

# US Multilateral Trade and Policy Developments

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**Japan External Trade Organization**

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## Trade Policy Developments

### USTR Issues Annual Trade Policy and China Strategies, Signaling Continuity in 2024

USTR published its 2024 Trade Policy Agenda and Annual Report (the “Policy Agenda”) on March 1, 2024, discussing the Biden administration’s recent trade policy activities and plans for 2024.<sup>1</sup> The updated Policy Agenda closely resembles those of the previous three years, describing a policy stance that prioritizes workers’ rights, agriculture exports, supply chain resilience, countering unfair market practices, and expanded public engagement. Seeking to further develop the supply chain resilience element of the Policy Agenda, USTR also issued a call for public input on supply chain resilience strategies.

Shortly before publishing the Policy Agenda, USTR also published its Report to Congress on China’s WTO Compliance (the “China Report”), an annual report that describes the administration’s trade policy related to China and tracks US-China trade policy disputes in more detail than the Policy Agenda.<sup>2</sup> As in other recent statements on USTR’s China strategy, this latest China Report describes a four part strategy for US-China trade relations: (i) investing domestically, (ii) leveraging enforcement and domestic trade tools, (iii) bilateral engagement with China, and (iv) coordinating with allies and partners.

#### USTR’s Policy Agenda

USTR’s 2024 Policy Agenda aligns with the agendas that the Biden administration has issued in the previous three years of the administration. According to USTR, the Biden administration’s trade policy agenda “stands up for workers’ rights and sustainable trade practices, supports U.S. farmers, ranchers, fishers, and food manufacturers, bolsters supply chain resilience, addresses unfair policies and practices, and advances inclusive, durable trade policy through expanded engagement.”

The Policy Agenda organizes the administration’s activities into five themes:

- Advancing a “worker-centric trade policy,” which the Policy Agenda says includes promoting worker rights, supporting decarbonization, supporting agriculture exports, and strengthening supply chain resilience;
- Re-aligning the US-China trade relationship, which is discussed further in the China Report;
- Engaging with partners and multilateral institutions, which highlights the Indo-Pacific Economic Framework for Prosperity (IPEF), the Americas Partnership for Economic Prosperity (APEP), and the WTO;
- Trade enforcement activities, including though filing disputes under the United States-Mexico-Canada Agreement (USMCA), enforcement of the African Growth and Opportunity Act’s (AGOA) qualifying conditions, protecting intellectual property rights, pressuring countries to not intervene in foreign exchange markets, and working with Congress to develop new trade rules enforcement tools; and
- Expanding stakeholder engagement.

On IPEF, USTR says it is continuing to work with the other IPEF parties to continue negotiations and “fully realize the high standards and tangible benefits of the Trade Pillar.” That said, the Policy Agenda offers no new details on USTR’s plans for continuing the negotiations. USTR also highlights APEP, WTO reform, the US-EU Trade and Technology Council (TTC), and the Global Arrangement on Sustainable Steel and Aluminum, and bilateral

<sup>1</sup> “2024 Trade Policy Agenda and 2023 Annual Report to Congress,” accessible here: <https://ustr.gov/sites/default/files/The%20Presidents%202024%20Trade%20Policy%20Agenda%20and%202023%20Annual%20Report.pdf>.

<sup>2</sup> “2023 Report to Congress on China’s WTO Compliance,” accessible here: [https://ustr.gov/sites/default/files/USTR%20Report%20on%20China's%20WTO%20Compliance%20\(Final\).pdf](https://ustr.gov/sites/default/files/USTR%20Report%20on%20China's%20WTO%20Compliance%20(Final).pdf).

negotiations with Taiwan and Kenya. With Japan, the Policy Agenda mentions efforts to deepen cooperation through meetings of the US-Japan Partnership on Trade and the January 2023 launch of the Task Force on the Promotion of Human Rights and International Labor Standards in Supply Chains.

One new addition to the Policy Agenda is a more detailed discussion of supply chain resilience objectives, which USTR considers part of the worker-centric trade policy. According to the Policy Agenda, USTR is developing a new policy approach to support US manufacturing, promote transparency and security, diversify sourcing, strengthening labor and environmental standards in other countries, and encouraging friend-shoring and near-shoring. USTR offers little detail on the specific policy initiatives under this theme, however, only mentioning the IPEF Supply Chain Agreement, APEP, and the US-Japan critical minerals trade agreement.

### Seeking input on supply chain resilience

On March 7, 2024, USTR followed the Policy Agenda with a new request for public comments to inform USTR's objectives and strategies for supply chain resilience activities.<sup>3</sup> The notice describes a government-wide "effort to proactively strengthen domestic manufacturing and to secure trusted supply chains through strategic arrangements with trusted partners (friend-shoring) and with regional partners (near-shoring)." USTR intends for these more resilient supply chains to provide more diverse sources for critical inputs, make the economy more resilient to shocks, protect labor rights and the environment, and expand domestic manufacturing.

The notice proposes a strategy broadly focused on four principles:

1. Transparency: confronting unfair trade and anticompetitive practices by other countries.
2. Diversity: helping businesses increase their supply chain sourcing options.
3. Security: promoting friend-shoring and near-shoring to strengthen supply chains.
4. Sustainability: supporting stronger labor and environmental standards in global supply chains.

Other than this general, aspirational language, USTR has not explained what specific policy actions the call for input is meant to inform. USTR noted in its press release that the information it gathers will "will support USTR's work within the White House Council on Supply Chain Resilience."<sup>4</sup>

The notice includes a list of questions to which USTR is interested in receiving suggestions from the public, including questions on how to improve international coordination on labor and environmental standards, how to reduce offshoring, and whether FTA rules of origin provisions are allowing too much value added from non-FTA countries to qualify for duty-free treatment (apparently referencing recent arguments by some domestic industry groups that the United States should raise the value thresholds in FTA origin rules and specifically exclude goods with Chinese-origin content<sup>5</sup>).

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<sup>3</sup> "Request for Comments on Promoting Supply Chain Resilience," 89 FR 16608 (March 7, 2024), accessible here: <https://www.federalregister.gov/documents/2024/03/07/2024-04869/request-for-comments-on-promoting-supply-chain-resilience>.

<sup>4</sup> Information about the White House Council on Supply Chain Resilience is accessible here: <https://www.whitehouse.gov/briefing-room/statements-releases/2023/11/27/fact-sheet-president-biden-announces-new-actions-to-strengthen-americas-supply-chains-lower-costs-for-families-and-secure-key-sectors/>.

<sup>5</sup> See, for example, recent comments to USTR from United Autoworkers (UAW) labor union on the United States-Mexico-Canada Agreement's automotive rules of origin, accessible here: <https://www.regulations.gov/comment/USTR-2023-0013-0013>; and a recent report by the protectionist lobby group Alliance for American Manufacturing, accessible here: <https://www.americanmanufacturing.org/wp-content/uploads/2024/02/on-a-collision-course-report-final-022324.pdf>.

Stakeholders interested in these issues may consider submitting comments and participating the public hearing. Written comments are due by April 22, 2024, and USTR will conduct a public hearing on May 2, 2024. Instructions for submitting comments and filing requests to appear at the hearing can be found in the Federal Register Notice.

## The China Report

The content and tenor of the China Report is largely consistent with those from recent years, demonstrating both the persistence of the various trade issues arising from China's role in the global economy, and the overall continuity of US trade policy related to China across US administrations. USTR criticizes China for its specific trade restrictions and state-led economy, then explains the Biden administration's strategy for confronting the challenge. Introducing the report, US Trade Representative Katharine Tai criticized China's approach to trade, stating: "China remains the biggest challenge to the international trading system established by the World Trade Organization. It has been 22 years since China acceded to the WTO, and China still embraces a state-directed, non-market approach to the economy and trade, which runs counter to the norms and principles embodied by the WTO[.]"

### *China's compliance with trade commitments*

The core of the report is a discussion of China's compliance with WTO commitments and a review of specific trade concerns, many of which fall outside of WTO commitments. Though the report is framed around monitoring China's WTO commitments, USTR (as in previous years) argues that most of the harm caused by China's trade policies come from the day-to-day distortionary effects of its non-market economy, and not any specific WTO violation. The report notes that "China's approach to the economy and trade, which is characterized by a routine reliance on non-market policies and practices, undermines fair, market-oriented decisions made by foreign enterprises and distorts market outcomes in significant ways."

Documenting its objections to China's trade policy and more general market practices the report highlights:

- China's use of market-distorting industrial policies;
- Preferential treatment of state-owned enterprises (SOEs);
- Domestic subsidies (through direct payments, SOEs, and state banks);
- Forced technology transfer and state-sponsored theft of intellectual property;
- Persistent market-distorting excess capacity in key industries; and
- Various other specific market access and regulatory concerns.

USTR gathered written comments from the public to inform these objections to China's practices, as well as drawing on its own experiences. USTR publishes a Federal Register Notice every August to gather this input from interested stakeholders.<sup>6</sup>

### *USTR's strategy*

Describing past efforts to address challenges, USTR argues that both efforts within the WTO and bilateral dialogues have failed to secure the fundamental changes to China's non-market economy. USTR then argues that the WTO cannot deal with the situation, seeking to justify the more confrontational approach the United States has taken outside the WTO.

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<sup>6</sup> The 2023 request for comments is at "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>.

Like the 2022 China Report, the 2023 China Report lays out a “multi-faceted strategic approach” that the Biden administration has adopted to manage the China trade relationship and issues arising from it:

- **Domestic investment:** The report frames recent domestic initiatives, such as the CHIPS and Science Act, the Bipartisan Infrastructure Law, and the Inflation Reduction Act (IRA), as a critical bulwark against China’s dominance of cutting-edge technologies. The Administration has argued that these kinds of investments are needed to make the United States internationally competitive and has asserted that the successful implementation of this domestic competitive-ness agenda is an important step towards the United States approaching trade policy challenges from a strong position.
- **Bilateral engagement with China:** Though the report prioritizes continued assertive use of enforcement tools, it still holds open the possibility of bilateral discussions. USTR lays out a broad range of issues it could address in future bilateral talks, including forced labor, specific market access concerns, and the continuation of the state-led economy itself. However, like last year, the China Report offers no pathway for how these bilateral negotiations would proceed.
- **Trade enforcement and domestic trade tools:** The report highlights the role of strict trade enforcement mechanisms as a key element of China-facing trade policy. The report notes that current trade laws were drafted decades before the non-market economy nature of China’s challenge rose to the top of the agenda, and that they are now out of date. Congress has proposed various changes in the current and the prior legislative session, though none have made it into law yet. These include proposals for measures to facilitate successive antidumping and countervailing duty investigations, reforms to the customs *de minimis* exception, and adding cross-border subsidies and currency manipulation to the scope of antidumping and countervailing duty investigations. The report itself does not make any proposals of its own for what these reforms should do.

USTR highlights Section 301 tariffs and the Phase 1 Agreement in this part of the report, calling the tariffs one of the most significant actions to date. The report details the tariffs that were imposed under the Trump administration, as well as the Section 201 report findings that led to them. In discussing the Phase 1 Agreement, the report notes that China has followed through on some, but not all, of their market access commitments. It particularly emphasizes, intellectual property rights protection, agriculture biotechnology, ractopamine, poultry trade, and registration of US food facilitates as priorities for further Chinese reform, and states that USTR is continuing to raise these issues in the bilateral consultation process established under the Phase 1 Agreement.

Ultimately, however, the report finds that the Phase 1 Agreement does not address certain fundamental problems. Other than saying that they will continue to pressure China to honor the Phase 1 commitments, the report makes no mention of what the next phase may look like. In the meantime, most of the Section 301 tariffs remain in place. The Section 301 tariffs have been undergoing a statutory four-year review since USTR published the previous China Report. This latest report does not provide any new information on the status of the long-delayed review, noting that USTR expects to complete it in 2024.

- **Coordinating actions with allies and partners:** With direct negotiations with China faring poorly, the Biden administration has elevated efforts to coordinate actions with like-minded countries. This effort to build coalitions and smooth over trade disputes in other parts of the world is a key difference between the Biden and Trump administrations’ approaches to China. Most of USTR’s effort here focuses on work with smaller coalitions of countries with similar interests to the United States.

The report particularly highlights the US-EU TTC and the US-Japan Partnership for Trade, as well as growing US-EU-Japan trilateral dialogues. It reports that the TTC has begun exchanging information and discussing coordinated actions on China’s non-market practices and subsidies, including for medical devices, clean energy, and legacy semiconductors. The report also raises the US-EU Ministerial Meeting of the Working Group on Large

Civil Aircraft in 2022, where the parties pledged to work on concerns about the development of the Chinese aerospace sector. The report also highlights emerging cooperation with US allies on countering Chinese economic coercion, most notably in the G7.

Despite USTR's apparent disappointment with the WTO, the report does make clear that it still sees the WTO as an avenue for addressing some challenges. In discussing potential WTO reforms, the report proposes changes to special and differential treatment for developing countries and toughening standards for subsidies notifications. USTR has long been concerned about China designating itself for special and differential treatment and for not being fully transparent with its WTO reporting obligations and is also now arguing for a new WTO workstream on state intervention.

## United States Considering New Restrictions on Biotechnology Trade and Investment

The Senate and the House of Representatives are considering a new bill, the Prohibiting Foreign Access to American Genetic Information Act of 2024 or the BIOSECURE Act,<sup>7</sup> which would ban the US government and organizations that receive US government funding from procuring services or equipment from certain biotechnology companies linked to China and other listed foreign adversaries.

Given the US government's large role in funding medical research and medical services provision, a broad application of the bill's restrictions could effectively exclude Chinese biotechnology-related equipment and services from the US market and force US healthcare companies to restructure supply chains. The US government is also considering new export controls, investment restrictions, and data transfer bans targeting the biotechnology sector, suggesting a new intensification of US interest in decoupling US and Chinese biotechnology sectors.

### Overview of the BIOSECURE Act

#### *The biotechnology sourcing prohibition*

The BIOSECURE Act seeks to prohibit US government funding and contracting from benefiting biotechnology companies that have ties to certain foreign adversary nations through two restrictions:

1. Prohibiting executive branch agencies from procuring or obtaining any biotechnology equipment or services that are produced or provided by biotechnology companies of concern.
2. Prohibiting executive branch agencies from entering new contracts or extending existing contracts with any entity (whether or not the entity is a biotechnology company of concern) that either: (i) uses biotechnology equipment or services in performance of the contract that are produced or provided to it by a biotechnology company of concern after the date the bill enters force, or (ii) enters any contract that would require the direct use of biotechnology equipment or services produced or provided by a biotechnology company of concern and acquired after the date the bill enters force.

Along with prohibiting procurement and contracting, the bill would also ban executive agencies from obligating or expending loans or grants to (i) procure biotechnology equipment or services produced or provided by a biotechnology company of concern, or (ii) enter a new contract or extend an existing contract with an entity covered by the contracting prohibition.

#### *Covered biotechnology equipment or services*

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<sup>7</sup> S.3558 - A bill to prohibit contracting with certain biotechnology providers, and for other purposes, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/bill/118th-congress/senate-bill/3558>; and H.R.7085 - BIOSECURE Act, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/bill/118th-congress/house-bill/7085>.

The bill's definition of biotechnology equipment or services is broad and unclear in some places. The definition could include any device or service used in conjunction with biological materials, covering equipment and activities ranging from data storage hardware to disease detection services (as well as component parts and support services), including:

- **Equipment** that is “designed for use in the research, development, production, or analysis of biological materials,” including components and accessories and “software, firmware, or other digital components that are specifically designed for use in, and necessary for the operation of, such equipment.” The bill specifies that this would include genetic sequencers, mass spectrometers, and polymerase chain reaction machines, as well as any other relevant instruments.
- **Services** for the research, development, production, analysis, detection, or provision of information (including data storage and transmission services related to biological materials), including (i) services related to use of covered equipment; and (ii) services related to disease detection, genealogical information, and related services.

The Office of Management and Budget (OMB) would also have discretion to include any other service, instrument, apparatus, machine, component, accessory, device, software, or firmware that it sees as appropriate.

#### *Covered biotechnology companies of concern*

After the passage of the bill, the OMB would be responsible for compiling a list of biotechnology companies of concern to which the prohibitions would apply. OMB would then review and update the list at least once per year to consider modifications. The Federal Acquisition Regulatory Council will subsequently revise the Federal Acquisition Regulation (FAR) to reflect this new restriction.

The bill defines the companies that OMB should include on the list – which it calls “biotechnology companies of concern” – as any entity that is:

- “Subject to the jurisdiction, direction, control, or operates on behalf of the government of a foreign adversary” (in which “foreign adversary” countries refers to North Korea, China, Russia, and Iran <sup>8</sup>);
- “To any extent involved in the manufacturing, distribution, provision, or procurement of a biotechnology equipment or service;” and
- Poses a risk to US national security due to the entity’s: (i) association with the foreign adversary’s security forces, (ii) providing multiomic data obtained via biotechnology to a foreign adversary government, or (iii) obtaining multiomic data through biotechnology without the subject’s consent.<sup>9</sup>

The bill would also require the biotechnology company of concern list to specifically include BGI, MGI, Complete Genomics, Wuxi Aptec, and any subsidiary, parent affiliate, or successor of those companies.

The bill cites the regulation governing the Committee on Foreign Investment in the United States (CFIUS) to define “control,” which covers various forms of direct or indirect power to decide important matters affecting an entity as forms of control.<sup>10</sup> The bill does not provide definitions for other key terms in its description of biotechnology companies of concern, nor does it explain how regulators should handle affiliated entities in third countries.

<sup>8</sup> “Foreign adversary” governments are those that are defined as covered nations under section 4872(d) of title 10, United States Code, accessible here: <https://www.govinfo.gov/content/pkg/USCODE-2022-title10/html/USCODE-2022-title10-subtitleA-partV-subpartI-chap385-subchapIII-sec4872.htm>

<sup>9</sup> The bill defines multiomic data as data types that include genomics, epigenomics, transcriptomics, proteomics, and metabolomics.

<sup>10</sup> See section 800.208 of title 31, Code of Federal Regulations, accessible here: <https://www.ecfr.gov/current/title-31/subtitle-B/chapter-VIII/part-800/subpart-B/section-800.208>.

*Waivers and exceptions*

The bill includes several narrow waiver authorities and exceptions:

- **Specific biotechnology exception:** Agencies may waive the prohibitions on a case-by-case basis for 365 days (with an option for a 180-day extension) if the agency submits a notification and justification to Congress.
- **Overseas healthcare services:** Agencies may waive the prohibitions for contracts related to the acquisition or provision of health care services outside the United States on a case-by-case basis if the waiver is necessary to support the activities of excepted US government employees and contractors stationed abroad and the agency submits a notification and justification to Congress.
- **Three generally excepted activities:** The prohibitions will not apply to (i) intelligence activities, (ii) the acquisition or provision of health care services outside the United States for employees of the United States or contractors directly supporting employees of the United States, and (iii) acquisition and use of publicly available human multiomic data.

*Situation in Congress*

Legislators introduced identical versions of the bill to the Senate on December 20, 2023 and to the House on January 25, 2024, both with bipartisan sponsorship. The Senate Committee on Homeland Security and Governmental Affairs reported an amended version of the Senate's bill favorably on March 6, 2024 with a strong bipartisan majority, suggesting there may be ample support in Congress for the bill to eventually succeed.

The bill is still in early phases of legislative development, having not yet passed markup in the House Oversight and Accountability Committee. As the bill makes its way through the House and Senate, further changes are likely to occur. Points that remain unclear (such as the details of the sourcing prohibition, broad nature of the covered products definition, and lack of details defining covered entities) and areas that are unaddressed (such as the lack of an appeals mechanism) could be filled out in future amendments. If the bill successfully advances (as its bipartisan support suggests it may), continued monitoring for updates to the text will help in understanding its true scope and impact on the healthcare sector.

The bill's supporters argue that the Chinese government's efforts to develop the Chinese biotechnology sector and the close relationship between the government and private sector, including for military and intelligence purposes, create privacy risks for US medical data and unfairly undercuts the competitiveness of the US biotechnology sector. Responding to those perceived risks, the bill's sourcing prohibitions would both prevent the US government from indirectly funding Chinese biotechnology activities and prevent Chinese companies from gathering US health data through biotechnology business relationships. The House of Representative's Select Committee on the Chinese Communist Party (a bipartisan committee formed in January 2023 to develop a new bipartisan Congressional policy towards China, mostly made up of Representatives who are skeptical of US engagement with China) backed these concerns in its December 2023 report on the US-China economic relationship and supports the BIOSECURE Act.<sup>11</sup> The National Security Commission on Emerging Biotechnology (a legislative advisory entity made up of leaders from the House and Senate reviewing how biotechnology advancements will affect Department of Defense activities) also recently endorsed the legislation, citing these same data security and economic competitiveness concerns.<sup>12</sup>

**Growing US security interests in the bioeconomy**

<sup>11</sup> "Select Committee Adopts Proposal to Reset Economic Relationship with The People's Republic of China," December 12, 2023, accessible here: <https://selectcommitteeontheccp.house.gov/media/press-releases/select-committee-adopts-proposal-reset-economic-relationship-peoples-republic>.

<sup>12</sup> "Federal Procurement Ban Letter," National Security Commission on Emerging Biotechnology, January 31, 2024, accessible here: <https://www.biotech.senate.gov/press-releases/federal-procurement-ban-letter/>.

The proposal comes as Congress has become increasingly concerned about Chinese access to US biotechnology and sensitive health data. Addressing this perceived risk, members of Congress have proposed restricting US investments in the Chinese biotechnology sector, restricting Chinese investment in the US biotechnology sector, expanding export controls to biotechnology products, restricting medical-related data transfers, banning Chinese biotechnology products from the US market, and adopting funding restrictions like those in the BIOSECURE Act.

Biotechnology has also been a focus from the Biden administration, which has been exploring options for supporting domestic development of the sector and debating restrictions as well. The administration's national security leaders see biotechnology, along with advanced computing (*i.e.*, AI, quantum computing, and microelectronics) and clean energy technology, as priorities for development and security scrutiny.<sup>13</sup> In September 2022, President Biden issued an Executive Order (EO) instructing the government to support the sector's development.<sup>14</sup>

The US government has been concerned about Chinese government activities in the biotechnology sector for several years, but concerns about the economic harms of decoupling the sector has been motivating a more moderate policy stance. For example, a 2019 report by the US-China Economic and Security Review Commission, argues the United States should better consider security, intellectual property, and data privacy risks associated with the Chinese biotechnology sector, but also argues that "integration and collaboration run deep, and that disrupting these linkages would bring high costs for innovation, US welfare and public wealth."<sup>15</sup>

#### *Export control proposals*

Congress is also increasing pressure on the Department of Commerce to impose new, far-reaching export controls on the biotechnology sector, similar to the export controls Commerce has imposed in the advanced semiconductor sector.

In a February 2024 letter, the Senate Intelligence Committee urged the executive branch to "take a comprehensive approach to protecting American technology, investment, data, and talent in critical technology sectors, such as biotechnology" and to specifically implement export controls on biotech.<sup>16</sup> The letter also praised the Commerce Department for adding BGI to the Entity List in 2023, but objected to how BGI, along with WuXi AppTec Co., MGI, and Complete Genomics, are continuing to "operate freely within the U.S., to purchase and/or invest in U.S. companies, and to acquire U.S. data." The Senators added that they intended to support legislation aimed at restricting the activities of Chinese biotechnology companies.

The House of Representative's Select Committee on the Chinese Communist Party is also calling for export controls. On December 12, 2023, the Select Committee published a report laying out a policy strategy for economic competition with China.<sup>17</sup> The report advocates for export controls on biotechnology, arguing that the US export control system has not adapted to changing technologies and is failing to address Chinese security threats. The report urges Congress to require the executive branch to impose general controls on exports of biotechnology and

<sup>13</sup> See, for example, Remarks by National Security Advisor Jake Sullivan at the Special Competitive Studies Project Global Emerging Technologies Summit, accessible here: <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/09/16/remarks-by-national-security-advisor-jake-sullivan-at-the-special-competitive-studies-project-global-emerging-technologies-summit/>.

<sup>14</sup> "E.O. 14081 of Sep 12, 2022: Advancing Biotechnology and Biomanufacturing Innovation for a Sustainable, Safe, and Secure American Bioeconomy," 87 FR 56849 (September 15, 2022), accessible here: <https://www.federalregister.gov/documents/2022/09/15/2022-20167/advancing-biotechnology-and-biomanufacturing-innovation-for-a-sustainable-safe-and-secure-american>.

<sup>15</sup> "China's Biotechnology Development: The Role of U.S. and Other Foreign Engagement," US – China Economic and Security Review Commission, accessible here: <https://www.uscc.gov/research/chinas-biotechnology-development-role-us-and-other-foreign-engagement>.

<sup>16</sup> "Warner and Rubio Push to Counter China in Critical Technology Sectors," February 29, 2024, accessible here: <https://www.warner.senate.gov/public/index.cfm/2024/2/warner-and-rubio-push-to-counter-china-in-critical-technology-sectors>.

<sup>17</sup> "Select Committee Adopts Proposal to Reset Economic Relationship with The People's Republic of China," December 12, 2023, accessible here: <https://selectcommitteeontheccp.house.gov/media/press-releases/select-committee-adopts-proposal-reset-economic-relationship-peoples-republic>.

other critical and emerging technologies. The report further urges the incorporation of these controls into multilateral export control regimes and into a new plurilateral regime among US allies. The Select Committee has recently urged the Biden administration to apply various sanctions to WuXi AppTec, one of the companies targeted by the BIOSECURE Act, accusing it of having ties to the Chinese military.<sup>18</sup>

#### *Bulk sensitive data Executive Order*

Targeting similar data privacy concerns to those that motivate some of the concerns with the biotechnology sector, the Biden administration's recent EO on protecting bulk sensitive data includes restrictions on transfers of certain medical data.<sup>19</sup> The EO seeks to restrict access by "countries of concern" (China (including Hong Kong and Macau), Russia, Cuba, Iran, Venezuela, and North Korea) to Americans' bulk sensitive personal data and US government-related data when such access would pose "an unacceptable risk to the national security of the United States." The EO states that data brokerages, third-party vendor agreements, employment agreements, investment agreements, and other such arrangements can provide direct and unfettered access to Americans' bulk sensitive data and thus pose unacceptable risks to US national security. The EO therefore authorizes the Attorney General to prevent the large-scale transfer of Americans' personal data to "countries of concern." Sensitive personal data is broadly defined in the EO, and includes biometric identifiers, human 'omic data (*i.e.*, data generated from humans that characterizes or quantifies human biological molecules or metabolic data), and personal health data.

#### *Outbound investment restriction proposals*

Restricting US investments in the Chinese biotechnology sector is another area where the United States could curtail connections between the US and Chinese biotechnology sectors, though no action has happened yet. The Biden administration and Congress are both developing a new system for restricting certain outbound US investments to China (including Hong Kong and Macau) in several technology sectors relevant to military, intelligence, surveillance, or cyber-enabled capabilities. The current system under development by the Biden administration does not cover biotechnology, though the White House had considered including the sector earlier in the policy's development.<sup>20</sup>

Members of Congress are considering legislation to expand the outbound investment restrictions have also proposed including coverage of some areas related to healthcare and biotech, though these proposals have not yet moved forward. The National Critical Capabilities Defense Act of 2023, introduced in May 2023, for example, included restrictions on active pharmaceutical ingredients.<sup>21</sup> Most recently, at a Select Committee hearing on the biotechnology sector on March 7, 2024, Representatives called for restricting US investment in the sector.<sup>22</sup>

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<sup>18</sup> "Gallagher, Colleagues Call on Admin to Investigate Chinese biotech Company, WuXi AppTec," February 12, 2024, House Select Committee on the CCP, accessible here: <https://selectcommitteeontheccp.house.gov/media/press-releases/gallagher-colleagues-call-admin-investigate-chinese-biotech-company-wuxi>.

<sup>19</sup> Executive Order 14117 of February 28, 2024: "Preventing Access to Americans' Bulk Sensitive Personal Data and United States Government-Related Data by Countries of Concern," 89 FR 15421 (March 1, 2024), accessible here: <https://www.federalregister.gov/documents/2024/03/01/2024-04573/preventing-access-to-americans-bulk-sensitive-personal-data-and-united-states-government-related>.

<sup>20</sup> "Executive Order 14105 of August 9, 2023: Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern," 88 FR 54867 (August 11, 2023), accessible here: <https://www.federalregister.gov/documents/2023/08/11/2023-17449/addressing-united-states-investments-in-certain-national-security-technologies-and-products-in>.

<sup>21</sup> H.R.3136 - National Critical Capabilities Defense Act of 2023, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/bill/118th-congress/house-bill/3136>.

<sup>22</sup> Hearing: "Growing Stakes: The Bioeconomy and American National Security," March 7, 2024, accessible here: <https://selectcommitteeontheccp.house.gov/committee-activity/hearings/hearing-growing-stakes-bioeconomy-and-american-national-security>.



## Trade Actions

No developments.

## Trade Agreements

No developments.

## Petitions & Investigations

### Investigations

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#### DOC Completes Expedited Five-year Review for ADD Order on Clad Steel Plate from Japan

On March 6, 2024, the Department of Commerce (DOC) published notice of its determination that the revocation of the antidumping duty (ADD) order on clad steel plate from Japan would likely lead to continuation or recurrence of dumping.<sup>23</sup> DOC determined a dumping margin of 118.53%, which is unchanged from the previous review. DOC originally announced the initiation of its portion of the fifth five-year review on November 1, 2023 and determined it would conduct an expedited review after not receiving substantive responses from the interested parties.<sup>24</sup>

The International Trade Commission (ITC) is also conducting an expedited five-year review of the ADD order, which it announced on February 22, 2024.<sup>25</sup> The ITC review will determine whether revocation of the ADD order would likely lead to continuation or recurrence of material injury within a reasonably foreseeable time. The ITC determined it would conduct an expedited review after the domestic interested party submitted an adequate response to the notice of institution, but the respondent party's response was found to be inadequate. The ITC first announced the review (the fifth for this ADD order) on November 1, 2023.<sup>26</sup>

#### Covered product

The scope of the order is all clad steel plates from Japan with a width of 600 millimeters (mm) or more and a composite thickness of 4.5 mm or more. Clad steel plate is a rectangular finished steel mill product consisting of a layer of cladding material (usually stainless steel or nickel) which is metallurgically bonded to a base or backing of ferrous metal (usually carbon or low alloy steel) where the latter predominates by weight. Cladding is the association of layers of metals of different colors or natures by molecular interpenetration of the surfaces in contact. Products under this order are classified in Harmonized Tariff Schedule of the United States (HTSUS) 7210.90.10.00, though the written description is dispositive.

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<sup>23</sup> "Clad Steel Plate From Japan: Final Results of the Expedited Fifth Sunset Review of Antidumping Duty Order," 89 FR 15973 (March 6, 2024), accessible here: <https://www.federalregister.gov/documents/2024/03/06/2024-04739/clad-steel-plate-from-japan-final-results-of-the-expedited-fifth-sunset-review-of-antidumping-duty>.

<sup>24</sup> "Initiation of Five-Year (Sunset) Reviews," 88 FR 74977 (November 1, 2023), accessible here: <https://www.federalregister.gov/documents/2023/11/01/2023-24101/initiation-of-five-year-sunset-reviews>.

<sup>25</sup> "Clad Steel Plate From Japan; Scheduling of an Expedited Five-Year Review," 89 FR 13375 (February 22, 2024), accessible here: <https://www.federalregister.gov/documents/2024/02/22/2024-03546/clad-steel-plate-from-japan-scheduling-of-an-expedited-five-year-review>.

<sup>26</sup> "Clad Steel Plate from Japan; Institution of a Five-Year Review," 88 FR 75026 (November 1, 2023), accessible here: <https://www.federalregister.gov/documents/2023/11/01/2023-24016/clad-steel-plate-from-japan-institution-of-a-five-year-review>.

## DOC Initiates ADD and CVD Investigations into Melamine from Germany, India, Japan, Netherlands, Qatar, and Trinidad and Tobago

On March 11, 2024, DOC published notice of the initiation of less-than-fair-value investigations for the ADD and countervailing duty (CVD) investigations into melamine from Germany, India, Japan, Netherlands, Qatar, and Trinidad and Tobago.<sup>27</sup> DOC intends to individually examine all known producers/exporters from each country for this investigation. Those companies, as named in the petition, are LAT Nitrogen Piesteritz GmbH from Germany; Gujarat State Fertilizer and Chemicals Limited from India; Mitsui Chemicals, Inc. from Japan; OCI Nitrogen B.V. from the Netherlands; Qatar Melamine Company and Muntajat Qatar Chemical and Petrochemical Marketing and Distribution Company from Qatar; and Methanol Holdings (Trinidad) Limited from Trinidad and Tobago. DOC is unaware of any other producers/exporters but invites interested parties to name other potential respondents in the initiation notice.

Previously, on February 21, 2023, the ITC published notice of the institution of ADD and CVD investigations and scheduling of the preliminary phase of investigations on imports of melamine from Germany, India, Japan, Netherlands, Qatar, and Trinidad and Tobago.<sup>28</sup> The ITC's preliminary investigations will seek to determine 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 reason of imports of melamine from Germany, India, Japan, Netherlands, Qatar, and Trinidad and Tobago, that are (i) alleged to be sold in the United States at less than fair value and (ii) alleged to be subsidized by the governments of Germany, India, Qatar, and Trinidad and Tobago. Unless the DOC extends the timeline, the ITC will reach its preliminary determinations by April 1, 2024 and transmit its findings to DOC by April 8, 2024. In the unlikely event that ITC reaches a negative determination, DOC will halt its investigation.

Cornerstone Chemical Company filed the petitions on February 14, 2024, alleging that imports of melamine from Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago are being sold in the United States at less than fair value, and that the governments of Germany, India, Qatar, and Trinidad and Tobago are providing countervailable subsidies. The petition alleges dumping rates of 5% - 140% for Germany; 378% - 619% for India; 104% - 124% for Japan; 33% - 75% for the Netherlands; 191% - 622% for Qatar; and 230% - 458% for Trinidad and Tobago. The petitioner did not provide specific countervailable rates for the CVD allegations.

In 2023, Japan exported \$1.4 million of melamine to the United States, a slight decrease from \$1.9 million in 2022. In total, the United States imported \$50.5 million of melamine from the target countries in 2023 and \$138.8 million in 2022.

### Covered product

DOC has issued several revisions to the original scope description after requesting more information and clarification from the petitioner, which it included in the initiation notice. Interested parties may submit additional comments on the scope until March 25, following the instructions in the initiation notice.

The merchandise subject to these investigations is melamine (Chemical Abstracts Service (CAS) registry number 108-78-01, molecular formula C<sub>3</sub>H<sub>6</sub>N<sub>6</sub>). Melamine is also known as 2,4,6-triamino-s-triazine; 1,3,5-Triazine-2,4,6-triamine; Cyanurotriamide; Cyanurotriamine; Cyanuramide; and by various brand names. Melamine is a crystalline

<sup>27</sup> "Melamine From Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago: Initiation of Less-Than-Fair-Value Investigations," 89 FR 17413 (March 11, 2024), accessible here: <https://www.federalregister.gov/documents/2024/03/11/2024-05127/melamine-from-germany-india-japan-the-netherlands-qatar-and-trinidad-and-tobago-initiation-of>.

<sup>28</sup> "Melamine From Germany, India, Japan, Netherlands, Qatar, and Trinidad and Tobago; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations," 89 FR 13090 (February 14, 2024), accessible here: <https://www.federalregister.gov/documents/2024/02/21/2024-03497/melamine-from-germany-india-japan-netherlands-qatar-and-trinidad-and-tobago-institution-of>.

powder or granule. All melamine is covered by the scope of these investigations irrespective of purity, particle size, or physical form. Melamine that has been blended with other products is included within this scope when such blends include constituent parts that have been intermingled, but that have not been chemically reacted with each other to produce a different product. For such blends, only the melamine component of the mixture is covered by the scope of these investigations. Melamine that is otherwise subject to these investigations is not excluded when commingled with melamine from sources not subject to these investigations. Only the subject component of such commingled products is covered by the scope of these investigations.

The subject merchandise is listed in HTSUS subheading 2933.61.0000. Although the HTSUS subheading and CAS registry number are provided for convenience, the written description of the scope is dispositive.

## **United States Initiates Global Safeguard Investigation into Fine Denier Polyester Staple Fiber Imports**

The US International Trade Commission (ITC) has initiated a global safeguard investigation into all imports of fine denier polyester staple fiber (fine denier PSF).<sup>29</sup> The covered product is listed under Harmonized Tariff Schedule of the United States (HTSUS) subheading 5503.20.0025.

Safeguard investigations allow the government to temporarily restrict imports of a product if those imports are threatening serious injury to a domestic industry. Unlike antidumping duties (ADD) and countervailing duties (CVD), the government does not have to find sales at less than fair value or subsidies to invoke safeguard import restrictions. On the other hand, safeguard actions require that the threatened injury be serious and that the increased imports are the substantial cause of that injury, which creates a higher standard for the injury determination than in ADD and CVD investigations. If ITC makes an affirmative determination that injury has occurred, the president may impose new trade barriers, including tariffs and quotas, targeting all import sources.

The United States imported \$179 million under HTSUS 5503.20.0025 in 2023 and \$183 million in 2022. This compares to \$120 million and \$132 million in 2018 and 2019, respectively. Thailand has been the largest source of US imports for the past few years (totaling \$63 million in 2023 and \$56 million in 2022), followed by India, Taiwan, Indonesia, and Mexico.

### **The Petition**

Three domestic producers of fine denier PSF (Fiber Industries LLC d/b/a Darling Fibers; Nan Ya Plastics Corporation, America; and Sun Fiber LLC) filed the petition on February 28, 2024. The petition alleges that, in the past few years, imports have increased in both absolute terms and as a share of US domestic consumption. Increasing imports, the petition argues, has led to falling production, declining financial performance, and reduced investment and employment in the domestic industry

The petitioners recommend several potential remedies should ITC make an affirmative determination, seeking action that will address the large increase in imports and the low prices of those imports, including:

- A country specific-quota system,
- Disallowing use of temporary import bonds,

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<sup>29</sup> US notification to the WTO on fine denier polyester staple fiber, G/SG/N/6/USA/14, March 11, 2024, accessible here: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SG/N6USA14.pdf&Open=True>; and "Fine Denier Polyester Staple Fiber; Institution of Investigation, Scheduling of Public Hearings, and Determination That the Investigation Is Extraordinarily Complicated," 89 FR 18435 (March 13, 2024), accessible here: <https://www.federalregister.gov/documents/2024/03/13/2024-05338/fine-denier-polyester-staple-fiber-institution-of-investigation-scheduling-of-public-hearings-and>.

- Tariffs,
- Tariff-rate quotas,
- Tax credits to subsidize domestic production or purchase of domestic products, and
- Applying the yarn-forward rules of free trade agreements to US-produced polyester fiber.

### **The Covered product**

The covered product under this petition is: fine denier polyester staple fiber, not carded or combed, measuring less than 3.3 decitex (3 denier) in diameter. The scope covers all fine denier polyester staple fiber, whether coated or uncoated.

The scope excludes (i) fiber equal to or greater than 3.3 decitex (more than 3 denier, inclusive) currently imported under HTSUS statistical reporting numbers 5503.20.0045 and 5503.20.0065; and (ii) low-melt PSF defined as a bicomponent polyester fiber having a polyester fiber component that melts at a lower temperature than the other polyester fiber component, which is currently imported under HTSUS statistical reporting number 5503.20.0015.

### **The Safeguard Investigation**

Section 201 of the Trade Act of 1974 empowers the president to impose duties, quotas, and other remedies in response to serious injuries to domestic industries that are substantially caused by imports. ITC can initiate these investigations in response to requests from domestic industry representatives, the president, Congress, or on its own. The United States has recently used the authority to apply restrictions on solar cells and modules and large residential washing machines.

Safeguard investigations must reach an injury determination in 120 days (with an option for a 30-day extension). Within 180 days, ITC must transmit the findings and recommended remedies (in the event of a positive determination) to the president. The president, not ITC, ultimately decides what remedies the United States will impose (if any at all). Relief actions under safeguards are temporary, set at a four-year duration with an option to extend for another four years.

For the fine denier PSF investigation, ITC has invoked the 30-day extension and will make the injury determination by July 9, 2024. The ITC will submit its report to the president by August 26, 2024. Information on the investigation process, briefing filing deadlines, and how to participate are available in the March 13, 2024 Federal Register Notice. Persons wishing to participate as parties in the investigation must file an entry of appearance within 21 days of the notice's March 13 publication. The ITC will hold a hearing on the injury allegations on June 4, 2024 and then hold a hearing to discuss potential remedies on July 23, 2024. Requests to appear at the hearings should be filed in writing with the Secretary to the Commission on or before May 24, 2024, for the injury hearing, and July 17, 2024, for the remedy hearing, which prehearing conferences will follow.

### **Existing ADD and CVD orders**

The United States has maintained ADD on imports of fine denier PSF from China, India, Korea, and Taiwan and CVD on imports from China and India since 2018.<sup>30</sup> In its first sunset review of the orders, finalized in June 2023, the

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<sup>30</sup> "Fine Denier Polyester Staple Fiber From the People's Republic of China, India, the Republic of Korea, and Taiwan: Antidumping Duty Orders," 83 FR 34545 (July 20, 2018), accessible here: <https://www.federalregister.gov/documents/2018/07/20/2018-15567/fine-denier-polyester-staple-fiber-from-the-peoples-republic-of-china-india-the-republic-of-korea>; "Fine Denier Polyester Staple Fiber from the People's Republic of China and India: Amended Final Affirmative Countervailing Duty Determination for the People's Republic of China and Countervailing Duty Orders for the People's Republic of China and India," 83 FR 11681 (March 16, 2018), accessible here: <https://www.federalregister.gov/documents/2018/03/16/2018-05371/fine-denier-polyester-staple-fiber-from-the-peoples-republic-of-china-and-india-amended-final>; and "Fine Denier Polyester Staple Fiber from the People's Republic of China and India: Amended Final Affirmative Countervailing

Department of Commerce maintained the duties at the following rates: a dumping margin of 103.06% and subsidy rates ranging from 37.75% to 47.57% for China; a dumping margin of 21.43% and subsidy rates ranging from 14.35% to 28.33% for India; a dumping margin of 45.23% for Korea; and a dumping margin of 48.86% for Taiwan.<sup>31</sup> The ITC's full five-year injury review of the orders is ongoing.

The petitioners argue that these duties have been insufficient to protect the US industry from rapidly rising imports. The petition cites increased imports from countries that the existing ADD and CVD orders do not cover, as well as rising imports from some countries that are subject to the orders.

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Duty Determination for the People's Republic of China and Countervailing Duty Orders for the People's Republic of China and India," 83 FR 12149 (March 20, 2018), accessible here: <https://www.federalregister.gov/documents/2018/03/20/C1-2018-05371/fine-denier-polyester-staple-fiber-from-the-peoples-republic-of-china-and-india-amended-final>.

<sup>31</sup> "Fine Denier Polyester Staple Fiber From the People's Republic of China, India, the Republic of South Korea, and Taiwan: Final Results of Expedited First Sunset Reviews of the Antidumping Duty Orders," 88 FR 37512 (June 8, 2023), accessible here: <https://www.federalregister.gov/documents/2023/06/08/2023-12260/fine-denier-polyester-staple-fiber-from-the-peoples-republic-of-china-india-the-republic-of-south>; "Fine Denier Polyester Staple Fiber From the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order," 88 FR 36278 (June 2, 2023), accessible here: <https://www.federalregister.gov/documents/2023/06/02/2023-11777/fine-denier-polyester-staple-fiber-from-the-peoples-republic-of-china-final-results-of-the-expedited>; and "Fine Denier Polyester Staple Fiber From India: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order," 88 FR 37513 (June 8, 2023), accessible here: <https://www.federalregister.gov/documents/2023/06/08/2023-12261/fine-denier-polyester-staple-fiber-from-india-final-results-of-the-expedited-first-sunset-review-of>.