

# US Multilateral Trade and Policy Developments

---

**Japan External Trade Organization**

June 2023

---

# Contents

<b>Trade Policy Developments</b> .....	<b>1</b>
US International Trade Commission to Study Greenhouse Gas Intensity of US Steel and Aluminum Industries .....	1
US Trade Representative Requests Public Input on its Worker-Centered Trade Policy Agenda .....	2
Congress Reintroduces Bill to Strengthen Antidumping and Countervailing Duty Powers .....	3
Bills to Limit Use of US Customs <i>De Minimis</i> Introduced to Congress.....	6
United States Launches Four New Rapid Response Petitions Concerning Denials of Labor Rights in Mexico under USMCA Bilateral Mechanism .....	8
US and Indian Leaders Meet in Washington, DC; Resolve Six WTO Trade Disputes.....	11
US Commerce Department Begins CHIPS Act Funding Round for Semiconductor Supply Chain Industries .....	14
<b>Trade Actions</b> .....	<b>16</b>
<b>Trade Agreements</b> .....	<b>17</b>
EU-US Trade and Technology Council Advances Work on Emerging Technologies and Sustainable Trade .....	17
United States and United Kingdom Unveil Economic Cooperation Plan and Critical Minerals Agreement .....	20
<b>Petitions &amp; Investigations</b> .....	<b>22</b>
Department of Commerce and International Trade Commission Sustain AD Order on Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Over and Under 4.5 Inches) From Japan and Romania in Sunset Reviews .....	22
Commerce Department Preliminarily Finds Sales at Less Than Normal Value in Administrative Review for Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan .....	23
International Trade Commission Begins Five-year Review of Tin- and Chromium-Coated Steel Sheet from Japan.....	23
<b>WTO Developments</b> .....	<b>25</b>
India Appeals Against a WTO Dispute Settlement Ruling on its ICT Tariffs .....	25

## Trade Policy Developments

### US International Trade Commission to Study Greenhouse Gas Intensity of US Steel and Aluminum Industries

On June 5, 2023, the United States Trade Representative (USTR) requested that the United States International Trade Commission (USITC) study the greenhouse gas (GHG) emissions intensity of the US steel and aluminum industries.<sup>1</sup> According to USTR, the results of this study will be used to “inform discussions with the European Union (EU) regarding the Global Arrangement on Sustainable Steel and Aluminum (Global Arrangement).”

#### Goals for the Global Arrangement

USTR is pursuing a common tariff regime on imported steel and aluminum as part of the Global Arrangement, though there has not yet been a final agreement on this approach with the EU. The proposed tariffs would be applied to all countries outside the Global Arrangement based on their relative GHG emissions. The United States and EU would be the founding members of this arrangement, but other countries would be invited to join should they meet certain conditions. USTR asserts this system would address concerns about the carbon intensity of steel and aluminum production as well as protect the US domestic industries from foreign competition, which USTR claims is unfairly subsidized. The EU has been less supportive of this approach, favoring its own carbon border adjustment mechanism (CBAM) instead.

If USTR’s proposal is adopted, the United States and EU would need detailed data about the GHG emissions intensity of the domestic and foreign steel industries. This will require new research on the sector. Carrying out surveys of this scale will likely take years to complete. For this study specifically, USTR has requested that USITC submit the report by January 2025. Since this study only covers the US industry, it is likely that a larger follow-up study will be necessary to understand how US emissions compare to emissions in other countries. USTR’s letter suggests that it may ask for follow-up studies later.

The long development timeline suggests any agreement unveiled this October (if a deal is successfully reached at all) would be only the first step in a long process of developing and implementing the Global Arrangement. In its letter to USITC, USTR restates that the negotiations will be concluded in October 2023, but that “discussions of the underlying issues will continue as the Global Arrangement is implemented.”

#### Scope of the study

USTR is interested in tracking GHG emissions intensity across Scope 1, Scope 2, and certain Scope 3 emissions. For the purpose of this study, GHG emissions intensity is defined as the quantity of GHG emissions in metric tons of carbon dioxide-equivalent units per metric ton of steel or aluminum produced.

- Scope 1 emissions are those that come directly from the facilities that produce steel and aluminum, including the facilities’ fuel combustion emissions, process emissions, and onsite electricity generation.
- Scope 2 covers emissions from generation of electricity and other energy that the facilities purchase from offsite.
- In Scope 3 emissions, USTR is interested specifically in emissions from upstream materials that are used as inputs for steel and aluminum manufacturing. This would include unwrought aluminum and steel substrates.

---

<sup>1</sup> USTR’s letter to the USITC can be found here:

[https://ustr.gov/sites/default/files/Section%20332%20Request%20Letter\\_Steel%20and%20Aluminum%20GHG%20Emissions.docx.pdf](https://ustr.gov/sites/default/files/Section%20332%20Request%20Letter_Steel%20and%20Aluminum%20GHG%20Emissions.docx.pdf)

USTR also wants USITC to gather information on the national origin of these inputs, including country of smelt and country of melt and pour.

USTR wants the report to cover emissions for specific steel and aluminum products wherever possible, along with measures for the broader sectors. For steel, this would include stainless steel and carbon and other alloy steel, with breakouts for flat, pipe and tube, long, and semi-finished products. Aluminum would include unwrought and wrought aluminum, including breakouts for bars, rods, and profiles; wire; plates, sheet, and strip; foil; tubes, pipes, and fittings; castings; and forgings. A full list of HS codes for the covered products is included in an attachment to the letter. These lists reflect the same products as those that were included in the Section 232 steel and aluminum actions.

### Next steps

USITC has been instructed to complete the report by January 28, 2025. To carry out the study, USITC will likely issue survey questionnaires to companies operating steel and aluminum production facilities in the United States (including foreign-owned facilities) and use existing data from the US Environmental Protection Agency's Greenhouse Gas Reporting Program (GHGRP). USITC may also choose to hold public hearings and other solicitations of public feedback, as is common in their research. Along with providing the report to USTR, USITC will also publish the full report for the public. *[Update: USITC published its "Notice of Investigation and Scheduling of a Public Hearing" on July 5, 2023, which can be found here:*

[https://www.usitc.gov/secretary/fed\\_reg\\_notices/332/332\\_598\\_notice\\_07052023sgl\\_0.pdf](https://www.usitc.gov/secretary/fed_reg_notices/332/332_598_notice_07052023sgl_0.pdf)]

## US Trade Representative Requests Public Input on its Worker-Centered Trade Policy Agenda

The US Trade Representative (USTR) is seeking input from the public on what policy measures the Biden administration could adopt to advance inclusive and worker-centered trade policy. The call for input was announced in a Federal Register Notice on June 12, 2023.<sup>2</sup> The Biden administration's trade agenda is prioritizing how it can use trade policy to support economically marginalized groups, minorities, and workers in all of its engagements. This call for input opens the door to proposals from the private sector, universities, labor unions, and other interested parties for how they can advance those objectives.

### Topics for consideration

With this call for input, USTR is specifically seeking suggestions from interested parties on how inclusive policy positions can be developed for all trade and investment policy areas, including proposals related to specific underserved communities.

To that end, the proposal asks for feedback on any or all of the below questions:

- "What meaningful and substantive trade policies, actions, or provisions should policy and decision makers consider that would advance racial and gender equity, equality, and empowerment in U.S. trade and investment policy? If applicable, what existing tools can be better utilized for these goals?"
- "What new and innovative tools, structures, and capacity should the U.S. Government adopt to advance inclusive trade and investment policy? Please identify data gaps that, if addressed, would be most helpful in undertaking meaningful impact analysis."

---

<sup>2</sup> The Federal Register Notice, which contains instructions on where to submit comments, can be found here: <https://www.federalregister.gov/documents/2023/06/12/2023-12446/request-for-comments-on-advancing-inclusive-worker-centered-trade-policy>

- “How can trade and investment policy address multiple, intersecting barriers to advancing equity for underserved persons (e.g., rural communities, race/ethnicity, gender, and persons with disabilities)?”
- “What best practices should USTR consider to ensure that advancing equity, equality, and economic empowerment is standardized in community and stakeholder engagement regarding the development and implementation of U.S. trade and investment policy?”
- “Are there specific engagement and consultation considerations and/or processes that policy makers should consider in incorporating equity into U.S. trade and investment policy?”
- “What key actions should the U.S. Government pursue with trade partners and allies to ensure that the benefits from trade and investment policy reach underserved communities?”
- “Are there trade policies, provisions, or actions which are detrimental to advancing racial and gender equity, equality, and economic empowerment? If so, please specify the relevant policy, program, and/or provision, and if available, provide data or analysis that would be useful evidence of this detrimental effect. Do you have a recommendation for how this should be corrected?”
- “How can trade policymaking better respond to the specific interests of different U.S. regions and local communities?”

### **Developing a new trade policy**

The call for input is the latest in a series of undertakings by the Biden administration to better understand how trade policy can support workers and marginalized communities. The US International Trade Commission (USITC), at USTR’s request, published a study on the distributional effects of trade policy in October 2022.<sup>3</sup> The report described some of the impacts of trade on domestic workers, but also identified significant gaps in the government’s knowledge. USTR followed up on this by requesting more in-depth research on these knowledge gaps in a January 25, 2023 letter to the USITC.

As the administration has learned, developing a detailed strategy for how trade policy can be used to help workers and marginalized communities is a complex challenge. Trade and investment policy tools focus on improving conditions for businesses. There are several layers of interactions between the companies that engage in commerce and individual citizens that are their employees or customers, making it difficult for trade regulations to pass through to particular personal outcomes. This is further complicated by the administration’s desire to help specific, and often small, communities, for whom detailed economic data is often unavailable. This request for input invites suggestions for how the economic data could be improved, besides asking for general policy suggestions.

### **Submissions**

Comments may be submitted by any interested parties through the Federal eRulemaking Portal at regulations.gov. Submissions are due by August 11, 2023 and should conform to the guidance described in the Federal Register Notice.

### **Congress Reintroduces Bill to Strengthen Antidumping and Countervailing Duty Powers**

On June 7, 2023, the *Levelling the Playing Field 2.0 Act* was reintroduced to Congress. The bill would expand the reach of antidumping (AD) and countervailing duty (CVD) investigations by introducing a system for successive investigations, making cross-border subsidies countervailable, strengthening enforcement, and codifying recently

<sup>3</sup> *Distributional Effects of Trade and Trade Policy on U.S. Workers*, USITC, available here: <https://www.usitc.gov/publications/332/pub5374.pdf>

developed particular market situation (PMS) and currency undervaluation policies. An earlier version of the bill was part of the House of Representative's *America COMPETES Act* in 2022 but was ultimately removed from the final *CHIPS and Science Act*, along with the rest of the trade policy measures that earlier versions of the CHIPS bills included.

The bill has bipartisan support in Congress and backing from domestic industry interests. Representatives Terri Sewell (D-AL) and Bill Johnson (R-OH), along with Reps. Frank Mrvan and (D-IN) and Beth Van Duyne (R-TX) introduced the bill in the House,<sup>4</sup> while Senators Sherrod Brown (D-OH) and Todd Young (R-IN), with several other co-sponsors, introduced a companion bill in the Senate.<sup>5</sup> In a show of domestic industry and labor support, the American Iron and Steel Institute (AISI) and the United Steelworkers union (USW) endorsed the bill upon its reintroduction.

The Department of Commerce is also developing its own proposals for reforming AD/CVD regulations, which were recently circulated in a May 2023 Federal Register notice.<sup>6</sup> The measures in this bill related to PMS and cross-border subsidies are similar to what Commerce has proposed and would provide them with a firmer legal basis. The authors of the bill reportedly worked with Commerce to ensure the regulatory proposals and the bill were aligned with one another.

### Main proposals in the bill

#### □ Introducing successive investigations

The bill would create a new form of AD/CVD investigation called a successive investigation. Successive investigations would make it easier for petitioners to file new cases targeting exports from a new country following the imposition of an AD/CVD order against another. The bill also explains the factors Commerce should consider in these kinds of cases and establishes an expedited timeline for them.

Imposing high tariffs on imports from specific countries often diverts production to new countries. Under the current rules, US companies cannot petition for investigations into these new imports until a new injurious import trend can be identified. The measures proposed in the bill would bypass that standard, potentially leading to AD/CVD orders targeting more countries than in the past.

#### □ Establishing cross-border subsidies as countervailable

The bill would change the definition of countervailable subsidies to treat funding from third countries as subsidies from the government of the country the exporter is located in. The United States has not previously targeted subsidies from third countries, believing it to be unnecessary. The recent expansion of Chinese overseas development finance has shifted thinking in Washington, however. The members of Congress who introduced the bill said that this measure is targeted at projects funded under China's Belt and Road Initiative (BRI).

<sup>4</sup> *Reps. Sewell, Johnson Introduce Bipartisan Legislation to Level the Playing Field for American Workers*, available here: <https://sewell.house.gov/2023/6/rep-sewell-johnson-introduce-bipartisan-legislation-to-level-the-playing-field-for-american-workers>

<sup>5</sup> *Brown, Young Introduce Legislation to Strengthen Trade Remedy Laws, Protect American Workers*, available here: <https://www.brown.senate.gov/newsroom/press/release/sherrod-brown-young-introduce-legislation-strengthen-trade-remedy-laws-protect-american-workers>

<sup>6</sup> *Regulations Improving and Strengthening the Enforcement of Trade Remedies Through the Administration of the Antidumping and Countervailing Duty Laws*, 88 FR 29850, available here: <https://www.federalregister.gov/documents/2023/05/09/2023-09052/regulations-improving-and-strengthening-the-enforcement-of-trade-remedies-through-the-administration>

Commerce similarly proposed to eliminate the rule that bans investigations into cross-border subsidies (referred to as “transnational subsidies” in Commerce’s proposed regulation) in its recently proposed reforms. The legal basis of this change was, however, questionable. Clarifying the law through this bill would provide stronger footing for Commerce’s action. The bill also goes into more detail than Commerce’s proposal, describing specific ways that Commerce should go about its investigations.

The bill adds that these measures should be applied consistently with the United States’ international obligations. Consistency with the World Trade Organization (WTO) of using countervailing duties against cross-border subsidies is unclear<sup>7</sup> and is currently being litigated in a case at the Dispute Settlement Body.<sup>8</sup>

#### □ **Codifying the PMS process**

The bill would clarify Commerce’s authority to investigate the existence of a PMS in an exporting country, following recent court challenges to the practice. The Commerce regulation also proposed similar measures, which these changes to the law would further entrench. Like the Commerce proposals, the bill introduces failures to enforce intellectual property, human rights, labor, and environmental laws as factors that could contribute to the existence of a PMS.

Where Commerce finds the existence of a PMS, it may make adjustments to an exporter’s reported costs or sales prices, having the effect to increasing the duty margin to account for market distortions in the exporting country. Solidifying Commerce’s authorities under the existing PMS rules would bolster a powerful tool for Commerce and US domestic industry to target exports from certain countries.

#### □ **Modifying circumvention case processes**

The bill clarifies the process and timeline by imposing new statutory requirements on circumvention investigations. It would also require US Customs and Border Protection (CBP) to begin collecting cash deposits as soon as the circumvention inquiry is initiated.

#### □ **Codifying currency undervaluation as a subsidy**

The bill would codify the existing practice of treating currency undervaluation as a countervailable subsidy into law, including processes for how it should be investigated. Determining the existence of undervaluation and the amount of the countervailable subsidy would depend upon both a comparison of the existing exchange rate to a derived estimate of the appropriate exchange rate and whether there is a “government action on the exchange rate” that causes undervaluation.

This practice of treating currency undervaluation as a countervailable subsidy was introduced by a Commerce regulation in 2020.<sup>9</sup> Under those rules, Commerce would usually defer to the Treasury Department in measuring currency undervaluation. The Treasury defines “government action on the exchange rate” to usually mean direct interventions in foreign exchange markets and capital controls, but not monetary policy actions. The Treasury’s

<sup>7</sup> Note by the WTO Secretariat, 3/16/2004, available here: [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S009-DP.aspx?language=E&CatalogueIdList=130147,65553,102228,64435,31069&CurrentCatalogueIdIndex=4&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=130147,65553,102228,64435,31069&CurrentCatalogueIdIndex=4&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True)

<sup>8</sup> DS616: European Union — Countervailing and Anti-Dumping Duties on Stainless Steel Cold-Rolled Flat Products from Indonesia, available here: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds616\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds616_e.htm)

<sup>9</sup> Modification of Regulations Regarding Benefit and Specificity in Countervailing Duty Proceedings (19 CFR Part 351, February 4, 2020), available here: <https://www.govinfo.gov/content/pkg/FR-2020-02-04/pdf/2020-02097.pdf>; and See White & Case’s coverage of the regulations from 2020, available here: <https://www.whitecase.com/insight-alert/us-department-commerce-publishes-final-rule-treatment-alleged-currency-undervaluation>

analysis couples that identification with the calculations of an econometric model that assesses if exchange rates may be undervalued.<sup>10</sup>

#### □ **Strengthening evasion rulings enforcement**

There are several measures in the bill that would tighten enforcement of CBP tariff evasion rulings, including limiting protests against CBP evasion rulings and adding new powers to investigate evasion of safeguard duties.

A draft of the bill can be found here: [https://sewell.house.gov/\\_cache/files/b/1/b15131f3-a95f-4fc7-87e7-e83ef58b470e/CFCE3BC3057E36172FC6E1C39F150F73.levelingtheplayingfield2.0.pdf](https://sewell.house.gov/_cache/files/b/1/b15131f3-a95f-4fc7-87e7-e83ef58b470e/CFCE3BC3057E36172FC6E1C39F150F73.levelingtheplayingfield2.0.pdf)

### **Bills to Limit Use of US Customs *De Minimis* Introduced to Congress**

In early June, bills that would reduce the kinds of shipments that qualify under US customs de minimis entry rules were introduced in both the House of Representatives and the Senate. The bills, the *Import Security and Fairness Act* and the *De Minimis Reciprocity Act of 2023*, would limit China and Russia's access to *de minimis* treatment, expand data reporting requirements, and add various other conditions to use of de minimis entry. The current US customs de minimis allows admission free of duty and tax in situations where the retail value of the exempted articles imported by one person in one day do not exceed \$800.

The members of Congress developing the bills are reportedly in contact with one another, and the data reporting sections of the two bills are substantially the same. That said, the rest of the bills' content diverge substantially. The Import Security and Fairness Act takes a narrower approach, mostly targeting concerns with China and Russia. The De Minimis Reciprocity Act of 2023, on the other hand, is seeking a broader rollback of de minimis and would promote reciprocal treatment of de minimis levels for all countries.

#### **The Import Security and Fairness Act**

Rep. Earl Blumenauer (D-OR and Ranking Member of the House Ways and Means Committee) and Rep. Neal Dunn (R-FL) unveiled the Import Security and Fairness Act on June 15, 2023. A companion bill is being introduced to the Senate by Finance Committee member Sherrod Brown (D-OH) and Foreign Relations Committee member Marco Rubio (R-FL). The bill introduces new exceptions from de minimis treatment for certain countries and traders, then adds new administrative requirements for those who still qualify.

The most important action in this bill is a ban use of de minimis for shipments from countries that are both designated by the United States as non-market economies and are listed on the USTR Special 301 Priority Watch List.<sup>11</sup> Currently, China and Russia are the only countries that meet both these conditions. Belarus, Turkmenistan, Uzbekistan, and Vietnam are on the Special 301 Watch List and are designated non-market economies, so would be at risk of inclusion if they are upgraded to the Priority Watch List. The bill would also prohibit specific companies from using de minimis if they have been suspended or debarred from doing business with the federal government.

The other core provision in the bill would require importers of de minimis shipments to file basic data with US Customs and Border Protection (CBP), including article description, Harmonized Tariff Schedule of the United States (HTSUS) classification, country of origin, identity of shipper and importers, transaction value, and possibly documentation of the product's final sale (for tracking of e-commerce shipments). CBP has been experimenting with

<sup>10</sup> See the *Treasury Framework For Assessing Currency Undervaluation*, available here: <https://home.treasury.gov/system/files/206/Treasury-Framework-for-Assessing-Currency-Undervaluation-Summary.pdf>, and the Treasury Department's latest report on *Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States*, available here: <https://home.treasury.gov/system/files/136/June-2023-FX-Report.pdf>

<sup>11</sup> See the latest Special 301 Report here: <https://ustr.gov/sites/default/files/2023-04/2023%20Special%20301%20Report.pdf>; and the list of non-market economies here: <https://www.trade.gov/nme-countries-list>

this kind of data gathering for several years under programs like the Section 321 Data Pilot and the Entry Type 86 Test. Both of these bills would codify and fully implement that ongoing work.

The content of the bill is similar to the de minimis provisions included in the *America COMPETES Act*, which were ultimately removed from the final *CHIPS and Science Act of 2022*. Those provisions originated as an earlier version of the Import Security and Fairness Act, which Rep. Blumenauer had introduced when he chaired the trade panel of the Ways and Means Committee during the 2021-2022 legislative session. The new version of the Import Security and Fairness Act does not include the provision to ban products subject to Section 301 and 232 actions from qualifying for de minimis treatment, which had been included in the previous version.

A draft of the Import Security and Fairness Act can be found here: [https://blumenauer.house.gov/sites/evo-subsites/blumenauer.house.gov/files/evo-media-document/blumen\\_057\\_xml.pdf](https://blumenauer.house.gov/sites/evo-subsites/blumenauer.house.gov/files/evo-media-document/blumen_057_xml.pdf)

### **The De Minimis Reciprocity Act of 2023**

Senators Bill Cassidy (R-LA) and Tammy Baldwin (D-WI) introduced the De Minimis Reciprocity Act of 2023 to the Senate on June 14, 2023, with J.D. Vance (R-OH) as a co-sponsor. The bill establishes new de minimis eligibility requirements for all countries, limits the types of shipments that can qualify for de minimis treatment, and establishes a new system for setting reciprocal de minimis levels.

To limit what countries can qualify for de minimis treatment, the bill establishes a set of qualifying criteria that countries must meet. The Treasury Department would determine which countries qualify under these conditions in an annual review. These conditions would include whether the subject country has violated the Uyghur Forced Labor Prevention Act (UFLPA), whether the subject country has facilitated transshipment from third countries which are banned from using de minimis, whether there are exports from the subject country of counterfeit goods, and whether the subject country “has committed to the fight against trafficking in persons, illegal narcotics, and terrorism.” The bill provides little further detail on how these criteria should be defined or evaluated. This section of the bill would automatically exclude shipments from Russia and China from receiving de minimis treatment.

The bill would also limit shipments that can qualify for de minimis treatment to those that are “transported to the United States by a contract carrier.” “Contract carrier,” under this bill, however, does not mean what it typically means under US law. This bill defines “contract carrier” as a private entity incorporated in the United States that ships small packages by air or land, instead of defining it as a carrier that is hired to transport merchandise by a specific person.

Like the Import Security and Fairness Act, these qualifying importers would need to submit additional data on the contents of de minimis shipments, including the appropriate HTSUS code, country of origin and manufacture, shipper and importer of record, description of the article, and market value.

The other major initiative in the bill would be the establishment of a new program to encourage reciprocal de minimis levels with other countries. It instructs the Treasury Department to establish de minimis thresholds for every country, considering the other country’s customs de minimis level and the de minimis for value-added tax border adjustments. Though this provision does not explicitly require the Treasury Department to lower the US de minimis threshold to match every foreign one, it would empower them to do so if they saw fit.

The proceeds of any extra duties collected under the reciprocal de minimis program would be automatically appropriated to subsidizing private companies that agree to relocate manufacturing activities from China to the United States. The bill calls this program the “Reshoring and Near-shoring Account,” but provides no further detail on how it should work.

Senator Cassidy has linked this bill to his *Americas Act*, which is still under development.<sup>12</sup> The Americas Act would seek to prioritize trade and investment in the Americas, provide a pathway for countries to join the US-Mexico-Canada Agreement (USMCA), discourage countries from doing business with China, and encourage companies to relocate their supply chains to the region. The Americas Act would likely include more detail on how the “Reshoring and Near-shoring Account” would be administered and funded. Early drafts of the Americas Act included the reciprocal de minimis provisions, which have now been separated into the De Minimis Reciprocity Act of 2023.

A draft of the De Minimis Reciprocity Act of 2023 can be found here:

[https://www.cassidy.senate.gov/imo/media/doc/de\\_minimis\\_bill.pdf](https://www.cassidy.senate.gov/imo/media/doc/de_minimis_bill.pdf)

### **Outlook and Legislative Agenda**

Amid the new political focus on fair trade, strict legal compliance, and countering forced labor, politicians have begun to question the United States’ \$800 customs de minimis threshold. Concern is growing that such a high threshold is creating an entry point for imports that violate US intellectual property (IP), safety, health, and forced labor rules. This focus has been reinforced by the rapid rise of Chinese direct-to-consumer e-commerce retailers since the COVID-19 lockdowns. The large amount of clothing these companies are shipping to the United States under de minimis has attracted concern from forced labor activists and their allies in Congress, as cotton is a priority for UFLPA enforcement.<sup>13</sup> Though some members of Congress have suggested more targeted approaches to the e-commerce concerns, such as improving data sharing, these bills are further reaching.

Beside these de minimis bills, Congress is also considering a broad range of other possible changes to trade and investment laws. Recently proposed measures include bills to strengthen antidumping and countervailing duty investigations, introduce outbound investment screening, establish e-commerce country of origin labeling, reforms to customs processes through the Customs Modernization Act, and revival of the Generalized System of Preferences (GSP) and Miscellaneous Tariff Bill (MTB). Some of these had been included in early versions of what became the CHIPS and Science Act of 2022 but were ultimately excluded from the final version when members of Congress could not find consensus on them.

The Senate is now considering merging some of these proposals into a single new bill, which some are calling “CHIPS 2.0.” Though still in early development, this bill could include provisions on outbound investment restrictions, additional CHIPS-like industrial subsidies, measures to counter Chinese economic activities, and other trade rule changes.<sup>14</sup> Like with the original CHIPS Act, elements of one or both of these de minimis bills could become part of this legislative package, though it is unclear if the initiative will have the support necessary to succeed in a divided Congress.

### **United States Launches Four New Rapid Response Petitions Concerning Denials of Labor Rights in Mexico under USMCA Bilateral Mechanism**

The United States has recently launched petitions to the Mexican government to conduct reviews of alleged denials of labor rights at four facilities: (i) a rubber tire facility, (ii) an auto parts facility, (iii) a garment facility, and (iv) a lead,

---

<sup>12</sup> “Cassidy, Salazar’s Sweeping “Americas Act” Discussion Draft Intends to Build Stronger Western,” available here: <https://www.cassidy.senate.gov/newsroom/press-releases/icymi-cassidy-salazars-sweeping-americas-act-discussion-draft-intends-to-build-stronger-western>

<sup>13</sup> See, for example, the House Select Committee on the Chinese Communist Party’s recent report recommending ending de minimis treatment of shipments from China, available here: <https://selectcommitteeontheccp.house.gov/media/press-releases/select-committee-ccp-overwhelmingly-adopts-proposals-uyghur-genocide-taiwan>

<sup>14</sup> For more details on the CHIPS 2.0 proposal, see here: <https://www.democrats.senate.gov/newsroom/press-releases/leader-schumer-launches-initiative-to-advance-national-security-and-create-china-competition-bill-20-schumer-directs-senate-chairs-to-craft-bipartisan-legislation-to-ensure-americas-global-leadership-in-the-21st-century-strengthen-us-manufacturing-create-american-jobs-and-build-on-game-changing-chips-and-science-act>

zinc, and copper mine. These petitions for review are filed under the bilateral Facility-Specific Rapid-Response Labor Mechanism (RRM), which is annexed to the Labor Chapter of the United States-Mexico-Canada Agreement (USMCA).

The United States Trade Representative (USTR) and the Secretary of Labor Interagency Labor Committee for Monitoring and Enforcement (ILC) have reviewed the petitions and determined that there was sufficient, credible evidence of a denial of rights enabling the good faith invocation of enforcement mechanisms.

With these four new petitions, the number of labor disputes under the RRM has risen to eleven. Six out of the seven previous disputes have been successfully resolved. In one other dispute, both governments agreed on a six-month course of remedial action, which is being implemented. No labor dispute under the USMCA has reached the panel stage so far.

For the first time since the entry into force of the USMCA in July 2020, the petitions do not just concern facilities in the automotive sector. For the second time, one petition is self-initiated by the US government. The Mexican government has already agreed to conduct a review in two of the new cases, while the time to respond has not yet elapsed in the other two.

A summary of the four new RRM petitions is provided below, followed by a brief explanation of the USMCA Annex 31-A procedure.<sup>15</sup>

#### 8th RRM Dispute – Goodyear SLP

On **May 22, 2023**, the United States requested that Mexico conduct a review of whether a denial of rights was occurring at a rubber tire facility operated by Goodyear-SLP, S. de R.L. de C.V. (Goodyear-SLP), located in San Luis Potosí, Mexico. At the same time, the USTR directed the Secretary of the Treasury to suspend liquidation of entries of goods from the facility until the procedure is complete.<sup>16</sup>

The petition submitted by a Mexican trade union alleged that Goodyear-SLP, which specializes in converting rubber into car tires, has not abided by the provisions in the rubber industry sectoral collective bargaining agreement (CBA) and instead signed a separate CBA with lesser benefits. In addition, since the petition was filed, a legitimization vote at the facility was canceled by the Mexican Government due to significant irregularities. A new vote took place on May 7-8, 2023, which resulted in the separate CBA being voted down. At the time of this request, Goodyear-SLP and the Mexican Government were pursuing legal action against those responsible for the criminal activities that were intended to influence the outcome of the first vote.

On **June 1, 2023**, the Mexican Government agreed to review the case. The Mexican Secretariat of Labor and Social Security has until July 15, 2023 to establish whether there has been a denial of labor rights.<sup>17</sup>

#### 9th RRM Dispute - Draxton México, S. de R.L. de C.V facility in Irapuato, Guanajuato

On **May 31, 2023**, the United States requested that Mexico conduct a review of whether a denial of rights was occurring at an auto parts facility operated by Draxton México, S. de R.L. de C.V. (Draxton) in Irapuato, Guanajuato. At the same time, the

<sup>15</sup> USTR's dedicated website on Chapter 31 Annex A of the USMCA is accessible here: <https://ustr.gov/issue-areas/enforcement/dispute-settlement-proceedings/fta-dispute-settlement/usmca/chapter-31-annex-facility-specific-rapid-response-labor-mechanism>.

<sup>16</sup> USTR press release, *United States Seeks Mexico's Review of Alleged Denial of Workers' Rights at Goodyear SLP*, May 22, 2023, is accessible here: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/may/united-states-seeks-mexicos-review-alleged-denial-workers-rights-goodyear-slp>.

<sup>17</sup> Mexico's Secretariat of Economy press release, *El Gobierno de México admite a revisión la solicitud presentada por el Gobierno de Estados Unidos al amparo del Mecanismo Laboral de Respuesta Rápida del T-MEC sobre una presunta denegación de derechos colectivos en Goodyear, San Luis Potosí*, June 1, 2023, is accessible here (in Spanish): <https://www.gob.mx/se/prensa/el-gobierno-de-mexico-admite-a-revision-la-solicitud-presentada-por-el-gobierno-de-estados-unidos-al-amparo-del-mecanismo-laboral?idiom=es>.

USTR directed the Secretary of the Treasury to suspend liquidation of entries of goods from the facility until the procedure is complete.<sup>18</sup>

In this case, the United States received information appearing to indicate several serious denials of labor rights, including the termination of a union official and interference intended to control the union. When workers at the facility tried to organize a new union, led by the terminated official, they experienced harassment, surveillance, and intimidation and the terminated official faced threats and violence at his home. Further, workers did not receive copies of their collective bargaining agreement before voting on it in 2022, and they still have not received copies. After conducting a thorough investigation, the United States *decided to self-initiate* this request under the RRM mechanism.

On **June 9, 2023**, the Mexican Government agreed to review the case. The Mexican Secretariat of Labor and Social Security has until July 15, 2023 to establish whether there has been a denial of labor rights.<sup>19</sup>

#### 10th RRM Dispute – Industrias del Interior (INISA) facility in Aguascalientes

On **June 12, 2023**, the United States requested that Mexico conduct a review of whether a denial of rights was occurring at a garment facility operated by Industrias del Interior S. de R.L. de C.V. in the area of Rincón de Romos, Aguascalientes. At the same time, the USTR directed the Secretary of the Treasury to suspend liquidation of entries of goods from the facility until the procedure is complete.<sup>20</sup>

The petition submitted by two Mexican trade unions alleged that INISA, which manufactures denim garments, is coercing workers to accept changes to the company's proposed collective bargaining agreement and intervening in the union's internal affairs. Specifically, in relation to ongoing negotiations concerning the facility's CBA, it appears that the company is aiding workers who support a CBA proposed by the company and hindering the activities of workers who oppose this proposal. Interference at the facility appears to include the selective exemption of workers from normal work rules and the provision of legal and other assistance to them. It also appears to include the reassignment and discipline of workers, including through dismissals, based on their union or CBA support.

The Government of Mexico has ten days to accept the request from the US Government to conduct its own review to verify whether the alleged denial of labor rights exists. *At the time of writing this report, the ten-day period has not yet expired.*

#### 11th RRM Dispute – Grupo Mexico San Martin Mine in Zacatecas

On **June 16, 2023**, the United States requested that Mexico conduct a review of whether a denial of rights was occurring at the San Martin mine, located in the area of Sombrerete, Zacatecas, owned and operated by the Grupo México conglomerate. The San Martin mine is a lead, zinc, and copper mine. At the same time, the USTR directed the Secretary of the Treasury to suspend liquidation of entries of goods from the facility until the procedure is complete.<sup>21</sup>

The petition submitted by a group of trade unions in the United States and Mexico alleged that Grupo Mexico has resumed operations at the San Martin mine despite an ongoing strike and engaged in collective bargaining with a coalition of workers despite the fact that Los Mineros holds the right to represent workers in collective bargaining processes.

The Government of Mexico has ten days to accept request from the US Government to conduct its own review to verify whether the alleged denial of labor rights exists. *At the time of writing this report, the ten-day period has not yet expired.*

<sup>18</sup> USTR's press release, *United States Seeks Mexico's Review of Alleged Denial of Workers' Rights at Draxton Facility*, May 31, 2023, is accessible here: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/may/united-states-seeks-mexicos-review-alleged-denial-workers-rights-draxton-facility>.

<sup>19</sup> Mexico's Secretariat of Economy press release, *El Gobierno de México admite a revisión la solicitud presentada por el Gobierno de Estados Unidos al amparo del Mecanismo Laboral de Respuesta Rápida sobre una presunta denegación de derechos colectivos en Draxton México, en Irapuato, Guanajuato*, June 9, 2023, is accessible here (in Spanish): <https://www.gob.mx/se/prensa/el-gobierno-de-mexico-admite-a-revision-la-solicitud-presentada-por-el-gobierno-de-estados-unidos-al-amparo-del-mecanismo-laboral-de-336479?idiom=es>.

<sup>20</sup> USTR's press release, *United States Seeks Mexico's Review of Alleged Denial of Workers' Rights at Mexican Garment Facility*, June 12, 2023, is accessible here: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/june/united-states-seeks-mexicos-review-alleged-denial-workers-rights-mexican-garment-facility>.

<sup>21</sup> USTR's press release, *United States Seeks Mexico's Review of Labor Rights Concerns at a Grupo Mexico Mine*, June 16, 2023, is accessible here: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/june/united-states-seeks-mexicos-review-labor-rights-concerns-grupo-mexico-mine>.

### About the procedure

USMCA Annex 31-A provides for an expedited dispute settlement procedure to enforce labor rights at a “covered facility”<sup>22</sup> under domestic laws. As defined in USMCA Article 31-A.2, a “denial of rights” occurs when workers are being denied the rights of free association and collective bargaining under laws necessary to fulfill a Party’s obligations under the USMCA. A basic description of the RRM is as follows:<sup>23</sup>

- Under the RRM, the first step is for a complainant Party, which has a good faith basis to believe that a denial of rights is occurring at a covered facility, to submit a request that the respondent Party conduct its own review of whether such situation exists. If the respondent Party determines that there is a denial of rights, it shall attempt to remedy any issues it finds within 45 days of the request.
- The complainant Party may request the establishment of a Rapid Response Labor Panel to conduct a separate verification and determination if (i) the respondent Party does not choose to conduct a review or (ii) if, having accepted to do so, the Parties are not able to agree that the issue has been resolved.
- Any non-compliance with key labor obligations can lead to the suspension of USMCA tariff benefits, or the imposition of other penalties, such as the denial of entry of goods from businesses that are repeat offenders.

### US and Indian Leaders Meet in Washington, DC; Resolve Six WTO Trade Disputes

From June 21-23, 2023, India’s Prime Minister Narendra Modi visited Washington, DC for a state visit. The high-profile engagement marks the latest step in a long effort by the US government to strengthen its relationship with India. The leaders’ joint statement covered commitments on technology development, supply chain security, people-to-people ties, green energy, public health, substantial defense procurement deals, and the resolution of several trade disputes.<sup>24</sup>

#### WTO trade dispute resolutions: Section 232

The two governments agreed to de-escalate trade disputes at the WTO, ending six long-running dispute settlement cases concerning steel and aluminum tariffs, domestic content requirements, and subsidies.<sup>25</sup> The governments have not released details on most of these resolutions, and it is unclear how much market access will be restored by their settlement. There was no further discussion of deepening trade ties beyond the resolution of these conflicts, but discussions are ongoing and genuine commitments to resolving these disputes would be significant for the affected industries.

The statements following the meetings particularly highlighted that both sides agreed to end their dispute over the US Section 232 duties on steel and aluminum. Comprehensive details of the agreement have not yet been released, but the deal would apparently include an exclusion from the Section 232 duties for 70% of steel and 80% of aluminum

<sup>22</sup> A “covered facility” means a facility in the territory of a Party that (i) produces a good or supplies a service traded between the parties; or (ii) produces a good or supplies a service that competes in the territory of a Party with a good or a service of the other Party; and is a facility in a “priority sector” (*i.e.*, that produces manufactured goods, supplies services or involves mining).

<sup>23</sup> Chapter 31 Annex A of USMCA Chapter 31 (Mexico and United States), accessible here: <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/31%20Dispute%20Settlement.pdf>. Chapter 31 Annex B sets out the rules for the RRM between Mexico and Canada.

<sup>24</sup> The Joint Statement from the United States and India is accessible here: <https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/22/joint-statement-from-the-united-states-and-india/>. A White House factsheet summarizing the outcomes is accessible here: <https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/22/fact-sheet-republic-of-india-official-state-visit-to-the-united-states/>.

<sup>25</sup> USTR’s announcement of the agreement is accessible here: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/june/united-states-announces-major-resolution-key-trade-issues-india>.

imported from India and the removal of some of India's retaliatory tariffs.<sup>26</sup> USTR's statement said that the products for which India would remove retaliatory tariffs will include chickpeas, lentils, almonds, walnuts, apples, boric acid, and diagnostic reagents. This compromise will include the termination of the two related WTO disputes: *United States – Certain Measures on Steel and Aluminium Products (DS547)*<sup>27</sup> and *India – Additional Duties on Certain Products from the United States (DS585)*.<sup>28</sup>

### Exchange of letters

On June 22, 2023, USTR updated its press statement to include the Exchange of Letters (dated June 21, 2023),<sup>29</sup> which details the Section 232 tariff compromise. The new document contains the list of products for which Indian retaliatory tariffs will be lifted and asserts that the Section 232 tariff exclusions are a commitment to continuing the existing Section 232 exclusion process, not a new exclusion.

USTR's letter states: "The United States confirms that since January 1, 2023, it has approved 1,424 exclusion requests that listed India as the sole Country of Origin. As a result, 308,666 metric tons of steel products and 28,772 metric tons of aluminum products have been made eligible to enter Section 232 duty free from India." Since June 2018, India's steel and aluminum exports have been subject to tariffs of 25% on steel and 10% on aluminum products.

### Other WTO trade dispute resolutions

Along with the Section 232 compromise, the United States and India agreed to mutually terminate four other WTO disputes:

- *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (DS436)*, a 2012 complaint against US steel countervailing duties;<sup>30</sup>
- *India – Certain Measures Relating to Solar Cells and Solar Modules (DS456)*, a 2013 complaint against Indian solar cell domestic content requirements;<sup>31</sup>
- *United States – Certain Measures Relating to the Renewable Energy Sector (DS510)*, a 2016 complaint against US state government subsidies and domestic content requirements for renewable energy products;<sup>32</sup> and
- *India – Export Related Measures (DS541)*, a 2018 complaint against Indian export subsidies.<sup>33</sup>

The governments did not provide any details on the basis for the resolution of these disputes, other than saying the two countries would resolve challenges "through mutually agreed solutions as well as their understandings on market access related to certain products of significance to the bilateral trade relationship." The United States and India have

<sup>26</sup> The statement of the Indian Ministry of Commerce and Industry for description of the Section 232 exclusion is accessible here: <https://commerce.gov.in/press-releases/india-us-wto-disputes-trade-off/>.

<sup>27</sup> DS547 is accessible here: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds547\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds547_e.htm).

<sup>28</sup> DS585 is accessible here: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds585\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds585_e.htm).

<sup>29</sup> The two letters are accessible here: [https://ustr.gov/sites/default/files/2023%2006%20US%20India%20Letter%20Exchange\\_USTR%20website.pdf](https://ustr.gov/sites/default/files/2023%2006%20US%20India%20Letter%20Exchange_USTR%20website.pdf).

<sup>30</sup> DS436 is accessible here: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds436\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds436_e.htm).

<sup>31</sup> DS456 is accessible here: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds456\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds456_e.htm).

<sup>32</sup> DS510 is accessible here: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds510\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds510_e.htm).

<sup>33</sup> DS541 is accessible here: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds541\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds541_e.htm).

been negotiating bilaterally on the issues through the US-India Trade Policy Forum (TBF), where they had pledged in a January 2023 joint statement to reach an outcome in the months to come. The US WTO complaint against Indian poultry trade barriers (DS 430)<sup>34</sup> was not included in the list of resolved cases, though bilateral negotiations are continuing. The TBF will convene again before the end of the year to discuss trade concerns, presenting an opportunity for further negotiations on these matters.

The joint statement also noted that the governments would continue discussions on India's potential readmission to the Generalized System of Preferences (GSP) program and government procurement market access. India expressed interest in obtaining a designation under the Trade Agreements Act, which would help Indian companies compete for US government contracts.

Expectations had been low for progress on trade interests before the meetings. The Biden administration played down the possibility of deals on these WTO disputes, with White House spokesman John Kirby saying the meetings were about the strategic relationship and that trade was not a priority. Kirby instead focused on the importance of strategic collaboration with India on industries that are important to policymakers, such as "artificial intelligence, quantum computing, and building resilient supply chains for clean energy technologies, semiconductors, and other critical and emerging technology, countering climate change, the future of our workforces, and global health, energy, food security [...]."<sup>35</sup> This agenda of prioritizing strategic economic cooperation and smoothing over significant trade disputes, while not pursuing any deeper trade integration, resembles the Biden administration's recent leadership engagements with the European Union, Korea, and United Kingdom.

### **Other bilateral commitments**

The leaders unveiled various other commitments and new engagements, most notably expanding cooperation on strategically important technologies and deepening cooperation on defense acquisition. They also highlighted recent collaboration on academic exchanges, public health research, anti-drug trafficking cooperation, expanded consulates, and green energy financing.

A new Strategic Trade Dialogue was unveiled, which would focus on coordinating export controls, facilitating technology transfer, and supporting important high technology industries. New collaborations and commitments in these areas announced during the visit include the following:

- India joined the Minerals Security Partnership (MSP), which is intended to provide diplomatic and financial support to important projects in the critical mineral supply chains of the member countries.
- The establishment of task forces to work on Open RAN system deployment and 6G development, part of the US-led effort to build mobile networking systems that do not rely on Chinese suppliers. The leaders also welcomed efforts from Indian industry to remove and replace installed Chinese mobile networking equipment.
- India signed the Artemis Accords for collaborative lunar exploration and is developing a framework with the United States for joint human spaceflight programs.
- The countries signed agreements for research collaboration on quantum computing, artificial intelligence, and physics.

The highest profile outcome of the state visit was a new defense deal for Indian production of the GE F414 engine, which is used in several military jet aircraft. Once approved by Congress, the deal will open new avenues of jet aircraft

<sup>34</sup> DS430 is accessible here: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds430\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds430_e.htm).

<sup>35</sup> John Kirby's full remarks previewing the meetings are accessible here: <https://www.state.gov/briefings-foreign-press-centers/preview-of-minister-modi-visit>.

co-production and defense technology transfer between the two countries. India also announced a large acquisition of US maritime reconnaissance drones, boosting India's capacity to monitor the Indian Ocean and supporting potential integration between US and Indian surveillance operations. Other defense cooperation agreements cover ship repair, ocean domain awareness, defense equipment supply, joint research, and a defense industrial cooperation roadmap.

## **US Commerce Department Begins CHIPS Act Funding Round for Semiconductor Supply Chain Industries**

The Department of Commerce's CHIPS Program Office unveiled the second funding round of its semiconductor investment incentives program on June 23, 2023, this time targeted at supporting semiconductor manufacturers' industrial supply chain.<sup>36</sup> Covered supply chain projects include those that would build, expand, or modernize facilities that produce either semiconductor materials or manufacturing equipment. Companies applying for the funding will follow the same process used for the first funding round, which covered semiconductor fabrication facilities, through the CHIPS Incentives Program Portal.<sup>37</sup> The portal will begin accepting pre-applications on September 1 and full applications on October 23. The CHIPS Program Office is encouraging companies planning applications to send them statements of interest as soon as possible.

### **The Biden administration's vision for success**

Alongside the updated funding application, the CHIPS Program Office published a "vision for success," outlining the administration's objectives for the funding round.<sup>38</sup> The document explains the CHIPS Program Office's strategy and broadly guides the evaluation of applicants' proposals. According to the vision, the Biden administration believes that as the semiconductor industry has developed in other countries, the United States has become vulnerable to risks related to geographic concentration and threats to supply chain security. The CHIPS Act, in their view, offers an opportunity to expand the United States' role in semiconductor supply chains and reduce those risks.

To meet that need, the Vision for Success outlines three core objectives for the second funding round:

1. Strengthen supply chain resilience by reducing geographic concentration, expanding overall production capacity, and requiring participants to adopt certain supply chain risk management practices.
2. Advance US technology leadership by encouraging US and foreign semiconductor manufacturing equipment and materials suppliers to expand their manufacturing activities in the United States.
3. Support US semiconductor fabrication clusters by building networks of local suppliers and services.

### **Qualifying companies and the application**

This funding round is targeting companies that are building, expanding, or modernizing facilities related to input materials manufacturing (production materials used to make semiconductors in both raw and intermediate stages) and manufacturing equipment suppliers (including suppliers of suppliers, like manufacturers of subsystems that are incorporated into semiconductor manufacturing equipment). These companies form the supply chain for the semiconductor fabrication facilities that participated in the first round of the CHIPS Act's fund distribution.

<sup>36</sup> *Biden-Harris Administration Outlines Plan to Strengthen Semiconductor Supply Chains as Part of Investing in America Agenda*, available here: <https://www.commerce.gov/news/press-releases/2023/06/biden-harris-administration-outlines-plan-strengthen-semiconductor>.

<sup>37</sup> CHIPS Incentives Program Portal is accessible here: <https://applications.chips.gov/s/>.

<sup>38</sup> The Vision for Success paper can be accessed here: <https://www.nist.gov/system/files/documents/2023/06/23/Vision%20for%20Success-Facilities%20for%20Semiconductor%20Materials%20and%20Mfr%20Equipment.pdf>.

The application process is structured as an expansion to the first funding round, so the application steps and evaluation process are unchanged. Applicants should expect a five-step process: statement of interest, pre-application (optional but recommended), full application, due diligence, and award preparation and issuance. The evaluation conditions cover how the proposed projects support the Biden administration's economic and national security objectives, as well as the projects' commercial viability, financial strength, technical feasibility, contribution to workforce development, and broader societal impacts.

This funding round is structured in two phases. This first phase is seeking applications only from projects that have over \$300 million in total capital investment. A second phase of the funding round will be announced later for projects with under \$300 million of total capital investment. The second phase will use a simplified application process that will be more accessible for small businesses. The CHIPS Program Office will issue additional details on phase two in the next few months.

### **Funding and other resources**

Altogether, the CHIPS funding rounds will provide about \$38.2 billion in direct project funding and \$75 billion in loan guarantees. The CHIPS Program Office is also directing \$11 billion to research and development efforts that will support the industry. The Biden administration expects industry demand for direct support from the program to exceed the money available and are telling industry that they will have to turn away some applications. Four-hundred statements of interest from companies around the world have already been submitted to the CHIPS Program Office for semiconductor fabrication, packaging, R&D, material suppliers, and equipment manufacturing.

Together with these funding opportunities from the CHIPS Program Office, the Treasury Department's Advanced Manufacturing Investment Credit will provide tax credits for investments in the semiconductor industry.<sup>39</sup> Most projects that qualify for funding from the CHIPS Program Office will also qualify for these tax credits and should seek both.

The CHIPS Program Office also recently introduced a new service, the CHIPS for America Teaming Partner List, to help connect companies and identify potential business partners.<sup>40</sup> The CHIPS Program Office hopes the list will help companies share information, collaborate, and advance program goals. The list may be especially helpful for foreign investors looking for local partners. Funding applicants can review the list to identify potential local partners while companies interested in supporting semiconductor investments (but which are not qualifying entities themselves) can share their information through it.

More information on the CHIPS funding opportunities can be found here: <https://www.nist.gov/chips/notice-funding-opportunity-commercial-fabrication-facilities>.

---

<sup>39</sup> See the proposed regulations for the Advanced Manufacturing Investment Credit, 88 FR 17451 (March 23, 2023), here: <https://www.federalregister.gov/documents/2023/03/23/2023-05871/advanced-manufacturing-investment-credit>.

<sup>40</sup> See the CHIPS for America Teaming Partner List webpage here: <https://www.nist.gov/chips/chips-america-teaming-partner-list>. More information on the list will be posted there soon.

## Trade Actions

### Section 232

---

No updates

### Section 301

---

No updates

## Trade Agreements

### EU-US Trade and Technology Council Advances Work on Emerging Technologies and Sustainable Trade

The European Union and the United States held the fourth Trade and Technology Council (TTC) summit in Luleå, Sweden on May 30-31, 2023.<sup>41</sup> The main outcomes of the summit focused on developing joint standards on emerging technologies and promoting “easier, greener and safer trade.” The actions illustrate how the parties have used the TTC to centralize engagement and improve policy coordination on a variety of key economic and technology priorities.

Nevertheless, scepticism remains on whether the TTC will be able to deliver concrete results to effectively address and de-escalate trade tensions in relation to environmental and climate-related policies. Despite expectations, no agreement was reached on either the Global Sustainable Arrangement for Steel and Aluminum or the critical minerals trade agreement. Outside groups, such as worker unions seeking strong commitments from the TTC to advance labor rights and business associations seeking resolution for trade disputes and rollbacks of EU laws harming US digital services companies, also expressed disappointment that their priorities were not sufficiently addressed.

#### Emerging technology policy outcomes

The emerging technology policy outcomes included provisions on artificial intelligence (AI), other emerging technologies, and social media moderation.

On AI, the parties share an understanding that AI carries both opportunities and risks, and that a risk-based approach should be preferred to mitigating certain risks while promoting innovation. The summit advanced the implementation of the TTC Joint Roadmap for Trustworthy AI and Risk Management<sup>42</sup> by launching three expert working groups: (1) on terminologies and taxonomy (including publishing a report on AI terminology<sup>43</sup>), (2) on standards and tools for risk management, and (3) on emerging risks. The EU and the United States also agreed on the urgency of addressing issues related to generative AI, added as a new focus area to the roadmap, which will complement the G7 Hiroshima AI process.<sup>44</sup> As its next step, the TTC will soon release a draft AI code of conduct for public comment.

On other emerging technologies, the TTC issued recommendations for common electric vehicle charger standards,<sup>45</sup> created a task force on quantum technology, and published an early strategy on establishing 6G standards.<sup>46</sup> The

---

<sup>41</sup> The Joint Statement EU-US Trade and Technology Council of May 31, 2023 can be found here: [https://ec.europa.eu/commission/presscorner/detail/en/statement\\_23\\_2992](https://ec.europa.eu/commission/presscorner/detail/en/statement_23_2992); and a factsheet of key outcomes can be found here: <https://digital-strategy.ec.europa.eu/en/library/eu-us-trade-and-technology-council-fourth-ministerial-meeting-key-outcomes>.

<sup>42</sup> The TTC Joint Roadmap for Trustworthy AI and Risk Management can be found here: <https://digital-strategy.ec.europa.eu/en/library/ttc-joint-roadmap-trustworthy-ai-and-risk-management>.

<sup>43</sup> EU-U.S. Terminology and Taxonomy for Artificial Intelligence can be found here: <https://digital-strategy.ec.europa.eu/en/library/eu-us-terminology-and-taxonomy-artificial-intelligence>.

<sup>44</sup> Launched in May 2023 by Japanese Prime Minister Fumio Kishida, the G7 Hiroshima AI process seeks to set common rules for governing AI and establishes a working group to strengthen collaboration to address various issues in relation to AI, including the development and adoption of technical standards to keep AI “trustworthy.” The G7 communiqué can be found here: <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/20/g7-hiroshima-leaders-communique/>.

<sup>45</sup> The Transatlantic technical recommendations for government funded implementation of electric vehicle charging infrastructure can be found here: [https://joint-research-centre.ec.europa.eu/document/aeabfa59-7073-427d-8f92-75cfe5abfca5\\_en](https://joint-research-centre.ec.europa.eu/document/aeabfa59-7073-427d-8f92-75cfe5abfca5_en).

<sup>46</sup> The 6G Outlook strategy can be found here: <https://digital-strategy.ec.europa.eu/en/library/6g-outlook>.

parties also noted continued cooperation on issues involving semiconductors, implementing agreements on a supply chain disruption early warning system and on transparency of subsidies.

The parties also declared that social media platforms should take more responsibility for protecting minors, including by sharing data with researchers. The TTC's outcomes included an agreement on high-level principles on data access for researchers and protection of minors<sup>47</sup> and the creation of a common methodology for countering government disinformation campaigns.<sup>48</sup>

### **Sustainable trade policy outcomes**

The TTC is exploring various strategies to facilitate trade. This meeting focused heavily on advancing green trade priorities and extending mutual recognition agreements.

The Transatlantic Initiative on Sustainable Trade's (TIST) work program was unveiled at the summit.<sup>49</sup> The TIST was first established at the third ministerial meeting in December 2022 to promote long term cooperation for developing environmentally sustainable trade. The newly endorsed work plan has four sets of activities to be launched alongside this fourth summit: (1) improve the business environment for green trade, including by sharing more information on green transition incentives; (2) improving clean economy supply chain resilience, including improving supply chain transparency and diversifying sourcing of critical minerals; (3) workshops on how workers can benefit from the green transition; and (4) promoting a global green transition.

At its fifth summit, expected to take place in late 2023, the TTC will launch another set of TIST deliverables on developing a sustainable business environment, which will include a stakeholder event alongside the summit, a new circular economy initiative, and a green public procurement initiative. For the latter, the parties intend to release a joint policy on best practices for reducing the environmental impact of government procurement later this summer. The expectation is that transatlantic work on this front could inform green procurement guidelines for the WTO Agreement on Government Procurement, after unsuccessful attempts by the WTO committee to do so since 2014.

Besides the sustainability initiatives, the TTC also expanded the mutual recognition agreement on pharmaceutical goods to include veterinary medicines and updated the marine equipment mutual recognition agreement. Work to facilitate conformity assessment and standards in several sectors, such as machinery, will continue.

### *Global Sustainable Arrangement for Steel and Aluminum*

Despite efforts, the Global Sustainable Arrangement for Steel and Aluminum negotiations were not completed. To recall, the parties have been debating a text for the arrangement since December 2022, when the United States proposed a concept paper. There is significant pressure to agree on a text by October 2023, when the suspension of tariffs expires. Both US Trade Representative Katherine Tai and the European Commission's Executive Vice President Valdis Dombrovskis told press at the summit that the two governments still intend to complete the deal by the soon approaching October deadline, as rumors begin to circulate that a deadline extension may be necessary, but no other details were disclosed. The TTC's sustainable trade work program added that both sides would continue

<sup>47</sup> The annex on high-level principles for transparent and accountable online platforms is available here: <https://digital-strategy.ec.europa.eu/en/library/transparent-and-accountable-online-platforms>.

<sup>48</sup> The annex on foreign information manipulation and interference in third countries can be found here: [https://www.eeas.europa.eu/eeas/trade-and-technology-council-fourth-ministerial-%E2%80%93-annex-foreign-information-manipulation-and\\_en](https://www.eeas.europa.eu/eeas/trade-and-technology-council-fourth-ministerial-%E2%80%93-annex-foreign-information-manipulation-and_en).

<sup>49</sup> The annex containing the TIST work program can be found here: <https://circabc.europa.eu/rest/download/80fa95cc-0843-4596-9894-2e187bc21993>.

work on measuring emissions embedded in trade, which would build on work from the Global Sustainable Arrangement for Steel and Aluminum negotiations.

#### *Critical minerals trade agreement*

The critical minerals trade agreement, which would give EU-based companies access to certain Inflation Reduction Act (IRA) clean vehicle subsidies, was not finished in time for the TTC meetings, and there was only a brief mention of the negotiations in the joint statement. However, Valdis Dombrovskis told the press that an agreement might be reached soon.

There are disagreements with the scope and the approval process for the agreement. On scope, the drafts of the agreement are currently limited to five critical minerals (cobalt, graphite, lithium, manganese, and nickel), none of which the EU is an important producer of, which raises questions on the extent of the value added for the EU. On the approval process, the United States is now seeking a more binding agreement than the one signed with Japan, according to Dombrovskis. This will require the European member states to individually back the agreement. The European Commission had been hoping it could conclude the agreement on its own so the matter could be quickly settled, following the Japan model. The backlash in Washington against the Japan agreement is apparently motivating USTR to seek more binding commitments from the other parties in future agreements (though the US side will still treat it as an executive agreement without Congressional ratification). This stronger approach would reportedly include deeper commitments on worker rights, with worker unions asking for it to include a facility-specific rapid response labor mechanism similar to the one in the US-Mexico-Canada Agreement (USMCA).

#### **Economic security policy outcomes**

Economic security concerns also featured in the agenda, though with fewer new developments. The parties reiterated their commitments to coordinating on sanctions and export controls targeting Russia and Belarus. They further reiterated support for foreign investment screening and recognized that outbound investment controls may be warranted for a small set of leading technologies. They also expressed concern about non-market practices and economic coercion, saying they would cooperate, share information, and coordinate policy responses as appropriate.

The statements of shared interest on these security measures are part of an effort to find a common strategy for handling concerns about China's rise, which also featured heavily in European Commission President Ursula von der Leyen's recent meetings with President Biden. At the TTC summit, the ministers continued to emphasize that their goal is to de-risk their relationships with China through measures like trade diversification and narrowly targeted security restrictions, rather than a larger economic decoupling. Despite these attempts at coordinated policy and the United States' adoption of the EU's "de-risking" terminology, however, the United States appears to still be taking a more aggressive position than the EU. US efforts to expand export controls and develop and outbound investment review mechanism are well ahead of the EU's work.

#### **Labor rights policy outcomes**

Protecting labor rights is another part of the TTC's agenda, though no major outcomes were announced at this summit. The parties report that they shared information on forced labor policies and responsible supply chain management. The Trade and Labor Dialogue (TALD), a stakeholder consultation on labor, was held alongside the summit. There, the EU and United States met with business and labor unions to discuss shared principles for combatting forced labor.

The union and company representatives to the TALD issued a joint statement on forced labor strategies, promoting the use of diplomacy, foreign assistance, capacity building, and supply chain due diligence to address the problem. Nevertheless, the two groups could not reach agreement on how at-the-border enforcement mechanisms should be

employed as part of this strategy. Their statement includes a footnote explaining the divergent positions.<sup>50</sup> The business organizations argue that “border- or market-centric enforcement approaches should be a tool of last resort” and favor “diplomatic engagement, capacity building, and robust information-sharing.” The labor organizations, in contrast, argue that “import restrictions and other trade-related enforcement measures are vital tools for governments to incentivize greater corporate action.”

## United States and United Kingdom Unveil Economic Cooperation Plan and Critical Minerals Agreement

The United States and United Kingdom announced a new economic partnership framework during Prime Minister Rishi Sunak’s visit to Washington, DC on June 8, 2023: the *US-UK Atlantic Declaration for a Twenty-First Century U.S.-UK Economic Partnership*.<sup>51</sup> The partnership will develop and implement shared policies in areas important to the governments, including cross-border data regulation, artificial intelligence (AI) governance, defense acquisition, export controls and sanctions, a critical minerals trade agreement, and green energy transition support. The agenda is similar to the one that the United States is pursuing with the European Union through the Trade and Technology Council (TTC).

Like other economic partnerships the Biden administration is pursuing, this is not a free trade agreement (FTA) and will not include commitments to integrating markets or resolving trade disputes. Though there is desire in the UK and some parts of the US Congress to negotiate a comprehensive FTA, the Biden administration has been generally avoiding FTA negotiations. Acknowledging this opposition, Prime Minister Sunak said during the trip that an FTA with the United States is no longer a policy priority for the UK government.

The new cooperation agenda is organized under five pillars: (1) “Ensuring U.S.-UK Leadership in Critical and Emerging Technologies,” (2) “Advancing Ever Closer Cooperation on Technology Protection, Economic Security Toolkits and Supply Chains,” (3) “Partnering on an Inclusive and Responsible Digital Transformation,” (4) “Building the Clean Energy Economy of the Future,” and (5) “Strengthening our Alliance Across Defense, Health Security, and Space.” Senior officials plan to meet biannually to discuss the implementation of the agenda, highlights of which are below.

### 1. Ensuring U.S.-UK Leadership in Critical and Emerging Technologies

The US and UK are exploring joint research and other collaborative programs to support their leadership in a range of emerging technologies, including quantum computing, 5G and 6G development, synthetic biology, advanced semiconductors, and AI. They also unveiled plans to launch an investor council in the next 12 months to help mobilize private capital for these industries.

<sup>50</sup> U.S.-EU Tripartite Trade and Labor Dialogue (TALD) Social Partner Joint Statement on Transatlantic Forced Labor Trade Strategy can be found here: <https://ustr.gov/sites/default/files/2023-05/TALD%20Joint%20Statement%20on%20Forced%20Labor%20-%20FINAL.pdf>.

<sup>51</sup> The Atlantic Declaration: A Framework for a Twenty-First Century U.S.-UK Economic Partnership can be found here: <https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/08/the-atlantic-declaration-a-framework-for-a-twenty-first-century-u-s-uk-economic-partnership/>.

## **2. Advancing Ever Closer Cooperation on Technology Protection, Economic Security Toolkits and Supply Chains**

Arguing that technology protection tools are out of date, the two countries pledged to update and align their policies. This will include exploring outbound investment restrictions (though the UK did not commit to adopting such a strategy), improving export controls, strengthening sanctions enforcement, and sharing information on critical technology supply chains.

## **3. Partnering on an Inclusive and Responsible Digital Transformation**

Under this pillar, the US and UK have agreed to “work together to shape the policy environment around technology and enable further responsible innovation.”

In what may be one of the more significant commitments of the partnership, the countries have “committed in principle” to form a US-UK Data Bridge. The program would facilitate personal data flows between both economies while ensuring privacy protections, according to the statement. This would be structured as a UK extension of the US-EU Data Privacy Framework, which is not yet completely finalized itself. Both sides agreed to work swiftly to finalize the necessary technical assessments.

The parties also pledged deeper cooperation on AI, with a focus on “safe and responsible development.” The United States endorsed a plan by the UK to lead a global summit on AI safety this fall and said it would send high-level representation. The UK has recently been floating proposals to position itself as a global leader in AI standards and development, presenting a less restrictive regulatory vision than the one the EU is pursuing with its AI Act. Besides the summit, the UK is proposing establishing centers on AI research and security. The United States is also working with the EU under the TTC on AI standards, which the parties are coordinating with the G7. The UK’s proposals are separate from those projects.

## **4. Building the Clean Energy Economy of the Future**

The announcement of a prospective US-UK Critical Minerals Agreement, which the two countries intend to negotiate over the coming months, is likely the most important outcome of the meeting. The joint declaration lays out broad principles for the agreement, which resemble the deal the United States is already negotiating with the EU. Like the previous agreements, it would cover cobalt, graphite, lithium, manganese, and nickel and allow UK companies to qualify for the relevant sections of the IRA Section 30D critical mineral tax credit. The agreement will also include commitments to shared approaches on supply chain diversification and “robust labor and environmental standards to support the creation of well-paying jobs with a free and fair choice to join a labor union on both sides of the Atlantic.”

Along with the critical minerals agreement, the parties also committed to finding additional areas of collaboration for clean energy development. The first of these will be a civil nuclear partnership, which will encourage end-to-end fuel cycle development and reduce reliance on Russian fuel.

## **5. Strengthening our Alliance Across Defense, Health Security, and Space**

Finally, the parties also recognized their ongoing and deepening collaboration on defense acquisition, biological security, and space exploration.

## Petitions & Investigations

### Investigations

---

#### **Department of Commerce and International Trade Commission Sustain AD Order on Carbon and Alloy Seamless Standard, Line, And Pressure Pipe (Over and Under 4.5 Inches) From Japan and Romania in Sunset Reviews**

On June 13 and 14, 2023, DOC published notices that it is sustaining the AD orders on carbon and alloy seamless standard, line, and pressure pipe (large<sup>52</sup> and small<sup>53</sup> diameter) from Japan and Romania, following the completion of the fourth sunset reviews. The reviews of continued injury by USITC and sales at less than normal value by DOC were both originally announced on October 3, 2022.

The DOC completed its expedited review on December 29, 2022,<sup>54</sup> for large diameter pipes, and January 23, 2023,<sup>55</sup> for small diameter pipes, finding in both that revocation of the AD order would lead to continuation or recurrence of dumping. The USITC published its determination on both orders on June 6, finding that revoking the orders would lead to recurrence of material injury.<sup>56</sup>

With the orders sustained, US Customs and Border Protection will continue collecting the AD cash deposits at the set rates. The DOC will initiate the next 5-year review of these orders no later than 30 days prior to the fifth anniversary of the date of this determination.

The orders cover large diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes, with one order covering large diameter pipes (over 4 1/2 inches) and one covering small diameter pipes (under 4 1/2 inches). These pipes are commonly used for line applications for oil, gas, water, and utility distribution. The large seamless pipes subject to the order are classified under HTSUS codes 7304.10.10.30, 7304.10.10.45, 7304.10.10.60, 7304.10.50.50, 7304.19.10.30, 7304.19.10.45, 7304.19.10.60, 7304.19.50.50, 7304.31.60.10, 7304.31.60.50, 7304.39.00.04, 7304.39.00.06, 7304.39.00.08, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.51.50.15, 7304.51.50.45, 7304.51.50.60, 7304.59.20.30, 7304.59.20.55, 7304.59.20.60, 7304.59.20.70, 7304.59.60.00, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, and 7304.59.80.70. The small seamless pipes subject to the order are classified under

<sup>52</sup> *Carbon and Alloy Seamless Standard, Line, And Pressure Pipe (Over 4 1/2 Inches) From Japan: Continuation of the Antidumping Duty Order*, 88 FR 38815 (June 14, 2023) is available here: <https://www.federalregister.gov/documents/2023/06/14/2023-12765/carbon-and-alloy-seamless-standard-line-and-pressure-pipe-over-412-inches-from-japan-continuation-of>.

<sup>53</sup> *Carbon and Alloy Seamless Standard, Line and Pressure Pipe (Under 4 1/2 Inches) From Japan and Romania: Continuation of the Antidumping Duty Orders*, 88 FR 38487 (June 13, 2023) is available here: <https://www.federalregister.gov/documents/2023/06/13/2023-12619/carbon-and-alloy-seamless-standard-line-and-pressure-pipe-under-412-inches-from-japan-and-romania>.

<sup>54</sup> *Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 87 FR 80162 (December 29, 2022) is available here: <https://www.federalregister.gov/documents/2022/12/29/2022-28387/certain-large-diameter-carbon-and-alloy-seamless-standard-line-and-pressure-pipe-from-japan-final>.

<sup>55</sup> *Carbon and Alloy Seamless Standard, Line and Pressure Pipe (Under 4 1/2 Inches) From Japan and Romania: Final Results of the Expedited Fourth Sunset Reviews of the Antidumping Duty Orders*, 88 FR 3970 (January 23, 2023) is available here: <https://www.federalregister.gov/documents/2023/01/23/2023-01212/carbon-and-alloy-seamless-standard-line-and-pressure-pipe-under-412>.

<sup>56</sup> *Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Japan and Romania*, 88 FR 37096 (June 6, 2023) is available here: <https://www.federalregister.gov/documents/2023/06/06/2023-11929/carbon-and-alloy-seamless-standard-line-and-pressure-pipe-from-japan-and-romania>.

7304.10.10.20, 7304.10.50.20, 7304.19.10.20, 7304.19.50.20, 7304.31.30.00, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80. Full details, descriptions, and exclusions are available in the orders.

### **Commerce Department Preliminarily Finds Sales at Less Than Normal Value in Administrative Review for Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan**

On June 6, 2023, the DOC published its preliminary determination for an administrative review of diffusion-annealed, nickel-plated flat-rolled steel products from Japan, finding sales at less than normal value for Toyo Kohan Co., Ltd. (Toyo Kohan) and rescinding its reviews for Nikken Las Industry Co., Ltd. (Nikken) and Taiyo Manufacturing Co., Ltd. (Taiyo).<sup>57</sup>

The DOC had originally announced the administrative reviews for Toyo Kohan, Nikken, and Taiyo on July 14, 2022, based on requests by interested parties for review. On October 4 and 5, however, the domestic party that requested the reviews for Nikken and Taiyo withdrew its request. Because no other parties requested reviews of those two producers, the DOC is rescinding their reviews.

For Toyo Kohan, the preliminary weighted-average dumping margin has been set at 57.32%. Toyo Kohan's original margin in the first antidumping order in 2014 was 45.42%.<sup>58</sup> The new rate will become effective after the publication of the final results of the administrative review. The All Others rate will remain 45.42%.

The nickel-plated steel subject to this order are "flat-rolled, cold-reduced steel products, regardless of chemistry; whether or not in coils; either plated or coated with nickel or nickel-based alloys and subsequently annealed (i.e., "diffusion-annealed"); whether or not painted, varnished or coated with plastics or other metallic or nonmetallic substances; and less than or equal to 2.0 mm in nominal thickness." Most of these products enter the US under 7212.50.0000 and 7210.90.6000, but may also enter under 7210.70.6090, 7212.40.1000, 7212.40.5000, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.90.0010, 7220.90.0015, 7225.99.0090, and 7226.99.0180.

### **International Trade Commission Begins Five-year Review of Tin- and Chromium-Coated Steel Sheet from Japan**

On June 1, 2023, the USITC gave notice that it had initiated its five-year review of the AD order on tin- and chromium-coated steel sheet from Japan.<sup>59</sup> The review will be seeking to determine if revocation of the duties would likely lead to a continuation or recurrence of the injury. Comments by interested parties are due by July 3, 2023.

The AD order was originally established on August 28, 2000, setting rates of 95.29% for four specific producers and an All Others rate of 32.52%. The orders were sustained by five-year reviews in 2006, 2012, and 2018.

<sup>57</sup> *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Preliminary Results of Antidumping Duty Administrative Review, and Rescission, in Part; 2021-2022*, 88 FR 37029 (June 6, 2023) is available here: <https://www.federalregister.gov/documents/2023/06/06/2023-11963/diffusion-annealed-nickel-plated-flat-rolled-steel-products-from-japan-preliminary-results-of>.

<sup>58</sup> *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Antidumping Duty Order*, 79 FR 30816 (May 29, 2014) is available here: <https://www.federalregister.gov/documents/2014/05/29/2014-12509/diffusion-annealed-nickel-plated-flat-rolled-steel-products-from-japan-antidumping-duty-order>.

<sup>59</sup> *Tin- and Chromium-Coated Steel Sheet From Japan; Institution of a Five-Year Review*, 88 FR 35920 (June 1, 2023) is available here: <https://www.federalregister.gov/documents/2023/06/01/2023-11465/tin--and-chromium-coated-steel-sheet-from-japan-institution-of-a-five-year-review>.



## WTO Developments

### India Appeals Against a WTO Dispute Settlement Ruling on its ICT Tariffs

India has appealed against the verdict delivered by the dispute settlement panel established to examine Japan's complaint from 2019 that India's tariffs on certain information and communication technology (ICT) products are inconsistent with India's obligations under the WTO Information Technology Agreement (ITA). Since the WTO Appellate Body is not functioning and is unable to hear appeals, India's appeal has been made "into the void" (WT/DS584/14). This means that the WTO Dispute Settlement Body (DSB) is unable to act in any way on the dispute panel report and India's tariffs can remain in place. Japan, supported by the United States, has formally requested India to withdraw its appeal. This is the fourth occasion on which India has appealed a WTO dispute settlement ruling against it "into the void."

Two other dispute settlement panels on the same issue, established at the request of Taiwan and the EU, reached the same verdicts, recommending that India eliminate the tariffs in question (WT/DS588/R) and (WT/DS582/R). Taiwan and India have received the agreement of the DSB to delay the DSB's consideration of the panel report until September 19, 2023, since they consider this would "facilitate the resolution of the dispute" (WT/DS588/12). This provides India with additional time to engage bilaterally with Taiwan before deciding whether to appeal the panel's findings. Neither the EU nor India have commented publicly about the next step in their dispute. One possibility could be for them to request from the DSB a delay similar to or even longer than that of Taiwan. Also, the EU and India are in the process of negotiating an FTA, which could give them an opportunity to reach a mutually agreed solution to this dispute.

In its appeal against the verdict of the dispute panel that examined the complaint by Japan, India claims that the panel made legal errors in its interpretation of the relationship between India's ITA obligations and its WTO tariff schedule. At the DSB meeting on May 30, 2023, when India's appeal was discussed, Japan expressed disappointment at India's decision to appeal the case. The United States expressed its support for Japan's request that India withdraw its appeal and stated that India's tariffs impose an inequitable financial burden on foreign companies and restrict access for Indian consumers and domestic firms to crucial high-tech products, including mobile phones and components, base stations, integrated circuits and optical instruments. China expressed its support for the findings of the dispute settlement panel. Canada and the EU urged India to channel its appeal through the Multi-Party Interim Appeal Arbitration Mechanism (MPIA) that has been set up by some WTO Members to act in place of the Appellate Body as long as it is unable to function, but in the past India has opposed the operation of the MPIA.

According to an Indian industry representative reported in India's Economic Times on May 30, 2023, India's approach is "about buying time and getting more component makers to set up shop in India so that we have a supply chain through the production-linked incentive schemes. Once that is done, no duty protection would be required."