

US Multilateral Trade and Policy Developments

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Trade Policy Developments

US Congress Resumes Activity on Farm Bill Renewal

Congress resumed work to renew the Farm Bill in May 2024, and members are considering proposals to change the bill's foreign trade provisions, add new investment restrictions, and increase domestic subsidies. On May 24, 2024, Republicans advanced their proposed renewal bill through the House of Representatives' Committee on Agriculture. Democrats, meanwhile, are preparing a proposal of their own in the Senate. Whether Congress will successfully bring these proposals together and pass a compromise bill into law by the September 2024 deadline is uncertain.

Background on the Farm Bill and the Situation in Congress

The Farm Bill is an omnibus package of food and agriculture policies that Congress typically must renew every five years. The legislation includes policies and funding for agriculture commodity subsidies, crop insurance, farm loans, food assistance for low-income households, rural development financing, environmental conservation, scientific research, horticultural development, forestry management, renewable energy production, and agricultural trade policy. Regular renewal of the Farm Bill is necessary to maintain funding for the subsidies and food assistance programs. Combining the farm subsidies and food assistance programs in the same legislation has helped maintain a majority coalition that regularly supports the Farm Bill's renewal.

The United States is now operating under the 2018 Farm Bill, the Agriculture Improvement Act of 2018. The 2018 Farm Bill expanded crop insurance and made various modifications to commodity subsidies, conservation programs, and the food assistance programs. The 2018 Farm Bill had been scheduled to expire at the end of 2023, but Congress extended it for one more year in November 2023 after legislators could not agree to a renewal plan. The extended 2018 Farm Bill will expire on September 30, 2024.

The final Farm Bill renewal will need majority support in both the Republican-majority House and the Democrat-majority Senate, making a bipartisan compromise necessary. There is widespread support in both parties to renew the Farm Bill ahead of the November elections, but whether they will be able to make a compromise in the short amount of time left remains to be seen. If the Republican proposal succeeds in the House and the Democrat proposal succeeds in the Senate, legislators will then have to negotiate a common version that can win support from both parties in both chambers. If legislators cannot reach a compromise before September 30, they would likely extend the 2018 Farm Bill again. Extending the 2018 Farm Bill into 2025 would likely mean the next session of Congress – which might be led by different politicians with different policy objectives – will become responsible for the renewal.

Republicans advancing Farm Bill proposal in the House

House Agriculture Committee Chair G.T. Thompson (R-PA) introduced the Republican proposal, H.R.8467, or the Farm, Food, and National Security Act of 2024, on May 17, 2024.¹ The Agriculture Committee promptly approved the bill during a May 23, 2024 markup by a vote of 33 to 21. Four Democrats voted for the bill, along with the Republicans. The bill will now have to pass a vote on the House floor, where the close partisan divide makes its likelihood of success less certain.

Trade and investment measures

The bill includes notable trade and investment policy changes, summarized below.²

- **Increasing funding for promoting agricultural exports (Section 3201):** The bill would double funding for the Market Access Program (MAP) and Foreign Market Development Program (FMD), the US Department of Agriculture's (USDA) principal export promotion programs. The MAP's funding would be increased from \$200 million per year to \$400 million per year and the FMD's funding would be increased from \$34.5 million per year to \$69 million per year. The bill would also establish a new technical assistance program under the FMD to improve infrastructure in foreign markets to assist US agricultural exports. The program would provide needs

¹ H.R.8467 - Farm, Food, and National Security Act of 2024, 118th Congress, accessible here: <https://www.congress.gov/bill/118th-congress/house-bill/8467>.

² The bill's authors have been promoting the bill's trade and investment restriction measures in recent media appearances. See, e.g., "Washington must not let politics stand in the way of American agriculture," May 29, 2024, accessible here: <https://thehill.com/opinion/congress-blog/4691368-farm-bill-agriculture-trade/>.

assessments, training, and other technical assistance and support improvements to distribution infrastructure like cold chain storage and ports.

- **Promoting US specialty crops (Section 3201):** The bill would instruct the executive branch to report to Congress on efforts to promote specialty crop exports and to protect US specialty crops from import competition. “Specialty crops” includes fruits and vegetables, tree nuts, dried fruits, and horticulture and nursery crops (including floriculture). The bill directs the government to examine foreign trade barriers to US exports, foreign subsidies, and policies that may be leading to unfairly priced imports. The bill contemplates Section 301 tariffs and WTO dispute settlement actions to protect US specialty crop producers.
- **Protecting common food names in export markets (Section 3202):** The bill would instruct the executive branch to pressure foreign governments and discourage the registration of geographical indications (GIs)³ that exclude US food products. Under this measure, the US government would create a list of “common names,” which are names customarily used for food products. If US export markets treat any of these designated common names as GIs, the US government would consider it a trade barrier.

The bill then specifically instructs the USDA to “coordinate efforts with the United States Trade Representative to secure the right of United States agricultural producers, processors, and exporters to use common names for agricultural commodities or food products in foreign markets through the negotiation of bilateral, plurilateral, or multilateral agreements, memoranda of understanding, or exchanges of letters that assure the current and future use of each common name identified by the Secretary in connection with United States agricultural commodities or food products.”

The Farm Bill’s GI proposal is the latest effort by the US food industry to convince the US government to adopt a tougher stance on foreign GIs. This is the first time Congress has added a GI measure to a Farm Bill. The bill uses the language that was proposed earlier in this legislative session in the SAVE Act of 2023.⁴ US food producers and their allies in Congress have become increasingly concerned with the growing use of GI restrictions in other countries, especially for products like wines and cheeses of European origin. With the European Union now promoting its GI policies in free trade agreements, US food producers are concerned about losing market access in more countries.

- **Developing domestic sources of critical minerals (Section 10212):** The bill would instruct the executive branch to consider designating potash, phosphates, and other minerals necessary for the production of fertilizer as critical minerals under the Energy Act. The executive branch would then be instructed to develop strategies for promoting the development of new domestic sources of these minerals and make recommendations to Congress.
- **Establishing a working group on seasonal and perishable fruits and vegetables (Section 3203):** The bill would establish a new interagency working group to monitor and assess seasonal and perishable fruits and vegetables trade. The working group would be instructed to “coordinate as appropriate regarding potential additional trade actions and investigations” and “recommend programs or assistance that the Secretary could provide to producers of seasonal and perishable fruits and vegetables to address market impacts.”

The US seasonal fruit and vegetable industry has been seeking increased protection from import competition (primarily from Mexico) for several years with little success. The industry is heavily concentrated in Florida, an

³ A geographical indication identifies a good as originating in a specific territory, region or locality where a particular quality, reputation, or other characteristic is essentially attributable to its geographical origin.

⁴ S.1652 - SAVE Act of 2023, 118th Congress (2023-2024), <https://www.congress.gov/bill/118th-congress/senate-bill/1652>. See also, “Rep. Fischbach on the introduction of the SAVE Act,” May 18, 2023, <https://fischbach.house.gov/2023/5/rep-fischbach-on-the-introduction-of-the-save-act>.

influential state in national elections. Most recently, the United States Trade Representative (USTR) and USDA unveiled a new Seasonal and Perishable Agricultural Products Advisory Committee on May 30, 2024, which will be comprised of businesses and industry associations from the sector.⁵ The committee will work with the government to recommend policies to support Southeastern US seasonal fruit producers.

- **Establishing a new Agricultural Trade Enforcement Task Force (Section 3311):** The bill would establish a new Agricultural Trade Enforcement Task Force, which would be instructed to develop and implement a strategy for enforcing market access commitments for agriculture trade. The proposal includes specific instructions that USTR should file a WTO dispute settlement case against India's minimum support price policy. The bill would require the task force to report to Congress regularly about its efforts to pursue dispute settlement cases, including the outcomes of appellate body decisions.
- **Increasing transparency for plant import detentions (Section 12409):** The bill would require US Customs and Border Protection (CBP) to issue new guidance that provides a process through which an importer can obtain information about imported plants that CBP has detained under the Lacey Act. Under this new process, CBP would have to inform importers of the reasons for the detention, the length of the detention, the tests that are being conducted on the plants, and any information the importer could provide to accelerate the resolution of the detention.
- **Increasing scrutiny of foreign investment in US farmland (Sections 12301, 12302, 12303, and 12304):** The bill includes several measures that would increase scrutiny of foreign investment in US farmland, including:
 - Providing the Committee on Foreign Investment in the United States (CFIUS) with the reports on foreign ownership of US agricultural land, which the USDA produces under the Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA).
 - Implementing the recommendations made by the Government Accountability Office in its January 2024 report about the performance of the AFIDA reporting system.⁶
 - Creating a new streamlined process for electronic submission of AFIDA disclosures and a new database to track the investment data. Congress has instructed USDA to create an electronic system in the past, but the Farm Bill would provide the funding USDA needs to build the system.
 - Establishing a new investigations office at USDA that would monitor and enforce AFIDA reporting obligations and cooperate with national security authorities to report concerning farmland acquisitions to CFIUS and counter malign foreign efforts to steal agricultural technology and disrupt US farming.
 - Expanding civil penalties for investors that fail to report investments through the AFIDA system.
 - Producing a new annual report on investments in US agricultural land by foreign countries of concern (i.e., China, North Korea, Russia, and Iran), state sponsors of terrorism, and foreign persons that are citizens of, or headquartered in such countries. The reports would describe the specific investments and assess risks related to food security, industrial espionage, intellectual property transfer, critical infrastructure security, and other national security interests.

⁵ "USTR, USDA Announce Appointments to Seasonal and Perishable Agricultural Products Advisory Committee," May 30, 2024. <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2024/may/ustr-usda-announce-appointments-seasonal-and-perishable-agricultural-products-advisory-committee>.

⁶ "Foreign Investments in U.S. Agricultural Land: Enhancing Efforts to Collect, Track, and Share Key Information Could Better Identify National Security Risks," GAO-24-106337, accessible here: <https://www.gao.gov/products/gao-24-106337>.

In response to new concerns about Chinese investment in US farmland, politicians in Washington are increasingly interested in expanding CFIUS' national security investment restrictions to the food and agriculture sector. Representatives have introduced several bills to restrict investment in the past years, but none have yet moved forward. The concerns were the subject of a recent Agriculture Committee hearing on March 20, 2024.⁷ The Republican's Farm Bill proposal is more moderate, focused on enhancing data collection and improving coordination between agriculture regulators and national security authorities. The Republican Farm Bill's supporters say these measures will address "China's malign influence in our food supply," and prevent China from controlling US food production.

Changes to farm subsidy programs

The Republican bill would expand domestic farm commodity subsidy and crop insurance programs. The bill includes increases to the reference prices for commodities that are covered under the Price Loss Coverage (PLC) and Agricultural Risk Coverage (ARC) programs, increasing the potential payments to farmers. The bill would also expand crop insurance programs in ways that are meant to meet the needs of specialty crop farms and farms that are vulnerable to climate change.

The bill would limit the activities of the Commodity Credit Corporation (CCC) by reducing its subsidy programs to just those specifically authorized by Congress, diverting subsidy money away from executive branch-designed programs. The CCC's remaining budget would then be redirected to the Farm Bill's commodity subsidies and crop insurance programs, funding those programs' subsidies increases. The bill would also redirect \$17 billion of Inflation Reduction Act (IRA) climate change programs funding to the Farm Bill's general environmental conservation programs.

Democrats will soon propose a Farm Bill in the Senate

The Democrats are developing their own proposal for the Farm Bill's renewal, though they have not yet submitted a full text to Congress. Compared to the Republican proposal, Democrats would likely want a final bill that includes more funding for food assistance programs and climate change policies. Following the introduction of the House Republicans' proposed Farm Bill, Senator Debbie Stabenow (D-MI and chair of the Senate Agriculture Committee) noted the Democrats and Republicans are close together on many topics but objected strongly to the Republicans' positions on food assistance funding and the proposed changes to the CCC.⁸

As Sen. Stabenow suggested in her statement, outlines of the forthcoming Democrat Farm Bill show there is substantial alignment between the parties on the proposed changes to export and investment policy provisions.⁹ Like the Republican bill, the Democrats have said their bill would also:

- Double export promotion funding and support technical assistance to other countries;
- Develop a strategy for promoting specialty crops exports;
- Establish a working group dedicated to protecting seasonal fruit and vegetable producers from import competition;
- Instruct US trade negotiators to pressure other countries into not adopting GIs; and

⁷ "The Danger China Poses to American Agriculture," House Committee on Agriculture hearing, accessible here: <https://agriculture.house.gov/calendar/eventsingle.aspx?EventID=7738>.

⁸ "Chairwoman Stabenow Statement on House Republican Farm Bill," May 17, 2024, accessible here: <https://www.agriculture.senate.gov/newsroom/dem/press/release/chairwoman-stabenow-statement-on-house-republican-farm-bill>.

⁹ "Chairwoman Stabenow Unveils the Rural Prosperity and Food Security Act," May 1, 2024, accessible here: <https://www.agriculture.senate.gov/newsroom/dem/press/release/chairwoman-stabenow-unveils-the-rural-prosperity-and-food-security-act>.

- Add new tools for enforcing compliance with AFIDA and strengthening oversight of foreign investment.

The Democrat proposal would also increase reference prices for the PLC and ARC, while also lowering the thresholds for triggering the payouts to farmers. Like the Republican bill, the Democrat bill would transfer IRA's climate change funding to the Farm Bill. However, unlike the Republican proposal, the Democrats would require that the money be used for climate change-related farm programs.

US Agriculture Department Announces Expansion of Lacey Act Plant-Derived Products Import Declarations

On May 31, 2024, the US Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) published its proposal for Phase VII of the Lacey Act plant products import declaration implementation.¹⁰ The Lacey Act of 1900 is an expansive anti-wildlife trafficking law, prohibiting trade (including international trade) of illegally taken, possessed, transported, or sold (either under US law or foreign law) fish, animals, timber, and plants.

Phase VII significantly expands the Lacey Act's coverage, applying the supply chain declaration requirements to all remaining plant-derived products that have not been subject to the earlier phases of Lacey Act implementation. The expansion will cover various wood articles, cork, shoes, tools, industrial machinery, vehicle components, boats, firearms, essential oils, furniture, and consumer products. Starting on December 1, 2024, importers of these products must file declarations with their customs entry documents that identify the specific plants contained in the imported products and their country of harvest.

The Lacey Act's plant product import rules

In 2008, Congress significantly expanded Lacey Act through Section 8204 of the 2008 Farm Bill (the Food, Conservation, and Energy Act of 2008),¹¹ which applied new import restrictions and supply chain documentation requirements to a broad range of plants and plant products.

Besides making it unlawful to import illegally harvested plants, the 2008 amendments make it unlawful to import any plants or plant products without filing an import declaration that documents the scientific name and country of harvest of the plants. APHIS has been gradually implementing and expanding the import declaration system since April 2009. Phases I, II, and III entered effect in 2009; Phase IV in 2010; Phase V in 2015; and Phase VI in 2021. The Phase VII expansion will fully apply the requirements to all plant-related imports, completing implementation of the law. Phase VII had previously been scheduled for implementation in 2023 but was delayed.

Declaration requirements

Importers must file the Lacey Act's declaration upon importation along with all other standard import documents. Importers must identify the component of their imported article that is a plant product, the scientific name of that plant, the plant's country of harvest (which may differ from the final article's country of origin), the quantity of the plant material, and the share of plant products in the article that are recycled plant materials (if the plant product is paper). Most importers today would fulfill this requirement electronically through the Automated Commercial Environment (ACE) upon or before arrival. In some situations, importers may instead need to use APHIS' Lacey Act Web Governance System (LAWGS) for the filings. Filers of paper declarations would use PPQ Form 505.¹²

¹⁰ "Implementation of Revised Lacey Act Provisions," 89 FR 47122 (May 31, 2024), accessible here: <https://www.federalregister.gov/documents/2024/05/31/2024-11901/implementation-of-revised-lacey-act-provisions>.

¹¹ Sec. 8204. Prevention of illegal logging practices, H.R.2419 - Food, Conservation, and Energy Act of 2008, 110th Congress (2007-2008), accessible here: <https://www.congress.gov/110/statute/STATUTE-122/STATUTE-122-Pg923.pdf>.

¹² PPQ Form 505 - Plant and Plant Product Declaration, accessible here: <https://www.aphis.usda.gov/sites/default/files/ppq505.pdf>; and Lacey Act Web Governance System (LAWGS), accessible here: https://lawgs.aphis.usda.gov/lawgs/faces/login_initial.jsf.

Whether or not the imported product was illegally harvested, importing any covered product without the required declaration or with an inaccurate declaration can lead to strict civil and criminal penalties. Civil penalties may be imposed up to \$250 for accidental misdeclarations and \$10,000 for intentional misdeclarations, along with civil forfeiture of the imports. Criminal penalties for intentional violations of the declaration requirement can lead to fines, probation, and prison sentences of up to five years for individuals.

Exceptions

Common plant cultivars (except trees), common food crops, scientific specimens, live plants that are intended to remain planted, and packing materials used in transport of other imports are excepted from the requirements. The requirement also includes a *de minimis* threshold, exempting imports for which the plant material is less than 5% of the imported product's total weight and weighs less than 2.9 kilograms in total.

The requirement also only applies to shipments that enter through formal customs entry (entries with a value over \$2,500). The requirement does not apply to informal entry, *de minimis* entry, in-bond movements, or carnets.

Phase VII declaration implementation

With this final expansion, importers must file declarations for all plant products in the remaining covered Harmonized Tariff Schedule (HTS) codes (unless the plant product is a 100% composite material). The full list of the HTS codes is available in the Federal Register notice, and is summarized below:

- ❑ Industrial and medicinal plants under HTS Chapter 12, including ginseng, ephedra, and African cherry bark;
- ❑ Ephedra saps and extracts under HTS Chapter 13;
- ❑ Vegetable plaiting materials under HTS Chapter 14, including those used in brushes, brooms, tanning, and dyeing;
- ❑ Essential oils under HTS Chapter 33, including sassafras, floral water, and odoriferous preparations for burning or perfuming rooms;
- ❑ Wooden matches under HTS Chapter 36;
- ❑ Pine oil under HTS Chapter 38;
- ❑ Wood cases under HTS Chapter 42, including boxes for musical instruments and jewelry;
- ❑ Plywood, laminated wood, and densified wood under HTS Chapter 44;
- ❑ Cork and cork articles under HTS Chapter 45;
- ❑ Basketware and wickerwork under HTS Chapter 46, including bamboo and rattan matting, plaiting, wickerwork, and basketware;
- ❑ Fishnets made of natural fibers under HTS Chapter 56;
- ❑ Footwear under HTS Chapter 64, including various shoes with wood or cork soles or platforms;
- ❑ Umbrellas and umbrella parts under HTS Chapter 66;
- ❑ Wood tools and cutlery under HTS Chapter 82, including hammers, saws, planes, table implements, knives, and manicure and pedicure sets;

- Machinery under HTS Chapter 84, including refrigerating and freezing equipment assemblies; brewery machinery, textile spinning machinery and components, and drying machines;
- Electrical machinery under HTS Chapter 85, including loudspeakers and amplifiers;
- Vehicles under HTS Chapter 87, including steering wheels, trailers, wagons, and carts;
- Ultralight aircraft under HTS Chapter 88;
- Boats under HTS Chapter 89, including ferry boats, cruise ships, fishing vessels, sailboats, canoes, row boats, floating docks, and tugboats;
- Optical, photographic, cinematographic, measuring, checking, precision, medical, and surgical instruments under HTS Chapter 90;
- Clocks and watches under HTS Chapter 91;
- Musical instruments, parts, and boxes under HTS Chapter 92;
- Firearms and parts under HTS Chapter 93;
- Furniture and bedding under HTS Chapter 94, including various wooden furniture and upholstered wooden frames;
- Various toys, games, and articles of sporting equipment under HTS Chapter 95; and
- Various miscellaneous manufactured articles under HTS Chapter 96, including brushes, buttons, pens, pencils, stamps, lighters, combs, pins, and mannequins.

The full list of products already subject to the requirements can be found on the APHIS website. The list includes timber, certain furniture, certain essential oils, wood cases, charcoal, and certain musical instruments.¹³

Public comments

APHIS is accepting public comments on the proposed expansion until July 30, 2024. The Notice includes further instructions on how to participate. Interested stakeholders may submit comments to the Lacey Act docket on Federal eRulemaking Portal.¹⁴ Participating in the public comment process can help shape the outcome of the action and prompt regulators to further clarify actions. APHIS' responses may also inform any potential legal challenge should a final action be adopted.

Preparing for compliance

The relatively wide scope of products and industries targeted under the Phase VII expansion means many companies that have not been previously subject to the Lacey Act will now be covered by the import declaration requirements. Companies will need to review their traded products for any that are under the listed HTS codes and then verify if those products contain the covered plants and plant materials.

Full supply chain reviews will often be needed to establish compliance for these covered materials. APHIS is advising companies to begin communicating with their suppliers to identify the plant species and the harvest location. To help

¹³ Lacey Act Declaration Implementation Schedule, accessible here: <https://www.aphis.usda.gov/plant-imports/lacey-act/implementation-schedule>.

¹⁴ Docket APHIS-2008-0119: Implementation of Revised Lacey Act Provisions, accessible here: <https://www.regulations.gov/docket/APHIS-2008-0119>.

importers that are unfamiliar with the program prepare for compliance, APHIS is funding free compliance training programs through the International Wood Products Association.¹⁵

United States Developing Federal Contracting Prohibition on Chinese Semiconductors

The Federal Acquisition Regulatory Council (FAR Council) is developing new amendments to the Federal Acquisition Regulation (FAR) that will prohibit the US federal government from procuring or obtaining products and services that include (or, in some cases, that connect to) semiconductor products produced by certain listed Chinese companies. The prohibition targets Semiconductor Manufacturing International Corporation (SMIC), ChangXin Memory Technologies (CXMT), and Yangtze Memory Technologies Corp (YMTC), and would also affect any other company that is selling products or services to the US government that may use semiconductors made by the listed companies. The prohibition — for which an Advanced Notice of Proposed Rulemaking (ANPRM) and opportunity for public comment was issued on May 3, 2024 — will enter effect by December 23, 2027.

Section 5949 of the 2023 NDAA

Paragraphs (a), (b), and (h) of section 5949 of the National Defense Authorization Act for Fiscal Year 2023¹⁶ (2023 NDAA) included a two-part prohibition on using certain semiconductors in the fulfillment of US government contracts: part (A) states that government cannot “procure or obtain, or extend or renew a contract to procure or obtain, any electronic parts, products, or services that include covered semiconductor products or services” and part (B) states the government cannot “enter into a contract (or extend or renew a contract) with an entity to procure or obtain electronic parts or products that use any electronic parts or products that include covered semiconductor products or services.” The prohibitions would not have any retroactive effect on services or systems acquired before the date the regulation enters effect.

The prohibited “covered semiconductor products or services” are semiconductors, semiconductor products, products that incorporate semiconductor products, or services that use such products, that are designed, produced, or provided by SMIC, CXMT, YMTC, or any subsidiary, affiliate, or successor of those companies. The executive branch may also designate the products of other companies as covered by determining a company is “owned or controlled by, or otherwise connected to, the government of a foreign country of concern [*i.e.*, China, Russia, North Korea, and Iran].”

In effect, the part (A) prohibition would require contractors that provide goods or services to the federal government to certify that those goods and services do not use or contain the prohibited semiconductors made by the specified Chinese companies. Part (B) is likely intended to restrict connections between the newly acquired systems and already installed systems, which may contain the prohibited semiconductor products or services, though its scope will need further elaboration in the FAR Council’s regulations. To implement these prohibitions, the FAR Council will also need to explain the compliance certification process, contract provisions, enforcement processes, remedies for violations, supply chain audit standards, and certain ambiguities within the scope of coverage in the forthcoming regulation.

The measure is similar the Federal Acquisition Supply Chain Security Act of 2018’s (FASCSA) exclusion and removal orders¹⁷ and the 2021 prohibition on Chinese telecommunications services and equipment from Huawei, ZTE, and

¹⁵ IWPA Lacey Act Compliance Training, accessible here: <https://www.iwpawood.org/page/LaceyActComplianceTraining>.

¹⁶ H.R.7776 - James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Public Law No. 117-263), accessible here: <https://www.congress.gov/bill/117th-congress/house-bill/7776>.

¹⁷ “Federal Acquisition Regulation: Implementation of Federal Acquisition Supply Chain Security Act (FASCSA) Orders,” 88 FR 69503 (October 5, 2023), accessible here: <https://www.federalregister.gov/documents/2023/10/05/2023-21320/federal-acquisition-regulation-implementation-of-federal-acquisition-supply-chain-security-act>.

certain surveillance products companies (the section 889 prohibition, also known as the Huawei ban).¹⁸ The new semiconductor prohibition is narrower than the section 889 prohibition though, as it does not prohibit federal contractors from using the covered products in their own systems and it does not require the government or contractors to remove the covered items from systems acquired before the rule's entry into force.

The FAR Council's ANPRM

On May 3, 2024, the Department of Defense (DoD), the General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA) – the three members of the FAR Council – issued the initial ANPRM explaining how the government intends to implement the section 5949 prohibition and inviting public comment.¹⁹ The ANPRM does not contain the full proposed text of the regulation, only explaining certain definitions and summarizing the contractual requirements.

The ANPRM proposes the prohibition will read as follows:

- “Section 5949(a)(1)(A) of the NDAA for FY 2023 prohibits executive agencies from procuring or obtaining electronic products or electronic services that include covered semiconductor products or services.”
- “Section 5949(a)(1)(B) of the NDAA for FY 2023 prohibits executive agencies from procuring or obtaining electronic products that use electronic products that include covered semiconductor products or services; however, this prohibition does not apply to electronic products used in systems that are not critical systems.”

To comply with this prohibition, offerors bidding for federal contracts will have to (i) ensure they are not using prohibited products in the equipment or services offered, (ii) certify in contract bids that the prohibited products will not be included, and (iii) enter contractual arrangements to assure ongoing compliance and to remove prohibited products that are accidentally included in the equipment or services sold.

The part (B) prohibition

The FAR Council's ANPRM interprets the part (B) prohibition to mean that otherwise-compliant electronic products that connect to and use electronic systems which contain covered semiconductor products or services would also be prohibited. The ANPRM provides an example where “section 5949(a)(1)(B) could restrict a Federal agency from acquiring a replacement control panel within a critical system that enables an Internet of Things (IoT) device that includes a covered semiconductor product or service and was purchased prior to the effective date of the prohibition.” The ANPRM does not provide a definition for “use,” making it unclear what kinds of electronic connections are covered by this prohibition.

Regardless of what kind of activity the part (B) prohibition is intended to restrict, it would only apply to such activities when they occur with “critical systems.” According to the 2023 NDAA, a critical system is defined in the same way as a “national security system,”²⁰ which is “a telecommunications or information system operated by the Federal Government, the function, operation, or use of which (A) involves intelligence activities; (B) involves cryptologic activities related to national security; (C) involves command and control of military forces; (D) involves equipment that is an integral part of a weapon or weapons system;” or any other system critical to direct fulfillment of military or

¹⁸ FAR 52.204-24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, accessible here: <https://www.acquisition.gov/far/52.204-24>; and FAR 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment, accessible here: <https://www.acquisition.gov/far/52.204-25>.

¹⁹ “Federal Acquisition Regulation: Prohibition on Certain Semiconductor Products and Services,” 89 FR 36738 (May 3, 2024), accessible here: <https://www.federalregister.gov/documents/2024/05/03/2024-08735/federal-acquisition-regulation-prohibition-on-certain-semiconductor-products-and-services>.

²⁰ Based on section 11103(a)(1) of USC title 40, accessible here: <https://www.govinfo.gov/content/pkg/USCODE-2022-title40/pdf/USCODE-2022-title40-subtitleIII-chap111-sec11103.pdf>.

intelligence missions (except for systems used for routine administrative and business applications). The FAR Council and the DoD may also designate other systems as critical systems.

Products covered

The ANPRM confirms the prohibition would apply to any “covered semiconductor products or service,” which is defined as a “semiconductor, a semiconductor product, a product that incorporates a semiconductor product, or a service that utilizes such a product, that is designed, produced, or provided by” SMIC, CXMT, YMTC, or other companies that may be designated by the FAR Council. To help clarify the scope of products subject to the prohibition, the ANPRM defines “semiconductor” using the definition set out in the CHIPS and Science Act of 2022: “an integrated electronic device or system most commonly manufactured using materials including, but not limited to, silicon, silicon carbide, or III-V compounds, and processes including, but not limited to, lithography, deposition, and etching.”

The prohibition applies to all applicable semiconductor products in all federal solicitations and contracts. There are no exemptions for contracts that are below the Simplified Acquisition Threshold (SAT), commercial products (including commercially available off-the-shelf (COTS) items), or for commercial services.

Waivers

The Secretary of Defense, Director of National Intelligence, Secretary of Commerce, and Secretary of Energy are empowered to issue general waivers of the prohibition for any executive agency. All other executive agencies can issue two-year waivers if they determine there are no alternative products available, and that issuing the waiver would not compromise national security interests. The ANPRM states the forthcoming full regulation will clarify the waiver processes.

Supply chain compliance standards

To satisfy the prohibitions, prospective government contractors will have to provide certifications of their compliance, following a process similar to the existing section 889 prohibition and FASCA compliance processes. All contractors making an offer on a federal solicitation would have to “certify, after conducting a reasonable inquiry, to the non-use of covered semiconductor products or services in electronic products or electronic services provided to the Government.” These restrictions would also be made part of a new standard FAR contract clause, which would obligate the contractor to continue abiding by the prohibition and to report violations. The contract will include a flow-down clause, requiring the contractor to include the same prohibition and reporting standards in contracts with its subcontractors and suppliers. The FAR Council intends to include the certification requirement and contract clause in all new federal contract offers, based on an assumption that most government acquisitions involve electronic products and services.

To fulfill the certification and contract standards, contractors are required to conduct a “reasonable inquiry” into their supply chains to detect and prevent use of the covered semiconductor products and services. A reasonable inquiry is an enquiry “designed to uncover any information in the entity’s possession about whether any electronic products or electronic services that are provided to the Government (1) Include covered semiconductor products or services; or (2) Use electronic products that include covered semiconductor products or services.” The ANPRM clarifies that to fulfill this standard, contractors may rely on certifications of compliance from subcontractors and covered entities that supply electronic products or services.

Generally, the FAR Council does not envision contractors conducting independent supplier audits to demonstrate compliance. However, the ANPRM also notes that closer due diligence reviews will be required when supplier entities are “established or operated in foreign countries of concern.” The ANPRM does not elaborate on what these additional due diligence requirements will include or how they would be triggered.

There will be additional compliance obligations for federal contractors that are “covered entities,” which are companies that develop semiconductors that are direct products of US-origin technology and purchase covered semiconductor products from SMIC or entities connected to the foreign countries of concern. Covered entities that are federal contractors will have to disclose the inclusion of any covered semiconductors in their products to all their customers. If the covered entity fails to report the presence of covered semiconductors in a product that is later used as part of a government contract, that covered entity would be responsible for any corrective action.

Federal contractors and subcontractors will need to notify federal authorities within 60 days of discovering an actual or suspected inclusion of a covered semiconductor product or service in a critical system. Contractors and subcontractors that report and then remedy accidental violations of the prohibition will not be subject to civil liability or findings of non-responsibility, providing a safe harbor. Contractors cannot claim the costs of corrective action as allowable incurred costs under cost-reimbursement contracts.

Call for public comments and next steps

The FAR Council is accepting public feedback on the ANPRM until August 2, 2024 (previously July 2, 2024). The Federal Register notice includes instructions on how interested stakeholders can submit feedback via the Federal eRulemaking portal at regulations.gov. Besides general feedback, the notice includes 18 specific questions on which the FAR Council is seeking public advice. The questions cover potential needs for other scope clarifications and definitions, the details of the solicitation certification and contract clause, waiver authorities, how companies presently assess supply chains and the level of visibility into input sources, estimations of the business impact of the prohibitions, opportunities for finding alternative semiconductor sources, and the potential for a government-maintained list that reports on what commercial products contain prohibited semiconductors.

Latest Updates

On June 26, 2024, the FAR Council extended the deadline for public comments from July 2 to August 2, providing stakeholders with another month to prepare responses.²¹ The June 26 update also provides a system for stakeholders to submit business confidential information, which the original call for input had not.

The FAR Council is likely to issue a Notice of Proposed Rulemaking (NPRM) after reviewing the public comments and completing a draft of the regulation. If the FAR Council issues an NPRM, it would include another opportunity for the public to submit feedback. The 2023 NDAA requires the FAR Council to promulgate the final regulations by December 23, 2025. Those final regulations would then enter effect on December 23, 2027, giving companies another two years to prepare.

Separate regulatory action from the FAR Council on the 2023 NDAA's Section 5949(g) mandate is also under development. Section 5949(g) requires the FAR Council to develop a supply chain risk mitigation plan for non-prohibited semiconductors and advise on any additional needed regulations.

US Senate Continues Customs Reform Discussion with Trade Facilitation Proposal

On June 10, 2024, Senators Bill Cassidy (R-LA) and Catherine Cortez Masto (D-NV), both members of the Senate Finance Committee, circulated a long-awaited proposal for trade facilitation reforms to US customs processes.²² The Senators intend to turn the proposal into a full bill, but they have not announced a specific timeline for when they will

²¹ “Federal Acquisition Regulation: Prohibition on Certain Semiconductor Products and Services,” 89 FR 53380 (June 26, 2024), accessible here: <https://www.federalregister.gov/documents/2024/06/26/2024-13819/federal-acquisition-regulation-prohibition-on-certain-semiconductor-products-and-services>.

²² “Trade Facilitation: U.S. Customs Laws for the 21st Century,” June 2024, accessible here: <https://www.cassidy.senate.gov/wp-content/uploads/2024/06/Trade-Facilitation-Framework.pdf>.

finish their work. The staff drafting the bill will likely continue working with traders and other interested stakeholders to continue developing the details of the bill over the coming months.

Trade facilitation proposal

The Senators are trying to identify areas where the United States can reduce burdens on trade while not compromising on trade rules enforcement. The proposal argues that “opportunities exist to ease the flow of goods across the border while also maintaining the level of enforcement necessary to combat issues like forced labor and counterfeits” and “customs modernization must strike the appropriate balance of reducing burdens and costs for the trade industry while maintaining safety and security.”

The proposal includes basic descriptions of the key provisions the authors intend to include in the bill, which are summarized below:

- **Create a “One U.S. Government at the Border” (1USG):** Creates a true single window for entry data filing and cargo release decisions, enhancing the Automated Commercial Environment (ACE) to better integrate US Customs and Border Protection (CBP) and Partner Government Agencies (PGA) filing requirements.
- **Streamline data collection:** Establishes new data requirement parameters to ensure that data collection requirements from different PGAs do not overly burden traders.
- **Duty drawback:** Simplifies the duty drawback process, making it more efficient and accelerating the claims process.
- **Information sharing:** Instructs CBP to provide better compliance information to traders by updating its website and the Customs-Trade Partnership Against Terrorism (CTPAT) Trade Compliance Handbook and making CBP representatives more available for answering inquiries.
- **Responding to inquiries from traders:** Encourages US government agencies to respond to actions and requests from traders in a timelier manner.
- **Export process improvements:** Streamlines export processes and reducing penalties for clerical errors in export data filings.
- **Study of duty and fee structures:** Authorizes the Government Accountability Office (GAO) to study current duties and fees and make recommendations to Congress.
- **Improve Centers of Excellence:** Instructs the Centers of Excellence to identify and provide access to import specialists on an industry basis to support importers on post-entry and clearance procedures for imported merchandise impacted by admissibility issues.

The measures described in the proposal broadly reflect reforms that traders have requested in previous consultations with Congress and CBP.²³ The Senators also note they are continuing to discuss other policy options with the private sector.

Customs Modernization Act

²³ See, e.g., a 2023 letter to Congress from the US Chamber of Commerce that includes many of the same proposals, at “U.S. Chamber Letter on Customs Modernization Priorities,” June 6, 2023, accessible here: <https://www.uschamber.com/security/supply-chain/u.s.-chamber-letter-on-customs-modernization-priorities>.

Previously, on December 7, 2023, Senators Bill Cassidy (R-LA) and Sheldon Whitehouse (D-RI) introduced the Customs Modernization Act of 2023 (CMA), a bipartisan bill to strengthen customs enforcement.²⁴ The CMA's sponsors intend for it to increase CBP access to international supply chain data, expand the government's use of collected data, as well as make supply chains more visible and easier to target in enforcement actions and strengthen oversight of *de minimis* shipments.

The CMA also built on the consultations with CBP and private sector stakeholders, but US industry representatives objected to the bill for focusing disproportionality on tightening enforcement. In announcing the CMA, Sen. Cassidy recognized its lack of trade facilitation measures, and said he would support a separate bipartisan trade facilitation framework that Congress would unveil in 2024. The new proposal is an early step in the process. If the measures become law, trade facilitation proposal and the CMA would be the most significant update to the laws governing US import/export procedures since 1993.

US Customs Targeting *de Minimis* Compliance, Plans New Regulations

US Customs and Border Protection (CBP) is cracking down on shipments (including e-commerce shipments) entering the United States through *de minimis* channels, amid growing concerns about lax enforcement in the sector. In recent weeks, CBP has increased detentions and suspended several customs brokers. CBP is also preparing new entry filing tools to encourage better compliance and a new proposed *de minimis* entry regulation is under final review.

Background on *de minimis* entry

The *de minimis* entry process under Section 321 of the Tariff Act of 1930 allows an importer to bring shipments into the United States without filing formal entry paperwork or paying taxes and duties so long as the total daily value of entries is below \$800 for each consignee. *De minimis* entry gives Americans access to a wider variety of goods, facilitates trade, supports the e-commerce industry, and decreases inspection burdens for CBP. Despite those advantages and the program's long history, *de minimis* has recently invited controversy among groups seeking stronger customs law enforcement, industries that have suddenly found themselves competing with new low-cost cross-border e-commerce retailers, and those seeking to reduce US trade with China (China is the source of about half of *de minimis* entries). CBP's new actions respond to these concerns.

Recent enforcement actions

Since May, CBP has seized shipments of e-commerce purchases, diverted cargoes into extra screening, and temporarily suspended some customs brokers from using the Entry Type 86 Test (ET86, the most common and efficient type of *de minimis* entry filing). Media reports suggest the actions have been unusually aggressive and disrupted shipping for some traders and airlines, though shipping data has not shown any significant system-wide fall in trade.

Though CBP does not usually elaborate on specific law enforcement actions, Acting Commissioner Troy Miller issued a statement on May 31 announcing the activities.²⁵ The statement acknowledged CBP is "taking action to ensure compliance and minimize the exploitation of the small package, or *de minimis*, environment." The statement focused on efforts by CBP to ensure that brokers using ET86 have complied with its requirements. The statement explained that CBP had suspended several brokers for non-compliance, though it did not disclose the specific grounds for the

²⁴ S.3431 - Customs Modernization Act of 2023, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/bills/118th-congress/senate-bill/3431>.

²⁵ "Statement from CBP Acting Commissioner Troy Miller on New Efforts to Enhance Enforcement and Prevent Exploitation in the De Minimis Environment," May 31, 2024, accessible here: <https://www.cbp.gov/newsroom/announcements/statement-cbp-acting-commissioner-troy-miller-new-efforts-enhance>.

suspensions. Brokers can have their status reinstated by demonstrating to CBP they have a plan to remedy the alleged compliance failures.

CBP's actions follow another announced crackdown on textile imports, which included a commitment to stronger targeting of e-commerce apparel shipments.²⁶

Compliance issues detected by CBP

On June 20, 2024, CBP held a webinar discussing *de minimis* rules compliance. Most of the webinar focused on the entry filing violations that CBP's inspections are encountering in their investigations. CBP also previewed several changes planned for the Automated Commercial Environment (ACE) entry filing system that are intended to improve compliance.

CBP focused on the following compliance concerns:

- **Exceeding the \$800 limit and structuring:** Traders are splitting shipments to disguise orders that exceed \$800, or otherwise importing more than is permitted while still claiming *de minimis* treatment. To better enforce the limit, CBP plans to deploy a new tool to ACE that will track consignees across entry filings and sum the values of those entries. Once entries reach \$800 under a consignee name, ACE will begin rejecting entry filings for that consignee. CBP will issue more information on the system soon. The tool will deploy to the ACE test environment in July and fully launch in August or September.
- **Invalid powers of attorney:** Traders are entering incorrect names and making other errors like incorrect signing dates. Customs brokers must be designated to enter shipments through a valid power of attorney.
- **Vague and incorrect cargo descriptions and classifications:** CBP is seeing problems with vague e-commerce manifest descriptions and have intensified enforcement against it (entry regulations require cargo descriptions to be "precise"). To assist with compliance, CBP recently deployed a new cargo message that notifies traders when merchandise descriptions appear vague.²⁷ Next, CBP will create a new tool in ACE that will reject those vague descriptions when entered. The enforcement systems target a specific list of inappropriate descriptions that CBP will update regularly.²⁸ CBP is also detecting HTS misclassifications in ET86 filings where full HTS codes are required.
- **Invalid consignee names:** Some shipments lack proper names for the consignee. CBP is developing a new ACE feature that will reject absent or fake names.
- **Invalid postal addresses for consignees:** Some shipments are missing postal addresses for the consignees. CBP is working on a new ACE feature that will verify postal addresses.
- **Other data errors:** CBP also highlighted general issues with traders entering junk data for fields like piece count and vendor.
- **Suspicious weight to value ratios:** CBP is screening entries for heavy shipments that have low reported *de minimis* values. Though there is no explicit rule on shipment weight, CBP is monitoring entries for weight to value ratios that appear unrealistic.

²⁶ "New DHS Textile Enforcement Actions Crack Down on Illicit Trade to Support 500,000 American Textile Jobs," April 5, 2024, accessible here: <https://www.dhs.gov/news/2024/04/05/new-dhs-textile-enforcement-actions-crack-down-illicit-trade-support-500000>.

²⁷ CSMS # 60144714 - Update on Vague Merchandise Description Cargo Messages, April 11, 2024, accessible here: <https://content.govdelivery.com/accounts/USDHSCBP/bulletins/395bc4a>.

²⁸ See the "Vague Item Description" list on CBP's e-commerce trade webpage, accessible here: <https://www.cbp.gov/trade/basic-import-export/e-commerce>.

CBP is also preparing to implement a new requirement for users of ET86 to file entry documents prior to or upon arrival, removing the allowance for importers to file for up to 15 days after entry.²⁹ Requiring complete filings in advance will help CBP enforce requirements and gather data on inbound cargo, which could enable more effective targeting of high-risk shipments and will enable the other changes to ACE that CBP is planning. Originally scheduled for implementation in early 2024, CBP has delayed the change several times. Deployment is now scheduled for August 3, 2024.

Forthcoming *de minimis* entry regulation changes

CBP is preparing to issue a proposal for more thorough reforms to the *de minimis* entry regulations, which would reorganize the entry process for e-commerce and other low value shipments. The new system will combine successful elements of ET86 and the Section 321 Data Pilot into a standard filing. CBP expects the reforms will improve automation, encourage compliance, and make it easier for inspectors to profile and target higher-risk shipments. The current ET86 system will sunset when this new system enters force.

CBP's completed Notice of Proposed Rulemaking (NPRM) is now under final review at the Office of Management and Budget (OMB). The NPRM will publish to the Federal Register once it completes review, which does not have a specific date scheduled. When published, the NPRM will include an opportunity for interested stakeholders to offer feedback on the reforms, which can help shape the final rule. CBP will not finalize the regulation until it reviews and responds to the public feedback.

US Congress Considering New Restrictions on Chinese-made Commercial Drones

The US government is considering several proposals to limit Chinese access to the US commercial drone market. Most recently, the House of Representatives advanced legislation in June 2024 that would add DJI (China's leading commercial drone manufacturer) to the Federal Communications Commission's (FCC) Covered List, effectively banning DJI from obtaining necessary US regulatory permits for its products. Other proposals to restrict Chinese drones are also under initial stages of consideration, including tariffs, import prohibitions, and transaction bans under existing regulatory authorities.

June 26, 2024 hearing on Chinese industrial policy

In a June 26, 2024 hearing, members of the House of Representatives' Select Committee on the Chinese Communist Party (CCP) reiterated calls for new market access barriers, suggesting tariffs, data security measures, subsidies, export controls, and outbound investment restrictions targeting the commercial drone sector.³⁰ The Committee argued that commercial drones are a strategically significant industry, positioning the sector alongside industries like green energy, semiconductors, steel, and shipbuilding in Washington's emerging industrial policy agenda. In his opening remarks, Committee Chair Rep. John Moolenaar (R-MI) said it should be the United States' goal to "clear our skies of Chinese-made drones."

Countering CCP Drones Act

²⁹ "Test Concerning Entry of Section 321 Low-Value Shipments Through the Automated Commercial Environment (ACE) (Also Known as Entry Type 86); Republication With Modifications," 89 FR 2630 (January 16, 2024), accessible here: <https://www.federalregister.gov/documents/2024/01/16/2024-00698/test-concerning-entry-of-section-321-low-value-shipments-through-the-automated-commercial>.

³⁰ Select Committee on the Chinese Communist Party Holds Hearing — "From High Tech to Heavy Steel: Combatting the PRC's Strategy to Dominate Semiconductors, Shipbuilding, and Drones," accessible here: <https://selectcommitteeontheccp.house.gov/media/media-advisories/select-committee-chinese-communist-party-holds-hearing-high-tech-heavy-steel>.

H.R.2864, the Countering CCP Drones Act, would add the equipment and services of DJI and its affiliates to the FCC Covered List under Section 2 of the Secure Networks Act.³¹ DJI is the largest commercial drone manufacturer in the world and has been the main target of US concerns.

Electronic devices that emit or use radio frequencies must obtain equipment authorization from the FCC to be marketed, imported, or used in the United States. The FCC's rules provide two procedures for obtaining equipment authorization: (1) by certification or (2) by a Supplier's Declaration of Conformity (SDoC). These two procedures differ significantly, with certification requiring that documentation be submitted to an FCC-recognized certification body, and SDoC relying on a self-declaration of compliance that lacks active oversight.

On November 11, 2022, complying with the Secure Equipment Act of 2021, the FCC adopted new rules revising the equipment authorization procedures.³² Among other changes, the new FCC rules now prohibit authorization of equipment included on the Covered List — a list of equipment and services found to pose an unacceptable risk to US national security or the safety of US persons, as identified by the FCC's Public Safety and Homeland Security Bureau (PSHSB). The Covered List identifies producers of such equipment by name. Huawei, ZTE, and several other Chinese telecommunications and surveillance companies are currently listed.³³

Adding DJI to the Covered List would prohibit the FCC from issuing telecommunications equipment and video surveillance equipment authorizations to the company's products, essentially excluding covered DJI products from the US market. Any DJI products that require FCC authorization but are not subject to the Covered Lists' coverage would also be banned from using SDoC authorization, forcing them to use the more burdensome certification process. Violation of these rules would be treated as a violation of the Communications Act of 1934, which gives the FCC authority to assess monetary penalties.

Representatives Elise Stefanik (R-NY) and Mike Gallagher (R-WI) introduced the bill to the House on April 25, 2023. The House Committee on Energy and Commerce approved it unanimously on March 20, 2024, sending it to the House floor for further consideration. A similar bill is under development in the Senate.³⁴

2025 National Defense Authorization Act

Rather than voting on the Countering CCP Drones Act as a standalone bill, Representatives in instead added it to the House's version of the 2025 National Defense Authorization Act (NDAA).³⁵ The House approved the 2025 NDAA on June 17, 2024, including the Countering CCP Drones Act as an amendment in Section 1722. To become law, the House's 2024 NDAA requires reconciliation with the Senate's 2024 NDAA, which does not currently include a comparable section. Considering that Democratic party Senators are working on a bill similar to the House's Countering CCP Drones Act, it is possible there is enough support for the final 2025 NDAA to include the measure.

Potential ICTS Rule action

³¹ H.R.2864 - Countering CCP Drones Act, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/bill/118th-congress/house-bill/2864>.

³² "Protecting Against National Security Threats to the Communications Supply Chain Through the Equipment Authorization Program," 88 FR 7592 (February 6, 2023), accessible here: <https://www.federalregister.gov/documents/2023/02/06/2022-28263/protecting-against-national-security-threats-to-the-communications-supply-chain-through-the>.

³³ See "List of Equipment and Services Covered by Section 2 of The Secure Networks Act," accessible here: <https://www.fcc.gov/supplychain/coveredlist>.

³⁴ "Daily Montanan: Tester To Introduce Bill Cracking Down On Chinese-Made Drones," Senator Jon Tester, June 18, 2024, accessible here: <https://www.testersenate.gov/newsroom/news-coverage/daily-montanan-tester-to-introduce-bill-cracking-down-on-chinese-made-drones/>.

³⁵ H.R.8070 - Servicemember Quality of Life Improvement and National Defense Authorization Act for Fiscal Year 2025, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/bill/118th-congress/house-bill/8070>.

Members of Congress seeking a ban on Chinese drones are also advocating for the executive branch to ban the products under recently introduced national security regulations that restrict certain information and communications technology and services (ICTS) transactions (the “ICTS rule”).³⁶

The ICTS regulations at 15 CFR 7 authorize the Secretary of Commerce to prohibit transactions or impose mitigation measures for ICTS that have been designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction of a foreign adversary if the Secretary determines that the ICTS poses an undue or unacceptable risk to US national security or the safety of US persons. China (including Hong Kong), Cuba, Iran, North Korea, Russia, and the Maduro Regime in Venezuela are the designated adversary countries. The rules are enforced by the newly formed Office of Information and Communications Technology and Services (OICTS) at the Bureau of Industry and Security (BIS). BIS reviews transactions that are referred to it case-by-case after determining the transactions are covered by the regulations.

BIS issued the first prohibition under the rule on June 25, 2024, targeting Kaspersky Labs antivirus software.³⁷ Other prohibitions are under consideration. On February 29, 2024, for example, BIS issued an advance notice of proposed rulemaking asking for public input on potential restrictions to address risks to national security posed by the ICTS components of connected vehicles.³⁸

On June 13, 2024, the House of Representatives Select Committee on the CCP asked the Secretary of Commerce to consider restricting Chinese drones under the ICTS rule.³⁹ The Representatives argue that drones made by Chinese companies pose the same national security risks as the ICTS components in vehicles that BIS is now investigating. The committee’s letter has no legal consequence of its own, but BIS can pursue an investigation of the drones if it determines the associated ICTS transactions meet the regulation’s criteria.

Proposals for tariffs

Members of Congress are also advocating for higher tariffs on Chinese drones. In March 2024, the Select Committee on the CCP called on the Biden administration to substantially raise Section 301 tariffs on Chinese drones.⁴⁰ Drones imported from China already face a 25% tariff under the Section 301 action against China, but the committee argues the rate is too low to make US manufacturers competitive. The committee’s letter further calls for the government to investigate drone imports from Malaysia, alleging without evidence that drones imported from Malaysia are illegally transshipped from China. The letter also proposes using Section 232 authorities and antidumping and countervailing

³⁶ EO 13873 of May 15, 2019, “Securing the Information and Communications Technology and Services Supply Chain,” 84 FR 22689 (May 17, 2019), accessible here: <https://www.federalregister.gov/documents/2019/05/17/2019-10538/securing-the-information-and-communications-technology-and-services-supply-chain>; and EO 14034 of June 9, 2021, “Protecting Americans’ Sensitive Data From Foreign Adversaries,” 86 FR 31423 (June 11, 2021), accessible here: <https://www.federalregister.gov/documents/2021/06/11/2021-12506/protecting-americans-sensitive-data-from-foreign-adversaries>. The implementing regulations can be found at 15 CFR Part 7, accessible here: <https://www.ecfr.gov/current/title-15/subtitle-A/part-7>.

³⁷ “Final Determination: Case No. ICTS-2021-002, Kaspersky Lab, Inc.,” 89 FR 52434 (June 25, 2024), accessible here: <https://www.federalregister.gov/documents/2024/06/24/2024-13532/final-determination-case-no-icts-2021-002-kaspersky-lab-inc>; and “Commerce Department Prohibits Russian Kaspersky Software for U.S. Customers,” June 20, 2024, accessible here: https://www.bis.gov/sites/default/files/files/KL-press_release-CLEAN.pdf.

³⁸ “Securing the Information and Communications Technology and Services Supply Chain: Connected Vehicles,” 89 FR 15066 (March 1, 2024), accessible here: <https://federalregister.gov/d/2024-04382>; and “Citing National Security Concerns, Biden-Harris Administration Announces Inquiry into Connected Vehicles with ICTS Components and Systems From Foreign Adversaries,” February 29, 2024, accessible here: <https://www.bis.doc.gov/index.php/documents/about-bis/newsroom/press-releases/3458-2024-02-29-citing-national-security-concerns-biden-harris-administration-announces-inquiry-into-connected-vehicles/file>.

³⁹ Letter to Secretary of Commerce Gina Raimondo, June 13, 2024, Select Committee on the Chinese Communist Party, accessible here: <https://selectcommitteeontheccp.house.gov/sites/evo-subsites/selectcommitteeontheccp.house.gov/files/evo-media-document/2024-06-13%20ICTS%20UAV%20letter%20clean.pdf>.

⁴⁰ Letter to Secretary Raimondo, Secretary Mayorkas, and Ambassador Tai, March 19, 2024, Select Committee on the Chinese Communist Party, accessible here: <https://selectcommitteeontheccp.house.gov/sites/evo-subsites/selectcommitteeontheccp.house.gov/files/evo-media-document/3.19.24%20Letter%20to%20Raimondo%20Mayorkas%20and%20Tai%20-%20PRC%20UAVs.pdf>.

duties to target the sector. USTR ultimately did not increase the tariffs on Chinese drones as part of its May 2024 expansion of the Section 301 tariffs.

A recently introduced bill, H.R.8416, the Drones for First Responders (DFR) Act, would increase tariffs imports of Chinese drones, eventually ban their import, and introduce new subsidies.⁴¹ The bill would raise tariffs on unmanned aircraft classified under HTS 8806 to 30% upon its enactment. The tariff would then increase to 35% in the bill's second year, 40% in its third year, 45% in its fourth year, and then 50% plus a \$100 specific tariff for all subsequent years. Finally, beginning in 2030, all drones that include certain Chinese components would be prohibited from entering the United States (subject to certain exceptions), regardless of the end-product's country of origin. The bill would also establish a grant program to subsidize the purchase of drones from sources other than China by US police, firefighters, farmers, infrastructure providers. Revenue from the tariffs would fund the grants, which makes the size of the grant program uncertain. Like the other recent proposals, Rep. Stefanik and leaders of the Select Committee on the CCP are sponsoring the DFR Act. It was introduced to the House on May 15, 2024 and awaits further action in committee.

Current federal procurement ban and sanctions

The American Security Drone Act, which became law as part of the 2024 NDAA in 2023, prohibits federal procurement and use of UAVs manufactured or assembled by certain foreign entities, including entities in China and their affiliates.⁴² The law instructed the Federal Acquisition Regulatory Council to add the covered drones to prohibition lists in the Federal Acquisition Regulations, along with certain exceptions.

In recent years, the government has also added DJI to BIS's Entity List, the Department of Defense Chinese military companies list, and the Office of Foreign Assets Control's (OFAC) Chinese Military-Industrial Complex list. The actions limit US exports to DJI, restrict DJI from raising money in the United States, and limit DJI's access to government contracts, but do not completely ban the company or other Chinese drone makers from the United States.

Congress Introduces Bill to Suspend 15% Tariff on Titanium Sponge Imports until 2031

On June 28, 2024, Reps. Dan Kildee (D-MI) and Brad Wenstrup (R-OH) introduced a bill to temporarily suspend the United States' 15% tariff on titanium sponge (H.R.8912, or the Securing America's Titanium Manufacturing Act of 2024) to the House of Representatives, where it was referred to the Committee on Ways and Means for consideration.⁴³ A bipartisan group of six Senators introduced an identical bill (S.4015) on March 21, 2024. S.4015 was referred to the Committee on Finance, which has yet to act on it.⁴⁴

The tariff suspension

Titanium sponge, classified under US Harmonized Tariff Schedule (HTSUS) subheading 8108.20.00, is subject to a 15% most favored nation (MFN) applied tariff. The bill would temporarily reduce the MFN rate to 0% through December 31, 2031. Following the sunset of this provision, the MFN tariff rate would revert to 15%.

⁴¹ H.R.8416 - To amend the Harmonized Tariff Schedule of the United States to increase the rate of duty on unmanned aircraft, and for other purposes, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/bill/118th-congress/house-bill/8416>. A draft of the bill is accessible here: <https://files.constantcontact.com/81b76c35801/5c26c2c3-123e-4e17-98b2-611a193819d2.pdf>.

⁴² Sections 1821-1833, H.R.2670 - National Defense Authorization Act for Fiscal Year 2024, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/bill/118th-congress/house-bill/2670/text>.

⁴³ H.R.8912 - To temporarily suspend duties on imports of titanium sponge, and for other purposes, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/bill/118th-congress/house-bill/8912>.

⁴⁴ S.4015 - Securing America's Titanium Manufacturing Act of 2024, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/bill/118th-congress/senate-bill/4015>.

The tariff suspension would be applicable to imports from all countries granted MFN status, excluding those non-MFN designated countries listed in column two. The bill further states explicitly that the column two rate would continue to apply to Russia, Cuba, North Korea, and Belarus (which are all countries with which the United States does not have permanent normal trade relations). The US column two rate for non-MFN countries is typically 25%. Russia faces a higher tariff of 70% on unwrought and scrap titanium (including sponge) due to the 2022 Suspending Normal Trade Relations with Russia and Belarus Act. Imports from China, subject to the standard MFN rate of 15%, are also subject to a 25% Section 301 tariff.⁴⁵

Trade patterns and use

Titanium sponge is used for manufacturing titanium metals and alloys, which are primarily used in aerospace applications.⁴⁶ The United States imports almost all the titanium sponge used in domestic manufacturing. Poor market conditions led to the closure of the last major domestic titanium sponge manufacturer in 2020. The only remaining titanium sponge manufacturer in the United States produces small volumes (about 500 tons per year) for use in electronics. US titanium producers, meanwhile, are trying to expand production to meet rising demand from sectors like aerospace.

The majority of the titanium sponge imported by the United States is currently sourced from Japan, with smaller amounts coming from Saudi Arabia and Kazakhstan.⁴⁷ In 2023, \$417.6 million in titanium sponge entered the United States. Of that, \$325.1 million was from Japan, \$57.9 million was from Saudi Arabia, and \$32.7 million was from Kazakhstan. Imports from all three countries are subject to the 15% tariff. US Customs and Border Protection collected approximately \$63 million in tariff revenue from titanium sponge imports in 2023, with about \$48.8 million of this total derived from Japanese imports.

Given this import dependence, the bill's sponsors argue suspending the tariff would lower the input costs of US titanium producers and make US titanium more competitive. Advocating for the bill, Rep. Wenstrup stated that “by providing a temporary waiver of these tariffs, we can ensure American producers can compete on the international stage while securing the supply chain for critical supplies needed for our defense industry.” US titanium manufacturers and aerospace companies, as well as the United Steelworkers union, have endorsed the bill.

Terminating the tariff suspension early

The bill's sponsors hope that the US titanium sponge industry will eventually return (though the bill includes no specific measures to support the industry). If the industry does resume production, the bill includes a provision that would allow the president to terminate the tariff suspension early. The bill would instruct the president to conduct an annual review to “determine whether the production of titanium sponge in the United States is sufficient to meet the national security needs of the United States.” If one of the reviews determines that domestic production is sufficient, then the president would terminate the tariff suspension one year after the determination is issued.

Modifying the tariff suspension

The bill would also give the president authority to modify the tariff suspension in some cases. The bill instructs that the president should consider changes in domestic product patterns; employment trends; impacts on national security; and changes in imports from China, North Korea, Russia, and Iran (*i.e.*, designated covered nations under

⁴⁵ The bill only states that imports of titanium sponge “shall enter the United States free of duty,” without clarifying treatment of such imports vis-à-vis existing Section 232 and Section 301 duties (*i.e.*, whether those additional duties would still apply). Congress could still clarify the issue in amendments to the bill as it makes its way through committee review.

⁴⁶ Mineral Commodity Summaries 2023, US Geological Survey, accessible here: <https://pubs.usgs.gov/periodicals/mcs2023/mcs2023.pdf>.

⁴⁷ All data is from US Census Bureau via USA Trade Online, accessed June 28, 2024.

10 US Code section 4872) when considering if any changes to the tariff suspension is necessary. The president would not be able to raise any applicable tariff above the United States' WTO bound rate, which is also 15%.

Sponsors of the bill have stated this modification provision is intended to prevent any potential future surges of imports from China. China is a major titanium sponge producer but does not currently export to the United States.

Congress Introduces Bill to Develop US Seafood Trade Strategy

Members of the House of Representatives introduced a bill on June 18, 2024 proposing targeted reforms to US fisheries laws, including potential foreign trade measures. The bill, H.R.8788, or the Fisheries Improvement and Seafood Health Act of 2024 (FISH Act), would direct the executive branch to create a new National Seafood Trade Policy and fisheries ecological resilience programs. The trade policy would consider strategies to support domestic investment, reduce costs of doing business, examine investment incentives, address export market access challenges, and initiate new World Trade Organization (WTO) disputes.

Situation in Congress

Reps. Mary Peltola (D-AK) and Jared Huffman (D-CA) introduced the FISH Act to the House of Representatives on June 18, 2024.⁴⁸ The bill was referred to the Committee on Natural Resources and the Committee on Ways and Means for consideration. Reps. Peltola and Huffman are both members of the Committee on Natural Resources, but not the Committee on Ways and Means.

US fisheries and fish trade are mainly regulated under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), which the United States originally enacted in 1976. Congress last made significant updates to the MSA with the MSA Reauthorization Act of 2007, which added new rules to protect overfished stocks, increased scientific research, and expanded international cooperation. Though several smaller changes to the MSA have passed in more recent years (such as shark conservation rules and changes to recreational fishing management), proposals for larger update packages have not found consensus in Congress.

Content of the bill

The two main actions under consideration in the FISH Act are reviews of US seafood trade competitiveness and the creation of new ecological resilience projects. The sponsors of the FISH Act have attempted to gather measures that have bipartisan support into a single compromise bill. Though the bill makes targeted changes to US fisheries law (and directs studies of other potential changes), it does not propose broad reforms.

National Seafood Trade Policy and report to Congress

The bill would instruct the US Government Accountability Office (GAO, the federal government's supreme audit institution) to study US seafood competitiveness in international markets and assess federal programs that support domestic seafood production. The GAO would provide a report to Congress covering policy options within 180 days of the bill's enactment. The bill's supporters argue the US seafood industry is in crisis because Russia and China are "flooding the market with cheap fish produced using forced labor and poor environmental standards."⁴⁹ Mirroring other recent US arguments against Chinese exports and industrial policy, the sponsors argue China and Russia have created a global oversupply of seafood and suppressed prices for US producers.

For the GAO's review of strategies supporting the domestic industry, the bill highlights interests in examining cost control, domestic investment programs, increased interagency regulatory cooperation, and financial support

⁴⁸ H.R.8788 - Fisheries Improvement and Seafood Health Act, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/bills/118/congress/house-bill/8788>; and draft text accessible here: https://peltola.house.gov/uploadedfiles/fish_act.pdf.

⁴⁹ "Peltola Introduces FISH Act," June 18, 2024, accessible here: <https://peltola.house.gov/news/documentsingle.aspx?DocumentID=1272>.

programs. The bill also instructs the GAO to calculate the costs for the US fishing industry of complying with US regulations relative to compliance costs in other countries. For the review of trade issues, the bill instructs the GAO to review the international competitiveness of the US seafood exports and identify tariff and non-tariff trade barriers faced by US exporters.

The GAO would use the lessons of these reviews to “provide recommendations for a new National Seafood Trade Policy to improve the competitiveness of United States seafood producers.” The proposed strategy would include approaches to improving coordination on market access policy, domestic cost control and investment, and financial support programs for domestic producers. The GAO would also identify foreign trade barriers “that are vulnerable to dispute settlement through the World Trade Organization or otherwise under trade agreements,” propose strategies for enforcing trade agreement violations, and recruit like-minded countries to join the United States in filing disputes. The GAO would have to provide quarterly reports to Congress on the executive branch’s progress in addressing identified market access barriers.

Ecological resilience programs

The other major action proposed in the bill is the establishment of new mandates for ecological resilience research and consideration of ecological resilience risks in certain rulemaking activities at the National Oceanic and Atmospheric Administration National Marine Fisheries Service (NOAA Fisheries). The proposals include the following:

- Fisheries and Ecological Resilience Program: The new program would help increase understanding of fisheries ecosystems through new research, coordinated data collection, innovative management tools, and cross-agency collaboration.
- Fisheries Research: The bill would add instructions to study changes in the range and productivity of fisheries to the fisheries research programs mandated under the MSA.
- Council Training Program: Training courses for members of Regional Fishery Management Councils would now include instruction on the effects of changing ecological conditions on fisheries.
- Fishery Management Plans: The bill would require NOAA Fisheries to consider the effects of changing ecological conditions in fisheries when developing Fishery Management Plans with the Regional Fishery Management Councils.

Trade Actions

No developments

Trade Agreements

United States and Kenya Hold STIP Negotiating Rounds while Congress Debates Full FTA and AGOA Renewal

US and Kenyan negotiators met for the US-Kenya Strategic Trade and Investment Partnership's (STIP) fifth and sixth negotiating rounds in recent weeks. The negotiators have met monthly for the past few months and are now attempting to complete the STIP by the end of 2024. Alongside the latest meetings, USTR also publicly circulated summaries of its latest proposed texts on environmental protection and trade facilitation, providing more information about the Biden administration's trade policy objectives.

As the Biden administration tries to complete the STIP by the end of its current term of office, members of the US Congress and Kenyan leaders are continuing to seek a comprehensive free trade agreement (FTA) and are discussing an early renewal of the African Growth and Opportunity Act (AGOA).

The fifth and sixth negotiating rounds

On June 3-7, 2024, USTR and Kenyan trade officials held STIP's sixth negotiating round, which took place in Mombasa, Kenya. According to the USTR, this latest round discussed the proposed texts for agriculture; customs, trade facilitation, and enforcement; good regulatory practices; and workers' rights and protections.⁵⁰ A few weeks earlier in May, the parties held the fifth negotiating round in Washington, DC. Like the June round, the May talks also focused on agriculture; workers' rights and protections; and customs, trade facilitation, and enforcement. The parties issued a joint statement after the May round announcing, "significant progress in several areas, including on anticorruption; micro, small, and medium-sized enterprises (MSMEs); services domestic regulation; and the first tranche of agriculture text."⁵¹

Like other agreements the Biden administration has pursued, the STIP is not a comprehensive FTA. USTR's proposals focus on promoting improved regulatory practices and government-to-government collaboration instead of market access commitments. The STIP would also not be ratified by Congress, which may create challenges for sustaining the program under future US presidents.

Publication of proposed texts

Prior to the sixth negotiating round, USTR published outlines of the texts it had proposed for the STIP's Customs, Trade Facilitation, and Enforcement chapter and the Environment chapter.⁵²

USTR's Customs, Trade Facilitation, and Enforcement chapter proposal seeks to use commitments related to "online publication, automation, reducing formalities, requiring innovative border processes, and cooperation including on enforcement" to improve transparency, reduce customs barriers to trade, and improve rules enforcement. Specific proposals by USTR in the chapter include:

- Improving transparency by making commitments to online publishing of information relating to international trade rules, maintaining mechanisms to communicate with traders, and maintaining customs enquiry points.

⁵⁰ "Readout of June 3-7 Negotiating Round Under the U.S.-Kenya Strategic Trade and Investment Partnership," June 7, 2024, accessible here: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2024/june/readout-june-3-7-negotiating-round-under-us-kenya-strategic-trade-and-investment-partnership>.

⁵¹ "United States and Kenya Joint Statement after the Fifth Round of U.S.-Kenya Strategic Trade and Investment Partnership Negotiations," May 17, 2024, accessible here: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2024/may/united-states-and-kenya-joint-statement-after-fifth-round-us-kenya-strategic-trade-and-investment>.

⁵² "Public Summary of Third Set of U.S. Text Proposals Under the U.S.-Kenya Strategic Trade and Investment Partnership," accessible here: <https://ustr.gov/sites/default/files/Public%20Summary%20of%203rd%20Set%20of%20U.S.%20STIP%20Proposals%205-31-2024%20final.pdf>.

- Making rules more predictable for traders through commitments to uniform procedures on issuance of advance rulings and ensuring access to administrative reviews and appeals.
- Streamlining border procedures by creating paperless customs filing, reducing formalities, and adopting electronic single windows. Also among the clearance provisions are commitments to maintaining procedures to allow for immediate release of goods before a final determination of duties, providing an option for electronic payment of duties, and reducing formalities for express shipments and return of goods (which is intended to facilitate cross-border e-commerce).
- Making trade fairer and more reliable through commitments to transparency and fairness, standards of conduct for officials engaged in trade, and protection of confidential business information.
- Enhancing cooperation between the governments on investigating customs offenses, including provisions for exchanging enforcement information between the two countries' customs offices.

The Environment chapter proposes “to deepen cooperation and joint approaches on trade and the environment between the United States and Kenya” and affirm that environmental sustainability is important to resilient and inclusive economies. The chapter includes provisions on climate and trade, clean energy and clean technologies, environmental goods and services, circular economies, digital economy and environmental sustainability, responsible business conduct, and environmental justice. The summary references specific commitments on:

- Improving environmental protection and effectively enforcing environmental laws.
- Not weakening domestic environmental laws to attract trade or investment.
- Addressing air quality, marine litter, plastic pollution, wildlife trafficking, sustainable forest management, marine species conservation, and biodiversity loss.
- Addressing illegal, unreported, and unregulated fishing and fisheries subsidies that contribute to overfishing and overcapacity.
- Creating opportunities for public participation, public awareness of relevant environmental laws and policies, and use of consultative mechanisms for the implementation of the chapter.

USTR published outlines of the agriculture (second tranche), good regulatory practices, and workers' rights and protections chapters on April 5, 2024.⁵³ In May 2023, USTR published summaries for the anticorruption; MSMEs; services domestic regulation, and the agriculture (first tranche).⁵⁴

State visit and FTA pressure

Just before the May negotiating round, Kenyan President William Ruto visited Washington, DC. Completing STIP, as well as other trade, investment, and regulatory interests, were on the agenda for the leadership meetings.⁵⁵ The leaders' joint statement notes the progress made on STIP and the goal of completing the agreement by the end of the year. The leaders also highlighted plans for an investment promotion partnership, establishment of a US Development Finance Corporation office in Nairobi, and new green energy and carbon reduction partnerships.

⁵³ “Public Summary of Second Set of U.S. Text Proposals Under the U.S.-Kenya Strategic Trade and Investment Partnership,” April 2024, accessible here: <https://ustr.gov/sites/default/files/Kenya%20STIP%20second%20set%20of%20public%20summaries.pdf>.

⁵⁴ “US-Kenya Strategic Trade and Investment Partnership, Summary of Texts Proposed by the US Side,” May 2023, accessible here: <https://ustr.gov/sites/default/files/2023-05/U.S.-Kenya%20STIP%20Chapter%20Summaries%20May%202023.pdf>.

⁵⁵ “United States-Kenya Joint Leaders' Statement,” May 23, 2024, accessible here: <https://www.whitehouse.gov/briefing-room/statements-releases/2024/05/23/united-states-kenya-joint-leaders-statement/>.

The Biden administration's interests in technology and supply chain security also featured in the meetings. Kenya is attempting to position itself as a technology industry hub for eastern Africa, and already hosts offices of large US technology companies. The leaders announced semiconductor development partnerships, cybersecurity coordination agreements, and new digital connectivity projects.

In meetings with Congress, President Ruto also discussed interests in a comprehensive bilateral FTA. The Trump administration had started early discussions on an FTA with Kenya, but the Biden administration downgraded those talks to the STIP. Pro-trade members of Congress are continuing to advocate for a full FTA, and top Democrats and Republicans from the Senate Finance and House Ways & Means committees used the visit to publicly call on USTR to upgrade the STIP negotiations to an FTA.⁵⁶

The upcoming AGOA forum

With STIP not offering new market access and a full FTA with Kenya (or with the African Continental Free Trade Area) unlikely during the Biden administration, AGOA's tariff preferences remain the most important policy tool for providing African exports preferential access to the US market. The United States recently disclosed that it will host the AGOA Forum on July 24-26 in Washington, DC. The annual forum gives leaders a chance to discuss shared trade and investment interests. This year's forum will occur as pressure builds to renew AGOA ahead of its September 2025 expiration. African governments and US businesses are becoming concerned that Congress may allow AGOA to expire like the Generalized System of Preferences (GSP), amid growing partisan conflicts over trade policy. President Ruto also used the Congressional meetings to advocate for reauthorization of the AGOA, of which Kenya is one of the largest beneficiaries.

At a Senate Finance Committee hearing on renewing the trade preference programs on June 5, 2024,⁵⁷ ranking member Sen. Mike Crapo (R-ID) argued for quick action on AGOA ahead of the forum. The committee chair, Sen. Ron Wyden (D-OR), in contrast, does not support such an aggressive timeline. There are currently multiple proposals for renewing AGOA circulating in Congress, with some seeking clean renewals and others contemplating reforms to the program. The House Ways and Means Subcommittee on Trade will hold another hearing on the future of the trade preference programs on June 12, 2024.⁵⁸

President's Export Council Advocates for Digital Services Trade and a Trade Agreement with Thailand

On June 11, 2024, the President's Export Council (PEC) met for the third time under the Biden administration, this time issuing recommendations for improving services market access. The June 11 meeting and recommendations follow the PEC's March 2024 factfinding trip to Thailand, where council members discussed strategies for deepening economic engagement with Thailand and the wider the Indo-Pacific. Building on the Thailand visit, the PEC issued a second report alongside its services market access recommendations that called for deeper US economic engagement with Thailand.

⁵⁶ "Top Democrats on Senate Finance and House Ways and Means Committees Urge Administration to Upgrade Trade Talks with Kenya to a Comprehensive Trade Agreement," May 21, 2024, accessible here: <https://www.finance.senate.gov/chairmans-news/top-democrats-on-senate-finance-and-house-ways-and-means-committees-urge-administration-to-upgrade-trade-talks-with-kenya-to-a-comprehensive-trade-agreement>; and "Smith Calls for Resuming Real Trade Negotiations with Kenya Following Meeting with President Ruto," May 23, 2024, accessible here: <https://waysandmeans.house.gov/2024/05/23/smith-calls-for-resuming-real-trade-negotiations-with-kenya-following-meeting-with-president-ruto/>.

⁵⁷ Hearing: Revitalizing and Renewing GSP, AGOA and Other Trade Preference Programs, June 5, 2024, accessible here: <https://www.finance.senate.gov/hearings/revitalizing-and-renewing-gsp-agoa-and-other-trade-preference-programs>.

⁵⁸ Hearing: Trade Subcommittee Hearing on Looking Beyond 2025 for Trade with Sub-Saharan Africa, Haiti, and Others, June 12, 2024, accessible here: <https://waysandmeans.house.gov/event/trade-subcommittee-hearing-on-looking-beyond-2025-for-trade-with-sub-saharan-africa-haiti-and-others/>.

The PEC is a high-level advisory body that provides recommendations to the president and the rest of the executive branch on policies to support US export performance. President Biden revived the PEC in 2023 after it had been dormant since the Obama administration. The PEC will hold one more meeting ahead of the November elections, where it will report on how the Biden administration has acted on the recommendations.

Export Strategy Recommendations

The June 11 meeting's focus was the unveiling of a series of recommendations to the Biden administration advocating for a renewed focus on promoting services exports, including for digital services.⁵⁹ The PEC's letter highlights the importance of services trade for the US economy and argues barriers to services trade are growing globally.

The PEC's key recommendation is that the Biden administration should better emphasize market access and national treatment for US services exporters in its international engagements. The PEC points to behind-the-border barriers like investment restrictions, licensing requirements, and discriminatory regulations as especially severe challenges for services traders. Among the specific policy recommendations are:

- **Re-start the Trade in Services Agreement (TiSA) initiative and reinvigorate the WTO's progressive liberalization services negotiations.** TiSA, for which negotiations started during the Obama administration, had sought to negotiate standard-setting market access commitments for all services sectors among countries that represented most global services trade. TiSA negotiations have not progressed since 2017. The PEC also calls for the Biden administration to pursue a more aggressive services liberalization agenda in the WTO. The General Agreement on Trade in Services' Article XIX committed Members to a progressive liberalization negotiation agenda, but those intended negotiations have not led to new market opening. PEC members point to the WTO's joint statement initiative on domestic services regulation, the ongoing negotiations on the joint statement initiative for e-commerce, and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) as evidence of there being support for advancing services trade liberalization.
- **Enforce existing trade agreements' services commitments and related disciplines.** The PEC calls for the Biden administration to prioritize enforcing services and investment commitments in existing trade agreements, though their letter does not name any specific targets for this action.
- **Re-establish US leadership for digital services trade, including in the WTO e-commerce joint statement initiative negotiations.** The PEC's digital trade recommendations respond directly to USTR's 2023 decision to withdraw support from key digital trade-enabling trade disciplines. The PEC calls on the administration to "reestablish U.S. leadership globally" on digital trade, including in the Indo-Pacific Economic Framework for Prosperity (IPEF) and the WTO e-commerce negotiations, and to pursue commercially meaningful agreements that protect cross-border data flows, prevent data localization, protect source code from disclosure, provide for nondiscriminatory treatment of content, and make permanent the electronic transmissions customs duty moratorium. Challenging USTR's assertion that the Biden administration needs more policy space for domestic regulation, the letter argues that the United States can still negotiate agreements that would not interfere with its domestic regulatory interests.

Jared Bernstein, who chairs President Biden's Council of Economic Advisors (CEA), also highlighted the importance of digitally enabled services to the US economy during the PEC meeting. the CEA also published an article

⁵⁹ President's Export Council letter to President Biden on expanding US exports, June 11, 2024, accessible here: <https://www.trade.gov/sites/default/files/2024-06/PEC%20Services%20Recommendation%20-%20Final%20Draft%20for%20Meeting.pdf>.

illustrating how digitally enabled services are the key driver of the US services trade surplus the day before the PEC met.⁶⁰

Beyond the core recommendation of restoring US services trade policy, the PEC's letter makes various related recommendations, including:

- Promoting regulatory coherence and preventing fragmentation of digital services standards;
- Encouraging close contact with industry on the Bureau of Industry and Security's connected vehicle import restrictions and maintaining a tailored approach to those restrictions;
- Reducing political risk premiums for US export financing agencies (the US Export-Import Bank, the US International Development Finance Corporation, and the US Trade and Development Agency) so US government lending can help US companies export to higher risk countries;
- Doing more to reduce corruption globally, including with the OECD Blue Dot Network and IPEF's Pillar 4 agreement; and
- Promoting intellectual property protection through the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Report on trade with Thailand and the Indo-Pacific

The PEC also issued a report on commercial engagement in the Indo-Pacific and strengthening US-Thai trade relations, building on the PEC's March visit to Thailand.⁶¹ Commerce Secretary Gina Raimondo led the visit and asked the PEC to identify opportunities to strengthen the commercial relationship.⁶² Most members of the delegation also joined a trade mission to the Philippines after visiting Thailand.

The report called on the Biden administration to pursue an agreement to expand trade and investment engagement with Thailand, citing their observations of "shared economic priorities between the U.S. and Thailand." PEC members noted how Thai contacts had told them during their visit that the lack of a strong economic agreement between the United States and Thailand is hindering the bilateral relationship. The PEC stopped short of specifically calling for a comprehensive free trade agreement (acknowledging the Biden administration's opposition to free trade agreements), but still argued their envisioned agreement should facilitate trade, encourage investment, and uphold labor and environmental standards. The economic agreement was one of eight recommendations for US-Thai relations in the report. Other recommendations covered digital customs procedures, regulatory standards harmonization, digital infrastructure projects, creative economy initiatives, sustainable infrastructure development, industrial diversification, digital finance adoption, science and digital education initiatives, and enhancing cultural and educational ties.

⁶⁰ "What Drives the U.S. Services Trade Surplus? Growth in Digitally-Enabled Services Exports," June 10, 2024, accessible here: <https://www.whitehouse.gov/cea/written-materials/2024/06/10/what-drives-the-u-s-services-trade-surplus-growth-in-digitally-enabled-services-exports/>.

⁶¹ "Report of the President's Export Council: Reflections on Commercial Engagement in the Indo-Pacific and Recommendations for Strengthening the U.S.-Thailand Commercial Relationship," accessible here: <https://www.trade.gov/sites/default/files/2024-06/PEC%20Thailand%20Trip%20Report%20and%20Recommendations%206.11.24.pdf>.

⁶² "Secretary Raimondo Leads Successful Presidential Trade and Investment Mission to the Philippines, President's Export Council Trip to Thailand," March 19, 2024, accessible here: <https://www.commerce.gov/news/press-releases/2024/03/secretary-raimondo-leads-successful-presidential-trade-and-investment>.

IPEF

IPEF Parties Sign Clean Economy and Fair Economy Agreements in Singapore

On June 6, 2024, the 14 countries participating in the Indo-Pacific Economic Framework for Prosperity (IPEF) met in Singapore to hold an IPEF ministerial meeting and signing ceremonies for the IPEF Agreement Relating to a Clean Economy (Pillar III), the IPEF Agreement Relating to a Fair Economy (Pillar IV), and the overarching Agreement on IPEF.⁶³ With the supply chain, clean economy, and fair economy pillars successfully concluded and the parties working on domestic ratification, the ministers have begun turning their attention to launching the cooperation programs envisioned under the agreements. Pillar I (Trade), the pillar of IPEF most similar to a traditional trade agreement, was not discussed at the meetings and was not referenced in the outcome documents.

The next ministerial meeting will be held virtually in September 2024. The parties are targeting 2025 for the first meetings of the IPEF Council and Joint Commission.

Signing of the Clean Economy Agreement

The IPEF Clean Economy Agreement, the outcome of the Pillar III negotiations, was substantially concluded at the previous summit in November 2023. Parties are now working on domestic ratification processes. The agreement focuses on facilitating economic cooperation to respond to climate change, though it does not include specific legal commitments.

The ministers on June 6 announced three new cooperative work programs (CWPs) under the agreement: (i) emissions intensity accounting, (ii) e-waste management, and (iii) small modular nuclear reactors. CWPs on hydrogen supply chains, carbon markets, clean electricity, sustainable aviation fuel, and just transition are already active. The US Department of Energy is leading a supply chain mapping exercise for hydrogen energy, the carbon markets CWP held a strategic dialogue, and the clean electricity CWP has conducted a clean energy mapping exercise.

The parties held the inaugural Clean Economy Investor Forum alongside the ministerial, which will be an annual conference bringing together investors, energy projects, start-ups, and governments to help mobilize finance for clean energy and climate friendly technology. The forum highlighted US\$23 billion of sustainable infrastructure investment opportunities in the region, including \$6 billion of specific investment-ready projects. Climate technology startups at the Indo-Pacific Climate Tech 100 also pitched projects to investors, seeking US\$2 billion in new funding.

The ministerial also marked the launch of the IPEF Catalytic Capital Fund, led by Australia, Japan, South Korea, and the United States. The fund will provide US\$33 million to help enable US\$3.3 billion in private investment in emerging and upper-middle income economies in the region. The US Department of Commerce said the countries “have made significant progress” in providing the funding.

Signing of the Fair Economy Agreement

The IPEF Fair Economy Agreement, the outcome of the Pillar IV negotiations, aims to combat corruption and improve tax administration through increased cooperation, information sharing, and capacity building. It was substantially concluded alongside the Clean Economy Agreement in November 2023. Parties are now working on domestic ratification processes.

The ministers welcomed the creation of a technical assistance and capacity building initiatives catalogue in the June 6 meeting. The parties will regularly update the catalogue to help provide IPEF members with better access to

⁶³ Press Statement on Indo-Pacific Economic Framework for Prosperity Ministerial Meeting in Singapore, June 6, 2024, accessible here: <https://www.commerce.gov/news/press-releases/2024/06/press-statement-indo-pacific-economic-framework-prosperity-ministerial>.

assistance. The ministers also highlighted various ongoing assistance programs that can support the objectives of the agreement.

Implementing the Supply Chain Agreement

The Supply Chain Agreement will facilitate collaboration efforts among the IPEF partners on supply chain resilience, emergency response, and worker rights programs. The agreement entered force on February 24, 2024, after five parties (Fiji, India, Japan, Singapore, and the United States) deposited instruments of ratification, acceptance, or approval. Korea deposited its ratification soon after. Thailand and Malaysia announced their ratifications and depositing of instruments of ratification during the June 6 meetings.

The ministers noted progress on establishing the various councils established by the agreement, including designating representatives, identifying chair candidates, creating terms of reference, and developing lists of critical supply chain sectors. The Supply Chain Council, Crisis Response Network, and Labor Rights Advisory Board will hold inaugural meetings virtually in July 2024. The United States will then host in-person Supply Chain Council and Crisis Response Network meetings by the end of the year. Besides these general meetings, the parties are already organizing programs on key priorities, including cybersecurity, cargo risk assessment, supply chain vulnerability assessments, labor and workforce development, and tabletop exercises that simulate supply chain disruptions.

US call for input on critical supply chain strategy

Shortly before the meeting, the US Department of Commerce issued a call for public input on how the United States should assess supply chains and choose critical sectors for the Supply Chain Agreement. More broadly, the call for input will also help inform the work of the Commerce Department's new Supply Chain Center. The call for input is seeking feedback on both the list of critical sectors and what methodologies Commerce should use in its supply chain risk assessment frameworks. Comments are due by June 21, 2024 and more information about submitting comments can be found in the Federal Register notice.⁶⁴

The Commerce Department will host a Supply Chain Summit in Washington before the end of 2024, which the in-person meetings of the IPEF's Supply Chain Council and Crisis Response Network would likely occur alongside.

Status of the Trade Pillar

Pillar I (Trade) appears to have made no notable progress since the US Trade Representative (USTR) abruptly withdrew support from an early harvest agreement in November 2023. Ambassador Katherine Tai did not attend the June 6 meeting. USTR has continued to say that discussions are continuing between the parties, but there have been no announcements of progress or new negotiating rounds since November 2023.

RCEP

Chile Submits Formal Application to Join RCEP

On June 14, 2024, Chile officially submitted its application to join the Regional Comprehensive Economic Partnership Agreement (RCEP).⁶⁵ While in Jakarta, Chile's Undersecretary of International Economic Relations (SUBREI), Claudia Sanhueza, met with the ASEAN Secretariat's (ASEC) Deputy Secretary-General for the ASEAN Economic Community (AEC), Satvinder Singh, to whom she delivered the formal letter of application for RCEP membership.

⁶⁴ "Request for Comments on Commerce Supply Chain Risk Assessment and IPEF Supply Chains," 89 FR 47536 (June 6, 2024), accessible here: <https://www.federalregister.gov/documents/2024/06/03/2024-12240/request-for-comments-on-commerce-supply-chain-risk-assessment-and-ipef-supply-chains>.

⁶⁵ Chile's Ministry of Foreign Affairs press release is accessible here (in Spanish): <https://www.subrei.gob.cl/sala-de-prensa/noticias/detalle-noticias/2024/06/14/chile-inicia-negociaciones-con-indonesia-para-profundizar-acuerdo-comercial>.

Chile's application comes one year after the RCEP completed its first full year of implementation in June 2024.⁶⁶ Since July 2023, the ASEAN Secretariat, as the RCEP Depository, has commenced receiving accession applications in line with Article 20.9 of the RCEP Agreement.⁶⁷ Hong Kong and Sri Lanka have also expressed their formal interest to join the RCEP.

The RCEP is the world's largest free trade agreement (FTA) and has become a milestone for economic integration in the Asia-Pacific region. RCEP member countries comprise nearly 30% of global gross domestic product (GDP) and a third of the world's population. The RCEP delivers a single, harmonized, and predictable set of regional trade rules, which aims to incentivize businesses to locate their supply chains within the covered Asia-Pacific region.⁶⁸ The RCEP's 15 members include a diverse mix of high-income economies (Australia, Brunei, Japan, Korea, New Zealand, and Singapore), upper middle-income economies (Indonesia, Malaysia, and Thailand), lower middle-income economies (Cambodia, Laos, Myanmar, the Philippines, and Vietnam), and the second largest economy in the world (China).

Chile, alongside Mexico, stands out in the Western Hemisphere, particularly in Latin America, for advocating one of the most proactive FTA policies. The US International Trade Administration (ITA) reports that more than 95% of Chile's exports were directed to countries with which it has established FTAs. In 2022, Chile's primary export destinations included China (39.4%), the United States (13.9%), Japan (7.6%), and Korea (6.2%).⁶⁹

Chile is a member of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which includes RCEP member countries (Australia, Brunei, Japan, Malaysia, New Zealand, Singapore, and Vietnam) and has bilateral FTAs in force with six RCEP member countries, namely Australia, China, Malaysia, Korea, Thailand, and Vietnam. Chile does not have a bilateral trade agreement with the Philippines, Laos, Cambodia, or Myanmar. Chile was granted the status of "Development Partner" by ASEAN on June 22, 2019. In 2023, the trade exchange between Chile and ASEAN members amounted to US \$4.359 billion, with an average annual growth rate of 5.1% from 2018 to 2023 according to Chile's Ministry of Foreign Affairs.

As next steps, the RCEP accession working group will hold a meeting to review Chile's application and conduct the technical work necessary to advance RCEP accession procedures. Chile looks forward to becoming the first Latin American country to join the RCEP. The Chilean government has reportedly already engaged with most RCEP member countries to discuss the level of expectations from each other under the agreement.

Petitions & Investigations

No developments

⁶⁶ The RCEP entered into effect first on January 1, 2022 for six ASEAN member states (Brunei, Cambodia, Laos, Singapore, Thailand, and Vietnam) and four ASEAN dialogue partners (Australia, China, Japan, and New Zealand); for Korea on February 1, 2022; for Myanmar on March 4, 2022; for Malaysia on March 18, 2022; for Indonesia on January 2, 2023; and for the Philippines on June 2, 2023. Despite receiving official notification of Myanmar's instrument of ratification on January 3, 2022, the political situation in Myanmar continues to raise concerns among several RCEP member states, which has delayed the official acceptance of the instrument of ratification by the ASEAN Secretariat.

⁶⁷ Article 20.9 of the RCEP: "This Agreement shall be open for accession by any State or separate customs territory 18 months after the date of entry into force of this Agreement."

⁶⁸ The RCEP contains 20 chapters: (i) initial provisions and general definitions; (ii) trade in goods; (iii) rules of origin; (iv) customs procedures and trade facilitation; (v) sanitary and phytosanitary measures; (vi) standards, technical regulations, and conformity assessment procedures; (vii) trade remedies; (viii) trade in services; (ix) temporary movement of natural persons; (x) investment; (xi) intellectual property; (xii) electronic commerce; (xiii) competition; (xiv) small and medium enterprises; (xv) economic and technical cooperation; (xvi) government procurement; (xvii) general provisions and exceptions; (xviii) institutional provisions; (xix) dispute settlement; and (xx) final provisions.

⁶⁹ See ITA report on Chile dated December 7, 2023, accessible here: [https://www.trade.gov/country-commercial-guides/chile-trade-agreements#:~:text=Over%2095%20percent%20of%20exports,and%20South%20Korea%20\(6.2%25\)](https://www.trade.gov/country-commercial-guides/chile-trade-agreements#:~:text=Over%2095%20percent%20of%20exports,and%20South%20Korea%20(6.2%25).).