WHITE & CASE

US & Multilateral Trade and Policy Developments

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Contents

Trade Policy Developments

US Proposes Revisions to Export Reporting Requirements for In-Transit Goods

On October 31, 2024, the United States Census Bureau issued a Notice of Proposed Rulemaking (NPRM) proposing various technical amendments to the export reporting requirements in the Foreign Trade Regulations (FTR).[1] Among the proposals, the amendments would clarify and expand what entities can be the US Principal Party in Interest (USPPI) for the re-export of previously-entered (in-transit) goods, allowing warehouses and Foreign-Trade Zones (FTZ) to handle export declarations. The NPRM would also make various revisions to definitions, export data disclosure requirements, mandatory filing requirements, responsibilities of parties to the export transaction, confidentiality, penalties, and voluntary self-disclosures.

The FTR is the regulation that governs exporter declaration requirements (currently filed through the Automated Export System (AES) on the Automated Commercial Environment (ACE)), which the Census Bureau manages as part of its responsibilities to collect and publish merchandise trade statistics and to help the Commerce Department enforce export controls.[2]

USPPIs for re-exported shipments

The NPRM proposes to broaden the definition of entities eligible to be the USPPI for in-transit shipments from foreign countries that enter the United States for consumption or warehousing before being re-exported. This change aims to increase the system's flexibility for situations involving long-term storage in the United States. The current system allows customs brokers to be the USPPI for filing Electronic Export Information (EEI, the data filed in the AES) for re-exports of shipments that had entered the United States for consumption or warehousing (when a broker or a foreign person is the importer of record). However, when the in-transit imports are stored long term in warehouses or FTZs before re-export, the original customs broker may have transferred control of the merchandise to another party. The Census Bureau states that it has been receiving an increased number of questions about how to handle these situations.

To address this change in control of the shipments, the NPRM proposes that the warehouse, storage facility, or FTZ should become the USPPI. Under the proposal, if a customs broker (or a foreign person) is listed as the importer of record for an import destined for re-export, the broker will continue to be the USPPI if the goods are exported without transformation or enhancement within 30 calendar days of import. After 30 calendar days, the warehouse or storage facility in possession and with knowledge and control of the goods when the goods begin their journey to the port of export shall be the USPPI.

The NPRM also proposes to require that the USPPI file a shipment's entry number in the EEI for the re-export. The change will help the Census Bureau track the original country of origin of the re-export. The amendments would also clarify that a customs broker USPPI must have consent from its clients to share information from the import entry through the EEI for this purpose.

Other clarifications and amendments

The NPRM proposes various other clarifications and technical amendments to the FTR, including:

- Clarifying that EEI filing is not required when goods are moving in-transit through the United States (or Puerto Rico and the US Virgin Islands) from one country to another and the goods do not enter the United States for consumption or warehousing;

[1] "Foreign Trade Regulations (FTR): Clarification of Filing Requirements Regarding In-Transit Shipments and Other FTR Provisions," 89 FR 86762 (October 31, 2024), accessible here: https://www.federalregister.gov/documents/2024/10/31/2024-24482/foreign-trade-regulations-ftr-clarification-of-filing-requirements-regarding-in-transit-shipments.

[2] 15 CFR Part 30, accessible here: https://www.ecfr.gov/current/title-15/subtitle-B/chapter-I/part-30.

- Adding language to require the EEI filer maintain a physical office or residence in the United States; be physically located in the United States at the time of preparing and filing the EEI; and have an Employer Identification Number (EIN) or a Data Universal Numbering System (DUNS) and be certified to report in the AES. If the filer does not have an EIN or DUNS, the filer must obtain an EIN from the Internal Revenue Service.
- Revising the list of required data elements that a USPPI and an authorized agent are each responsible for in a routed export transaction;
- Revising the Drug Enforcement Agency's authorization to require EEI filing in AES for all licenses and permits under 12 CFR 1309;
- Clarifying that the EEI data may not be used for tax purposes, export marketing, or promotion unless otherwise noted;
- Clarifying the import reporting requirements for repairs incurred outside of the United States; and
- Clarifying that foreign persons may not submit a voluntary self-disclosure (foreign entities are prohibited from filing the EEI).

Amended definitions

The NPRM proposes to add a new definition for the term "conveyance," remove the definition of "consignee" (replacing its use with "ultimate consignee"), and revise the definitions of "buyer," "end-user," "filer," "foreign port of unlading," "foreign PPI," "forwarding agent," "intermediate consignee," "order party," "seller," "shipment," "ultimate consignee," and "USPPI." Among these changes, the NPRM clarifies that "foreign port of unlading" means the port where the exported goods are removed from the exporting conveyance and that the "intermediate consignee" must physically take possession of the goods. A "conveyance" would be defined as the "actual aircraft, vessel, railcar, truck, and other means of transport used to transport goods from one place to another."

Call for public input

The NPRM will be open to public comment through December 30, 2024. Interested stakeholders may submit comments to the docket on the Federal eRulemaking Portal at regulations.gov. The NPRM includes further instructions on how to participate. Engaging in the public comment process can help shape the outcome of the action and prompt the government to further clarify its actions. The Census Bureau will not issue its final rule until it has reviewed and responded to the feedback received.

United States Set to Expand Plant Product Import Declarations

The US Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) is on schedule to implement the Phase VII expansion of the Lacey Act's plant and plant-derived products import declaration requirement on December 1, 2024. The expansion (which APHIS originally announced in May 2024[3]) will cover various wood articles, cork, shoes, tools, industrial machinery, vehicle components, boats, firearms, essential oils, furniture, and consumer products that contain plant-based components. Companies importing products within the Harmonized Tariff Schedule (HTS) codes listed in the announcement should be prepared on December 1 to report species and country of harvest of any covered plant inputs contained in their products. After completing Phase VII implementation, APHIS will begin work on Phase VIII. Phase VIII will cover plant-derived composite materials and will likely take several years to develop.

[3] "Implementation of Revised Lacey Act Provisions," 89 FR 47122 (May 31, 2024), accessible here: https://www.federalregister.gov/documents/2024/05/31/2024-11901/implementation-of-revised-lacey-act-provisions, and see the APHIS webpage on filing Lacey Act declarations for more information, updates, and compliance guidance, accessible here: https://www.aphis.usda.gov/plant-imports/file-lacey-act-declaration.

Implementation of the Lacey Act's declaration requirements

The Lacey Act of 1900 is an expansive anti-wildlife trafficking law, prohibiting trade (including international trade) of illegally taken, possessed, transported, or sold (either under US law or foreign law) fish, animals, timber, and plants. In 2008, Congress significantly expanded the Lacey Act through Section 8204 of the 2008 Farm Bill (the "Food, Conservation, and Energy Act of 2008") to regulate illegal plant harvesting.[4] Besides making it unlawful to import illegally harvested plants, the 2008 amendments make it unlawful to import any covered plants or plant products without filing an import declaration that documents the scientific name and country of harvest of the plants.

APHIS has been gradually implementing and expanding the import declaration system since April 2009. Phases I, II, and III entered effect in 2009; Phase IV in 2010; Phase V in 2015; and Phase VI in 2021. Phase VII will enter into force on December 1, 2024. The full list of products already subject to the requirements can be found on the APHIS website. The list includes timber, certain furniture, certain essential oils, wood cases, charcoal, and certain musical instruments.[5]

Complying with the Lacey Act

Importers of record (or their agent) with shipments covered by the Lacey Act must file the declaration upon importation with their standard import documents. An import is covered if the product contains plant materials, is classified under the covered HTS codes, and is imported as a formal entry. The declaration must identify the component of the imported article that is a plant product, the scientific name of that plant, the plant's country of harvest (which may differ from the final article's country of origin), the quantity of the plant material, and the share of plant products in the article that is recycled plant materials (if the plant product is paper).

There are several exceptions to the Lacey Act import declaration requirements, under which importers may bypass the declaration process or enter a disclaimer code in the import declaration (as applicable). Common plant cultivars (except trees), common food crops, scientific specimens, live plants that are intended to remain planted, and packing materials used in transport of other imports are excepted. The Lacey Act also includes a *de minimis* threshold (which is distinct from the $800 US customs *de minimis*), exempting imports for which the covered plant material is less than 5% of the imported product's total weight and the plant materials weigh less than 2.9 kilograms in total.[6]

The declaration requirement only applies to shipments that enter through formal customs entry. Formal customs entry typically applies to shipments with a value of $2,500, though there are exceptions (including for products subject to trade remedies actions). The declaration requirement does not apply to informal entry, entries under the customs *de minimis*, in-bond movements, or carnets.[7]

Most importers would complete the filing electronically through the Automated Commercial Environment (ACE) upon or before arrival. Importers may also use APHIS' Lacey Act Web Governance System (LAWGS) to enter the filings.[8] Filers of paper declarations may use PPQ Form 505 instead. Users of the paper declarations should be aware that APHIS intends to retire the paper declaration process in 2025, aligning the declaration process with the United States' electronic single window policy. APHIS plans to issue more information on the retirement of the paper declaration system soon.

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

[5] Lacey Act Declaration Implementation Schedule, accessible here: https://www.aphis.usda.gov/plant-imports/lacey-act/implementation-schedule.

[6] "Lacey Act Implementation Plan: De Minimis Exception," 85 FR 12207 (March 2, 2020), accessible here: https://www.federalregister.gov/documents/2020/03/02/2020-04165/lacey-act-implementation-plan-de-minimis-exception.

[7] For a full description of the customs entry type codes that are covered or exempt from Lacey Act filing, see "Lacey Act Requirements by Entry Type Code," accessible here: https://www.aphis.usda.gov/plant-imports/file-lacey-act-declaration/lacey-act-requirements-entry-type-code.

[8] Lacey Act Web Governance System (LAWGS), accessible here: https://lawgs.aphis.usda.gov/lawgs/faces/login_initial.jsf.

Phase VII enters effect on December 1, 2024

Phase VII of the Lacey Act import declaration requirement will enter into force December 1, 2024. APHIS believes the products added to the Lacey Act's coverage under Phase VII cover all remaining plant-derived materials that were not covered in previous phases, except for plant-based composite materials. The full list of HTS codes covered by the expansion is provided in the May 2024 *Federal Register* notice.

The wide scope of products and industries targeted under the Phase VII expansion means many companies that have not been previously subject to the Lacey Act will now have to fulfill the import declaration requirement. Companies will need to review their traded products for any items that are under the listed HTS codes and then verify whether those products contain covered plant materials. Full supply chain reviews will often be needed to establish compliance for these covered materials. APHIS is advising companies to begin communicating with their suppliers to identify the plant species and the harvest location as soon as possible.

Changes to Phase VII coverage

On September 20, 2024, APHIS announced two changes to Phase VII's coverage based on comments that stakeholders submitted in response to the May 2024 notice.[9]

1. APHIS will not implement the reporting requirement for HTS 3301.29.5142 (essential oil of vetiver), because vetiver is an excepted common plant cultivar.

2. APHIS will add three new codes for certain furniture products: HTS 9403.40.9040 (wood kitchen dining tables), 9403.40.9060 (wood kitchen cabinets designed for permanent installation), and 9403.40.9080 (other wood kitchen furniture). APHIS mistakenly excluded these codes from the original Phase VII list. To add the three codes to the reporting requirement's coverage, APHIS will have to issue a new *Federal Register* notice. The reporting requirement will enter into effect six months after APHIS issues the notice. There is no timeline for when APHIS will issue the notice. Rulemaking delays are common during presidential transitions and APHIS may be unable to issue the notice until 2025.

Expectations for the Phase VIII expansion to composite plant materials

After completing the Phase VII deployment in December, APHIS staff anticipate beginning the next implementation stage – Phase VIII – in 2025. Phase VIII will cover plant-derived composite materials, which could include rubber, latex, synthetic textiles, particle board, paper, fiberboard, wood pulp, and plant-derived chemicals. APHIS has not yet determined the full scope of Phase VIII's product coverage. Exact coverage will depend on how APHIS decides to define "plant composites" and how many steps down supply chains APHIS wants to track plant-derived materials.

As the Phase VIII reporting requirement would extend farther down manufacturing supply chains than the previous phases, it will become increasingly challenging for importers to identify specific plant species and harvest locations. APHIS staff have acknowledged the supply chain traceability challenge that Phase VIII is likely to create during recent discussions with the business community. Before issuing the Phase VIII HTS code list, APHIS intends to consult affected industries to determine what kind of coverage would be practical and useful. The official rulemaking process will likely be preceded with information collection requests, which APHIS would issue sometime in 2025. According to APHIS staff, the entire rulemaking process for Phase VIII will likely take several years to complete. Once the final Phase VIII list is issued, importers would have six months to prepare for compliance.

[9] "APHIS Responds to Revised Lacey Act Provisions Public Comments and Reminds Stakeholders of December 1, 2024, Implementation Deadline," APHIS, September 20, 2024, accessible here: https://content.govdelivery.com/accounts/USDAAPHIS/bulletins/3b4d03c.

United States Prohibits Certain Foreign Drones from Government Contracting

The Federal Acquisition Regulatory Council (FAR Council) has issued an interim rule implementing a federal procurement prohibition on certain foreign-made drones, which entered into effect immediately upon publication on November 12, 2024.[10] The interim rule is based on the “American Security Drone Act,” which became law as part of the 2024 National Defense Authorization Act (NDAA) in 2023. The Act prohibits (i) federal procurement, (ii) federal operation, and (iii) use of federal funding for procurement or operation of unmanned aerial vehicles (drones) and connected equipment that was manufactured or assembled by designated foreign entities (including entities controlled by China).[11]

The law instructed the FAR Council to amend the Federal Acquisition Regulation (FAR) to implement the prohibition, prepare new standard contract terms, establish a prohibited entities list, and provide systems for exceptions. Sections of the prohibition enter effect on different timelines over the next few years, with the procurement prohibition entering effect immediately. Though the rule entered force as written on an interim basis, it is also open to further revision. The FAR Council is inviting public comment until January 13, 2025.

Covered entities and products

The prohibition applies to certain foreign entities identified by the Federal Acquisition Security Council (FASC), known as “American Security Drone Act-covered foreign entities.” The FASC’s list will include (i) any entity included on the Consolidated Screening List; (ii) entities designated by the Department of Homeland Security as subject to extrajudicial direction from a foreign government; (iii) entities determined to be of national security risk by the FAR Council, (iv) entities in China or subject to influence or control by the Chinese government or Chinese Communist Party;[12] and (v) subsidiaries and affiliates of the above. The FASC will publish the list to the System for Award Management (SAM) website.[13] Contractors are required to check the list and verify their compliance before submitting contract proposals.

The products of the listed entities that are subject to the prohibition are “unmanned aircraft” and “unmanned aircraft systems” (UAS), which include both the unmanned aircraft itself and the associated elements required for operating the aircraft (collectively, a “FASC-prohibited UAS”). Though the law (including its title) uses the term “drone” interchangeably with UAS, the definition of UAS is more expansive than just the drone, including designated “associated elements” of the aircraft that are not onboard. The FASC is developing a list of covered associated elements, which would include communication links and the components that control the aircraft.

The prohibition and implementation timeline

The prohibition includes three key provisions, which enter effect separately. Though the prohibitions are different under the law, the FAR Council has simplified the rulemaking process by including all three in the same rule. The provisions:

1. Immediately prohibit federal contractors from procuring FASC-prohibited UAS on November 12, 2024. The prohibition applies to all procurements and contracts, including acquisitions below the Simplified Acquisition Threshold (SAT), commercial products (including Commercially Available Off-the-Shelf (COTS) items), and

[10] “Federal Acquisition Regulation: Prohibition on Unmanned Aircraft Systems From Covered Foreign Entities,” 89 FR 89464 (November 12, 2024), accessible here: https://www.federalregister.gov/documents/2024/11/12/2024-26061/federal-acquisition-regulation-prohibition-on-unmanned-aircraft-systems-from-covered-foreign.

[11] Sections 1821-1833, H.R.2670 - National Defense Authorization Act for Fiscal Year 2024, 118th Congress (2023-2024), accessible here: https://www.congress.gov/118/plaws/publ31/PLAW-118publ31.pdf.

[12] China’s DJI, the world’s largest commercial drone manufacturer, is on the Consolidated Screening List and therefore automatically an American Security Drone Act-covered foreign entity.

[13] “American Security Drone Act-Covered Foreign Entity List,” SAM.gov, November 13, 2024, accessible here: https://sam.gov/announcements/american-security-drone-act-covered-foreign-entity-list.

commercial services. Any future orders in ongoing delivery contracts or modifications and extensions of contracts that existed before November 12, 2024 would need to incorporate the prohibition.

2. Prohibit executive branch agencies from operating FASC-prohibited UAS that were acquired before the prohibition entered into effect beginning on December 22, 2025. The operation prohibition extends to any FASC-prohibited UAS operated on behalf of executive branch agencies by private contractors. From an FAR standpoint, this section of the rule prohibits federal contractors from operating a FASC-prohibited UAS in performance of a federal contract.

3. Prohibit federal contractors using federal funds for the procurement or operation of a FASC-prohibited UAS beginning on December 22, 2025.

The interim rule directs federal contracting officers to include new standard language in federal solicitations and contracts to implement the prohibitions.[14] Contractors must also include the prohibition clause in all subcontracts, including subcontracts for acquisition of commercial products and services.

Exemptions, exceptions, and waivers

The interim rule includes several sets of general exemptions, use-case exceptions, and waivers:

- Certain executive agencies may be exempt for procurements necessary for national security, national airspace management, public safety, and scientific work.
- There are general exceptions for use cases related to wildfire management, search and rescue, intelligence activities, and tribal government law enforcement.
- Executive agencies may also issue case-by-case waivers under certain circumstances, subject to certain approval and notification processes.

Call for public input

The interim rule is open to public feedback until January 13, 2025. The FAR Council will consider and respond to any public feedback that it receives when it finalizes the interim rule. Interested Stakeholders may submit comments on the interim rule via the Federal eRulemaking portal at regulations.gov.

Besides general suggestions, the interim rule mentions several issues for which the FAR Council is specifically seeking input:

- The FAR Council declined to include any disclosure or reporting requirements for contractors. The interim rule states that the FAR Council may be interested in adding such requirements, including a requirement that contractors disclose certain information about uses of FASC-prohibited UAS to government contracting officers and a requirement that contractors report to contracting officers if a UAS used in a contract becomes subject to a FASC listing. In requesting input, the FAR Council asks if disclosure and reporting requirements would create compliance challenges for contractors.
- The interim rule asks if contractors need a more thorough explanation of the meaning of “federal funds” in the prohibition on contractors using federal funds to purchase FASC-prohibited UAS.

Ongoing efforts to restrict Chinese drone manufacturers

The acquisition prohibition is the latest in a series of recent measures to restrict Chinese drone manufacturers. Chinese drone companies are already prohibited from participating in Department of Defense contracting, based on a provision under section 848 of the 2020 NDAA. The US government has also adopted measures targeting specific

[14] *See*, FAR 52.240-1, Prohibition on Unmanned Aircraft Systems Manufactured or Assembled by American Security Drone Act-Covered Foreign Entities, accessible here: https://www.acquisition.gov/far/52.240-1.

Chinese drone manufacturers, most notably DJI. The United States has added DJI to the Bureau of Industry and Security (BIS) Entity List, the Department of Defense Chinese military companies list, and the Office of Foreign Assets Control's (OFAC) Chinese Military-Industrial Complex list. The actions limit US exports to Chinese drone manufacturers, restrict them from raising money in the United States, and limit their access to US defense contracts, but do not entirely ban the companies from the US commercial market.

Congress is deliberating proposals to limit Chinese access to the US commercial drone market, which may accelerate when Republicans take control over both chambers in January. Most recently, the House of Representatives advanced legislation that would add DJI to the Federal Communications Commission's (FCC) Covered List under Section 2 of the Secure Networks Act.[15] Adding DJI to the Covered List 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. The House passed the bill as a standalone measure on September 9, 2024. Congress is now considering attaching it to the 2025 NDAA, which will likely pass into law by mid-December 2024. Other proposals to restrict Chinese drones (including higher tariffs) are also under consideration, but the FCC Covered List proposal has advanced the furthest.

The Biden administration may also be considering a more thorough prohibition on certain Chinese drone technologies. In a July 2024 regulatory agenda filing,[16] 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 comment to help BIS determine "the technologies and market participants most appropriate for regulation." The approach would resemble the current investigation into connected vehicles, for which BIS issued a proposed prohibition in September 2024.[17]

Anticipated Tariff Policy Outcomes Under a Second Trump Administration

President-elect Donald Trump will assume the presidency for the second time on January 20, 2025. Trump and senior advisors surrounding his campaign have vowed – and observers expect – that increasing import tariffs will be one of the administration's first priorities. The exact details of how President Trump would implement the tariff increases remains to be determined, which has led to extensive speculation since the election. Trump's appointments to senior trade positions, the balance of power in Congress, how other countries respond, and other outside factors will all influence how the administration pursues its general policy objectives. In the coming months, it will be crucial for businesses and government to closely monitor Trump's appointments to senior positions, the outcomes of Congressional elections, and statements from Trump and his advisors regarding their near-term plans.

Likely overall trade policy-related priorities

As in his first term, Trump is promising to raise trade barriers on countries he believes have treated the United States unfairly, lower domestic taxes, and support domestic oil and gas development. However, his agenda in these areas appears to have become more assertive since his first term. Though details are not settled, businesses should anticipate significantly more disruption from tariffs and other trade actions under Trump's second term. Key priorities would likely include:

[15] H.R.2864 - Countering CCP Drones Act, 118th Congress (2023-2024), accessible here: https://www.congress.gov/bill/118th-congress/house-bill/2864; and S.4792 - Countering CCP Drones and Supporting Drones for Law Enforcement Act, 118th Congress (2023-2024), accessible here: https://www.congress.gov/bill/118th-congress/senate-bill/4792.

[16] "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.

[17] "Securing the Information and Communications Technology and Services Supply Chain: Connected Vehicles," 89 FR 79088 (September 26, 2024), accessible here: https://www.federalregister.gov/documents/2024/09/26/2024-21903/securing-the-information-and-communications-technology-and-services-supply-chain-connected-vehicles.

- **Escalating economic confrontation with China:** The Trump administration's first priority will likely be to increase trade restrictions specifically targeting China. Besides increasing tariffs, the Trump administration will likely expand the use of national security restrictions targeting China and Chinese entities in third countries.
- **Global tariffs:** The Trump administration is likely to raise tariffs across all imports from the rest of the world. Whether this will be a single global action or a series of targeted tariff increases (possibly coupled with negotiations) remains uncertain.
- **United States – Mexico – Canada Agreement (USMCA) renegotiation and addressing market access concerns in other countries:** As he did in his first term, Trump may use some of his tariff threats to pressure other countries into granting the United States more favorable market access terms. Renegotiating the USMCA is the most certain area of action. USMCA's novel requirement that the parties meet to review the text after six years falls in July 2026.
- **Shifting energy development focus from green energy to domestic oil and gas production:** Trump has repeatedly promised to end the Biden administration's Inflation Reduction Act (IRA) green energy development programs and instead prioritize domestic oil and gas development; however, the potential for executive branch action in this area may be limited. The president could rewrite IRA implementing regulations to make the tax credits harder to access, but he could not repeal the IRA without an act of Congress. On oil and gas development, Trump's most likely policy options would be to resume issuing natural gas export permits and expand leasing of public land.
- **Corporate tax and income tax cuts:** For some domestic industries, new income tax cuts may partially offset losses from higher input costs and reduced access to foreign markets. While running for president, Trump has promised several new tax cuts for businesses and workers and said he would support the extension of the corporate and individual income tax cuts passed under his first term in 2017. Tax code changes will require Congressional authorization, which Republican legislators would generally support.

Tariff policy

Trump generally believes that the United States is treated unfairly in international trade and that this has done significant harm to US manufacturing. This belief in unfair treatment is often based on one-sided interpretations of relationships that ignore US trade barriers and an incomplete understanding of the causes and effects of trade deficits, but it is nonetheless important to the worldview of Trump and his advisors. To the extent that Trump perceives trade relationships as being unbalanced, he will seek to correct that imbalance through aggressive use of all available trade policy tools (including tariffs) and aggressive negotiating tactics, as he did in his first term of office. His perceptions may be shaped by specific policy disputes, supply chain security interests, US industry concerns that aides and business executives bring to him, news coverage, and trade data.

Based on statements from the Trump presidential campaign and trade policy practitioners who will likely be appointed to senior policy roles, the second Trump administration is likely to quickly seek to impose new tariffs globally, with higher tariffs targeting imports from China (and potentially imports from Chinese-owned companies in third countries). The exact details of this policy are unclear. Trump and his advisors have mentioned various tariff rates and policy objectives at different times, usually suggesting a 10% or 20% global tariff and a 60% tariff on China. There may also be opportunities for companies trading products that are not domestically available to appeal for exceptions from the tariffs. Sources close to the Trump campaign noted that they are considering small exceptions for products like critical minerals, while some tariffs on manufactured goods may be phased in more slowly. Details of the strategy, options for negotiations, tariffs rates, timelines, and legal authorities will be shaped by individuals that Trump appoints to key leadership positions.

Executive branch tariff options

Though the US president does not have a general authority to raise or lower tariff levels arbitrarily, Congress has delegated extensive authorities to the president to modify tariffs and other trade barriers under specific circumstances. A second Trump administration might be unable to impose a single global baseline tariff as he has suggested in his presidential campaign, but he could still build significant tariffs through these existing authorities.

During his first term as president, Trump significantly expanded use of several of these trade policy authorities. Trump relied on Section 232 of the Trade Expansion Act of 1962 and Section 301 of the Trade Act of 1974 to raise tariffs on various imports from China and on imports of steel and aluminum from most of the world. He could return to using those powers, raising tariffs piecemeal on specific countries and products. Section 301 and Section 232 investigations would not create a single "universal" tariff, but in practice it could be his preferred option. Trump has experience with using those powers, and they would offer more flexibility and nuance than a single sweeping action. Trump's advisors have also suggested potentially using Section 338 of the Tariff Act of 1930. Section 338 gives the president authority to respond to countries that discriminate against the United States by imposing tariffs. The government has not used Section 338 since the 1930s, but it remains part of the law.

Another option would be to use the International Emergency Economic Powers Act (IEEPA) to order a more general tariff increase. Trade policy advisors close to Trump, like Lighthizer, have said IEEPA is an option for fast action in the early months of Trump's term of office. A broad application of an IEEPA emergency declaration could enable the Trump administration to impose a single global tariff, thought the action would likely be challenged in court.

Legislative branch tariff options

If Trump can build sufficient support in Congress, legislative action may also be possible. Advisors close to the president-elect have recently discussed such a strategy with influential Republican legislators. The Republicans are already planning a large tax cut legislative package. When running for president, Trump said he would use tariffs to pay for those other tax cuts, which appears to be the strategy under discussion with Congress. What a revenue tariff would look like in practice is unclear from the Republicans' statements. The United States has not relied on tariffs as a major revenue source since the 1800s. In fiscal year 2022, the US government raised $4.9 trillion in total revenue, of which, only $111.8 billion was tariff revenue (including revenue from the current Section 301 and Section 232 tariffs).

Executive branch authorities like Section 301, Section 232, and IEEPA are powerful tools for the president, but implementation of tariffs under executive branch authorities can be time consuming and would invite legal challenges. If Congress chooses to pass a bill revising the US tariff schedule, higher tariffs could be implemented rapidly and with less risk of legal complications.

As of the writing of this alert, it is unclear whether a majority coalition could form in Congress to support legislative tariff increases. Though the Republicans have a comfortable majority in the Senate, the outcome of the House of Representatives' elections are still undetermined. Two outcomes are possible for the House: (i) either the Republicans will hold a small majority (making building consensus within the party challenging), or (ii) the Democrats will win a small majority (splitting control of the government and forcing Republicans to compromise on their legislative objectives). Pro-business Republicans in Congress may also oppose legislative tariff increases, stymying any efforts for legislation. Trump himself may also oppose legislative action, preferring to use executive branch powers that he could control.

Potential for renewing trade negotiations

Another area of speculation regarding Trump's trade policy is whether his tariff threats are intended to create negotiating leverage for new trade agreements. It remains unclear to what extent Trump's promises to raise tariffs and his commitments to improve trade deals are aligned. Some have argued Trump's tariff threats are a bargaining tool, intended to extract new concessions from other economies. For example, in a September 16, 2024, interview, a senior member of Trump's presidential campaign described the tariff threats as a "bargaining chip" that would force other countries to lower trade barriers facing US exporters. The Trump campaign platform references these interests as well, saying Trump would renegotiate trade deals and address unfair trading practices in other countries.[18]

On the other hand, some senior advisors to the Trump campaign have argued tariffs are a desirable policy objective in themselves, blaming international trade for challenges in the US domestic economy and arguing tariffs are the solution. Lighthizer, in a November 1, 2024 article, argued the "three ways to bring about fairness and balance" in trade are (i) government licensing of international transactions; (ii) taxing foreign investment in the United States; (iii) and tariffs.[19] Lighthizer makes no mention of negotiating new trade deals in his comments, believing that restricting trade and investment is the preferable policy strategy. Both Trump and Lighthizer have argued in recent remarks that tariffs are beneficial for the US economy.[20]

That said, in his first term as president, Trump used new tariffs or the threat of imposing new tariffs in negotiating the US-China Phase One deal, renegotiating the North American Free Trade Agreement (NAFTA) into the USMCA, and modifying the Korea-United States FTA (KORUS). The first Trump administration was also in early stages of negotiating new trade agreements with the United Kingdom and several other economies when Trump left office. If the second Trump administration's real policy objective is to obtain new market access concessions from other countries, then the latest commitments to raising tariffs may also be a negotiating tactic.

If the Trump administration does decide to purse new trade deals, it would likely pursue a strategy of bilateral negotiations. In his first term as president, Trump followed a similar pattern, withdrawing from multilateral arrangements like the Trans-Pacific Partnership (TPP) and negotiating new sectoral agreements with Japan and updates to KORUS. Similar to the withdrawal of the United States from the TPP, Trump would also likely suspend the Biden administration's Indo-Pacific Economic Framework for Prosperity (IPEF) and the Americas Partnership for Economic Prosperity (APEP). In contrast, bilateral negotiations with Taiwan and Kenya may continue, and potentially expand into traditional FTA negotiations.

US-China trade dispute escalation

Given the complex regional supply chains and multinational enterprises involved, the US-China trade war is likely to have far-reaching and unpredictable effects on third countries. When running for president, Trump vowed to significantly increase restrictions on imports from China, including calling for a tariff of 60% on all imports. Trump is also seeking to stop Chinese-owned companies from exporting to the United States from third countries, seeking targeted tariffs and investment restrictions. For example, Trump has threatened to impose 200% tariffs on imports from cars made by Chinese entities in Mexico. A comprehensive effort to exclude Chinese entities from multinational industrial supply chains would likely be a significant risk for new investments and joint ventures involving Chinese companies in Asia and Mexico.

Targeted national security-based restrictions on sensitive industries are also likely to continue under the Trump administration, which would also have significant implications for market access. With the US-China rivalry and supply chain security moving to center-stage in Washington, it is no surprise that national security interests have taken on a higher profile in the United States' international economic policy. Increased focus on mitigating security risks is becoming especially apparent in digital trade and high-tech products, sectors the United States has traditionally championed in foreign commerce. New laws and regulations introduced in 2024 will restrict certain data

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[18] *See*, the Republican National Committee Platform, at "2024 Gop Platform Make America Great Again!" p.9, accessible here: https://rncplatform.donaldjtrump.com/?_gl=1*1ah912b*_gcl_au*NjIzNTkxOTA4LjE3MzEzMzczMTM.&_ga=2.16196405.2022723390.1731337313-1624666882.1731337313.

[19] "Donald Trump's trade remedies reflect America's troubled reality," Financial Times, November 1, 2024, accessible here: https://www.ft.com/content/c72fac7b-4b0c-4981-8bc8-8999bde17900.

[20] *See, e.g.*, "Former President Trump Interview with the Economic Club of Chicago," October 15, 2024, accessible here: https://www.c-span.org/video/?539131-1/president-trump-interview-economic-club-chicago.

broker transactions and digital applications linked to foreign adversary countries. The government is also developing security restrictions on digital transactions related to specific technology products like cars and unmanned aerial vehicles. Application of export controls is also widening, restricting exports in advanced technology sectors that are not used to facing such restrictions. Security-based exclusions on Chinese businesses would likely continue under the Trump administration, potentially creating significant disruptions to international supply chains and investment.

Outlook

As President-elect Trump prepares to assume the presidency for the second time on January 20, 2024, there is considerable anticipation regarding his administration’s trade policy. Trump and his senior advisors have emphasized that increasing import tariffs will be a top priority, although the specifics of their implementation remain uncertain and have fueled extensive speculation. The administration’s approach will be influenced by various factors, including Trump’s appointments to senior trade positions, the balance of power in Congress, responses from other countries, and other external elements. Over the next several months, it will be crucial for businesses and government to closely monitor these developments to understand the administration’s near-term plans and potential impacts on trade policy.

Trump Begins to Assemble Trade Leadership Team

The first major appointments for President-elect Donald Trump’s trade policy team have emerged in recent days. Trump has nominated Scott Bessent to lead the Department of the Treasury (Treasury) and Howard Lutnick to lead the Department of Commerce (Commerce). Trump has still not announced a nominee for the Office of the United States Trade Representative (USTR), though he has made the unusual suggestion that Commerce would oversee the office.

The president must appoint political personnel to about 4,000 senior positions that guide executive branch operations – a significant administrative undertaking for any incoming administration. With a strong Republican majority in the Senate, Trump should be able to appoint and obtain confirmations for candidates of his choice. As part of their confirmation process, Bessent and Lutnick will face Congressional hearings, which will provide more opportunities to learn about how they plan to lead their departments.

Department of the Treasury

Scott Bessent, a prominent hedge fund manager, will be nominated as Secretary of the Treasury. Bessent is the founder of Key Square Capital Management, a global macro hedge fund. Prior to that, he was the Chief Investment Officer for Soros Fund Management. He has no experience in government, though he has taught economic history as an adjunct professor at Yale University. Bessent has become a key economic advisor to Trump over the past year, as well as a major fundraiser for the presidential campaign. Competition for the Treasury Secretary post has been intense and subject to significant media speculation over the past few weeks. Lutnick was also under consideration for the post.

Should he be confirmed, Bessent has said his priorities would include reducing business regulation (especially rules that limit bank lending), promoting oil and gas development, extending Trump’s tax cuts, imposing tariffs, and supporting the cryptocurrency industry. Bessent has also been a critic of the Biden administration’s green energy subsidies under the Inflation Reduction Act (IRA). As Secretary of the Treasury, Bessent would oversee the IRA’s implementing regulations, tax policy, the Committee on Foreign Investment in the United States (CFIUS), the Biden administration’s new outbound investment restrictions (which the Trump administration will likely expand), sanctions programs, the financial services industry elements of US trade policy, and US representation to the international financial institutions, among many other areas.

Department of Commerce

Howard Lutnick will be nominated as Secretary of Commerce. Lutnick is the Chairman and CEO of the financial services firm Cantor Fitzgerald, where he has worked since 1983. Lutnick was a major funder of the Trump presidential campaign and is co-chair of Trump's presidential transition team, where he has been vetting candidates to fill jobs across the administration. Like Besset, Lutnick has no experience in government.

Lutnick has been an advocate for deregulation, increasing domestic energy production, lowering taxes, supporting cryptocurrency, and using tariffs as a bargaining chip in negotiations with other countries. As Secretary of Commerce, Lutnick would lead the International Trade Administration (which conducts antidumping and countervailing duty investigations) and the Bureau of Industry and Security (which manages export controls, the new information and communications technology and services transactions restriction authorities (the "ICTS rule"), and Section 232 investigations). The Census Bureau, the National Oceanic and Atmospheric Administration, the US Patent and Trademark Office, the National Weather Service, and the National Institute of Standards and Technology are also within Commerce.

Trade policy leadership

In announcing Lutnick's appointment to Commerce Secretary, Trump said Lutnick will also coordinate tariff and trade policy across the government and oversee USTR. Trump stated Lutnick "will lead our Tariff and Trade agenda, with additional direct responsibility for the Office of the United States Trade Representative."[21] Placing USTR under Commerce would be an unusual action. Formally, USTR could not be moved to Commerce without an act of Congress, though Trump could be describing a more informal arrangement. Congress – even one dominated by Republicans – is likely to oppose any effort to end USTR's independent status. The Senate Finance Committee and House Ways and Means Committee will be especially committed to defending their oversight over USTR, which they would lose if USTR is moved under Commerce.

Unlike most other countries, the United States does not have a Ministry of Trade-like agency responsible for all trade policy matters. Instead, the US Congress has deliberately split trade authorities between USTR and the Department of Commerce, as well as giving some related policy roles to Treasury, the Department of State, the Department of Agriculture, the US International Trade Commission (ITC), and other agencies. Though USTR's political positioning between the White House and Congress is desirable to legislators, the split authorities often lead to confusion and internal disagreements over who is leading trade policy for the president. When Trump announced that Wilbur Ross would lead Commerce during his first term as president, he also suggested that Ross would lead on trade policy. That suggestion did some into fruition because of Congressional opposition and disputes within the Trump administration about how to handle trade with China. Ultimately, the leaders of Commerce, Treasury, and USTR competed for control over the China trade war and negotiations with Beijing during Trump's first term – a situation which Trump would likely want to avoid in his second term.

Attitudes toward tariffs

Treasury bond and foreign exchange markets cooled down in the days following Trump's announcement of Bessent as Treasury Secretary, suggesting businesses expect the pick to take a more moderate approach to tariffs and fiscal policy than expected. Trump has announced highly controversial nominees to lead other agencies, including one who has already withdrawn. Lutnick and Bessent, in contrast, are more typical appointments for Republican presidents.

Lutnick and Bessent are also less supportive of an aggressive tariff agenda than other Trump advisors. Lutnick has said the tariff threats are just a "bargaining chip" to get better market access terms from other countries and that the actual tariffs Trump would impose would be more strategically targeted than the universal tariffs he has threatened. Bessent has also cautioned against rapidly increasing global tariffs and has referred to the threatened tariffs as a negotiating tactic.[22] Contradicting former USTR Robert Lighthizer's calls (and occasional calls from Trump and JD

[21] Trump's Truth Social post announcing the appointment is accessible here: https://truthsocial.com/@realDonaldTrump/posts/113511235978420631.

[22] *See*, e.g., "Trump would not weaken the dollar, says adviser Scott Bessent," Financial Times, October 13, 2024, accessible here: https://www.ft.com/content/fa08cc45-e6d1-4e19-b49b-047c5a23ca39.

Vance) to weaken the dollar to rebalance global trade, Bessent has vowed support for strong dollar policy and the dollar's status as the primary world reserve currency.

These personal attitudes of the two nominees suggest they may use tariffs in a more measured way, seeking to extract market access concessions from other countries. This potential approach would contrast with Trump's threats of universal tariffs and claims that tariffs would be beneficial to the US economy, which are popular among more protectionist advisors close to Trump. Some lobbyists representing protectionist industry interests have already objected to the nominations, saying the choices indicate Trump is turning away from his vows to raise tariffs.[23] At the same time, however, both nominees have indicated that implementing new tariffs is a priority as they anticipate joining Trump's cabinet.

United States Trade Representative

Updated November 5, 2024: Trump has announced that he will nominate Jamieson Greer to lead USTR.[24] Greer served as Chief of Staff to Robert Lighthizer at USTR during Trump's first term as president. He is notable for his protectionist views on foreign trade, especially regarding China. Lighthizer – who was rumored to be under consideration for several senior roles – appears unlikely to rejoin the Trump administration.

Other notable selections

There are many other cabinet-level and more junior positions that will be critical to how the Trump administration manages trade policy. Appointments for some of these positions have also emerged in recent days. For the Department of Agriculture, Trump will nominate Brooke Rollins. Rollins was a member of the White House staff during President Trump's first term, coordinating domestic policy issues. Since then, she has led the America First Policy Institute, a non-profit group helping to develop the policy agenda for Trump's second term.[25] Trump has also announced he will nominate Senator Marco Rubio to be Secretary of State. Rubio is a China hawk who has supported numerous legislative proposals to decouple the US economy from China and increase trade barriers in recent years.

Notable appointments are also being announced for the president's staff. Alex Wong will be principal deputy national security advisor, a high-level security policy planning role in the White House. In Trump's first term, Wong served as Deputy Assistant Secretary for East Asian and Pacific Affairs and helped organize Trump's meetings with Kim Jong-un. Since then, Wong has led the US-China Economic and Security Review Commission. The Commission is a congressionally appointed, bipartisan group that has lately advocated for raising tariffs and erecting other trade barriers between the United States and China. In its 2023 report (for which Wong was Vice-Chairman), the Commission recommended Congress expand foreign investment restrictions, strengthen tariff enforcement against China, and strengthen export controls.[26]

Trump Threatens to Impose Tariffs on Canada, Mexico, and China Immediately Upon Taking Office

On November 25, 2024, President-elect Donald Trump threatened that he would immediately impose tariffs on China, Canada, and Mexico upon taking office in January 2025 if those countries to do not assist the United States in policing its borders. In his brief announcements, Trump said he would impose a 25% tariff on all imports from Mexico

[23] *See*, e.g., Lori Wallach of Rethink Trade on X, accessible here: https://x.com/WallachLori/status/1858177883929272494.

[24] Trump's November 26, 2024, Truth Social post announcing Greer's appointment is accessible here: https://truthsocial.com/@realDonaldTrump/posts/113552350882072401.

[25] The America First Policy Institute's trade policy statement is accessible here: https://agenda.americafirstpolicy.com/economy/negotiate-trade-deals-that-protect-american-workers.

[26] "2023 Annual Report to Congress," US-China Economic and Security Review Commission, accessible here: https://www.uscc.gov/annual-report/2023-annual-report-congress.

and Canada until “such time as Drugs, in particular Fentanyl, and all Illegal Aliens stop this Invasion of our Country,”[27] and would impose a 10% tariff on China until it cuts off fentanyl precursor chemical exports to drug traffickers in Mexico.[28] Trump’s statements contained little additional detail beyond those broad contours. The announcements show that Trump is willing to use tariffs (or the threat of tariffs) to extract policy concessions from trading partners that are unrelated to trade itself.

Trump posted the announcements to his social media platform, Truth Social, which he has been using to announce policy plans and appointments since winning the presidential election.

The Canada and Mexico tariff threat

Trump declared that the United States would impose a 25% import tariff on Canada and Mexico until Mexico and Canada stop illegal drugs and undocumented immigrants from entering the United States. The core of the statement is below:

> *On January 20th, as one of my many first Executive Orders, I will sign all necessary documents to charge Mexico and Canada a 25% Tariff on ALL products coming into the United States, and its ridiculous Open Borders. This Tariff will remain in effect until such time as Drugs, in particular Fentanyl, and all Illegal Aliens stop this Invasion of our Country! Both Mexico and Canada have the absolute right and power to easily solve this long simmering problem. We hereby demand that they use this power, and until such time that they do, it is time for them to pay a very big price!*

The threat provides little detail on what specific actions Trump would want Canada and Mexico to undertake or what powers Trump believes Canada and Mexico possess to control the United States’ borders. The statement also provides little detail on how the tariffs would work, their envisioned legal basis, or when they would enter into force, other than emphasizing the tariffs will apply to “ALL” imports.

It is typical for countries to respond to tariffs with tariffs of their own, and US industry should expect that Canada and Mexico may respond to Trump’s tariffs in kind. Indeed, Mexican President Claudia Sheinbaum responded to Trump’s threats with a threat of proportional retaliation, stating that Trump’s tariffs “will be followed by another in response and so on.”[29] However, applying tariffs on imports from the United States will be challenging for Mexico and Canada because of their heavy economic reliance on US trade. Some economists have even estimated that Canada retaliating against US tariffs with tariffs of its own could be more harmful to Canada than to the United States.[30]

Diplomatic engagement may become the preferred path to handle Trump’s new threat. Canadian Prime Minister Justin Trudeau spoke with Trump about border security issues on the same day that Trump announced the tariff threat. Trudeau told reporters it had been a “good call” and that they “talked about some of the challenges that we can work on together.”

Mexico and Canada regularly encountered threats of higher tariffs from Trump during his first term as president, but Trump rarely followed through. Instead, Canada and Mexico were generally able to negotiate with Trump and resolve the problems. For example, Canada and Mexico obtained exemptions from the Section 232 steel and aluminum tariffs and were able to renegotiate the North American Free Trade Agreement (NAFTA) to create the US-Mexico-Canada Agreement (USMCA). In a move reminiscent of the new tariff threat, Trump threatened to impose tariffs on Mexico in 2019 over immigration disputes. Mexico eventually negotiated a deal to cooperate with Trump to manage

[27] Trump’s November 25, 2024 statement on the Canada and Mexico tariff is accessible here: https://truthsocial.com/@realDonaldTrump/posts/113546215051155542.

[28] Trump’s November 25, 2024 statement on the China tariff is accessible here: https://truthsocial.com/@realDonaldTrump/posts/113546215408213585.

[29] President Sheinbaum’s response is accessible here: https://www.gob.mx/presidencia/prensa/no-es-con-amenazas-ni-con-aranceles-como-se-va-a-atender-el-fenomeno-migratorio-ni-el-consumo-de-drogas-en-eua-presidenta-claudia-sheinbaum.

[30] “Protectionism and Retaliation,” Dan Ciuriak and Jingliang Xiao, 2017, accessible here: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2918183.

immigration, averting the imposition of any tariffs. Sheinbaum highlighted this existing cooperation in her response to Trump's new threat, in addition to threatening retaliatory tariffs.

If Trump intends to follow the same playbook in his second term, the same outcome is possible. Providing several months of advance notice on the action and speaking to Trudeau in advance may suggest that Trump is using the threat as the opening of a negotiation. Trump will face additional pressure to abandon the plan from domestic industry groups and constituencies concerned about inflation. Tariffs on US imports from Canada and Mexico would hit the oil and gas, automotive, mining, and food industries especially hard, harming industry groups Trump wants to support, and raising the prices of consumer staples. Industry and labor union representatives have already cautioned against imposing the threatened tariffs.

The China tariff threat

Trump's threat of tariffs against China stated that the United States would impose a 10% tariff on all imports until China ends drug trafficking to the United States via Mexico:

> *Representatives of China told me that they would institute their maximum penalty, that of death, for any drug dealers caught doing this but, unfortunately, they never followed through, and drugs are pouring into our Country, mostly through Mexico, at levels never seen before. Until such time as they stop, we will be charging China an additional 10% Tariff, above any additional Tariffs, on all of their many products coming into the United States of America.*

Fentanyl, fentanyl analogues, and methamphetamine are synthesized and distributed to the United States by drug trafficking organizations based in Mexico. These organizations source most of the chemical precursors used for producing those drugs from chemical companies in China. Trump's statement is referring to the trade of those Chinese-origin chemical precursors, which the United States has been pressuring the Chinese government to cut off. Aside from supplying those chemicals, China does not have any significant involvement in the North American illegal drug trade.

In recent years, the US government has begun indicting and sanctioning Chinese chemical suppliers, as well as pressuring the Chinese government to crack down on the industry. Following recent diplomatic engagements with the Biden administration, China has taken additional steps to shut down chemical precursor suppliers. China responded to Trump's new threats by defending their ongoing cooperation and the actions already taken to reduce the flow of chemical precursors to North America. Trump appears to believe those actions have been insufficient.

Trump's statement notably highlights that the 10% tariff would be "above any additional Tariffs" that he might be considering. Trump has regularly threatened to impose 60% tariffs on imports from China. This threat of a 10% tariff appears to be on top of those tariffs, rather than a substitute for them. If China cannot placate Trump with respect to its anti-drug trafficking efforts, the threatened 10% tariff may become a small part of a much larger dispute.

Legal basis and implementation

The announcements do not explain the legal authority under which Trump plans to act or the implementation timelines for the tariffs. Trump's threat against Canada and Mexico states that he will use an executive order to implement the tariff and implies that the tariff would be implemented quickly. This vague description of the process *may* imply that Trump intends to rely on the International Emergency Economic Powers Act (IEEPA).[31] Trade policy advisors close to Trump, like former USTR Robert Lighthizer, have said IEEPA is an option for fast action in the early months of Trump's term of office. Trump's 2019 threat to impose immigration-related tariffs on Mexico also relied on IEEPA authorities.

IEEPA authorities are typically used to implement sanctions against US adversaries, but the law is written broadly enough to likely allow any intervention in economic activities that have a foreign nexus. IEEPA also does not require

[31] 50 USC §§1701–1709, accessible here: https://www.govinfo.gov/content/pkg/USCODE-2023-title50/html/USCODE-2023-title50-chap35.htm.

lengthy investigations or reports before implementing restrictions (unlike actions under Section 301 and Section 232), which would enable faster action. No president has ever used IEEPA to impose tariffs, but President Richard Nixon used the Trading with the Enemy Act (IEEPA's predecessor, which included similar powers to IEEPA) to impose a universal tariff during a balance of payments crisis in the 1970s.

Any tariff created through this approach would likely work the same way as any other standard tariff, applying to goods that are considered to have wholly originated or that have been last substantially transformed in the target countries. During Trump's first term, Section 301 and Section 232 tariffs were often imposed with only a few weeks' notice, giving importers little time to prepare. Still, in some cases, the Trump administration provided temporary reprieves. The first Trump administration would sometimes allow shipments that were already in transit when the government announced tariff increases to enter the United States without paying the tariffs. The Section 301 and Section 232 tariff actions also provided opportunities for importers to seek exceptions when covered products were unavailable from other sources. Trump may choose to allow for such exemptions again in his second term, but the decision would be at his discretion.

US Congress Considering Trade Legislation for the Lame Duck and Next Term

The United States Congress has reconvened for the last few weeks of the 2023-2024 legislative session, seeking last-minute agreements to pass important budget laws. Trade restrictions, federal procurement prohibitions, and foreign investment controls may also emerge. Among the priorities are an extension of the Farm Bill, and extension of the federal budget, and the 2025 National Defense Authorization Act (NDAA).

As the current Congress finishes its business, Republicans are beginning to discuss their agenda for the 2025-2026 Congress. The next Congress, which will be seated in January 2025, will have Republican majorities in both chambers. Budget and tax concerns will likely be the Republicans' priority for early 2025, but the party is also beginning to consider options for enacting President-elect Donald Trump's tariff and trade policy proposals through legislation. However, their majority is small, which will likely become a challenge to passing significant partisan legislation. In the Senate, the Republican majority is too small to overcome Democrat filibusters, making passing new laws without support from at least a few Democrats challenging. In the House of Representatives, the Republican majority is so narrow that small numbers of Republican defectors would be able to block the party's legislation (which has been a serious challenge for the Republicans in the current Congress as well).

Congressional agenda for December 2024

Congress is in session for three more weeks in December 2024, which provides the last opportunity to pass legislation during the 118th Congress. The 118th Congress has been unusually unproductive, passing few substantive bills into law. Important legislation, including the 2025 NDAA and a renewal of the Farm Bill (which expired in September 2024), have not yet passed. Other legislation expected this year, including outbound investment restrictions and reforms to customs *de minimis* entry, are also still under negotiation despite bipartisan support. Since Republicans will have majorities in both houses of Congress next year, they will have to decide on what initiatives they can delay for a few more months and what initiatives they can pass now through politically acceptable compromises.

Congress will also have to pass a bill to extend the government's spending authorizations in December (and replenish disaster aid budgets), since it failed to approve a new budget in 2024. If the current budget is not extended, the government will shut down after December 20. A stopgap budget extension to spring 2025 (which would allow the Republicans to write a new federal budget when they have the majority) is the most likely outcome of the impasse.

Important trade-related bills that Congress may address in the next few weeks are summarized below.

The 2025 NDAA

The NDAA is an annual bill that Congress must pass to authorize Department of Defense to spend appropriated funds. The bill also often contains trade and investment-related security measures, such as foreign investment controls and government procurement limits. Informal discussions between House and Senate armed services appropriators are underway to develop a new, bipartisan 2025 NDAA that Congress can approve in December, after earlier partisan proposals failed. Once the bill is complete, the Senate will likely approve it quickly and with limited debate.

There are several bills currently under consideration in Congress that are intended to reduce trade and investment links to China on national security grounds, several of which passed the House of Representatives in September 2024. These bills are unlikely to pass into law on their own during the current session, but Congress may amend them to the 2025 NDAA. Discussion over which bills could be included has featured in the negotiations between House and Senate's NDAA appropriators. Around 70 bills related to China policy, economic security, and artificial intelligence (AI) are reportedly under consideration. Among the bills that could be amended to the NDAA are the BIOSECURE Act, customs *de minimis* restrictions, the Countering CCP Drones Act, export control expansions, and outbound investment restriction proposals.

The Farm Bill

The Farm Bill, which bundles together provisions related to agriculture subsidies, crop insurance, foreign food aid, domestic food assistance programs, and trade policy expired at the end of September. The government had been operating under the 2018 Farm Bill, the "Agriculture Improvement Act of 2018." The 2018 Farm Bill was originally due for renewal in late 2023, but partisan disagreement over domestic food assistance programs and certain farm subsidy programs prevented Congress from passing a clean renewal. Instead, Congress extended the 2018 Farm Bill to September 2024 to provide more time for negotiation. Congress then allowed the 2018 Farm Bill to expire at the end of September 2024, failing to pass any form of renewal or extension. Though several new Farm Bill proposals have been introduced to Congress in 2024, the most likely outcome is that Congress will pass another one-year extension of the 2018 Farm Bill in December 2024. If Congress cannot pass an extension by the end of December, food and farm programs will begin either shutting down or reverting to operating under outdated laws in early 2025.

Pushing the full renewal of the Farm Bill to 2025 will mean that Republicans will lead on developing the renewal bill. A Republican Farm Bill would likely de-prioritize funding for climate change resilience projects and cut spending on domestic food assistance programs. That said, the Republican's slim majority may restrain them from advancing controversial changes to the law. For example, the agriculture section of the Heritage Foundation's Project 2025 strategy for Trump's second term calls for ending most farm subsidy programs and the sugar import quota,[32] which are unlikely to have sufficient support even among Republicans. Recent Republican Farm Bill proposals[33] have also included funding increases for export promotion and market access work, efforts to curtail foreign use of geographical indicators, restrictions on foreign investment in US farmland, strengthened enforcement of food product import rules, and measures that would consider protecting the seasonal fruit industry from import competition, which are less controversial and generally have bipartisan support.

Protecting American Industry and Labor from International Trade Crimes Act

On November 3, 2024, the House of Representatives approved H.R.9151, the Protecting American Industry and Labor from International Trade Crimes Act of 2024,[34] as one of its first actions after returning from the Thanksgiving holiday. The bipartisan bill would direct the Department of Justice (DOJ) to establish a new task force dedicated to investigating and prosecuting violations of US trade laws (such as duty evasion, transshipment, and fraud).

[32] The Department of Agriculture chapter of The Heritage Foundation's Project 2025 report ("Mandate for Leadership: The Conservative Promise") is accessible here: https://static.project2025.org/2025_MandateForLeadership_CHAPTER-10.pdf.

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

[34] H.R.9151 - Protecting American Industry and Labor from International Trade Crimes Act of 2024, 118th Congress (2023-2024), accessible here: https://www.congress.gov/bill/118th-congress/house-bill/9151.

Supporters of the bill have argued this increased enforcement focus is necessary to counter efforts by Chinese companies to circumvent US tariffs on China. The bill does not make any direct changes to US trade laws. Instead, any new trade challenges that come from the law would come from increased compliance risks.

A bipartisan group of Senators introduced a companion bill in the Senate in August 2024,[35] but the Senate may no longer have time to pass it before the end of the session. Considering the popularity of the bill among Republicans and domestic industry groups, the bill will likely resurface in 2025.

Invent Here, Make Here Act of 2024

On November 3, 2024, the Senate passed S.1956, the Invent Here, Make Here Act of 2024.[36] The bill intends to encourage domestic manufacturing of technologies invented in the United States by prohibiting small businesses and non-profit organizations that have made inventions using US government research grants from licensing the invention exclusively to foreign manufacturers. The bill includes options for obtaining waivers to this requirement when inventors cannot find a domestic manufacturer for their product.

Sens. Tammy Baldwin (D-WI) and JD Vance (R-OH) originally introduced the bill in June 2023. Since then, it has been rewritten to make the waiver system significantly more flexible. The version passed by the Senate removes the original bill's requirement that domestic manufacturing waivers follow the procedures of the Build America, Buy America Act; allows for waivers for manufacturing in "countries of concern" (*i.e.*, North Korea, China, Russia, and Iran; for which the original version of the bill prohibited the issuance of waivers); and limits the waiver review process to no more than 90 days.

There is not yet an equivalent bill in the House. Though the House can pass bills faster than the Senate, it is unclear if the House will be interested in taking up the bill before the end of the term. President Biden issued a similar policy through executive order in July 2023.[37]

An outbound investment compromise bill

Congress is continuing to negotiate over varying approaches to restricting US investment in China (building on the system President Biden recently enacted through an executive order). Consensus has not yet coalesced around any single proposal and the approaches of the current bills differ significantly. The Republicans in the House have split between China hawks who want to impose broad prohibitions on US investment in certain sectors of China's economy and House Financial Services Committee Republicans, who prefer a sanctions-based approach that targets specific entities.[38]

Republican leaders are now negotiating a compromise bill that would merge the different approaches. The envisioned bill would codify and expand the Biden administration's new outbound investment regulation and categorize restricted investments by technology instead of by industry sector. Though the Representatives negotiating the deal have said they hope to deliver a completed bill by the end of the year (and possibly include it in the 2025 NDAA), the chance of such a quick success appears unlikely. If the initiative fails, the Republicans would

[35] S.4955 - Protecting American Industry and Labor from International Trade Crimes Act of 2024, 118th Congress (2023-2024), accessible here: https://www.congress.gov/bill/118th-congress/senate-bill/4955.

[36] S.1956 - Invent Here, Make Here Act of 2024, 118th Congress (2023-2024), accessible here: https://www.congress.gov/bill/118th-congress/senate-bill/1956.

[37] "Executive Order 14104 of July 28, 2023: Federal Research and Development in Support of Domestic Manufacturing and United States Jobs," 88 FR 51203 (August 2, 2023), accessible here: https://www.federalregister.gov/documents/2023/08/02/2023-16636/federal-research-and-development-in-support-of-domestic-manufacturing-and-united-states-jobs.

[38] *See* Rep. Andy Barr's (R-KY) Chinese Military and Surveillance Company Sanctions Act of 2023 for an example of the sanctions-based approach, accessible here: https://www.congress.gov/bill/118th-congress/house-bill/760; and Rep. Rosa DeLauro's (D-CT) National Critical Capabilities Defense Act for an example of the sector-based approach, accessible here: https://www.congress.gov/bill/118th-congress/house-bill/3136.

take up the proposals again in 2025. Trump, when president, could also act on his own, expanding the Biden administration's rule to create a more expansive regime.

A *de minimis* reform compromise bill

There is widespread support for restricting use of customs *de minimis* entry among both Republicans and Democrats, but Congress has been unable to compromise on a single approach. Attempting to break through, Senate Finance Committee Chair Ron Wyden (D-OR) introduced S.5329, the "FIGHTING for America Act of 2024," on November 14, 2024.[39] S.5329 would significantly narrow the types of goods that can qualify for *de minimis* treatment, excluding products that are subject to Section 201, Section 301, and Section 232 tariffs, as well as excluding goods that are deemed ineligible for preferential treatment under the Generalized System of Preferences (GSP). The bill would also make other administrative changes to the handling processes and entry requirements for *de minimis* shipments, including new data disclosure rules, processes for disposing of detained shipments, and a new user fee for *de minimis* entries. The bill introduced on November 14 is mostly the same as the draft Sen. Wyden circulated for feedback in August 2024, making just a few technical clarifications.

Sen. Wyden hopes the bill will present a workable compromise between the differing approaches to *de minimis* reform. However, he probably introduced the bill too close to the end of the session to fit into the legislative calendar. Republicans will likely have to take up the debate during the next session, at which point they may choose to build off Sen. Wyden's bipartisan proposal or develop their own bill.

New tariff bills and potential Republican trade priorities for 2025-2026

With control of all branches of government in 2025 and 2026, Republicans will be empowered to undertake a wide variety of policy initiatives. Passing a full government budget and extending the expiring provisions of the 2017 Tax Cuts and Jobs Act (TCJA) will likely be the party's first priority upon taking over Congress in early 2025. Republicans are also discussing several bills that would increase tariffs and options to repeal green energy subsidies.

Several proposals for legislative tariff increases are discussed below. It is unclear whether a majority coalition could form in Congress to support such tariff increases. Pro-business Republicans in Congress may oppose the measures while Trump himself may prefer to use executive branch powers that he could control.

New PNTR revocation bills

Some Republicans in Congress are advocating for passing a bill to repeal Permanent Normal Trade Relations (PNTR) with China, though the matter is still unsettled. Proposals to severely restrict trade with China through measures like repealing PNTR have become more popular in the past few years, especially among Republican China hawks. The US-China Economic and Security Review Commission also endorsed repealing China's PNTR in its November 2024 report.[40]

As PNTR revocation has become more popular (and symbolic for anti-China politicians), the bills have also become more extreme. Older versions of the PNTR revocation bill would have reverted the United States to the system it used before granting China PNTR, under which the president would annually grant China Most-Favored Nation (MFN) status. Under that approach, revoking China PNTR would not necessarily lead to tariff increases.

The new bills that Republican China hawks introduced in late 2024 go farther than simply ending PNTR, proposing to also increase tariffs on imports from China and to create new non-tariff barriers. Following this new approach, Rep.

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[39] S.5329 - FIGHTING for America Act of 2024, 118th Congress (2023-2024), accessible here: https://www.congress.gov/bill/118th-congress/senate-bill/5329.

[40] "2024 Annual Report to Congress," US-China Economic and Security Review Commission, November 2024, accessible here: https://www.uscc.gov/annual-report/2024-annual-report-congress.

John Moolenaar (R-MI) introduced H.R.10127, the Restoring Trade Fairness Act,[41] on November 14, 2024. The same bill was introduced to the Senate in September 2024 by Sens. Tom Cotton (R-AR), Josh Hawley (R-MO), and Marco Rubio (R-FL, and Trump's designated nominee for Secretary of State) as S.5264, the Neither Permanent Nor Normal Trade Relations Act.[42] S.5264 and H.R.10127 would:

- Revoke PNTR with China;
- Impose new tariffs of at least 35% on all imports from China and at least 100% on imports in strategic sectors (which would phase in over five years, and with an extra time delay for goods that are only available from China);
- Grant the president discretion to raise tariffs higher and to impose import prohibitions and quotas;
- Change customs valuation methodologies for products imported from China;
- Change the US WTO tariff bindings to allow the United States to exclude any country from MFN treatment at its own discretion;
- Prohibit use of *de minimis* entry for imports from China, North Korea, Russia, and Iran; and
- Use the revenue raised from the tariffs to subsidize US exporters injured by Chinese retaliation and to purchase munitions "as the President and the Secretary of Defense determine necessary to defend Taiwan […]."

S.5264 and H.R.10127 will not pass during the current legislative session but could become a roadmap for what Republicans would pursue in 2025.

Reciprocal Trade Act

When running for president, Trump endorsed the Reciprocal Trade Act as a key part of his strategy to make trade fairer for the United States.[43] The bill would grant to president discretion to set US tariffs to match the tariff rates of each individual trade partner, replacing the most-favored nation universal tariff schedule the United States has negotiated under the World Trade Organization. The bill would also allow the president to lower tariffs reciprocally with tariff reductions offered by trade partners.

Republicans introduced the Reciprocal Trade Act to the House and Senate during the 2019-2020 Congress, which Trump (as president at the time) supported.[44] That version of the bill never advanced past committee mark-up. The bill has not been introduced in the current legislative session. Considering Trump's endorsement of the bill, it could re-emerge in 2025.

Income tax cuts funded by tariff increases

As noted, Republicans are planning to pass a package of tax cuts as one of their first actions in 2025. Legislators intend to use budget reconciliation to approve the bill over Democrat objections. Budget reconciliation is a process that Congress can use to pass fiscal policy changes with a simple majority vote in the Senate, preventing filibusters from the minority party. Legal changes that Congress can implement under the reconciliation process are constrained by the Byrd Rule, which (among other things) prohibits reconciliation bills from increasing the budget deficit after a ten-year period. The Byrd Rule may be a challenge for the Republicans' plans, since the tax cuts will create a

[41] H.R.10127 - Restoring Trade Fairness Act, 118th Congress (2023-2024), accessible here: https://www.congress.gov/bill/118th-congress/house-bill/10127.

[42] S.5264 - Neither Permanent Nor Normal Trade Relations Act, 118th Congress (2023-2024), accessible here: https://www.congress.gov/bill/118th-congress/senate-bill/5264.

[43] See "Agenda47: Cementing Fair and Reciprocal Trade with the Trump Reciprocal Trade Act" for Trump's endorsement of the bill, accessible here: https://www.donaldjtrump.com/agenda47/agenda47-cementing-fair-and-reciprocal-trade-with-the-trump-reciprocal-trade-act.

[44] H.R.764 - United States Reciprocal Trade Act, 116th Congress (2019-2020), accessible here: https://www.congress.gov/bill/116th-congress/house-bill/764; and S.2409 - United States Reciprocal Trade Act, 116th Congress (2019-2020), accessible here: https://www.congress.gov/bill/116th-congress/senate-bill/2409.

significant revenue shortfall. Though the details of how the Republicans will handle this limitation are still undecided, some have suggested they should add tariff increases to the reconciliation bill to offset the cost of the income tax cuts.

When running for president, Trump said he would use tariffs to pay for those other tax cuts. Advisors close to Trump have also recently discussed the strategy with Republican legislators. What a revenue focused tariff would look like in practice is unclear from the Republicans' statements. The United States has not relied on tariffs as a major revenue source since the 1800s. In fiscal year 2022, the US government raised $4.9 trillion in total revenue, of which, only $111.8 billion (2.3%) was tariffs, taxes, and fees on foreign trade. It is also unclear whether the Senate could successfully implement new tariffs under the limitations involved in using the reconciliation process.

Emissions-based tariff proposals

Another proposal that has been circulating in Washington for the past few years is to create new tariffs that scale with the greenhouse gas (GHG) emissions-intensity of the countries from which imports originate. Unlike a traditional carbon tax, the emissions-based tariff would only apply at the border and there would be no equivalent domestic emissions price. Both Democrats and Republicans have introduced bills to create such a tariff in the 2023-2024 term. The Biden administration had also sought to negotiate an emissions-based global steel and aluminum tariff regime with the European Union under the Global Arrangement on Sustainable Steel and Aluminum (GASSA), which would have replaced the current Section 232 tariffs.

Sen. Bill Cassidy (R-LA) has championed this approach among Republicans. Sen. Cassidy introduced the most recent version of his bill, the Foreign Pollution Fee Act of 2023,[45] to the Senate in November 2023, where it has not advanced since. The core of the bill is a measure that imposes a tariff, called a "foreign pollution fee," that would scale in cost based on the GHG emissions intensity of specified imported products' manufacturing processes. Other countries could avoid the tariff by adopting a common emissions tariff with the United States. The bill prohibits China and Russia from joining the emissions tariff club.

Sen. Cassidy is still building support for his proposal and will likely reintroduce the Foreign Pollution Fee Act to the new Congress in 2025. Former US Trade Representative Robert Lighthizer has endorsed the general concept, as have some Republican-leaning environmental groups. Other Republican legislators are advocating for a more modest bill (the PROVE IT Act[46]) that would create measurements of relative GHG emissions, but not actually impose the envisioned tariffs. Some legislators who support the PROVE IT Act could likely be persuaded to support actual tariffs. However, it is unclear how many other Republicans would be supportive. Many Republicans and conservative activist groups – who generally oppose any action on climate change – have strongly objected to emissions-based tariff proposals. Trump himself has also disavowed efforts to combat climate change. An emissions-based tariff would also likely take years of research and preparation to implement. The slow implementation would conflict with Trump's desire to raise tariffs quickly once he takes office.

[45] S.3198 - "Foreign Pollution Fee Act of 2023," 118th Congress, accessible here: https://www.congress.gov/bill/118th-congress/senate-bill/3198.

[46] S.1863 - PROVE IT Act of 2024, 118th Congress (2023-2024), accessible here: https://www.congress.gov/bill/118th-congress/senate-bill/1863.

Trade Actions

Safeguards

United States Announces Safeguard Quota for Certain Fine Denier Polyester Staple Fiber

On November 8, 2024, the Biden administration issued a Presidential Proclamation announcing the imposition of a new safeguard action to restrict imports of fine denier polyester staple fiber (fine denier PSF).[47] The president's final decision is narrower than the initial recommendations by the US International Trade Commission (ITC). The president decided to only apply a quota to fine denier PSF entered tariff-free through a Temporary Importation under Bond (TIB) program used by domestic manufacturers using the imported product as an input in manufactured items that are later exported. Standard imports of fine denier PSF that pay the currently applicable tariffs will be unaffected by the safeguard.

Section 201 of the Trade Act of 1974 (19 USC 2252) is the United States's import safeguards law, which empowers the president to impose duties, quotas, and other remedies in response to serious injuries (or a threat thereof) to domestic industries that are substantially caused by imports.

The final safeguard measure

The safeguard measure will be a quantitative restriction on imports of covered fine denier PSF that are admitted under the TIB HTS 9813.00.0520 entry code. The quota will be in force for four years, with annual increases to the quota level in the second, third, and fourth years. US Customs and Border Protection (CBP) has issued additional technical instructions for importers on how to file the quota.[48]

The quota levels and timetable are set out in Annex I of the proclamation and match the ITC's recommendation:

- If entered from November 23, 2024 - November 22, 2025: 0 kilograms.
- If entered from November 23, 2025 - November 22, 2026: 453,592 kilograms.
- If entered from November 23, 2026 - November 22, 2027: 907,185 kilograms.
- If entered from November 23, 2027 - November 22, 2028: 1,360,777 kilograms.

The president has declined to adopt the tariff rate quota (TRQ) on all imports of fine denier PSF that the ITC commissioners had recommended. The Biden administration believes that the TIB entries specifically are undermining the effectiveness of existing trade remedy actions covering the sector, and therefore decided to only target TIB entries in the final action. As a result, tariff treatment of imports for consumption will be unaffected by the safeguard. The applied most-favored nation rate for imports of fine denier PSF is 4.3%.

The government will allocate the TIB quota among all countries, except those that are excluded from the scope. Annex I provides the full list of excluded countries, summarized below:

- Listed developing countries. The president may modify the action to apply the quota to any or all of the listed developing countries if (i) the share of total imports of the product from that country exceeds 3% of total imports,

[47] Proclamation 10857 of November 8, 2024: "To Facilitate Positive Adjustment to Competition From Imports of Fine Denier Polyester Staple Fiber," 89 FR 89909 (November 20, 2024), accessible here: https://www.federalregister.gov/documents/2024/11/20/R1-2024-26714/to-facilitate-positive-adjustment-to-competition-from-imports-of-fine-denier-polyester-staple-fiber. The proclamation was originally issued on November 8, 2024. The November 20, 2024 version adds the new HTS Chapter 99 subheading needed for filing quota entries, which was missing from the original version.

[48] CSMS # 63100038 - New Entry Summary Validation to Prevent Ineligible Polyester Staple Fiber Temporary Importation under Bond (TIB) Entries, https://content.govdelivery.com/bulletins/gd/USDHSCBP-3c2d486.

(ii) imports of the product from all listed countries with less than 3% import share collectively account for more than 9% of total imports of the product, or (iii) a country graduates from developing country status.

- Caribbean Basin Initiative-beneficiary countries.
- Select US free trade agreement (FTA) partners: Australia, Canada, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Colombia, Israel, Panama, Peru, and Singapore. Jordan will be exempt from the safeguard under the developing country exception instead of the FTA partner exception. Korea, another US FTA partner, will be subject to the safeguard.[49]

The quota will enter into effect on November 23, 2024 (15 days after the White House announced the proclamation on November 8). As is normal for the safeguard measure, the quota will phase out after four years on November 22, 2028. At that point, the president may extend the action for another four years.

The covered product

The covered product, which is defined as "fine denier polyester staple fiber" under the HTS 9903.55.01 quota subheading, fine denier polyester staple fiber, not carded or combed, measuring less than 3.3 decitex (3 denier) in diameter, whether coated or uncoated. The scope covers products classifiable in subheading 5503.20.00 and described in statistical reporting number 5503.20.0025 or 9813.00.0520.

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

Temporary Importation under Bond

Temporary Importation under Bond (TIB) allows companies to import articles without paying tariffs for certain activities and temporary uses listed under HTS heading 9813, such as repairing, altering, and processing (including as an input in domestic manufacturing).[50] Rather than pay applicable tariffs, the importer posts a bond. After the domestic activity is complete, the article would have to be re-exported (or destroyed) for CBP to cancel the bond.

The safeguard quota applies specifically to HTS 9813.00.0520, the TIB entry code for imported articles that will be processed into articles manufactured or produced in the United States for export. Restricting use of this TIB would force companies that want to import fine denier PSF for domestic manufacturing to import through regular processes and pay all applicable tariffs. For some countries, these tariffs would include antidumping duties (ADD) and countervailing duties (CVD).

Existing trade remedies

The United States has maintained an ADD order on imports of fine denier PSF from China, India, Korea, and Taiwan and a CVD order on imports from China and India since 2018. In the first sunset review of the orders, finalized in June 2023, the Department of Commerce maintained the duties at the following rates: a dumping margin of 103.06% and subsidy rates ranging from 37.75% to 47.57% for China; a dumping margin of 21.43% and subsidy rates ranging

[49] Morocco and Oman are also subject to the safeguard, but do not export fine denier PSF to the United States and were not examined in the safeguard investigation.

[50] 19 CFR 10.31 through 10.40, accessible here: https://www.ecfr.gov/current/title-19/chapter-I/part-10/subpart-A/subject-group-ECFR936eee413ff07c6.

from 14.35% to 28.33% for India; a dumping margin of 45.23% for Korea; and a dumping margin of 48.86% for Taiwan.[51]

Import patterns and TIB usage

Importers of covered fine denier PSF from India and Taiwan have shifted most of their entries to TIB entry since the ADD and CVD orders entered effect, which the US domestic fine denier PSF industry believes is unfairly bypassing the ADD and CVD orders. In contrast, importers of the covered products from Korea and China are not using TIB entry. Companies importing from Thailand, Indonesia, and Vietnam also sometimes use TIB entry, though they are not covered by ADD or CVD orders. For countries that are not covered by the ADD and CVD orders, use of TIB entry is likely intended to avoid the 4.3% MFN tariff rate.

The United States imported US$148 million of fine denier PSF in 2017, $2 million of which was through TIB HTS 9813.00.0520. In 2023, the United States imported US$178 million of fine denier PSF and $57 million was through TIB HTS 9813.00.0520.

The ITC investigation

The action is based on a safeguard investigation the ITC concluded in July 2024, which had determined that fine denier PSF is being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry.[52] The ITC made additional findings that imports from US FTA partners are either not substantial in quantity or not substantial causes of the injury or threats of injury.

Following the determination, ITC proceeded to the remedy phase of the investigation. To gather input on potential remedies from affected parties, the ITC held a public hearing on July 23. At the hearing, representatives of the domestic industry argued for strong relief measures that would apply to all countries, including calling for a tariff rate quota with in-quota tariffs of 25% and out-of-quota tariffs of 50%. Representatives of the US yarn industry at the hearing warned that highly restrictive measures would cause injury to downstream textile sectors like the US yarn spinning industry.

In August 2024, the ITC commissioners sent the president a set of three potential TRQ remedy actions for his consideration. The exact tariff rates and in-quota volumes proposed by the commissioners vary substantially, but all follow the same general pattern:

- A TRQ on imports from all countries that were covered by the affirmative injury determination.
- A quantitative restriction (QR), to be set at zero in the first year of relief increasing by 1 million pounds in each subsequent year over the duration of the safeguard, on imports entered as a TIB under HTS 9813.00.05.
- An exclusion process to allow for importation of covered imports without application of the remedy measures in the case of a demonstrated lack of production in the United States for a particularized fine denier PSF product or in the case of a critical short supply of a particularized fine denier polyester staple fiber product from domestic sources.

The United States Trade Representative (USTR), as part of the Executive Office of the President, invited further public input on potential remedies to be considered by the president.[53]

[51] "Fine Denier Polyester Staple Fiber From the People's Republic of China, India, the Republic of Korea, and Taiwan: Continuation of Antidumping and Countervailing Duty Orders," 89 FR 25563 (April 11, 2024), accessible here: https://www.federalregister.gov/documents/2024/04/11/2024-07692/fine-denier-polyester-staple-fiber-from-the-peoples-republic-of-china-india-the-republic-of-korea.

[52] "Increased Imports of Fine Denier Polyester Staple Fiber Injure U.S. Industry, USITC Determines," July 9, 2024, USITC, accessible here: https://www.usitc.gov/press_room/news_release/2024/er0709_65394.htm; and "Fine Denier Polyester Staple Fiber," 89 FR 71422 (September 3, 2024), accessible here: https://www.federalregister.gov/documents/2024/09/03/2024-19673/fine-denier-polyester-staple-fiber.

[53] "Request for Comments and Public Hearing About the Administration's Action Following a Determination of Import Injury With Regard to Fine Denier Polyester Staple Fiber (PSF)," 89 FR 63465 (August 5, 2024), accessible here:

Trade Agreements

CPTPP

CPTPP Members Endorse General Review Interim Report and Establish Accession Working Group for Costa Rica

Ministers and representatives of the twelve member states of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) in Vancouver for the eighth CPTPP Commission meeting from November 27 to 28, 2024. As the chair of the 2024 CPTPP Commission, Canadian Minister of Export Promotion, International Trade and Economic Development Mary Ng hosted the meeting during which the parties affirmed the CPTPP's importance as a high-standard agreement that upholds transparent, predictable, and rules-based trade.

The parties, consisting of Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United Kingdom (UK), and Vietnam, welcomed the outcomes achieved under Canada's 2024 CPTPP chairmanship in three priority areas: (i) accessions, (ii) progressive stewardship, and (iii) comprehensive utilization.

Priority 1: Accessions

The Commission reached a consensus to establish an Accession Working Group (AWG) for Costa Rica's CPTPP accession. The AWG will be chaired by Peru, with Canada and New Zealand serving as Vice-Chairs. This decision considered Costa Rica's capability to meet the Auckland Principles, which mandate that CPTPP candidates fulfill three criteria: (i) readiness to meet the agreement's high standards; (ii) a proven history of complying with trade commitments; and (iii) acknowledgment that decisions are based on the consensus of CPTPP parties.

Costa Rica's accession to the CPTPP will be a gradual process overseen by the AWG. The next steps involve the AWG and Costa Rica engaging in technical discussions on legal and policy issues to ensure compliance with all existing CPTPP rules. The AWG will also evaluate Costa Rica's market access offers and the proposed terms and conditions of its accession. In addition to Costa Rica, there are accession requests from China, Taiwan, Ecuador, Uruguay, and Ukraine to join the CPTPP.

The Commission clarified that the establishment of the AWG for Costa Rica will not hinder the consideration and discussions of the other accession requests by CPTPP members. However, the CPTPP parties decided to defer their decision on the applications from Taiwan and China. China applied to join the CPTPP on September 16, 2021, followed by Taiwan on September 22, 2021. Both applications have been stalled due to sensitive political factors. Although Taiwan is one of the most prepared applicants to meet the CPTPP's high standards, it does not have unanimous support from all existing members, including the UK.

The Commission also announced that the Protocol on the Accession of the UK to the CPTPP will enter into force on December 15, 2024, for the UK, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam, and on December 24, 2024, for Australia. The inclusion of the UK, the world's sixth-largest economy and a G7 member, underscores the significance of the CPTPP in maintaining a dynamic, high-standards, and rules-based framework for international trade and investment.

Priority 2: Progressive Stewardship

As a living agreement, CPTPP members have successfully enhanced its operation through several major milestones in 2024, including:

- Progress by CPTPP parties to ensure notifications and party-specific transition period reports are up to date.

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https://www.federalregister.gov/documents/2024/08/05/2024-17138/request-for-comments-and-public-hearing-about-the-administrations-action-following-a-determination.

- Successful completion of Committee work program outcomes, including: (i) updating CPTPP product-specific rules of origin to align with the latest version of the Harmonized System (HS); (ii) conducting a workshop on the use of automated customs systems and data elements in relation to the World Customs Organization's Data Model; (iii) completing the stand-alone review of the implementation and operation of the Environment Chapter (Article 20.19.7); and (iv) publishing a report on the growth of supply chain trade within the CPTPP.
- Announcement of the rotation schedule for the CPTPP Commission Chair and Vice-Chair roles through 2031.

Priority 3: Comprehensive Utilization

The parties also welcomed the successful completion of the Inclusive Trade Symposium. Facilitated by Canada as Chair, the symposium provided an inclusive platform for stakeholders, business representatives, trade experts, and non-governmental organizations to exchange views and offer recommendations on how the CPTPP can further enhance inclusive trade. Additionally, the parties welcomed the launch of a website by the Asia Pacific Foundation of Canada, a non-governmental organization, to serve as a repository of CPTPP documents.

General review

The Commission endorsed the Interim Report by Senior officials to Ministers on Progress on the General Review of the CPTPP*.* Senior officials launched and completed the initial review of all 30 chapters of the agreement and cross-cutting issues in 2024. The review was meant to ensure that the provisions contained in the agreement remain relevant to the trade and investment issues in the current economic and trade environment. Recommendations in the interim report are as follows:

Areas of review	Recommendations
Customs administration and trade facilitation	Deepen discussions on how the agreement can further facilitate trade, including the potential creation of a dedicated committee or working group.
Economic coercion	Intensify discussions on strategies to build resilience against, and mitigate the risks and impacts of, economic coercion.
Electronic commerce	Finalize exploratory discussions in 2025 on potential improvements to the electronic commerce chapter.
Environment	Identify meaningful ways to address collective environmental challenges including climate change, biodiversity loss, and pollution, including updating the environment chapter.
Financial services	Conclude exploratory discussions in 2025 on potential enhancements to the financial services chapter.
Global value chains & supply chain resilience	Intensify discussions on strengthening supply chain resilience and expanding value chains.
Inclusive trade	Establish a working group on inclusive trade.
Innovation	Consider various strategies to infuse innovation into the agreement to bolster trade and economic growth.
Management of administrative work	Establish a dedicated working group to provide recommendations to the Commission in 2025 on the development of tools to reduce the administrative burden on members and improve the effective implementation and operation of the agreement, including the possible establishment of a CPTPP Secretariat.
Market distorting practices	Scope issues and deepen understanding on market distorting practices through workshops and provide recommendations for next steps in coordination with relevant committees.
Micro, small, medium-sized enterprises (MSME)	Deepen discussions on the MSME chapter with a view to promoting fuller participation of MSMEs in global trade.
Sustainable agriculture and food systems	Deepen discussions on the scope of sustainable agriculture and food systems and provide recommendations for next steps.

The Commission accepted the recommendations and instructed their respective senior officials to advance the necessary work and report on the progress of each identified issue by the next commission meeting in 2025.

APEC

APEC Members Commit to Advance Trade and Cooperation on New Issues in the Asia-Pacific Region

Economic leaders of the Asia-Pacific Economic Cooperation (APEC) Forum met in Lima, Peru from November 15-16, 2024 to wrap up a year of deliberations and consensus-building around the theme “Empower, Include, and Grow.” The meeting marked the end of Peru’s APEC presidency, which was based on three pillars: (i) Trade and Investment for Inclusive Growth; (ii) Innovation to Promote the Transition to the Formal and Global Economy; and (iii) Sustainable Growth for Resilient Development. The leaders’ meeting was preceded by a Ministerial Meeting.

Peru’s President Dina Boluarte hosted heads of state and government, or their representatives, from the 21 APEC member states, including the presidents of Chile, Indonesia, China, Korea, the United States, and Vietnam, the Sultan of Brunei, the prime ministers of Australia, Canada, Japan, Hong Kong, Malaysia, New Zealand, Singapore, and Thailand, and government representatives from Mexico, Papua New Guinea, the Philippines, Russia, and Taiwan.

Members reached a consensus on over 20 documents to strengthen trade relations, [54] including the leaders’ declaration, 11 ministerial declarations, and 8 technical policy instruments. In parallel, members seized the opportunity to advance bilateral or sub-regional agendas. Ministers issued a Joint Ministerial Declaration summarizing the main outcomes of Peru’s presidency.[55]

Main outcomes

The leaders adopted the Declaration of the 31st APEC Economic Leaders’ Meeting (the “Machu Pichu Declaration”), committing to ensure that “Asia-Pacific remains the world’s most dynamic and interconnected region.”[56] Building upon previous progress, Members agreed, among others, to:

- **Support the rules-based multilateral trading system** and remain committed to working toward the necessary WTO reform, to improve its functions, including the dispute settlement system. They also supported plurilateral negotiations at the WTO, including Joint Statement Initiatives.
- **Enhance supply chain connectivity** to minimize adverse effects of disruptions, lower costs, and facilitate trade and investment. Members will seek to improve single window systems, digitalize key processes, and promote cross-border paperless trade, including through exchanging information on different paperless trade systems, electronic authentication, and the recognition of electronic trade-related documents, such as the electronic bill of lading and electronic invoice.
- **Advance economic integration in the Asia-Pacific region** in a manner that is market-driven, mainly through free trade agreements (FTAs). To advance this work, Members endorsed the Ichma Statement on A New Look at the Free Trade Area of the Asia-Pacific (FTAAP) agenda.[57] Twenty years after the concept of the FTAAP was proposed by the APEC Business Advisory Council (ABAC), Members shared the view that it is time to

[54] The 20 documents agreed during the Peruvian Presidency of APEC are accessible here (in Spanish): https://www.gob.pe/institucion/rree/colecciones/54333-declaraciones-apec-peru-2024.

[55] The Joint Ministerial Statement of the 35th APEC Ministerial Meeting 2024 is accessible here: https://www.mofa.go.jp/files/100755406.pdf.

[56] The Machu Pichu Declaration is accessible here: https://www.apec.org/meeting-papers/leaders-declarations/2024/2024-apec-leaders%27-machu-picchu-declaration.

[57] The Ichma Statement on A New Look at the Free Trade Area of the Asia-Pacific Agenda is accessible here: https://www.apec.org/meeting-papers/leaders-declarations/2024/2024-apec-leaders%27-machu-picchu-declaration/ichma-statement-on-a-new-look-at-the--free-trade-area-of-the-asia-pacific-agenda.

revitalize the FTAAP agenda, by assessing how it can address changes in the evolving international trade landscape. They therefore instructed the APEC Committee on Trade and Investment (CTI) to examine and analyze areas of divergence and convergence in existing FTAs and regional trade agreements (RTAs) among Members and identify relevant emerging issues and topics that would promote their further economic integration. In addition, Members should continue to explore the links between trade and other sectors or emerging topics, such as digitalization, sustainability, inclusivity, and supply chain resilience, among others. A comprehensive review of the FTAAP agenda will take place in 2030.

- **Integrate relevant economic actors into the formal economy**, specifically aiming to empower those facing structural barriers to achieve their economic potential, enabling their integration into Asia-Pacific markets and value chains, and participate in the global economy. In this regard, Members endorsed the Lima Roadmap to Promote the Transition to the Formal and Global Economies (2025-2040).[58]

- **Advance digital transformation across the APEC region**, recognizing its critical role in enhancing digital connectivity. They acknowledged the potential of artificial intelligence (AI) to drive innovation, support sustainable economic growth, and transform various aspects of daily life across our economies. Members pledged to create an enabling, open, fair, non-discriminatory, safer, and inclusive digital ecosystem, and endorsed policies that foster the development of digital infrastructure, literacy, and skills, allowing everyone to fully participate in and benefit from the digital economy. Building on prior efforts, members committed to advancing intellectual property rights through policies and programs that encourage innovation and creativity.

- **Bolster competitiveness in the services sector**; in particular, facilitating trade in environmental related services and enhancing cooperation in green supply chains, supporting the transition to more circular economies.

- **Triple renewable energy capacity globally** through existing targets and policies as well as demonstrate similar ambition with respect to other zero and low emissions technologies including abatement and removal technologies in line with domestic circumstances by 2030. Members renewed their commitment to rationalize and phase out inefficient fossil fuel subsidies that encourage wasteful consumption, while recognizing the importance of providing those in need with essential energy services.

Bilateral outcomes

Leaders from member economies held bilateral or group meetings to advance issues on their respective agendas. In the area of trade, some members signed bilateral agreements or made the following announcements.

Peru - China	Signing of the Optimization Protocol of the China-Peru Free Trade Agreement. The Protocol updated the FTA in force since March 2010.
Peru - Hong Kong	Signing of the Hong Kong-Peru FTA.
Peru - Indonesia	Substantial conclusion of negotiations for a Peru-Indonesia Comprehensive Economic Partnership Agreement (CEPA), which started in August 2023. The parties still need to complete negotiations on the annexes to the agreement. The parties aim to sign the CEPA during the first half of 2025.
Peru - Philippines	Establishment of a bilateral committee to study the feasibility of a Philippines-Peru FTA.
Peru - Thailand	Commitment to conclude the Peru-Thailand FTA by 2025. The agreement will replace a protocol (complemented with additional protocols), signed in 2011, that grants tariff preferences to a limited group of products.

[58] The Lima Roadmap to Promote the Transition to the Formal and Global Economies (2025-2040) is accessible here: https://www.apec.org/meeting-papers/leaders-declarations/2024/2024-apec-leaders%27-machu-picchu-declaration/lima-roadmap-to-promote-the-transition-to-the-formal-and-global-economies-(2025-2040).

Canada - Indonesia	Substantive conclusion of negotiations for a Canada-Indonesia Comprehensive Economic Partnership Agreement (CEPA), which started in June 2021. The parties aim to bring the CEPA into force as soon as possible.
Chile - New Zealand - Singapore	Establishment of Working Group on Trade and the Green Economy. The Group will consider proposals for a possible new initiative to enhance international cooperation, and, as appropriate, contribute towards the development of innovative trade policy frameworks to accelerate the uptake and deployment of low-emissions and resource-efficient solutions, production, and consumption. It will explore and assess possible common ground on trade-related issues in different areas of the green economy and provide recommendations to Ministers in 2025.
Peru + Chile, Korea, New Zealand, and Singapore	Establishment of a Working Group for Peru's accession to the Digital Economy Partnership Agreement (DEPA). DEPA is a plurilateral trade agreement, which aims to facilitate digital trade and creating a framework for the digital economy.

APEC 2025 and beyond

Korea will take over the presidency in 2025, followed by China in 2026, Vietnam in 2027, and Singapore in 2030. The presidencies in 2028 and 2029 have not been decided yet.

Petitions & Investigations

Investigations

Commerce Issues Final Results of Administrative Review of ADD Order on Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan

On November 3, 2024, Commerce issued the final results of the 2022-2023 administrative review for imports of diffusion-annealed, nickel-plated flat-rolled steel products from Japan, finding that Toyo Kohan Co., Ltd. made sales at less than normal value during the period of review.[59] The new weighted-average dumping margin for Toyo Kohan is 4.44%.

Commerce published the preliminary results of the administrative review on May 23, 2024, which had also found that Toyo Kohan made sales at less than normal value.[60] Commerce also rescinded the reviews for Nikken Las Industry Co., Ltd. and Taiyo Manufacturing Co., Ltd. after the petitioner withdrew its requests for review of those producers. Toyo Kohan's preliminary weighted-average dumping margin was 12.69%, significantly higher than their final margin (Commerce modified the home market sales datasets in the final decision's margin calculations). Commerce initiated the administrative review on July 12, 2023, in response to a request for review from Thomas Steel Strip Corporation (the petitioner).

Covered product

The diffusion-annealed, nickel-plated flat-rolled steel products covered by the order are flat-rolled, cold-reduced steel products, regardless of chemistry; whether or not in coils; either plated or coated with nickel or nickel-based alloys and subsequently annealed (*i.e.*, "diffusion-annealed"); whether or not painted, varnished or coated with plastics or other metallic or nonmetallic substances; and less than or equal to 2.0 mm in nominal thickness. "Nickel-based alloys" include all nickel alloys with other metals in which nickel accounts for at least 80 percent of the alloy by volume.

Imports are classified primarily under the HTSUS 7212.50.0000 and 7210.90.6000, but may also be classified under HTSUS 7210.70.6090, 7212.40.1000, 7212.40.5000, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.90.0010, 7220.90.0015, 7225.99.0090, or 7226.99.0180. While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

Commerce Issues Preliminary Results of Administrative Review of ADD Order on Hot-Rolled Steel Flat Products from Japan

On November 13, 2024, Commerce published the preliminary results of the 2022-2023 administrative review of the ADD order on hot-rolled steel flat products (hot-rolled steel) from Japan, finding that one of the examined producers (Nippon Steel Corporation/Nippon Steel Nisshin Co., Ltd./Nippon Steel Trading Corporation (collectively, NSC)) sold products at less than normal value while the other (Tokyo Steel Manufacturing Co., Ltd. (Tokyo Steel)) did not.[61] The preliminary weighted-average dumping margins are 29.03% for NSC and 0.00% for Tokyo Steel. Commerce will now move on the final stage of the administrative review for the two producers. The preliminary decision also rescinds the review with respect to JFE Steel and its affiliates (JFE Steel Corporation, JFE Shoji Corporation, JFE Shoji Trade

[59] "Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Final Results of Antidumping Duty Administrative Review; 2022-2023," 89 FR 95735 (November 3, 2024), accessible here: https://www.federalregister.gov/documents/2024/12/03/2024-28275/diffusion-annealed-nickel-plated-flat-rolled-steel-products-from-japan-final-results-of-antidumping.

[60] "Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2022-2023," 89 FR 45638 (May 23, 2024), accessible here: https://www.federalregister.gov/documents/2024/05/23/2024-11265/diffusion-annealed-nickel-plated-flat-rolled-steel-products-from-japan-preliminary-results-and.

[61] "Certain Hot-Rolled Steel Flat Products From Japan: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2022-2023" 89 FR 89602 (November 13, 2024), accessible here: https://www.federalregister.gov/documents/2024/11/13/2024-26223/certain-hot-rolled-steel-flat-products-from-japan-preliminary-results-and-partial-rescission-of.

Corporation, and JFE Shoji Trade America), after both JFE and the US petitioners withdrew their requests for review with respect to the producer.

Commerce published the final results of the previous administrative review (for 2021-2022) of hot-rolled steel flat products from Japan in May 2024.[62] That review had set weighted-average dumping margins of 1.39% for NSC and 0.00% for Tokyo Steel, while leaving the all-others duty rate at 5.58%.

Covered product

The products covered by this order are certain hot-rolled, flat-rolled steel products, with or without patterns in relief, and whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. For a full description of the product coverage, exceptions, and treatment of products further processed in third countries, see the preliminary issues and decision memorandum.

The products are currently classified in HTSUS codes 7208.10.1500, 7208.10.3000, 7208.10.6000, 7208.25.3000, 7208.25.6000, 7208.26.0030, 7208.26.0060, 7208.27.0030, 7208.27.0060, 7208.36.0030, 7208.36.0060, 7208.37.0030, 7208.37.0060, 7208.38.0015, 7208.38.0030, 7208.38.0090, 7208.39.0015, 7208.39.0030, 7208.39.0090, 7208.40.6030, 7208.40.6060, 7208.53.0000, 7208.54.0000, 7208.90.0000, 7210.70.3000, 7211.14.0030, 7211.14.0090, 7211.19.1500, 7211.19.2000, 7211.19.3000, 7211.19.4500, 7211.19.6000, 7211.19.7530, 7211.19.7560, 7211.19.7590, 7225.11.0000, 7225.19.0000, 7225.30.3050, 7225.30.7000, 7225.40.7000, 7225.99.0090, 7226.11.1000, 7226.11.9030, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.5000, 7226.91.7000, and 7226.91.8000. Covered products may also enter under HTSUS codes 7210.90.9000, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7214.99.0060, 7214.99.0075, 7214.99.0090, 7215.90.5000, 7226.99.0180, and 7228.60.6000. While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

Commerce Issues Aluminum Lithographic Printing Plates ADD and CVD Orders for Japan and China

On November 22, 2024, Commerce published the ADD orders on aluminum lithographic printing plates (ALPs) from China and Japan, and the countervailing duty (CVD) order on ALPs from China.[63] Commerce will now instruct US Customs and Border Protection (CBP) to begin assessing the duties.

Commerce's final order followed the US International Trade Commission's (ITC) final determination that the US industry is materially injured by reason of imports of ALPs sold at less than fair value from China and Japan and subsidized by China, which the ITC published on November 18, 2024.[64] The ITC also found that imports subject to Commerce's affirmative critical circumstances determinations are not likely to undermine seriously the remedial effect of the antidumping and countervailing duty orders on ALPs from China. Commerce will instruct CBP to lift suspension of liquidation and to refund any cash deposits made to secure the payment of estimated antidumping duties for imports subject to the critical circumstances determination.

[62] "Certain Hot-Rolled Steel Flat Products From Japan: Final Results of Antidumping Duty Administrative Review; 2021-2022," 89 FR 39584 (May 9, 2024), accessible here: https://www.federalregister.gov/documents/2024/05/09/2024-10152/certain-hot-rolled-steel-flat-products-from-japan-final-results-of-antidumping-duty-administrative.

[63] "Aluminum Lithographic Printing Plates From Japan and the People's Republic of China: Antidumping Order; Aluminum Lithographic Printing Plates From the People's Republic of China: Countervailing Duty Order," 89 FR 92624 (November 22, 2024), accessible here: https://www.federalregister.gov/documents/2024/11/22/2024-27426/aluminum-lithographic-printing-plates-from-japan-and-the-peoples-republic-of-china-antidumping-order.

[64] "Aluminum Lithographic Printing Plates From China and Japan: Determinations," 89 FR 90737 (November 18, 2024), accessible here: https://www.federalregister.gov/documents/2024/11/18/2024-26740/aluminum-lithographic-printing-plates-from-china-and-japan-determinations.

Commerce published the final determinations in its ADD investigation of ALPs from Japan and China on September 27, 2024, finding that imports are being, or are likely to be, sold in the United States at less than fair value.[65] Commerce also published the final determinations for the CVD investigation of imports from China, finding that countervailable subsidies are being provided to producers and exporters of printing plates from China.[66] 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. 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 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.

Covered product

The covered products are aluminum lithographic printing plates imported under Harmonized Tariff Schedule of the United States (HTSUS) 3701.30.0000 and 3701.99.6060. The product may also enter under HTSUS 3701.99.3000 and 8442.50.1000. The written description of the covered product, included below, is dispositive.

Aluminum lithographic printing plates consist of a flat substrate containing at least 90 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.

[65] "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 (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.

[66] "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.