

US Multilateral Trade and Policy Developments

Japan External Trade Organization

May 2023

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Trade Policy Developments

US Government Exploring New Export Promotion Opportunities for Climate Change Adaptation Products

On May 2, 2023, the US International Trade Administration (ITA) and the US Trade and Development Agency (USTDA) issued a Request for Information (“RFI”) seeking public comments “on climate adaptation and resilience-related technologies and services to enhance the US government’s understanding of opportunities and challenges for US exporters in these sectors.”¹ The government plans to use the information gathered to help develop a new export promotion strategy. Information sought by the government for this strategy includes suggestions for new export promotion programs, descriptions of market access challenges faced by US exporters, and details on foreign exporters who may be competing against US industry unfairly.

Overview

The RFI sets a wide scope for the goods and services in which it is interested. It defines climate adaptation as “range of technologies, services and activities used to address a variety of issues relating to the effects and impacts of climate change” and climate resilience as “the ability to prepare for and recover from the impacts of climate change.” This may include both established and emerging technologies and both goods and services. Products covered could include early warning systems, infrastructure design services, weather forecasting, resilient electrical systems, water management, resilient communication system, flood protection systems, food production systems, green bonds, insurance services, and more. USTDA is especially interested in learning about products that represent significant opportunities to export to emerging markets.

ITA and USTDA would like the submitted comments to address the US industry’s interests, concerns, and capabilities. Along with the request for general information, the RFI includes four specific areas that the government wants to learn more about:

- Opportunities: What are the immediate opportunities for growing US exports and where may opportunities emerge in the future?
- Challenges: What are the barriers US exporters face in other countries, what challenges in the US reduce the competitiveness of US exports, and with what foreign countries and companies are US exporters competing (and is that competition fair)?
- US Government Solutions: How can the US government better support exports and reduce trade barriers?
- Scope: What other goods and services should the US government prioritize in a climate adaptation and resilience export strategy?

ITA and USTDA are both export promotion agencies, though they approach the task with different strategies. ITA works mainly through export promotion and helping companies solve foreign market barriers, while USTDA focuses on using economic developing and technical assistance projects to develop markets in middle-income countries. For the ITA, the input from this RFI will inform export promotion, commercial diplomacy, and trade compliance work. USTDA wants to use the RFI to help integrate the sector’s interests into its project feasibility studies, technical assistance programs, pilot projects, and outreach and education events.

The program is part of President Biden’s President’s Emergency Plan for Adaptation and Resilience (PREPARE), which he unveiled at COP26 in November 2021.² PREPARE is a government-wide effort to respond to climate change and is based on Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad.”³ The Executive

¹ The Federal Register Notice announcing the RFI can be found here: <https://www.federalregister.gov/documents/2023/05/02/2023-09051/climate-adaptation-export-competitiveness-request-for-information>; the docket for submitting comments is here: https://www.regulations.gov/document/ITA_FRDOC_0001-8814.

² The President’s Emergency Plan for Adaptation and Resilience is available here: <https://www.whitehouse.gov/wp-content/uploads/2021/10/Full-PREPARE-Plan.pdf>.

³ E.O. 14008 of Jan 27, 2021, Tackling the Climate Crisis at Home and Abroad, 86 FR 7619, available here: <https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-home-and-abroad>.

Order instructs federal agencies to prioritize responding to climate change, including by developing “strategies and implementation plans for integrating climate considerations into their overseas programming.” ITA and USTDA believe the government can support climate change responses globally by facilitating the export of US-made climate adaptation and resilience-related technologies and services.

Comments

The government is seeking input from all interested stakeholders, including US industry, academia, and civil society. Because this RFI is part of PREPARE, a whole of government program, the comments submitted may be used to inform other administration programs. Public comments can be submitted for 60 days after the RFI was issued, with the window closing on June 30, 2023. They should be submitted to regulations.gov under Docket Number 230417–0103.

President Biden Hosts Leaders of South Korea and the Philippines for Defense and Economic Policy Discussions

In recent days, Washington, DC has hosted the leaders of two important allies from the Asia Pacific. First came a high-profile state visit on April 26 with President Yoon Suk Yeol of South Korea, which was followed by a working visit with Philippine President Ferdinand Marcos Jr. on May 1. Developments in the security relationships, including the upgrading of the Korea-US mutual defense treaty and expanded defense activities in the Philippines, took most of the headlines. Economic policy developments were notable too, however. The new technology and economic security cooperation emerging between the US and Korea in this visit and other recent meetings represent a broadening of the alliance into new areas of the private sector. With the Philippines, new programs were announced to expand economic exchanges, though Manila did not make progress convincing the US to negotiate a deeper trade agreement.

Visit of President Yoon Suk Yeol of South Korea

The South Korea meetings happened under a “state visit,” a high-level ceremonial honor that the Biden Administration has previously only held for France.⁴ The US government wanted to give the visit extra attention, both because it fell on the 70th anniversary of the US-Korea alliance and so they could signal support for President Yoon’s more US-aligned foreign policy agenda.

The enhancements to the security relationship that the leaders announced were the most notable development. The two countries described an expanded “global comprehensive strategic alliance” and unveiled expansions of nuclear deterrence coordination.⁵ They also announced a new cybersecurity strategic framework and deeper cooperation on outer space policy, highlighting how the security relationship is growing into new domains.

The scope of the US-Korea relationship has grown in the past decade, first with the Korea-US Free Trade Agreement, and now with increased collaboration on economic, scientific, and supply chain security, which were highlighted in this visit. The leaders committed to strengthening cooperation on digital industries, including by endorsing free flow of data, high-standard digital trade rules, and Open RAN mobile network architectures. They further pledged to continue work on trade interests through the US-Korea Free Trade Agreement, including for

⁴ More details on outcomes of the visit can be found here in the White House’s factsheet: <https://www.whitehouse.gov/briefing-room/statements-releases/2023/04/26/fact-sheet-republic-of-korea-state-visit-to-the-united-states/>. The leaders’ joint statement can be found here: <https://www.whitehouse.gov/briefing-room/statements-releases/2023/04/26/leaders-joint-statement-in-commemoration-of-the-70th-anniversary-of-the-alliance-between-the-united-states-of-america-and-the-republic-of-korea/>.

⁵ The “Washington Declaration” is available here: <https://www.whitehouse.gov/briefing-room/statements-releases/2023/04/26/washington-declaration-2/>.

semiconductors, steel, and other critical goods, and recognized progress in addressing Korean concerns about the CHIPS and Science Act and the Inflation Reduction Act (IRA).

In what may grow into a significant platform for cooperation, the leaders unveiled the Next Generation Critical and Emerging Technologies Dialogue. This annual meeting, led by each country's national security advisors, will broaden cooperation on critical emerging technologies like biotechnology, batteries, semiconductors, and digital and quantum technologies. Discussing the announcement a few days later, Korea's Ambassador to the United States, Cho Hyundong, described the Dialogue as "playing a role of control tower on the overall [...] discussions and communications between the two sides on many issues of science and technology and economic security issues."

In addition to the new Next Generation Critical and Emerging Technologies Dialogue, Secretary of Commerce Gina Raimondo and Minister of Trade, Industry, and Energy Lee Chang-Yang held the first ministerial meeting of the US-ROK Supply Chain and Commercial Dialogue (SCCD) alongside the state visit.⁶ The SCCD, established in May 2022, is intended to deepen cooperation on supply chain security between the governments. At the ministerial, the leaders agreed to do more work on supply chain resilience for semiconductors, robotics, and additive manufacturing. They also pledged to increase export controls cooperation, for which a dual-use products working group has met twice since the SCCD was established. Semiconductors cooperation will include cooperating on CHIPS Act implementation and promoting research and development partnerships (including by giving Korean companies access to the new US National Semiconductor Technology Center⁷).

Minister Lee and Secretary Raimondo also discussed other supply chain, export control, and industrial subsidy matters. This included Korean concerns about IRA and CHIPS act subsidy rules, limitations on investment in China, export control permits for semiconductor exports to China, and critical mineral FTAs for important mineral sources like Indonesia and Argentina.⁸

Another engagement between the leaders is quickly approaching, as Korea will be attending the upcoming G7 summit on May 19 in Japan. Korea appears to be exploring ways it can become a member of the G7, but is not formally seeking full membership yet. There will also likely be a trilateral dialogue between the US, Korea, and Japan on the sidelines of the G7, representing another step in the recent thawing of relations between Korea and Japan. Following the G7 Summit, Korea will host the fourth negotiating round of the Indo-Pacific Economic Framework for Prosperity (the exact date of which has not been published yet).

Visit of President Ferdinand Marcos Jr. of the Philippines

President Marcos spent four days in Washington for a working visit starting on May 1, meeting President Biden and various other government and private sector leaders.⁹ The meetings come amid substantial increases in defense coordination between the two countries, even as the Philippine economy has become more intertwined with China. Sustaining the closer defense relationship that both Presidents are pursuing, however, will also require deepening economic and people-to-people ties. To that end, President Marcos is seeking closer economic arrangements,

⁶ The SCCD joint statement is available here: <https://www.commerce.gov/news/press-releases/2023/04/united-states-korea-supply-chain-and-commercial-dialogue-ministerial>.

⁷ More information on the NSTC, which is currently under development, can be found here: <https://www.nist.gov/news-events/news/2023/04/chips-america-outlines-vision-national-semiconductor-technology-center>.

⁸ The Korean statement about the meeting and the SCCD can be found here (in Korean): http://www.motie.go.kr/motie/nc/presse/press2/bbs/bbsView.do?bbs_seq_n=167140&bbs_cd_n=81¤tPage=1&search_key_n=&cate_n=1&dept_v=&search_val_v=.

⁹ More details on outcomes of the visit can be found here in the White House's factsheet: <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/01/fact-sheet-investing-in-the-special-friendship-and-alliance-between-the-united-states-and-the-philippines/>. The leaders' joint statement can be found here: <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/01/joint-statement-of-the-leaders-of-the-united-states-and-the-philippines/>.

proposing both a critical minerals trade agreement and a full FTA to the United States.¹⁰ The Biden administration has not expressed interest in that approach, however. Instead, the meetings ended with announcements of more modest expansions of cooperation on critical supply chain security, labor rights, and trade and investment promotion:

- Supply chain and telecommunications security: The United States announced it would establish an Open RAN 5G Interoperability Lab in Manila to train workers, vendors, and operators from around the world on Open RAN. For critical mineral supply chain development, USAID announced \$5 million in new assistance for developing the Philippine mineral industry and electric vehicle component manufacturing and the US Interior Department announced a new collaboration on minerals governance with Philippine Department of Environment and Natural Resources.
- Labor rights: The governments unveiled a new labor working group, organized under the US-Philippines Trade and Investment Framework Agreement (TIFA). The working group will help the countries collaborate on implementing international labor rights standards and establish dialogues with labor unions.
- Trade and investment promotion: The leaders announced a US Presidential Trade and Investment Mission to the Philippines, led by Secretary of Commerce Gina Raimondo, focused on the innovation economy, clean energy, critical minerals, and food security. The two countries will also co-host the next Indo-Pacific Business Forum in Manila in 2024.

Biden Administration Elaborates on its International Economic Policies in Recent Speeches

Recent speeches from top Biden administration officials have explained the United States' outlook on international economic policy and its strategy for economic disputes with China. The speeches, by National Security Advisor Jake Sullivan and Treasury Secretary Janet Yellen, helped clarify the boundaries of the ongoing disputes with China, asserted the primacy of industrial policy in the administration's approach to foreign and domestic economic objectives, and continued to struggle with defining a role for trade policy.

Overview of the speeches

National Security Advisor Jake Sullivan spoke on April 27, laying out the administration's strategy for international economic leadership.¹¹ In the speech, he asserted that the world needs a new model of international economic governance that would invest in technological strength; make supply chains more resilient; provide public goods like climate change mitigation; and set higher standards for labor rights, environmental protection, and good governance. To meet these goals, Sullivan proposed a four-step agenda:

- Step 1: Implement a modern American industrial strategy;
- Step 2: Work with international partners to build capacity, resilience, and inclusiveness;
- Step 3: Develop international economic partnerships to address new challenges; and
- Step 4: Mobilize investment for developing countries.

¹⁰ DTI's Pascual and USTR's Amb. Tai discuss trade priorities and partnership through international trade engagements, available here: <https://www.dti.gov.ph/news/dtis-pascual-and-ustrs-amb-tai-discuss-trade-priorities-and-partnership-through-international-trade-engagements/>.

¹¹ National Security Advisor Jake Sullivan's full speech can be found here: <https://www.brookings.edu/events/the-biden-administrations-international-economic-agenda-a-conversation-with-national-security-advisor-jake-sullivan/>.

Though China was not the focus of the speech, Sullivan sought to assure the audience that the administration's measures restricting trade and investment with China have a narrow scope strictly focused on national security needs. The administration's goal, he says, is to protect foundational technologies using "a small yard and high fence" (*i.e.*, covering a small set of products but with strict enforcement).

Speaking the week before Sullivan, on April 20, Treasury Secretary Janet Yellen addressed the US-China economic relationship directly, and in more detail.¹² Secretary Yellen called for a constructive and fair relationship where both countries can discuss disputes and work together where needed. Her speech laid out three objectives for US economic policy towards China:

- Objective 1: Secure national security interests and protect human rights;
- Objective 2: Seek a healthy economic relationship that fosters growth in both countries; and
- Objective 3: Seek cooperation on urgent global issues like climate change, debt forgiveness, and macroeconomic stability.

Secretary Yellen proposed three conditions for how the United States will design export and investment restrictions. These tools, Secretary Yellen said, should be "narrowly scoped and targeted to clear objectives," "easily understood and enforceable," and coordinated with allies. She added that the United States would also maintain communication with China and other countries on these actions to avoid mistakes and accidental escalation.

Primacy of industrial policy in US economic strategy

The core of the new policy regime proposed by Sullivan is an inward-looking industrial policy strategy centered on subsidies for a few key industries. The international aspect, highlighted in Sullivan's "Step 2," aims to coordinate those subsidy systems with allies. In line with that framework, the United States' recent collaboration with Japan, Korea, Canada, Taiwan, India, and the EU suggests that an industrial alliance may be emerging that would coordinate subsidies and synchronize export control and supply chain policies for sectors that the governments believe are important to their security.¹³

This agenda appears limited in its international applicability, however, Congress designed the subsidies to prioritize the domestic industry, so that the administration has struggled to appease key trade allies, such as by making the local content rules more flexible. The huge financial costs of these subsidies also prevent developing countries from fully participating in this new economic order. Sullivan's vision for the role of developing countries is heavily focused on granting them development aid and debt forgiveness, rather than commercial engagement.

Along with the small set of countries that can participate in this system, the agenda is also unusually narrow. It prioritizes a small set of industries, focusing on semiconductors and green energy. It even excludes industries like biomedical that the administration has called strategically important in the past. That narrow policy focus is likely a result of the Inflation Reduction Act and CHIPS and Science Act being narrowly focused on these sectors, but it raises the question of why the administration is branding this as a holistic economic agenda.

More broadly, trade policy, finance, macroeconomic management, regulatory cooperation, intellectual property, and migration do not have a clear role in a view of the global economic order that prioritizes this form of industrial planning. The administration's goals for these other aspects of global economic governance received little attention in the speeches. Even so, this new industrial strategy will remain the Biden administration's key legislative success

¹² Treasury Secretary Janet Yellen's speech can be found here: <https://home.treasury.gov/news/press-releases/jy1425>.

¹³ This vision for a collaborative industrial policy system can also be seen in USTR Katherine Tai's April 20 remarks at the Foreign Correspondents Club of Japan, available here: <https://www.youtube.com/live/jx8eruE4bSA?feature=share>.

and the implementation of the CHIPS Act and IRA will be the United States' focus at least through the end of the current administration.

The role of trade policy

Sullivan links trade policy to the administration's industrial policy by arguing that economic partnerships need to focus on making supply chains more diverse, funding climate change responses, creating jobs, protecting digital infrastructure, strengthening labor and environmental protections, and reducing corruption. This mix of issues does not point to any clear policy direction or prioritization, and they are mostly covered by previous international agreements dating back to the 1990s. Sullivan's speech confused the situation further by claiming traditional free trade agreements (FTAs) have only cut tariffs and have not addressed any of these policy goals.

Sullivan promised that the alternative agreements the administration is pursuing, like the Indo-Pacific Economic Framework (IPEF) and the Americas Partnership for Economic Prosperity (APEP), will address these goals in ways that previous agreements did not. He does not however explain what new policies in those agreements would set them apart from traditional FTAs. Most of the chapters in IPEF, for example, are based on chapters from the US-Mexico-Canada Agreement (USMCA) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). He suggests that the supply chain-related agreements like IPEF Pillar II could introduce new programs for supply chain security, but beyond that, the agenda pursued here appears to be a less ambitious version of the previously existing US trade policy.

Sullivan later added a few more interesting points on other initiatives. First, he said that USTR will unveil its new global labor rights policy agenda in the weeks to come, which will be based on worker protection systems developed under the USMCA. Then he called for Congress to approve the OECD Global Minimum Tax agreement. He also highlighted the Global Arrangement on Steel and Aluminum with the EU, which he said would address both emissions intensity and overcapacity. He added that it may eventually be expanded to other sectors.

On the World Trade Organization, he asserted the administration is still committed to the WTO's rules-based order but that non-market practices threaten the system. He argued that this requires reform of the WTO, including by accommodating more national security interests and by finding ways for the WTO to support the clean energy transition.

Setting limits on the US-China economic disputes

The most significant outcomes of the speeches may be their efforts to clarify the administration's view of the US-China economic relationship. The statements have set limits on what the United States intends to do and show a desire to prevent the confrontation from escalating any further, though they also make little effort to resolve current points of disagreement. Both speeches endorse a model of managed competition, asserting there are certain domains where the United States and China will have long-term disputes while there are others areas in which they can work together.

They sought to steer the conversation away from more extreme forms of economic decoupling that have been discussed in Washington recently. Instead, they adopt European Commission President Ursula von der Leyen's term "de-risking," signaling both a more narrowly targeted approach and increased alignment with the allies. This stance has been criticized by some observers as being too weak and by others as too aggressive, underlining the moderate path the administration believes it can take.¹⁴

¹⁴ See here: <https://www.washingtonpost.com/opinions/2023/04/27/china-us-economic-talks-national-security-biden/>; and here: <https://foreignpolicy.com/2023/04/24/america-has-dictated-its-economic-peace-terms-to-china/> for examples of these contrasting interpretations.

The agenda reflected in these speeches would focus on:

- Export controls to deny the Chinese military access to US technologies. These controls would be narrowly targeted at key security-related technologies instead of a broader technological blockade.
- Use of entity lists and sanctions authorities to target specific threats like hacking and severe human rights abuses, coupled with a ban on imports of products made by forced labor through the Uyghur Forced Labor Prevention Act (UFLPA).
- Stricter review of Chinese investments in the United States along with a new outbound investment review system (which is still under development). The outbound review system is also likely to be narrowly targeted at a small set of security-related technologies, similar to the new export control regime.
- Strengthening certain domestic industries through industrial policy to help them compete with Chinese exporters and reducing US reliance on China.
- Coordinating these activities with allies to present a more united front to China and diversify critical supply chains.

This strategy fits the actions the administration has already taken (except for the long-delayed outbound investment regime) and no new actions against China were suggested by either speech.

While making this effort to limit the disputes, Secretary Yellen also clarified situations where the administration may respond with more significant escalation. She asserted that the US will not compromise on its national security and human rights interests, even where they may contradict economic goals. Most significant among these interests is the Russia-Ukraine war, where Secretary Yellen threatened severe consequences if China provided Russia with material support.

Moderating the recent increase in tensions will be important to other elements of the administration's agenda. According to Secretary Yellen and Sullivan, the United States still intends to work collaboratively with China on issues of mutual interest. Secretary Yellen said the most important places for the two countries to continue working together are climate change mitigation and developing country debt relief. The administration also hopes to expand high-level dialogues between the United States and China, which they believe would help manage the disputes and prevent further escalation.

A new Washington Consensus?

Sullivan asserted that this agenda could become a new Washington Consensus that would work for all countries. The prioritization of narrow domestic industrial objectives, centering of a semi-protectionist subsidy regime, and the unclear role for trade however show this agenda puts the United States' internal political needs first. At the same time, both the United States' allies and competitors are proposing alternative visions for global economic orders. Though some clarity has been gained about the Biden administration's intentions, more negotiation will be needed between the United States and its allies to determine how these policies can fit into a truly global system.

US Congress Considering Country of Origin Labeling for Online Retail Again

Congress is once again considering extending country of origin labeling requirements to products sold via e-commerce, with bills now introduced in both the House of Representatives and the Senate. The bills would apply current product origin labeling requirements to e-commerce sales by requiring retailers to post country of origin in the product listings. The bills had been passed during the previous legislative session, but then failed to reach final approval and expired at the end of the session along with a variety of other trade policy related measures.

House of Representatives: Country of Origin Labeling Requirement Act

Congressman Jeff Van Drew (R-NJ) reintroduced H.R. 217 *Country of Origin Labeling Requirement Act* (COOL Act) in January 2023.¹⁵ The bill has one cosponsor, Congressman Brad Sherman (D-CA), and has been referred to the House Committee on Energy and Commerce.¹⁶ The committee must review the legislation before deciding whether to move it to the floor for a full vote. The Committee has not yet scheduled hearings.

Substantively, H.R.217 is a simple bill, split into two operative sections: disclosure requirements and enforcement.

For its disclosure requirements, Section 2(a) provides that any “person that operates an internet website or a mobile application and that sells or offers for sale, at retail, any product through such website or application, shall disclose on such website or application, in a clear and conspicuous manner, the country in which such product was manufactured or finally assembled.” Section 2(b) further sets out an exception to this requirement, stating that it “shall not be construed to apply to any individual who uses an internet website or a mobile application operated by another person to sell or offer for sale any product.”

For enforcement, the bill provides that the Federal Trade Commission (FTC) will be responsible for enforcing the disclosure requirement, and may treat violations of the requirement as a violation of US laws “regarding unfair or deceptive acts or practices.” Violators of such laws can be subject to investigation and potential civil penalties.¹⁷

Senate: Country of Origin Labeling (COOL) Online Act¹⁸

On May 4, 2023, Senators Sherrod Brown (D-OH), Tammy Baldwin (D-WI), and JD Vance (R-OH) announced they would reintroduce to the Senate the *Country of Origin Labeling (COOL) Online Act*.¹⁹ Senators Rick Scott (R-FL), Josh Hawley (R-MO), and Mike Braun (R-IN) will also join as co-sponsors, showing the level of bipartisan support for the proposal. The COOL Online Act contains the same substantive provisions as H.R. 217, but is written to fit better into current law.

For the disclosure requirement, Section 2(a) of the current draft links directly to established law for traditional retail and extends those requirements to e-commerce. The section reads “it shall be unlawful for a product that is marked or required to be marked under section 304 of the Tariff Act of 1930 (19 U.S.C. 1304) to be introduced, sold, advertised, or offered for sale in commerce on an internet website unless the internet website description of the product indicates in a conspicuous place— (i) the country of origin of the product (or, in the case of a multi-sourced product, the countries of origin), in a manner consistent with the regulations prescribed under such section 304; and 15 (ii) the country in which the seller of the product has its principal place of business.”

The disclosure requirement also includes several exclusions. Food and drug products that are controlled under their own specialized labeling and regulatory processes are excluded from coverage. There is also an exclusion for re-sale of used products and an exemption for “small sellers” which have “annual sales of less than \$20,000 and fewer than 200 discrete sales.” It also includes a safe harbor clause for third-party retailers and liability limitations.

¹⁵ The House’s COOL Act can be found here: <https://www.congress.gov/bill/118th-congress/house-bill/217/text>.

¹⁶ H.R.217 - *Country of Origin Labeling Requirement Act*, available at: <https://www.congress.gov/bill/118th-congress/house-bill/217/cosponsors>.

¹⁷ U.S. Federal Trade Commission, A Brief Overview of the Federal Trade Commission’s Investigative, Law Enforcement, and Rulemaking Authority, available at: <https://www.ftc.gov/about-ftc/mission/enforcement-authority>.

¹⁸ A draft of the Senate’s COOL Online Act can be found here: https://www.brown.senate.gov/imo/media/doc/cool_online_bill_text.pdf.

¹⁹ *Brown, Colleagues Introduce Bipartisan Legislation To Increase Transparency Online And Support Made In USA Products*, 4 May 2023, available at: <https://www.brown.senate.gov/newsroom/press/release/sherrod-brown-colleagues-introduce-bipartisan-legislation-increase-transparency-online-support-made-usa-products>.

For enforcement, the bill provides that the FTC will be responsible for enforcing the disclosure requirement “as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this sect.”

Background on country of origin labeling in e-commerce

Under US law, “every article of foreign origin (or its container...) imported into the United States shall be marked in a conspicuous place [...] as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article.”²⁰ The FTC enforces these requirements. These labels are not, however, immediately visible to consumers on products sold via e-commerce. With the popularity of e-commerce growing rapidly, interest groups and lawmakers have started to call for country of origin labeling rules that extend to the virtual sales postings. Specifically, that the e-commerce platforms identify the country of origin of a product when made available to consumers for purchase.²¹

Starting in the 116th Congress (2019-2020), members of the House and the Senate have proposed legislation calling for this extension of origin labeling. However, progress did not occur until the 117th Congress (2021-2022), when Senator Tammy Baldwin (D-WI) reintroduced her *Country of Origin Labeling Online Act* from the prior session, as an amendment to the *United States Innovation and Competition Act of 2021* (USICA). USICA encompassed various measures on “U.S. technology and communications, foreign relations and national security, domestic manufacturing, education, trade, and other matters,” introduced by Senate Majority Leader Chuck Schumer (D-NY).²² The Senate passed USICA on June 8, 2021 by a vote of 68-32. The House then passed its version, the *America COMPETES Act*, on February 4, 2022 by a vote of 222-210. To complete the bills and pass them into law, differences between the two versions had to be reconciled. Ultimately, COOL language was removed in the reconciliation process, along with various other trade policy measures.²³ The reconciled bill became the *CHIPS and Science Act* (H.R.4346), which was approved in July 2022. There have been several efforts since then to revive the trade policy elements of USICA. Though the eventual outcome of this effort is still uncertain, it may be gaining momentum with the reintroduction of the rules of origin bills.

President Vetoes Bill that would have Restored Solar Cell Circumvention Duties

H.J. Res 39, “Disapproving the Rule Submitted by the Department of Commerce Relating to ‘Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord With Presidential Proclamation 10414’” (“the Bill”) and its companion Senate Joint Resolution were passed by Congress in early May with bipartisan majorities. Senate Joint Resolution 15 passed 56 to 41 on 3 May 2023. Nine Democrats joined the Republicans in approval, and one Republican voted against it. The week before the Senate voted, House Joint Resolution 39 passed 221-202 on 28 April 2023. Twelve Democrats joined to Republicans in favor of the bill, while eight Republicans voted against it.

By the time Congress approved the Joint Resolution, President Biden had issued a statement in which he stated that he intended to veto. The administration said in its statement of policy that “This rule is necessary to satisfy the demand for reliable and clean energy while ensuring Commerce is able to rigorously enforce US trade laws, hold

²⁰ See 19 U.S.C. § 1304(a)(1); 19 C.F.R. § 134.11

²¹ See, e.g., Christine Abely, *It’s time to require country of origin disclosures for products sold online*, THE HILL, 10 June 2021, available at: <https://thehill.com/opinion/technology/557745-its-time-to-require-country-of-origin-disclosures-for-products-sold-online/>.

²² S.1260 - United States Innovation and Competition Act of 2021, available at: <https://www.congress.gov/bill/117th-congress/senate-bill/1260>.

²³ The other trade measures included trade remedy law changes, customs *de minimis* changes, outbound investment screening, forced labor restrictions, Section 301 exclusions, renewal of (and possibly changes to) the Generalized System of Preferences and the Miscellaneous Tariff Bill, and renewal of Trade Adjustment Assistance.

trading partners accountable, and defend US industries and workers from unfair trade actions. Passage of this joint resolution would undermine these efforts and create deep uncertainty for jobs and investments in the solar supply chain and the solar installation market.” The statement also added that the president does not intend to extend the current duty suspension any further after it expires in June 2024.²⁴ President Biden followed through on 16 May 2023, vetoing the Joint Resolution.²⁵

The Bill’s supporters in Congress will need a two-thirds majority to override the president’s veto and force the bill into law. Though the bill had bipartisan support in both chambers of Congress on the first round of votes, it did not reach a two-thirds majority. An effort in the House of Representative to muster an override failed 214-205 on May 24. Although the Joint Resolution’s supporters could reintroduce the bill at a later date, there does not appear to be any immediate path forward. Barring any change in administration policy, the government will not begin enforcing the solar panel duties until June 2024.

²⁴ Statement Of Administration Policy, April 24, 2023, available at <https://www.whitehouse.gov/wp-content/uploads/2023/04/HJRes-39-SAP.pdf>.

²⁵ Message to the House of Representatives — President’s Veto of H.J. Res. 39, 16 May, 2023, available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/05/16/message-to-the-house-of-representatives-presidents-veto-of-h-j-res-39/>.

Trade Actions

Section 232

None

Section 301

USTR Extends Most COVID-related Section 301 Exclusions Through September 2023

On May 17, 2023, the United States Trade Representative (USTR) published revisions and extensions to the list of medical-care products that are temporarily exempted from the Section 301 tariffs targeting China. The extension moves the expiration of the policy to the end of September 30, 2023, for all but four of the covered HTS codes. All of the exclusions had been set to expire on May 15, 2023, which USTR preempted by announcing this extension on May 12.²⁶

USTR said it will be using the extra time to “consider stakeholder and public feedback” on the policy, hinting that there could be more changes to the list in September. September 30 is also when the 352 non-COVID Section 301 exclusions expire.²⁷ USTR also suggests in the extension notice that the ongoing four-year statutory review of the Section 301 duties will be completed by that time, allowing all aspects of the program to be aligned.

Overview of the changes

The extension applies to 77 of the 81 previously covered products. Tariff relief for the other four will expire from June 1, 2023 (giving importers another 16 days for transition). The list of covered products is included in the Federal Register notice.²⁸ HTS 9903.88.66, the Chapter 99 code encompassing products currently excluded from Section 301, will have its expiration extended from May 15 through May 31, 2023.²⁹ Following that, the new list of 77 products will be established under HTS 9903.88.68, which importers should use from June 1 through September 30, 2023. US Customs and Border Protection (CBP) will soon issue instructions for implementing the policy change in customs declarations.

The four products that USTR will end COVID-related exclusions for on June 1 are:

- Certain polymers of ethylene (HTS 3923.21.0095). Under List 3 of the Section 301 action, there will be a 25% duty in addition to any other applicable measures.
- Certain nonwoven fabrics (HTS 5603.14.9090). Under List 3 of the Section 301 action, there will be a 25% duty in addition to any other applicable measures.

²⁶ *USTR Extends Certain COVID-Related Exclusions from China Section 301 Tariffs*, available here: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/may/ustr-extends-certain-covid-related-exclusions-china-section-301-tariffs>.

²⁷ *Notice of Extensions for Reinstated Product Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, available here: <https://www.federalregister.gov/documents/2022/12/21/2022-27637/notice-of-extensions-for-reinstated-product-exclusions-chinas-acts-policies-and-practices-related-to>.

²⁸ The Federal Register notice can be found here: <https://www.federalregister.gov/documents/2023/05/17/2023-10460/notice-of-product-exclusion-extensions-chinas-acts-policies-and-practices-related-to-technology>.

²⁹ The list of products in the 81 product list can be found in the 11/16/2021 Federal Register notice, *Notice of Product Exclusion Extensions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, available here: <https://www.federalregister.gov/documents/2021/11/16/2021-24918/notice-of-product-exclusion-extensions-chinas-acts-policies-and-practices-related-to-technology>.

- Facemasks and other sanitary articles of paper (HTS 4818.90.0000 before July 1, 2020, and HTS 4818.90.0020 or 4818.90.0080 effective July 1, 2020). Under List 4A of the Section 301 action, there will be a 7.5% duty in addition to any other applicable measures.
- Safety glasses and related protective articles (described in HTS 9004.90.0000 before January 1, 2021, and HTS 9004.90.0010 or 9004.90.0090 effective January 1, 2021). Under List 4A of the Section 301 action, there will be a 7.5% duty in addition to any other applicable measures.

The action follows a February Federal Register notice, in which USTR extended the exclusions by 75 days and requested public feedback on the policy.³⁰ USTR said it would use the feedback to review each of the 81 exclusions on a case-by-case basis. According to the May 17 extension notice, USTR decided to continue most of the exclusions based on the public response to that notice, along with feedback from its advisory committee, the interagency Section 301 Committee, and the White House COVID Response Team.

USTR originally introduced these tariff exclusions for medical-care products in December 2020, as part of the response to the COVID-19 pandemic.³¹ The exclusion originally applied to 99 products, but it was reduced to 81 in November 2021.

³⁰ *Interim Extension and Request for Comments on COVID-Related Product Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, available here: <https://www.federalregister.gov/documents/2023/02/07/2023-02570/interim-extension-and-request-for-comments-on-covid-related-product-exclusions-chinas-acts-policies>.

³¹ *Request for Comments on Additional Modifications to the 301 Action To Address COVID-19: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, available here: <https://www.federalregister.gov/documents/2020/03/25/2020-06285/request-for-comments-on-additional-modifications-to-the-301-action-to-address-covid-19-chinas-acts>.

Trade Agreements

CPTPP

Brunei Ratifies CPTPP; Entry into Force in Mid-July 2023

According to an official statement by Brunei's Ministry of Finance and Economy (MOFE), the Government of Brunei ratified the Comprehensive and Progress Agreement for Trans-Pacific Partnership (CPTPP) on May 13, 2023 and submitted on the same day its instrument of ratification to New Zealand, which serves as the Depository for CPTPP documents. The CPTPP will enter into force for Brunei 60 days later, *i.e.*, from July 12, 2023.

Brunei signed the CPTPP on March 8, 2018 together with other CPTPP member states. Brunei is the last of the original 11 signatories to ratify the CPTPP after Australia, Canada, Japan, Mexico, New Zealand, and Singapore (2018), Vietnam (2019), Peru (2021), Malaysia (2022), and Chile (2023).

With the entry into force of CPTPP, Brunei will gain access to new markets including Canada, Mexico and Peru, which are not covered by any of Brunei's existing FTAs. Apart from the CPTPP, Brunei has ten FTAs in force, including one bilateral with Japan and nine regional FTAs.³²

The MOFE statement is available at: <https://www.mofe.gov.bn/Lists/News/NewDispForm.aspx?ID=493>

³² The nine regional FTAs include: (i) ASEAN Free Trade Area (1993); (ii) ASEAN-China Free Trade Agreement (2003); (iii) ASEAN-Korea Free Trade Agreement (2006); (iv) Trans-Pacific Strategic Economic Partnership Agreement (2006); (v) ASEAN-Japan Comprehensive Economic Partnership (2009); (vi) ASEAN-Australia-New Zealand Free Trade Agreement (2010); (vii) ASEAN-India Free Trade Agreement (2010); (viii) ASEAN-Hong Kong Free Trade Agreement (2019); and (ix) Regional Comprehensive Economic Partnership (2022).

Petitions & Investigations

Petitions

US Manufacturer Files Petition for Imposition of Antidumping and Countervailing Duties on Paper Bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, Turkey, and Vietnam

On May 31, 2023, the US Department of Commerce (DOC) filed a petition seeking antidumping duties on imports of paper bags from Colombia, Portugal, Turkey, India, Vietnam, Cambodia, Malaysia, China, and Taiwan, and countervailing duties on imports of paper bags from China and India.

The subject product is paper shopping bags with handles, which are usually made with kraft paper, regardless of any printing or finishing. Gift bags bundled for retail sale; bags with woven fabric or die-cut handles; multiwall bags; and bags that are 11.5-12.5 inches in width, 6.5-7.5 inches in depth, and 13.5-17.5 inches in height are excluded. Paper shopping bags are classified under HTSUS subheadings 4819.30.0040 and 4819.40.0040, which are general categories that include other products as well (including the excluded bag types). These codes are usually subject to 0% tariffs, though imports from China are currently subject to Section 301 tariffs of 7.5%.

The petitioner is the Coalition for Fair Trade in Shopping Bags, an ad hoc association representing a large domestic paper bag manufacturer and a union that represents workers in the industry. The manufacturer is Novolex Holdings, LLC, which employs 950 people to produce paper bags in the United States, with factories and warehouses in Florence, KY; Walton, KY; Monroe, GA; Vancouver, WA; Meriden, CT; Erlanger, KY. It also manufactures paper bags in Mexico. The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial Service Workers International Union (commonly known as United Steelworkers or USW), the union in the association, represents the workers in Novolex's Florence, KY; Walton, KY; and Erlanger, KY facilities. The other two major US producers, American Paper Bag, LLC and ProAmpac, LLC are not involved in the petition. A subsidiary of Novolex, Hilex Poly Co., LLC, has previously participated in antidumping investigations covering plastic shopping bags from China, Malaysia, and Thailand.

The petitioner is alleging that producers from the nine countries are all dumping, injuring the domestic industry. The dumping margins alleged in the petition are:

- Cambodia: 44.29% ~ 221.36%
- China: 133.80% ~ 324.24%
- Colombia: 65.04%
- India: 88.56%
- Malaysia: 173.38%
- Portugal: 26.71% ~ 204.54%
- Taiwan: 44.76% ~ 50.13%
- Turkey: 12.51% ~ 45.29%
- Vietnam: 63.67% ~ 128.81%

In addition to the dumping allegations, the petitioner alleges the exporters from China and India are benefiting from countervailable subsidies. The petitioner does not quantify the net subsidy themselves.

The US International Trade Commission (ITC) posted its investigation notice on May 31, automatically starting preliminary review for material injury.³³ ITC will reach its determination by July 17 and will transmitted it to DOC by July 24 (subject to any extensions by DOC).

Investigations

DOC Initiates Antidumping Investigation on Boltless Steel Shelving Units from India, Malaysia, Taiwan, Thailand, and Vietnam

On May 19, 2023, the DOC published to the Federal Register that it is initiating investigations into less-than-fair-value sales of boltless steel shelving units from India, Malaysia, Taiwan, Thailand, and Vietnam.³⁴ The DOC currently plans to make preliminary determinations no later than 140 days from this initiation (though that may be postponed). The US ITC will also preliminarily determine within 45 days if there is material injury.

Edsal Manufacturing Co., the largest manufacturer of boltless steel shelving in the United States, originally filed the petition for the investigations on April 24, 2023 (*please see W&C's April 2023 US & Multilateral Trade and Policy Developments report for more information on the original petition*). In addition to the April 24 petition, the petitioner filed additional clarifications in response to DOC questions on May 1, 3, 8, and 10. As Edsal itself is the majority of the US industry, DOC found that they have sufficient industry support for the initiation of the inquiry. The estimated dumping margins are 175.31% for India, 35.45% to 81.12% for Malaysia, 78.12% for Taiwan, 176.62% to 187.03% for Thailand; and 92.60% to 224.94% for Vietnam.

The period of investigation for the India, Malaysia, Thailand, and Taiwan antidumping (AD) investigations is April 1, 2022 through March 31, 2023, while Vietnam's period of investigation is October 1, 2022, through March 31, 2023 (Vietnam has only two quarters instead of four because it is a non-market economy under 19 CFR 351.204(b)(1)).

The scope of the investigation covers "boltless steel shelving units prepackaged for sale, with or without decks (boltless steel shelving)." These are generally classified under HTSUS 9403.20.0075. The scope description has been modified slightly since the original petition to align it more fully with the scope of the China boltless steel shelving investigation from 2014. The full description of the product can be found in the appendix of the Federal Register Notice. Interested parties should submit any additional comments on the scope of the investigation by June 5, 2023 (there will be an additional 10 days after that for rebuttals).

³³ *Paper Shopping Bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, Turkey, and Vietnam: Institution of Anti-Dumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations*, available at: https://www.usitc.gov/secretary/fed_reg_notices/701_731/701_690_notice_06012023sgl.pdf.

³⁴ *Boltless Steel Shelving Units Prepackaged for Sale From India, Malaysia, Taiwan, Thailand and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 88 FR 32188, 5/19/2023, available at: <https://www.federalregister.gov/documents/2023/05/19/2023-10778/boltless-steel-shelving-units-prepackaged-for-sale-from-india-malaysia-taiwan-thailand-and-the#footnote-2-p32188>.

DOC Launches Antidumping and Countervailing Duty Investigations of Brass Rod from Brazil, India, Israel, Mexico, Korea, and South Africa

On May 24, 2023, the DOC published to the Federal Register notices that it had initiated CVD investigations into imports of brass rod from India, Israel, and Korea³⁵ and AD investigations into imports from Brazil, India, Israel, Mexico, Korea, and South Africa.³⁶

The American Brass Rod Fair Trade Coalition and its members, Mueller Brass Co. and Wieland Chase LLC, filed the petitions on April 27, 2023, followed by supplemental information on May 8 and 11, 2023 to clarify the product scope.

The CVD petition accuses the governments of India, Israel, and Korea of providing countervailable subsidies to their producers. The petitioners named one exporter from India, one from Israel, and two from Korea as benefiting from these subsidies. DOC intends to calculate company-specific subsidy rates for each of these exporters. The period of CVD investigation will be January 1, 2022, through December 31, 2022. Unless DOC postpones, preliminary results will be made in 65 days.

The estimated dumping margins, based on the data the petitioners provided to DOC, are 77.14% for Brazil, 16.52% for India, 40.12% for Israel; 29.43% for Mexico; 20.82% for Korea; and 20.99% for South Africa. The periods of the AD investigations will be April 1, 2022, through March 31, 2023. Unless DOC postpones, the preliminary findings will be released in 140 days. ITC will also preliminarily determine within 45 days if there is material injury.

The product covered under these investigations are brass rod and bars with a diameter greater than 0.25 inches and less than or equal to 12 inches, “which is defined as leaded, low-lead, and no-lead solid brass made from alloys such as, but not limited to the following alloys classified under the Unified Numbering System (UNS) as C27450, C27451, C27460, C34500, C35000, C35300, C35330, C36000, C36300, C37000, C37700, C48500, C67300, C67600, and C69300, and their international equivalents.” Brass ingots are excluded from the scope of the investigation. These products usually under HTSUS 7407.21.9000, 7407.21.7000, and 7407.21.1500, though they will sometimes be included in 7403.21.0000, 7407.21.3000, and 7407.21.5000.

DOC Announces Preliminary Affirmative Antidumping Determinations and other Actions on Paper File Folders from Vietnam, China, and India

On May 17, 2023, the DOC published three preliminary affirmative determinations of less-than-fair-value sales in antidumping investigations on imports of paper file folders from China,³⁷ India,³⁸ and Vietnam.³⁹ The cases had been

³⁵ *Brass Rod From India, Israel, and the Republic of Korea: Initiation of Countervailing Duty Investigations*, 88 FR 33566, 5/24/2023, available at: <https://www.federalregister.gov/documents/2023/05/24/2023-11005/brass-rod-from-india-israel-and-the-republic-of-korea-initiation-of-countervailing-duty>.

³⁶ *Brass Rod From Brazil, India, Israel, Mexico, the Republic of Korea, and South Africa: Initiation of Less-Than-Fair-Value Investigations*, 88 FR 33575, 5/24/2023, available at: <http://www.federalregister.gov/documents/2023/05/24/2023-11002/brass-rod-from-brazil-india-israel-mexico-the-republic->.

³⁷ *Paper File Folders From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 88 FR 31485, 5/17/2023, available at: <https://www.federalregister.gov/documents/2023/05/17/2023-10484/paper-file-folders-from-the-peoples-republic-of-china-preliminary-affirmative-determination-of-sales>.

³⁸ *Paper File Folders From the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 88 FR 31488, 5/17/2023, available at: <https://www.federalregister.gov/documents/2023/05/17/2023-10483/paper-file-folders-from-the-socialist-republic-of-vietnam-preliminary-affirmative-determination-of>.

³⁹ *Paper File Folders From India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 88 FR 31490, 5/17/2023, available at: <https://www.federalregister.gov/documents/2023/05/17/2023-10482/paper-file-folders-from-india-preliminary-affirmative-determination-of-sales-at-less-than-fair-value>.

initiated on November 8, 2022, based on a petition from the Coalition of Domestic Folder Manufacturers. The petitioner represents two domestic producers, Smead Manufacturing Co. Inc. and TOPS Products LLC.

The scope of the three investigations covers file folders, consisting mostly of paper, paperboard, pressboard, or other cellulose, which is prepared for holding documents. This includes a range of different types of folders, including manila folders, hanging folders, fastener folders, classification folders, expanding folders, pockets, jackets, and wallets. Mailing envelopes, ringed binders, boxes, and certain specific types of portfolios are excluded. The covered products mostly enter the United States under HTSUS 4820.30.0040.

China

For the China investigation, DOC preliminarily determined that paper file folders are being sold or are likely to be sold at less than fair value. No companies qualified for a special rate in the China investigation and multiple respondents failed to respond to DOC questionnaires. As such, based on facts otherwise available, DOC preliminarily determined a “China-wide entity” estimated dumping margin of 192.70%. DOC plans to issue its final determination within 75 days.

Vietnam

For the Vietnam investigation, DOC preliminarily determined that paper file folders are being sold or are likely to be sold at less than fair value. DOC preliminarily relied on facts otherwise available for the ruling for CRE8 Direct (HK) Co., Limited and Fairton Asia Limited and further ruled that they and six other exporters were not eligible for separate rates. The “Vietnam-wide entity” estimated weighted-average dumping margin has been set at 324.7%. Three-Color Stone Stationary (Viet Nam) Company Limited received a separate rate set at the same level. DOC will issue its final determination within 135 days, based on a postponement request submitted by Three-Color Stone Stationary (Viet Nam) Company Limited.

India

For the India investigation, DOC preliminarily determined that paper file folders are being sold or are likely to be sold at less than fair value. The preliminary dumping margin rates are 15.07% (with a 11.42% cash deposit rate adjusted for subsidy offsets) for Navneet Education Limited and the all-others rate. The rates for Navneet were calculated in accordance with section 772(s) based on constructed price values, and the all-others rates was based on Navneet’s rate. A rate of 86.01% (with a 82.36% cash deposit rate adjusted for subsidy offsets) for Kokuyo Riddhi Paper Products Pvt. Ltd and LGPL Paper Industries Pvt. Was set based on facts available. DOC will issue its final determination within 135 days, based on postponement requests by Navneet and by the petitioner (the Coalition of Domestic Folder Manufacturers).

DOC Announces Final Affirmative Antidumping and Countervailing Duty Determinations for Freight Rail Couplers and Parts from China and Preliminary Affirmative Antidumping Determination for Mexico

In May 2023, the DOC published final affirmative determinations for the AD and CVD investigations into imports of freight rail couplers and parts thereof from China and a preliminary affirmative determination for a related antidumping investigation into the same product from Mexico.

The scope of these investigations covers certain freight railcar couplers and their parts. A coupler includes the knuckle and coupler body components, but may also include other parts like locks, lock lift assemblies, knuckle pins, knuckle throwers, and rotors. The parts specifically covered are “(1) E coupler bodies, (2) E/F coupler bodies, (3) F coupler bodies, (4) E knuckles, and (5) F knuckles.” The knuckle and coupler bodies are included even if imported separately, but others (including the coupler locks, lock lift assemblies, knuckle pins, knuckle throwers, and rotors) are only in scope if they are imported as part of an assembly. Couplers are imported under HTSUS 8607.30.1000

and parts under 7326.90.8688, though there are a number of other codes that could also be used in some circumstances. This scope has been slightly modified for all three investigations following recent comments from importers and the petitioner.

Couplers and parts are considered to be of Chinese or Mexican origin, and thus subject to the CVD order, if the coupler parts were cast or forged in China or Mexico. This applies regardless of where further processing, assembly, or final attachment to rail cars occurs.

China CVD

The DOC published to the Federal Register its final affirmative determination, as well as a partial final affirmative critical circumstances determination, on May 19, 2023.⁴⁰ The CVD determination did not change from the preliminary determination, which was published on March 3, 2023. It is set at 265.99% for all the respondent companies, the non-respondents companies (based on adverse facts available), and for all others.

The final determination however narrows the critical circumstances ruling, finding critical circumstances on only Chongqing Tongyao, Qingdao Sanheshan, and the non-responsive companies. The preliminary decision had applied this finding to all producers and exporters. Because the finding was narrowed, CBP will release all cash deposits that were made by importers dropped from the critical circumstances finding for entries that occurred before March 3, 2023. ITC now has 45 days from the date of the determination to issue a determination of whether the domestic industry is materially injured. Should ITC's determination be positive, DOC will issue the final CVD order.

China AD

On May 30, 2023, the DOC will publish a final affirmative determination of sales at less than fair value in its antidumping investigation into certain freight rail couplers and parts thereof from China, along with a final affirmative critical circumstances determination.⁴¹

The preliminary determination was published on March 13, 2023, finding sales at less-than-fair value. The rate did not change from the preliminary ruling, remaining at a dumping margin of 169.9% with a dumping margin-adjusted rate of 139.49%. No companies qualified for special rates in the antidumping investigation so rates have been set for a single China-wide entity. The critical circumstances ruling will continue to apply to the China-wide entity for the AD investigation, unlike the CVD investigation. ITC now has 45 days from the date of the determination to issue a determination of whether the domestic industry is materially injured. Should ITC's determination be positive, DOC will issue the final AD order.

Mexico AD

On May 3, 2023, the DOC published to the Federal Register its preliminary affirmative determination of sales at less-than-fair value in its antidumping investigation into certain freight rail couplers and parts thereof from Mexico.⁴²

⁴⁰ *Certain Freight Rail Couplers and Parts Thereof From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, In Part*, 88 FR 32184, 5/19/2023, available at: <https://www.federalregister.gov/documents/2023/05/19/2023-10779/certain-freight-rail-couplers-and-parts-thereof-from-the-peoples-republic-of-china-final-affirmative>.

⁴¹ *Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China: Final Affirmative Determination of Sales at Less-Than-Fair Value and Final Affirmative Determination of Critical Circumstances*, 5/30/2023, available at: <https://www.federalregister.gov/public-inspection/2023-11358/sales-at-less-than-fair-value-determinations-investigations-etc-certain-freight-rail-couplers-and>.

⁴² *Certain Freight Rail Couplers and Parts Thereof From Mexico: Preliminary Affirmative Determination of Sales at Less Than Fair Value Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures*, 88 FR 27864, 5/3/2023, available at: <https://www.federalregister.gov/documents/2023/05/03/2023-09350/certain-freight-rail-couplers-and-parts-thereof-from-mexico-preliminary-affirmative-determination-of>.

Unlike the China investigation results that followed a week later, however, the Mexico investigation did not find critical circumstances. The preliminary determination sets a dumping margin of 47.82% for ASF–K de Mexico S. de R.L. de C.V. (ASF–K), the only company individually examined. The same rate is used for the all others category. The notice also extends the deadline for the final determination to 135 days after the publication of the preliminary determination, based on a request from ASF-K.

DOC Issues Final Antidumping Duty Orders for Preserved Mushrooms from the Netherlands, Poland, and Spain

On May 23, 2023, the DOC issued its final antidumping duty orders on certain preserved mushrooms from the Netherlands, Poland, and Spain.⁴³ The decision follows affirmative final determinations DOC⁴⁴ and the ITC.⁴⁵

The product covered by the order is certain preserved mushrooms of the genus *Agaricus*, whether whole, sliced, diced or as stems and pieces. “Preserved mushrooms” refers to mushrooms that are prepared or preserved and then packed and heat sterilized in containers. The scope excludes mushrooms that are preserved by means of vinegar or acetic acid (pickled, marinated, or acidified mushrooms). The covered product is usually imported under HTSUS 2003.10.0127, 2003.10.0131, and 2003.10.0137, though it may also enter under 2003.10.0143, 2003.10.0147, and 2003.10.0153.

The estimated weighted-average dumping margins are between 0% and 146.59% for the Netherlands, between 34.32% and 57.22% for Poland, and between 59.59% and 156.59% for Spain. The antidumping duties will be assessed on unliquidated entries of the covered product that entered the United States or were withdrawn from warehouses for consumption on or after November 3, 2022 (the date of the preliminary determination).

⁴³ *Certain Preserved Mushrooms From the Netherlands, Poland, and Spain: Antidumping Duty Orders*, 88 FR 33096, 5/23/2023, available at: <https://www.federalregister.gov/documents/2023/05/23/2023-10939/certain-preserved-mushrooms-from-the-netherlands-poland-and-spain-antidumping-duty-orders>.

⁴⁴ *Certain Preserved Mushrooms From the Netherlands, Poland, and Spain*, 88 FR 31522, 5/17/2023, available at: <https://www.federalregister.gov/documents/2023/05/17/2023-10439/certain-preserved-mushrooms-from-the-netherlands-poland-and-spain>.

⁴⁵ *Certain Preserved Mushrooms From the Netherlands, Poland, and Spain*, 88 FR 31522, 5/17/2023, available at: <https://www.federalregister.gov/documents/2023/05/17/2023-10439/certain-preserved-mushrooms-from-the-netherlands-poland-and-spain>.

WTO Developments

WTO Initiative on Trade in Plastics Starts to Take Shape

The WTO has announced that progress is being made in the discussions on trade in plastics that is being co-chaired by China and Morocco. The “Dialogue on Plastics Pollution and Environmentally Sustainable Plastics Trade” was launched by seven WTO Members in November 2020 and supported at Ministerial level by over 60 participating Members, including the United States, the EU and Japan, in December 2021 (WT/MIN(21)/8/Rev.2). The co-chairs have issued an evolving “skeleton” text of a Ministerial Declaration on plastics pollution for consideration at the next Ministerial Conference (MC13) in 2024 and a commitment “to further progress on concrete, pragmatic and effective outcomes for MC14.”

The “skeleton” text of a Declaration for MC13 places the WTO largely in a supportive role of enhancing collaboration and cooperation with other international organizations, in particular to send a signal of support to the negotiations of the United Nations Environment Programme which are aimed at achieving a multilateral, legally-binding instrument on reducing plastics pollution by 2024.

In the specific area of trade, the text proposes priorities for cooperation among WTO Members as the next stage in the Dialogue. The most concrete priority is collaboration between the WTO and the World Customs Organization (WCO) to support amendments to the Harmonized System (HS) for classifying traded goods, which is used by WTO Members for customs and tariff purposes. The aim of this would be to ensure more effective monitoring and regulation of trade in virgin and recycled plastics. Other priorities include promoting the adoption of sustainable and effective non-plastic substitutes and re-use systems, facilitating access to technologies for environmentally sound waste management, and facilitating trade in “green” goods and services. Also under consideration is the inclusion of a menu of trade-related measures that WTO Members could implement on a voluntary basis, an illustrative compilation of goods, services and technologies that governments could seek to promote or reduce, and trade-related technical cooperation and capacity-building priorities for developing countries.

The Dialogue falls formally under the WTO work programme on trade and environment. For the time being, indications are that it would lead only to non-binding conclusions and political messages of support. However, one possible result from MC13 could be to upgrade it to the status of a negotiation if that is warranted by the trade-related substance under consideration at that time, for example to allow each WTO Member to implement amendments to the HS classification of trade in plastics that could impact upon established tariff schedules.