

US Multilateral Trade and Policy Developments

Japan External Trade Organization

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Trade Policy Developments

US Treasury Previews Rulemaking Plans for the Inflation Reduction Act as it Concludes Phase One

In early September 2023, the US Department of the Treasury (“Treasury”) and the Internal Revenue Service (IRS) previewed the second phase of rulemaking for the clean energy programs established by the Inflation Reduction Act (IRA).¹ Draft guidance for clean hydrogen, sustainable aviation fuel, manufacturing tax credits, and energy efficient homes are all on the agenda, as well as more details on the Section 30D clean vehicle credit and its Foreign Entity of Concern requirements.

This plan follows the completion of the Treasury’s first rulemaking phase, which had focused on the key cross-cutting bonus tax credits and payment options, household tax credits, and competitive grants. The last action in phase one was the publication of draft guidance on prevailing wage and apprenticeship requirements (PWA requirements) at the end of August.

Phase two of the IRA’s implementation

Phase two, which runs until the end of 2023, prioritizes drafting the IRA regulations related to expanding US manufacturing and strengthening US energy security. This will include guidance for the Section 45V Clean Hydrogen Production Tax Credit, more detail on the Section 48 Investment Tax Credit, the Sections 40B Sustainable Aviation Fuel Credit, guidance for the Section 45X advanced manufacturing production tax credit, the Section 45L credit for energy efficient new homes, more information about how to list qualifying clean energy vehicles for the Section 30D credit, and the foreign entity of concern regulations for the Section 30D credit. Exact timing for these regulations is unavailable, but the Treasury expects to issue the 45L and 40B guidance first, followed by the guidance for 48, 45X, 30D Foreign Entity of Concern, and 45V by the end of 2023.

A summary of these expected actions is below:

- The Section 45X Advanced Manufacturing Production Tax Credit is a key priority for this phase. 45X is intended to encourage domestic production of industrial inputs for clean energy projects, like solar panel wafers, batteries, critical minerals, and solar panel components. The administration sees 45X as complimentary to the Section 48C Advanced Energy Project Credit, a separate competitive tax credit that Treasury launched applications for in spring 2023. In its first round of applications, which closed in July, the 48C program received bids for projects totaling \$42 billion in value.
- New eligibility guidance the underlying Section 48 Investment Tax Credit will also be issued, which will encourage investment in clean energy projects.
- The Section 45L Energy Efficient Home Credit will issue tax credits for homebuilders to meet modern energy efficiency standards. The administration sees this credit as important for increasing the energy efficiency of US households and lowering electricity demand.
- Several updates for the Section 30D clean vehicle subsidies will be issued. Most importantly, Treasury will issue guidance on the Foreign Entity of Concern requirements sometime in the next few months. The Foreign Entity of Concern requirements will exclude clean vehicles from qualifying for the tax credit if they have sourced battery

¹ See Remarks by Assistant Secretary for Tax Policy Lily Batchelder on Phase Two of Implementation of the Inflation Reduction Act’s Clean Energy Provisions, accessible here: <https://home.treasury.gov/news/press-releases/jy1723>.

components and critical minerals from Chinese and Russian entities, a significant challenge for automakers given the leading role of Chinese companies in critical minerals processing.

In the next few months, the Treasury will also introduce a system that will allow clean vehicle buyers to transfer the vehicle's tax credit to dealers. This measure, which enters force in 2024, would allow dealers to discount the sales price of the clean vehicle by the amount of the tax credit, saving the buyer the need to claim a tax refund.

- The Low-Income Communities Bonus Credit program will begin accepting applications soon, and allocation decisions will then be made by the end of the year. The program provides a bonus tax credit for solar and wind energy projects built in low-income communities or that serve low-income households. Treasury will issue new guidance in early 2024 on next year's allocations.
- The section 40B Sustainable Aviation Fuel Credit and the Section 45V Clean Hydrogen Production Tax Credit will foster innovation and investment in industries that are likely unable to simply adopt cleanly generated electricity, such as metal smelting and fertilizer production. Companies in these industries may also want to consider using these credits alongside the expanded 45Q greenhouse gas sequestration tax credits to keep high-emission activities competitive (the Treasury has not yet issued guidance for the IRA's enhancements to 45Q). The Treasury originally planned to release the 45V guidance in August but had to delay it because of ongoing disagreements about the interpretation of the IRA's language.

Prevailing wage and apprenticeship standards

Phase one of the IRA's rulemaking process concluded on August 29, 2023, when the Treasury and IRS published proposed regulations on the bonus tax credits and deductions for clean energy facilities that taxpayers may claim if they meet the PWA requirements. The draft regulations provide guidance for claiming the credits and deductions, transferring them, correcting failed applications, and keeping records. The IRS previously outlined the regulations in a November 2022 notice.²

To meet the PWA requirements, taxpayers must pay workers in certain roles an applicable prevailing wage and employ registered apprentices for a certain number of hours. The US Department of Labor sets prevailing wages for certain classes of laborers and mechanics by geographic region and type of construction. Laborers and mechanics employed by taxpayers and their contractors will have to be paid at or above this level for construction, alteration, and repair work at the facility.³ For the apprenticeship portion, any taxpayer (or contractor) that employs more than four workers engaged in construction, alteration, and repair work on a facility should employ at least one qualified apprentice. Such qualified apprentices must also contribute certain minimum percentages of a project's total labor hours.⁴

If taxpayers that qualify for certain clean energy facility and project tax credits under the IRA also fulfill the PWA requirements, they can claim bonus tax credits and refunds. The Section 30C alternative fuel vehicle refueling property credit, the Section 45 renewable electricity production credit, the Section 45Q credit for carbon oxide sequestration, the Section 45V credit for production of clean hydrogen, the Section 45Y clean electricity production credit, the Section 45Z clean fuel production credit, the Section 48 energy credit, the Section 48C qualifying advanced energy project credit, the Section 48E clean electricity investment credit, the Section 179D energy efficient

² "Notice of initial guidance: Prevailing Wage and Apprenticeship Initial Guidance Under Section 45(b)(6)(B)(ii) and Other Substantially Similar Provisions," 87 FR 73580 (November 30, 2022), accessible here: <https://www.federalregister.gov/documents/2022/11/30/2022-26108/prevailing-wage-and-apprenticeship-initial-guidance-under-section-45b6bii-and-other-substantially>.

³ See sam.gov's wage determinations page for more information on these pay levels, accessible here: <https://sam.gov/content/wage-determinations>.

⁴ See apprenticeship.gov's IRA page for more information on qualifying apprenticeship programs, accessible here: <https://www.apprenticeship.gov/inflation-reduction-act-apprenticeship-resources>.

commercial buildings deduction, the Section 45L new energy efficient home credit, and the Section 45U zero-emission nuclear power production credit all include such bonuses. These credits and deductions are usually equal to the base amount of the credit multiplied by five.

Publication of the PWA requirements regulation marks the end of the first round of IRA rulemaking, which began in spring 2023. Phase one's focus was on the core elements needed to accelerate the climate elements of the law, including the cross-cutting bonus credits, new payment options, household tax credits like the clean vehicle subsidies, and the credits that are subject to competitive bidding processes. The Biden administration is now reviewing the public feedback received on these actions. Treasury will continue to issue final regulations, further details, and clarifications to the phase one rules over the next several months.

The proposed PWA regulations, along with information on how stakeholders may submit comments on them and the IRS' plans for public hearings, are accessible here: <https://www.federalregister.gov/documents/2023/08/30/2023-18514/increased-credit-or-deduction-amounts-for-satisfying-certain-prevailing-wage-and-registered>.

Comments are due by November 30, 2023.

US Government Calls for Public Input on Trade Policy and Technical Standards Strategies

In early September, the Office of the United States Trade Representative (USTR) and the National Institute of Standards and Technology (NIST) issued calls for public input on the 2024 National Trade Estimate Report (NTE) and the United States Government National Standards Strategy for Critical and Emerging Technology (NSSCET). These requests for comments provide stakeholders the opportunity to offer feedback and suggestions for US policy makers on two important aspects of US international economic policy.

The requests follow a series of other requests for comments from USTR, including on USTR's strategies for a worker-centered trade policy, updates to the Notorious Markets List, and the annual report on China's compliance with trade obligations.

Request for comments on significant foreign trade barriers for the 2024 NTE

On September 11, 2023, USTR posted its annual request for public input on the NTE.⁵ The NTE catalogues foreign trade barriers faced by US companies and guides USTR's market access priorities. The report covers 64 economies, which together comprise 99% of US goods trade and 66% of services trade. The report covers import policies, technical barriers to trade, sanitary and phytosanitary measures, government procurement, intellectual property protection, services barriers, barriers to digital trade and electronic commerce, investment barriers, export subsidies, competition, state-owned enterprises, labor rights concerns, environmental protection, and other policies that cause significant economic distortions.

USTR updates the report annually based on public submissions to these requests for comment, discussions with businesses and industry associations, and its own engagements with foreign governments. Submissions for the 2024 edition are due by October 23, 2023. USTR usually publishes the updated NTEs in late March.⁶

2023 NTE: Japan

For Japan, the 2023 NTE praised the new market access that the United States gained under the 2020 United States–Japan Trade Agreement and the United States–Japan Digital Trade Agreement, especially for agricultural

⁵ "Request for Comments on Significant Foreign Trade Barriers for the 2024 National Trade Estimate Report," 88 FR 62421 (September 11, 2023), accessible here: <https://www.federalregister.gov/documents/2023/09/11/2023-19521/request-for-comments-on-significant-foreign-trade-barriers-for-the-2024-national-trade-estimate>.

⁶ "USTR Releases 2023 National Trade Estimate Report on Foreign Trade Barriers," March 31, 2023, accessible here: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/march/ustr-releases-2023-national-trade-estimate-report-foreign-trade-barriers>.

and digital products. It also raised a list of challenges on which USTR is seeking further progress. These include high tariffs on a few remaining products (rice and rice products, certain dairy products, fruit juices, pet food, table grapes, frozen blueberries, sugar, chocolate, and sweetened cocoa powder); non-tariff barriers on some foods; services barriers in express shipping, insurance, telecommunications, and others; competition in digital markets; the medical device reimbursement pricing system; and automotive market access (including concerns with spectrum allocation for short-range vehicle communications systems). Most of these topics were also featured in the previous year's report. USTR added new sections in 2023 about general concerns with forthcoming changes to food safety oversight and objections to certain specific beef safety rules.

Request for information on implementation of the United States government NSSCET

On September 7, 2023, NIST issued a request for information seeking public input on the NSSCET, which will be the first national strategy for US government engagement with technical standards bodies.⁷ According to NIST, the NSSCET will “support and complement existing private sector-led activities and plans, including the American National Standards Institute (ANSI) United States Standards Strategy (USSS), with a focus on critical and emerging technology(ies) (CET).” NIST is specifically seeking to learn more from the private sector about how it can best partner with relevant stakeholders and identify key engagements where the US government can be supportive. Comments are due by November 6, 2023.

NIST, alongside the United States Patent and Trademark Office (USPTO) and the International Trade Administration (ITA) then issued a second request for comments on September 11, 2023, asking the public how the three agencies can better collaborate on technical standards and intellectual property issues.⁸ The request asks if foreign intellectual property policies are creating challenges for standards setting, how the United States can expand its role in standards setting, if US intellectual property law is a challenge for licensing and implementing standards, what reforms to US intellectual property policy could improve standards development, and how to improve the management of disputes related to fair, reasonable, and non-discriminatory (FRAND) licensing practices. The three agencies will jointly hold a public listening session on September 20, 2023, to discuss these questions with stakeholders.

These requests for information follow the Biden administration's announcement of the national standards strategy in May 2023, which NIST is leading.⁹ In its unveiling, the administration highlighted the new political priority of maintaining US influence in emerging technologies. The strategy intends to “strengthen U.S. leadership and competitiveness in international standards development and ensure that the ‘rules of the road’ for CET standards embrace transparency, openness, impartiality and consensus, effectiveness and relevance, coherence, and broad participation.” The strategy has four overarching objectives, on which NIST's request for information specifically asks for public input: (1) supporting pre-standardization research; (2) increasing US participation in standards development bodies; (3) supporting workforce development, (4) ensuring standards are independent and sound.

Critical technologies that NIST is considering covering in the strategy include communications and networking technologies; semiconductors; artificial intelligence; biotechnology; positioning, navigation, and timing services; digital identity infrastructure and distributed ledger technologies; clean energy generation and storage technologies; and

⁷ “Request for Information on Implementation of the United States Government National Standards Strategy for Critical and Emerging Technology (USG NSSCET),” 88 FR 61527 (September 7, 2023), accessible here: <https://www.federalregister.gov/documents/2023/09/07/2023-19245/request-for-information-on-implementation-of-the-united-states-government-national-standards>.

⁸ “Joint ITA-NIST-USPTO Collaboration Initiative Regarding Standards; Notice of Public Listening Session and Request for Comments,” (88 FR 62349 (September 11, 2023), accessible here: <https://www.federalregister.gov/documents/2023/09/11/2023-19667/joint-ita-nist-uspto-collaboration-initiative-regarding-standards-notice-of-public-listening-session>.

⁹ Biden-Harris Administration Announces National Standards Strategy for Critical and Emerging Technology, May 4, 2023, accessible here: <https://www.federalregister.gov/documents/2023/09/05/2023-19040/extension-of-comment-period-advancing-inclusive-worker-centered-trade-policy>.

quantum information technologies. NIST is also interested in certain specific applications of critical technologies, including automated and connected infrastructure; biobanking; automated, connected, and electrified transportation; critical minerals supply chains; cybersecurity and privacy; and carbon capture, removal, utilization, and storage.

Request for comments on advancing inclusive, worker-centered trade policy

USTR announced on August 6, 2023, that it would extend the deadline for public comments on its strategy to make US trade policy more inclusive and worker centered from August 11 to September 29.¹⁰ The request has been popular, having already received almost 1,500 submissions since USTR issued it on June 12, 2023.

The Biden administration's trade agenda is prioritizing how it can use trade policy to support economically marginalized groups, minorities, and workers in its policies and 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. USTR is specifically seeking suggestions from interested parties on how it can develop inclusive policies for all trade and investment policy areas, including proposals related to historically underserved communities.

Request for comments on the 2023 Review of Notorious Markets for Counterfeiting and Piracy

On August 24, 2023, USTR issued a request for comments to identify online and physical markets it should consider for inclusion in the 2023 Review of Notorious Markets for Counterfeiting and Piracy (the "Notorious Markets List").¹¹ The Notorious Markets List is an annual report that identifies markets that are known to engage in large-scale piracy and counterfeiting. The 2023 Notorious Markets List will also have a special focus on the health and safety risks of counterfeit goods. The deadline for submission of comments and proposals for market listings is October 6, 2023. Stakeholders may submit rebuttal comments for USTR's consideration until October 20, 2023.

USTR publishes the Notorious Markets List annually as part of the Special 301 program, a program that empowers USTR to pursue intellectual property practices that threaten the value of US innovation. The report is developed using information from these requests for comment and consultations with the federal agencies on Special 301 Subcommittee of the Trade Policy Staff Committee.

Request for comments and notice of public hearing concerning China's compliance with WTO commitments

Alongside the general calls for input on trade barriers and intellectual property theft, USTR is also requesting public comments on its annual review of trade barriers companies face in China.¹² Section 421 of the US-China Relations Act of 2000 requires USTR to prepare annual reports for Congress on China's compliance with the commitments it made when joining the WTO.¹³ Public comments are due by September 20, 2023. USTR will also hold a public hearing on October 4, 2023, where stakeholders may testify about their experiences. USTR plans to livestream the hearing on its website.

¹⁰ "Extension of Comment Period: Advancing Inclusive, Worker-Centered Trade Policy," 88 FR 60731 (September 5, 2023), accessible here: <https://www.federalregister.gov/documents/2023/09/05/2023-19040/extension-of-comment-period-advancing-inclusive-worker-centered-trade-policy>.

¹¹ "2023 Review of Notorious Markets for Counterfeiting and Piracy: Comment Request," 88 FR 58055 (August 24, 2023), accessible here: <https://www.federalregister.gov/documents/2023/08/24/2023-18201/2023-review-of-notorious-markets-for-counterfeiting-and-piracy-comment-request>.

¹² "Request for Comments and Notice of Public Hearing Concerning China's Compliance With WTO Commitments," 88 FR 56117 (August 17, 2023), accessible here: <https://www.federalregister.gov/documents/2023/08/17/2023-17633/request-for-comments-and-notice-of-public-hearing-concerning-chinas-compliance-with-wto-commitments>.

¹³ See documents WT/L/432, WT/MIN(01)/3, WT/MIN(01)/3/Add.1, WT/MIN(01)/3/Add.2 on the WTO's website for China's specific commitments, accessible here: <http://docsonline.wto.org/>.

The previous report, published on February 24, 2023,¹⁴ criticized China for its specific trade restrictions and state-led economy, then explained the Biden Administration's strategy for confronting China. The report argued that, in many respects, China has failed to live up to its WTO commitments, and that the WTO itself cannot deal with an economy like China's. The report said that, in the context of WTO reform efforts, it is "highly unlikely that China would agree to new WTO disciplines targeted at its policies and practices. In fact, in connection with ongoing discussions at the WTO relating to needed WTO reform, China has stated that it would not alter its state-led, nonmarket approach to the economy and trade." As an alternative to challenging specific Chinese policy measures at the WTO, the report asserted that the administration would pursue a strategy of (1) making the US economy more competitive, (2) expanding use of trade enforcement tools, (3) engaging bilaterally with China, and (4) coordinating responses with allies through frameworks like the Indo-Pacific Economic Framework for Prosperity (IPEF) and US-EU Trade and Technology Council (TTC). Since USTR issued the 2023 report, the Biden administration has resumed high-level dialogue with the Chinese government and may be moderating its stance on some issues, though no breakthroughs in US-China trade relations have yet occurred.

US Congress Holds Hearing on GSP Renewal

The House Committee on Ways and Means Subcommittee on Trade, which leads the development of trade legislation for the House of Representatives, held a public hearing on September 20, 2023, to discuss renewing and reforming the Generalized System of Preferences (GSP).¹⁵ GSP and the Miscellaneous Tariff Bill (MTB) expired at the end of 2020 and several proposals to renew them have failed to pass Congress since then despite the programs' popularity. The Democrats recently introduced a bill to renew the programs, along with Trade Adjustment Assistance (TAA), while Republican members of the Trade Subcommittee are negotiating a more bipartisan proposal that may have a better chance of passing in a divided Congress.

House GSP interests

Renewing GSP has strong, bipartisan support in Congress. However, proposed reforms to the program have divided legislators and delayed renewal. Though there are disagreements on the exact nature of the reforms, there is generally interest in making some changes to the GSP program's qualifying criteria and oversight.

Using GSP benefits to reduce US import reliance on China has become central to arguments in Congress for renewing the program. GSP's supporters believe that renewing the program would essentially raise the relative tariff on imports of like goods from China, encouraging companies to move elsewhere. On July 12, 2023, a bipartisan group of 66 representatives wrote a letter to the leaders of the Ways & Means Committee making this argument.¹⁶ Representatives at the hearing raised this argument several times, asking how they could modify GSP to further encourage companies to move out of China. Company representatives testifying at the hearing informed the representatives that it is difficult to incorporate GSP's tariff preferences into corporate decision making on where to locate factories because GSP is so unreliable. These witnesses argued Congress should increase the predictability and duration of GSP's preferences if there is interest in using the program to encourage diversification away from China. They advised Congress that it could consistently renew the program, remove the competitive needs limits, and reduce threats to suspend countries from the program.

¹⁴ "USTR Releases Annual Report on China's WTO Compliance," February 24, 2023, accessible here: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/february/ustr-releases-annual-report-chinas-wto-compliance>.

¹⁵ "Trade Subcommittee Hearing on Reforming the Generalized System of Preferences to Safeguard U.S. Supply Chains and Combat China," September 20, 2023, accessible here: <https://waysandmeans.house.gov/event/trade-subcommittee-hearing-on-reforming-the-generalized-system-of-preferences-to-safeguard-u-s-supply-chains-and-combat-china/>.

¹⁶ July 12 letter to the House Ways & Means Committee, accessible here: https://dunn.house.gov/_cache/files/3/0/3041238e-89d4-4975-8264-c3c570367df6/52BEA65E33C2715ADA57396AF1215194.gsp-letter-final.pdf.

Leveraging GSP membership to obtain market access concessions from beneficiary countries is another area of interest for both Congress and the US industry representatives who spoke at the hearing. Congress is considering reforms that would require USTR to use threats of excluding a country from GSP more aggressively in market access negotiations. Several members of the Trade Subcommittee raised the specific possibility of offering renewed GSP membership to Thailand in exchange for improved market access for US farm exports.

Representatives are also developing a proposal to add a new requirement that beneficiary countries provide adequate market access for digital goods and services to qualify for GSP, taking the market access criteria attached to GSP further than in the past. Darin LaHood (R-IL) is leading the effort to develop this new standard, which is also backed by the US technology industry.

Democrats and union representatives that testified at the hearing reminded the Trade Subcommittee that it should include renewal of TAA in the same bill as GSP and MTB. Congress has historically bundled the three measures together as a compromise. The Democrats are also interested in raising the required levels of local value-added content that goods must meet to qualify for GSP treatment. The level is currently set at 35%. US unions support an increase, arguing that Congress should raise the threshold to as high as 65%. Other stakeholders at the hearing cautioned that reaching higher levels of local value-added content may be impractical for smaller and less developed countries, and in the view of some Republicans on the Trade Subcommittee, may inadvertently encourage companies to stop using GSP and return to China.

Democrats on the Trade Subcommittee also continued to argue that Congress should add expansive qualifying conditions related to labor rights, environmental protection, and human rights. Democrats included these measures in their latest proposed bill to renew GSP, entitled the American Worker and Trade Competitiveness Act (discussed below). Republicans are skeptical of adding these conditions, however, and disagreements over this contributed to Congress' failure to renew GSP in the previous legislative session.

The American Worker and Trade Competitiveness Act

The American Worker and Trade Competitiveness Act is the Democrat proposal for GSP renewal. It includes new requirements related to worker rights, human rights, environmental protection, and enforcement transparency that have broad support among Democrats, but not among Republicans.

House Ways & Means Trade Subcommittee ranking member Earl Blumenauer (D-OR) and 10 Democrat co-sponsors unveiled the bill in June 2023, which would reauthorize MTB and TAA as well. This bill's approach to renewal and reform was last included in the CHIPS Act's trade title, which ultimately failed to be included in the final law amid disagreements over certain details. The new bill has not moved forward since it was reintroduced.

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

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 like 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 (discussed below).

Emerging alternative approaches

Rep. Adrian Smith (R-NE), who chairs the Trade Subcommittee, is attempting to build consensus around an alternative, bipartisan GSP renewal bill that would be more likely to pass the Republican-led House. Rep. Smith has said he believes that layering additional trade restrictions onto GSP (as the Democrats' plan does) is a "race to the bottom" that would worsen the program while raising costs for US consumers, though he has also said he is sympathetic to the Democrats' goals and still wants to explore ways Congress can address labor concerns. Republicans appear especially supportive of strengthening how USTR can use GSP to pressure other countries to improve market access, modifying GSP to better encourage diverting trade away from China, and adding new criteria related to digital trade openness. Rep. Smith has not introduced the bill yet, despite several months of discussion.

In the Senate, Finance Committee ranking member Mike Crapo (R-ID) recently said the Senate is committed to reviving bipartisan trade legislation, including GSP renewal. Sen. Crapo and several other members of the Finance Committee, however, have expressed caution when asked when they would be able to move forward with such a bill.

AGOA renewal

Alongside the GSP discussions, Washington is increasingly debating the future of AGOA. Congress established AGOA in 2000 to go beyond GSP and create a unique preferential program for most African nations. AGOA added approximately 1,800 additional tariff lines for 35 sub-Saharan African countries, in addition to the 5,100 tariff lines already covered by the GSP. Most of the tariff lines not covered by the two programs are already effectively tariff-free under WTO commitments. The US Congress last renewed AGOA in 2015; it expires on September 30, 2025.

Ambassador Katherine Tai and South African Minister of Trade, Industry and Competition Ebrahim Patel met on September 20, 2023, and announced that South Africa will host the annual AGOA Forum in Johannesburg from November 2-4, 2023.¹⁷ Learning from the repeated and lengthy expirations of GSP, AGOA's stakeholders have already begun pursuing renewal of AGOA for an additional ten years and examining potential reforms to the program. Minister Patel is among those calling for an early AGOA renewal. Ambassador Tai has previously said that she is discussing renewal and potential reforms with Congress, while Rep. Adrian Smith has said he supports renewal.

Submitted testimony and video of the GSP hearing can be found on the Ways and Means Committee website, accessible here: <https://waysandmeans.house.gov/event/trade-subcommittee-hearing-on-reforming-the-generalized-system-of-preferences-to-safeguard-u-s-supply-chains-and-combat-china/>.

Vietnam Requests Market Economy Status from the United States for Antidumping Law Purposes

On September 11, 2023, the White House announced that Vietnam's Ministry of Industry and Trade (MOIT) has requested a Market Economy (ME) designation from the United States for antidumping law purposes as opposed to the current Non-Market Economy (NME) status. The MOIT sent the 24-page letter on September 8, 2023, as part of its request for the US Commerce Department to initiate a changed circumstances-NME graduation review.

Under US trade law (19 U.S.C. 1677), the term "nonmarket economy country" means "any foreign country that the administering authority determines does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise." Vietnam's long-time designation as an NME has implications for the treatment of Vietnamese exporters' treatment in US trade remedy proceedings, often leading to high antidumping duties.

¹⁷ "Joint Statement by U.S. Trade Representative Katherine Tai and Minister of Trade, Industry and Competition of South Africa Ebrahim Patel," September 20, 2023, accessible here: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/september/joint-statement-us-trade-representative-katherine-tai-and-minister-trade-industry-and-competition>.

Vietnam's request follows bilateral high-level meetings held between General Secretary of the Communist Party of Vietnam Central Committee Nguyen Phu Trong and US President Joe Biden in Hanoi on September 10, 2023. In the Joint Leader's Statement: Elevating United States-Vietnam Relations to a Comprehensive Strategic Partnership,¹⁸ the United States acknowledged Vietnam's official request for a review of its ME status on September 9, 2023, and stated that it "will review Vietnam's request as expeditiously as possible, in accordance with U.S. law. The United States appreciates Vietnam's ongoing efforts to further modernize and enhance the transparency of its monetary policy and exchange rate management framework, to promote macroeconomic stability, and to ensure the safety and soundness of the banking system."¹⁹

Vietnam's NME status, in place since 2002, is a serious impediment to trade for Vietnamese exporters. The NME status means that the US Department of Commerce (DOC) adopts cost and price data from third countries when calculating antidumping duties. This methodology typically results in a higher antidumping duty margin than would have otherwise been calculated if Vietnam were considered an ME. Countries such as the United States and the members of the European Union that maintain well-developed antidumping calculation methodologies and policies typically reject in NME antidumping proceedings an exporter's actual production costs. Instead, antidumping authorities find "surrogate" material, energy, and labor costs in a country outside of Vietnam and substitute the exporter's actual material, energy, and labor costs with these "surrogate" values in order to calculate the "normal value" that is compared to the export price in the dumping margin calculation. As a result, Vietnamese exporters often cannot control the outcome of an NME proceeding, the final dumping margin calculated might not reflect the exporter's actual level of dumping, and exporters often face higher duty margins than if the calculation was based on the exporter's actual production costs.

According to Vietnam's Chamber of Commerce and Industry (VCCI), over 70 countries and territories recognize Vietnam as a market economy, including Argentina, the ten ASEAN member states, Australia, Canada, Japan, Korea, Mexico, and the United Kingdom.

Vietnam is one of 12 countries designated by the US government as an NME. The others are Armenia, Azerbaijan, Belarus, China, Georgia, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, and Uzbekistan.

Next steps

According to the United States Tariff Act of 1930, as amended, certain conditions related to the following must be met before ME status can be granted: (1) currency convertibility, (2) wage rates freely determined by labor and management, (3) degree of openness to foreign investment, and (4) government control over the allocation of resources, among others.

These criteria suggest that ME/NME determination is a purely fact-based, non-political determination. However, DOC has significant discretion in interpreting and implementing the statute, and there remains room for top-down political considerations to seep into agency action. Both countries will be eager to demonstrate tangible "wins" following the elevation of the relationship to a Comprehensive Strategic Partnership. While it is likely that Vietnam's NME status is a point of discussion in the White House, DOC, and other US government stakeholders, any change to Vietnam's status would have to be carefully balanced with the views of US domestic industry, which continues to view lower-cost imports from Vietnam and elsewhere as an existential threat to US manufacturing.

¹⁸ The Joint Statement is accessible here: <https://www.whitehouse.gov/briefing-room/statements-releases/2023/09/11/joint-leaders-statement-elevating-united-states-vietnam-relations-to-a-comprehensive-strategic-partnership/>. Under Vietnam's diplomatic hierarchy, a Comprehensive Strategic Partnership is the highest designation, on a par with China, India, Korea, and Russia.

¹⁹ The US International Trade Administration has already acknowledged on its website, here: <https://www.trade.gov/nme-countries-list>; that the United States will review Vietnam's request for ME status.

The MOIT's letter is available upon request.

US Commerce Department Issues Final CHIPS Act National Security Guardrails for Semiconductor Manufacturing Activities

On September 22, 2023, the CHIPS Program Office (CPO) at the National Institute of Standards and Technology (NIST) under the US Department of Commerce published the final rule implementing the national security guardrails for the CHIPS and Science Act's semiconductor facility grant program.²⁰ The national security guardrails covered in the final rule restrict companies that receive the federal funding from expanding semiconductor manufacturing activities in foreign countries of concern and from engaging in research activities and technology licensing agreements with foreign entities of concern. The final rule enters effect on November 24, 2023. CPO issued a draft of the national security guardrails on March 23, 2023,²¹ which funding applicants have been operating under since then. The final rule loosens the guardrails in several important ways relative to the draft rule, which should make the funding a more practical option for multinational companies.

Overview of the national security guardrails

The national defense need for reliable semiconductor supplies and broader US concerns about the rise of China are central motivations for the CHIPS and Science Act.²² The most important criteria for evaluating the Act's funding applications is how the proposed projects contribute to economic and national security. Beyond these evaluation conditions, the Act subjects the funding to national security guardrails meant to prevent the incentive program from benefiting semiconductor industries in China and other countries of concern. The final rule contains the details of how the CPO will implement the national security guardrails, including additional details on the restrictions, definitions of key terms, notification requirements, and enforcement processes. These guardrails are broader than the current BIS semiconductor export controls, covering more semiconductor products and further restricting fundamental research. The two requirements of the national security guardrails, the Expansion Clawback²³ and the Technology Clawback,²⁴ are described below:

- **Expansion Clawback:** Funding recipients cannot engage in significant transactions involving material expansions of semiconductor manufacturing capacity in foreign countries of concern (*i.e.*, China, Russia, Iran, and North Korea) for 10 years after receiving funding. This rule includes exemptions for certain limited investments in existing facilities that produce legacy semiconductors (capping expansion at 10% capacity growth) and semiconductors that predominantly serve the facility's domestic market (requiring 85% of end-user products to be consumed in the domestic market).
- **Technology Clawback:** Funding recipients cannot engage in joint research or licensing activities with foreign entities of concern involving products and technologies that the rule designates as raising national security concerns. Foreign entities of concern include those entities owned or controlled by foreign countries of concern, those on the Bureau of Industry and Security (BIS) Entity List and the Treasury Department's Chinese Military-

²⁰ "Preventing the Improper Use of CHIPS Act Funding," 15 CFR 231 (September 25, 2023), accessible here: <https://www.federalregister.gov/documents/2023/09/25/2023-20471/preventing-the-improper-use-of-chips-act-funding>. The Federal Register Notice also includes a full explanation of the changes made to the rule and responses to the public feedback on the draft rule.

²¹ "Proposed Rule: Preventing the Improper Use of CHIPS Act Funding," 15 CFR 231 (March 23, 2023), accessible here: <https://www.federalregister.gov/documents/2023/03/23/2023-05869/preventing-the-improper-use-of-chips-act-funding>.

²² "Approach to National Security," CHIPS Incentives Program, accessible here: <https://www.nist.gov/system/files/documents/2023/09/22/National%20Security%20Guidebook.pdf>.

²³ 15 U.S.C. 4652(a)(6).

²⁴ 15 U.S.C. 4652(a)(5)(C).

Industrial Complex Companies (CMIC) list, and other entities covered by certain sanctions and export control designations described in the regulations.

If funding recipients engage in these restricted activities or fail to properly report activities to CPO, CPO may recover (or “claw back”) the full amount of the funding award plus interest.

Changes in the final rule

CPO made several key changes to the two clawback rules based on feedback from the semiconductor industry, allied governments, and other stakeholders. Key changes are summarized below:

- **Coverage for affiliated corporate entities:** CPO narrowed the requirement that the guardrails apply to all affiliates that are under common corporate control with the funding recipient (“covered entity”) by removing the definition of affiliate from the final rule. Under the final rule, the Expansion Clawback will apply to the covered entity and certain members of its affiliated group (with an ownership threshold of 80%) but will exclude entities that are not “includible corporations.”²⁵ The Technology Clawback will now apply only to the covered entity, but CPO may still order remedial actions if it is concerned about joint research or technology licensing activities of affiliated entities. CPO intends to specify these potential technology restrictions in each project’s grant agreement.
- **National security critical semiconductors:** CPO removed most compound and fully depleted silicon on insulator (FD-SOI) semiconductors from the list of semiconductors classified as critical to national security (semiconductors critical to national security are those which will not be considered legacy semiconductors). The final rule also adds that the Secretary of Commerce can list additional types of semiconductors to the list as necessary.
- **The Expansion Clawback’s significant transaction definition:** CPO changed the Expansion Clawback’s significant transaction definition (which the draft defined as any transaction above \$100,000) to a more flexible standard that CPO will negotiate with each funding recipient as part of the grant agreement. CPO based this change on an acknowledgment that different thresholds may be necessary for different business models and notes that it will issue further guidance on the issue.
- **The Expansion Clawback’s material expansion definition:** The final rule further clarified that the Expansion Clawback’s material expansion limitation (which limits capacity growth to five percent) focuses on limiting the addition of clean room or production line space, not ordinary upgrades of existing equipment. The growth measure will also now be assessed annually instead of monthly, allowing more flexibility for seasonal production patterns and easier monitoring.
- **The Expansion Clawback’s legacy semiconductor products list:** The final rule adds the following to the list of legacy semiconductors: silicon wafers measuring 200 millimeters or smaller in diameter and compound wafers measuring 150 millimeters or smaller in diameter for wafer facilities; digital or analog logic semiconductors that are of the 28-nanometer generation or older and various memory semiconductors for fabrication facilities; and semiconductors that do not use advanced three-dimensional (3D) integration packaging for packaging facilities.
- **The Technology Clawback’s definition of foreign entity of concern:** CPO reorganized the definition of foreign entity of concern to incorporate the definition of “owned by, controlled by, or subject to the jurisdiction or direction of” directly into the definition, clarifying coverage. CPO also clarified that the designation applies to persons who are citizens, nationals, or residents of a foreign country of concern who are in such a country. Explaining this

²⁵ This definition of affiliated group is based on 26 U.S.C. 1504, accessible here: <https://www.govinfo.gov/content/pkg/USCODE-2021-title26/pdf/USCODE-2021-title26-subtitleA-chap6-subchapA-sec1504.pdf>.

nuance, the final rule elaborates that “the term would include an Iranian national working in Russia, but would not include a Chinese national lawfully working in the United States or the Republic of Korea.”

- **The Technology Clawback’s research activity and technology licensing exemptions:** CPO added several exemptions to the Technology Clawback’s covered research and licensing activities, including for technical standards programs, activities with related entities, intellectual property information needed for production outsourcing arrangements, intellectual property licenses that are necessary for the use of final products, and any activities that were ongoing before the rule was published. The final rule also exempts publicly available information, such as patents, from the restrictions on technology licensing arrangements.

Status of the CHIPS Act’s funding opportunities

CPO began accepting applications for the \$39 billion in semiconductor industry grants in spring 2023. The first funding opportunity, which was for building commercial semiconductor fabrication facilities, was released on February 28, 2023. On June 23, 2023, the funding opportunity expanded to include construction, expansion, or modernization of commercial facilities for semiconductor materials and manufacturing equipment for which total capital invested exceeded \$300 million. On September 29, 2023, CPO issued a separate, simplified funding opportunity for smaller-scale supplier projects.²⁶ CPO will issue a third funding opportunity for research and development facilities by early 2024. Since CPO opened the funding opportunities, it has received over 500 statements of interest and funding 100 applications and pre-applications.

Aside from the competitive grants, the CHIPS Research and Development Office is investing \$11 billion in semiconductor research and development efforts and the Internal Revenue Service (IRS) is implementing a new uncapped Advanced Manufacturing Tax Credit for investments in certain semiconductor facilities. The tax credit also includes procedures to claw back funding if a company materially expands semiconductor manufacturing capacity in a country of concern within 10 years of receiving the credit. The IRS issued a notice of proposed rulemaking describing this credit and clawback on March 23, 2023,²⁷ and a notice of proposed rulemaking describing new elective payment options for the tax credit on June 21, 2023.²⁸ The IRS has not yet issued final rules.

²⁶ Notice of Funding Opportunity: Small-Scale Supplier Projects, accessible here: <https://www.nist.gov/chips/notice-funding-opportunity-small-scale-supplier-projects>.

²⁷ “Notice of proposed rulemaking: Advanced Manufacturing Investment Credit,” 88 FR 17451 (March 23, 2023), accessible here: <https://www.federalregister.gov/documents/2023/03/23/2023-05871/advanced-manufacturing-investment-credit>.

²⁸ “Notice of proposed rulemaking: Elective Payment of Advanced Manufacturing Investment Credit,” 88 FR 40123 (June 21, 2023), accessible here: <https://www.federalregister.gov/documents/2023/06/21/2023-12800/elective-payment-of-advanced-manufacturing-investment-credit>.

Trade Actions

Section 301

United States Extends China Section 301 Tariff Exclusions to 2024

On September 6, 2023, USTR announced that all current exclusions from the China Section 301 tariffs will be extended through the end of 2023.²⁹ The exclusions had been scheduled to expire on September 30, 2023, which was 24 days away when USTR made the announcement. Previous extensions have been issued with only a few days' notice and US business associations had been calling on USTR to renew the exclusions as soon as possible to reduce uncertainty for importers.³⁰

The extension applies to both sets of Section 301 exclusions: the 352 general exclusions and the 77 COVID-related exclusions. It makes no changes to the two lists' coverage, only changing the expiration dates from September 30, 2023, to December 31, 2023, in the relevant Chapter 99 tariff codes. US Customs and Border Protection (CBP) will issue guidance for implementing this change on import declarations.

According to USTR, the extension was necessary to "provide a transition period for the expiring exclusions and to allow for further consideration under the four-year review." This explanation is similar to the explanation that USTR provided when it extended the exclusions from spring 2023 to September 30, suggesting the four-year review is taking longer than anticipated.

The four-year review

USTR is conducting a mandatory four-year review of the China Section 301 actions, with results expected in the next few months. Section 307(c) of the Trade Act of 1974 requires USTR to review the effectiveness and economic impact of Section 301 actions every four years to keep the actions in force.³¹

This review, which USTR announced in May 2022, is currently in its second phase. USTR collected public comments for phase two between November 2022 and January 2023, receiving 1,497 submissions from the public.³² Since the comment docket closed six months ago, there have been no further updates from USTR on the review. USTR told Congress in March 2023 that the review would be completed sometime in the fall. In a September 5 interview, Secretary of Commerce Gina Raimondo said she did not expect any further changes to the tariffs to occur until after the four-year review is completed.

The review is an opportunity for the Biden administration to alter the tariffs, with some observers and government officials suggesting USTR could better align them with the administration's industrial policy objectives. The administration's recent public comments suggest that no major changes to the tariffs are coming, though there may be smaller modifications to the tariffs' coverage, levels, and the exclusion process.

²⁹ USTR Extends Reinstated and Covid-Related Exclusions from China Section 301 Tariffs, September 6, 2023, accessible here: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/september/ustr-extends-reinstated-and-covid-related-exclusions-china-section-301-tariffs>.

³⁰ Letter regarding the extension of Section 301 China tariffs exclusions, Americans for Free Trade, July 27, 2023, accessible here: <https://americansforfreetrade.com/wp-content/uploads/2023/07/AFT-Letter-to-USTR-Tariff-Exclusion-Renewal-Final-072723.pdf>.

³¹ 19 USC 2417(c)(3)(A) and (B), accessible here: <https://www.govinfo.gov/content/pkg/USCODE-2021-title19/pdf/USCODE-2021-title19-chap12-subchapIII-sec2417.pdf>.

³² "Request for Comments in Four-Year Review of Actions Taken in the Section 301 Investigation: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation," 87 FR 62914 (October 17, 2022), accessible here: <https://www.federalregister.gov/documents/2022/10/17/2022-22469/request-for-comments-in-four-year-review-of-actions-taken-in-the-section-301-investigation-chinas>.

Trade Agreements

IPEF

IPEF Partners Publish Supply Chain Agreement

The US Department of Commerce published the completed text of the Indo-Pacific Economic Framework for Prosperity (IPEF) Agreement Relating to Supply Chain Resilience (the “Agreement”) on September 7, 2023.³³ The Agreement is the first IPEF parties have finished and is intended to enable collaboration between the IPEF partners on supply chain resilience, emergency response, and worker rights programs. It does not in itself contain binding commitments on market access or other trade-related matters. Instead, it creates several standing bodies that will examine questions of supply chain resilience and support reform efforts among the parties.

Now that the text is completed, the 14 IPEF parties will proceed with their domestic processes to adopt the Agreement. The Agreement will then enter force 30 days after the date on which at least five parties have submitted an instrument of acceptance. As expected, the Biden administration stated that it will not submit the Agreement to Congress for legal ratification and will instead treat it as an executive agreement. This is the first of IPEF’s four Pillars to be completed and published. The Agreement’s substantial conclusion was originally announced at an IPEF trade ministers’ meeting on May 27, 2023.³⁴ After that, it took several months of follow-up work to complete the full text and legal scrub.

The Agreement’s three consultative bodies

The Agreement establishes that the parties have various shared interests in investing in supply chain resilience, improving disaster response, and protecting workers. To advance these interests, the parties have committed to collaborate on potential reforms through three standing bodies, described below.

1. The IPEF Supply Chain Council

The Agreement establishes an IPEF Supply Chain Council (the “Council”). The Council will meet annually to review reports prepared by the parties on efforts to promote stronger supply chains, regulatory transparency, and worker rights. It will also develop action plans to implement these policies and review labor rights concerns. The Council will establish its operating procedures and create its first action plans after the Agreement’s entry into force.

The Council’s action plans will provide recommendations to increase the resilience and competitiveness of critical sectors³⁵ and key goods,³⁶ which may include measures to promote market diversification, assess raw materials, assess workforce needs, relieve logistical bottlenecks, improve infrastructure connectivity, hold business matching programs, help the private sector understand supply chain risks, support research and development, and facilitate trade. The Agreement adds that these action plans should not address financial system regulation, monetary policy, or economic sanctions.

³³ The text of the Supply Chain Agreement is accessible here: <https://www.commerce.gov/sites/default/files/2023-09/2023-09-07-IPEF-Pillar-II-Final-Text-Public-Release.pdf>.

³⁴ Press Statement on the Substantial Conclusion of IPEF Supply Chain Agreement Negotiations, May 27, 2023, accessible here: <https://www.commerce.gov/news/press-releases/2023/05/press-statement-substantial-conclusion-ipef-supply-chain-agreement>.

³⁵ Critical sectors are “sectors that produce goods and supply any related essential services critical to a party’s national security, public health and safety, or prevention of significant or widespread economic disruptions, as identified by that party in accordance with Article 10.”

³⁶ Key goods are “raw, in-process, or manufactured materials, articles, or commodities, the absence of which could have a significant effect on a party’s national security, public health and safety, or prevention of significant or widespread economic disruptions, as identified by that party in accordance with Article 10.”

2. The IPEF Supply Chain Crisis Response Network

The Agreement establishes the IPEF Supply Chain Crisis Response Network (the “Network”). The Network will serve as an emergency communication channel to spread information about supply chain disruptions, facilitate cooperation, and assess past experiences and policies about preparing for and responding to crises. The Network’s focus on short-term emergency response complements the Council’s focus on long-term reform and preparedness. Lessons learned about disaster preparedness in the Network can be reported to the Council for further work under Council action plans.

The Network will elect a chair, convene meetings, and develop terms of reference for the body after the Agreement enters force. Specific cooperation initiatives under the Network may include emergency Network meetings to discuss supply chain disruptions, sharing information about disruptions, and supporting each party’s responses to disruptions.

3. The IPEF Labor Rights Advisory Board

Along with the two supply chain planning bodies, the Agreement contains an IPEF Labor Rights Advisory Board (the “Board”) to promote labor rights³⁷ in international supply chains. The parties have tasked the Board with identifying labor rights concerns that pose a risk to supply chains, developing recommendations for addressing those risks, and informing the Council about any identified concerns and recommendations. These recommendations could include technical assistance and capacity building programs. The Board is also tasked with developing technical, sector-specific reports on labor rights in supply chains.

The Board will include representatives from government, organized labor, and employers from each party. Like the other two bodies, the Board will elect its leadership and establish terms of reference after the Agreement enters into force. Publishing labor rights advisories, best practices guides, technical reports, and other updates on the Board’s activities will require a two-thirds majority vote by the Board’s representatives.

The Agreement also includes a system for discussing “Facility-Specific Labor Rights Inconsistencies,” the outcomes of which will be reported on by the Board. Under this system, the parties say they intend to establish reporting systems for confidentially filing and receiving labor abuse allegations against subject facilities.³⁸ Parties that host a facility that is subject to a notification must review the allegation, investigate it, and provide a written response. Facility-specific labor rights enforcement mechanisms first appeared in the US-Mexico-Canada Agreement (USMCA). Unlike USMCA, however, the IPEF version includes no enforcement mechanisms that could pressure parties or the subject facilities to remediate the concerns that are raised. The parties to the Agreement have only committed to engaging in dialogue about allegations and these allegations will be kept confidential.

Enforceability

As the Agreement is not a full free trade agreement, it does not contain thorough enforcement measures. If there is a disagreement over implementation, a concerned party may request consultations with another party through a written notification, if the exchange of notifications do not resolve the concerns, then consultations can commence. There are, however, no further obligations, enforcement tools, or adjudication processes. The Agreement simply says that the parties engaged in consultations “shall attempt to arrive at a mutually satisfactory resolution.” US Secretary of

³⁷ “Labor rights” are defined as those set out in the ILO Declaration, specifically freedom of association and collective bargaining, elimination of forced labor and child labor, elimination of employment discrimination, safe working environment, as well as “acceptable conditions of work with respect to minimum wages and hours of work” (*i.e.*, enforcement of a party’s domestic wage-related regulations, as determined by that party).

³⁸ “Subject facilities” are facilities in the party countries operated by an enterprise that has more than 20 employees.

Commerce Gina Raimondo recently said that while the Agreement is not enforceable in the traditional sense, countries that do not fulfill the commitments would not benefit from IPEF's programs.

Private sector reactions

The private sector's response to the Agreement has so far been muted, noting the lack of clear commitments to market opening or investment promotion. Some industry sources had expressed concern that the facility-specific labor rights mechanism could become a new compliance risk when the IPEF parties first announced it in May 2023. However, the lack of legal obligations and the confidentiality of the reports will likely limit the mechanism's practical impact.

The Agreement is not static like a traditional free trade agreement, and impactful policies could emerge from the three new bodies in the future. The Council and Board may develop investment, trade, labor, education, or development assistance programs once they are operational. The Network, meanwhile, could prove its value in a future crisis. Continued monitoring and engagement from the private sector in these bodies could be useful.

Continuing negotiations on the rest of IPEF

The Agreement's release came a few days before the September 10-16, 2023, negotiating round in Bangkok, Thailand, was set to begin. Negotiations on the other three pillars, Pillar I (Trade), Pillar III (Clean Economy – clean energy, decarbonization and infrastructure), and Pillar IV (Fair Economy – tax and anti-corruption), will continue there. The parties are targeting the November 2023 APEC Leaders' Summit in San Francisco, California for a substantial conclusion to the negotiations. As the date draws closer, however, completing the agreement in time is looking increasingly ambitious. Australian Trade Minister Don Farrell recently suggested that completing only one more pillar in time for APEC is more realistic. Before then, there will be one more negotiating round in Malaysia on October 15-21, 2023.

IPEF Countries Meet in Thailand for Fifth Negotiating Round

The 14 countries negotiating the IPEF met in Bangkok, Thailand from September 10-16, 2023, for a fifth full negotiating round.³⁹ Negotiations on IPEF's Pillar I (Trade), Pillar III (Clean), and Pillar IV (Fair) continued, while implementation of the completed Pillar II (Supply Chains) was also on the agenda. The negotiators reported that they made further progress in the talks but did not announce any new outcomes.

Alongside the meeting, the Government of Thailand hosted a listening session to discuss IPEF with the public. About 150 stakeholders from the private sector, civil society, and academia attended, including individuals from Australia, Brunei, Malaysia, India, Japan, Korea, the Philippines, and Thailand. The US government held its own listening session in advance of the round on August 24, also providing stakeholders an opportunity to raise comments on the negotiations.

Status of the negotiations

□ Pillar I (Trade)

Pillar I of the agreement is the section that resembles a traditional FTA, though it will not include most of the market access commitments that are typical in an FTA. 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. The trade pillar appears to be farther from completion than the other two pillars, and there are still significant disagreements over several of the

³⁹ "Joint U.S. Department of Commerce and USTR Readout of Fifth Indo-Pacific Economic Framework Negotiating Round in Thailand," accessible here: <https://www.commerce.gov/news/press-releases/2023/09/joint-us-department-commerce-and-ustr-readout-fifth-indo-pacific>.

chapters, including digital trade. Some other chapters, reportedly including the trade facilitation and agriculture chapters, are closer to agreement.

The digital trade chapter has been particularly challenging, with debates ongoing about the strength of the commitments it should include. The countries negotiating the chapter appear divided between some that support high standard commitments on topics like data flows, while others are seeking weaker commitments. The Biden administration itself is facing divisions among its own constituents on the chapter's contents and appears to be moving slowly on producing a final, full proposal for the chapter.

The agriculture chapter may be closer to completion. Ahead of the latest negotiating round, US Chief Agricultural Negotiator Doug McKalip said that the negotiators are close to concluding the agriculture chapter and are trying to reach agreement by November. The chapter will include commitments on regulatory certainty and transparency, including the use of scientific processes for developing regulations. It may also include a new commitment that environmental protection policies not harm food trade more than necessary, which would be a first for a trade agreement. Still, sources have suggested that negotiations over the provisions on genetically modified foods are one of the larger ongoing challenges for the trade pillar.

□ **Pillar II (Supply Chain)**

The US Department of Commerce published the completed text of IPEF's Pillar II, the *Agreement Relating to Supply Chain Resilience*, on September 7, 2023.⁴⁰ The Pillar II agreement is the first the parties have finished and will facilitate collaboration efforts among the IPEF partners on supply chain resilience, emergency response, and worker rights programs. It does not in itself contain binding commitments on market access or other trade-related matters. Instead, it creates several standing bodies that will examine questions of supply chain resilience and support reform efforts.

Now that the text is complete, the 14 IPEF parties will proceed with their domestic processes to adopt the agreement. It will enter force 30 days after the date on which at least five parties have submitted an instrument of acceptance. As expected, the Biden administration stated that it will not submit the agreement to Congress for legal ratification and will instead treat it as an executive agreement.

□ **Pillar III (Clean Economy)**

Pillar III covers environmental protection, especially policies responding to climate change. This chapter will likely focus on fostering cooperation in helping each IPEF participant 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."⁴¹

□ **Pillar IV (Fair Economy)**

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.

⁴⁰ U.S. Department of Commerce Publishes Text of Landmark Indo-Pacific Economic Framework for Prosperity (IPEF) Supply Chain Agreement, accessible here: <https://www.commerce.gov/news/press-releases/2023/09/us-department-commerce-publishes-text-landmark-indo-pacific-economic>.

⁴¹ "Press Statement for the Trade Pillar, Clean Economy Pillar, and Fair Economy Pillar," accessible here: <https://www.commerce.gov/news/press-releases/2023/05/press-statement-trade-pillar-clean-economy-pillar-and-fair-economy>.

Upcoming negotiating rounds

The IPEF parties will hold their next negotiating round around October 15-21, 2023, in Malaysia, though official details are not yet available. Discussions on the three remaining pillars will continue there with intersessional meetings taking place between the formal negotiating rounds. In the week of September 18, Deputy US Trade Representative Sarah Bianchi will visit Tokyo, Japan for meetings with the Ministry of Economy, Trade and Industry and the Ministry of Foreign Affairs. According to USTR, the meetings will cover IPEF, the upcoming Asia-Pacific Economic Cooperation (APEC) Leaders' Summit, and other areas of bilateral cooperation.

The parties are targeting the November 2023 APEC Leaders' Summit in San Francisco, California for a substantial conclusion to the IPEF negotiations. As the date draws closer, however, completing the agreement in time is looking increasingly ambitious. Australian Trade Minister Don Farrell recently suggested that completing only one more pillar in time for APEC is more realistic.

G20, ASEAN, APEC: Development, Economic Security, Clean Energy on the Agendas for September Summits

US President Joe Biden and Vice President Kamala Harris joined a series of international leaders' summits in September 2023, where development assistance, economic security, deepened relations with developing countries and ASEAN, and clean energy policies were all under discussion. President Biden travelled to India for bilateral meetings with the Indian government and then for the G20 Summit, after which he visited Vietnam to announce an upgrade to the US-Vietnam diplomatic relationship. Vice President Kamala Harris also travelled to Indonesia for the ASEAN Summit and East Asia Summit.

The G20 Summit

President Biden joined the G20 Leaders' Summit in New Delhi from September 7 to September 10, 2023, where the attending leaders pledged to work together on implementing the 2030 Agenda for Sustainable Development, expanding renewable energy capacity, improving access to digital services, reforming the multilateral development banks (MDBs), and committing to the rules-based multilateral trading system based on the WTO.⁴²

Increasing the capacity of the MDBs was high on the agenda at the Summit. The United States, India, and other members of the G20 are seeking to change the MDBs' financing models and priorities so they can better help countries address climate change, global health issues, and conflict.⁴³ The G20's joint statement broadly endorsed these objectives, calling for "the MDBs to undertake comprehensive efforts to evolve their vision, incentive structures, operational approaches and financial capacities so that they are better equipped to maximize their impact in addressing a wide range of global challenges[.]" The reforms under consideration include changing risk tolerance levels for lending, giving more credit to callable capital in calculations of capital adequacy, and expanding use of financial innovations. The MDBs estimate these changes could unlock about \$200 billion in additional lending capacity over the next decade. There is also a possibility however that these actions could increase the amount of financial risk taken on by the MDBs. President Biden has also recently asked Congress to allocate additional funding and lending authorities for the MDBs, which would further support this expansion.⁴⁴ The United States has framed the changes as necessary to counter the influence of China's Belt and Road Initiative, as well as helping to reach climate change goals. Treasury Secretary Janet Yellen (who would lead the MDB reform efforts for the United States) also

⁴² "G20 New Delhi Leaders' Declaration," accessible here: https://www.g20.org/content/dam/gtwenty/gtwenty_new/document/G20-New-Delhi-Leaders-Declaration.pdf.

⁴³ See the July 2023 updates to the G20 Capital Adequacy Framework roadmap, accessible here: https://www.g20.org/content/dam/gtwenty/gtwenty_new/document/G20_Roadmap_for_MDBCAF.pdf.

⁴⁴ "Letter Regarding Critical Needs for the American People," August 10, 2023, accessible here: <https://www.whitehouse.gov/omb/briefing-room/2023/08/10/letter-regarding-critical-needs-for-the-american-people/>.

attended the Summit and participated in discussions on the MDBs, debt restructuring, and the IMF Poverty Reduction and Growth Trust.⁴⁵

President Biden also met bilaterally with Prime Minister Narendra Modi on September 8, where recent discussions on improving the trade relationship continued. The leaders discussed expanding cooperation on technology and infrastructure development and announced the settlement of the last of seven WTO bilateral disputes. The United States and India agreed to shelve six of seven active WTO disputes following a meeting in Washington, DC in July 2023. The last case, *India — Measures Concerning the Importation of Certain Agricultural Products* (DS 430), was resolved at the September 8 meeting with India agreeing to reduce tariffs on certain US food exports.⁴⁶

The United States, European Union, India, United Arab Emirates, Saudi Arabia, France, Germany, and Italy announced of a new transport corridor between South Asia and Europe, dubbed the India-Middle East-Europe Economic Corridor. The participants committed to meeting within 60 days to develop an action plan for the project.⁴⁷

For India, the G20 Summit was the peak of its host year and an opportunity to position itself as an emerging power and a leader among emerging economies. India prioritized increased lending to developing countries, food and energy security, and the African Union's accession to the G20. Russia's invasion of Ukraine however became a challenge for the year's meetings, making it difficult for the group to reach unanimous decisions and leading India to issue Chair's summaries of meetings instead of consensus joint statements. At the leaders' summit, negotiators ultimately decided to weaken the statement's language on the war to achieve consensus.

The Summit follows the G20 trade ministers meeting in August, which focused on a variety of trade facilitation commitments. The Outcome Document highlighted nonbinding commitments on a framework for mapping global value chains, making trade data more accessible for small and medium sized enterprises, and encouraging paperless trade.⁴⁸ The meeting also covered the ongoing WTO reform efforts, with the trade ministers highlighting the goal of restoring the Dispute Settlement System by 2024. The next G20 meeting is the speakers of parliaments meeting on October 12-14, 2023.

Brazil will assume the 2024 G20 presidency on December 1, 2023, followed by South Africa for 2025. Brazilian President Luiz Inácio Lula da Silva announced at the Summit that its G20 year will prioritize "(i) social inclusion and the fight against hunger;" "(ii) energy transition and sustainable development in its three aspects (social, economic and environmental);" and "(iii) reform of global governance institutions."⁴⁹

The Vietnam visit

President Biden also visited Vietnam during the trip, where the two countries upgraded their diplomatic relations to a "comprehensive strategic partnership."⁵⁰ The joint statement accompanying the announcement reaffirmed the

⁴⁵ "Secretary Yellen to Travel to India for the G20 Leaders' Summit," August 31, 2023, accessible here: <https://home.treasury.gov/news/press-releases/jy1711>.

⁴⁶ "United States Announces Resolution of the Outstanding WTO Poultry Dispute with India," accessible here: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/september/united-states-announces-resolution-outstanding-wto-poultry-dispute-india>.

⁴⁷ "Memorandum of Understanding on the Principles of an India – Middle East – Europe Economic Corridor," accessible here: <https://www.whitehouse.gov/briefing-room/statements-releases/2023/09/09/memorandum-of-understanding-on-the-principles-of-an-india-middle-east-europe-economic-corridor/>.

⁴⁸ Outcome Document and Chair's Summary, G20 Trade and Investment Minister's Meeting, accessible here: https://www.g20.org/content/dam/gtwenty/gtwenty_new/document/G20_Trade_and_Investment_Ministers_Meeting.pdf.

⁴⁹ "Speech by President Lula at the closing of the G20 Summit," accessible here: <https://www.gov.br/planalto/en/follow-the-government/speeches/speech-by-president-lula-at-the-closing-of-the-g20-summit>.

⁵⁰ "Joint Leaders' Statement: Elevating United States-Vietnam Relations To A Comprehensive Strategic Partnership," September 11, 2023, accessible here: <https://www.whitehouse.gov/briefing-room/statements-releases/2023/09/11/joint-leaders-statement-elevating-united-states-vietnam-relations-to-a-comprehensive-strategic-partnership/>.

importance of the trade relationship and the two countries pledged to continue work to address market access barriers.

As US companies continue to look to Vietnam as an alternative manufacturing base to China, partnerships on semiconductor sector development, natural gas, and offshore wind are being explored. In the joint statement, the United States pledged to support manufacturing, infrastructure, energy, agriculture, and supply chain development. The two countries signed a new memorandum of cooperation on semiconductor supply chain and workforce development, establishing a bilateral cooperation mechanism to expand Vietnamese semiconductor production capacity. To pursue these goals, the United States announced it was contributing \$2 million to a semiconductor workforce development program through the State Department's new CHIPS Act International Technology Security and Innovation Fund. The countries also discussed establishing an Open Radio Access Network training lab in Vietnam and signed a memorandum of understanding to assess Vietnam's rare earth element resources. Convincing Vietnam to diversify its sourcing of military equipment away from Russia will likely be another objective for the improved relationship. The joint statement also included references to deepening cooperation on defense trade and domestic defense development.

As discussed above, Vietnam is also seeking designation as a market economy under US trade remedy law, which the United States acknowledged in the joint statement. Under US trade law (19 U.S.C. 1677), the term "nonmarket economy country" (NME) means "any foreign country that the administering authority determines does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise." Vietnam's long-time designation as an NME has implications for the treatment of Vietnamese exporters' treatment in US trade remedy proceedings, often leading to high antidumping duties. Vietnam submitted a formal application for removal from the NME list to the US Commerce Department on September 8, 2023, which the United States is now reviewing.

ASEAN engagements

While President Biden prepared for the G20, Vice President Harris attended the US-ASEAN Summit and the East Asia Summit in Jakarta, Indonesia. The parties discussed climate change responses, maritime security, infrastructure development, strengthening international norms in the region, and economic growth. Vice President Harris reaffirmed US support for ASEAN centrality, pledged US support for Timor-Leste's ASEAN accession, and announced the United States will establish a new US-ASEAN Center to promote closer engagement.

The US-ASEAN Center will be a public-private partnership based in Washington, DC, hosted by the Department of State and Arizona State University. According to the State Department, the Center will "promote an open, connected, prosperous, resilient, and secure region."⁵¹ Senators Mitt Romney (R-UT) and Chris Van Hollen (D-MD) introduced bipartisan legislation to establish the Center on September 5, 2023, which was referred to the Committee on Foreign Relations.⁵² The precise function/activities of the Center are as of yet unclear.

APEC Leaders' Summit

Looking ahead, the United States will host the APEC Leaders' Meeting in November in San Francisco, California. A meeting of national leaders participating in the IPEF will also occur alongside APEC, with the parties targeting the announcement of a substantial conclusion of negotiations.

⁵¹ "Establishment of a U.S.-ASEAN Center in Washington, D.C.," accessible here: <https://www.state.gov/establishment-of-a-u-s-asean-center-in-washington-d-c/>.

⁵² "S.2725 - A bill to authorize the establishment of the US-ASEAN Center to support United States economic and cultural engagement with Southeast Asia," accessible here: <https://www.congress.gov/bill/118th-congress/senate-bill/2725>.

A long-awaited meeting between President Biden and President Xi Jinping may also occur at the APEC Summit, though it has not been confirmed yet (President Xi did not attend the G20 Summit). The meeting, if it occurs, would follow recent high-level visits of US officials to Beijing, most recently with Secretary of Commerce Gina Raimondo. These meetings have focused on restoring communication and building trust between the two countries and have not yet led to any solid commitments to improving the economic relationship. During Secretary Raimondo's visit, the two sides agreed to establish new consultative bodies on export controls and commercial issues. A meeting between President Biden and President Xi at APEC would likely follow this same pattern.

CPTPP

CPTPP Panel Sides with New Zealand in Dispute Settlement Proceeding against Canada's Implementation of Dairy Tariff Rate Quotas

On September 6, 2023, a dispute settlement panel established pursuant to Article 28.7 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) published its Final Report⁵³ in the dispute settlement proceeding launched by New Zealand in May 2022 against Canada's implementation of dairy tariff rate quotas (TRQs). The Panel Report concluded that Canada is not administering its dairy TRQs in a manner that provides importers the opportunity to utilize them fully, and that Canada is "impermissibly limiting access to TRQ quota to its domestic dairy processors," according to New Zealand's Ministry of Foreign Affairs and Trade (MFAT).⁵⁴ The Panel Report sided with New Zealand on two complaints, while rejected two other arguments. Both sides have formally claimed a win in the dispute with Canada pointing to a clause in the report that confirms Canada has discretion of over its imports. Under CPTPP rules, Canada must change its TRQ administration to comply with the Panel decision and has been given a reasonable period of time to do so.

Background

Dairy is New Zealand's largest export by value. The Canadian government maintains a supply management mechanism for dairy farmers that controls production and provides minimum support prices for their commercial products. During the CPTPP negotiations, the 11 member countries agreed to a specific amount of tariff-free access to Canada's market in 20 different categories of poultry, eggs, and dairy products. In December 2018, the Canadian government announced it would allocate between 80% and 90% of import licenses to domestic dairy processors, thus giving the processors near exclusive rights to import and market dairy products from New Zealand and other CPTPP members like Australia, another large dairy exporter. In New Zealand's view, "Canada was not living up to its commitments under CPTPP, by effectively blocking access for [the] dairy industry to upscale its imports" according to New Zealand's Minister for Trade and Export Growth Damien O'Connor.

In May 2022, New Zealand launched dispute settlement proceedings under the CPTPP against Canada with respect to Canada's implementation of dairy TRQs under its supply management system. This marked the first dispute settlement proceeding under the CPTPP and the first dispute New Zealand has taken under a free trade agreement.

Consultations held in June 2022 were unable to resolve the matter after which New Zealand submitted its request for a CPTPP panel to hear the case. A panel, comprised of three individuals - Jennifer Hillman, Petros Mavroidis, and Colleen Swords, was established on March 9, 2023, and the hearing took place in Canada from June 14-15, 2023.

⁵³ The Panel Report is accessible here: <https://www.mfat.govt.nz/assets/Trade-General/WTO-Disputes/Canada-Dairy/Final-Report-of-the-Panel.pdf>.

⁵⁴ Information on the dispute is accessible on the website of New Zealand's MFAT, accessible here: https://www.mfat.govt.nz/en/trade/trade-law-and-dispute-settlement/current-wto-disputes/#_blank.

Australia, Japan, Mexico, Peru, and Singapore joined the dispute as third parties, with Australia and Japan filing submissions in support of New Zealand. Mexico, Peru, and Singapore did not file submissions, but expressed their support in the dispute for Canada to address its use of dairy TRQs.

Petitions & Investigations

Petitions

US Aluminum Companies File ADD/CVD Petition on Aluminum Extrusions from Multiple Countries

On October 4, 2023, the US Aluminum Extruders Coalition and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union filed an antidumping duty (ADD) petition on imports of aluminum extrusions from Colombia, the Dominican Republic, Ecuador, India, Indonesia, Italy, Malaysia, Mexico, China, Korea, Taiwan, Thailand, Turkey, the United Arab Emirates, and Vietnam; and a countervailing duty (CVD) petition against aluminum extrusions from China, Indonesia, Mexico, and Turkey. The ADD petition alleges that imports of aluminum extrusions from these 15 countries are being sold in the United States at less than fair value, and the CVD petition alleges that the governments of China, Indonesia, Mexico, and Turkey are providing countervailable subsidies with respect to the manufacture, production, and export of aluminum extrusions.

The dumping rates alleged in the ADD petition vary by country, as follows: 256.58% (China); 179.53% (Colombia); 66.46% (Ecuador); 43.41% (India); 112.21% (Indonesia); 37.52% (Italy); 53.91% (Malaysia); 111.38% (Mexico); 71.03% (South Korea); 116.19% (Taiwan); 72.20% (Thailand); 33.79% (Turkey); 39.80% (UAE); and 53.75% (Vietnam). Because the US Department of Commerce (DOC) considers China and Vietnam as “non-market economies” (NMEs), DOC begins its investigation under the assumption that all exporters are part of a single, government-operated “China-wide entity” or “Vietnam-wide entity” which will be subject to a “China-wide” or “Vietnam-wide” ADD margin. This margin is often based on “adverse facts available,” making it punitively high. Companies that demonstrate sufficient independence from the Government of China or the Government of Vietnam may receive a separate dumping rate based on their actual data.

Covered product

The merchandise subject to this investigation is aluminum extrusions, regardless of form, finishing, or fabrication, whether assembled with other parts or unassembled, whether coated, painted, anodized, or thermally improved. Aluminum extrusions are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by the Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, subject aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 1 contain not less than 99 % aluminum by weight. Subject aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 3 contain manganese as the major alloying element, with manganese accounting for not more than 3.0% of total materials by weight. Subject aluminum extrusions made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contain magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1% but not more than 2.0% of total materials by weight, and silicon accounting for at least 0.1% but not more than 3.0% of total materials by weight. The scope also includes merchandise made from an aluminum alloy with an Aluminum Association series designation commencing with the number 5 (or proprietary equivalents or other certifying body equivalents) that have a magnesium content accounting for up to but not more than 2.0% of total materials by weight.

Imports of the subject merchandise are primarily provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS): 7604.10.1000; 7604.10.3000; 7604.10.5000; 7604.21.0010; 7604.21.0090; 7604.29.1010; 7604.29.1090; 7604.29.3060; 7604.29.3090; 7604.29.5050; 7604.29.5090; 7608.10.0030; 7608.10.0090; 7608.20.0030; 7608.20.0090; 7609.00.0000; 7610.10.0010; 7610.10.0020; 7610.10.0030; 7610.90.0040; and 7610.90.0080. The subject merchandise may also enter as components of products under other

HTSUS codes.⁵⁵ The country of origin of the aluminum extrusion is determined by where the metal is extruded (*i.e.*, pressed through a die).

Next steps

By October 24, 2023, DOC must decide whether the ADD petition contains the legally required information regarding the petitioners' standing, dumping, and injury to warrant initiating an investigation. The standard for initiation is low, requiring only that the petition contains information that is "reasonably available" to petitioners. As with the dumping investigation, DOC must decide whether the CVD petition contains the legally required information regarding Petitioners' standing, subsidies, and injury to warrant initiating an investigation by October 24, 2023.

The ITC is currently scheduled to make a preliminary determination no later than November 20, 2023.

Investigations

ITC Initiates Full Five-Year Review on Tin- and Chromium-Coated Steel Sheet from Japan; Declines to Institute Changed Circumstances Review

On September 5, 2023, the ITC issued a notice that it is proceeding with a full review to determine whether revocation of the ADD order on tin- and chromium-coated steel sheet from Japan (Investigation No. 731-TA-860) would likely lead to the continuation or recurrence of material injury within a reasonably foreseeable time.⁵⁶ The decision is based on the ITC's determination that the domestic and respondent interested party group responses to its notice of initiation, issued on June 1, 2023, were adequate. This is ITC's fourth five-year review for the ADD order, which the Department of Commerce (DOC or "Commerce") originally implemented in August 2000. The ITC will next issue a schedule for the review.

Shortly after announcing the full five-year review on September 19, 2023, the ITC announced it had declined to issue a changed circumstance review for the investigation.⁵⁷ In declining, the ITC cited the ongoing five-year review as making the changed circumstances review unnecessary. The Can Manufacturers Institute, Silgan Containers, LLC,

⁵⁵ Imports of the subject merchandise, including subject merchandise entered as parts of other products, may also be classifiable under the following additional HTSUS categories, as well as other HTSUS categories: 6603.90.8100; 7606.12.3091; 7606.12.3096; 7615.10.2015; 7615.10.2025; 7615.10.3015; 7615.10.3025; 7615.10.5020; 7615.10.5040; 7615.10.7125; 7615.10.7130; 7615.10.7155; 7615.10.7180; 7615.10.9100; 7615.20.0000; 7616.10.9090; 7616.99.1000; 7616.99.5130; 7616.99.5140; 7616.99.5190; 8302.10.3000; 8302.10.6030; 8302.10.6060; 8302.10.6090; 8302.20.0000; 8302.30.3010; 8302.30.3060; 8302.41.3000; 8302.41.6015; 8302.41.6045; 8302.41.6050; 8302.41.6080; 8302.42.3010; 8302.42.3015; 8302.42.3065; 8302.49.6035; 8302.49.6045; 8302.49.6055; 8302.49.6085; 8302.50.0000; 8302.60.9000; 8305.10.0050; 8306.30.0000; 8414.59.6590; 8415.90.8045; 8418.99.8005; 8418.99.8050; 8418.99.8060; 8419.50.5000; 8419.90.1000; 8422.90.0640; 8424.90.9080; 8473.30.2000; 8473.30.5100; 8479.89.9599; 8479.90.8500; 8479.90.9596; 8481.90.9060; 8481.90.9085; 8486.90.0000; 8487.90.0080; 8503.00.9520; 8508.70.0000; 8513.90.2000; 8515.90.2000; 8516.90.5000; 8516.90.8050; 8517.71.0000; 8517.79.0000; 8529.90.7300; 8529.90.9760; 8536.90.8585; 8538.10.0000; 8541.90.0000; 8543.90.8885; 8708.10.3050; 8708.29.5160; 8708.80.6590; 8708.99.6890; 8807.30.0060; 9013.90.7000; 9013.90.8000; 9031.90.9195; 9401.99.9081; 9403.10.0040; 9403.20.0086; 9403.91.0005; 9403.91.0010; 9403.91.0080; 9403.99.0040; 9403.20.0086; 9403.91.0005; 9403.91.0010; 9403.91.0080; 9403.99.1040; 9403.99.1050; 9403.99.1085; 9403.99.2040; 9403.99.2080; 9403.99.3005; 9403.99.3010; 9403.99.3080; 9403.99.4004; 9403.99.4010; 9403.99.4080; 9403.99.5005; 9403.99.5010; 9403.99.5080; 9403.99.9010; 9403.99.9015; 9403.99.9020; 9403.99.9040; 9403.99.9045; 9403.99.9051; 9403.99.9061; 9405.99.4020; 9506.11.4080; 9506.51.4000; 9506.51.6000; 9506.59.4040; 9506.70.2090; 9506.91.0010; 9506.91.0020; 9506.91.0030; 9506.99.0510; 9506.99.0520; 9506.99.0530; 9506.99.1500; 9506.99.2000; 9506.99.2580; 9506.99.2800; 9506.99.5500; 9506.99.6080; 9507.30.2000; 9507.30.4000; 9507.30.6000; 9507.30.8000; 9507.90.6000; and 9603.90.8050.

⁵⁶ "Tin- and Chromium-Coated Steel Sheet From Japan; Notice of Commission Determination To Conduct a Full Five-Year Review," 88 FR 64464 (September 5, 2023), <https://www.federalregister.gov/documents/2023/09/19/2023-20183/tin--and-chromium-coated-steel-sheet-from-japan-notice-of-commission-determination-to-conduct-a-full>.

⁵⁷ "Tin- and Chromium-Coated Steel Sheet From Japan; Denial of Request To Institute a Section 751(b) Review Concerning the Commission's Affirmative Determination," 88 FR 66052 (September 19, 2023), <https://www.federalregister.gov/documents/2023/09/26/2023-20817/tin--and-chromium-coated-steel-sheet-from-japan-denial-of-request-to-institute-a-section-751b-review>.

Sonoco Product Company, Trivium Packaging USA Inc., Crown Holdings, Inc., and Nippon Steel Corporation requested the changed circumstances review on August 5, 2022. The ITC delayed its decision on the review in January 2023 when commissioners voted to waive the 45-day time limit on determinations.

The ITA is concurrently conducting its fourth five-year review of the order to determine if revocation of the ADD order would likely lead to the continuation or recurrence of dumping.⁵⁸

The products covered by the ADD order are tin mill flat-rolled products that are coated or plated with tin, chromium or chromium oxides. Flat-rolled steel products coated with tin are known as tin plate. Flat-rolled steel products coated with chromium or chromium oxides are known as tin-free steel or electrolytic chromium-coated steel. The products are classified under HTSUS 7210.11.0000, 7210.12.0000, 7210.50.0000, 7212.10.0000, and 7212.50.0000 if of non-alloy steel and under HTSUS 7225.99.0090, and 7226.99.0180 if of alloy steel.

ITC Makes Affirmative Determination in Five-Year Reviews concerning Stainless Steel Sheet and Strip from Japan, Korea, and Taiwan

On October 2, 2023, the ITC announced it had determined that revoking the existing ADD and countervailing duty (CVD) orders on stainless steel sheet and strip from Japan, Korea, and Taiwan would likely lead to the continuation or recurrence of material injury within a reasonably foreseeable time.⁵⁹ With this affirmative determination, the existing orders on imports will remain in place. This is ITC's fourth five-year review for the ADD and CVD order, which DOC originally implemented in July 1999.

The ITC instituted the five-year review on September 1, 2022. Following adequate responses to the initiation notice from the domestic and respondent interested parties for the Japan orders, the ITC voted to conduct full reviews for all three countries. The ITC plans to publish its public report on the review on November 13, 2023.

The ITA issued the final findings of its expedited fourth sunset review of the ADD orders on December 2, 2022, finding that revocation of the ADD orders on stainless steel sheet and strip from Japan, Korea, and Taiwan would be likely to lead to the continuation or recurrence of dumping.⁶⁰ The dumping margins are set at 57.87% for Japan, 58.79% for Korea, and 21.10% for Taiwan.

The scope of the orders is stainless steel sheet and strip in coils from Japan, Korea, and Taiwan classified in the HTSUS under 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80.

⁵⁸ "Initiation of Five-Year (Sunset) Reviews," 88 FR 35832 (June 1, 2023), <https://www.federalregister.gov/documents/2023/06/01/2023-11680/initiation-of-five-year-sunset-reviews>.

⁵⁹ "USITC Makes Determinations In Five-Year (Sunset) Reviews Concerning Stainless Steel Sheet And Strip From Japan, South Korea, And Taiwan," October 2, 2023, https://www.usitc.gov/press_room/news_release/2023/er1002_64385.htm.

⁶⁰ "Stainless Steel Sheet and Strip in Coils From Japan, the Republic of Korea, and Taiwan: Final Results of Expedited Fourth Sunset Reviews of Antidumping Duty Orders," 87 FR 74133 (December 2, 2022), <https://www.federalregister.gov/documents/2022/12/02/2022-26241/stainless-steel-sheet-and-strip-in-coils-from-japan-the-republic-of-korea-and-taiwan-final-results>.

ITC Announces ADD and CVD Investigations of Aluminum Lithographic Printing Plates from China and Japan in Response to New Petition

On October 4, 2023, the ITC announced in the Federal Register that it had begun the preliminary phase of an ADD and CVD investigation into whether there is a reasonable indication that 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 imports of aluminum lithographic printing plates from China and Japan.⁶¹

Unless the Internal Trade Administration (ITA) extends the deadline, the ITC will reach its preliminary determination in the investigations by November 13, 2023 and transmit the decision to ITA by November 20, 2023. Stakeholders that want to participate in the investigations as a party should file an entry of appearance with the ITC. If the ITC preliminarily determines that injury exists, the ITA will begin its less-than-fair-value investigations.

The investigation is in response to a petition from Eastman Kodak Company, which was filed on September 28, 2023. The petitioner alleges that the covered products are sold in the United States at less than fair value by China and Japan and subsidized by the government of China. The petition alleges dumping margins of 107.64% for China and 23.52% for Japan.

The covered products are aluminum lithographic printing plates under HTSUS 3701.30.0000 and 3701.99.6060. The product may also enter under HTSUS 3701.99.3000 and 8442.50.1000. The written description of the covered product, included below, is dispositive.

Aluminum lithographic printing plates consist of a flat substrate containing at least 90% aluminum. The aluminum-containing substrate is generally treated using a mechanical, electrochemical, or chemical graining process, which is followed by one or more anodizing treatments that form a hydrophilic layer on the aluminum-containing substrate. An image-recording, oleophilic layer that is sensitive to light, including but not limited to ultra-violet, visible, or infrared, is dispersed in a polymeric binder material that is applied on top of the hydrophilic layer, generally on one side of the aluminum lithographic printing plate. The oleophilic light-sensitive layer is capable of capturing an image that is transferred onto the plate by either light or heat. The image applied to an aluminum lithographic printing plate facilitates the plate's use in offset printing processes to produce materials such as newspapers, magazines, books, yearbooks, coupons, packaging, and other printed materials.

Aluminum lithographic printing plates within the scope of these investigations include all aluminum lithographic printing plates, irrespective of the dimensions or thickness of the underlying aluminum substrate, whether the plate requires processing after an image is applied to the plate, whether the plate is ready to be mounted to a press and used in printing operations immediately after an image is applied to the plate, or whether the plate has been exposed to light or heat to create an image on the plate or remains unexposed and is free of any image.

Subject merchandise also includes aluminum lithographic printing plates produced from an aluminum sheet coil that has been coated with a light-sensitive image-recording layer in a subject country and that is subsequently unwound and cut to the final dimensions to produce a finished plate in a third country (including the United States), or exposed to light or heat to create an image on the plate in a third country (including the United States).

Excluded from the scope of these investigations are lithographic printing plates manufactured using a substrate produced from a material other than aluminum, such as rubber or plastics.

⁶¹ "Aluminum Lithographic Printing Plates From China and Japan; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations," 88 FR 68669 (October 4, 2023), <https://www.federalregister.gov/documents/2023/10/04/2023-21930/aluminum-lithographic-printing-plates-from-china-and-japan-institution-of-antidumping-and>.

DOC Postpones Preliminary Determinations in ADD Investigation of Certain Boltless Steel Shelving Units from India, Malaysia, Taiwan, Thailand, and Vietnam

On September 14, 2023, Commerce published a notice that it was postponing the preliminary determination in the ADD investigation of boltless steel shelving units prepackaged for sale from India, Malaysia, Taiwan, Thailand, and Vietnam.⁶² The preliminary determination is now due on November 21, 2023.

The investigation commenced with a petition filed by Edsal Manufacturing Co. in April 2023, a domestic manufacturer, which alleged it was being injured by imports at less than fair value from producers in the five countries. Commerce announced it had begun the investigation into the less than fair value sales for the case in a May 19 Federal Register Notice.⁶³ The petition alleges an estimated dumping margin for India of 175.31%, Malaysia of 35.45% to 81.12%, Taiwan of 78.12%, Thailand of 176.62% to 187.03%, and Vietnam of 92.60% to 224.94%.

In the parallel ITC investigation, the ITC published its determination on June 14, 2023 that there is reasonable indication that the US industry has been materially injured by reason of subject imports from Malaysia, Taiwan, Thailand, and Vietnam, and that there is reasonable indication that the US industry *will* be injured by imports of the product from India.⁶⁴ The ITC is now conducting the final phase investigations.

The scope of these investigations covers boltless steel shelving units prepackaged for sale, with or without decks (boltless steel shelving). Subject boltless steel shelving enters the United States through HTSUS statistical subheading 9403.20.0075.

The term “prepackaged for sale” means that, at a minimum, the steel vertical supports (i.e., uprights and posts) and steel horizontal supports (i.e., beams, braces) necessary to assemble a completed shelving unit (with or without decks) are packaged together for ultimate purchase by the end-user. The scope also includes add-on kits. Add-on kits include, but are not limited to, kits that allow the end-user to add an extension shelving unit onto an existing boltless steel shelving unit such that the extension and the original unit will share common frame elements (e.g., two posts). The term “boltless” refers to steel shelving in which the vertical and horizontal supports forming the frame are assembled primarily without the use of nuts and bolts, or screws. The vertical and horizontal support members for boltless steel shelving are assembled by methods such as, but not limited to, fitting a rivet, punched or cut tab, or other similar connector on one support into a hole, slot or similar receptacle on another support. The supports lock together to form the frame for the shelving unit and provide the structural integrity of the shelving unit separate from the inclusion of any decking. The incidental use of nuts and bolts, or screws to add accessories, wall anchors, tie-bars or shelf supports does not remove the product from scope. Boltless steel shelving units may also come packaged as partially assembled, such as when two upright supports are welded together with front-to-back supports, or are otherwise connected, to form an end unit for the frame. The boltless steel shelving covered by these investigations may be commonly described as rivet shelving, welded frame shelving, slot and tab shelving, and punched rivet (quasi-rivet) shelving as well as by other trade names. The term “deck” refers to the shelf that sits on or fits into the horizontal supports (beams or braces) to provide the horizontal storage surface of the shelving unit.

⁶² “Boltless Steel Shelving Units Prepackaged for Sale From India, Malaysia, Taiwan, Thailand and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,” 88 FR 63063 (September 14, 2023), accessible here: <https://www.federalregister.gov/documents/2023/09/14/2023-19896/boltless-steel-shelving-units-prepackaged-for-sale-from-india-malaysia-taiwan-thailand-and-the>

⁶³ “Boltless Steel Shelving Units Prepackaged for Sale From India, Malaysia, Taiwan, Thailand and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,” 88 FR 32188 (May 19, 2023), accessible here: <https://www.federalregister.gov/documents/2023/05/19/2023-10778/boltless-steel-shelving-units-prepackaged-for-sale-from-india-malaysia-taiwan-thailand-and-the>.

⁶⁴ “Boltless Steel Shelving Units Prepackaged for Sale From India, Malaysia, Taiwan, Thailand, and Vietnam,” 88 FR 38894 (June 14, 2023), accessible here: <https://www.federalregister.gov/documents/2023/06/14/2023-12740/boltless-steel-shelving-units-prepackaged-for-sale-from-india-malaysia-taiwan-thailand-and-vietnam>.

The scope includes all boltless steel shelving meeting the description above, regardless of: (1) vertical support or post type (including but not limited to open post, closed post and tubing); (2) horizontal support or beam/brace profile (including but not limited to Z-beam, C-beam, L-beam, step beam and cargo rack); (3) number of supports; (4) surface coating (including but not limited to paint, epoxy, powder coating, zinc and other metallic coating); (5) number of levels; (6) weight capacity; (7) shape (including but not limited to rectangular, square, and corner units); (8) decking material (including but not limited to wire decking, particle board, laminated board or no deck at all); or (9) the boltless method by which vertical and horizontal supports connect (including but not limited to keyhole and rivet, slot and tab, welded frame, punched rivet and clip).

Specifically excluded from the scope are:

- Wall-mounted shelving, defined as shelving that is hung on the wall and does not stand on, or transfer load to, the floor. The addition of a wall bracket or other device to attach otherwise freestanding subject merchandise to a wall does not meet the terms of this exclusion;
- Wire shelving units, which consist of shelves made from wire that incorporates both a wire deck and wire horizontal supports (taking the place of the horizontal beams and braces) into a single piece with tubular collars that slide over the posts and onto plastic sleeves snapped on the posts to create the finished shelving unit;
- Bulk-packed parts or components of boltless steel shelving units; and
- Made-to-order shelving systems.

DOC Issues Affirmative Finding in ADD Investigation of Certain Freight Rail Couplers and Parts Thereof from Mexico

On September 21, 2023, Commerce published the final findings in its ADD investigation of certain freight rail couplers and parts thereof from Mexico.⁶⁵ The agency determined that certain freight rail couplers and parts thereof from Mexico are being, or are likely to be, sold in the United States at less than fair value. The period of investigation was July 1, 2021 through June 30, 2022.

Commerce calculated a dumping margin for mandatory respondent ASF–K de Mexico S. de R.L. de C.V of 48.10%. This is also the “All Others” rate applicable to other producers/exporters.

The ITC will now make its final injury determination within 45 days of DOC’s determination. If the ITC also issues an affirmative determination, Commerce will impose an ADD order.

ITC Makes Affirmative Preliminary Injury Determination in ADD and CVD Investigation of Mattress Imports from 13 Countries

On September 11, 2023, the ITC issued a preliminary affirmative injury finding in the ADD and CVD investigation of mattress imported from Bosnia and Herzegovina, Bulgaria, Burma (Myanmar), India, Indonesia, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan.⁶⁶ The subject merchandise is classified under HTSUS subheadings 9404.21.00, 9404.29.10, and 9404.29.90. The ITC found there is “reasonable indication” of injury due to

⁶⁵ “Certain Freight Rail Couplers and Parts Thereof From Mexico: Final Affirmative Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances,” 88 FR 65153 (September 21, 2023), accessible here: <https://www.federalregister.gov/documents/2023/09/21/2023-20483/certain-freight-rail-couplers-and-parts-thereof-from-mexico-final-affirmative-determination-of-sales>.

⁶⁶ “Mattresses From Bosnia and Herzegovina, Bulgaria, Burma, India, Indonesia, Italy, Kosovo, Mexico, Philippines, Poland, Slovenia, Spain, and Taiwan,” 88 FR 63616 (September 15, 2023), accessible here: <https://www.federalregister.gov/documents/2023/09/15/2023-19955/mattresses-from-bosnia-and-herzegovina-bulgaria-burma-india-indonesia-italy-kosovo-mexico>.

the alleged less than fair value sale of mattresses from the 13 countries and alleged subsidization by the government of Indonesia.

Due to the ITC's preliminary affirmative determination, DOC will continue its investigation, and the ITC final phase investigation will commence.