US & Multilateral Trade and Policy Developments

Japan External Trade Organization

December 2024

Contents

Trade Policy Developments

Trump Appoints Jamieson Greer to Lead USTR and Peter Navarro to White House Staff

President-elect Donald Trump has continued to fill out his senior trade policy staff, announcing that he intends to nominate Jamieson Greer to lead the United States Trade Representative (USTR) and that Peter Navarro will return to his previous role as a trade policy advisor in the White House. Both served in related positions during Trump's first term as president and are notable for their protectionist views on foreign trade. Earlier in November, Trump announced he would nominate Scott Bessent to lead the Department of the Treasury and Howard Lutnick to lead the Department of Commerce. Trump also said that Lutnick would oversee USTR, which could weaken Greer's position in the administration.

Former USTR Robert Lighthizer – who was rumored to be under consideration for several senior roles – appears unlikely to rejoin the Trump administration. Greer, though a protégé of Lighthizer with similar views on trade policy, is less experienced and has a lower profile in political circles, which may suggest USTR will (at least at first) play a diminished role in Trump's second term.

USTR leadership and policy interests

Trump announced he would nominate Jamieson Greer to lead USTR on November 26, 2024.[1] Greer is a practicing international trade attorney and served as Chief of Staff to Robert Lighthizer at USTR during Trump's first term as president. In announcing the appointment, Trump mentioned "reining in the Country's massive Trade Deficit, defending American Manufacturing, Agriculture, and Services" as priorities for USTR, pointing towards a more protectionist agenda. Greer is seen as a protectionist, although he has not advocated for universal tariffs as Trump has recently done. His recent public comments have focused heavily on China, where he has advocated for "selective" (or "strategic") decoupling of the two economies.

Trump's announcement also mentioned that improving export market access will be a priority. Greer himself has backed negotiating new free trade agreements (FTAs) and sector-specific trade agreements, mentioning the United Kingdom, India, Kenya, and the Philippines as potential candidates. This endorsement of FTAs has made some observers hopeful that Greer may play a more constructive role than his protectionist statements suggest. At the same time, he has also argued that these potential FTAs should minimize US tariff liberalization, prevent offshoring, and exclude Chinese-owned companies from benefits. Greer also appears to oppose multilateral trade agreements, saying they weaken the United States' negotiating position, are too complex, and require market access commitments in sectors he wants to protect.

Greer's views on trade policy

Greer's nomination requires confirmation by the Senate, where his confirmation hearings will provide more opportunities to learn about how he intends to lead USTR. Since leaving the first Trump administration, Greer has been active around Washington in arguing for protectionist policies, industrial subsidies, and reducing US trade with China. His personal comments may be instructive about what he hopes to do at USTR, or why Trump is nominating him. That said, as leader of USTR, he would be bound by the legal limits of that role, the opinions of other cabinet members, and Trump's objectives as president.

Greer testified in front of the US-China Economic Security and Review Commission in May 2024, where he discussed his views on reducing economic engagement with China and industrial policy.[2] In his testimony he called China a generational challenge for the United States and advocated for continuing the policies adopted under Presidents Trump and Biden to raise trade and investment barriers with China. He expressed similar views in 2023

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

[2] Hearing on "Key Economic Strategies for Leveling the U.S.-China Playing Field: Trade, Investment, and Technology," May 23, 2024, accessible here: https://www.uscc.gov/hearings/key-economic-strategies-leveling-us-china-playing-field-trade-investment-and-technology.

testimony to the House of Representatives' Committee on Ways and Means,[3] where he argued that the United States needs to expand its manufacturing sector to improve its defense production capacity and deter China. He also dismissed the economic harms of tariffs as "relatively short-term costs" that are outweighed by long term strategic concerns.

In that personal testimony, he advocated for specific measures that will accelerate US economic decoupling from China, including withdrawing Permanent Normal Trade Relations (PNTR), restricting US outbound investment, and establishing new sanctions programs. Some recommendations he made would also harm market access for third countries caught in the middle of the US-China trade war. Those recommendations include amending FTAs to exclude Chinese-owned companies and products that contain Chinese inputs from qualifying under rules of origin; penalizing countries that "take advantage of Chinese retaliation against the United States by backfilling into the Chinese market;" expanding antidumping and countervailing duty laws; and applying export controls to aircraft, transportation equipment, and legacy semiconductor manufacturing equipment.

Transshipment and trade diversion to third countries also concern Greer. In his testimony to the Commission, he noted that some amount of the reduced US trade with China since the imposition of the Section 301 tariffs resulted from Chinese companies moving activities to other countries. He argued that this diversion shows a need for changes to the Section 301 tariffs to "prevent third-country workarounds by extending the effect of the measures to imports from Chinese headquartered companies or adjusting the rule of origin for goods subject to the Section 301 tariffs." Broadening the US-China trade war to apply tariffs to Chinese companies in third countries could create significant market access and investment promotion challenges for other countries in Asia (and Mexico), which have so far benefited from the diversionary effects of the Section 301 tariffs.

Senior Counselor for Trade and Manufacturing

Trump announced on December 4, 2024 that he will appoint Peter Navarro as Senior Counselor for Trade and Manufacturing, an advisory role in the White House.[4] Trump described Navarro's role as helping to "advance and communicate the Trump Manufacturing, Tariff, and Trade Agendas." White House advisor roles such as this do not require Senate confirmation. Navarro can be expected to champion Trump's most aggressive tariff threats, though as a White House advisor he would not directly administer any trade or tariff programs.

Navarro held a similar position in Trump's first term, where he advocated for extreme protectionist, anti-FTA, and anti-China positions that often put him in conflict with other members of the administration. He participated in Trump's negotiation of the United States – Mexico – Canada Agreement (USMCA) and the negotiations to amend the United States – Korea Free Trade Agreement (KORUS), which Trump praised when announcing Navarro's nomination. Navarro later became the first senior White House official to ever be imprisoned for contempt-of-Congress, after he ignored subpoenas related to his alleged involvement in attempts to overturn the results of the 2020 election.

Leading on trade policy in Trump's cabinet

In announcing Lutnick's appointment to Commerce Secretary in November, Trump said Lutnick "will lead our Tariff and Trade agenda, with additional direct responsibility for the Office of the United States Trade Representative." Trump's presidential transition team has not provided any further detail on the plan since the original announcement. Formally, USTR could not be moved to Commerce without an act of Congress and Congress would strongly oppose such a move. Trump could be describing a more informal arrangement. Nominating Greer – a relatively junior figure – to lead USTR, suggests Trump may intend for USTR to sit lower in an informal hierarchy within the administration.

[3] Written Testimony of Jamieson Greer, House Ways and Means Subcommittee on Trade, April 18, 2023, accessible here: https://gop-waysandmeans.house.gov/wp-content/uploads/2024/03/Greer-Testimony-1.pdf.

[4] Trump's December 4, 2024, Truth Social post announcing Navarro's appointment is accessible here: https://truthsocial.com/@realDonaldTrump/posts/113595333429088742.

Whether that plan will work remains to be seen. If Trump intends to negotiate new trade agreements with other countries, he will eventually have to rely more on Greer to implement his agenda, instead of Lutnick.

Lutnick is viewed as less supportive of an aggressive tariff agenda than other trade policy advisors close to Trump. 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. This attitude suggests Lutnick may attempt to use tariffs in a more measured way, seeking to extract market access concessions from other countries. This potential approach may put him in conflict with figures like Navarro and Greer, leading to policy disputes within the administration. Navarro has already foreshadowed those disputes in remarks to the press, telling journalists that “I think there’s going to be a battle between the MAGA folks and the Wall Street folks. I think if you see Wall Street-type people in key places like Treasury or the National Economic Council within the West Wing, that’s going to be very, very difficult. One of the problems we had in the first term is that Wall Street was continually fighting.”[5]

BIS Publishes Assessment of Mature-Node Semiconductor Supply Chains

On December 6, 2024, the US Department of Commerce Bureau of Industry and Security (BIS) published a report concerning mature-node (legacy) semiconductors and reliance on China-based foundries, based on an industrial base survey that BIS began in January.[6] The report found that companies selling electronics that use mature-node semiconductors are often unaware of their supply sources, that most of the examined products contain mature-node semiconductors from China-based foundries (though usually in small numbers), and that rapidly increasing foundry capacity in China may weaken the competitiveness of US foundries. Announcing the report, BIS stated the results showed “more action is needed to build strong, diverse, and resilient semiconductor supply chains.” The report does not make specific policy recommendations.

Industrial base surveys and semiconductor supply chain monitoring

BIS launched the Section 705 assessment in January 2024 to investigating reliance on Chinese-origin mature-node semiconductors in infrastructure and defense supply chains.[7] According to BIS, the study was performed “to evaluate the extent of, and visibility into, the use of mature-node chips manufactured by PRC [People’s Republic of China]-based companies in supply chains of critical US industries like telecommunications, automotive, medical device, and the defense industrial base.” The report builds on a broader Section 705 assessment of the US semiconductor industry published in December 2023.[8] The 2023 report included recommendations that the United States protect its domestic semiconductor manufacturing sector from foreign competition, support research and development in the sector, help the sector access reliable supplies of raw materials, and support workforce development. The report specifically raised concerns with Chinese subsidies and argued that China is creating a supply glut that threatens US manufacturers. BIS recommended that the government defend the US industry from this “PRC nonmarket behavior” and references tariffs and export controls as potential remedies.

Section 705 investigations are conducted by BIS’s Office of Technology Evaluation (OTE) and are intended to inform the government’s understanding of technologies and trade issues that are important to the maintenance of the defense industrial base. To carry out these studies, BIS uses surveys to obtain production, research and development, export control, employment, and other data that can inform government policy. Section 705 surveys are

[5] “Peter Navarro explains how Donald Trump will compose his Cabinet,” NewsNation, November 7, 2024, accessible here: https://www.newsnationnow.com/politics/2024-election/peter-navarro-cabinet-selection-trump/.

[6] “Public Report on the Use of Mature-Node Semiconductors,” BIS, December 6, 2024, accessible here: https://www.bis.gov/media/documents/public-report-use-mature-node-semiconductors-december-2024.

[7] “BIS Deploys Assessment On The Use Of Mature-node Chip,” BIS, January 18, 2024, accessible here: https://www.bis.doc.gov/index.php/documents/about-bis/newsroom/press-releases/3437-2024-01-18-bis-press-release-legacy-chip-survey-final/file.

[8] “Assessment Of The Status Of The Microelectronics Industrial Base In The United States,” BIS, December 2023, accessible here: https://www.bis.doc.gov/index.php/documents/technology-evaluation/3402-section-9904-report-final-20231221/file.

mandatory for recipients and are enforceable through subpoena authorities. A final Section 705 report provides factual findings and policy recommendations to government leaders but does not automatically trigger any policy action.

Results from the December 2024 Report

China's market share and manufacturing capacity in the mature-node sector has grown rapidly in the past few years, which the US government has ascribed to "the PRC's non-market practices." The report further highlights that China will account for about half of new global mature-node semiconductor manufacturing capacity over the next three to five years and argues that China's growth "risks investment made and planned by market-driven firms."

The report is specifically interested in organizations headquartered in China, with manufacturing activities located in China, and that are involved in front-end wafer fabrication. BIS is differentiating between these "China-based foundries" and foreign companies engaged in "fabrication in China" (which includes companies based in the United States, Korea, and Taiwan).

The report summarizes the results of the survey and discusses lessons for policymakers. BIS surveyed 97 end-users in the aerospace and defense, automotive, consumer product, industrial, medical, and technology services sectors and from 22 US semiconductor suppliers.

Generally, for end-users, the report found that use of mature-node semiconductors supplied by China-based foundries is widespread but that the semiconductors are only used in small amounts. The report also found that 44% of the end users surveyed could not determine whether their products contained semiconductors from China-based foundries. The report ascribes the information gap to a lack of direct interaction between product manufacturers and the original chip foundries and resellers not transmitting origin information with sales of downstream products. The report notes these knowledge gaps will be a challenge for building supply chain resilience.

For US semiconductor suppliers, the report found that very few mature-node semiconductors supplied by China-based foundries are in use. The majority of the respondents reported not using China-based foundries at all. Those that do source from China obtain only 6% of their production from there, primarily due to cost advantages. The report also highlights that some of these suppliers are encountering increased competitive pressures from a "combination of subsidies for foundries and downstream industries in China, as well as pressure to use PRC-origin content in China."

Policy recommendations

Updated December 23, 2024: Since the publication of the BIS report, the Biden administration has initiated a new Section 301 investigation targeting legacy chips. *Please see the topic, "USTR Announces Section 301 Investigation Targeting Chinese Mature-Node Semiconductors" for more information.*

The investigation is part of the Biden administration's broader efforts to expand the reach of US technology security policy and protect strategically important industries. In the semiconductor sector, this has included promoting the development of the US industry through with subsidies, responding to Chinese subsidies and market distortions with tariffs, preventing US technologies from aiding the development of the Chinese advanced semiconductor sector with export controls, and ultimately attempting to manage national security risks that stem from China's increasingly sophisticated and global technology industry. As documented in the new report, addressing potential threats from semiconductor inputs that are deeply embedded in global supply chains is a unique challenge. Policy measures adopted to date are unable to properly respond to the risks perceived by the US government. As of now, it appears the Biden administration has not decided what the US policy response should be.

In describing how the report fits into the policy making process,[9] BIS' press release states that the "report's findings will help inform future U.S. government actions to address PRC overconcentration and oversupply concerns, as well as companies' lack of visibility into the supply chains for these critical semiconductor components" and that "the Department [of Commerce] remains committed to securing critical supply chains for semiconductors and safeguarding the U.S. economy from the distorting effects of non-market activity."

The issue is separate from BIS' advanced semiconductor export controls (which BIS expanded on December 2, 2024 in a different action[10]). The export controls are meant to limit the Chinese industry's ability to adopt the most advanced semiconductor manufacturing techniques, which have predominantly been developed outside of China and rely on manufacturing machinery produced outside of China. Export controls would be less useful for mature-node semiconductors because Chinese manufacturers are already competitive in the subsector, unlike leading-edge technologies. The CHIPS Act's subsidies are also insufficient. Most of the CHIPS Act grants have been for the leading-edge side of the industry and the subsidies are too small to compete with the size of China's market interventions.

The Biden administration's recent Section 301 tariff expansion will raise import tariffs on semiconductors that originate in China from 25% to 50% in 2025 (which applies to all technology levels).[11] Those tariffs can only address semiconductors imported unassembled for use in domestically manufactured products. Traditional tariffs cannot target imported electronics and machinery that contain Chinese mature-node semiconductors, since those products are imported under separate tariff codes. Tariffs also cannot support the competitiveness of US mature-node chip exports to the Chinese market or to the rest of the international market, where they are encountering increasing competition from Chinese mature-node semiconductors.

Forthcoming government procurement prohibition

While the Biden administration may not yet have a practical policy response to the use of mature-node semiconductors supplied by China-based foundries, Congress has already mandated that the government must prohibit Chinese semiconductors from US government devices and contracted services. To that end, the Federal Acquisition Regulatory Council (FAR Council) is developing a new Federal Acquisition Regulation amendment to prohibit the US federal government from procuring or obtaining products and services that include (or, in some cases, connect to) certain covered semiconductor products made by certain listed Chinese companies.[12] The prohibition targets products and services produced by Semiconductor Manufacturing International Corporation (SMIC), ChangXin Memory Technologies (CXMT), and Yangtze Memory Technologies Corp (YMTC), and would affect any other company that is selling products or services to the US government that may use semiconductors made by the listed companies. The prohibition, for which an advanced notice of proposed rulemaking was issued on May 3, 2024, would enter effect by December 23, 2027.

Products from the survey that are known to be sold to the US government were more likely than average to have documented their supply chains and had fewer semiconductors from China-based foundries. However, uncertainty was still widespread and, according to BIS, "these products are still expected to contain at least one chip manufactured in China by PRC-based facilities." BIS highlights that this will complicate compliance for the

[9] "BIS Publishes Assessment on the Use of Mature-Node Chips," BIS, December 6, 2024, accessible here: https://www.bis.gov/press-release/bis-publishes-assessment-use-mature-node-chips.

[10] "Commerce Strengthens Export Controls to Restrict China's Capability to Produce Advanced Semiconductors for Military Applications," BIS, December 2, 2024, accessible here: https://www.bis.gov/press-release/commerce-strengthens-export-controls-restrict-chinas-capability-produce-advanced.

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

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

forthcoming FAR prohibition. Companies that intend to sell electronics to the US government or to US government contractors will have to begin carefully reviewing their supply chains in the next few years.

Congress Passes Few Trade and Investment Measures in Last Days of Term

In the last few days of the 2023-2024 Congress in December, legislators approved a continuing resolution (CR) to keep the government running until March 2025, the 2025 National Defense Authorization Act (NDAA), and a one-year extension of the Farm Bill. Though certain trade and investment measures had been included in early versions of the bills (including expansions to export controls and a new outbound investment law), almost all these proposals failed. The BIOSECURE Act, customs *de minimis* reform, and bills to renew tariff preference programs like the Generalized System of Preferences (GSP) and the African Growth and Opportunity Act (AGOA) were also completely excluded from the negotiations, despite efforts by some legislators to include them.

The 2023-2024 Congress is now ending and all proposed legislation that has not successfully passed into law will be withdrawn from consideration. Legislative activity will resume with the 2025-2026 term — the 119th Congress — in January 2025. Though the trade, investment, export control, and other national security-related economic measures failed to pass in the 2024-2026 term, most of these proposals have bipartisan support and will likely resurface in 2025 or 2026.

The Continuing Resolution

The original version of the CR,[13] published on December 17, included a new law to restrict outbound US investment in certain Chinese technology sectors, a doubling of the statute of limitations for export control violations, a five-year extension of special preferential tariff rules for Haiti under the Caribbean Basin Initiative (CBI), and several other technology and supply chain security measures targeted at China. The final CR passed Congress late in the evening of December 20, following tense negotiations that led to significant last-minute changes to the bill. Most of the provisions that were unrelated to extending the federal budget (including all the trade and investment measures from the December 17 proposal) were excluded from the final version.[14]

The Farm Bill Extension

One notable inclusion in the final CR was a Farm Bill extension. The final version of the CR extended the 2018 Farm Bill by an additional year, until September 30, 2025. The 2018 Farm Bill was originally due for renewal in September 2023, but partisan disagreement over domestic food assistance programs and certain farm subsidy programs prevented Congress from passing a full renewal. The 2018 bill has now been extended twice, while US farm groups continue to complain that the law's provisions are becoming increasingly out of date. Republicans will likely be able to develop and approve a new, full renewal of the Farm Bill in 2025, due to their majorities in both chambers of Congress.

The proposal Republicans would introduce next year may resemble the Republican renewal proposals from earlier in 2024. Those proposals included several notable trade policy measures and substantial increases in funding for US agriculture support programs. Rep. Glenn Thompson's (R-PA) "Farm, Food, and National Security Act of 2024"[15] included funding increases for export promotion and market access work, efforts to curtail foreign use of geographical indications (GIs), restrictions on foreign investment in US farmland, strengthened enforcement of food product import rules, and measures to protect the seasonal fruit industry from import competition. Because Democrats had the majority in the Senate when the bill was introduced, it was intended as a compromise. With majorities in both chambers of Congress in 2025, Republicans may attempt more significant policy changes. They may be interested in

[13] The failed December 17 proposed continuing resolution is accessible here: https://docs.house.gov/billsthisweek/20241216/CR.pdf.

[14] H.R.10545 - American Relief Act, 2025, 118th Congress (2023-2024), accessible here: https://www.congress.gov/bill/118th-congress/house-bill/10545.

[15] H.R.8467 - Farm, Food, and National Security Act of 2024, 118th Congress (2023-2024), accessible here: https://www.congress.gov/bill/118th-congress/house-bill/8467.

making further reductions to climate change-related conservation measures or to domestic food assistance programs, though whether Republicans truly have enough support to successfully pass these more aggressive proposals into law remains to be seen.

The 2025 National Defense Authorization Act

Congress approved the 2025 NDAA on December 20, 2024.[16] The NDAA is an annual bill that Congress must pass to authorize the Department of Defense to spend appropriated funds. The bill often contains security measures affecting trade, government procurement, and foreign investment laws. Approximately 70 bills related to China policy, economic security, and artificial intelligence (AI) were considered for inclusion in the 2025 NDAA, most of which were ultimately not included in the final version. Like with the CR, efforts by China hawks to include the BIOSECURE Act, outbound investment restrictions, and customs *de minimis* reform in the bill failed. The most notable inclusion in the final law is a measure that will likely lead to the prohibition of commercial drones associated with Chinese companies, including DJI and Autel Robotics. Several trade and procurement measures that successfully passed into law as part of the final 2025 NDAA are summarized below.

Section 1709 of the 2025 NDAA, "Analysis of certain unmanned aircraft systems entities," is a modified version of the "Countering CCP Drones Act,"[17] a bill that passed in the House in September 2024 but was not considered by the Senate. This measure would add all communications or video surveillance equipment produced by DJI and Autel Robotics, as well as any subsidiary, affiliate, joint venture partner, or entity with licensing agreements with DJI or Autel Robotics, to the Federal Communications Commission's (FCC) Covered List under Section 2 of the Secure Networks Act.[18] This represents a significantly broader scope than the original bill, which applied only to DJI and its subsidiaries and affiliates.

Adding the entities to the Covered List would prohibit the FCC from issuing equipment authorizations to the companies' covered telecommunications equipment and video surveillance products, essentially excluding the covered products from the US market. Given the presence of these products in the commercial drones manufactured by the two companies, the listings would likely amount to bans on distribution of new or modified models of the companies' drones in the United States. Furthermore, any DJI and Autel Robotics products that require FCC authorization but are not covered under the scope of the Covered List would be prohibited from using the Supplier's Declaration of Conformity (SDoC) authorization. Instead, they would be required to undergo the more burdensome equipment certification process. Unlike the original bill, the final version included in the 2025 NDAA allows for up to a one-year delay in the implementation of the listings and provides an opportunity to stop them. During this period, the executive branch would have the opportunity to certify that covered products manufactured by DJI and Autel Robotics do not pose a national security risk. If the report finds national security risks do exist, or if the report is not issued, the listing would enter effect no later than 30 days after the issuance of the relevant report or upon reaching the one-year deadline.

The defense acquisition title of the 2025 NDAA includes several provisions related to promoting supply chain resilience, domestic sourcing, and restricting procurement related to Chinese entities in Sections 841-858. For new supply chain rules and domestic sourcing requirements, the law requires (i) domestic production of stainless-steel flatware and dinnerware; (ii) modifications to the sourcing requirements for strategic materials and sensitive materials; (iii) new preferences for recycled and reused minerals and metals in sourcing for strategic and critical

[16] H.R.5009 - Servicemember Quality of Life Improvement and National Defense Authorization Act for Fiscal Year 2025, 118th Congress (2023-2024), accessible here: https://www.congress.gov/bill/118th-congress/house-bill/5009.

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

[18] "Protecting Against National Security Threats to the Communications Supply Chain through the Equipment Authorization Program," Report and Order, Order, and Further Notice of Proposed Rulemaking, FCC 22-84, ET Docket No. 21-232 (November 25, 2022). The rules were published in the *Federal Register* as "Protecting Against National Security Threats to the Communications Supply Chain Through the Equipment Authorization Program," 88 FR 7592 (February 6, 2023), accessible here: https://www.federalregister.gov/documents/2023/02/06/2022-28263/protecting-against-national-security-threats-to-the-communications-supply-chain-through-the.

materials; and (iv) development of new incentives for contractors to document their supply chains. Furthermore, attempting to strengthen drone supply chains, Section 162 instructs the Department of Defense to review supply chain risks for drones and to increase supply chain resilience by "using parts supplied by domestic sources and from allies and partners of the United States." Section 3536 also extends the Buy America rules under the Infrastructure Investment and Jobs Act to cover certain US shipyard modernization and improvement programs.

For China-specific procurement restrictions, the 2025 NDAA prohibits the Department of Defense from (i) contracting with entities that engage lobbyists who also lobby for designated Chinese military companies; (ii) contracting with online tutoring services that may transmit data to China; and (iii) entering into or renewing contracts with "any entity that knowingly provides covered semiconductor products and services to Huawei." "Covered semiconductor products and services" includes semiconductors, semiconductor manufacturing equipment, and semiconductor design tools. To enforce these prohibitions, all contractors selling covered semiconductor products and services to the Department of Defense will have to certify they are not engaged in the prohibited activities. While Huawei is already subject to extensive export controls that limit its ability to acquire semiconductors and manufacturing equipment, these export controls typically require a US-technology nexus to apply, unlike the procurement ban.[19]

[19] "Addition of Huawei Non-U.S. Affiliates to the Entity List, the Removal of Temporary General License, and Amendments to General Prohibition Three (Foreign-Produced Direct Product Rule)," 85 FR 51596 (August 20, 2020), accessible here: https://www.federalregister.gov/documents/2020/08/20/2020-18213/addition-of-huawei-non-us-affiliates-to-the-entity-list-the-removal-of-temporary-general-license-and.

Trade Actions

Section 301

USTR Issues China Section 301 Tariff Increases for Tungsten, Polysilicon, and Wafers

On December 11, 2024, the United States Trade Representative (USTR) issued additional Section 301 tariffs increases on imports of tungsten products, polysilicon, and wafers from China.[20] The tariffs will enter into effect for imports entering the United States beginning on January 1, 2025. USTR stated the modifications mark the conclusion of the Section 301 tariffs' statutory four-year review, suggesting this will be the last change to the tariffs under the Biden administration.

The tariff increases

The new tariffs are summarized below:

1. Introducing a new 25% Section 301 tariff for three Harmonized Tariff Schedule (HTS) subheadings covering certain tungsten products from China:
   - HTS 8101.94.00: Tungsten, unwrought (including bars and rods obtained simply by sintering);
   - HTS 8101.99.10: Tungsten bars and rods (other than those obtained simply by sintering), profiles, plates, sheets, strip and foil; and
   - HTS 8101.99.80: Tungsten, articles not elsewhere specified or included.
2. Increasing the Section 301 tariffs from 25% to 50% for two subheadings covering polysilicon and wafers from China:
   - HTS 2804.61.00: Silicon containing by weight not less than 99.99% of silicon; and
   - HTS 3818.00.00: Chemical elements doped for use in electronics, in the form of discs, wafers etc., chemical compounds doped for electronic use.

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

Discussion and responses to public feedback

USTR originally announced it was considering these additional tariff increases when it issued the previous round of Section 301 tariff increases in September 2024.[21] Though USTR received comments opposing the tariffs, which highlighted that China is an important source of the covered products (including being the source of most tungsten imports) and that the tariffs would harm downstream manufacturers, the final actions did not make any changes to the original proposed tariff increases. Though USTR acknowledges the tariffs will raise prices, the final decision argues that the tariffs are necessary to protect US national security, encourage domestic production (including by

[20] "USTR Increases Tariffs Under Section 301 on Tungsten Products, Wafers, and Polysilicon, Concluding the Statutory Four-Year Review," USTR, December 11, 2024, accessible here: https://ustr.gov/about-us/policy-offices/press-office/press-releases/2024/december/ustr-increases-tariffs-under-section-301-tungsten-products-wafers-and-polysilicon-concluding; an advance copy of the Federal Register notice is accessible here: https://ustr.gov/sites/default/files/Section%20301%20FRN%20for%20Modifications%20for%205%20Additional%20Subheadings%20-%20Final.pdf
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[21] "Request for Comments on Proposed Modifications: China's Acts, Policies and Practices Related to Technology Transfer, Intellectual Property and Innovation," 89 FR 77958 (September 2, 2024), accessible here: https://www.federalregister.gov/documents/2024/09/24/2024-21773/request-for-comments-on-proposed-modifications-chinas-acts-policies-and-practices-related-to.

supplementing the Biden administration's new subsidy programs for these industries), and encourage China to address its harmful policies.

USTR Announces Section 301 Investigation Targeting Nicaraguan Labor Rights Practices

On December 10, 2024, the Office of the US Trade Representative (USTR) initiated an investigation into Nicaragua's acts, policies, and practices related to labor rights, human rights, and rule of law under Section 301 of the Trade Act of 1974.[22] USTR's announcement asserts that "Nicaragua is engaging in repressive and persistent attacks on labor rights, human rights, and the rule of law" and that those practices "may burden U.S. commerce." Though Section 301 includes forced labor, child labor, and other labor rights violations as covered unreasonable acts, the United States has never pursued a Section 301 investigation with respect to these issues. Numerous Nicaraguan government officials and several entities are already subject to US asset blocking and visa sanctions based on the same human rights violations that USTR seeks to investigate under Section 301. USTR's announcement does not explain why the Biden administration has decided to use a unilateral trade policy tool against Nicaragua (a US free trade agreement partner) instead of its active sanctions authorities or free trade agreement dispute resolution procedures. If the Section 301 investigation leads to an affirmative finding that Nicaragua's practices are a burden to US commerce, a separate process to decide an appropriate remedy will begin.

The allegations

The initiation notice explains the general allegations against Nicaragua, which the investigation will next examine in more detail. The notice raises concerns about labor rights violations, human rights violations, and a dismantling of the rule of law. The core of the Section 301 allegation appears to be an argument that "increasing and pervasive labor and human rights violations and dismantling of the rule of law" harms US companies and US workers (i) by exploiting local workers to compete unfairly with US companies; (i) "by negatively impacting the Nicaraguan economy and market, with lost sales and exports for U.S. enterprises;" and (iii) "by lost investment and business opportunities for U.S. workers and companies, including through the creation of a high-risk environment to invest or conduct business [in Nicaragua]."

Section 301 standards and labor abuses

Section 301 of the Trade Act of 1974[23] assigns authorities to USTR for investigating foreign government practices that are "unreasonable or discriminatory and burdens or restricts United States commerce" and taking appropriate action to obtain remediation of the practice. "Unreasonable acts," as defined in the law, includes "a persistent pattern of conduct that — (i) denies workers the right of association, (ii) denies workers the right to organize and bargain collectively, (iii) permits any form of forced or compulsory labor, (iv) fails to provide a minimum age for the employment of children, or (v) fails to provide standards for minimum wages, hours of work, and occupational safety and health of workers." As USTR states in the investigation announcement, it has never pursued a Section 301 investigation targeting labor rights violations. Besides the alleged labor abuses having to meet the definition of an unreasonable act, the acts in question must also burden or restrict US commerce. This dual requirement is why the initiation notice attempts to associate the described labor rights abuses with lost US competitiveness and market access.

The United States has become more aggressive in pressuring foreign countries to address forced labor and child labor abuses under the Biden administration, but those efforts have generally relied on customs import prohibitions

[22] "Initiation of Section 301 Investigation, Hearing, and Request for Public Comments: Nicaragua's Acts, Policies, and Practices Related to Labor Rights, Human Rights, and Rule of Law," 89 FR 101088 (December 12, 2024), accessible here: https://www.federalregister.gov/documents/2024/12/13/2024-29422/initiation-of-section-301-investigation-hearing-and-request-for-public-comments-nicaraguas-acts; also see the press release, "USTR Initiates Section 301 Investigation on Nicaragua's Acts, Policies, and Practices Related to Labor Rights, Human Rights, and the Rule of Law," USTR, December 10, 2024, accessible here: https://ustr.gov/about-us/policy-offices/press-office/press-releases/2024/december/ustr-initiates-section-301-investigation-nicaraguas-acts-policies-and-practices-related-labor-rights.

[23] 19 U.S.C. §§2411-2420, accessible here: https://www.govinfo.gov/app/details/USCODE-2023-title19/USCODE-2023-title19-chap12-subchapIII-sec2411.

under Section 307 of the Tariff Act, technical assistance, and the Bureau of International Labor Affairs' (ILAB) monitoring programs. ILAB's "List of Goods Produced by Child Labor or Forced Labor" already documents the presence of child labor in the Nicaraguan banana, coffee, gold, gravel, shellfish, pumice, and tobacco industries and deems the country to have "made minimal advancement in efforts to eliminate the worst forms of child labor."[24] However, ILAB's reports do not document the presence of forced labor in the country. US Customs and Border Protection (CBP) has also not issued any Section 307 Withhold Release Orders or Findings targeting companies in Nicaragua.

Section 301 process

Section 301 investigations take up to one year to complete, meaning USTR will not reach a decision until after President-elect Donald Trump assumes office. Judging by past practice, the initial phase of the investigation will take about four to six months to produce a preliminary determination. The preliminary determination will be followed by a second round of comments and another hearing. The final determination is supposed to be completed within 12 months. If USTR determines that there is a trade violation, then there is an additional process for determining the appropriate remedy. A negative determination, on other hand, would end the matter.

Call for public input and next steps

As part of the initial steps for the investigation, USTR is seeking information from the public to inform its determination about injury to US industry and what policy measures the government should consider. Interested stakeholders may contribute to the process by submitting written comments and participating the upcoming public hearings. The *Federal Register* notice includes instructions for how to participate.

Besides seeking general input for the investigation, USTR's initiation notice mentions several specific questions:

- Whether Nicaragua's acts, policies, and practices related to labor rights, human rights, and rule of law are unreasonable or discriminatory towards US business;
- Whether the practices burden or restrict US commerce; and
- Whether actionable conduct exists under Section 301(b) and what action, if any, should be taken in response.

The deadline for filing comments is January 8, 2025. The Section 301 Committee will then hold a public hearing on January 16. Parties interested in participating in the hearing should submit requests to appear and testimony summaries by January 8 as well. The deadline for post-hearing rebuttal comments is January 23, which is three days after Trump becomes president and new leadership begins to arrive at USTR. The rest of the investigation will proceed under Trump's leadership.

USTR must also request consultations with the government of Nicaragua as part of the inquiry, which the initiation notice says USTR has begun. According to USTR, the United States has already engaged with Nicaragua on these concerns prior to announcing the investigation, but the Nicaraguan government has not responded to the United States' concerns.

Potential for import restrictions or other remedies

If the Section 301 Committee reaches an affirmative determination in the investigation, it will have to consider how its available policy tools could help it obtain the elimination of the targeted Nicaraguan policies. USTR has broad discretion on how it approaches Section 301 remedies, including imposition of trade restrictions; withdrawal, or suspension of trade agreement concessions; or negotiating binding agreements with the subject country to eliminate or compensate for the conduct in question. If the president proceeds with a trade restriction as remedy, the system

[24] *See* ILAB's "List of Goods Produced by Child Labor or Forced Labor" to access the various reports, accessible here: https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods.

generally favors a tariff in proportion to the injury, but it also allows for a broader set of import and service provision restrictions that are within the powers of the president.

Since the creation of the World Trade Organization's (WTO) dispute settlement system in 1995, USTR has typically only used Section 301 processes to develop cases for WTO dispute settlement. Unilateral Section 301 actions resumed under the Trump administration and have continued under the Biden administration. The initiation notice highlights the potential for unilateral action, quoting the law's provision that "an act, policy, or practice is unreasonable if, while not necessarily in violation of, or inconsistent with, the international legal rights of the United States, it is otherwise unfair and inequitable."

Unilateral trade restrictions on Nicaragua through Section 301 would likely raise a variety of concerns regarding the United States' WTO commitments and commitments under the Dominican Republic-Central America Free Trade Agreement (CAFTA-DR). The investigation announcement mentions neither treaty, both of which include dispute settlement procedures for situations where a party believes its rights have been violated. If the Section 301 investigation results in an affirmative finding, USTR could still choose to refer the matter to dispute settlement proceedings instead of taking unilateral action. USTR has used the CAFTA-DR labor commitments and dispute settlement process to promote labor rights protections in the past.[25]

Existing sanctions and US-Nicaragua relations

US relations with Nicaragua have deteriorated significantly in recent years, with the United States protesting the erosion of democracy in Nicaragua and expanding relations between Nicaragua and Russia. Both Presidents Trump and Biden have imposed targeted sanctions, including property blocking sanctions and visa restrictions, against senior officials in President Daniel Ortega's government and other entities that support the regime. Pressure has intensified since 2021, after Ortega claimed victory in elections that the Organization of American States (OAS) said had "no democratic legitimacy."

On the trade policy front, the United States has also suspended Nicaragua's raw cane sugar quota allocation for the past three fiscal years and excluded Nicaragua from the Americas Partnership for Economic Prosperity (APEP). The Biden administration has credited the exclusions to what it describes as Nicaragua's undemocratic actions and closer relationship with Russia.

If the Section 301 initiation is based on these same political and human rights concerns, it could point to how the United States is becoming increasingly comfortable using tariffs and other trade policy tools to obtain leverage in diplomatic disputes. Recent increases in Section 301 tariffs on China, the Section 232 steel and aluminum tariffs, and national-security based restrictions in the technology sector are all contributing to that accelerating trend. President-elect Donald Trump has advocated for this approach in his recent remarks and tariff threats as well, suggesting similar actions will continue when he assumes office. In a December 8 interview, he asserted that "tariffs [...] properly used are a very powerful tool, not only economically, but also for getting other things outside of economics."[26]

It is unclear whether the incoming Trump administration will be interested in proceeding with this specific Section 301 investigation. Trump may prefer alternative approaches to handling the United States' ongoing disputes with Nicaragua, such as the continued use of targeted sanctions. Action through CAFTA-DR would also be possible.

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[25] "In the Matter of Guatemala – Issues Relating to the Obligations Under Article 16.2.1(a) of the CAFTA-DR," USTR, accessible here: https://ustr.gov/issue-areas/enforcement/dispute-settlement-proceedings/fta-dispute-settlement/cafta-dr/matter-guatemala-issues-relating-obligations-under-article-1621a-cafta-dr.

[26] "Trump details sweeping changes he'll carry out on day one and beyond in an exclusive interview," NBC News, December 8, 2024, accessible here: https://www.nbcnews.com/politics/donald-trump/trump-details-sweeping-changes-ll-carry-day-one-exclusive-interview-rcna182858.

Senator Marco Rubio (R-FL), who Trump is nominating as Secretary of State, has backed reconsidering Nicaragua's membership in the free trade agreement.[27]

USTR Announces Section 301 Investigation Targeting Chinese Mature-Node Semiconductors

On December 23, 2024, the Office of the United States Trade Representative (USTR) announced the initiation of a Section 301 investigation into "China's acts, policies, and practices related to targeting of the semiconductor industry for dominance."[28] The investigation will target two sections of the semiconductor ecosystem: (i) Chinese-manufactured mature-node semiconductors (also known as "foundational" or "legacy" semiconductors) and downstream products that may contain them; and (ii) Chinese-manufactured silicon carbide substrates and wafers used in semiconductor manufacturing.

The initiation notice provides no further details on the possible remedies USTR is considering. Media reports and comments by senior administration officials indicate the United States is considering import restrictions on downstream products that contain Chinese-manufactured semiconductors, possibly including products manufactured in third countries. However, the incoming Trump administration will be responsible for deciding the eventual outcome of the case, not the current Biden administration officials who initiated the investigation. Initiating investigations at the end of a president's term is unusual. The investigation's scope, timeline, and remedies under consideration could change.

Targeted sectors and producers

The initiation notice describes two related product inquiries for the initial focus of the investigation:

- **Mature-node semiconductors and downstream products:** The primary focus will be Chinese manufacturing of legacy-node semiconductors. That focus will include examining the incorporation of semiconductors into downstream products in industries the United States views as critical, including defense, automotive, medical devices, aerospace, telecommunications, electricity generation, and power grid infrastructure.
- **Silicon carbide substrates:** The investigation will also assess whether the effect of Chinese policies on the "production of silicon carbide substrates (or other wafers used as inputs into semiconductor fabrication) contribute to any unreasonableness or discrimination or burden or restriction on U.S. commerce."

UTSR's initiation notice does not specify the kinds of Chinese-manufactured semiconductors or companies that it intends to target, only suggesting it is interested in examining "PRC [People's Republic of China] manufacturing of foundational semiconductors" that is supported by the Chinese government. A recent report about the sector from the Bureau of Industry and Security (BIS) – which USTR cited in the initiation notice – suggests the government may be interested in what BIS describes as "PRC-based foundries." These are organizations headquartered in China, with manufacturing activities located in China, and that are involved in front-end wafer fabrication. It is unclear if USTR intends to focus on that same narrow targeting or is considering broader coverage.

[27] *See, e.g.*, a June 10, 2021 letter from Sen. Rubio and six other Senators to President Biden, accessible here: https://www.rubio.senate.gov/wp-content/uploads/_cache/files/cbcc0123-589e-4bdc-8901-ba2746062309/1388A95B84D211EE23C9E4C2EAA0B711.210610---to-potus-nicaragua-bipartisan-letter.pdf.

[28] "Initiation of Section 301 Investigation; Hearing; and Request for Public Comments: China's Acts, Policies, and Practices Related to Targeting of the Semiconductor Industry for Dominance," 89 FR 106725 (December 30, 2024), accessible here: https://www.federalregister.gov/documents/2024/12/30/2024-31306/initiation-of-section-301-investigation-hearing-and-request-for-public-comments-chinas-acts-policies.

Section 301 investigation process

Section 301 of the Trade Act of 1974 gives USTR authority to investigate foreign government practices that are found "unreasonable or discriminatory" and that burden or restrict United States commerce.[29] It also empowers the USTR to take appropriate action to remedy such practices.

Judging by past practice, the initial phase of the investigation will take about four to six months to produce a preliminary determination. The preliminary determination will be followed by a second round of comments and another hearing. The final determination is usually completed within 12 months. However, significant changes to the timeline are possible because the incoming Trump administration will take over the case in January. If USTR determines that there is a trade violation, then there is an additional process for determining the appropriate remedy. A negative determination, on other hand, would end the matter.

Call for input and public hearings

As part of the initial steps for the investigation, USTR is seeking information from the public to inform its determination about injury to US industry and what policy measures the government should consider. Interested stakeholders may contribute to the process by submitting written comments and participating the upcoming public hearings. The Federal Register notice includes instructions for how to participate.

The deadline for filing comments is February 5, 2025. The Section 301 Committee intends to hold public hearings on March 11-12, 2025. Parties interested in participating in the hearing should submit requests to appear and summaries of their testimony by February 24, 2025. The deadline for post-hearing rebuttal comments will be seven days after the last day of hearings. All the milestones occur after Trump assumes the presidency and new leadership begins to arrive at USTR, meaning the investigation targets, process, timeline, and potential remedies may be subject to revision.

USTR's initiation notice raises several specific issues public comments may address:

- "China's acts, policies, and practices related to its targeting of the semiconductor industry for dominance;"
- "Anticompetitive and non-market means employed by the PRC in pursuit of its semiconductor industry targeting objectives;"
- "Whether China's acts, policies, and practices are unreasonable or discriminatory;"
- "Whether China's acts, policies, and practices burden or restrict U.S. commerce, and if so, the nature and level of the burden or restriction;" and
- "Whether China's acts, policies, and practices are actionable under Section 301(b) of the Trade Act, and what action, if any, should be taken, including tariff and non-tariff actions."

Expectations for the incoming Trump administration

It is likely that USTR will not complete the investigation and remedy plan until late 2025 or early 2026. Consequently, the incoming Trump administration will be responsible for most of the investigation, as well as the design and implementation of any ensuing policy actions.

President-elect Trump's team appears to broadly share the Biden administration's concerns about Chinese semiconductors and are considering similar trade restrictions targeting international supply chains connected to China. Jamieson Greer (Trump's choice to lead USTR) backed imposing tariffs on downstream products that include Chinese inputs in his recent personal testimony to the US-China Economic Security and Review Commission, as well

[29] 19 U.S.C. §§2411-2420, accessible here: https://www.govinfo.gov/app/details/USCODE-2023-title19/USCODE-2023-title19-chap12-subchapIII-sec2411.

as calling for export controls targeting mature-node semiconductor manufacturing equipment.[30] In comments to the press, Biden administration officials have highlighted bipartisan support for measures targeting the Chinese semiconductor sector. Trump and his transition team have not commented on the Section 301 investigation specifically.

Potential trade restrictions

If USTR determines that there is a trade violation, then there is an additional process for determining the appropriate remedy. The law grants USTR and the president broad discretion in determining remedies, which can include any actions “that are within the power of the President with respect to trade in any goods or services, or with respect to any other area of pertinent relations with the foreign country.” The public is likely to remain unaware of the specific details of the planned action until the investigation process is nearing completion.

Under the existing China Section 301 tariffs, semiconductors originating from China are already subject to a 25% tariff, which increases to 50% in January 2025.[31] On December 11, 2024, USTR also announced it would also raise the Section 301 tariffs on polysilicon and wafers from China to 50% in January 2025.[32] Those existing tariffs only cover semiconductors and inputs imported on their own, not downstream products that may contain the covered items. That said, the current China Section 301 tariffs also cover many specific downstream technology products under separate listings.

Though the details are uncertain, recent reporting has suggested the Biden administration intends to use the Section 301 investigation to impose an import tariff on Chinese semiconductors embedded within finished products. Imposing a tariff on an embedded component would be unusual and complex. The general rule for US customs identification and tariffs is that goods are classified according to their condition at the time of importation. There are no exact procedures or recent precedent for this kind of tariff. The Biden administration’s melt and pour rules for the Section 232 steel tariffs and smelt and cast rules for the Section 232 aluminum tariffs are similarly meant to exclude substrates originating in certain countries, which could provide a roadmap for a semiconductor inputs restriction.

In comments to the press, Biden administration officials have suggested that they may be considering using policy tools outside of USTR’s authorities to address concerns with products manufactured outside of China. If that is the case, other trade authorities – especially on the national security side – could better enable targeting of supply chains in third countries. For example, BIS’ new Information and Communications Technology and Services (ICTS) rule permits the Secretary of Commerce to review and prohibit transactions with Chinese technology companies that pose a risk to US national security.[33] The Biden administration’s recent proposal to use the ICTS rule to prohibit imports of vehicles containing certain Chinese ICTS inputs demonstrates how the government could use the rule to restrict semiconductor supply chain inputs.[34]

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[30] Hearing on “Key Economic Strategies for Leveling the U.S.-China Playing Field: Trade, Investment, and Technology,” US-China Economic and Security Review Commission, May 23, 2024, accessible here: https://www.uscc.gov/hearings/key-economic-strategies-leveling-us-china-playing-field-trade-investment-and-technology.

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

[32] “Notice of Modification: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation,” 89 FR 101682 (December 16, 2024), accessible here: https://www.federalregister.gov/documents/2024/12/16/2024-29462/notice-of-modification-chinas-acts-policies-and-practices-related-to-technology-transfer.

[33] 15 CFR 791, accessible here: https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-E/part-791?toc=1.

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

Forthcoming government procurement restrictions

In announcing the Section 301 investigation,[35] the Biden administration also highlighted other ongoing projects to remove Chinese semiconductors from US government supply chains and reduce reliance on imports:

- The Federal Acquisition Regulatory Council (FAR Council) is developing a new Federal Acquisition Regulation amendment to prohibit the US federal government from procuring or obtaining products and services that include (or, in some cases, connect to) certain covered semiconductor products made by certain listed Chinese companies.[36] The prohibition targets products and services produced by Semiconductor Manufacturing International Corporation (SMIC), ChangXin Memory Technologies (CXMT), and Yangtze Memory Technologies Corp (YMTC), and would affect any other company that is selling products or services to the US government that may use semiconductors made by the listed companies. The prohibition, for which an advanced notice of proposed rulemaking was issued on May 3, 2024, would enter effect by December 23, 2027.
- The Office of Management and Budget (OMB) is soliciting public input for how the government can support domestic semiconductor manufacturing by giving preference to domestically manufactured semiconductors and end products.[37]
- Developing new guidance to encourage government procurement systems to develop new sourcing strategies for semiconductors to "mitigate the risk posed by undue dependence on foreign manufacturing."

Lack of information in semiconductor supply chains

BIS published a report on December 6, 2024, describing challenges associated with mature-node semiconductors and China-based foundries.[38] The report finds that companies selling electronics that use mature-node semiconductors are often unaware of their supply sources, that most of the examined products contain mature-node semiconductors from China-based foundries (though in very small amounts), and that rapidly increasing foundry capacity in China may weaken the competitiveness of US foundries. The report estimates that 44% of the end users surveyed could not determine whether their products contained semiconductors from China-based foundries. BIS ascribes the information gap to a lack of direct interaction between product manufacturers and the original chip foundries and resellers not transmitting origin information with sales of downstream products. The Biden administration cited the results of the report in justifying the new Section 301 investigation. However, the report's finding that a large share of companies cannot identify the original source of semiconductors in their products suggests that implementing restrictions on downstream products containing semiconductors from China will be challenging.

[35] "President Biden Takes Action to Protect American Workers and Businesses from China's Unfair Trade Practices in the Semiconductor Sector," White House, December 23, 2024, accessible here: https://www.whitehouse.gov/briefing-room/statements-releases/2024/12/23/fact-sheet-president-biden-takes-action-to-protect-american-workers-and-businesses-from-chinas-unfair-trade-practices-in-the-semiconductor-sector/.

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

[37] "Biden-Harris Administration Seeks Input on Strengthening Domestic Supply Chains for American-Made Semiconductors through Federal Procurement," White House, December 10, 2024, accessible here: https://www.whitehouse.gov/omb/briefing-room/2024/12/10/biden-harris-administration-seeks-input-on-strengthening-domestic-supply-chains-for-american-made-semiconductors-through-federal-procurement/.

[38] "Public Report on the Use of Mature-Node Semiconductors," Bureau of Industry and Security, December 6, 2024, accessible here: https://www.bis.gov/media/documents/public-report-use-mature-node-semiconductors-december-2024.

Trade Agreements

RCEP Support Unit Commences Operations on December 2, 2024

Secretary-General of ASEAN Kao Kim Hourn together with Indonesian Trade Minister Budi Santoso officially inaugurated the Regional Comprehensive Economic Partnership (RCEP) Support Unit (RSU) office on December 9, 2024.[39] The inauguration was also attended by the ASEAN Committee of Permanent Representatives (CPR) and ASEAN FTA Partners' Missions to ASEAN.[40] The inauguration of the RSU office marks a significant milestone for the RCEP following RCEP the decision on September 17, 2022 to establish the RSU as a special unit within the ASEAN Secretariat.

The RSU will provide the necessary institutional support to the RCEP Joint Committee (RJC) and its subsidiary bodies on the implementation of the RCEP pursuant to Article 18.3 of the RCEP. Mr. Taufiq Arfi Wargadalam has officially been appointed as Executive Director of the RSU who will lead a proactive role in ensuring that the RCEP remains a modern, high quality, open, and inclusive agreement. During the 8th RJC meeting on November 27, 2024, the RJC agreed that the RSU will commence its formal operations on December 2, 2024. The inauguration ceremony marks the full operationalization of the RSU, which will serve as a hub for coordination, technical support, and strategic initiatives to maximize the beneficial outcomes of the RCEP.

The RCEP is an ASEAN-led mega-free trade agreement (FTA) with five of ASEAN's dialogue partners including Australia, China, Japan, Korea, and New Zealand. It represents the world's largest FTA accounting for 30% of global GDP and about a third of the world's population. With the RSU in place, the RCEP is expected to expand its membership. The RSU will help facilitate procedures to ensure smooth accession for potential new RCEP members, including the establishment of an accession working group to review applications and conduct technical work. To date, Hong Kong and Sri Lanka have expressed their interest to join the RCEP.

[39] Indonesia's Ministry of Trade press release is accessible here: https://www.kemendag.go.id/berita/siaran-pers/resmikan-kantor-rcep-support-unit-mendag-budi-santoso-tonggak-baru-perkuat-integrasi-ekonomi-kawasan.

[40] RCEP member states include the ten ASAN member states (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam) and five ASEAN dialogue partners (China, Japan, Korea, Australia, and New Zealand).

Petitions & Investigations

Commerce Extends Deadlines in Antidumping and Countervailing Duty Administrative Reviews

On December 9, 2024, the US Department of Commerce (Commerce) announced an extension to the administrative processing period for certain active antidumping duty (ADD) and countervailing duty (CVD) investigation administrative reviews. The deadlines for issuing preliminary and final conclusions in administrative reviews, including reviews of new exporters, will be extended by up to 90 days. This extension applies to ongoing reviews where an opportunity to request a review was notified before December 9, 2024. Correspondingly, deadlines related to the submission of new factual information will also be adjusted to align with the extended deadlines for issuing conclusions. Commerce has added memos announcing the deadline extensions to the dockets for each proceeding to which the action applies.

The extension does not affect: (i) deadlines for parties to submit responses, additional information, briefs, and rebuttals; and (ii) time limits for re-determining the imposition of taxes by court order and related administrative procedures. Individual extension requests will continue to be considered on a case-by-case basis, provided they are submitted within the prescribed time limits.

Commerce cited an unusually high caseload as the reason for the extension. According to the memo, Commerce has received 117 new petitions from domestic industries in fiscal year 2024 (October 1, 2023 through September 30, 2024), surpassing the previous record set in fiscal year 2020. Additionally, in the first two months of fiscal year 2025 (beginning October 1, 2024), Commerce received 25 more petitions.

The announcement is accessible here:

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Investigations

ITC Sustains ADD and CVD Orders on Glycine from China, India, Japan, and Thailand in Five-Year Sunset Review

On November 29, 2024, the ITC published its final determination that revocation of the ADD orders on glycine from India, Japan, and Thailand, and CVD orders on glycine from China and India would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[41] The ITC made the determination in an expedited review, after the domestic producers responded to the institution notice, but the respondents did not.

Previously, Commerce published its finding that revocation of the ADD orders on glycine from India, Japan, and Thailand would likely lead to the continuation or recurrence of dumping on September 12, 2024.[42] Commerce reached the final determination in an expedited (120-day) review, as the earlier notice of initiation did not receive substantive responses from the respondent interested parties. The finding maintains the weighted-average dumping margins of up to 13.61% for India, 86.22% for Japan, and 227.17% for Thailand. Commerce issued the final results of the expedited sunset review of the CVD on glycine from China and India separately on September 13, 2024.[43] Commerce found that revocation of the CVD would be likely to lead to continuation or recurrence of countervailable subsidies at subsidy rates of up to 15.13% for India and a rate of 144.01% for China.

Covered product

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

Commerce Issues Final Determinations in ADD and CVD Investigations of Melamine from Germany, Japan, the Netherlands, Qatar, and Trinidad and Tobago

On December 9, 2024, Commerce published the final determinations in the less-than-fair value and countervailable subsidies investigations for melamine imports from Germany, Japan, the Netherlands, Qatar, and Trinidad and Tobago.[44] The ADD investigations found that melamine from Japan, Germany, the Netherlands, and Trinidad and

[41] "Glycine From China, India, Japan, and Thailand," 89 FR 94761 (November 29, 2024), accessible here: https://www.federalregister.gov/documents/2024/11/29/2024-28018/glycine-from-china-india-japan-and-thailand.

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

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

[44] "Melamine From Japan: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part," 89 FR 97601 (December 9, 2024), accessible here: https://www.federalregister.gov/documents/2024/12/09/2024-28794/melamine-from-japan-final-affirmative-determination-of-sales-at-less-than-fair-value-and-final; "Melamine From the Netherlands: Final Affirmative Determination of Sales at Less Than Fair Value," 89 FR 97590 (December 9, 2024), accessible here: https://www.federalregister.gov/documents/2024/12/09/2024-28795/melamine-from-the-netherlands-final-affirmative-determination-of-sales-at-less-than-fair-value; "Melamine From Qatar: Final Negative Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances," 89 FR 97592 (December 9, 2024), accessible here: https://www.federalregister.gov/documents/2024/12/09/2024-28796/melamine-from-qatar-final-negative-determination-of-sales-at-less-than-fair-value-and-final-negative; "Melamine From Trinidad and Tobago:

Tobago is being, or is likely to be, sold in the United States at less than fair value, while imports from Qatar are not. For the CVD investigations, Commerce found that countervailable subsidies are being provided to melamine producers and exporters from Germany, Trinidad and Tobago, and Qatar. The concurrent final ADD and CVD investigations of melamine from India are postponed until February 6, 2025.[45]

For Japan, the final determination for the ADD investigation is the same as the preliminary because no interested parties submitted comments on the preliminary determination. The weighted-average dumping margins are 127.69% for Mitsui Chemicals, Inc. and 115.11% for the All-Others rate. The rate for Mitsui Chemicals was based on adverse facts available because the company declined to participate in the investigation. Commerce also issued a preliminary affirmative determination of critical circumstances for Mitsui Chemicals. The All-Others rate was based on the average of the petitioner's alleged estimated dumping margins for Japan.

Previously, on September 24, 2024, Commerce published preliminary affirmative determinations in the ADD investigations of melamine from Japan, Germany, Netherlands, India, and Trinidad and Tobago, finding that imports are being, or are likely to be, sold in the United States at less than fair value.[46] For Qatar, Commerce found a *de minimis* weighted-average dumping margin, leading to a preliminary determination that imports are not being and are not likely to be sold in the United States at less than fair value.[47] Commerce published preliminary affirmative determinations for the CVD investigations of imports from India, Germany, Trinidad and Tobago, and Qatar, separately on July 22, 2024, preliminarily finding that countervailable subsidies are being provided to melamine producers and exporters.[48]

Final Affirmative Determination in the Countervailing Duty Investigation," 89 FR 97599 (December 9, 2024), accessible here: https://www.federalregister.gov/documents/2024/12/09/2024-28798/melamine-from-trinidad-and-tobago-final-affirmative-determination-in-the-countervailing-duty; "Melamine From Qatar: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination," 89 FR 97593 97599 (December 9, 2024), accessible here: https://www.federalregister.gov/documents/2024/12/09/2024-28797/melamine-from-qatar-final-affirmative-countervailing-duty-determination-and-final-negative-critical; "Melamine From Trinidad and Tobago: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part," 89 FR 97598 (December 9, 2024), accessible here: https://www.federalregister.gov/documents/2024/12/09/2024-28799/melamine-from-trinidad-and-tobago-final-affirmative-determination-of-sales-at-less-than-fair-value; "Melamine From Germany: Final Affirmative Determination of Sales at Less Than Fair Value," 89 FR 97584 (December 9, 2024), accessible here: https://www.federalregister.gov/documents/2024/12/09/2024-28800/melamine-from-germany-final-affirmative-determination-of-sales-at-less-than-fair-value; "Melamine From Germany: Final Affirmative Countervailing Duty Determination," 89 FR 97586 (December 9, 2024), https://www.federalregister.gov/documents/2024/12/09/2024-28801/melamine-from-germany-final-affirmative-countervailing-duty-determination.

[45] "Melamine From India: Postponement of Final Determination of Sales at Less Than Fair Value Investigation," 89 FR 84533 (October 23, 2024), accessible here: https://www.federalregister.gov/documents/2024/10/23/2024-24499/melamine-from-india-postponement-of-final-determination-of-sales-at-less-than-fair-value.

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

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

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

The US International Trade Commission (ITC) published its affirmative preliminary determinations for the ADD and CVD investigations on April 4, 2024.[49] The ITC found (i) there is a reasonable indication that the US melamine industry is materially injured by imports from Germany, India, Netherlands, Qatar, and Trinidad and Tobago that are alleged to be sold at less than fair value and alleged to be subsidized by Germany, India, Qatar, and Trinidad and Tobago; and (ii) there is a reasonable indication that the US melamine industry is threatened with material injury by imports from Japan that are alleged to be sold at less than fair value. Following Commerce's preliminary affirmative determinations, the ITC issued its final phase investigation schedule on September 30, 2024, and will now proceed with concluding its final phase investigation.[50]

Covered product

Commerce has not made any new modifications to the scope of the investigation. The merchandise subject to these investigations is melamine (Chemical Abstracts Service (CAS) registry number 108-78-01, molecular formula $C3H6N6$). Melamine is also known as 2,4,6-triamino-s-triazine; 1,3,5-Triazine-2,4,6-triamine; Cyanurotriamide; Cyanurotriamine; Cyanuramide; and by various brand names. Melamine is a crystalline powder or granule. All melamine is covered by the scope of these investigations irrespective of purity, particle size, or physical form. Melamine that has been blended with other products is included within this scope when such blends include constituent parts that have been intermingled, but that have not been chemically reacted with each other to produce a different product. For such blends, only the melamine component of the mixture is covered by the scope of these investigations. Melamine that is otherwise subject to these investigations is not excluded when commingled with melamine from sources not subject to these investigations. Only the subject component of such commingled products is covered by the scope of these investigations.

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

Commerce Issues Final Affirmative Determination for 2022-2023 Administrative Review of the ADD Order on Glycine from Japan

On December 16, 2024, Commerce published its final affirmative determination that Yuki Gosei Kogyo Co., Ltd./Nagase & Co., Ltd. (YGK/Nagase) the sole producer/exporter of glycine from Japan subject to the administrative review, had made sales at less than normal value during the period of review (June 1, 2022 - May 31, 2023).[51] The final weighted-average dumping margin is estimated at 0.99%. Commerce made no changes to the margin calculations in the final stage of the review. Commerce will issue new duty assessment instructions to CBP based on the final weighted-average dumping margin.

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tobago-preliminary-affirmative-countervailing-duty-determination-and; and "Melamine From Qatar: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Determination of Critical Circumstances, and Alignment of Final Determination With Final Antidumping Duty Determination," 89 FR 59045 (July 22, 2024), accessible here: https://www.federalregister.gov/documents/2024/07/22/2024-15978/melamine-from-qatar-preliminary-affirmative-countervailing-duty-determination-preliminary-negative.

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

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

[51] "Glycine From Japan: Final Results of Antidumping Duty Administrative Review; 2022-2023," 89 FR 101553 (December 16, 2024), accessible here: https://www.federalregister.gov/documents/2024/12/16/2024-29529/glycine-from-japan-final-results-of-antidumping-duty-administrative-review-2022-2023.

Previously, Commerce published its preliminary affirmative determination that YGK/Nagase, had made sales at less than normal value during the period of review on July 3, 2024.[52] The preliminary determination also announced the rescission of the review for the other subject producer/exporter, Showa Denko K.K., after the party requesting the review withdrew. All other Japanese exporters are still subject to the all-others rate from the initial investigation (53.66%) unless they have received a separate rate in the original investigation or other subsequent reviews.

[52] "Glycine From Japan: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review; 2022-2023," 89 FR 55228 (July 3, 2024), accessible here: https://www.federalregister.gov/documents/2024/07/03/2024-14659/glycine-from-japan-preliminary-results-and-rescission-in-part-of-antidumping-duty-administrative.