BEFORE THE OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

In the Matter of:

Section 301 Investigations Relating to Structural Excess Capacity and Production

Docket No. USTR-2026-0067

COMMENT OF PHILIP A. LUCK

Date: April 15th, 2026

I. IDENTITY AND INTEREST OF COMMENTER

Philip A. Luck submits this comment in response to the request for public comments concerning the Section 301 investigation into structural excess capacity and production in foreign economies, initiated March 11, 2026. Dr. Luck is an international economist with expertise in international trade policy, industrial economics, and empirical measurement of capacity utilization.

This comment addresses the evidentiary basis for the investigation from an economics perspective. The investigation rests on an empirical claim: that foreign governments have distorted their industrial sectors through subsidies, directed credit, and zombie firm forbearance, producing capacity utilization rates below what competitive markets would sustain. We submit that the aggregate metrics the investigation relies upon — capacity utilization rates, zombie firm prevalence, and trade surpluses — are not reliable indicators of government market distortion. They are outcomes consistent with multiple causes, most of which have nothing to do with government policy. The data presented below demonstrate why.

II. CAPACITY UTILIZATION CANNOT IDENTIFY MARKET DISTORTION

The Federal Reserve's G.17 capacity utilization statistic was designed for one purpose: to track the relationship between industrial slack and inflationary pressure. The Fed's 80% threshold is an empirical regularity about U.S. business cycles — not a normative benchmark for competitive markets. The investigation has appropriated it as the latter. This is a category error.

A capacity utilization rate below 80% is simultaneously consistent with: (1) demand-side contraction from a recession or export market weakness; (2) private sector over-investment reflecting normal market miscalculation; (3) technology-driven capital replacement cycles where new vintages displace old ones before full utilization; (4) exogenous cost shocks such as energy price dislocations; and (5) government-subsidized capacity expansion. Only the last is a trade policy problem. The utilization rate itself cannot distinguish among these causes.

Manufacturing utilization has tracked remarkably similar paths across all major economies since 2005 (Figure 1). The United States, EU-27, Germany, France, and Italy fell together in the financial crisis, recovered together, fell together during COVID, and have settled into a post-pandemic range between 74% and 80%. U.S. manufacturing utilization (75.5%) is currently lower than Germany (77.4%) and the EU-27 (77.8%).

A pattern that appears simultaneously across economies with very different industrial policies is more plausibly explained by common macroeconomic factors — post-2008 demand weakness, COVID disruption, energy repricing — than by coincident government distortions in 16 countries. The investigation does not address this alternative explanation.

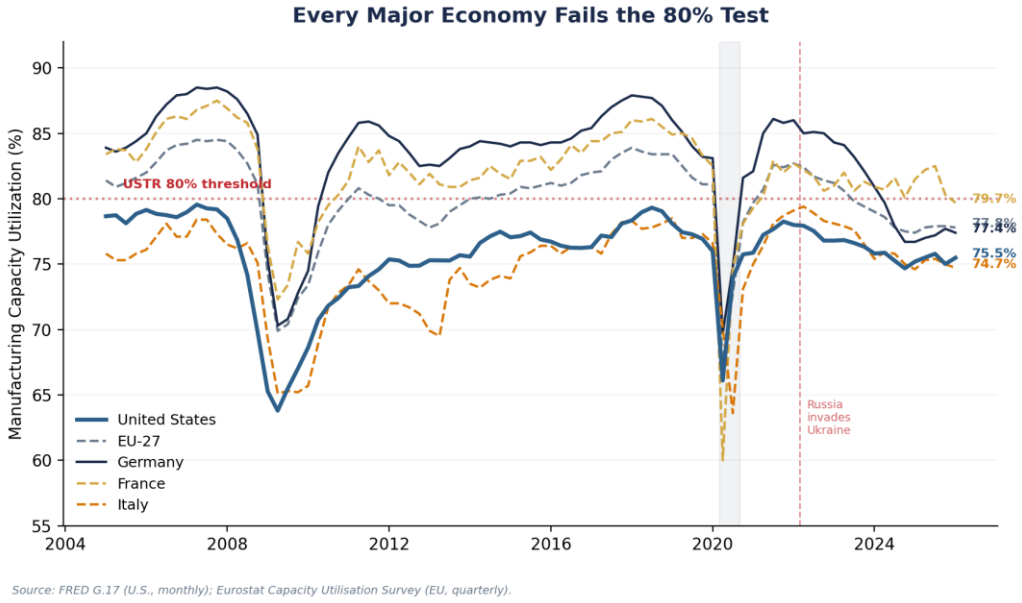

Figure 1. Every major economy fails the 80% test. Manufacturing capacity utilization, 2005–2026. Source: FRED G.17 (U.S.); Eurostat Capacity Utilisation Survey (EU).

III. THE UNITED STATES FAILS ITS OWN TEST

Even accepting the investigation's statistical framework for purposes of argument, it identifies the United States as exhibiting the same conditions attributed to foreign government distortion.

Applied with identical methodology to Federal Reserve G.17 data, eleven of fourteen U.S. industrial sectors operate below the investigation's 80% threshold (Figure 2):

Sector	Current U.S. Rate	vs. 80% Threshold
Primary Metals (Steel)	66.9%	−13.1 pp
Motor Vehicles & Parts	68.9%	−11.1 pp
Electric Power Generation	71.7%	−8.3 pp
Semiconductors & Electronics	73.0%	−7.0 pp
Chemicals	74.2%	−5.8 pp
Computers & Electronic Products	74.5%	−5.5 pp
Plastics & Rubber Products	74.7%	−5.3 pp
Manufacturing (Total)	75.5%	−4.5 pp

Total Industry	76.3%	−3.7 pp
Paper	77.7%	−2.3 pp

U.S. primary metals (steel) at 66.9% is a full 6 percentage points below the 72.7% rate cited for German chemicals. U.S. semiconductors (73.0%) — the very sector the investigation characterizes as a victim of foreign overcapacity — is itself below the threshold. U.S. manufacturing overall (75.5%) is lower than both Germany (77.4%) and the EU-27 aggregate (77.8%).

A standard trend-cycle decomposition (Hodrick-Prescott filter, $\lambda = 14{,}400$) confirms that for twelve of fourteen sectors, the structural trend itself lies below 80%. The cyclical component is typically less than 2 percentage points. These are not transient demand shortfalls — they are the long-run trajectory of U.S. manufacturing utilization. The count of G.17 series below 80% has remained at 11–12 of 14 every year since 2023, against a pre-2020 median of 7. Below 80% is the new normal.

If the 80% threshold is the standard for alleging foreign distortion, the investigation has an obligation to explain why the same threshold, applied with the same methodology to U.S. data, does not raise analogous concerns about the structure of U.S. industry.

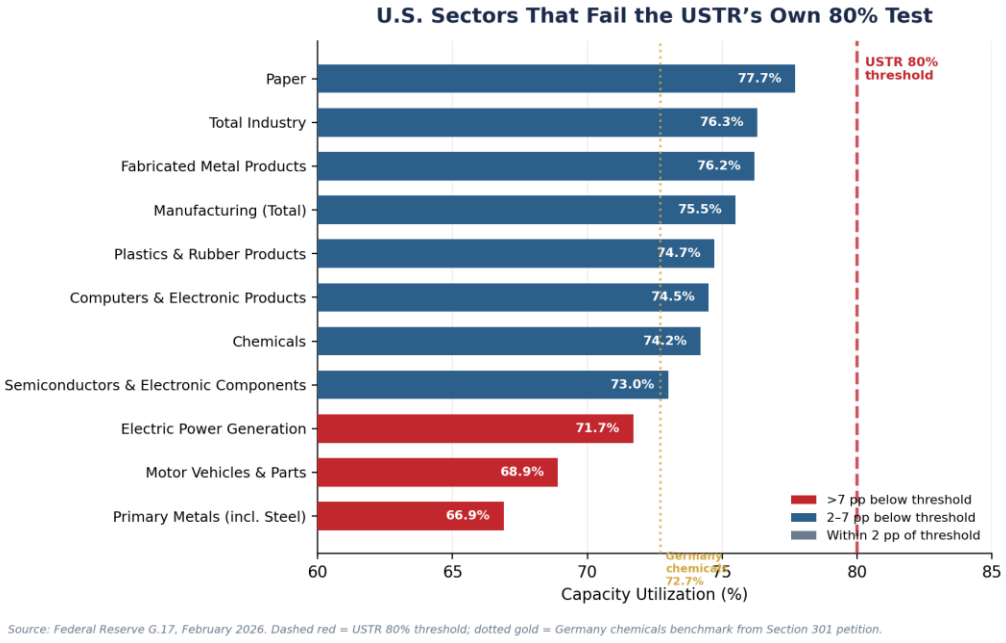

Figure 2. U.S. sectors that fail the USTR's own 80% test, February 2026. Dashed red line = USTR threshold; dotted gold line = Germany chemicals benchmark from Section 301 petition. Source: Federal Reserve G.17.

IV. THE GERMAN CHEMICAL INDUSTRY DEMONSTRATES WHY AGGREGATE STATISTICS FAIL AS EVIDENCE

Perhaps the most analytically revealing case in the investigation is the German chemical industry. The investigation cites German chemicals at 72.7% capacity utilization as evidence of excess capacity. The data tell a different story.

Germany's chemical sector is roughly four times as energy-intensive as German manufacturing overall. It operated for decades on a competitive advantage built around cheap Russian pipeline natural gas. After Russia invaded Ukraine in February 2022, European natural gas prices rose approximately tenfold — TTF futures peaked above €300/MWh in August 2022, from roughly €20/MWh in early 2021. The Nord Stream pipeline sabotage in September 2022 eliminated any prospect of return to pre-war supply conditions.

The Eurostat Industrial Production Index (Figure 3) makes the causal mechanism unmistakable: German chemical production has fallen 22% from its pre-invasion level and shows no sign of recovery. The decline begins with the invasion and accelerates after Nord Stream. German manufacturing overall declined far less, and EU-27 chemicals experienced a smaller drop, reflecting Germany's disproportionate dependence on Russian gas.

BASF SE, then the world's largest chemical producer by revenue, announced a permanent restructuring of its Ludwigshafen operations, closing ammonia, caprolactam, and TDI capacity, and shifted production to existing facilities in the United States, China, and South Korea, citing €3.2 billion in additional energy costs in 2022 alone.

This case is dispositive of the methodological problem. The same statistical signature the investigation cites as evidence of government-driven overcapacity is here entirely attributable to a geopolitical energy shock with no connection to any German government industrial policy. If the investigation's methodology cannot distinguish this case from genuine policy-driven distortion, it cannot reliably identify distortion in any case. This is not a peripheral example — it demonstrates that the core methodology produces false positives.

Our cross-sector correlation analysis reinforces the broader point. The average pairwise correlation across 91 U.S. sector pairs nearly tripled from 0.11 in 2016–2019 to 0.31 post-COVID. If low utilization reflected country-specific industrial policies, cross-sector correlations would remain stable. Instead, COVID, the semiconductor shortage, and energy repricing hit all sectors simultaneously. These are macro shocks, not industrial policy.

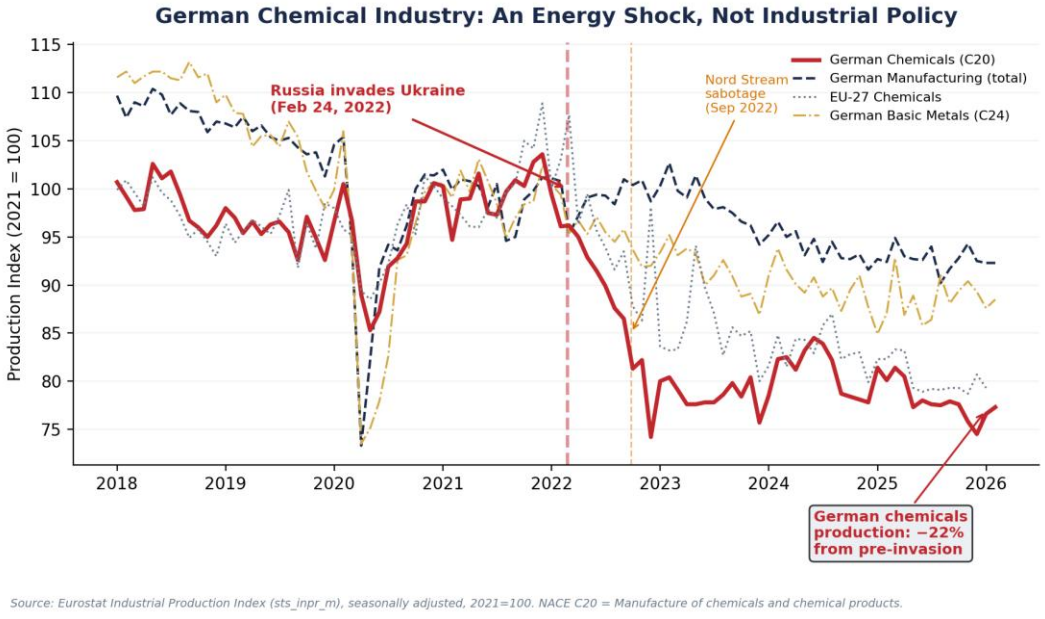

Figure 3. German chemical industry: an energy shock, not industrial policy. Production index (2021 = 100), 2018–2026. Source: Eurostat Industrial Production Index (NACE C20).

V. ZOMBIE FIRM PREVALENCE: THE U.S. IS NOT DIFFERENT

The investigation cites zombie firm persistence in Japan as evidence of government forbearance sustaining artificial capacity. The concept has at least five competing definitions in the academic literature, and estimates for the same country can vary by a factor of four depending on which definition is applied. But even taking the numbers at face value, the story they tell undermines the investigation's case.

Japan's zombie firm share has fallen dramatically from its 1990s peak of 30–35%. According to Teikoku Databank, Japan's current zombie share is 15.5% (FY2024), down from a post-COVID peak of 17.1% (FY2022). The United States, by the Federal Reserve's own measure (Favara, Minoiu, and Perez-Orive, 2021), sits at 10–15% of listed non-financial firms, with U.S. primary metals and paper manufacturing at 12–18%. The EU runs at 12–18% depending on definition and period (Figure 4).

The three economies have converged into the same range. The reason is the same across all three: a decade of near-zero interest rates. The Federal Reserve held the Fed Funds rate at 0–0.25% from 2008 to 2015. The ECB deposit rate was negative from 2014 to 2022. The Bank of Japan has maintained near-zero rates since the 1990s. Low rates reduce the cost of carrying unproductive capital everywhere they prevail.

COVID-era interventions reinforced the pattern in the United States. Paycheck Protection Program loans, Main Street Lending facilities, and the Fed's corporate bond purchasing programs collectively functioned as forbearance programs that extended the survival of marginal firms. Some estimates suggest these interventions raised the effective U.S. zombie share by several percentage points in 2020–2022.

Attributing zombie firm prevalence to Japanese government forbearance while treating the identical prevalence in the United States, produced by the identical macroeconomic mechanism, as normal is not an empirical distinction. It is a double standard.

VI. TRADE SURPLUSES REFLECT COMPARATIVE ADVANTAGE, NOT OVERCAPACITY

If trade surpluses indicate overcapacity, the United States is one of the world's most prolific offenders.

At the HS-4 product level, the U.S. ran a global trade surplus in 370 of 1,238 product categories in 2024: aircraft ($100 billion), mineral fuels ($78 billion), oil seeds ($27 billion), cereals ($21 billion), and chemical products ($28 billion). Under the investigation's framework, each of these surpluses could be characterized as evidence that U.S. government policy, agricultural subsidies, defense procurement, energy tax treatment, export credit agencies, has sustained capacity beyond what competitive markets would support.

More fundamentally, the investigation's overcapacity framework is selectively applied to goods while ignoring where the United States holds its most commanding global position: services. In 2024, the U.S. ran a total services trade surplus of $293 billion (BEA). The largest surplus categories were intellectual property charges — licensing fees paid to U.S. technology firms, pharmaceutical companies, and entertainment conglomerates — followed by other business services and financial services. The U.S. runs a services surplus with virtually every major economy, including China, Singapore, and Brazil.

These surpluses are sustained by network effects, and favorable regulatory and tax conditions, structural forces of comparative advantages no less durable than a state subsidy. The distinction the investigation draws, that U.S. services surpluses reflect competitiveness while foreign goods surpluses reflect distortion, is not an empirical finding. It is an assumption.

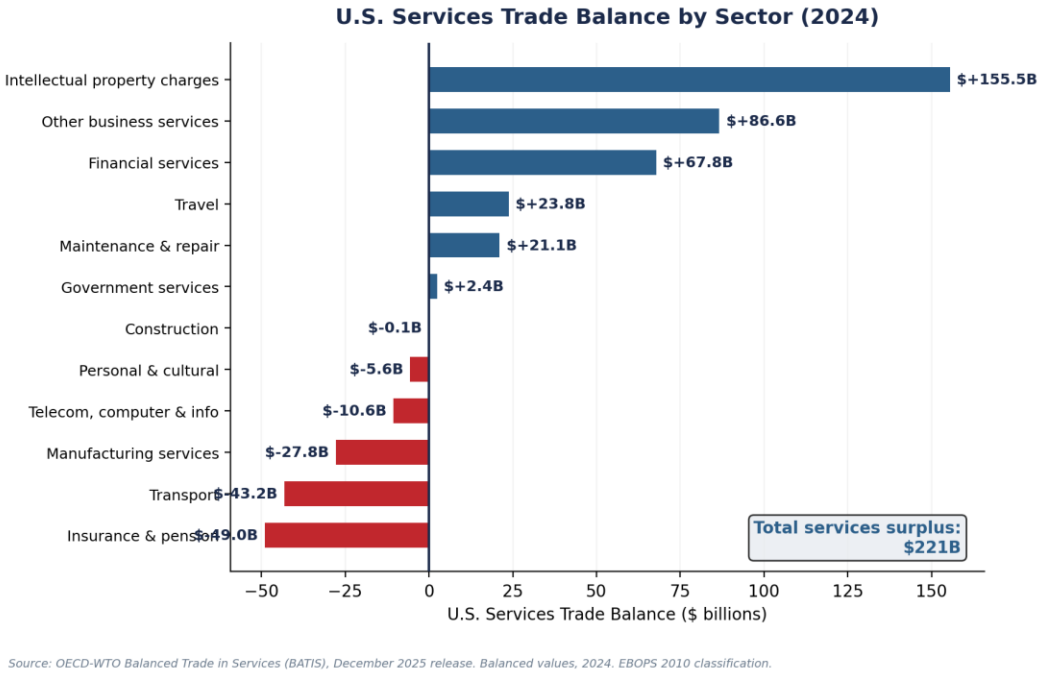

Figure 5. The $293 billion services surplus the investigation ignores. U.S. services trade balance by sector, 2024. Source: BEA International Trade in Goods and Services.

VII. EXCESS CAPACITY IS NOT OVERCAPACITY

The investigation does not define the threshold at which normal excess capacity, a standard feature of capital-intensive industries, becomes actionable overcapacity attributable to government distortion. “Overcapacity” implies capacity sustained above any reasonable future demand trajectory by government intervention. Without a method for distinguishing this from normal excess capacity generated from any one of a myriad of alternative sources, the investigation cannot identify what can be attributable to government action. This is why identifying the actual acts, policies, and practices is a necessary precondition to any determination.

VIII. TOWARD MORE DEFENSIBLE EVIDENCE

Policy-driven excess capacity, which leads to overproduction and distorts global markets, does exist. However, it cannot be identified or remedied by the methodology laid out by USTR. The fundamental problem with the overcapacity framework is the inferential step it takes for granted: that low utilization, high zombie shares, trade surpluses, constitute evidence of identifiable government actions causing trade-distorting excess supply. More credible empirical strategies exist and would produce actionable evidence.

IX. CONCLUSION

The aggregate statistical framework employed in this investigation does not reliably identify government market distortion as it cannot distinguish between policy-driven and macro-driven outcomes (Section IV). Zombie firm metrics produce equivalent readings in the United States, Japan, and the EU (Section V). Trade surpluses reflect comparative advantage as readily as they reflect distortion, and the United States itself holds surpluses in 370 goods products and $293 billion in services (Section VI). The investigation does not define the boundary between normal excess capacity and actionable overcapacity (Section VII). And U.S. industrial policy would raise the same concerns under the investigation's own framework.

We respectfully urge USTR to supplement the evidentiary record with: (1) identification of specific government programs alleged to sustain excess capacity; (2) causal analysis connecting those programs to observed utilization patterns, controlling for exogenous shocks and macroeconomic conditions; (3) an explanation of why the identical statistical patterns observed in U.S. industries do not warrant the same characterization; and (4) firm-level or program-level evidence that would withstand standard empirical scrutiny.

A framework that identifies the United States as having overcapacity in steel, chemicals, autos, semiconductors, and manufacturing overall, with zombie firm rates comparable to Japan and trade surpluses in 370 products, has not found evidence of foreign distortion. It has found the normal state of advanced manufacturing in a post-financial-crisis, post-COVID global economy. We do not make policy based on symptoms. We make policy based on actions.

Respectfully submitted,

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