the various trading partners. An agency acts arbitrarily and capriciously when it “treat[s] similar situations differently” without adequate explanation.<sup>77</sup> “If the agency makes an exception in one case, then it must either make an exception in a similar case or point to a relevant distinction between the two cases.”<sup>78</sup> By the same token, such a “relevant distinction” between cases, or in this case, countries, calls for either dissimilar treatment or an explanation. Indeed, the Proposal’s irrational uniformity “fail[s] to consider an important aspect of the problem,” namely the relevant differences.<sup>79</sup>

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<sup>72</sup> *Id.* at 54:9–55:2.

<sup>73</sup> NFTC Comment, *supra* n. 47, at 2.

<sup>74</sup> See *Michigan*, 576 U.S. at 752 (“No regulation is ‘appropriate’ if it does significantly more harm than good.”).

<sup>75</sup> Day 2 31:3–10.

<sup>76</sup> See, e.g., Day 1 149:13–166:14.

<sup>77</sup> *W. Deptford Energy, LLC v. FERC*, 766 F.3d 10, 21 (D.C. Cir. 2014).

<sup>78</sup> *Westar Energy, Inc. v. FERC*, 473 F.3d 1239, 1241 (D.C. Cir. 2007).

<sup>79</sup> See *Motor Vehicle Mfrs. Ass’n*, 463 U.S. at 43.

The irrational uniformity in USTR’s Proposal takes three forms. First, economies with importation bans would be treated nearly identically to those without. Second, a uniform rate would be applied to all non-exempt goods from all economies within each category, despite large differences within each bucket. Third, intermediate and finished goods would also be treated alike, despite presenting different risks and incentives when it comes to use of forced labor. And USTR provides no reasoned explanation for this uniformity.

**i. Economies with and without mechanisms to prevent use of forced labor would be treated similarly.**

The USTR recognizes that 16 of the 60 economies investigated have prohibitions or commitments on the importation of goods produced with forced labor.<sup>80</sup> Yet the USTR proposes to treat those 16 economies similarly to the 44 it identified as lacking such a prohibition, proposing only a 2.5% difference in tariff rate between these two very differently situated buckets of economies. But as explained above, the two types of economies have different needs and require different forms of encouragement. The USTR makes no effort to explain why a similar solution would work for these very differently situated economies.

**ii. The proposed tariffs treat different economies alike within each category.**

The record also shows that within the agency’s proposed tariff categories—namely economies without forced labor import bans or economies with bans but insufficiently effective mechanisms—the affected jurisdictions are materially different, and a uniform tariff cannot be rationally justified across them. Several witnesses explained that economies lacking formal forced labor import ban mechanisms nonetheless vary widely in legal frameworks, labor inspection capacity, economic development, industry composition, and degree of engagement with the United States.

For instance, representatives from both Peru and Guatemala testified. Both countries were listed by the USTR as failing to prohibit forced labor imports. Both representatives testified about their respective country’s efforts to reduce forced labor. But their testimony revealed important differences in their approaches to the problem.

The representative from Peru testified that Peru had ratified International Labor Organization agreements and, because of its bilateral agreements with the United States, had participated in meetings “on a series of institutional mechanisms” addressing forced labor.<sup>81</sup> The representative also emphasized the country’s constitutional commitment to the freedom to work.<sup>82</sup> The representative further discussed the progress the country had made in advancing a complete ban on the importation of goods made with forced labor through its legislature.<sup>83</sup>

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<sup>80</sup> 91 Fed. Reg. at 34274.

<sup>81</sup> Day 2 80:17–81:10.

<sup>82</sup> *Id.* at 81:11–13.

<sup>83</sup> *Id.* at 82:14–20.

The representative from Guatemala, on the other hand, emphasized its participation in transnational customs security frameworks and its coordination with U.S. Customs and Border Protection, demonstrating meaningful risk mitigation tools even absent a complete import ban regime.<sup>84</sup>

While both nations discussed their commitment to ending forced labor practices, they diverged in the mechanisms they have in place, and in their anticipated next steps.

USTR has not explained why these nations, with their differing approaches, will both be encouraged to solve the problem by the same tariffs. These two countries have both taken, and are taking, meaningful steps toward forced labor prevention. USTR also proposes to treat both countries identically to those countries that have not taken any meaningful steps toward forced labor prevention. That would collapse these crucial distinctions and therefore require, at least, a reasoned explanation.

The same is true for countries that have instituted bans but have varying degrees of effectiveness. For example, representatives from Mexico, Ecuador, and India all testified. The representative from Mexico emphasized its fully implemented USMCA-based forced labor import ban mechanism and the substantial expansions it adopted in 2025, including investigation protocols and sustained coordination with the United States.<sup>85</sup> The representative from Ecuador detailed not only its constitutional prohibitions on forced labor but also recent judicial enforcement actions and its ongoing development of a national mechanism to restrict forced labor imports.<sup>86</sup> These two economies, then, are in quite different positions to India, which has more limited enforcement capacity and ongoing developmental work.<sup>87</sup>

Despite this, the USTR proposes applying the same tariff rate to all three of these economies, and to all economies that the USTR deemed to have insufficiently effective mechanisms.<sup>88</sup> This disregard for meaningful differences in enforcement progress and institutional capacity renders the tariff schedule internally inconsistent and unreasonable.<sup>89</sup>

### **iii. The proposed tariffs do not distinguish between types of goods.**

Finally, the USTR's proposed tariffs apply uniformly to both intermediate goods and finished goods. Numerous witnesses repeatedly identified this uniform treatment as irrational and counterproductive. Both the costs and benefits of tariffs differ between these types of goods, calling for different treatment.

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<sup>84</sup> *Id.* at 87:4–20.

<sup>85</sup> *Id.* at 67:5–69:13.

<sup>86</sup> *Id.* at 75:12–17, 76:4–20.

<sup>87</sup> *See id.* at 114:2–6, 114:22–15:10 (representative from India discussing absence of restrictions on importation of forced labor goods and enforcement challenges).

<sup>88</sup> 91 Fed. Reg. at 34274.

<sup>89</sup> *See W. Deptford Energy*, 766 F.3d at 20.

Consider first the costs. U.S. manufacturers stressed that tariffs on intermediate inputs—many of which are not available domestically—would impair domestic production, increase costs for downstream U.S. industries, and reduce U.S. competitiveness. For instance, as discussed above, the representative from the PFA spoke about the domestic shortage of polyol, an intermediate good in the production of flexible polyurethane foam.<sup>90</sup> Polyurethane foam, in turn, is used in such products as mattresses and upholstered furniture.<sup>91</sup> The shortage of polyol creates an economic risk “orders of magnitude greater than the value of the chemicals involved.”<sup>92</sup>

Yet the USTR proposes to apply the same rates to intermediate and finished goods, despite the very different risks for the United States economy.

Turning to the claimed benefits of tariffs, several witnesses, such as those from Chemours,<sup>93</sup> noted that any risk of forced labor is far more likely to arise in finished goods or in specific high-risk sectors. Applying identical tariff measures to all goods, irrespective of supply chain position or risk profile, therefore fails to establish the required “rational connection between the facts found and the choice made.”<sup>94</sup>

### **C. USTR entirely fails to respond to comments regarding tariffs.**

Despite the voluminous public feedback regarding the imposition of tariffs, the USTR fails entirely to engage on the subject. An agency must do more than acknowledge a category of comments; it must “respond[] to significant points raised by [the] public” bearing on its chosen course of action.<sup>95</sup> The USTR has done neither.

The USTR’s only response to the tariff concerns raised in comments and testimony, and discussed above, is a deafening silence. The Proposal addresses only whether the conduct under investigation could be considered “unreasonable” within the meaning of Section 301, but it does not substantively engage with the extensive record evidence demonstrating that tariffs would be ineffective, economically harmful, overbroad, or counterproductive.<sup>96</sup>

Because the Proposal does not address any issues relating to the effectiveness of tariffs as a response to the use of forced labor, does not engage with the alternatives proposed by dozens of commenters, and does not explain why contrary evidence did not alter the agency’s reasoning,

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<sup>90</sup> Day 2 49:14–50:4.

<sup>91</sup> *Id.* at 50:5–51:2.

<sup>92</sup> *Id.* at 50:18–20.

<sup>93</sup> *Id.* at 53:4–13.

<sup>94</sup> *Motor Vehicles Mfrs. Ass’n*, 463 U.S. at 52 (citation modified).

<sup>95</sup> *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 35–36 (D.C. Cir. 1977) (citation modified); see *Texas Corn Producers v. U.S. EPA*, 141 F.4th 687, 701 (5th Cir. 2025) (“An agency fails to consider the relevant factors when it does not address comments raising points which, if true and which, if adopted, would require a change in the agency’s proposed rule.” (citation modified)).

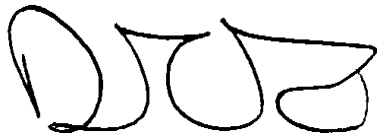
<sup>96</sup> *Cf.* 91 Fed. Reg. at 34274–75 (no response to tariff comments).

the USTR's response falls short of the APA's requirement of meaningful consideration. As a result, proceeding with tariffs would be arbitrary and capricious.<sup>97</sup>

**V. Conclusion**

The USTR is abusing Section 301 statutory authority in an attempt to paper over the administration's predetermined sweeping tariffs on nearly all imports to the United States. The record does not support imposition of these sweeping blanket tariffs to curb the worldwide problem of forced labor in international trade; instead, the USTR should work collaboratively and effectively with countries to reduce forced labor, and trading in goods made with forced labor, by other means.

Sincerely,



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<sup>97</sup> See *Texas Corn Producers*, 141 F.4th at 701 (failure to respond to comments amounts to failure to consider relevant factors, rendering action arbitrary and capricious).



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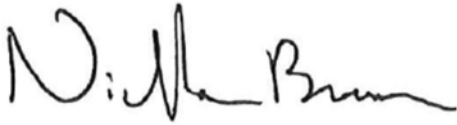
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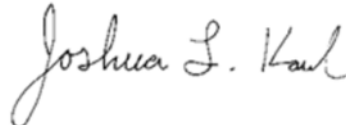
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