

# US Multilateral Trade and Policy Developments

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**Japan External Trade Organization**

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## Trade Policy Developments

### US Congress Reintroduces Bill to Renew Generalized System of Preferences, Miscellaneous Tariff Bill, and Trade Adjustment Assistance Program

House Ways & Means trade subcommittee ranking member Earl Blumenauer (D-OR) and 10 Democrat co-sponsors have unveiled a new bill, *The American Worker and Trade Competitiveness Act*, to reauthorize the Generalized System of Preferences (GSP), the Miscellaneous Tariff Bill (MTB), and the Trade Adjustment Assistance program (TAA).<sup>1</sup> GSP and MTB expired at the end of 2020 with various proposals for their renewal failing to pass Congress since then, despite widespread bilateral support for the programs. This bill's approach to their renewal was last included in the CHIPS Act's trade title, which ultimately failed to be included in the 2022 final version of the law amid disagreements over details.

Missing from the bill is a renewal of Trade Promotion Authority (TPA), which Congress has historically bundled together with these measures. Democrats have shied away from renewing TPA, which grants the president additional powers for negotiating free trade agreements (FTAs), amid a broader political turn against FTAs in Washington and a lack of support from the Biden administration. Congressional Republicans, however, may demand its inclusion in any final compromise bill.

#### Generalized System of Preferences

The GSP section of the bill would reauthorize tariff reductions through the end of 2026, with retroactive effect. The bill also adds new standards that USTR must consider in its annual reviews of eligibility, commissions new studies on the effects of GSP, establishes an annual study of worker rights in beneficiary countries, and makes a few changes to process and transparency.

As is common practice in late GSP renewals, the bill would apply retroactively and allow importers to receive refunds for duties paid since the program's expiration in 2020. Under the retroactive renewal, shipments that would have received preferential treatment if they had entered the United States on December 31, 2020 (the last day of the previous GSP), but which entered the country after December 31, 2020, and before the date in which the new law enters force (30 days after its enactment), will be reliquidated as if they entered the country on the date when the new law enters force. To receive the new duty rate under the reliquidation, the importer must file a request with US CPB within 180 days of the law's enactment. Refunds will be paid (without interest) within 90 days of the reliquidation.

Like the version introduced in 2022, the bill would add new and stricter conditions that countries must meet to qualify for GSP, making it tougher for countries to qualify. Under the factors that can make a country ineligible for inclusion in GSP, the bill would strengthen the existing labor rights requirements and add new environmental protection and human rights standards. In factors that USTR should consider when examining a country for inclusion, the bill would add new criteria on environmental protection, human rights, rule of law, equal protection under the law, adequate economic development policies, and anti-corruption practices. These new criteria are similar to those used for determining eligibility in the African Growth and Opportunity Act (AGOA), a separate and more generous import preference program for developing countries in Africa.

These new conditions are stricter than what Republicans have supported before. Debates on these requirements led to the bill being removed from the final CHIPS Act in 2022. It is possible that a rival GSP renewal will emerge from

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<sup>1</sup> A draft of the bill is attached and a summary from its sponsors is accessible here: <https://blumenauer.house.gov/sites/evo-subsites/blumenauer.house.gov/files/evo-media-document/one-pager-awtca.pdf>.

Republicans that does not include the controversial qualifying conditions. Rep. Adrian Smith (R-NE) recently said he was working on such a bipartisan approach.

### **Miscellaneous Tariff Bill**

The bill would reauthorize the MTB following the reformed system that was established under the American Manufacturing Competitiveness Act of 2016 (AMCA).<sup>2</sup> The renewal would last through the end of 2024, retroactive to four months before its enactment. The MTB reduces or eliminates tariffs on products that are not made in the United States, as there is no domestic interest in keeping foreign products out.

The AMCA process requires companies to petition the USITC for their products to be included. The USITC then reviews those petitions, and Congress compiles them into the bill. This bill contains the current list of products that would be excluded from tariffs when the bill enters effect.

The bill includes two new cycles for USITC to review the MTB product list, the first starting no later than October 15, 2023, and the second starting no later than October 15, 2026. By those dates, the USITC will have posted a notice to the Federal Register, inviting the public to submit products for consideration. For these future MTB cycles, the bill would exclude finished products from coverage. Instead, it would only allow tariff free treatment for imports used as inputs in US manufacturing.

### **Trade Adjustment Assistance**

TAA provides job training and other assistance to workers who lost their jobs to foreign competition. It expired in June 2022. The last omnibus appropriations bill provided funding for restarting TAA, but it has not actually been legally reauthorized.<sup>3</sup> This bill would reauthorize it and then go further by increasing its funding and expanding eligibility, measures that were supported by House Democrats in 2022 but that were left out of the omnibus appropriations bill.

### **US International Trade Commission Launches Study on Greenhouse Gas Emissions from the US Steel and Aluminum Industries**

The US International Trade Commission (USITC) has begun to investigate the greenhouse gas (GHG) emissions of the US steel and aluminum industry, following a request from the US Trade Representative (USTR).<sup>4</sup> USTR requested the study on June 5, 2023, saying the results are needed to “inform discussions with the European Union (EU) regarding the Global Arrangement on Sustainable Steel and Aluminum (Global Arrangement).”<sup>5</sup> USITC expects to deliver the report to USTR by January 28, 2025. It will then be released to the public.

USITC is an independent, non-partisan federal agency that performs factfinding investigations on trade policy matters for the US government, along with import injury determinations in antidumping and countervailing duty investigations. USITC investigations do not make policy determinations in themselves. Instead, they provide detailed data to support decision-making in other parts of the executive branch and Congress.

### **Conducting the study**

USITC will issue mandatory questionnaires to companies that produce steel and aluminum in the United States (both foreign owned and US-owned companies), to collect data on production of the covered products and associated

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<sup>2</sup> The 2016 AMCA is accessible here: <https://www.congress.gov/114/plaws/publ159/PLAW-114publ159.pdf>.

<sup>3</sup> The Consolidated Appropriations Act, 2023, accessible here: <https://www.congress.gov/117/bills/hr2617/BILLS-117hr2617enr.pdf>.

<sup>4</sup> The investigation is accessible on the USITC website here: <https://ids.usitc.gov/case/8129/investigation/8407> and the Notice of Investigation is accessible here: <https://www.federalregister.gov/public-inspection/2023-14500/investigations-determinations-modifications-and-rulings-etc-greenhouse-gas-emissions-intensities-of>.

<sup>5</sup> USTR’s letter to USITC is accessible 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).

GHG emissions. Before the questionnaires are issued to companies, USITC intends to post drafts of them to its website for public feedback.

USITC has also scheduled a public hearing to discuss the study on December 7, 2023. More information about the hearing will be posted to USITC's website at a later date.<sup>6</sup> Companies interested in participating in the hearing should file a request by November 17, 2023. Written submissions may also be entered for the record until June 28, 2024. Both written submissions and requests to participate in the hearing must be filed through the USITC Electronic Document Information System (EDIS). Submissions will be available for public view, but options are available for suppressing business confidential information.<sup>7</sup>

### Scope of the study

The study will measure 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, the study is specifically interested in emissions from upstream materials that are used as inputs for steel and aluminum manufacturing. This would include "iron ore, coke, ore-based metallics, semi-finished steel and other steel substrate suitable for further processing, carbon anodes, unwrought aluminum, and wrought aluminum suitable for further processing." The national origin of these inputs will also be tracked, to identify where related GHG emissions are occurring.

USTR requested that the report 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 USTR's original letter. These lists reflect the same products as those that were included in the Section 232 steel and aluminum actions.

### The Global Arrangement on Sustainable Steel and Aluminum

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. The latest meeting between the US and EU negotiators was on July 5 in Washington, DC. Neither side reported any new progress following the meetings, though Katherine Tai said they still intend to conclude negotiations by the October 2023 deadline.

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<sup>6</sup> USITC's hearings calendar is accessible here: <https://www.usUSITC.gov/calendar>.

<sup>7</sup> The USITC EDIS is accessible here: <https://edis.usUSITC.gov/>.

If USTR's proposal is adopted, the United States and EU would need detailed data about GHG emissions from the industry. This will require new research on the sector and the development of new GHG accounting systems in the USITC, which has no previous experience with emissions accounting. Developing the new administrative capacity and implementing the surveys will take years to complete. This first study begins that capacity building process but will not be completed until January 2025. 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."

## Trade Actions

### Section 301

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#### Congress Reintroduces Bill to Protect Goods in Transit from Section 301 Tariff Changes

Members of Congress recently reintroduced a bill that would protect goods in transit from sudden changes in tariff levels related to Section 301 actions. The *For Accurate Import Relief to Aid Retailers and Importers of Foreign Freights Act of 2023* (FAIR TARIFF Act) was reintroduced in June in the House of Representatives and July in the Senate, after it failed to move forward in the previous legislative session.

The bill would prevent goods already in transit from being subjected to surprise changes in applicable duties from Section 301 tariff actions by requiring 60 days' notice for tariff increases. The sponsors were motivated to introduce the bill by sudden Section 301 tariff changes that occurred during the Trump administration, which often left US importers with unexpected charges. The bill would also refund tariffs that importers paid on goods imported from Europe immediately following some of those Section 301 actions.

#### Current advance notice practice

When USTR changes Section 301 tariffs, it acts at its own discretion in how much advance notice to give and how to treat goods that are already in transit. In the Section 301 tariff actions that occurred during the Trump administration, there was usually about two weeks of notice between when the tariffs were published to the Federal Register and when they went into effect. For example, in October 2019 and again in January 2021, USTR placed tariffs on billions of dollars of imports from the European Union and United Kingdom with two weeks' notice. International shipping, however, can often take longer than two weeks. Industry stakeholders regularly object to the short notice provided by these tariff actions to both USTR and Congress. The Wine & Spirits Wholesalers of America, an industry association representing companies that were subjected to unexpected tariffs following these Section 301 actions, argues that it takes 25-40 days for their import shipments to reach the United States.<sup>8</sup>

#### Content of the bills

The 2023 version of the FAIR TARIFF Act was introduced to the Senate on July 19 by Senators Bob Menendez (D-NJ) and Bill Cassidy (R-LA)<sup>9</sup> and to the House of Representatives on June 1 by Representatives Brad Wenstrup (R-OH), Mike Thompson (D-CA), and Terri Sewell (D-AL).<sup>10</sup> The House and Senate versions are substantively the same, though they have some small drafting differences that would need to be reconciled at some point before the bill could become law.<sup>11</sup> The bill contains two important actions: (1) refunding some Section 301 tariffs that had been paid on goods in transit; and (2) establishing a 60-day notice period Section 301 duties on imports from market economies can be implemented.

The bill's tariff refunds are for goods that entered the United States for consumption in the 60 days following the imposition of tariffs related to the Section 301 investigation into European subsidies of the civil aircraft industry that

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<sup>8</sup> A statement from the WSWA endorsing an earlier draft of the FAIR Tariff Act can be found here: <https://www.wswa.org/news/wswa-applauds-introduction-fair-tariff-act>.

<sup>9</sup> "Sens. Menendez, Cassidy Renew Bipartisan Effort to Exempt International Goods Already in Transit from Surprise Tariffs," available here: <https://www.menendez.senate.gov/newsroom/press/sens-menendez-cassidy-renew-bipartisan-effort-to-exempt-international-goods-already-in-transit-from-surprise-tariffs>.

<sup>10</sup> "Bipartisan Ways and Means Members Reintroduce the FAIR TARIFF Act," available here: <https://wenstrup.house.gov/updates/documentsingle.aspx?DocumentID=407537>.

<sup>11</sup> Notably, the House bill has one significant drafting error: it erroneously describes the January 2021 Section 301 tariff action on EU civil aircraft subsidies as occurring in January 2022. This would make the refund process unusable for importers subject to this tariff action, but it would likely be fixed when the House and Senate versions are reconciled.

were imposed in October 2019 and January 2021. The bill would not provide tariff refunds for any other Section 301 actions, including those against imports from China.

For the October 2019 action,<sup>12</sup> any tariffs paid on entries that occurred within 60 days of the action's October 18, 2019 announcement will be refunded. The goods subject to tariff refunds are under Harmonized Tariff System (HTS) Chapter 99 subheadings 9903.89.10, 9903.89.13, 9903.89.16, 9903.89.19, 9903.89.22, 9903.89.25, 9903.89.28, 9903.89.31, 9903.89.34, 9903.89.37, 9903.89.40, 9903.89.43, 9903.89.46, or 9903.89.49.

For the January 2021 action,<sup>13</sup> tariffs that were paid on entries that occurred within 60 days of the action's January 12, 2021 announcement will be refunded. These tariffs are under the HTS subheadings 9903.89.57 and 9903.89.59. Interestingly, the 2023 version of the bill would not refund duties paid on entries under HTS 9903.89.61 and 9903.89.63, whereas earlier versions of the bills did. These two codes cover aircraft parts that were subject to the January 2021 action. Representative Wenstrup's statement announcing the bill said these had not been included because they are "tied to the underlying dispute regarding aircraft." All the tariffs related to the civil aircraft Section 301 action are currently suspended under cooperation agreements with the EU and UK announced in July 2021.<sup>14</sup>

To receive a refund, the importer of record would file a request for either a reliquidation or liquidation with US Customs and Border Protection (CBP) within one year of the bill's enactment into law. The request must include information that would enable CBP locate the entry and verify eligibility of the request. The bill requires CBP to develop an application process for those filings and make it available to the public not later than 90 days after enactment.

The second action in the bill would introduce an advance notice requirement for Section 301 tariff increases. It would amend Section 306(b) of the Trade Act of 1974<sup>15</sup> to require that any tariff increase under Section 301 not enter effect until 60 days after notice of the action is published to the Federal Register. Sixty days would be a significant increase over USTR's recent practice of about 14 days and would give importers significantly more space to adjust. This new advance notice requirement, however, does not apply to imports from countries designated as non-market economies (such as China and Vietnam).<sup>16</sup>

## Outlook

The bill enjoys bipartisan support in both the House and the Senate. Passage of any bills in a divided Congress is difficult, however, and the bill's chances of passage are unclear. A bipartisan trade policy bill may emerge in the Senate later in the year (often called CHIPS 2.0 or the China competition bill), to which the FAIR TARIFF Act could eventually be added.

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<sup>12</sup> Notice of Determination and Action Pursuant to Section 301: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute (84 FR 54245), October 9, 2019, available here: <https://www.federalregister.gov/documents/2019/10/09/2019-22056/notice-of-determination-and-action-pursuant-to-section-301-enforcement-of-us-wto-rights-in-large>.

<sup>13</sup> Notice of Revision of Section 301 Action: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute (86 FR 674), January 6, 2021, available here: <https://www.federalregister.gov/documents/2021/01/06/2020-29225/notice-of-revision-of-section-301-action-enforcement-of-us-wto-rights-in-large-civil-aircraft>.

<sup>14</sup> Suspension of Action: Enforcement of U.S. WTO Rights in the Large Civil Aircraft Dispute (86 FR 36313), July 9, 2021, available here: <https://www.federalregister.gov/documents/2021/07/09/2021-14550/suspension-of-action-enforcement-of-us-wto-rights-in-the-large-civil-aircraft-dispute>.

<sup>15</sup> 19 U.S.C. 2416(b), available here: <https://www.govinfo.gov/app/details/USCODE-2021-title19/USCODE-2021-title19-chap12-subchapIII-sec2416>.

<sup>16</sup> "Non-market economy" is defined in Section 771(18) of the Tariff Act of 1930 (19 U.S.C. 1677(18)), available here: <https://www.govinfo.gov/app/details/USCODE-2021-title19/USCODE-2021-title19-chap4-subtitleIV-partIV>.



The House version of the FAIR TARIFF Act can be found here: <https://www.congress.gov/bill/118th-congress/house-bill/3739/text>; and a draft of the Senate version can be found here: [https://www.menendez.senate.gov/imo/media/doc/fair\\_tariff\\_act\\_of\\_2023.pdf](https://www.menendez.senate.gov/imo/media/doc/fair_tariff_act_of_2023.pdf).

## Trade Agreements

### IPEF Members Hold Fourth Negotiating Round in Busan, Korea

The fourth full negotiating round of the Indo-Pacific Economic Framework for Prosperity (IPEF) occurred in Busan, Korea from July 9-15, 2023.<sup>17</sup> This is the first negotiating round since the ministerial meeting on May 27 that announced the substantial conclusion of the Pillar II supply chain agreement. The Busan round did not announce any further breakthroughs, with work on Pillars I (Trade), III (Clean Economy), and IV (Fair Economy) continuing.

#### The four pillars

IPEF is split into four pillars, each being its own separate treaty that can be negotiated and joined independently. The participants are Australia, Brunei, Fiji, India, Indonesia, Japan, Korea, Malaysia, New Zealand, the Philippines, Singapore, Thailand, the United States, and Vietnam.

#### □ Pillar I (Trade)

Pillar I of the agreement is the section most like traditional free trade agreements, though it will not include most of the market access commitments that would usually be expected. The pillar includes chapters on digital trade, labor standards, environmental protection, technical assistance, inclusivity, agriculture, services domestic regulation, customs and trade facilitation, good regulatory practices, and competition policy. Most of the text for these chapters has been proposed by USTR, with the other parties responding.

India has declined to participate in Pillar I, making it the only party not participating in all four pillars. The Indian government has recently suggested it may join Pillar I if the market access commitments are improved.

On the sidelines of the meetings, Indonesia, Malaysia, and the Philippines with the support of other ASEAN member countries and Australia reportedly continue to push for the inclusion of critical minerals market-access discussions in the IPEF negotiations; however, USTR has stated that “nothing has been decided,” characterizing discussions on this issue in the context of supply chain resilience.

#### □ Pillar II (Supply Chain)

The supply chain pillar negotiations have been substantially completed, which was announced during the May 27 ministerial meeting in Detroit, Michigan. The agreement establishes three new committees for coordinating supply chain policies among the member countries: (i) the IPEF Supply Chain Council, (ii) the IPEF Supply Chain Crisis Response Network, and (iii) the IPEF Labor Rights Advisory Board.

The full text has not yet been released. The US Commerce Department has attributed this delay to the additional time required for the “legal scrub” of the text, as this is a new type of agreement. Statements following the Busan meetings simply stated that the parties had advanced this legal review.

Despite the slow legal process, the parties have proceeded with implementing the agreement’s core activities. Alongside the Busan negotiating round, Korea hosted a seminar on how participants could use and implement the agreement. Supply chain experts from Korea, Australia, the United States, and Japan presented on approaches to supply chain risk monitoring to the assembled governments.<sup>18</sup>

<sup>17</sup> The US Department of Commerce and USTR Readout of the negotiating round is accessible here: <https://www.commerce.gov/news/press-releases/2023/07/joint-us-department-commerce-and-ustr-readout-fourth-indo-pacific>.

<sup>18</sup> See Korea’s announcement of the meetings, accessible here: [https://english.motie.go.kr/en/pc/pressreleases/bbs/bbsView.do?bbs\\_seq\\_n=1355&bbs\\_cd\\_n=2&currentPage=1&search\\_key\\_n=&search\\_val\\_v=&cate\\_n=](https://english.motie.go.kr/en/pc/pressreleases/bbs/bbsView.do?bbs_seq_n=1355&bbs_cd_n=2&currentPage=1&search_key_n=&search_val_v=&cate_n=)

### □ **Pillar III (Clean Economy)**

Pillar III covers environmental protection, especially responding to climate change. This chapter will likely focus on fostering cooperation in helping each IPEF participant country meet its environmental goals (including those of the Paris Agreement), rather than developing new commitments. The US Commerce Department described the goals as advancing “cooperation on research, development, commercialization, availability, accessibility, and deployment of clean energy and climate friendly technologies, and facilitate investment towards climate-related projects in the region.”<sup>19</sup>

### □ **Pillar IV**

The Fair Economy Pillar is seeking “progress on anti-corruption measures and tax initiatives, including through enhanced cooperation on capacity building and technical assistance,” according to past statements.<sup>20</sup>

### **The June 29 ministerial call**

Ahead of the Busan round, ministers negotiating Pillars III (Clean Economy) and IV (Fair Economy) held a virtual ministerial meeting on June 29.<sup>21</sup> The ministers repeated their commitment to a quick and ambitious outcome to the two pillars and discussed technical assistance and capacity building activities that could help the developing country participants in the framework reach higher standard commitments. The United States announced at the meeting that the US International Development Finance Corporation (DFC) has launched a new program to provide \$300 million in aid and up to \$900 million in matching private financing for sustainable infrastructure projects around the world, including in IPEF countries.<sup>22</sup>

### **Approaching the November APEC Leaders’ Summit**

The United States still intends to conclude the negotiations in time for the Asia-Pacific Economic Cooperation (APEC) Leaders’ Summit in San Francisco, California in November 2023. There will be several more negotiating rounds before that, with the parties seeking to settle the Trade, Clean Economy, and Fair Economy Pillars in time.

### **US Congress Reasserts Role in Taiwan Trade Negotiations**

On July 18, 2023, the Senate passed the *United States-Taiwan Initiative on 21st-Century Trade First Agreement Implementation Act* following the House of Representative’s approval of the bill on June 21, 2023.<sup>23</sup> The bill seeks to reassert some of Congress’ authority over trade agreements by endorsing the first stage agreement of the US-Taiwan Initiative on 21st Century Trade (which was signed on June 1, 2023) and establishing requirements for Congressional oversight and approval of any further negotiations with Taiwan (*see the appendix for a summary of the US-Taiwan trade negotiations*).

### **Congress’ role in trade policy**

Trade Promotion Authority (TPA), the law that clarifies executive and legislative authorities for trade negotiations and provides a simplified pathway for Congressional approval of trade agreements, expired in July 2021. TPA’s expiration

<sup>19</sup> See US Department of Commerce statement from the May 27 ministerial, accessible here: <https://www.commerce.gov/news/press-releases/2023/05/press-statement-trade-pillar-clean-economy-pillar-and-fair-economy>.

<sup>20</sup> Ibid.

<sup>21</sup> The US Department of Commerce’s readout is accessible here: <https://www.commerce.gov/news/press-releases/2023/06/readout-indo-pacific-economic-framework-prosperity-virtual-ministerial>.

<sup>22</sup> The DFC’s media release is accessible here: <https://www.dfc.gov/media/press-releases/dfcs-approval-300-million-financing-sustainable-infrastructure-projects>.

<sup>23</sup> The United States-Taiwan Initiative on 21st-Century Trade First Agreement Implementation Act is accessible here: <https://www.govinfo.gov/content/pkg/BILLS-118hr4004enr/pdf/BILLS-118hr4004enr.pdf>.

suspended both Congress' typical role of overseeing executive branch-lead negotiations and the executive branch's practical pathways to obtaining Congressional ratification for new free trade agreements. The Biden administration has continued to pursue trade agreements despite TPA expiration but is implementing them as executive agreements instead of as legally ratified treaties. This has limited the kinds of policies that can be included in trade negotiations, as Congressional approval is needed for any changes to US law.<sup>24</sup> This avoidance of Congressional approval also has led to public disputes between the executive branch and Congress, with members of Congress upset by both the content of the executive branch's negotiations and by the apparent challenge to Congress' authority. The Taiwan bill is Congress' first significant effort to assert its powers against the Biden administration.

The bill passed both chambers by unanimous consent. That level of support makes it almost certain that Congress will override any opposition from the executive branch. The White House has not yet issued any public statements on the bill. A veto from President Biden may delay the bill's enactment into law but cannot permanently block it. The Taiwanese Foreign Ministry, for its part, welcomed the bill as a signal of "the high regard that US Congress members of both parties have for the Taiwan-US Initiative on 21st-Century Trade and points to their robust support for stronger bilateral trade relations."<sup>25</sup>

There is strong bipartisan support for expanding trade relations with Taiwan, despite the challenging environment for other free trade agreements in Washington. This likely made it simpler for Congress to pass a measure specifically about the Taiwan negotiations, rather than renewing TPA. It is unclear at this time if additional bills establishing Congressional authority over other negotiations like IPEF will materialize, though some Congressional staff members have suggested that could be a future option. Applying the oversight requirements established by this bill to IPEF (or passing a new TPA bill) would not only make future trade negotiations more complicated but also make it possible for the United States to offer durable market access concessions.

### **Overview of the Taiwan bill**

The first significant act of the bill is to endorse the June 1 US-Taiwan agreement. The bill would provide a pathway for the agreement to enter into force, instructing that the President "may provide for the Agreement to enter into force not earlier than 30 days after the date on which the President submits to Congress a certification" that Taiwan has taken the necessary measures to comply with the agreement. No later than 30 days before submitting the certification, the President must consult Congress on the agreement, submit a report to Congress on Taiwan's implementation of the agreement and its economic impact, and respond to written questions from Congress.

The bill also sets out requirements for the next phase of the Taiwan negotiations, establishing a strong role for Congressional oversight and approval. These provisions appear to go beyond what is usually found in TPA in ways that may complicate the negotiations for the next phase of the agreement, though Congressional approval could also make any agreement deeper and more durable should one be successfully completed.

For oversight, the bill would require the executive branch to share both US and Taiwanese negotiating texts with Congress. USTR would have to provide its negotiating texts to Congress for review before sharing them with Taiwan or any other groups outside the executive branch, which would give Congress more influence over the content of the texts and would likely slow down private sector consultations and negotiating rounds. USTR would also have to share Taiwan's negotiating texts with Congress and would eventually have to share the final agreement 45 days before releasing it to the public.

<sup>24</sup> For a discussion of the conflicting constitutional authorities that underlie these debates, see Timothy Meyer and Ganesh Sitaraman, *Trade and the Separation of Powers*, 107 California Law Review. 583 (2019), accessible here: <https://scholarship.law.vanderbilt.edu/faculty-publications/1093/>.

<sup>25</sup> Taiwan's statement is accessible here: [https://en.mofa.gov.tw/News\\_Content.aspx?n=1328&s=115094](https://en.mofa.gov.tw/News_Content.aspx?n=1328&s=115094).

Finally, any further agreements between the United States and Taiwan would not take effect until enacted into law by Congress. The bill notably does not include the expedited approval procedures that Congress usually provides under TPA, such as automatic committee discharge, limited floor debate, and a simple majority vote. Putting an agreement through the full legislative process may make passing it into law challenging, given the controversial nature of trade agreements. If Congress does find consensus on passing an agreement, however, this legal process could create the opportunity for the United States to negotiate a deeper trade agreement with more significant market access commitments than the executive branch can negotiate on its own.

Despite making negotiations on further agreements more complicated for USTR, Congress does support further agreements in principle. The bill states that it “is the sense of Congress that - (1) the United States should continue to deepen its relationship with Taiwan; and (2) any Further Agreements should be high-standard, enforceable, and meaningful to both the United States and Taiwan, as well as subject to robust requirements on public transparency and congressional consultation.” The bill does not, however, provide USTR with any specific negotiating objectives, which leaves the difficult political debates over market access concessions open for another time.

The bill also includes a measure limiting the Biden administration’s controversial critical mineral trade agreements. Section 8 says that the agreement “does not constitute a free trade agreement for purposes of section 30D,” the Inflation Reduction Act’s (IRA) electric vehicle subsidies. The current agreement has no provisions that would have qualified under the Treasury Department’s Section 30D free trade agreement definition, so this provision does not change the present outcome. Even so, Congress including this limitation in the bill may be a signal that it may seek to block other critical mineral trade agreements.

### **Appendix: Background on the Taiwan negotiations**

On May 18, 2023, the United States and Taiwan, under the auspices of the American Institute in Taiwan (AIT) and the Taipei Economic and Cultural Representative’s Office in the United States (TECRO), announced the conclusion of negotiations on the first stage of the US-Taiwan Initiative on 21st Century Trade. This early harvest agreement covered commitments on trade facilitation, good regulatory practices, services domestic regulation, anticorruption, and small and medium-sized enterprise (SME) trade.

These chapters include commitments on efficient customs clearance, electronic invoicing, transparency, and good governance standards that could help reduce trade and investment costs for some industries, though they also overlap heavily with already existing commitments under the World Trade Organization’s Trade Facilitation Agreement and Joint Initiative on Services Domestic Regulation.

#### **□ Customs Administration and Trade Facilitation**

The customs administration and trade facilitation chapter focuses on measures to streamline border procedures, allowing products to move through customs inspections faster and at a lower cost. The agreement gives Taiwan a three-year transition period (with an option for a one-year extension) to implement these commitments, some of which will likely require changes to Taiwan’s current customs regulations. The commitments include:

- Making customs information and regulatory developments more accessible to traders;
- Allowing electronic documents, including for filing requirements and invoices, and establishing or maintaining a single window system;
- Applying measures for prompt release of goods, including for express shipments, returned goods, perishable goods, and humanitarian cargo;
- Setting standards for customs agencies, including commitments to judicial and administrative review, consistent customs penalties, and confidential data protection; and

- Applying measures to support cooperation between US and Taiwanese customs officials.

#### □ **Good Regulatory Practices**

The chapter on good regulatory practices promotes transparent processes for developing regulations, improving communication with the private sector, accepting public comments on regulations, thoroughly reviewing of the effects of regulations, and encouraging collaboration between US and Taiwanese regulatory bodies.

#### □ **Services Domestic Regulation**

The services domestic regulation chapter is meant to ensure fair and transparent treatment of foreign services suppliers when applying for business licenses. The chapter builds upon the World Trade Organization's *Joint Initiative on Services Domestic Regulation*, a plurilateral agreement signed in December 2021.<sup>26</sup> Though past trade agreements have included commitments on services market access, this chapter's approach is new and will likely be a model for future US-led agreements.

Whereas in the WTO Declaration, Members commit to opening only specifically listed sectors, the US-Taiwan agreement's chapter would cover all sectors by default. The only exceptions would be for government procurement, non-commercial services, subsidies, and air transport services. As with the WTO Declaration, there is a separate set of commitments for financial services, which USTR has said is necessary to "preserve the ability of regulators overseeing that sector to protect the stability of the financial system."

#### □ **Anticorruption**

The anticorruption chapter's commitments seek to prevent and combat bribery and other forms of corruption as well as address the treatment of corrupt public officials. The chapter includes efforts to ban corruption, off-the-books accounts, money laundering, and enhance whistle blower protection. The chapter also includes a commitment that obligates governments to adopt legislation giving themselves the authority to deny entry to corrupt public officials from third countries.

#### □ **Small- and Medium-Sized Enterprises**

The SME chapter contains commitments in support of trade and investment among SMEs, including through training and education programs, digital trade promotion, and improvements to SME access to credit.

Negotiators will now turn their focus to the remaining topics under the initiative's August 2022 negotiating mandate.<sup>427</sup> These include agriculture, standards, digital trade, labor, environment, state-owned enterprises, and non-market policies and practices. This next stage of negotiations will be more complex. Agriculture market access, for example, has been a challenge between the United States and Taiwan in the past. Disputes over the use of ractopamine in meat products prompted the United States to suspend Trade and Investment Framework Agreement (TIFA) talks several times in recent years. Tariffs and quotas also remain on key agriculture products, and Taiwan heavily restricts genetically modified crops. Digital trade may also prove challenging. In IPEF, the digital trade chapter has proven controversial both among the negotiating parties and in Washington, DC. How far USTR will be able to push Taiwan in these chapters without offering tariff concessions in return remains to be seen.

<sup>26</sup> More information on the WTO's Services Domestic Regulation work is accessible here: [https://www.wto.org/english/tratop\\_e/serv\\_e/jsdomreg\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/jsdomreg_e.htm); and a WTO review of past services domestic regulation commitments is accessible here: [https://www.wto.org/english/res\\_e/reser\\_e/ersd202114\\_e.pdf](https://www.wto.org/english/res_e/reser_e/ersd202114_e.pdf).

<sup>27</sup> The negotiating mandate is accessible here: [https://ustr.gov/sites/default/files/2022-08/US-Taiwan%20Negotiating%20Mandate%20\(Final\).pdf](https://ustr.gov/sites/default/files/2022-08/US-Taiwan%20Negotiating%20Mandate%20(Final).pdf).

USTR has not provided a timeline to conclude negotiations for these seven topics. According to the Taiwanese government, the two sides plan to conclude negotiations on all topics by the end of 2023.<sup>28</sup> Upcoming presidential elections in both economies could complicate negotiations should they extend into 2024.

## CPTPP

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### **United Kingdom Signs Accession Protocol to Become Latest CPTPP Member; CPTPP Enters into Force for Brunei**

On July 16, 2023, New Zealand hosted the seventh Commission meeting of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) in Auckland.<sup>29</sup> Ministers and senior officials from the original CPTPP member countries including Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, and Vietnam as well as the United Kingdom (UK) attended the meeting. During the meeting, the Ministers welcomed the entry into force of the CPTPP for Chile and Brunei on February 21, 2023 and July 12, 2023, respectively. These additions mark the first time where all the original CPTPP signatories have ratified and fully implement the Agreement.

The full implementation of the CPTPP comes at a time when the global economy is facing rising inflation and economic instability brought by the ongoing geopolitics and the recovery from the Covid-19 pandemic. In this regard, the Ministers reiterated their commitment to uphold the rule-based trading system and ensure that the CPTPP will promote resilient supply chains and enhance the global value chain. In addition, the Ministers discussed global environmental challenges and recognized the role of trade policies in addressing climate change. To this end, the review of the environment chapter will enable CPTPP member states to assess the implementation, operation, and contribution of the environment provisions in the CPTPP.

On the digital economy, the Parties agreed to enhance cooperation in digital trade, which includes consideration of a study commissioned in 2022 to examine the implementation of the e-commerce chapter. This study serves as a reference point for CPTPP members to consider how they can promote further cooperation on digital economy. The Ministers also discussed how existing provisions could be further reviewed to facilitate digital trade. They agreed to further facilitate data flows and share best practices to ensure the operability of their systems.

To further facilitate trade, the Ministers agreed to establish an ad-hoc working group under Chapter 5 (Customs Administration and Trade Facilitation), which will meet to find ways to reduce transaction costs for businesses operating under the CPTPP. The Parties also look forward to progressing the third-year general review as per Article 27.2.1 (b) of the CPTPP, which is meant to ensure the continuing relevance of the Agreement.

#### **UK's CPTPP accession**

The Ministers approved the terms and conditions for the UK's accession to the CPTPP as proposed by the Accession Working Group. In this regard, they signed the UK's Accession Protocol, which will officially add the UK as the 12th member of the CPTPP and expands the Agreement beyond the Asia Pacific region. Negotiations on the UK's accession were concluded on March 31, 2023, when agreement was finally reached on the market access requirements that the UK will have to meet. These were set by CPTPP members at a high level in order to establish a sufficiently ambitious precedent for future accessions, notably that of China. The UK government has welcomed the leadership role played by Japan in helping to steer the UK's accession to a successful conclusion.

<sup>28</sup> Taiwan's statement is accessible here (in Chinese): <https://www.ey.gov.tw/otn/8E7CF7585049FAB6/715de58e-8afd-44d7-a826-33b86adb9aaf>.

<sup>29</sup> The CPTPP Ministers' joint statement is accessible here: <https://www.mfat.govt.nz/assets/Trade-agreements/CPTPP/Joint-Ministerial-Statement-of-the-7th-CPTPP-Commission-Meeting.pdf>.

The provisions of the CPTPP will enter into force formally for the UK once ratification procedures have been completed by the UK and the parliaments of the 11 existing CPTPP members. The UK's Protocol of Accession states that entry into force will take place 60 days after all existing members of the CPTPP give notice that they have completed their domestic ratification procedures, although if that process has not been completed within 15 months (*i.e.*, by mid-October 2024) then the Protocol will come into force 60 days after the UK and at least six CPTPP members have completed the ratification process.

In the UK, ratification will involve parliamentary scrutiny of the CPTPP in accordance with the *Constitutional Reform and Governance Act 2010*, which sets out the procedure for treaty ratifications. There is no requirement in the 2010 Act for a formal parliamentary debate or vote on ratification, but the UK Government has stated that it will allow a debate if one is recommended by one or more of the parliamentary select committees that are currently reviewing the protocol. That process is already underway and reportedly it is proceeding smoothly.

Most important will be a conclusion from the Trade and Agriculture Commission (TAC) that membership of the CPTPP is consistent with the maintenance of UK levels of statutory protection on animal health, animal welfare, and environmental protection. The TAC has already delivered positive advice on the treatment of these issues in the provisions of the UK's recent bilateral free trade agreements (FTAs) with Australia and New Zealand, but it may take some time for the TAC to complete an assessment of the agri-food legislation in force in the nine other CPTPP members. Nonetheless, the UK Government is aiming to complete its ratification process this year.

### **Other potential CPTPP members**

Besides the UK, there are six accession requests from China, Taiwan, Costa Rica, Ecuador, Uruguay, and Ukraine to join the CPTPP. At this stage, the CPTPP members are undertaking an information-gathering process on whether those economies can meet the CPTPP's high standards based on their existing trade commitments. Reportedly, the CPTPP members will consider China's application next, followed by Taiwan. CPTPP membership requires unanimous consent from all CPTPP members, including the UK. With respect to China's request, Malaysia, Singapore and Vietnam have already signalled their support, but Australia and Japan have taken a more cautious approach for the time being.

Following the submission of its application in September 2021, China has been studying the terms, costs, and benefits of joining the CPTPP according to Vice-Minister of Commerce Wang Shouwen. China has carried out various pilot projects to show its willingness and capability to meet CPTPP high standards. Some analysts opine that China intends to use accession negotiations to accelerate domestic market-oriented reforms. Specifically, China has issued a government notice to reform free trade zones (FTZs) rules to align with CPTPP rules.<sup>30</sup> The new rules are expected to apply first to five eligible FTZs (Shanghai, Guangdong, Tianjin, Fujian, and Beijing and the Hainan Free Trade Port) in areas of trade in goods, temporary entry of business personnel, and risk control. In addition, China plans to reduce the negative list of foreign investment access and launch a nationwide negative list of cross-border services trade.

Meanwhile, Taiwan's status as an advanced liberal market economy makes it a qualified candidate to meet the high standards of CPTPP membership. However, its political relationship vis-à-vis China complicates its potential membership. Certain CPTPP members may be reluctant to accept both economies into the Agreement, and CPTPP members remain uncomfortable admitting one before the other.

Other countries including Costa Rica, Ecuador, Uruguay, and Ukraine will continue to face lengthy accession processes, although their acceptance is less politically controversial. New Zealand's Trade Minister Damien

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<sup>30</sup> Notice on the Implementation of Several Measures to Promote Institutionalized Opening-Up of Qualified Free Trade Zones and Port in Accordance with International High Standards, accessible here (in Chinese): [https://www.gov.cn/zhengce/content/202306/content\\_6889026.htm](https://www.gov.cn/zhengce/content/202306/content_6889026.htm).



O'Connor indicated that there is no specific timeframe for when any decisions on future membership will be made. He noted that the UK accession process is viewed as a trial run where there was much to learn from the process to ensure that other interested countries can meet the CPTPP's high standards.

Canada will take over New Zealand's responsibility for steering the CPTPP and will host the next CPTPP Ministerial meeting in mid-2024.

## Petitions & Investigations

### Petitions

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#### **US Industry Files New ADD/CVD Petition Targeting Certain Pea Protein from China; US International Trade Commission Initiates Investigation**

On July 12, 2023, US producer PURIS Proteins LLC filed antidumping duty (ADD) and countervailing duty (CVD) petitions alleging that certain pea protein from China are being, or are likely to be, sold in the United States at less than fair value, and that the US industry is injured as a result. The petitioner further alleges that the Government of China is providing countervailable subsidies with respect to the manufacture, production, and export of certain pea protein.

The product within the proposed scope of these investigations is high protein content (HPC) pea protein, which is a protein derived from peas (including, but not limited to, yellow field peas and green field peas) and which contains more than 65% protein on a dry weight basis. HPC pea protein may also be identified as, for example, pea protein concentrate, pea protein isolate, hydrolyzed pea protein, pea peptides, and fermented pea protein. Pea protein, including HPC pea protein, has the Chemical Abstracts Service (CAS) registry number 222400-29-5.

The proposed scope covers HPC pea protein in all physical forms, including all liquid (*e.g.*, solution) and solid (*e.g.*, powder) forms, regardless of packaging.

The proposed scope includes HPC pea protein described above that is blended, combined, or mixed with non-subject pea protein or with other products, including, but not limited to, protein powders, dry beverage blends, and protein fortified beverages. For any such blended, combined, or mixed products, only the HPC pea protein component is covered by the proposed scope of these investigations. HPC pea protein that has been blended, combined, or mixed with other products is included within the proposed scope, regardless of whether the blending, combining, or mixing occurs in third countries. HPC pea protein that is otherwise within the proposed scope is covered when commingled (*i.e.*, blended, combined, or mixed) with HPC pea protein from sources not subject to this investigation. Only the subject component of the commingled product is covered by the proposed scope. A blend, combination, or mixture is excluded from the proposed scope if the total HPC pea protein content of the blend, combination, or mixture (regardless of the source or sources) comprises less than 5% of the blend, combination, or mixture on a dry weight basis.

The merchandise covered by the proposed scope are currently classified under Harmonized Tariff Schedule of the United States (HTSUS) categories 3504.00.1000, 3504.00.5000, and 2106.10.0000. Such merchandise may also enter the US market under HTSUS category 2308.00.9890.

On July 18, 2023, the USITC published a notice of institution of the preliminary phase investigation. The USITC must determine by August 28, 2023 whether an industry in the United States is materially injured or threatened with

material injury, or the establishment of an industry in the United States is materially retarded, by reason of subject imports. If so, the USITC and US Department of Commerce investigations will proceed.<sup>31</sup>

## **US Industry Files New ADD/CVD Petition Targeting Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Indonesia, Italy, Kosovo, Mexico, Philippines, Poland, Slovenia, Spain, and Taiwan**

On July 28, 2023, US petitioners Brooklyn Bedding LLC; Carpenter Co., Corsicana Mattress Company; Future Foam, Inc.; FXI, Inc.; Kolcraft Enterprises, Inc.; Leggett & Platt, Incorporated; Serta Simmons Bedding, LLC; Southerland, Inc.; Tempur Sealy International; the International Brotherhood of Teamsters, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO filed antidumping duty (ADD) and countervailing duty (CVD) petitions alleging that mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, Philippines, Poland, Slovenia, Spain, and Taiwan are being, or are likely to be, sold in the United States at less than fair value, and that the US industry is injured as a result. The petitioners further allege that the Government of Indonesia is providing countervailable subsidies with respect to the manufacture, production, and export of mattresses.

The products within the proposed scope of these investigations include all types of youth and adult mattresses. The term “mattress” denotes an assembly of materials that at a minimum includes a “core,” which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses also may contain (1) “upholstery,” the material between the core and the top panel of the ticking on a single-sided mattress, or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) “ticking,” the outermost layer of fabric or other material (e.g., vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of these petitions is restricted to only “adult mattresses” and “youth mattresses.” “Adult mattresses” are frequently described as “twin,” “extra-long twin,” “full,” “queen,” “king,” or “California king” mattresses. “Youth mattresses” are typically described as “crib,” “toddler,” or “youth” mattresses. All adult and youth mattresses are included regardless of size and size description.

The scope encompasses all types of “innerspring mattresses,” “non-innerspring mattresses,” and “hybrid mattresses.” “Innerspring mattresses” contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as “innerspring mattresses” or “hybrid mattresses.” “Hybrid mattresses” contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

“Non-innerspring mattresses” are those that do not contain any innerspring units. They are generally produced from foams (e.g., polyurethane, memory (viscoelastic), latex foam, gel infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of these petitions may be imported independently, as part of furniture or furniture mechanisms (e.g., convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed mattresses, crib mattresses), or as part of a set (in combination with a “mattress foundation”). “Mattress foundations” are any base or support for a mattress. Mattress foundations are commonly referred to as “foundations,” “boxsprings,” “platforms,” and/or “bases.” Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set, in combination with a mattress foundation.

<sup>31</sup> Certain Pea Protein From China; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations, 88 FR 45924 (July 18, 2023), accessible here: <https://www.federalregister.gov/documents/2023/07/18/2023-15196/certain-pea-protein-from-china-institution-of-antidumping-and-countervailing-duty-investigations-and>.

Excluded from the scope of these petitions are “futon” mattresses. A “futon” is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A “futon mattress” is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon. Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress. Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where such filler material or components are upholstered, integrated into the design and construction of, and inseparable from, the furniture framing, and the outermost layer of the multifunctional furniture converts into the sleeping surface. Such furniture may, and without limitation, be commonly referred to as “convertible sofas,” “sofabeds,” “sofa chaise sleepers,” “futons,” “ottoman sleepers,” or a like description. Also excluded from the scope of these petitions are any products covered by the existing antidumping duty orders on uncovered innerspring units from China, South Africa, and Vietnam.<sup>32</sup> Also excluded from the scope of these orders are bassinet pads with a nominal length of less than 39 inches, a nominal width of less than 25 inches, and a nominal depth of less than 2 inches. Additionally, also excluded from the scope of these petitions are “mattress toppers.” A “mattress topper” is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a height of four inches or less.

The products subject to these petitions are currently classifiable under HTSUS subheadings: 9404.21.0010, 9404.21.0013, 9404.21.0095, 9404.29.1005, 9404.29.1013, 9404.29.1095, 9404.29.9085, 9404.29.9087, 9404.29.9095. Products subject to these petitions may also enter under HTSUS subheadings: 9401.41.0000, 9401.49.0000, and 9401.99.9081.

On August 3, 2023, the USITC published a notice of institution of the preliminary phase investigation. The USITC must determine by September 11, 2023 whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subject imports. If so, the USITC and US Department of Commerce investigations will proceed.<sup>33</sup>

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<sup>32</sup> Uncovered Innerspring Units from the People’s Republic of China, South Africa, and Socialist Republic of Vietnam: Continuation of Antidumping Duty Orders, 84 FR 55285 (Oct. 16, 2019), <https://www.federalregister.gov/documents/2019/10/16/2019-22516/uncovered-innerspring-units-from-the-peoples-republic-of-china-south-africa-and-socialist-republic>.

<sup>33</sup> Mattresses From Bosnia and Herzegovina, Bulgaria, Burma, India, Indonesia, Italy, Kosovo, Mexico, Philippines, Poland, Slovenia, Spain, and Taiwan; Institution of Anti-Dumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations, 88 FR 51351 (August 3, 2023), accessible here: <https://www.federalregister.gov/documents/2023/08/03/2023-16571/mattresses-from-bosnia-and-herzegovina-bulgaria-burma-india-indonesia-italy-kosovo-mexico>.

## Investigations

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### **US International Trade Commission Finds Reasonable Indication that an Industry in the United States Is Materially Injured by Reason of Imports of Paper Shopping Bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, Turkey, and Vietnam in Preliminary Phase Investigation**

On July 17, 2023, the USITC issued a preliminary affirmative finding with respect to paper shopping bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, Turkey, and Vietnam.<sup>34</sup> In doing so, the Commission found “that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of paper shopping bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, Turkey, and Vietnam ... that are alleged to be sold in the United States at less than fair value (LTFV) and to be subsidized by the governments of China and India.” As a result, the USITC’s investigation will proceed to the final phase, and the Department of Commerce investigations will continue.

As noted in previous monthly reports, on May 31, 2023, a US consortium of paper bag manufacturers filed a petition seeking antidumping duties on imports of paper bags from Colombia, Portugal, Turkey, India, Vietnam, Cambodia, Malaysia, China, and Taiwan, and countervailing duties on imports of paper bags from China and India.

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

### **US International Trade Commission Determines that US Industry is Materially Injured by Imports of Certain Freight Rail Couplers and Parts Thereof from China; Commerce Issues ADD and CVD Orders**

On July 3, 2023, the USITC issued its determination that an industry in the United States is materially injured by reason of imports of certain freight rail couplers and parts thereof (FRCs) from China.<sup>35</sup> As a result of the Commission’s affirmative determination, ADD and CVD orders were imposed by Commerce on July 14, 2023.<sup>36</sup>

As noted in the May 2023 monthly report, the US Department of Commerce published its final affirmative determinations in the ADD and CVD investigations on May 30 and May 19, 2023, respectively, setting the dumping margin at a China-wide rate of 169.90%, and the subsidy rate at 265.99%.

The scope of these investigations covers certain freight railcar couplers and their parts. A coupler includes the knuckle and coupler body components, but may also include other parts like locks, lock lift assemblies, knuckle pins, knuckle throwers, and rotors. The parts specifically covered are “(1) E coupler bodies, (2) E/F coupler bodies, (3) F

<sup>34</sup> Paper Shopping Bags From Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, Turkey, and Vietnam; Determinations, 88 FR 46809 (July 20, 2023), <https://www.federalregister.gov/documents/2023/07/20/2023-15440/paper-shopping-bags-from-cambodia-china-colombia-india-malaysia-portugal-taiwan-turkey-and-vietnam>.

<sup>35</sup> Certain Freight Rail Couplers and Parts Thereof From China, 88 FR 43398 (July 7, 2023), <https://www.federalregister.gov/documents/2023/07/07/2023-14410/certain-freight-rail-couplers-and-parts-thereof-from-china>.

<sup>36</sup> Certain Freight Rail Couplers and Parts Thereof From the People’s Republic of China: Antidumping Duty Order, 88 FR 45138 (July 14, 2023), <https://www.federalregister.gov/documents/2023/07/14/2023-14892/certain-freight-rail-couplers-and-parts-thereof-from-the-peoples-republic-of-china-antidumping-duty>; Certain Freight Rail Couplers and Parts Thereof From the People’s Republic of China: Countervailing Duty Order, 88 FR 45135 (July 14, 2023), <https://www.federalregister.gov/documents/2023/07/14/2023-14891/certain-freight-rail-couplers-and-parts-thereof-from-the-peoples-republic-of-china-countervailing>.

coupler bodies, (4) E knuckles, and (5) F knuckles.” The knuckle and coupler bodies are included even if imported separately, but others (including the coupler locks, lock lift assemblies, knuckle pins, knuckle throwers, and rotors) are only in scope if they are imported as part of an assembly. Couplers are imported under HTSUS 8607.30.1000 and parts under 7326.90.8688, though there are a number of other codes that could also be used in some circumstances.

### **US Department of Commerce Issues Preliminary Results in the 2021-2022 Administrative Review of the Antidumping Duty Order on Glycine from Japan**

On July 7, 2023, the US Department of Commerce issued the preliminary results in the 2021-2022 administrative review of the ADD Order on Glycine from Japan.<sup>37</sup> Commerce preliminarily determined that producers or exporters subject to the administrative review did not make sales of subject merchandise at less than normal value during the period of review June 1, 2021, through May 31, 2022. Therefore, Commerce found a 0.00% dumping margin for the sole respondent (Yuki Gosei Kogyo Co., Ltd./Nagase & Co., Ltd.). All other Japanese exporters are still subject to the “All Others” rate from the initial investigation - 53.66%<sup>38</sup> – unless they already received a separate rate in the investigation or subsequent reviews.

The merchandise covered by the ADD order is glycine at any purity level or grade. This includes glycine of all purity levels, which covers all forms of crude or technical glycine including, but not limited to, sodium glycinate, glycine slurry and any other forms of amino acetic acid or glycine. Subject merchandise also includes glycine and precursors of dried crystalline glycine that are processed in a third country, including, but not limited to, refining or any other processing that would not otherwise remove the merchandise from the scope of these orders if performed in the country of manufacture of the in-scope glycine or precursors of dried crystalline glycine. Glycine has the Chemical Abstracts Service (CAS) registry number of 56-40-6. Glycine and glycine slurry are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2922.49.43.00. Sodium glycinate is classified in the HTSUS under 2922.49.80.00.

Commerce will issue the final results of the administrative review by November 6, 2023, unless extended.

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<sup>37</sup> Glycine From Japan: Preliminary Results of Antidumping Duty Administrative Review; 2021-2022, 88 FR 43273 (July 7, 2023), <https://www.federalregister.gov/documents/2023/07/07/2023-14393/glycine-from-japan-preliminary-results-of-antidumping-duty-administrative-review-2021-2022>.

<sup>38</sup> Glycine From India and Japan: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Orders, 84 FR 29170 (June 21, 2019), <https://www.federalregister.gov/documents/2019/06/21/2019-13362/glycine-from-india-and-japan-amended-final-affirmative-antidumping-duty-determination-and>.

## WTO Developments

### WTO Concludes Negotiations on Investment Facilitation for Development Agreement

The co-Coordinator (Chile and Korea) of negotiations among over 110 participating WTO Members<sup>39</sup> on a plurilateral Agreement on Investment Facilitation for Development (IFD) announced the successful conclusion of the negotiations and circulated the text of the proposed new agreement on July 6, 2023 (WTO document INF/IFD/RD/136).<sup>40</sup> The core objectives of the agreement are “promoting greater developing and [least-developed country (LDC)] Members’ participation in global investment flows and fostering sustainable development,” by creating “a more transparent, efficient and predictable environment to facilitate more investment” in developing countries and “to anchor and support domestic, bilateral and regional reform efforts.” Several important WTO Members, including the United States and Thailand, have not participated in these negotiations, but they have expressed their support for the objectives and are expected to endorse the agreement in due course.

To help improve the climate for foreign direct investment (FDI) in developing and LDC members, the IFD Agreement sets out guiding principles and best practices for host governments to follow when regulating to attract investment and increase its benefits for the development of the host economy. Its main provisions relate to improving transparency, streamlining administrative procedures, and promoting domestic regulatory coherence and international cooperation between home and host economies. The Agreement also contains provisions on “responsible business conduct” and on “measures against corruption” and establishes a framework for donor countries to provide aid to developing countries who identify a need for technical assistance and help with capacity-building to attract and regulate FDI.

The IFD Agreement explicitly excludes provisions on market access, investment protection, and investor-state dispute settlement (ISDS), which were considered by participants to be too controversial for inclusion.

While negotiations on the text of the IFD Agreement are now complete, work will need to continue to prepare it for Ministerial approval at the next Ministerial Conference (MC13) in February 2024. This will involve a legal scrubbing exercise of the text and a “needs assessment” process for developing countries and LDCs to indicate the financial and technical assistance they will need for implementation and a donors’ conference to identify funding for the results of that exercise. In addition, the participating WTO Members have agreed on five principles that should apply to the implementation of the Agreement:

1. The IFD Agreement should become an integral part of the WTO treaty architecture;
2. It should be a standalone agreement;
3. It should apply horizontally to investment in all economic sectors;
4. Its benefits should be extended to all WTO Members; and

<sup>39</sup> Afghanistan; Albania; Antigua and Barbuda; Argentina; Australia; Austria; Bahrain, Kingdom of; Barbados; Belgium; Benin; Brazil; Bulgaria; Burundi; Cabo Verde; Cambodia; Canada; Central African Republic; Chad; Chile; China; Colombia; Congo; Costa Rica; Croatia; Cyprus; Czech Republic; Denmark; Djibouti; Dominica; Dominican Republic; Ecuador; El Salvador; Estonia; European Union; Finland; France; Gabon; Gambia; Georgia; Germany; Greece; Grenada; Guatemala; Guinea; Guinea-Bissau; Honduras; Hong Kong, China; Hungary; Iceland; Indonesia; Ireland; Italy; Japan; Kazakhstan; Korea, Republic of; Kuwait, the State of; Kyrgyz Republic; Lao People’s Democratic Republic; Latvia; Liberia; Lithuania; Luxembourg; Macao, China; Malaysia; Maldives; Malta; Mauritania; Mauritius; Mexico; Moldova, Republic of; Mongolia; Montenegro; Morocco; Myanmar; Netherlands; New Zealand; Nicaragua; Nigeria; North Macedonia; Norway; Oman; Panama; Papua New Guinea; Paraguay; Peru; Philippines; Poland; Portugal; Qatar; Romania; Russian Federation; Saudi Arabia, Kingdom of; Seychelles; Sierra Leone; Singapore; Slovak Republic; Slovenia; Solomon Islands; Spain; Suriname; Sweden; Switzerland; Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Tajikistan; Togo; Turkey; Uganda; United Arab Emirates; United Kingdom; Uruguay; Vanuatu; Yemen; Zambia; Zimbabwe.

<sup>40</sup> The statement by the co-Coordinator is accessible here: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/INF/IFD/W51.pdf&Open=True>.

5. It should be open to all WTO Members.

Participants in the IFD Agreement will have to reach agreement with other WTO Members that are not participants on the implementation of these five principles. It is expected that the most difficult part will be reaching agreement on the integration of the IFD agreement into the WTO architecture. India and South Africa, which are not participants, have consistently rejected the principle of incorporating plurilateral agreements into the WTO even if, as is intended to be the case of the IFD Agreement, the benefits of the agreements are extended on the Most-Favored-Nation (MFN) basis to all non-participating WTO Members. Formal approval of the IFD Agreement at MC13 as a “WTO agreement” will depend upon non-participants joining the consensus which, at present, they are seemingly not willing to do. For example, India is continuing to refuse to ratify amendments to WTO Members’ service schedules that are needed to implement the plurilateral agreement on Services Domestic Regulation that was concluded in 2021 and to bring it formally under the WTO umbrella.

### United States Sets Out its Objectives on WTO Dispute Settlement Reform

WTO Members are wrapping up the first stage of their process to reform the dispute settlement system and consolidating proposals that have been tabled in the past six months along with the views of Members on those proposals and “the necessary ingredients to deliver an outcome that is satisfactory to all.”

The Facilitator of the discussions (Guatemala) intends the consolidation to be the basis for a drafting exercise that will last from September until the end of the year. That will be followed by negotiations to finalize a text of the reformed dispute settlement system that can, in principle, be available for Ministers to consider at least the outline of a deal at the WTO’s next Ministerial Conference (MC13) scheduled for February 2024. The United States has participated actively in the reform discussions and supported their “inclusive and transparent nature,” but it has remained non-committal on whether MC13 should be the target date to finalize the exercise.

The United States has not tabled any reform proposals of its own so far, preferring instead to comment on the proposals of others. On July 5, the United States tabled a new paper expounding its views on what the objectives of the reform exercise should be but “not advancing specific negotiating proposals at this time” (WTO document JOB/DSB/4).<sup>41</sup>

The paper sets out ten objectives for reform, which the United States frames as “examples of positive contributions of a reformed dispute settlement system.” The objectives address some of the core complaints that the United States has made over the past few years about the dispute settlement system, in particular that dispute settlement panels and the Appellate Body have exceeded their proper functions and must be kept away from matters that are the preserve of Members such as negotiating new commitments and trade rules and defending their national security interests. The objectives also address the United States’ view that more space should be given to arbitration and conciliation rather than litigation to resolve disputes, and the system must be made more efficient, more transparent and less costly in order to make it more accessible to Members and other stakeholders.

The ten objectives set out by the United States are:

1. **Facilitating the resolution of trade disputes.** This reiterates the complaints that the United States has made repeatedly about overreach by dispute panels and the Appellate Body to re-write trade rules and set legal precedents: “The use of dispute settlement to create new rules has contributed to the atrophy of the monitoring and deliberative functions of the WTO.” Dispute settlement should focus on “assisting Members in resolution of their disputes.”

<sup>41</sup> WTO document JOB/DSB/4 is accessible here: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/Jobs/DSB/4.pdf&Open=True> .

2. **Maintaining existing commitments and rules as agreed.** Dispute settlement “cannot be a means to change the commitments and rules of the WTO agreements without the consent of all Members.” It must “respect the rules, including the policy space left the Members, as agreed by Members.”
3. **Preserving and promoting fairness in the trading system.** Dispute settlement has “interpreted commitments and rules in ways that undermine core values, such as the ability of Members to protect their workers and businesses from non-market distortions, to promote democracy and human rights, or to protect human health or the environment.” The system must enable “rather than undermine Members’ ability to promote and defend their values.”
4. **Respecting the essential security interests of Members.** “WTO dispute settlement cannot be a forum for debating and deciding on the essential security interests of Members.” The system must respect the right of Members to determine what action is necessary to protect their essential security interests.
5. **Utilizing all available tools to resolve disputes.** “WTO dispute settlement has become synonymous with litigation.” The system must maximise the use of other tools available under the Dispute Settlement Understanding (DSU).
6. **Reducing costs to enable wider access to dispute resolution.** The system has become “prohibitively expensive for most WTO Members.” The system must be made accessible and affordable for all.
7. **Resolving disputes efficiently.** “WTO dispute settlement proceedings routinely drag on for years.” The United States supports “a more streamlined, efficient form of dispute resolution.”
8. **Promoting transparency in the system.** “We support a system that can be better understood and accessed by Members who are not directly involved in the dispute and the public.”
9. **Building trust in the system and its results.** “We support a system that delivers quality, consistent and efficient adjudication through the fair application of treaty interpretation according to the terms of the agreements as agreed by Members, leaving Members to further develop their commitments and rules through negotiation.”
10. **Safeguarding the integrity of the dispute settlement system.** “WTO dispute settlement departed over time from the system envisioned and agreed to by Members in the DSU. We support a system that provides opportunities for meaningful assessment of all participants in the system and mechanisms for ongoing improvement to ensure the system continues to deliver for Members.”

## Comments

The United States does not make reference in its paper or shed any further light on its thinking about three issues that many consider are core to a successful effort to reform the system. One is the structure of the system, whether it should have a second “appellate” tier and what the relationship should be between that tier and the first “dispute panel” tier. The second is how dispute settlement should deal with any ambiguities or gaps in WTO rules, such as on trade remedies, modern industrial subsidy practices, or state-ownership practices of non-market economies. The third is what role WTO Members should play in vetting and approving, or not, dispute settlement rulings and whether the current practice should continue of automatic adoption of those rulings by the Dispute Settlement Body (DSB) unless there is a consensus of opposition to doing so from Members.

The United States has made it crystal clear that it considers reform in these three areas to be fundamental to putting the WTO dispute settlement system back on track, but many other Members have grown frustrated that the United States continues to avoid making any proposals on precisely what reforms it is seeking or is prepared to accept.



The United States is the key player in this exercise, given its strong views on what it considers has been wrong with the way that the dispute settlement system has operated in the past, and its leadership will be particularly important in the next phase of the process through to the end of the year that will engage in a drafting exercise on the basis of the proposals and views that have been expressed so far.

## Reform of the WTO's Deliberative Functions Advances

WTO Members will establish a “roadmap” at the General Council meeting later this month on reforms to the WTO’s deliberative and procedural functions that they wish to accomplish at the next Ministerial Conference (MC13) in February 2024. This element of the WTO reform agenda that was agreed at MC12 has attracted proposals from many WTO Members, including the United States, the EU, China, and India, aimed at improving how the WTO carries out day-to-day work of administering existing agreements and making meetings of WTO councils, committees, and other bodies more meaningful. It is proving to be considerably less controversial than other elements of the reform agenda on dispute settlement and WTO rules, leading to expectations that concrete results can be achieved at MC13 and even beforehand in some cases. The roadmap is intended to provide guidance to a planned meeting of WTO Senior Officials that will be held in October to prepare for MC13. The roadmap is expected to cover “the topics to be taken up” and how they will be treated through “retreats, dedicated sessions, working groups or joint sessions on identified themes” with facilitators appointed to oversee the process “as appropriate.”

The topics that will be covered are expected to be drawn from proposals that Members have made on this issue. The United States has proposed improvements to the operation of meetings of the General Council and the Trade Negotiations Committee (TNC) to make Members’ discussions and decision-making more efficient (WT/GC/W/872).<sup>42</sup> The United States has also proposed a review and expansion of the way that the WTO engages with external expertise and stakeholders on global challenges, notably the environment and sustainable development (WT/GC/W/871).<sup>43</sup> China has made proposals to improve the functioning of the General Council and to make Ministerial Conferences more efficient and focused on decision-making (WT/GC/W/879).<sup>44</sup> Australia has also proposed improvements to the functioning of Ministerial Conferences (WT/GC/W/873).<sup>45</sup> India has proposed around 30 operational improvements to rationalize and improve the value of regular meetings of WTO bodies, to improve external communication with stakeholders, and to ensure that the voice of developing country Members is fully and accurately reflected in the work of the WTO (WT/GC/W/874).<sup>46</sup> The EU and 23 other Members, including Korea, Canada, and Japan, have proposed extensive improvements to the WTO’s deliberative and monitoring functions covering the framework of meetings, transparency and notifications, and the handling of specific trade concerns, (WT/GC/W/877).<sup>47</sup> Other proposals by Members include holding joint sessions of certain committees on some issues, better scheduling of meetings, increasing the research function of the Secretariat, bringing in more external expertise and engagement, and better utilizing digital tools.

Many of the proposals that have been put forward overlap and have a good deal of commonality that can help Members converge and move towards consensus. Reflecting that, the United States, China, and India have proposed aiming for incremental “small steps” in the reform agenda that can be agreed on and implemented quickly, in some cases ahead of MC13, by making more effective use of the possibility for decision-making by the General

<sup>42</sup> WT/GC/W/872 is accessible here: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:WT/GC/W872.pdf&Open=True>.

<sup>43</sup> WT/GC/W/871 is accessible here: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:WT/GC/W871.pdf&Open=True>.

<sup>44</sup> WT/GC/W/879 is accessible here: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:WT/GC/W879.pdf&Open=True>.

<sup>45</sup> WT/GC/W/873 is accessible here: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:WT/GC/W873.pdf&Open=True>.

<sup>46</sup> WT/GC/W/874 is accessible here: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:WT/GC/W874.pdf&Open=True>.

<sup>47</sup> WT/GC/W/877 is accessible here: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:WT/GC/W877.pdf&Open=True>.

Council. That could help to increase momentum for progress on other aspects of the WTO reform agenda that are proving to be more controversial and difficult to deal with.