

# US & Multilateral Trade and Policy Developments

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**Japan External Trade Organization**

September 2024

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## Trade Policy Developments

### US Department of Labor Updates Lists of Products Made with Forced Labor and Child Labor

On September 5, 2024, the US Department of Labor (DOL) published updates to its international forced labor and child labor reports: the List of Goods Produced by Child Labor or Forced Labor (TVPR List), the Findings on the Worst Forms of Child Labor (TDA Report), and the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor pursuant to Executive Order 13126 (EO 13126 List).<sup>1</sup> In this year's reports, the DOL expanded its focus on downstream products that are manufactured using inputs that were made with forced labor and child labor, reflecting the US government's growing interest in supply chain due diligence. The DOL also removed six products from the TVPRA and EO 13126 lists, the largest number of removals DOL has ever made in one update.

Alongside publication of the reports, the DOL also updated its child and forced labor compliance guide, Comply Chain.<sup>2</sup> The DOL is accepting public feedback on several of the changes that it proposed in the September 5 announcements until December 16, 2024.

#### Overview of the reports

The TVPRA list<sup>3</sup> is a list of goods and source countries for which the DOL has reason to believe are produced by forced labor or child labor. The list mainly seeks to raise public awareness of forced labor risks. Inclusion on the TVPRA List does not directly lead to any punitive action. The DOL is required to maintain the list by the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2005.

The TDA Report<sup>4</sup> is an annual assessment of efforts by 131 countries to eliminate the worst forms of child labor, ranking the countries by whether they made significant, moderate, minimal, or no advancement. The report also recommends actions the subject countries could take to eliminate the worst forms of child labor. The president uses the TDA report to determine whether countries receiving benefits under the Generalized System of Preferences (GSP) and other trade preferences programs are implementing their international commitments to eliminate the worst forms of child labor.

The EO 13126 List<sup>5</sup> was established by Executive Order 13126 of June 12, 1999, "Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor," which led the DOL to begin reporting on products that might have been mined, produced, or manufactured with forced or indentured child labor.<sup>6</sup> Federal Acquisition Regulatory (FAR) Council rules require that federal contractors that are supplying the listed products to the US government certify that they have made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under the contract and that, on the basis of those efforts, the contractor is unaware of any such use of forced or indentured child labor.<sup>7</sup>

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<sup>1</sup> "US Department of Labor announces updates in reporting, enhanced tools to bolster efforts to combat child, forced labor globally," DOL, September 5, 2024, accessible here: <https://www.dol.gov/newsroom/releases/ilab/ilab20240905>.

<sup>2</sup> Comply Chain is accessible here: <https://www.dol.gov/agencies/ilab/comply-chain>.

<sup>3</sup> The TVPRA List on the DOL website is accessible here: <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods/>.

<sup>4</sup> The TDA Report country listings on the DOL website are accessible here: <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings>.

<sup>5</sup> The EO 13126 List on the DOL website is accessible here: <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-products>.

<sup>6</sup> Executive Order 13126 of June 12, 1999: Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor, 64 FR 32383 (June 16, 1999), accessible here: <https://www.federalregister.gov/documents/1999/06/16/99-15491/prohibition-of-acquisition-of-products-produced-by-forced-or-indentured-child-labor>.

<sup>7</sup> 48 CFR subpart 22.15, accessible here: <https://www.ecfr.gov/current/title-48/chapter-1/subchapter-D/part-22/subpart-22.15>.

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## The TVPRA report and TVPRA List update

The DOL published its updated 2024 List of Goods Produced by Child Labor or Forced Labor on September 5, 2024,<sup>8</sup> which includes the changes to the TVPRA list. The 2024 TVPRA List includes the largest update the DOL has ever published, adding 72 products and removing 4. Blueberries from Argentina, salt from Cambodia, fluorspar from Mongolia, and shrimp from Thailand were removed.

The large number of additions to the TVPRA List is partly because of the DOL's enhanced efforts to add downstream products that are manufactured using inputs that were produced with forced labor or child labor. DOL's Bureau of International Labor Affairs (ILAB) has funded 15 projects over the past year to trace supply chains, identifying 43 end products that derive from products made using forced labor. For example, the DOL added lithium-ion batteries from China to the TVPRA List based on evidence that copper and cobalt inputs sourced from the Democratic Republic of the Congo (DRC) are mined with forced labor and child labor. Many other goods added to the list are associated with China's Xinjiang Uyghur Autonomous Area (XUAR), mirroring the US government's recent Uyghur Forced Labor Prevention Act (UFLPA) enforcement activity. The 2024 list includes aluminum, caustic soda, jujubes (red dates), metallurgical-grade silicon, polyvinyl chloride, and squid from China, due to allegations of Uyghur forced labor being present in their production. The list also includes the downstream products thread/yarn, textiles, and garments made with cotton from China; cotton garments from Vietnam made with cotton from China; and automotive parts and components from China made with aluminum from China for the first time (solar panel components were added to the list in 2022).

## TDA Report

The 2023 TDA report is the 23<sup>rd</sup> edition issued by the DOL, covering child labor policies and enforcement progress in developing countries.<sup>9</sup> Argentina, Chile, Colombia, Ecuador, Mexico, and Moldova met the report's highest standard ("Significant Progress") in 2023. The report also notes that Brazil, Guinea, Peru, Senegal, Sierra Leone, Sri Lanka, Thailand, and Togo would have met the Significant Advancement standard, but are missing certain required baseline policies. The report makes about 1,900 recommendations for policy improvements across all the covered countries. The most common type of recommendation – covering 36% of the total – involve addressing enforcement gaps in current laws. The 2023 edition of the report also expands the policy overviews featured in the report.

## Removals from the EO 13126 List

For the updated EO 13126 List, DOL has removed shrimp from Thailand and garments from Vietnam.<sup>10</sup> DOL originally proposed removing Thai shrimp and Vietnamese garments from the 13126 List in a May 10, 2024 Notice of Initial Determination.<sup>11</sup> DOL did not receive any additional public comments that addressed the forced child labor allegations during the initial determination's public comment period. The final determination maintains the conclusion that "based on available information, there is no longer a reasonable basis to believe that forced or indentured child labor is used in the production of" Thai shrimp and Vietnamese garments. With that update, the EO 13126 List now includes 33 products from 25 countries.

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<sup>8</sup> "2024 List of Goods Produced by Child Labor or Forced Labor," accessible here: [https://www.dol.gov/sites/dolgov/files/ilab/child\\_labor\\_reports/tda2023/2024-tvpra-list-of-goods.pdf](https://www.dol.gov/sites/dolgov/files/ilab/child_labor_reports/tda2023/2024-tvpra-list-of-goods.pdf).

<sup>9</sup> "2023 Findings on the Worst Forms of Child Labor," accessible here: [https://www.dol.gov/sites/dolgov/files/ILAB/child\\_labor\\_reports/tda2023/2023-Findings-on-the-Worst-Forms-of-Child-Labor.pdf](https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2023/2023-Findings-on-the-Worst-Forms-of-Child-Labor.pdf).

<sup>10</sup> "Notice of Final Determination To Remove Shrimp From Thailand and Garments From Vietnam From the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor Pursuant to Executive Order 13126," 89 FR 72428 (September 5, 2024), accessible here: <https://www.federalregister.gov/documents/2024/09/05/2024-18767/notice-of-final-determination-to-remove-shrimp-from-thailand-and-garments-from-vietnam-from-the-list>.

<sup>11</sup> "Notice of Initial Determination To Remove Shrimp From Thailand and Garments From Vietnam From the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor Pursuant to Executive Order 13126," 89 FR 40509 (May 10, 2024), accessible here: <https://www.federalregister.gov/documents/2024/05/10/2024-10249/notice-of-initial-determination-to-remove-shrimp-from-thailand-and-garments-from-vietnam-from-the-list>.

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## Proposed additions for the EO 13126 List

The DOL is also inviting public comments on several potential additions to the EO 13126 List, which are described in the September 6 *Federal Register* notice.<sup>12</sup> Public comments are due by December 16, 2024. The notice provides further instructions for how interested stakeholders can submit comments.

First, the DOL has reached an initial determination to add garments from Bangladesh to the EO 13126 List. The September 6 notice invites public comments on whether DOL should follow through with the listing. Bangladeshi garments are already included on the TVPRA List.

Second, the DOL is inviting information and comments on the likelihood of child labor and forced labor being present in the production of shrimp from India and in the upstream supply chains of gold products manufactured in the United Arab Emirates. The DOL has not yet reached an initial determination on either of these products but is inviting relevant evidence. The DOL added Indian shrimp to the TVPRA List in the 2024 update, based on allegations of adult forced labor on shrimp farms. The TVPRA List and the EO 13126 List both include gold mined in numerous countries, including countries from which UAE manufacturers likely source raw gold.

## Call for input on DOL forced labor and child labor reports

Beyond the report and specific updates to the lists, the DOL also launched a general call for input on its forced labor reporting tools in a separate September 5, 2024 *Federal Register* notice.<sup>13</sup> Interested stakeholders should submit comments by December 16, 2024 for consideration.

The DOL is seeking information relevant to updating the TDA Report (including for assessing each country's advancement toward eliminating the worst forms of child labor) and for maintaining and updating the TVPRA and EO 13126 lists.

The call for input is also seeking feedback for updating ILAB's Comply Chain knowledge tool for labor compliance in global supply chains. ILAB is specifically seeking information on current practices of companies, business associations, and other private sector groups to reduce the likelihood of child labor and forced labor in the production of goods, which it could use to update Comply Chain. ILAB is also seeking information on government practices for collaborating with private sector actors through public-private partnerships to reduce the likelihood of child labor and forced labor in the production of goods.

## Bureau of Industry and Security Issues Proposed Rule for AI Reporting Requirements

On September 9, 2024, the Department of Commerce Bureau of Industry and Security (BIS) announced a Notice of Proposed Rulemaking on a new reporting requirement for companies developing certain advanced dual-use foundation artificial intelligence (AI) models and computing clusters (the "proposed rule").<sup>14</sup> The proposed rule is intended to help the government monitor "defense-relevant capabilities at the frontier of AI research and development" by requiring developers of the most advanced AI models to provide the government with detailed information about development, cybersecurity, and outcomes of red-teaming tests. The system builds on an AI

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<sup>12</sup> "List of Goods Produced by Child Labor or Forced Labor and Updates to the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor," 89 FR 72897 (September 6, 2024), accessible here:

<https://www.federalregister.gov/documents/2024/09/06/2024-20153/notice-of-publication-to-the-department-of-labors-list-of-goods-produced-by-child-labor-or-forced>.

<sup>13</sup> "Efforts by Certain Foreign Countries To Eliminate the Worst Forms of Child Labor; Child Labor, Forced Labor, and Forced or Indentured Child Labor in the Production of Goods in Foreign Countries; and Business Practices To Reduce the Likelihood of Forced Labor or Child Labor in the Production of Goods," 89 FR 72426 (September 5, 2024), accessible here: <https://www.federalregister.gov/documents/2024/09/05/2024-18770/efforts-by-certain-foreign-countries-to-eliminate-the-worst-forms-of-child-labor-child-labor-forced>.

<sup>14</sup> "Establishment of Reporting Requirements for the Development of Advanced Artificial Intelligence Models and Computing Clusters," 89 FR 73612 (September 11, 2024), accessible here: <https://www.federalregister.gov/d/2024-20529>.

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industrial base survey that BIS conducted in early 2024. The rule is only in proposed form and will not enter effect until BIS completes its review of the public feedback and issues the final rule.

### **Executive Order 14110**

BIS is developing the new rule pursuant to Section 4.2 of Executive Order 14110 regarding “Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence” of October 30, 2023 (EO 14110).<sup>15</sup> President Biden issued EO 14110 in late 2023 to outline the administration’s policy objectives for AI, which include promoting competition within the industry, promoting US competitiveness, and managing both domestic civil liberties risks and national security risks. Among other activities that the EO directs federal agencies to carry out to advance the administration’s policy objectives, Section 4.2(a) directs the Department of Commerce to, within 90 days:

- “require companies developing, or demonstrating an intent to develop, potential dual-use foundation AI models to provide certain information to the Federal Government on an ongoing basis,” and
- “require companies, individuals, or other organizations or entities that acquire, develop, or possess a potential large-scale computing cluster to report any such acquisition, development, or possession, including the existence and location of these clusters and the amount of total computing power available in each cluster.”

Information provided to the Department of Commerce would include details of ongoing and planned activities related to developing dual-use foundation models, details of model weights, and results of relevant red-team testing. Section 4.1 of the EO directs the National Institute of Standards and Technology (NIST), a non-regulatory federal agency within the Department of Commerce, to develop guidelines for AI safety and security, including for red-team testing, within 270 days of the EO’s publication. Reporters would rely on the NIST guidelines after their publication.

Section 4.2(c) and (d) of EO 14110 further directs the Department of Commerce to develop new know-your-customer (KYC) regulations for infrastructure as a service (IaaS) providers, which BIS is implementing through a separate rulemaking process. BIS issued a Notice of Proposed Rulemaking and request for comments on the KYC regulations on January 29, 2024.<sup>16</sup> The final rule is currently under development.

### **Defense Production Act surveys**

To carry out the EO 14110’s instructions, BIS is using its Defense Production Act (DPA) Industrial Base Assessments authorities, which are described in 15 CFR Part 702.<sup>17</sup> BIS routinely conducts Industrial Base Surveys to assess whether US industry is prepared to supply material to support national defense needs. The law requires that any person who receives a survey from BIS under Part 702 respond completely and on time. Surveys are backed with subpoena authority and inadequate responses, or outright avoidance can lead to civil and criminal penalties. The regulation provides only certain limited options for requesting exemptions or time extensions on responses.

BIS issued DPA surveys to companies training large language models in January 2024 as an initial response to section 4.2 of EO 14110. The DPA surveys required that every time a company trains a covered large AI model, the company should notify and share safety testing data with BIS. In announcing the September proposed rule, BIS called the earlier activity a “pilot survey” for the new proposed system.<sup>18</sup> Companies that participated in the initial

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<sup>15</sup> Executive Order 14110 of October 30, 2023, “Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence,” accessible here: <https://www.federalregister.gov/documents/2023/11/01/2023-24283/safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence>.

<sup>16</sup> “Taking Additional Steps To Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities,” 89 FR 5698 (January 29, 2024), accessible here: <https://www.federalregister.gov/documents/2023/11/01/2023-24283/safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence>.

<sup>17</sup> See BIS’ webpage on industrial base assessments, accessible here: <https://www.bis.doc.gov/index.php/other-areas/office-of-technology-evaluation-ote/industrial-base-assessments>.

<sup>18</sup> “Commerce Proposes Reporting Requirements for Frontier AI Developers and Compute Providers,” BIS, September 9, 2024, accessible here: <https://www.bis.gov/press-release/commerce-proposes-reporting-requirements-frontier-ai-developers-and-compute-providers>.

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survey (as well as new companies entering the industry) should expect to be subject to the new proposed reporting process.

### Covered technologies and reporting thresholds

The EO defines “dual-use foundation AI models” as AI models that are:

*trained on broad data; generally uses self-supervision; contains at least tens of billions of parameters; is applicable across a wide range of contexts; and that exhibits, or could be easily modified to exhibit, high levels of performance at tasks that pose a serious risk to security, national economic security, national public health or safety, or any combination of those matters, such as by:*

*(i) substantially lowering the barrier of entry for non-experts to design, synthesize, acquire, or use chemical, biological, radiological, or nuclear (CBRN) weapons;*

*(ii) enabling powerful offensive cyber operations through automated vulnerability discovery and exploitation against a wide range of potential targets of cyber attacks; or*

*(iii) permitting the evasion of human control or oversight through means of deception or obfuscation.*

*Models meet this definition even if they are provided to end users with technical safeguards that attempt to prevent users from taking advantage of the relevant unsafe capabilities.*

Section 4.2(b) of the EO provides initial technical conditions for models and computing clusters that would be subject to the reporting requirements in section 4.2(a). BIS would regularly update the thresholds as the industry develops and AI computing power increases.

The EO’s proposed thresholds make clear that the government is only interested in the largest AI models, with the EO listing a size threshold of  $10^{26}$  computational operations (integer or floating-point operations). Models using primarily biological sequence data will face a  $10^{23}$  computational operations threshold, but BIS will address these models in a separate survey.

Covered computing clusters have “a set of machines physically co-located in a single datacenter, transitively connected by data center networking of over 100 Gbit/s, and having a theoretical maximum computing capacity of  $10^{20}$  integer or floating-point operations per second for training AI.”

BIS states that it is unaware of any active large-scale AI models that currently meet or exceed the  $10^{26}$  computational operations threshold and that the reporting requirement will likely only affect a few companies. The proposed rule states that “there are between zero and 15 companies [that] exceed the reporting thresholds for models and computing clusters at the time of publication,” all of which would be large technology companies.

### The proposed rule’s reporting program

In the proposed rule, BIS is considering a new notification and reporting process through which companies that are developing covered AI models or that possess covered computing clusters would provide quarterly reports to BIS on relevant activities. To that end, the proposed rule would amend BIS’ current information collection regulations to include a new Part 702.7, “Special requirements for on-going reporting regarding the development of advanced artificial intelligence models and computing clusters,” which is summarized below:

- **Reporting obligation:** Covered US persons are required to submit a quarterly notification by email to BIS if the covered US person engages in, or plans, within six months, to engage in applicable activities.
- **Covered US persons** are “any individual U.S. citizen, any lawful permanent resident of the United States as defined by the Immigration and Nationality Act, any entity—including organizations, companies, and corporations—organized under the laws of the United States or any jurisdiction within the United States (including

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foreign branches), or any person (individual) located in the United States.” Expanding upon the definition of “company,” the proposed rule notes the “definition is not limited to commercial or for profit organizations” and that it “may encompass academic institutions, research centers, or any group of persons who are organized in some manner.”

- **Applicable activities:** The covered applicable activities are “conducting any AI model training run using more than  $10^{26}$  computational operations” or “acquiring, developing, or coming into possession of a computing cluster that has a set of machines transitively connected by data center networking of greater than 300 Gbit/s and having a theoretical maximum greater than  $10^{20}$  computational operations (e.g., integer or floating-point operations) per second (OP/s) for AI training, without sparsity.”
- **Responses to BIS questions:** Following notification of covered activities, the covered US person will receive a mandatory questionnaire from BIS. The covered US person must respond to all questions within 30 calendar days. BIS may follow up on a submitted questionnaire to request corrections and clarifications. The survey will include instructions on how covered US persons should submit their responses.
- **Affirmation of no applicable activities:** For each of the seven quarters following the quarter covered by a notification of applicable activities, if the covered US person has no further applicable activities to report, they must submit an affirmation of no applicable activities in the quarterly report.
- **Content of the surveys:** BIS will send questions that cover (but may not be limited to) the following topics: (i) ongoing or planned activities related to training, developing, or producing dual-use foundation models, including the physical and cybersecurity protections taken to assure the integrity of that training process against sophisticated threats; (ii) ownership and possession of the model weights of any dual-use foundation models, and the physical and cybersecurity measures taken to protect those model weights; (iii) results of any developed dual-use foundation model’s performance in relevant AI red-team testing, including a description of any associated measures the company has taken to meet safety objectives, such as mitigations to improve performance on these red-team tests and strengthen overall model security; and (iv) information pertaining to the safety and reliability of dual-use foundation models, or activities or risks that present concerns to US national security.
- **AI model training or training run** refers to “any process by which an AI model learns from data using computing power. Training includes but is not limited to techniques employed during pre- training like unsupervised learning and employed during fine tuning like reinforcement learning from human feedback.”
- **AI red-team testing** refers to “structured testing effort to find flaws and vulnerabilities in an AI system, often in a controlled environment and in collaboration with developers of AI. In the context of AI, red-teaming is most often performed by dedicated “red teams” that adopt adversarial methods to identify flaws and vulnerabilities, such as harmful or discriminatory outputs from an AI system, unforeseen or undesirable system behaviors, limitations, or potential risks associated with the misuse of the system.”

### Request for comments

BIS is inviting public comments on the proposed rule for 30 days, with a deadline of October 11, 2024. Participating in the public comment process can help shape the outcome of the action and prompt BIS to further clarify its actions. BIS’ responses may also inform any potential legal challenge should a final action be adopted.

The broad details of the information collection are mandated by the EO, so a significant course change by BIS is unlikely. Comments on technical details are more likely to be considered. BIS states that it is particularly interested in comments on the notification schedule, approaches to safeguarding submitted data, and the technical thresholds that trigger data reporting, summarized below:

- **Quarterly notification schedule:** BIS is proposing a quarterly notification schedule in the proposed rule, which it believes will provide the “with timely information on the safety and security of large AI models and computing

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clusters, while offering a regular notification schedule to facilitate respondent planning and ease respondent burden.” The call for input states that BIS is welcoming comments on the proposed frequency of the reporting schedule.

- **Information collection and storage:** BIS generally treats the responses to its industrial base surveys as confidential, subject to certain exceptions. The proposed rule notes that BIS recognizes that the detailed information it is seeking in this particular survey is extremely sensitive and is inviting comments on how the collected information can be safely collected and stored.
- **Collection thresholds:** The proposed rule includes the technical specifications set out by the EO, along with further definitions and clarifications. BIS intends to update the thresholds as the industry develops more advanced models, for which it is seeking initial feedback.

### Policy objectives for the reporting system

The proposed rule provides several national defense policy objectives for the new reporting requirements. The policy objectives are similar to those of other BIS industrial survey activities and suggest that further actions may be under consideration:

- **Ensuring dual-use models are available to the defense industrial base:** Having more complete information on the sector will “allow the U.S. Government to determine whether action is necessary to stimulate development of dual-use foundation models or to support the development of specific types of models.”
- **Ensuring that dual-use models will operate in a safe and reliable manner:** Having more complete information on the safety and reliability testing of models will “allow the U.S. Government to determine the extent to which certain dual use foundation models can be used by the defense industrial base and whether action is needed to ensure that the defense industrial base produces the safest and most reliable products and services in the world.”
- **Improving cybersecurity for dual-use models:** Having more complete information on the cybersecurity measures adopted by industry to protect models will “allow the U.S. Government to determine which models are secure enough to be integrated into products or services that are essential to the national defense and to assess whether action is needed to ensure that the defense industrial base is producing the most secure products and services in the world.”
- **Preparing the defense industrial base for offensive use of dual-use models by US adversaries:** Having more complete information on any potentially dangerous capabilities that developers of dual-use models have identified will “enable the U.S. Government to determine whether investments in the defense industrial base are needed to ensure the United States has access to safe and reliable AI systems, as well as to counteract the dangerous capabilities identified or to ensure that adequate safeguards are in place to prevent the theft or misuse of dual-use foundation models by foreign adversaries or non-state actors.”

### House of Representatives Approves Economic Security Bills During “China Week”

The House of Representatives passed dozens of bills during the week of September 9-13, 2024, making progress on various measures that have languished during most of the legislative session. Dubbed “China Week” by House leadership, most of the bills focused on new economic security measures and market access restrictions targeting China. This alert summarizes select bills related to market access, export controls, investment restrictions, intellectual property protection, and research collaboration that the House passed during the week.

The House did not vote on bills to reform the customs *de minimis* rule or to establish outbound investment restrictions. China hawks in the House who had sought votes on more restrictive bills expressed disappointment at the limited nature of the week’s votes. Following the failure to pass *de minimis* legislation, House Democrats called

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on the Biden administration to implement *de minimis* restrictions through executive powers.<sup>19</sup> The White House responded on September 13, announcing plans to change *de minimis* regulations while continuing to encourage legislative action.<sup>20</sup>

### Passing the bills into law

With limited time remaining in the legislative session and strong partisan divisions, passing the bills into law will be challenging. Attaching the bills to “must-pass” legislation like the 2025 National Defense Authorization Act (NDAA) would be the most promising approach. The 2025 NDAA is now awaiting a floor vote in the Senate,<sup>21</sup> which will likely take place during the lame-duck session in November or December.

The House approved its version of the 2025 NDAA in June 2024, mostly along partisan lines.<sup>22</sup> The House’s bill includes social policy measures unpopular among Democrats and sets an overall budget lower than the budget in the Senate’s version, both of which will lead to challenging negotiations between the House and Senate over the next few months. Informal discussions between House and Senate armed services appropriators are underway, aiming to produce a bipartisan bill that the Senate could quickly pass. The most bipartisan of the national security policy-related bills approved by the House during its “China Week” (for example, the BIOSECURE Act) could become amendments to this forthcoming compromise NDAA. In contrast, the partisan Republican bills, like the bills to tighten restrictions on accessing electric vehicles subsidies and re-establishing the Department of Justice’s China Initiative office, are unlikely to progress any further.

### Overview of bipartisan bills passed during “China Week”

#### □ BIOSECURE Act

H.R.8333, the BIOSECURE Act, is a bipartisan proposal to prohibit the US government and organizations that receive US government funding from procuring services or equipment from certain biotechnology companies linked to China and other listed foreign adversaries.<sup>23</sup> The bill’s sourcing prohibition is based on Section 889 of the 2019 NDAA, which restricts US government acquisitions of covered telecommunications equipment and services from certain Chinese manufacturers.<sup>24</sup> Given the US government’s large role in funding medical research and medical services provision, a broad application of the bill’s restrictions could effectively exclude Chinese biotechnology-related equipment and services from the US market and force US healthcare companies to restructure supply chains.

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<sup>19</sup> House Democrats letter to the Biden administration, September 11, 2024, accessible here: <https://delaura.house.gov/sites/evo-subsites/delauro.house.gov/files/evo-media-document/Letter%20to%20President%20Biden%20re.%20de%20minimis%209.11.24%20FINAL-compressed.pdf>.

<sup>20</sup> “Biden- Harris Administration Announces New Actions to Protect American Consumers, Workers, and Businesses by Cracking Down on De Minimis Shipments with Unsafe, Unfairly Traded Products,” September 13, 2024, accessible here: <https://www.whitehouse.gov/briefing-room/statements-releases/2024/09/13/fact-sheet-biden-harris-administration-announces-new-actions-to-protect-american-consumers-workers-and-businesses-by-cracking-down-on-de-minimis-shipments-with-unsafe-unfairly-traded-products/>.

<sup>21</sup> S.4638 - National Defense Authorization Act for Fiscal Year 2025, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/bill/118th-congress/senate-bill/4638>.

<sup>22</sup> 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>.

<sup>23</sup> H.R.8333 - BIOSECURE Act, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/bill/118th-congress/house-bill/8333>.

<sup>24</sup> Section 889 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232); see also, “Section 889 Policies,” accessible here: <https://www.acquisition.gov/Section-889-Policies>, for the restriction’s implementing rules for government contracting and 2 CFR 200.216 for the implementing rules for loans and grants, accessible here: <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-C/section-200.216>.

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The bill was originally introduced in the Senate on December 20, 2023 (S.3558)<sup>25</sup> and in the House of Representatives on January 25, 2024 (H.R.7085).<sup>26</sup> The House version was then reintroduced with some modifications on May 10, 2024 as H.R.8333 after H.R.7085's original sponsor resigned from Congress. The Senate Committee on Homeland Security and Governmental Affairs approved S.3558 on March 6, 2024 with an amendment in the nature of a substitute, and the House Committee on Oversight and Accountability approved H.R.8333 on May 15, 2024, both with strong bipartisan majorities. The amended Senate bill is identical to H.R. 8333 as passed by the House in most respects, except that the House bill includes a delayed effective date for existing contracts and a safe harbor for biotechnology equipment and services that are no longer being provided by the prohibited companies. The House approved H.R.8333 on September 9, 2024, by a vote of 306 to 81. Because the House and Senate versions of the bill are slightly different, legislators will need to reconcile the bills before a final version is sent to the president. Given the close similarity of the two versions, it is likely that any discrepancies can be easily resolved.

H.R.8333 makes several notable changes relative to H.R.7085, which will likely make it easier for the US industry to adjust to the prohibition. Though the prohibition and scope of covered products remain largely the same as in the original bill, the new bill (i) extends the implementation timeline to 2032 for supplier prohibitions that affect contracts that were entered into before the effective date of the prohibition; (ii) adds a new safe harbor for certain legacy biotechnology equipment; (iii) adds a new notification process under which companies have an opportunity to refute a proposed designation or adopt mitigation measures that result in no designation; and (iv) adds new instructions for intelligence assessments of risks related to foreign adversary access to US multiomic data. The notification process and intelligence assessment were both included in the amended Senate version of the bill.

#### □ **Economic Espionage Prevention Act**

H.R.8361, the Economic Espionage Prevention Act,<sup>27</sup> would (i) direct the executive branch to submit a report to Congress on efforts by companies in China to evade US sanctions on Russia; (ii) authorize the executive branch to impose sanctions on foreign adversary entities that steal US trade secrets, provide material support to US foreign adversaries, or violate US export controls; and (iii) limit the information exchange protections in Section 203(b) of the International Emergency Economic Powers Act (IEEPA), which could allow the president to use IEEPA to restrict certain foreign media and technology companies in the United States.

Rep. Richard McCormick (R-GA) introduced the bill on May 10, 2024, and it was unanimously approved by the Committee on Foreign Affairs on May 16. The House approved the bill on September 9, 2024 by voice vote.

#### □ **Remote Access Security Act**

H.R.8152, the Remote Access Security Act, would empower the Bureau of Industry and Security (BIS) to impose export controls on remote access systems, including cloud computing services.<sup>28</sup> The bill's supporters intend for BIS to use this power to prohibit Chinese companies from using US cloud services to train AI models. To do so, the bill amends various sections of the Export Control Reform Act to add "remote access of such systems" to the kinds of transactions that BIS can restrict for controlled items (alongside "export, reexport, and in-country transfer"). Amended section 1742 would define "remote access" as "access to an item subject to the jurisdiction of the United States by a foreign person through a network connection, including the internet or a cloud

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<sup>25</sup> S.3558 - A bill to prohibit contracting with certain biotechnology providers, and for other purposes, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/bill/118th-congress/senate-bill/3558>.

<sup>26</sup> H.R.7085 - BIOSECURE Act, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/bill/118th-congress/house-bill/7085>.

<sup>27</sup> H.R.8361 - Economic Espionage Prevention Act, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/bill/118th-congress/house-bill/8361>.

<sup>28</sup> H.R.8152 - Remote Access Security Act, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/bill/118th-congress/house-bill/8152>.

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computing service, from a location other than where the item is physically located,” or in “any other form of access specified in regulations promulgated by the Secretary [of Commerce].”

Reps. Mike Lawler (R-NY), Jeff Jackson (D-NC), Rich McCormick (R-GA), and Jasmine Crockett (D-TX) introduced the Remote Access Security Act to the House of Representatives on April 29, 2024. The bill was referred to the House Committee on Foreign Affairs, where it was promptly ordered to be reported by unanimous consent on May 16, 2024. It passed the House by voice vote on September 9, 2024. Sen. Ron Wyden (D-OR) has introduced a similar bill in the Senate as a proposed amendment to the 2025 NDAA.<sup>29</sup> BIS has provided input on the bills and supports the proposal.

#### □ **Export Control Enforcement and Enhancement Act**

H.R.7151, the Export Control Enforcement and Enhancement Act,<sup>30</sup> seeks to streamline the process for altering the items included on BIS’ Commerce Control List by expediting the proposal and review process. The bill would also impose a presumption of denial for exports of items on the Commerce Control List to countries subject to embargo or entities on the Entity List, though BIS could waive the presumption.

Reps. Ann Wagner (R-MO) and Michael McCaul (R-TX) introduced the bill in January 2024. The House Foreign Affairs Committee approved it by voice vote on July 11, 2024, and the bill passed the House on September 9 by voice vote.

#### □ **To amend the Export Control Reform Act of 2018 relating to the statement of policy**

H.R.6606, To amend the Export Control Reform Act (ECRA) of 2018 relating to the statement of policy, would expand the ECRA’s coverage to allow export controls to be used against entities that steal US trade secrets.<sup>31</sup> The bill amends 50 U.S.C. 4811(2)<sup>32</sup> (the ECRA’s statement of situations for which export controls should be used) to add a paragraph H, stating, “to protect the trade secrets of the United States, its people, and its industrial base either related to items subject to control by the Secretary pursuant to this part or when the subject of economic espionage as described in section 1831 of title 18, United States Code.”

Delegate Aumua Amata Coleman Radewagen (R-AS) introduced H.R.6606 on December 5, 2023, and it was approved unanimously by the Committee on Foreign Affairs a few days later. The bill passed the House by voice vote on September 9, 2024.

#### □ **Maintaining American Superiority by Improving Export Control Transparency Act**

H.R.6614, the Maintaining American Superiority by Improving Export Control Transparency Act, would require BIS to provide a quarterly report to Congress on all the export licenses that it considers.<sup>33</sup> The reports would include (with respect to each preceding 90-day period): (i) a description of each license application (including entity, item description and ECCN, end user, value estimate, information on site inspections, and BIS’ decision); (ii) aggregated data on license applications and other authorization requests; and (iii) a list detailing what specific items are being denied a license for license denials involving items within category EAR99.

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<sup>29</sup> S.Amdt.2187 to S.4638, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/amendment/118th-congress/senate-amendment/2187/text>.

<sup>30</sup> H.R.7151 - Export Control Enforcement and Enhancement Act, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/bills/118th-congress/house-bill/7151>.

<sup>31</sup> H.R.6606 - To amend the Export Control Reform Act of 2018 relating to the statement of policy, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/bills/118th-congress/house-bill/6606>.

<sup>32</sup> Section 1752(2) of the Export Control Reform Act of 2018 (50 U.S.C. 4811(2)), accessible here: [https://uscode.house.gov/view.xhtml?req=\(title:50%20section:4811%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:50%20section:4811%20edition:prelim)).

<sup>33</sup> H.R.6614 - Maintaining American Superiority by Improving Export Control Transparency Act, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/bills/118th-congress/house-bill/6614>.

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Reps. Ronny Jackson (R-TX) and Michael McCaul (R-TX) introduced the bill on December 6, 2023, and it was approved by the Committee on Foreign Affairs a few days later. The House passed the bill by voice vote on September 9, 2024.

#### □ **Countering CCP Drones Act**

H.R.2864, the Countering CCP [Chinese Communist Party] Drones Act, would add DJI (China's leading commercial drone manufacturer) to the Federal Communications Commission's (FCC) Covered List under Section 2 of the Secure Networks Act.<sup>34</sup> Adding DJI to the Covered List<sup>35</sup> would prohibit the FCC from issuing equipment authorizations to the company's covered telecommunications equipment and video surveillance products, essentially excluding covered DJI products from the US market. Furthermore, any DJI products that require FCC authorization and are not subject to the Covered Lists' coverage would be banned from using Supplier's Declaration of Conformity (SDoC) authorization, forcing DJI to use the more burdensome equipment 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. The House passed the bill by voice vote on September 9, 2024. It was also amended to the House's version of the 2025 NDAA. A similar bill is under development in the Senate.<sup>36</sup>

#### □ **ROUTERS Act**

H.R.7589, the ROUTERS Act, would direct the Department of Commerce, through the Assistant Secretary of Commerce for Communications and Information, to conduct a study of the national security risks posed by consumer routers and modems designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the influence of North Korea, China, Russia, or Iran.<sup>37</sup> The bill provides no further details on what the report should specifically contain, nor does it define "persons owned by, controlled by, or subject to the influence of."

Reps. Robert Latta (R-OH) and Mary Peltola (D-AK) introduced the bill on March 3, 2024, and it was approved unanimously by the Committee on Energy and Commerce a few weeks later. The House passed the bill by voice vote on September 9, 2024. Sens. Marsha Blackburn (R-TN) and Ben Ray Lujan (D-NM) introduced a similar bill to the Senate in June 2024.<sup>38</sup>

#### □ **Decoupling from Foreign Adversarial Battery Dependence Act**

H.R.8631, the Decoupling from Foreign Adversarial Battery Dependence Act, would prohibit the Department of Homeland Security (DHS) from using appropriated funds to procure a battery produced by certain Chinese

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<sup>34</sup> H.R.2864 - Countering CCP Drones Act, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/bill/118th-congress/house-bill/2864>.

<sup>35</sup> "Protecting Against National Security Threats to the Communications Supply Chain through the Equipment Authorization Program," Report and Order, Order, and Further Notice of Proposed Rulemaking, FCC 22-84, ET Docket No. 21-232 (November 25, 2022). The rules were published in the Federal Register as "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>.

<sup>36</sup> "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/>.

<sup>37</sup> H.R.7589 - ROUTERS Act, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/bill/118th-congress/house-bill/7589>.

<sup>38</sup> S.4572 - ROUTERS Act, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/bill/118th-congress/senate-bill/4572>.

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entities.<sup>39</sup> The specified Chinese entities include CATL, BYD, Envision Energy, EVE Energy, Gotion, and Hithium Energy Storage Technology; any entity on the UFLPA Entity List; entities that are identified by the Department of Defense as Chinese military companies; the BIS Entity List (Supplement No. 4 to EAR Part 744); as well as any subsidiary or successor entities.

Reps. Carlos Gimenez (R-FL), Mark Green (R-TN), John Moolenaar (R-MI), August Pfluger (R-TX) introduced the bill on June 5, 2024, and it was approved by the Committee on Homeland Security a few days later. The House passed the bill by voice vote on September 9, 2024.

#### □ **Foreign Adversary Communications Transparency Act**

H.R.820, the Foreign Adversary Communications Transparency Act, would require the FCC to publish a list of entities with ties to specified countries that hold a license or other authorization granted by the FCC.<sup>40</sup> No later than 120 days after the bill is enacted, the FCC would publish a list of entities that hold licenses issued by the FCC pursuant to section 309(j) of the Communications Act of 1934<sup>41</sup> (electromagnetic spectrum licensing) and the Cable Landing Licensing Act of 1921 and Executive Order 10530<sup>42</sup> (submarine cable licensing), with respect to which (i) a covered entity holds an equity or voting interest that is required to be reported to the FCC under its ownership rules, or (ii) an appropriate national security agency has determined that a covered entity exerts control, regardless of whether such entity holds an equity or voting interest that is required to be reported to the FTC.

Reps. Elise Stefanik (R-NY), Mike Gallagher (R-WI), and Ro Khanna (D-CA) introduced the bill on February 2, 2023. The Committee on Energy and Commerce approved it unanimously on March 20, 2024, and the House passed it by voice vote on September 9, 2024.

#### □ **Sanctions Lists Harmonization Act**

H.R.5613, the Sanctions Lists Harmonization Act, would instruct the Departments of Treasury, Commerce, and Defense to notify each other when placing an individual or entity on a sanctions list and then consider adding the sanctioned individual or entity to all other sanctions lists.<sup>43</sup>

Rep. Michael Waltz (R-FL) introduced the bill on September 20, 2023, and the Committee on Foreign Affairs approved the bill unanimously on December 13, 2023. It passed the House on September 9, 2024 by voice vote.

### **Partisan Republican bills passed during “China Week”**

#### □ **Protecting American Agriculture from Foreign Adversaries Act of 2024**

H.R.9456, Protecting American Agriculture from Foreign Adversaries Act of 2024, would instruct Committee on Foreign Investment in the United States (CFIUS) to review certain agricultural land transactions reported to it by the Department of Agriculture (and makes the Department of Agriculture a member of CFIUS).<sup>44</sup> Under this review system, the Department of Agriculture would report certain agricultural transactions to CFIUS, CFIUS

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<sup>39</sup> H.R.8631 - Decoupling from Foreign Adversarial Battery Dependence Act, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/bill/118th-congress/house-bill/8631>.

<sup>40</sup> H.R.820 - Foreign Adversary Communications Transparency Act, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/bill/118th-congress/house-bill/820>.

<sup>41</sup> 47 U.S.C. 309(j), accessible here: [https://uscode.house.gov/view.xhtml?req=\(title:47%20section:309%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:47%20section:309%20edition:prelim)).

<sup>42</sup> 47 U.S.C. 34 et seq., accessible here: [https://uscode.house.gov/view.xhtml?req=\(title:47%20section:34%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:47%20section:34%20edition:prelim)); and Executive Order No. 10530, accessible here: <https://www.fcc.gov/cable-landing-license-act#EO10530>.

<sup>43</sup> H.R.5613 - Sanctions Lists Harmonization Act, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/bill/118th-congress/house-bill/5613>.

<sup>44</sup> H.R.9456 - Protecting American Agriculture from Foreign Adversaries Act of 2024, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/bill/118th-congress/house-bill/9456>.

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would then determine whether the transactions are covered transactions. If CFIUS determines the transaction is covered, it would initiate a review. Reportable agricultural land transactions are those that (i) are reported to the Department of Agriculture under section 2(a) of the Agricultural Foreign Investment Disclosure Act (AFIDA);<sup>45</sup> (ii) the Secretary of Agriculture has reason to believe is a covered transaction; and (iii) involve acquisition of an interest in agricultural land by a foreign person of China, North Korea, Russia, or Iran.

Rep. Dan Newhouse (R-WA), along with 12 other Republican original co-sponsors, introduced the bill on September 6, 2024. The Rules Committee referred the bill to the House floor for a vote along with several other partisan Republican bills. The bill passed the House on September 11, 2024, by a vote of 269 to 149. The bill is one of several measures proposed in the past year to modify CFIUS rules to review agriculture investment, which vary in their level of restrictiveness (others include S.68/H.R.513, H.R.3378, and H.R.5409).

#### □ **End Chinese Dominance of Electric Vehicles in America Act of 2024**

H.R. 7980, the End Chinese Dominance of Electric Vehicles in America Act, would tighten the Section 30D foreign entity of concern (FEOC) restriction with amendments that establish a new definition of prohibited foreign entity and that broaden the scope of the inputs and commercial relationships that are subject to the restriction. The bill does not contain phase-in periods for these restrictions, applying immediately to any vehicles placed into service after the bill's enactment into law.

Rep. Carol Miller (R-WV) introduced the bill on April 15, 2024. The Ways and Means Committee approved the bill on April 17, 2024 along partisan lines with 22 Republicans voting in favor and 18 Democrats voting against. The House approved the bill on September 12, 2024 by a vote of 217 to 192. The Biden administration opposes the bill, describing the proposed FEOC definition as unclear and unworkable.<sup>46</sup>

#### □ **DHS Restrictions on Confucius Institutes and Chinese Entities of Concern Act**

H.R.1516, the DHS Restrictions on Confucius Institutes and Chinese Entities of Concern Act, would prohibit US universities from receiving funding from the DHS if the university has a relationship with any Chinese entity of concern or Chinese government-funded cultural institutes.<sup>47</sup> The bill defines Chinese entities of concern as universities in China that are (i) involved in the implementation of military-civil fusion; (ii) participate in the Chinese defense industrial base; (iii) are affiliated with the Chinese State Administration for Science, Technology and Industry for the National Defense; (iv) receive funding from any organization subordinate to the Central Military Commission of the Chinese Communist Party; and (v) provide support to any security, defense, police, or intelligence organization of the Government of the People's Republic of China or the Chinese Communist Party.

Rep. August Pfluger (R-TX) and 12 other original Republican co-sponsors introduced H.R.1516 in March 2023 and the Committee on Homeland Security approved the bill 16-12 on November 8, 2023. The House passed the bill by a vote of 249 to 161 on September 10, 2024. The White House has stated that it would prefer alternative approaches to “ensure that DHS funding is made available only to partners that advance U.S. interests, homeland security, and democratic norms,” and that the Biden administration “looks forward to working with Congress to refine this bill as it moves through the legislative process.”<sup>48</sup>

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<sup>45</sup> AFIDA requires foreign investors who acquire, transfer, or hold an interest in US agricultural land to report such holdings and transactions to the Secretary of Agriculture, see, the AFIDA webpage for more information, accessible here: <https://www.fsa.usda.gov/programs-and-services/economic-and-policy-analysis/afida/index>.

<sup>46</sup> Statement of Administration Policy on H.R.7980, September 11, 2024, accessible here: <https://www.whitehouse.gov/wp-content/uploads/2024/09/SAP-HR7980.pdf>.

<sup>47</sup> H.R.1516 - DHS Restrictions on Confucius Institutes and Chinese Entities of Concern Act, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/bill/118th-congress/house-bill/1516>.

<sup>48</sup> Statement Of Administration Policy on H.R.1516, September 10, 2024, accessible here: <https://www.whitehouse.gov/wp-content/uploads/2024/09/SAP-HR1516.pdf>.

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## □ **Protect America's Innovation and Economic Security from CCP Act of 2024**

H.R.1398, the Protect America's Innovation and Economic Security from CCP Act of 2024, would establish a China-focused prosecutions office at the Department of Justice.<sup>49</sup> The system is based on the DOJ China Initiative office, which the Biden administration disbanded in 2022 because of civil rights concerns. The office would (i) counter nation-state threats; (ii) curb spying by the Chinese Communist Party (CCP) on US intellectual property and academic institutions; (iii) develop an enforcement strategy concerning nontraditional collectors, including researchers in labs, universities, and the defense industrial base, that are being used to transfer technology contrary to US interests; (iv) implement the Foreign Investment Risk Review Modernization Act of 2018 for the DOJ; (v) identify cases under the Foreign Corrupt Practices Act involving Chinese companies that compete with United States businesses; (vi) prioritize prosecution of those engaged in trade secret theft, hacking, and economic espionage; and (vii) prioritize protecting critical infrastructure against external threats through foreign direct investment and supply chain compromises.

Reps. Lance Gooden (R-TX), Randy Weber (R-TX), Bill Posey (R-FL), and Doug Lamborn (R-CO) introduced the bill to the House on March 7, 2023. The Judiciary Committee approved it 15 to 8 on August 30, 2024, and the House approved it 237 – 180 on September 11, 2024 with several amendments. Sens. Rick Scott (R-FL), Bill Hagerty (R-TN), and Marco Rubio (R-FL) introduced a similar companion bill to the Senate in February 2023, which has not moved forward.<sup>50</sup> The Biden administration issued a statement of administration policy opposing the bill after it passed the House.<sup>51</sup>

## **BIS Proposes to Ban Chinese and Russian Information and Communications Technology Components from Automotive Supply Chains**

On September 23, 2024, the Bureau of Industry and Security (BIS) issued a notice of proposed rulemaking (NPRM)<sup>52</sup> to prohibit the import and sale of certain hardware and software components integrated in automotive vehicle connectivity systems (VCS) and automated driving systems (ADS). If implemented as proposed, the rule would apply to VCS and ADS, as well as finished vehicles that contain such systems (referred to as “completed connected vehicles”), that are designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of China (including Hong Kong) or Russia.

Besides prohibiting the import and sale of the hardware and software manufactured in China and Russia covered by the proposed rule, the prohibition would apply to automotive manufacturers and suppliers located in third countries or in the United States that either use covered Chinese and Russian hardware and software as inputs or that are “owned by, controlled by, or subject to the jurisdiction or direction” of China or Russia. Companies importing VCS, ADS, and completed connected vehicles that are not prohibited under the proposed rule would be required to submit Declarations of Conformity to BIS describing the covered hardware and software components used in their VCS and ADS hardware components and finished vehicles.

### **Efforts to exclude Chinese companies from the US automotive market**

The prohibition is the latest in a series of policies the US government has adopted to exclude the Chinese automotive industry from the US market, which the Biden administration has argued is necessary both to protect US national

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<sup>49</sup> H.R.1398 - Protect America's Innovation and Economic Security from CCP Act of 2024, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/bill/118th-congress/house-bill/1398>.

<sup>50</sup> S.511 - Protect America's Innovation and Economic Security from CCP Act, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/bill/118th-congress/senate-bill/511>.

<sup>51</sup> Statement Of Administration Policy on H.R.1398, September 10, 2024, accessible here: <https://www.whitehouse.gov/wp-content/uploads/2024/09/SAP-HR1398.pdf>.

<sup>52</sup> “Securing the Information and Communications Technology and Services Supply Chain: Connected Vehicles,” 89 FR 79088 (September 26, 2024), accessible here: <https://federalregister.gov/d/2024-21903>.

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security and to promote the US automotive industry.<sup>53</sup> Though Chinese manufacturers do not currently export significant numbers of vehicles to the United States, Washington has become increasingly concerned that China's rapidly growing industry may soon take a leading role in the sector, especially in the new electric vehicle industry. In a speech on the day the prohibition was announced, White House National Economic Advisor Lael Brainard described the Biden administration's recent actions as "determined to avoid a second China shock, which means putting safeguards in place before a flood of underpriced Chinese autos undercuts the ability of the U.S. auto sector to compete on the global stage."

Most recently, the Biden administration finalized a rule to raise Section 301 tariffs on electric vehicles manufactured in China to 100%, which will enter effect on September 27, 2024 (internal combustion engine vehicles remain subject to the existing 25% Section 301 tariff). The Inflation Reduction Act's (IRA) foreign entity of concern (FEOC) prohibition is also intended to incentivise the US electric vehicle industry to separate itself from Chinese suppliers. Those prior actions do not amount to a comprehensive prohibition on the entire Chinese automotive industry, however. Since the tariffs entered effect, Washington has become concerned that Chinese manufacturers might seek to bypass the Section 301 tariffs by relocating certain stages of production to third countries like Mexico. BIS's proposed prohibition would exclude all Chinese vehicle manufacturers from the retail market and exclude Chinese manufacturers of certain hardware inputs from automotive supply chains, regardless of where the manufacturing takes place. Under this prohibition, Chinese manufacturers will be unable to access the US market even if they relocate their manufacturing activities to third countries.

Though the prohibition on Chinese vehicles will prevent a predicted future increase in Chinese exports, the prohibition on Chinese VCS hardware and software may be the most significant disruption to current international automotive supply chains (Russian suppliers are already excluded from much of the US automotive supply chain by international sanctions). Automotive manufacturers that are not associated with Chinese automotive suppliers – wherever located – will have to reconfigure their supply chains to exclude the covered Chinese hardware and software inputs and then document their compliance to BIS.

### **Background on the ICTS rule**

The NPRM builds on an advance notice of proposed rulemaking that BIS issued in March 2024,<sup>54</sup> and is based on national security regulations that empower BIS to prohibit information and communications technology and services (ICTS) transactions that pose certain security risks (known as the "ICTS rule"). The ICTS rule empowers BIS to prohibit transactions involving certain technologies that BIS has determined present "undue or unacceptable risks" to US national security or the security and safety of US persons. To implement a prohibition, BIS may issue rules that establish criteria for particular classes of technology or for specific market participants, to which the ICTS rule's restrictions would automatically apply.

BIS developed the ICTS rule to implement Executive Order (EO) 13873, which President Trump issued in 2019 and President Biden continued and expanded in EO 14034.<sup>55</sup> The ICTS rule authorizes the Secretary of Commerce to

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<sup>53</sup> See, for example, "Protecting America from Connected Vehicle Technology from Countries of Concern," September 23, 2024, accessible here: <https://www.whitehouse.gov/briefing-room/statements-releases/2024/09/23/fact-sheet-protecting-america-from-connected-vehicle-technology-from-countries-of-concern/>; and "Remarks by National Economic Advisor Lael Brainard on Sustaining American Auto Leadership," September 23, 2024, accessible here: <https://www.whitehouse.gov/briefing-room/speeches-remarks/2024/09/23/remarks-by-national-economic-advisor-lael-brainard-on-sustaining-american-auto-leadership/>.

<sup>54</sup> "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>.

<sup>55</sup> 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->

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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 pose 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. Persons who violate, attempt to violate, conspire to violate, or knowingly cause a violation of actions taken under the ICTS rule may be subject to civil and criminal penalties under the International Emergency Economic Powers Act (IEEPA).

The ICTS rule is enforced by the newly formed Office of Information and Communications Technology and Services (OICTS) at BIS. OICTS' announced its first enforcement action on June 24, 2024, when it prohibited distribution of Kaspersky Lab antivirus and cybersecurity products in the United States or to US persons in an entity-specific action.<sup>56</sup> The connected vehicle prohibition will be the first categorical regulatory prohibition on transactions involving a whole class of ICTS products proposed by BIS since the ICTS rule's creation.

### The ICTS rule and connected vehicles

To apply the ICTS rule's restrictions to connected vehicles, the NPRM specifies the prohibited transactions; defines the covered hardware, software, and manufacturers; proposes certain exceptions; proposes compliance systems; sets out the proposed timeline for implementation; and requests public feedback on the proposals.

### Prohibited transactions

The NPRM is proposing four specific prohibitions applying to certain classes of technologies and manufacturers (referred to collectively as the proposed rule's "prohibited transactions"):

1. **VCS hardware importers** are prohibited from knowingly **importing** VCS hardware (which may also contain covered software) that is designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of China or Russia. BIS designates VCS hardware importers as responsible for compliance with this prohibition.
2. **Connected vehicle manufacturers** are prohibited from knowingly **importing** into the United States completed connected vehicles that incorporate covered software that is designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of China or Russia. BIS designates connected vehicle manufacturers that import completed connected vehicles as responsible for compliance with this prohibition.
3. **Connected vehicle manufacturers** are prohibited from knowingly **selling** in the United States completed connected vehicles that incorporate covered software that is designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of China or Russia. BIS designates connected vehicle manufacturers that sell completed connected vehicles as responsible for compliance with this prohibition.
4. **Connected vehicle manufacturers who are persons owned by controlled by, or subject to the jurisdiction or direction of China or Russia**, are prohibited from knowingly **selling** in the United States completed connected vehicles that incorporate VCS hardware or covered software. This prohibition applies even if the manufacturer was not involved in the design or development of the specific hardware and software components.

Because the prohibitions overlap, a single company may have obligations under multiple prohibitions (e.g., a company that imports completed connected vehicles for distribution in the United States may be both a VCS

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from-foreign-adversaries. The implementing regulations can be found at 15 CFR 791, accessible here: <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-E/part-791?toc=1>.

<sup>56</sup> "Final Determination: Case No. ICTS-2021-002, Kaspersky Lab, Inc.," 89 FR 52434 (June 24, 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/press-release/commerce-department-prohibits-russian-kaspersky-software-us-customers>.

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hardware importer under the first prohibition and a connected vehicle manufacturer under the second and third prohibitions).

The prohibition would rely on a knowledge standard in the same way as the Export Administration Regulations (EAR) at 15 CFR 772.1. Knowledge of a circumstance includes not only positive knowledge that the circumstance exists or is substantially certain to occur, but also an awareness of a high probability of its existence or future occurrence. Such awareness is inferred from evidence of the conscious disregard of facts known to a person and is also inferred from a person's willful avoidance of facts.

### Definitions for prohibited transactions

Transactions that may be subject to the prohibitions involve "imports" or "sales" by "VCS hardware importers" or "Connected vehicle manufacturers," defined below:

- A **"Connected vehicle manufacturer"** is a US person that is: either, (i) manufacturing or assembling completed connected vehicles in the United States; or (ii) importing completed connected vehicles for sale in the United States.
- A **"VCS hardware importer"** is a US person importing VCS hardware for further manufacturing, integration, resale, or distribution. A connected vehicle manufacturer is also a VCS hardware importer if the VCS hardware is integrated with a vehicle the connected vehicle manufacturer is importing.
- An **"import"** is defined as an entry into the United States Customs Territory. Under this definition, prohibited items may still enter United States Foreign-Trade Zones (FTZ) for storage and further assembly, so long as the item is eventually shipped onward to a foreign country and not brought into the United States Customs Territory.
- **"Sale"** means distributing for purchase, lease, or other commercial operations a new completed connected vehicle for a price. The definition would include both (i) the transfer of completed connected vehicles from a connected vehicle manufacturer to a dealer or distributor; and (ii) direct-to-consumer sales of completed connected vehicles from the connected vehicle manufacturer to the ultimate purchaser.

### Prohibited covered hardware and software

Covered transactions involving VCS hardware and covered software would be prohibited transactions if the transacted VCS hardware and covered software is **"designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary [i.e., China or Russia],"** which includes the following relationships:

- (a) Any person, wherever located, who acts as an agent, representative, or employee, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign adversary or of a person whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in majority part by a foreign adversary.
- (b) Any person, wherever located, who is a citizen or resident of a foreign adversary or a country controlled by a foreign adversary, and is not a United States citizen or permanent resident of the United States.
- (c) Any corporation, partnership, association, or other organization with a principal place of business in, headquartered in, incorporated in, or otherwise organized under the laws of a foreign adversary or a country controlled by a foreign adversary.
- (d) Any corporation, partnership, association, or other organization, wherever organized or doing business, that is owned or controlled by a foreign adversary, to include circumstances in which any person identified in paragraphs (a) through (c) possesses the power, direct or indirect, whether or not exercised, through the ownership of a majority or a dominant minority of the total outstanding voting interest in an entity, board

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representation, proxy voting, a special share, contractual arrangements, formal or informal arrangements to act in concert, or other means, to determine, direct, or decide important matters affecting an entity.

VCS hardware and covered software would not be deemed to be designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary solely based on the country of citizenship of natural persons who are employed, contracted, or otherwise similarly engaged to participate in the design, development, manufacture, or supply of the VCS hardware or covered software.

For the purpose of this prohibition, BIS proposes limiting the definition of **“foreign adversary”** to China (including the Hong Kong) and Russia. The prohibition would not apply to entities associated with Cuba, Iran, North Korea, or the Maduro Regime in Venezuela, which are typically included in the definition of “foreign adversary” under the ICTS rule.

### Definitions of covered hardware and software

The specific automotive inputs subject to the prohibited transactions include certain specified VCS hardware and covered software (that operates either VCS hardware or ADS) in connected vehicles, defined below:

- Covered **“VCS hardware”** means the following software-enabled or programmable components and subcomponents that support the function of VCS or that are part of an item that supports the function of VCS: microcontrollers, microcomputers or modules, systems on chips, networking or telematics units, cellular modem/modules, Wi-Fi microcontrollers or modules, Bluetooth microcontrollers or modules, satellite navigation systems, satellite communication systems, other wireless communication microcontrollers or modules, and external antennas. Aftermarket devices that fulfill functions consistent with the definition of VCS hardware would also be covered by the definition. VCS hardware does not include component parts that do not contribute to the communication function of VCS hardware (e.g., brackets, fasteners, plastics, and passive electronics).
- **“Vehicle Connectivity System” (VCS)** means a hardware or software item for a completed connected vehicle that has the function of enabling the transmission, receipt, conversion, or processing of radio frequency communications at a frequency over 450 megahertz. BIS intends for the frequency range floor to exclude certain hardware items from the definition of VCS hardware, such as keyless entry fobs, immobilizers, and some internal wireless sensors and relays. VCS software is included in the definition of covered software.
- **“Covered software”** means the software-based components, in which there is a foreign interest, executed by the primary processing unit of the respective systems that are part of an item that supports the function of the covered VCS hardware (VCS software) or an automated driving system (ADS software) at the vehicle level. The definition would – at a minimum – include operating systems. The definition would not include the firmware used for controlling the hardware device or any open-source software (which are therefore not subject to the prohibition).
- A **“foreign interest,”** for the purposes of the covered software definition, refers to any interest in property of any kind, whether direct or indirect, by a non-US person. This includes interests arising from ownership, intellectual property, contracts (e.g., ongoing supply commitments such as maintenance), and any license agreements related to the use of intellectual property, among other arrangements.
- **“Automated Driving System” (ADS)** means hardware and software that, collectively, are capable of performing the entire dynamic driving task for a completed connected vehicle on a sustained basis, regardless of whether it is limited to a specific operational design domain (ODD). BIS intends for the definition to be consistent with the existing definitions of automation levels 3, 4, and 5 as defined by SAE International standard J3016.
- **“Connected vehicle” (CV)** means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, that integrates onboard networked hardware with automotive software systems to communicate via dedicated short-range communication, cellular telecommunications connectivity, satellite communication, or other wireless spectrum connectivity with any other network or device.

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Nearly all vehicles used for road transport (including cars, trucks, busses, etc.) on today's market would be implicated under the definition. The definition does not apply to vehicles operated on rail. BIS also highlights that vehicles not typically used on public roads (such as agricultural and mining vehicles) would not be covered by the definition.

- A **“completed connected vehicle”** means a connected vehicle that requires no further manufacturing operations to perform its intended function. The integration of an ADS into a connected vehicle constitutes a manufacturing operation for a completed connected vehicle.

### Authorizations for exceptions

VCS hardware importers and connected vehicle manufacturers seeking to engage in prohibited transactions would either need to qualify under a general authorization or obtain a specific authorization.

- **General authorizations** allow prohibited activities under certain narrow circumstances. The general authorizations would allow certain VCS hardware importers and connected vehicle manufacturers to engage in otherwise prohibited transactions without the need to notify BIS. The general authorizations could be used for:
  - (i) Low-volume manufacturers that produce fewer than 1,000 units of connected vehicles or VCS hardware per year;
  - (ii) Otherwise prohibited vehicles for use on public roadways for fewer than 30 calendar days per year;
  - (iii) Otherwise prohibited connected vehicles used for testing, display, or research purposes only; and
  - (iv) Imports of otherwise prohibited vehicles solely for the purpose of repair, alteration, or competition off public roads, with the intent to subsequently reexport.

Persons using general authorizations are allowed to self-certify compliance but are required to retain records of the activities for 10 years. Such records are subject to audit and inspection by BIS. An entity that is a subsidiary, joint venture, affiliate, or other entity subject to the ownership, control, jurisdiction, or direction of China or Russia would be ineligible for general authorizations.

- **Specific authorizations** may be applied for by VCS hardware importers and connected vehicle manufacturers seeking to engage in a specific prohibited transaction that does not otherwise qualify under the general authorization. BIS expects that the specific authorization process will enable it to assess the risk of certain activities on a case-by-case basis and consider potential alternative mitigation strategies.

BIS will establish a web portal through which companies can submit applications for specific authorization. Applicants would submit one application per transaction documenting the proposed transaction, including: (i) every party involved; (ii) an overview of the covered software and/or the VCS hardware designed, developed, manufactured, or supplied by a person owned by, controlled by, or subject to the jurisdiction or direction of the PRC or Russia; (iii) the intended use of the covered software and/or VCS hardware; and (iv) documentation to support the information contained in the application.

BIS would only issue a specific authorization if it determines the prohibited transaction does not present an undue or unacceptable risk to US national security, such as risks of potential exfiltration of connected vehicle or US person data and the potential for remote manipulation or operation of a connected vehicle. BIS may require the parties to adopt certain mitigation measures as a condition for the specific authorization. The NPRM states that BIS would endeavor to provide either a request for more information or a decision within 90 days of an application.

Both the general and specific authorization processes provide a limited opportunity for appeal, based the appeal process used under the EAR (15 CFR 756). Persons whose specific authorization applications are denied, whose

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specific authorizations are revoked, or who are notified that they do not qualify for a general authorization would be able to file an appeal with the Office of the Under Secretary of Commerce for Industry and Security within 45 days of receiving the adverse notice. The Under Secretary would delegate reviews and informal hearings for the appeal to senior BIS officials. The decision issued by an appeal review would be final.

### **Declaration of Conformity and recordkeeping**

The proposed rule would require all covered VCS hardware importers and connected vehicle manufacturers to submit a Declaration of Conformity to BIS certifying they have not engaged in prohibited transactions. The Declaration of Conformity would be filed once per calendar year (or model year) or within 30 days of whenever material changes to the declaration or associated bills of materials occur. Engaging in the covered transactions before first filing a Declaration of Conformity would be prohibited.

For a covered transaction to be permitted, the appropriate person must submit the Declaration of Conformity if they are: (i) VCS hardware importers, (ii) connected vehicle manufacturers importing completed connected vehicles containing covered software, and (iii) connected vehicle manufacturers selling completed connected vehicles in the United States that they have manufactured or assembled in the United States and which contain covered software, so long as there is a continuing foreign interest (which is not necessarily a foreign adversary interest) in the covered software. The NPRM expands on each of the three situations, explaining the general requirements that covered entities would have to fulfill. To complete the Declaration of Conformity, companies would have to submit documentation (including bills of materials) from their component and software suppliers that demonstrate compliance. BIS does not intend to mandate any particular due diligence process for the Declaration of Conformity requirement.

The proposed rule would also require connected vehicle manufacturers and VCS hardware importers to maintain 10 years of records related to any transaction for which a Declaration of Conformity, general authorization, or specific authorization would be required. The required records would include all information pertinent to a general authorization or submitted when applying for a specific authorization, as well as business records related to the execution of the transaction. Recordkeepers would be required to furnish complete information on any covered transaction as may be required by BIS.

### **Advisory opinions and “is-informed” notices**

BIS is proposing a process for issuing advisory opinions, which would allow VCS hardware importers and connected vehicle manufacturers to seek guidance from BIS on whether an actual prospective transaction may be prohibited. The process would be similar to that in the EAR for export controls. Persons would submit the requests by email or on the BIS website, providing all current information about the transaction in question. BIS encourages persons seeking an advisory opinion to submit as much pertinent information as possible, including details on the involved VCS hardware or covered software, information on the completed connected vehicle (if applicable), the bills of materials for the covered software and/or VCS hardware, and any other supporting materials that the submitter assesses will help BIS determine whether the transaction may be prohibited.

BIS may also issue so-called “is-informed” notices, announcing that certain transactions would be prohibited transactions. BIS may issue notices to specific entities through direct letters or to the broader public through Federal Register notices. Persons engaging in transactions specified under the notices would be considered to have knowledge that such transactions are prohibited. Since the prohibition is based on a knowledge standard, any person who continues to engage in these specified transactions would be in violation of the prohibition.

### **Timeline for implementation**

There is no set timeline for when BIS will issue the final rule, but BIS is reportedly seeking to have the final rule in place by January 2025. The final rule would take effect 60 days after BIS publishes it to the Federal Register.

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The NPRM proposes several exceptions to the prohibitions during the rule's initial years in force, thereby delaying the compliance deadlines. The Declaration of Conformity requirements would enter effect on the same delayed schedule.

- VCS hardware importers would be permitted to engage in otherwise prohibited transactions so long as: (i) the VCS hardware unit is associated with a vehicle model year prior to 2030 or the VCS hardware is integrated into a connected vehicle with a Model Year prior to 2030; or (ii) for VCS hardware not associated with a model year, the import of the VCS hardware takes place prior to January 1, 2029.
- Connected vehicle manufacturers would be permitted to engage in otherwise prohibited transactions involving covered software designed, developed, manufactured, or supplied by a person owned by, controlled by, or subject to the jurisdiction or direction of China or Russia, so long as the completed connected vehicle that is imported, or sold within the United States, is of a model year prior to 2027.
- Connected vehicle manufacturers who are owned by, controlled by, or subject to the jurisdiction or direction of China or Russia may engage in prohibited transactions and are exempt from submitting a Declaration of Conformity, provided that the completed connected vehicle that incorporates VCS hardware and/or covered software was manufactured prior to model year 2027.

### **Public comment period**

BIS is accepting public comments on the proposed rule until October 26, 2024. BIS states that it is seeking feedback on all portions of the proposed rule, including the definitions of key terms, hardware and software coverage, effectiveness of the prohibitions, compliance, and enforcement processes, and expected regulatory burdens. Interested stakeholders may submit comments to the docket on the Federal eRulemaking Portal at [regulations.gov](https://www.regulations.gov) or via email.

The NPRM includes further instructions on how to participate. Participating in the public comment process can help shape the outcome of the action and prompt the government to further clarify its actions. BIS will not issue its final rule until it has reviewed and responded to the feedback received.

### **Potential future ICTS rule investigations**

Other ICTS rule investigations are under way, with additional prohibitions and mitigation measures potentially under development. For example, in a July 2024 regulatory agenda filing,<sup>57</sup> BIS disclosed that it is considering restricting certain “transactions involving information and communications technology and services integral to Unmanned Aerial Systems that are designed, developed, manufactured, or supplied by persons owned, controlled, or subject to the jurisdiction or direction of foreign countries or foreign non-government persons.” According to the disclosure, BIS will publish an advance notice of proposed rulemaking in the next few months to seek public comments to help BIS determine “the technologies and market participants most appropriate for regulation.” If BIS proceeds with developing class restrictions on unmanned aerial systems, it will likely follow the same process that it has for the connected vehicles action. In contrast, BIS would not provide advance public notice for restrictions on specific entities (as with the Kaspersky prohibition).

## **United States to Assess Expanding Third-Party Logistics Provider Access to Trusted Trader Program**

On October 1, 2024, President Biden signed S. 794, or the “Customs Trade Partnership Against Terrorism [CTPAT] Pilot Program Act of 2023,” into law.<sup>58</sup> The new law directs the Department of Homeland Security (DHS) to carry out a pilot program for adding a broader variety of third-party logistics providers to CTPAT, the United States’ trusted

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<sup>57</sup> “Securing the Information and Communications Technology and Services Supply Chain: Unmanned Aerial Systems,” Office of Management and Budget, accessible here: <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202404&RIN=0694-AJ72>.

<sup>58</sup> S. 794 - CTPAT Pilot Program Act of 2023, 118th Congress (2023-2024), accessible here: <https://www.congress.gov/118/bills/s/794/BILLS-118s794enr.pdf>.

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trader program. The law was introduced by a bipartisan group of Senators in March 2023, approved by the Senate in July 2023, and then approved by the House on September 23, 2024.

## CTPAT

CTPAT is the United States' equivalent of a customs trusted trader program. Congress established the program after the September 11 terrorist attacks to create a partnership between the government and importers to improve supply chain security from the point of origin to the point of distribution. CTPAT focuses heavily on enhanced security screening of its participants. Private sector participants that meet CTPAT's security requirements are entitled to reduced examination rates, access to Free and Secure Trade (FAST) lanes, and front of the line processing.

Updated CTPAT guidance issued in 2008 allowed certain types of third-party logistics providers to participate in the program but excluded many others.<sup>59</sup> The guidance defined a third-party logistics provider as a "firm that provides outsourced or 'third party' logistics services to companies for part, or sometimes all of their supply chain management function." CBP's guidance explicitly excluded non-asset-based providers from participation.

The International Warehouse Logistics Association (IWLA) and the Transportation Intermediaries Association (TIA) were key supporters of S. 794, hoping it would help more of their members participate in CTPAT.<sup>60</sup>

### Third-party logistics providers pilot program

The law instructs DHS to carry out a voluntary pilot program to assess whether adding a broader variety of third-party logistics providers (including non-asset-based providers) to CTPAT would "enhance port security, combat terrorism, prevent supply chain security breaches, or otherwise meet the goals of CTPAT."

DHS will announce the pilot program and the requirements for participation in a *Federal Register* notice within the next year. The pilot would then last between one and five years. After completing the pilot, DHS will provide a report to Congress on its findings. Lessons learned from the pilot would then inform potential longer-term revisions to the rules around third-party logistics provider participation in CTPAT.

The pilot will be open to:

- **Non-asset-based third-party logistics providers**, which are defined as entities that arrange international transportation of freight and are licensed by the Department of Transportation (*i.e.*, freight brokers), and
- **Asset-based third-party logistics providers**, which are defined as entities that facilitate cross-border activity and are licensed or bonded by the Federal Maritime Commission, the Transportation Security Administration, US Customs and Border Protection, or the Department of Transportation; and that manage and execute logistics services using their own warehousing assets and resources on behalf of customers (*i.e.*, third-party logistics warehouses).

Adopting these definitions would significantly broaden the scope of logistics companies that can participate in CTPAT.

DHS may promulgate other requirements for participation under these two categories in its forthcoming *Federal Register* notice and will screen the applicants. Participation in the pilot will be limited to no more than 10 entities from each of the two categories.

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<sup>59</sup> CBP's guidance for third-party logistics providers participation in CTPAT is accessible here: [https://www.cbp.gov/sites/default/files/documents/3pl\\_security\\_criteria\\_3.pdf](https://www.cbp.gov/sites/default/files/documents/3pl_security_criteria_3.pdf).

<sup>60</sup> "IWLA Statement on the Introduction of CTPAT Pilot Program Act", December 21, 2023, accessible here: <https://iwla.com/iwla-statement-on-the-introduction-of-ctpat-pilot-program-act/>; and "TIA Gives Full Support to C-TPAT Pilot Program Act," March 2, 2022, accessible here: <https://www.tianet.org/tia-gives-full-support-to-c-tpat-pilot-program-act/>.

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### **Report on effectiveness of CTPAT**

The law also instructs the Government Accountability Office (GAO) to submit a report to Congress on the effectiveness of CTPAT in one year. The report will focus on the effectiveness of CTPAT in improving port security, rather than on its commercial impacts. According to the law, the report should include an analysis of: (i) security incidents in the cargo supply chain and whether those incidents involved CTPAT participants; (ii) the causes for the suspension or removal of entities from participating in CTPAT as a result of security incidents; and (iii) the number of CTPAT participants involved in one or more security incidents while maintaining their status as participants. The report will also provide recommendations for security improvements.

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## Trade Actions

### Section 301

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#### USTR Finalizes Section 301 Tariff Increases on Imports from China

On September 13, 2024, the United States Trade Representative (USTR) announced the final Section 301 tariff increases on imports from China,<sup>61</sup> following its original proposal in May 2024. Electric vehicles, electric vehicle batteries, battery parts, respirators and facemasks, syringes and needles, ship-to-shore gantry cranes, solar panel cells and modules, steel and aluminum products, and certain critical minerals imported from China will face increased tariff rates ranging between 25% and 100% beginning on September 27, 2024.

The tariffs were originally scheduled to enter effect on August 1, but the action was delayed after USTR took longer than planned to review public feedback and finalize the tariff lists.<sup>62</sup> Tariffs on semiconductors, respirators and facemasks, syringes and needles, medical gloves, lithium-ion non-electrical vehicle batteries, permanent magnets, and natural graphite will increase further in 2025 and 2026. USTR is also considering additional tariff increases for tungsten, polysilicon, and wafers, for which it will soon issue a separate notice.

Updated on September 26, 2024: US Customs and Border Protection (CBP) has published additional guidance for how importers should file entries for the new tariffs and exclusions.<sup>63</sup>

#### The notice of modification of actions

The advance copy of the *Federal Register* notice (FRN), “Notice of Modification: China’s Acts, Policies and Practices Related to Technology Transfer, Intellectual Property and Innovation,” (the “Notice”) issued by USTR on September 13 includes the final list of the specific products and tariff rates at the Harmonized Tariff Schedule (HTS) 8-digit and 10-digit level. Annex C of the Notice provides the specific changes to the Harmonized Tariff Schedule of the United States that will be relied on for filing import declarations. The Notice also includes the final lists of manufacturing equipment for which importers can apply for tariff exceptions, the final list of solar panel manufacturing equipment for which tariff exceptions automatically apply, and a new waiver for certain ship-to-shore gantry cranes.

#### Covered products and implementation schedule

Annex A of the Notice summarizes the 382 HTS-8 codes and 7 HTS-10 codes covered by the increased tariffs, as well as product descriptions and the dates on which the tariffs will enter effect. The first tranche of the tariff increases will enter effect for covered products that are entered for consumption or withdrawn from warehouse for consumption on or after September 27, 2024. Tariffs on additional products (and increases in certain tariffs from the September 27 list) will enter effect on January 1, 2025 and January 1, 2026.

Like the other Section 301 tariffs, the new tariffs would only apply to direct imports of the listed products from China. The tariffs would generally not apply to downstream products, whether imported from China or a third country, that are under different HTS codes.

The final tariff levels and dates of entry into force are listed below:

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<sup>61</sup> “Notice of Modification: China’s Acts, Policies and Practices Related to Technology Transfer, Intellectual Property and Innovation,” 89 FR 76581 (September 18, 2024), accessible here: <https://www.federalregister.gov/documents/2024/09/18/2024-21217/notice-of-modification-chinas-acts-policies-and-practices-related-to-technology-transfer>; and “USTR Finalizes Action on China Tariffs Following Statutory Four-Year Review,” USTR, September 13, 2024, accessible here: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2024/september/ustr-finalizes-action-china-tariffs-following-statutory-four-year-review>.

<sup>62</sup> “Office of the U.S. Trade Representative Continues to Review Public Comments for Proposed Modifications to China 301 Actions,” USTR, July 30, 2024, accessible here: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2024/july/office-us-trade-representative-continues-review-public-comments-proposed-modifications-china-301>.

<sup>63</sup> “CSMS # 62411889 - GUIDANCE: Section 301 Four-Year Review Modifications,” September 26, 2024, accessible here: <https://content.govdelivery.com/bulletins/gd/USDHSCBP-3b85471>.

Product Group	New Section 301 Tariff Rate	Entry into Force	Previous Section 301 Tariff Rate
Battery parts (non-lithium-ion batteries)	25%	September 27, 2024	7.5%
Electric vehicles	100%	September 27, 2024	25%
Lithium-ion electrical vehicle batteries	25%	September 27, 2024	7.5%
Surgical and non-surgical respirators and facemasks (first increase)	25%	September 27, 2024	7.5%
Syringes and needles (excluding enteral syringes)	100%	September 27, 2024	0%
Ship-to-shore gantry cranes	25%	September 27, 2024	0%
Solar cells (whether or not assembled into modules)	50%	September 27, 2024	25%
Steel and aluminum products	25%	September 27, 2024	0% or 7.5%
Various critical minerals	25%	September 27, 2024	0%
Semiconductors	50%	January 1, 2025	25%
Rubber medical and surgical gloves (first increase)	50%	January 1, 2025	7.5%
Disposable textile facemasks (first increase)	25%	January 1, 2025	7.5%
Disposable textile facemasks (second increase)	50%	January 1, 2026	25%
Surgical and non-surgical respirators and facemasks (second increase)	50%	January 1, 2026	25%
Enteral syringes (exempted in 2024 and 2025)	100%	January 1, 2026	0%
Lithium-ion non-electrical vehicle batteries	25%	January 1, 2026	7.5%
Rubber medical and surgical gloves (second increase)	100%	January 1, 2026	50%
Permanent magnets	25%	January 1, 2026	0%
Natural graphite	25%	January 1, 2026	0%

### Changes from the May proposed action

USTR originally proposed the tariff increases for public comment in a May 2024 FRN.<sup>64</sup> Stakeholders filed over 1,100 comments in response, covering issues related to the tariff levels, products covered by the tariffs, the machinery exclusion process, and the solar manufacturing equipment exclusion.

Based on public feedback, USTR made several changes to the tariffs:

- **Exception for certain ship-to-shore gantry cranes:** USTR has established a temporary tariff exclusion for ship-to-shore gantry cranes that were ordered prior to May 14, 2024 and imported prior to May 14, 2026. To use the exception, importers must file the importer certification form provided in Annex D of the Notice with their import declaration.
- **Increases to the tariffs on respirators and face masks:** The final tariffs on surgical and non-surgical respirators and face masks will increase to 25% in 2024 (as originally planned) and then increase again to 50% in

<sup>64</sup> "Request for Comments on Proposed Modifications and Machinery Exclusion Process in Four-Year Review of Actions Taken in the Section 301 Investigation: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation," 89 FR 46252 (May 28, 2024), accessible here: <https://www.federalregister.gov/documents/2024/05/28/2024-11634/request-for-comments-on-proposed-modifications-and-machinery-exclusion-process-in-four-year-review>.

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2026.<sup>65</sup> The final action extends the tariff to HTS 6307.90.9870 (face masks of textile, disposable), which had not been included in the original proposal. The 25% tariff on disposable textile facemasks will enter effect on January 1, 2025 instead of September 27, 2024, giving importers a few more months to prepare.

- **Increase to the tariff on rubber gloves:** In the final action, USTR has decided to increase the rate of additional duties on medical gloves to 50% in 2025 and then to 100% in 2026. The original proposal had called for implementing a 25% tariff in 2026.
- **Increase to the tariff on syringes and needles:** Syringes and needles will be subject to a tariff of 100% beginning on September 27, 2024 under the final action. The original proposed tariff was 50%.
- **Temporary exclusion for enteral syringes:** The 100% tariff on enteral syringes (HTS 9018.31.0080) – which are covered by the syringe and needle tariffs – is now waived until January 1, 2026.

USTR has also made changes to the machinery and solar exclusions and proposed additional tariffs on other products, which are discussed below.

### Proposal for tariffs on additional products

USTR announced in the Notice that it intends to propose new Section 301 tariff increases on processed tungsten, polysilicon, and wafers. To implement the proposed tariffs, USTR will issue a separate proposed rule and request for comments. The proposed tariffs would not enter effect until after USTR completes the notice and comment process.

- **Tungsten products:** USTR will propose a 25% Section 301 tariff on HTS 8101.94.00 (Tungsten, unwrought (including bars and rods obtained simply by sintering)); HTS 8101.99.10 (Tungsten bars and rods (o/than those obtained simply by sintering), profiles, plates, sheets, strip, and foil); and HTS 8101.99.80 (Tungsten, articles nesoi). These products are not currently subject to any Section 301 tariffs.
- **Polysilicon and wafers:** USTR will propose a 50% Section 301 tariff on HTS 2804.61.00 (Silicon containing by weight not less than 99.99 percent silicon) and HTS 3818.00.00 (Chemical elements doped for use in electronics, in the form of discs, wafers or similar forms; chemical compounds doped for use in electronics). These products are currently subject to a 25% Section 301 tariff.

Updated on September 19, 2024: See the next section for a complete discussion of the new proposed tariffs, which USTR formally proposed on September 19, 2024.

### New exclusion processes for industrial machinery

USTR is establishing a new exclusion process under which importers may request that certain specific products be excepted from the Section 301 tariffs. Unlike previous exclusion processes that applied to all covered products, this new exclusion process will only apply to machinery used in domestic manufacturing classified within certain HTS subheadings under Chapters 84 and 85. The eligible HTS subheadings are listed in Annex E of the Notice. Granted exclusions would be effective only through May 31, 2025.

In the final action, USTR added five HTS subheadings to the exclusions eligibility list:

- HTS 8421.21.00 (Machinery and apparatus for filtering or purifying water);
- HTS 8421.29.00 (Filtering or purifying machinery and apparatus for liquids, nesoi);
- HTS 8421.39.01 (Filtering or purifying machinery and apparatus for gases, other than intake air filters or catalytic conv. for internal combustion engines);

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<sup>65</sup> The final notice also corrects the erroneous use of the obsolete HTS code 6307.90.9845 (N95 Respirators of Textiles), replacing it with 6307.90.9842 (surgical N95 respirators) and 6307.90.9844 (other N95 respirators).

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- HTS 8428.70.00 (Industrial robots); and
  - HTS 8443.19.30 (Printing machinery, nesoi).

USTR provided the proposed process for requesting the exclusions in an August 15, 2024 Information Collection Request (ICR) in the *Federal Register*.<sup>66</sup> The appendix to the ICR includes the proposed documents companies would file for the Exclusion Request Form, Objection To Exclusion Requests Form, Rebuttal To Exclusion Request Form, and Support Of Exclusion Request Form. The ICR was open to public comment until September 16, 2024. When announcing the final tariff rates on September 13, USTR stated that it “expects to launch the machinery exclusions process soon.”

### **Solar manufacturing equipment exclusion**

USTR automatically implemented 14 tariff exclusions for certain solar wafer and cell manufacturing equipment classified within HTS 8486.10.0000, 8486.20.0000, and 8486.40.0030. The exclusions are retroactive and applicable with respect to products that are entered for consumption, or withdrawn from warehouse for consumption, on or after January 1, 2024, and through May 31, 2025. The exclusions are based on product description instead of HTS codes, which are provided in Annex B of the Notice.

USTR had originally proposed 19 automatic exclusions for solar manufacturing equipment but removed five from the final action. USTR states that it removed those five because manufacturers can acquire the covered equipment from sources outside of China. The Notice also makes several amendments to product descriptions, which may alter their scope.

USTR removed the following machine descriptions from the exclusions list:

- “Cell interconnection machines designed to electrically solder solar cells to each other to form a complete electrical circuit, for use in solar module manufacturing (described in statistical reporting number 8486.20.0000).”
- “Module encapsulant preparation machines designed for encapsulant cutting and placement, butyl dispensing equipment, and equipment for the transport of encapsulant materials, all the foregoing for use in solar module manufacturing (described in statistical reporting number 8486.20.0000).”
- “Machines designed to laminate an interconnected cell string and to attach junction boxes, all the foregoing for use in solar module manufacturing (described in statistical reporting number 8486.20.0000).”
- Frame attachment machines designed for attaching metal frames to the perimeter or rear surface of solar modules (described in statistical reporting number 8486.20.0000).
- Machines designed for lifting, handling, loading, or unloading in the assembly of solar modules (described in statistical reporting number 8486.40.0030).

### **Status of the previous general and COVID-related exclusions**

While the Biden administration’s review of the Section 301 tariffs proceeded over the past two years, USTR had maintained 352 general exclusions and 77 COVID-related exclusions to the tariffs. Alongside the completion of the Section 301 review and issuance of the tariff increases in May 2024, USTR announced that 234 of the exclusions

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<sup>66</sup> “Agency Information Collection Activities; Request for the Office of Management and Budget To Approve Renewal of the Collection of Information Titled ‘301 Exclusion Requests,’” 89 FR 66484 (August 15, 2024), accessible here: <https://www.federalregister.gov/documents/2024/08/15/2024-18190/agency-information-collection-activities-request-for-the-office-of-management-and-budget-to-approve>.

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would expire on June 14, 2024.<sup>67</sup> The remaining exclusions will remain in effect until May 31, 2025 (the same date on which the manufacturing equipment exclusions under the new Section 301 expansion would expire).

Though all exclusions are set to expire on May 31, 2025, USTR could extend any of the exclusions again at its own discretion. That said, in announcing the May extension, USTR emphasized that it expects importers to treat the exclusions as temporary and to seek alternative suppliers outside of China.

## **USTR Proposes Additional Section 301 Tariff Increases**

On September 19, 2024, the United States Trade Representative (USTR) issued a proposal and request for feedback on new Section 301 tariffs on imports of tungsten products, polysilicon, and wafers from China.<sup>68</sup> USTR originally announced it was considering these additional tariff increases when it finalized the previous round of Section 301 tariff increases on September 13, 2024.<sup>69</sup>

### **The proposed tariff increases**

As indicated in the September 13 notice that finalized the previous Section 301 tariff increases, USTR's new notice proposes two sets of tariff changes.

#### **1. Introducing a new 25% Section 301 tariff for three Harmonized Tariff Schedule (HTS) subheadings covering certain tungsten products:**

- HTS 8101.94.00: Tungsten, unwrought (including bars and rods obtained simply by sintering);
- HTS 8101.99.10: Tungsten bars and rods (other than those obtained simply by sintering), profiles, plates, sheets, strip and foil; and
- HTS 8101.99.80: Tungsten, articles not elsewhere specified or included.

#### **2. Increasing Section 301 tariffs from 25% to 50% for two subheadings covering polysilicon and wafers:**

- HTS 2804.61.00: Silicon containing by weight not less than 99.99% of silicon; and
- HTS 3818.00.00: Chemical elements doped for use in electronics, in the form of discs, wafers etc., chemical compounds doped for electronic use.

The notice does not state when the proposed tariffs would enter effect.

Like the other Section 301 tariffs, the new tariffs would only apply to direct imports of the listed products from China. The tariffs would generally not apply to downstream products, whether imported from China or a third country, that are under different HTS codes.

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<sup>67</sup> "Notice of Extension of Certain Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation," 89 FR 46948 (May 30, 2024), accessible here: <https://www.federalregister.gov/documents/2024/05/30/2024-11904/notice-of-extension-of-certain-exclusions-chinas-acts-policies-and-practices-related-to-technology>.

<sup>68</sup> "Request for Comments on Proposed Modifications: China's Acts, Policies and Practices Related to Technology Transfer, Intellectual Property and Innovation," FRN advance copy, accessible here: [https://ustr.gov/sites/default/files/Section%20301%20FRN%20for%20Public%20Comment%20Docket%20\(5%20Additional%20Subheadings\).pdf](https://ustr.gov/sites/default/files/Section%20301%20FRN%20for%20Public%20Comment%20Docket%20(5%20Additional%20Subheadings).pdf).

<sup>69</sup> "Notice of Modification: China's Acts, Policies and Practices Related to Technology Transfer, Intellectual Property and Innovation," 89 FR 76581 (September 18, 2024), accessible here: <https://www.federalregister.gov/documents/2024/09/18/2024-21217/notice-of-modification-chinas-acts-policies-and-practices-related-to-technology-transfer>.

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### **Call for public input**

USTR's notice is only a proposal, not a final action. The public docket for submitting comments on the proposed tariff increases will open on September 23, 2024, when the Federal Register Notice (FRN) is officially published. The deadline for submitting comments is October 22, 2024.

Interested stakeholders can find instructions for submitting comments in the advance copy of the FRN. Participating in the public comment process can help shape the outcome of the action and prompt USTR to further clarify its actions.

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## Trade Agreements

### IPEF

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#### **IPEF Clean Economy and Fair Economy Agreements Set to Enter into Force in October**

Work on the supply chains, clean economy, and fair economy pillars of the Indo-Pacific Economic Framework for Prosperity (IPEF) is continuing in September and October, with the United States and Thailand hosting in-person meetings and the Clean Economy Agreement, Fair Economy Agreement, and Agreement on IPEF (overarching agreement to oversee IPEF cooperation) all set to enter force in October. IPEF's other pillar, covering traditional trade topics and led by the United States Trade Representative (USTR), remains incomplete.

#### **Entry into force of the Clean Economy Agreement, Fair Economy Agreement, and the Agreement on IPEF**

The Clean Economy Agreement and the Agreement on IPEF will enter effect on October 11, 2024, and the Fair Economy Agreement will enter force on October 12, 2024 for member countries that have completed the necessary ratification, acceptance, or approval procedures and deposited the relevant legal instrument with the Depository (the US Department of State<sup>70</sup>) in accordance with the requisite threshold for each of the three agreements.

- Fiji, Japan, Malaysia, New Zealand, Singapore, and the United States have completed their domestic processes for entry into force of the Clean Economy Agreement.
- Fiji, Malaysia, New Zealand, Singapore, Thailand, and the United States have completed their domestic processes for entry into force of the Fair Economy Agreement.
- Fiji, Japan, Malaysia, New Zealand, Singapore, Thailand, and the United States have completed their domestic processes for entry into force of the Agreement on IPEF.

The other IPEF parties are still completing their domestic approval processes, which can vary in length. The three IPEF agreements will enter into force for the other parties 30 days after the date on which the party deposits its instrument of ratification, acceptance, or approval with the Depository.

For the countries that have completed ratification, the IPEF Clean Economy Agreement and the Agreement on IPEF (IPEF's overarching agreement) will enter effect on October 11, 2024 and the IPEF Fair Economy Agreement will enter force on October 12, 2024. Fiji, Japan, Malaysia, New Zealand, Singapore, and the United States have completed their domestic processes for the Clean Economy Agreement; Fiji, Malaysia, New Zealand, Singapore, Thailand, and the United States have completed their domestic processes for the Fair Economy Agreement; and Fiji, Japan, Malaysia, New Zealand, Singapore, Thailand, and the United States have completed their domestic processes for the Agreement on IPEF. The other parties are still completing their domestic approval processes, which can vary in length.

#### **September ministerial meeting**

The 14 IPEF members met virtually on September 23, 2024 for the third IPEF Ministerial meeting, on the sidelines of the UN General Assembly to welcome the entry into force of the IPEF agreements.<sup>71</sup> The Ministers committed to continuing collaboration through IPEF consultative bodies and to monitoring the progress made to operationalize the Supply Chain Agreement, Clean Economy Agreement, Fair Economy Agreement, and Agreement

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<sup>70</sup> See, "Status Lists for Treaties for Which the United States is Depository," accessible here: <https://www.state.gov/trade-status-lists/>.

<sup>71</sup> "Secretary Raimondo, IPEF Ministers Welcome Upcoming Entry into Force of the Clean Economy Agreement, Fair Economy Agreement, and Agreement on the Indo-Pacific Economic Framework for Prosperity (IPEF) and Commit to Continued Progress at Virtual Ministerial," September 23, 2024, accessible here: <https://www.commerce.gov/news/press-releases/2024/09/secretary-raimondo-ipef-ministers-welcome-upcoming-entry-force-clean>.

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on IPEF. They look forward to the first ministerial-level IPEF Council and IPEF Joint Commission meetings (which are established under the Agreement on IPEF).

### **Supply Chain Council and Crisis Response Network meetings**

Washington hosted the first in-person meetings of the Supply Chain Council and the Crisis Response Network in September, following the IPEF Supply Chain Agreement's entry into force in February 2024.<sup>72</sup>

The Supply Chain Council met on September 12, 2024, with delegates from Australia, Brunei, Fiji, India, Indonesia, Japan, Korea, Malaysia, New Zealand, the Philippines, Singapore, Thailand, the United States, and Vietnam. The Council adopted a workplan and established two new subcommittees: Logistics and Movement of Goods, and Data and Analytics. The parties also agreed to establish "action plan teams" to deepen collaboration on semiconductors, chemicals, and critical mineral supply chains. Another team focused on health care supply chains is also under development. The Council previously met virtually in July. The next meeting is scheduled for December 2024.

The Crisis Response Network (CRN) met on September 13, 2024. The meeting held a tabletop exercise simulating an import disruption to a chemical industry. The CRN is intended to help countries address immediate supply chain disruptions and the exercise focused on learning the agreements operating mechanisms. Korea's Ministry of Trade, Industry, and Energy (which chairs the CRN) plans to host similar exercises and training events several times per year.<sup>73</sup>

While Washington hosted the supply chain meetings, Bangkok hosted meetings in early September between government, labor, and corporate leaders to discuss the labor provisions of the IPEF supply chain, clean economy, and fair economy agreements.

### **US Supply Chain Summit**

Alongside the Supply Chain Council and Crisis Response Network meetings, the US Department of Commerce hosted its inaugural Supply Chain Summit on September 10, 2024.<sup>74</sup> The summit brought together supply chain policy leaders to discuss supply chain resilience. The Department of Commerce announced new strategic partnerships with industry and academia for building supply chain resilience during the summit.<sup>75</sup> The Biden administration intends for the summits to become an annual event and will soon announce a second summit for 2025.

For the main event at the summit, the Department of Commerce introduced its new SCALE tool. The SCALE tool is a diagnostic tool that the US government intends to use to assess supply chain vulnerabilities in the US economy. The International Trade Administration's (ITA) new supply chain office has been developing the tool for several years. It merges 40 datasets about the US economy to assess 431 economic sectors, measuring their importance to the US government, vulnerabilities to disruption, and resiliency. The Biden administration intends to use it to inform US government supply chain security policy and US priorities for IPEF supply chain cooperation. However, the Commerce Department has said it will not make the tool's diagnostic results public. Considering that the system relies on preexisting, publicly available data, it is unclear what new insights the US government could generate from

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<sup>72</sup> "U.S. and IPEF Partners Hold First In-Person Meetings of the IPEF Supply Chain Council and the IPEF Crisis Response Network," September 14, 2024, accessible here: <https://www.commerce.gov/news/press-releases/2024/09/us-and-ipef-partners-hold-first-person-meetings-ipef-supply-chain>.

<sup>73</sup> "IPEF partner countries to simulate first mock drill for supply chain crisis response," September 12, 2024, accessible here: <https://english.motie.go.kr/eng/15/topics/4/view?pageIndex=2&ctgCdN=4&bbsCdN=2&bbsSeqN=2033>.

<sup>74</sup> "U.S. Department of Commerce Holds Inaugural Supply Chain Summit," September 10, 2024, accessible here: <https://www.commerce.gov/news/press-releases/2024/09/us-department-commerce-holds-inaugural-supply-chain-summit>. Recordings of most of the Summit events are accessible here: <https://www.cfr.org/event/cfr-and-us-department-commerce-supply-chain-summit>.

<sup>75</sup> "Fact Sheet: Department of Commerce Announces New Actions on Supply Chain Resilience," September 10, 2024, accessible here: <https://www.commerce.gov/news/fact-sheets/2024/09/fact-sheet-department-commerce-announces-new-actions-supply-chain>.

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the SCALE tool. The ITA is planning to launch a competition “developing new data or analysis that can be used to expand the indicators of risk incorporated into the SCALE tool.”

## CPTPP

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### Malaysia Ratifies UK’s CPTPP Membership

Malaysia’s Ministry of Investment, Trade and Industry (MITI) issued a media release on September 20, 2024<sup>76</sup> announcing that Malaysia has formally notified the ratification of the Protocol on the Accession of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).<sup>77</sup> According to MITI’s media release, Malaysia notified New Zealand, the CPTPP Treaty Depository, on September 17, 2024 that it completed the required internal legal procedures for entry into force.

The accession protocol states that entry into force would take place 60 days after all existing members have given notice that they have completed their domestic ratification procedures. However, if that process has not been completed within 15 months (*i.e.*, by mid-October 2024) then the protocol would come into force 60 days after the UK and at least six CPTPP members completed the ratification process. This condition was met with the formal notification by Peru of the completion of its ratification procedures on August 21, 2024.

Malaysia is the seventh CPTPP member to complete the process, and its decision is of particular commercial significance for the UK because Malaysia is one of the only two members – the other is Brunei – with which the UK does not currently have any form of bilateral trade agreement, meaning that the effects of the CPTPP liberalization commitments will be felt in full. These commitments will apply to UK-Malaysia trade from December 15, 2024 when the UK’s accession will enter into force. They will include the immediate abolition of the UK’s 12% import duty on imported Malaysian palm oil and the start of a 10-year phase-out of Malaysian tariffs on Scotch whisky. Immediate duty-free treatment will also apply to Malaysian exports of certain machinery and equipment, electronics and electrical products, rubber, chemicals, and cocoa. With the UK as the agreement’s twelfth member, the CPTPP will have a combined GDP of US \$15.4 trillion, representing 15% of global GDP.

The other CPTPP members that have concluded their ratification procedures are Japan, Singapore, Chile, New Zealand, Vietnam, and Peru. The UK’s CPTPP accession will enter into force for these members by December 15, 2024, and subsequently with other members, *i.e.*, Australia, Brunei, Canada, and Mexico, as they ratify. If the four remaining CPTPP members have not completed their domestic legal procedures by December 15, the provisions of the CPTPP will not initially apply to trade between them and the UK.

### Indonesia Submits Formal Application to Join CPTPP

Indonesia’s Coordinating Minister for Economic Affairs Airlangga Hartarto has announced that Indonesia submitted a formal request on September 19, 2024 for accession to the CPTPP to New Zealand, the CPTPP Treaty Depository.

During a meeting on September 25 to garner support for Indonesia’s membership with the 12 CPTPP country ambassadors,<sup>78</sup> Minister Airlangga emphasized that Indonesia’s inclusion in the CPTPP would create new opportunities with member countries and deepen regional integration as well as elevate the CPTPP’s standing as a

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<sup>76</sup> Ministry of Investment, Trade and Industry, “Malaysia Joins Six Other CPTPP Parties on Accession of the United Kingdom (UK) to the CPTPP, Now an Economic Bloc of USD 15-Tillion GDP,” September 20, 2024, accessible here: [https://www.miti.gov.my/miti/resources/Media%20Release/Malaysia\\_Joins\\_Six\\_Other\\_CPTPP\\_Parties\\_On\\_Accession\\_Of\\_The\\_United\\_Kingdom\\_\(UK\)\\_To\\_The\\_CPTPP,\\_Now\\_An\\_Economic\\_Bloc\\_Of\\_USD15-Trillion\\_GDP.pdf](https://www.miti.gov.my/miti/resources/Media%20Release/Malaysia_Joins_Six_Other_CPTPP_Parties_On_Accession_Of_The_United_Kingdom_(UK)_To_The_CPTPP,_Now_An_Economic_Bloc_Of_USD15-Trillion_GDP.pdf).

<sup>77</sup> The Protocol on the Accession of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership is accessible here: <https://assets.publishing.service.gov.uk/media/657acb160467eb001355f7ce/accession-protocol-of-the-united-kingdom-to-the-cptpp.pdf>.

<sup>78</sup> Indonesia’s Coordinating Ministry for Economic Affairs press release is accessible here (in Bahasa Indonesia): <https://www.ekon.go.id/publikasi/detail/5978/proses-aksesi-indonesia-ke-cptpp-dimulai-menko-airlangga-undang-duta-besar-negara-anggota-cptpp-untuk-galang-dukungan>.

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modern regional trade bloc and strengthen economic ties with ASEAN, given Indonesia's strategic position within the region. He added that initial studies forecast a 19% increase in Indonesian exports to CPTPP members and an 11% rise in foreign direct investment (FDI) due to a more transparent investment environment. Indonesia's membership would also provide indirect market access to the United States through Canada or Mexico, thereby enhancing the competitiveness of Indonesian products.

As next steps, the CPTPP Commission, a designated body that mandates the accession process for new member countries, will decide when to commence the accession process. In parallel, Indonesia will engage in bilateral preparatory discussions with the current CPTPP parties (Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the UK, and Vietnam) to seek their support as part of the formal accession process, which is already underway. The market access component of the negotiations should be assisted by the fact that Indonesia has already one or more free trade agreements (FTAs) in effect with eight CPTPP members and negotiating comprehensive economic partnership agreements with Canada and Peru. Indonesia but does not have a bilateral FTA with Mexico or the UK.

Other economies that have submitted their formal requests to join the CPTPP include China (September 16, 2021), Taiwan (September 22, 2021), Ecuador (December 13, 2021), Costa Rica (August 10, 2022), Uruguay (December 1, 2022), and Ukraine (May 5, 2023). CPTPP members are still undertaking an information-gathering process on whether these economies can meet the CPTPP's high standards based on their existing trade commitments. Accession of new CPTPP members requires unanimous consent from existing CPTPP parties. Besides these formal applications, Korea and Thailand have expressed strong interest in joining the CPTPP but have yet to submit a formal application. Both countries require parliamentary approvals for the formal applications to join the CPTPP.

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## Petitions & Investigations

### Investigations

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#### Commerce Issues Final Results of Five-Year Sunset Review of ADD and CVD Orders on Glycine from China, India, Japan, and Thailand

On September 12, 2024, the Department of Commerce (Commerce) published its finding that revocation of the antidumping duty (ADD) orders on glycine from India, Japan, and Thailand would be likely to lead to the continuation or recurrence of dumping.<sup>79</sup> Commerce reached the final determination in an expedited (120-day) review, as the earlier notice of initiation did not receive substantive responses from the respondent interested parties. The finding maintains the weighted-average dumping margins of up to 13.61% for India, 86.22% for Japan, and 227.17% for Thailand.

Commerce issued the final results of the expedited sunset review of the countervailing duty orders (CVD) on glycine from China and India separately on September 13, 2024.<sup>80</sup> Commerce found that revocation of the CVD would be likely to lead to continuation or recurrence of countervailable subsidies at subsidy rates of up to 15.13% for India and a rate of 144.01% for China.

Following the Commerce decision, on September 18, 2024, the International Trade Commission (ITC) published the schedule for an expedited injury review for both the ADD and CVD orders on glycine from China, India, Japan, and Thailand.<sup>81</sup>

#### Covered product

The product covered by the original orders is glycine at any purity level or grade. This includes glycine of all purity levels, which covers all forms of crude or technical glycine including, but not limited to, sodium glycinate, glycine slurry and any other forms of amino acetic acid or glycine. Subject merchandise also includes glycine and precursors of dried crystalline glycine that are processed in a third country, including, but not limited to, refining or any other processing that would not otherwise remove the merchandise from the scope of this order if performed in the country of manufacture of the in-scope glycine or precursors of dried crystalline glycine. Glycine has the Chemical Abstracts Service (CAS) registry number of 56–40–6. Glycine and glycine slurry are classified under HTSUS subheading 2922.49.43.00. Sodium glycinate is classified in the HTSUS under 2922.49.80.00. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope is dispositive.

#### Commerce Issues Final Affirmative Determinations in Aluminum Lithographic Printing Plates ADD Investigations for China and Japan and CVD Investigation for China

On September 27, 2024, the US Department of Commerce published the final determinations in its ADD investigation of aluminum lithographic printing plates (printing plates) from Japan and China, finding that imports are being, or are likely to be, sold in the United States at less than fair value.<sup>82</sup> Commerce also published the final determinations for

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<sup>79</sup> "Glycine From India, Japan, and Thailand: Final Results of the Expedited First Sunset Reviews of the Antidumping Duty Orders," 89 FR 74206 (September 12, 2024), accessible here: <https://www.federalregister.gov/documents/2024/09/12/2024-20671/glycine-from-india-japan-and-thailand-final-results-of-the-expedited-first-sunset-reviews-of-the>.

<sup>80</sup> "Glycine From India and the People's Republic of China: Final Results of the Expedited First Sunset Reviews of the Countervailing Duty Orders," 89 FR 74898 (September 13, 2024), accessible here: <https://www.federalregister.gov/documents/2024/09/13/2024-20754/glycine-from-india-and-the-peoples-republic-of-china-final-results-of-the-expedited-first-sunset>.

<sup>81</sup> "Glycine From China, India, Japan, and Thailand; Scheduling of Expedited Five-Year Reviews," 89 FR 76507 (September 20, 2024), accessible here: <https://www.federalregister.gov/documents/2024/09/18/2024-21145/glycine-from-china-india-japan-and-thailand-scheduling-of-expedited-five-year-reviews>.

<sup>82</sup> "Aluminum Lithographic Printing Plates From Japan: Final Affirmative Determination of Sales at Less-Than-Fair-Value," 89 FR 79250 (September 27, 2024), accessible here: <https://www.federalregister.gov/documents/2024/09/27/2024-22157/aluminum-lithographic-printing-plates-from-japan-final-affirmative-determination-of-sales-at>; and "Aluminum Lithographic Printing Plates From the People's Republic of China: Final Affirmative Determination of Sales at Less-Than-Fair-Value and Final Affirmative Determination of Critical Circumstances," 89 FR 79256

the CVD investigation of imports from China, finding that countervailable subsidies are being provided to producers and exporters of printing plates from China.<sup>83</sup>

For Japan, Commerce set the final weighted-average dumping margin rates at 91.83% for Fujifilm Corporation and Fujifilm Shizuoka Co., Ltd; 160.11% for Miraclon Corporation Ltd; and 91.83% for the All-Others rate. The final Japan margins are slightly higher than the preliminary margins, which had been 87.81% for Fujifilm Corporation and Fujifilm Shizuoka Co., Ltd; 157.16% for Miraclon Corporation Ltd; and 87.81% for the All-Others rate. The increase is a result of certain margin calculation changes that Commerce made for Fujifilm following the on-site verification. The Miraclon rate is based on adverse facts available (AFA), and the All-Others rate is based on the Fujifilm rate.

For China, Commerce set the final estimated weighted average dumping margins at 115.85% (115.84% adjusted for subsidy offset) for Fujifilm Printing Plate (China) Co., Ltd and 317.44% (317.43% adjusted for subsidy offset) for the China-wide Entity. The final China margins are lower than the preliminary margins, which were 164.31% for Fujifilm Printing Plate (China) Co., Ltd and 477.60% for the China-Wide Entity. The final estimated countervailable subsidy rates for China were 35.66% for Fujifilm Printing Plate (China) Co., Ltd.; 229.54% for Shanghai National Ink Co. Ltd; and 35.66% for the All-Others rate (which are slightly lower than the preliminary rates). Commerce also sustained its preliminary determination that critical circumstances exist for imports from China.

Previously, Commerce published the affirmative preliminary determinations on May 1, 2024, finding that imports from Japan and China are being, or are likely to be, sold in the United States at less than fair value.<sup>84</sup> Commerce issued the preliminary determination for the CVD investigation into printing plates from China on March 1, 2024, finding that countervailable subsidies are being provided to producers and exporters of printing plates from China.<sup>85</sup>

The ITC issued its preliminary determination that there is a reasonable indication that US industry is materially injured by imports of aluminum lithographic printing plates from China and Japan that are alleged to be sold in the United States at less than fair value and subsidized by China in November 2023.<sup>86</sup> The ITC published the schedule for its final phase investigations on May 14, 2024, with a final determination date set for October 28, 2024.<sup>87</sup>

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(September 27, 2024), accessible here: <https://www.federalregister.gov/documents/2024/09/27/2024-22155/aluminum-lithographic-printing-plates-from-the-peoples-republic-of-china-final-affirmative>.

<sup>83</sup> "Aluminum Lithographic Printing Plates From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances," 89 FR 79248 (September 27, 2024), accessible here: <https://www.federalregister.gov/documents/2024/09/27/2024-22156/aluminum-lithographic-printing-plates-from-the-peoples-republic-of-china-final-affirmative>.

<sup>84</sup> "Aluminum Lithographic Printing Plates From Japan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures," 89 FR 35065 (May 1, 2024), accessible here: <https://www.federalregister.gov/documents/2024/05/01/2024-09456/aluminum-lithographic-printing-plates-from-japan-preliminary-affirmative-determination-of-sales-at>; "Aluminum Lithographic Printing Plates From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination and Extension of Provisional Measures," 89 FR 35062 (May 1, 2024), accessible here: <https://www.federalregister.gov/documents/2024/05/01/2024-09457/aluminum-lithographic-printing-plates-from-the-peoples-republic-of-china-preliminary-affirmative>; and "Aluminum Lithographic Printing Plates From the People's Republic of China: Amended Preliminary Determination of the Less-Than-Fair-Value Investigation," 89 FR 47516 (June 3, 2024), accessible here: <https://www.federalregister.gov/documents/2024/06/03/2024-12117/aluminum-lithographic-printing-plates-from-the-peoples-republic-of-china-amended-preliminary>.

<sup>85</sup> "Aluminum Lithographic Printing Plates From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination," 89 FR 15134 (March 1, 2024), accessible here: <https://www.federalregister.gov/documents/2024/03/01/2024-04392/aluminum-lithographic-printing-plates-from-the-peoples-republic-of-china-preliminary-affirmative>; and "Aluminum Lithographic Printing Plates From the People's Republic of China: Preliminary Determination of Critical Circumstances, in Part, in the Countervailing Duty Investigation; Correction," 89 FR 26125 (April 15, 2024), accessible here: <https://www.federalregister.gov/documents/2024/04/15/2024-07903/aluminum-lithographic-printing-plates-from-the-peoples-republic-of-china-preliminary-determination>.

<sup>86</sup> "Aluminum Lithographic Printing Plates From China and Japan," 88 FR 80338 (November 17, 2023), accessible here: <https://www.federalregister.gov/documents/2023/11/17/2023-25402/aluminum-lithographic-printing-plates-from-china-and-japan>.

<sup>87</sup> "Aluminum Lithographic Printing Plates From China and Japan; Scheduling of the Final Phase of Antidumping and Countervailing Duty Investigations," 89 FR 41993 (May 14, 2024), accessible here: <https://www.federalregister.gov/documents/2024/05/14/2024-10502/aluminum-lithographic-printing-plates-from-china-and-japan-scheduling-of-the-final-phase-of>.

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## Covered product

The covered products are aluminum lithographic printing plates under HTSUS 3701.30.0000 and 3701.99.6060. The product may also enter under HTSUS 3701.99.3000 and 8442.50.1000. The written description of the covered product, included below, is dispositive. Commerce did not make any further revisions to the product scope in the final determinations.

Aluminum lithographic printing plates consist of a flat substrate containing at least 90 percent aluminum. The aluminum-containing substrate is generally treated using a mechanical, electrochemical, or chemical graining process, which is followed by one or more anodizing treatments that form a hydrophilic layer on the aluminum-containing substrate. An image-recording, oleophilic layer that is sensitive to light, including but not limited to ultra-violet, visible, or infrared, is dispersed in a polymeric binder material that is applied on top of the hydrophilic layer, generally on one side of the aluminum lithographic printing plate. The oleophilic light-sensitive layer is capable of capturing an image that is transferred onto the plate by either light or heat. The image applied to an aluminum lithographic printing plate facilitates the production of newspapers, magazines, books, yearbooks, coupons, packaging, and other printed materials through an offset printing process, where an aluminum lithographic printing plate facilitates the transfer of an image onto the printed media. Aluminum lithographic printing plates within the scope of this investigation include all aluminum lithographic printing plates, irrespective of the dimensions or thickness of the underlying aluminum substrate, whether the plate requires processing after an image is applied to the plate, whether the plate is ready to be mounted to a press and used in printing operations immediately after an image is applied to the plate, or whether the plate has been exposed to light or heat to create an image on the plate or remains unexposed and is free of any image.

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

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

## Commerce Issues Preliminary Affirmative Determinations in ADD and CVD Investigations into Melamine from Germany, India, Japan, Netherlands, Qatar, and Trinidad and Tobago

On September 24, 2024, Commerce published preliminary affirmative determinations in the ADD investigations of melamine from Japan, Germany, Netherlands, India, and Trinidad and Tobago, finding that imports are being, or are likely to be, sold in the United States at less than fair value.<sup>88</sup> For Qatar, Commerce found a *de minimis* weighted-average dumping margin of 0.80%, leading to a preliminary determination that imports are not being and are not

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<sup>88</sup> “Melamine From Japan: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, In Part,” 89 FR 77819 (September 24, 2024), accessible here: <https://www.federalregister.gov/documents/2024/09/24/2024-21826/melamine-from-japan-preliminary-affirmative-determination-of-sales-at-less-than-fair-value-and>; “Melamine From Germany: Preliminary Affirmative Determination of Sales at Less Than Fair Value,” 89 FR 77822 (September 24, 2024), accessible here: <https://www.federalregister.gov/documents/2024/09/24/2024-21825/melamine-from-germany-preliminary-affirmative-determination-of-sales-at-less-than-fair-value>; “Melamine From the Netherlands: Preliminary Affirmative Determination of Sales at Less Than Fair Value,” 89 FR 77829 (September 24, 2024), accessible here: <https://www.federalregister.gov/documents/2024/09/24/2024-21827/melamine-from-the-netherlands-preliminary-affirmative-determination-of-sales-at-less-than-fair-value>; “Melamine From India: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part,” 89 FR 77832 (September 24, 2024), accessible here: <https://www.federalregister.gov/documents/2024/09/24/2024-21824/melamine-from-india-preliminary-affirmative-determination-of-sales-at-less-than-fair-value-and>; “Melamine From Trinidad and Tobago: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, In Part,” 89 FR 77814 (September 24, 2024), accessible here: <https://www.federalregister.gov/documents/2024/09/24/2024-21829/melamine-from-trinidad-and-tobago-preliminary-affirmative-determination-of-sales-at-less-than-fair>.

likely to be sold in the United States at less than fair value.<sup>89</sup> Previously, on July 22, 2024, Commerce published preliminary affirmative determinations for the CVD investigations of imports from India, Germany, Trinidad and Tobago, and Qatar, preliminarily finding that countervailable subsidies are being provided to melamine producers and exporters.<sup>90</sup>

For Japan, the preliminary ADD determination has set weighted-average dumping margins of 127.69% for Mitsui Chemicals, Inc. and 115.11% for the All-Others rate. The rate for Mitsui Chemicals (the only mandatory respondent from Japan) was based on adverse facts available because the company did not respond to the investigation questionnaire. Commerce also issued a preliminary affirmative determination of critical circumstances for Mitsui Chemicals. The All-Others rate was based on the average of the petitioner's alleged estimated dumping margins for Japan.

The ITC published its affirmative preliminary determinations for the ADD and CVD investigations on April 4, 2024.<sup>91</sup> The ITC found (i) there is a reasonable indication that the US melamine industry is materially injured by imports from Germany, India, Netherlands, Qatar, and Trinidad and Tobago that are alleged to be sold at less than fair value and alleged to be subsidized by Germany, India, Qatar, and Trinidad and Tobago; and (ii) there is a reasonable indication that the US melamine industry is threatened with material injury by imports from Japan that are alleged to be sold at less than fair value. Following Commerce's preliminary affirmative determinations, the ITC issued its final phase investigation schedule on September 30, 2024.<sup>92</sup> The ITC intends to hold a hearing for the investigation on December 3, 2024.

### Covered product

Commerce has not made any new modifications to the scope as it appeared in the initiation notice. The merchandise subject to these investigations is melamine (Chemical Abstracts Service (CAS) registry number 108-78-01, molecular formula C<sub>3</sub>H<sub>6</sub>N<sub>6</sub>). Melamine is also known as 2,4,6-triamino-s-triazine; 1,3,5-Triazine-2,4,6-triamine; Cyanurotriamide; Cyanurotriamine; Cyanuramide; and by various brand names. Melamine is a crystalline powder or granule. All melamine is covered by the scope of these investigations irrespective of purity, particle size, or physical form. Melamine that has been blended with other products is included within this scope when such blends include constituent parts that have been intermingled, but that have not been chemically reacted with each other to produce a different product. For such blends, only the melamine component of the mixture is covered by the scope of these investigations. Melamine that is otherwise subject to these investigations is not excluded when commingled with

<sup>89</sup> "Melamine From Qatar: Preliminary Negative Determination of Sales at Less Than Fair Value," 89 FR 77824 (September 24, 2024), accessible here: <https://www.federalregister.gov/documents/2024/09/24/2024-21828/melamine-from-qatar-preliminary-negative-determination-of-sales-at-less-than-fair-value>.

<sup>90</sup> "Melamine From India: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Determination With the Final Antidumping Duty Determination," 89 FR 59055 (July 22, 2024), accessible here: <https://www.federalregister.gov/documents/2024/07/22/2024-15981/melamine-from-india-preliminary-affirmative-countervailing-duty-determination-preliminary>; "Melamine From Germany: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination," 89 FR 59053 (July 22, 2024), accessible here: <https://www.federalregister.gov/documents/2024/07/22/2024-15980/melamine-from-germany-preliminary-affirmative-countervailing-duty-determination-and-alignment-of>; "Melamine From Trinidad and Tobago: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination," 89 FR 59057 (July 22, 2024), accessible here: <https://www.federalregister.gov/documents/2024/07/22/2024-15979/melamine-from-trinidad-and-tobago-preliminary-affirmative-countervailing-duty-determination-and>; and "Melamine From Qatar: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Determination of Critical Circumstances, and Alignment of Final Determination With Final Antidumping Duty Determination," 89 FR 59045 (July 22, 2024), accessible here: <https://www.federalregister.gov/documents/2024/07/22/2024-15978/melamine-from-qatar-preliminary-affirmative-countervailing-duty-determination-preliminary-negative>.

<sup>91</sup> "Melamine From Germany, India, Japan, Netherlands, Qatar, and Trinidad and Tobago; Determinations," 89 FR 23610 (April 4, 2024), accessible here: <https://www.federalregister.gov/documents/2024/04/04/2024-07181/melamine-from-germany-india-japan-netherlands-qatar-and-trinidad-and-tobago-determinations>.

<sup>92</sup> "Melamine From Germany, India, Japan, Netherlands, Qatar, and Trinidad and Tobago; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations," 89 FR 79637 (September 30, 2024), accessible here: <https://www.federalregister.gov/documents/2024/09/30/2024-22252/melamine-from-germany-india-japan-netherlands-qatar-and-trinidad-and-tobago-scheduling-of-the-final>.

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melamine from sources not subject to these investigations. Only the subject component of such commingled products is covered by the scope of these investigations.

The subject merchandise is listed in Harmonized Tariff Schedule of the United States (HTSUS) subheading 2933.61.0000. Although the HTSUS subheading and CAS registry number are provided for convenience, the written description of the scope is dispositive.