

# US Multilateral Trade Policy Developments

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**Japan External Trade Organization**

March 2022

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## US Trade Policy

### Biden Administration Increases Domestic Content Requirements under Buy American Act, Enhances Price Preferences for Domestic “Critical” Goods

On March 7, 2022, the Federal Acquisition Regulatory Council (FAR Council) published a final rule that increases domestic content requirements for Federal government procurements governed by the Buy American Act (BAA). The FAR Council issued the final rule pursuant to President Biden’s Executive Order of January 25, 2021 (EO 14005), which outlined the Biden Administration’s policy that US government procurement should “maximize the use of goods, products, and materials produced in, and services offered in, the United States.”<sup>[1]</sup> The final rule also establishes enhanced price preferences under the BAA for domestic goods that the Federal government designates as “critical” to US supply chains. This change is intended to align Federal procurement policy with the Biden Administration’s recently published strategy to improve supply chain resiliency in critical sectors, such as information and communications technology (ICT), clean energy, defense, public health, agriculture, and transportation.

This alert provides an overview of the final rule.

#### Background

The Buy American Act requires the federal government to buy domestic “articles, materials, and supplies” when they are acquired for public use, subject to exceptions for nonavailability of domestic products, unreasonable cost of domestic products, acquisitions subject to certain trade agreements, and situations where it would not be in the public interest to buy domestic products.<sup>[2]</sup> For purposes of the BAA, goods are domestic if they are “such unmanufactured articles, materials, and supplies as have been mined or produced in the United States” or “such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States.”<sup>[3]</sup>

#### *Domestic content thresholds under the BAA*

The implementing regulations for the BAA are set out in the Federal Acquisition Regulation (FAR).<sup>[4]</sup> The FAR sets forth rules for determining whether solicited “construction material” or “end products” are “domestic” – that is, whether they were mined, produced, or manufactured in the United States, substantially all from components mined, produced, or manufactured in the United States. The FAR uses a two-part test to determine whether a manufactured end product or construction material is domestic:<sup>[5]</sup>

- The end product or construction material must be manufactured in the United States; and
- A certain percentage of all component parts (determined by the cost of the components) must also be mined, produced, or manufactured in the United States (a requirement known as the “component test” until early 2021, when it was redesignated the “domestic content test”). For an end product or construction material that does not

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<sup>[1]</sup> For an overview of EO 14005, please refer to the W&C US Trade Alert dated February 1, 2021.

<sup>[2]</sup> See generally 41 U.S.C. §§ 10a-10d.

<sup>[3]</sup> 41 U.S.C. § 10a.

<sup>[4]</sup> 48 C.F.R. Part 25.

<sup>[5]</sup> 48 C.F.R. §§ 25.003, 25.101(a), and 25.201(b).

consist wholly or predominantly of iron or steel or a combination of both, the cost of domestic components must exceed 55 percent of the cost of all components.<sup>[6]</sup> For an end product or construction material that consists wholly or predominantly of iron or steel or a combination of both, the cost of foreign iron and steel must constitute less than 5 percent of the cost of all the components.<sup>[7]</sup> The domestic content test is waived for acquisitions of commercially available off-the-shelf (COTS) items, but not if they are iron or steel products (unless they are COTS fasteners).<sup>[8]</sup>

#### *Price preferences for domestic goods under the BAA*

The BAA does not prohibit the purchase of foreign end products or use of foreign construction material. Instead, it encourages the use of domestic end products and construction materials by imposing a “price preference” for such goods, applied when the procuring agency assesses the “reasonableness” of the cost of domestic offers.<sup>[9]</sup> Where a domestic offer is not the low offer, the procuring agency applies the price preference by adding a specified percentage to the price of the foreign low offer, inclusive of duty.<sup>[10]</sup> The price of the domestic bid is deemed reasonable if the bid price does not exceed the price of the low offer with the addition of the price preference.<sup>[11]</sup> Under the current FAR, large businesses offering domestic supplies receive a 20 percent price preference, and small businesses offering domestic supplies receive a 30 percent price preference.<sup>[12]</sup>

#### *Trade agreements*

Under the WTO Agreement on Government Procurement (GPA) and certain US free trade agreements, the United States has assumed obligations to afford non-discriminatory treatment to goods from participating foreign countries when it conducts procurements covered by the agreement. This obligation is implemented in US law through the Trade Agreements Act of 1979, which limits the Buy American Act’s applicability by requiring US government procurements to treat as if they were domestic those materials originating in a country with which the United States has a covered trade agreement.<sup>[13]</sup>

### **Final rule amending the FAR Buy American Act requirements**

The FAR Council’s final rule retains the core elements of the proposed rule issued on July 30, 2021, with some minor adjustments.<sup>[14]</sup> The key elements of the final rule are (1) an increase of the domestic content thresholds for domestic end products and construction materials; and (2) the establishment of enhanced price preferences for goods that OMB will designate as “critical” to US supply chains in a future rulemaking.

#### *Increased domestic content thresholds*

Consistent with the proposed rule, the final rule will gradually increase the domestic content threshold for end products and construction materials to 75 percent (from the current rate of 55 percent) over a period of several

<sup>[6]</sup> 48 C.F.R. § 25.003, 25.101(a)(2)(i), and 25.201(b)(2)(i).

<sup>[7]</sup> 48 C.F.R. § 25.003, 25.101(a)(2)(ii), and 25.201(b)(2)(ii).

<sup>[8]</sup> 48 C.F.R. § 25.001(c)(1).

<sup>[9]</sup> 48 C.F.R. § 25.105.

<sup>[10]</sup> 48 C.F.R. § 25.105(b).

<sup>[11]</sup> 48 C.F.R. § 25.105(c).

<sup>[12]</sup> 48 C.F.R. § 25.105(b)(1) and (2).

<sup>[13]</sup> 19 U.S.C. § 2511(a).

<sup>[14]</sup> For an overview of the proposed rule, please refer to the W&C US Trade Alert dated August 5, 2021.

years. The current 55 percent threshold will remain in effect until October 25, 2022 (the effective date of the final rule), in order to provide a “grace period” for industry to adjust to the higher threshold. Once the final rule takes effect, the domestic content threshold will increase gradually according to the following schedule:

- 60 percent (for items delivered in calendar years 2022 and 2023)
- 65 percent (for items delivered in calendar years 2024 through 2028)
- 75 percent (for items delivered starting in calendar year 2029)

Under the final rule, a supplier holding a contract with a period of performance that spans the schedule of threshold increases will normally be required to comply with each increased threshold for the items in the year of delivery. For example, a supplier awarded a contract in 2023 will have to comply with the 60 percent domestic content threshold initially, but in 2024 will have to supply products with 65 percent domestic content. However, in response to comments on the proposed rule, the final rule authorizes an agency’s senior procurement executive to allow a supplier to comply with the domestic content threshold that applies at the time of the contract award for the entire period of performance for that contract. The procuring agency must consult with OMB’s “Made in America Office” (MIAO) before exercising this authority.

Consistent with the proposed rule, the final rule establishes a “fallback” threshold that will apply in instances where goods that meet the new, higher domestic content threshold are not available or are of unreasonable cost. In these circumstances, the rule would allow for the acceptance of the former, lower domestic content threshold of 55 percent. For example, if a domestic end product that exceeds the 60 percent domestic content threshold is determined to be of unreasonable cost after application of the price preference, the government will treat an end product that is manufactured in the United States and exceeds 55 percent domestic content (but not 60 percent) as a domestic end product for purposes of the BAA.

The fallback threshold would cease to apply one year after the domestic content threshold increases to 75 percent, in order to “send a clear signal to the Federal marketplace that the Federal Government is fully committed to suppliers who increase their reliance on domestic supply chains.”

The domestic content thresholds set forth in the final rule will not apply to end products or construction materials that consist wholly or predominantly of iron or steel or a combination of both. Such items will continue to be classified as domestic for purposes of the BAA only if the cost of foreign iron and steel constitutes “less than 5 percent of the cost of all the components used” in the end product or construction material. The fallback threshold described above also would not apply to such items.

#### *Increased price preferences for “critical” products and components*

Consistent with the proposed rule, the final rule requires procuring agencies to apply higher price preferences to end products and construction materials that OMB deems to be “critical” to US supply chains or made up of “critical components[.]” This change will take effect on October 25, 2022. The White House has indicated that OMB will soon publish a final rule establishing the list of critical products and components in the FAR, and the level of additional price preference for such items.<sup>[15]</sup>

The White House contends that, by allowing the Federal government to pay an additional premium for critical items made domestically, the enhanced price preferences “will create a steady source of demand that will help catalyze

<sup>[15]</sup> “The Biden-□Harris Plan to Revitalize American Manufacturing and Secure Critical Supply Chains in 2022,” The White House, February 24, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/24/the-biden-harris-plan-to-revitalize-american-manufacturing-and-secure-critical-supply-chains-in-2022>.

domestic production.”<sup>[16]</sup> This is a core objective of the Biden Administration’s new supply chain strategy, which Federal agencies unveiled last month pursuant to President Biden’s Executive Order of February 24, 2021 (EO 14017).

The supply chain reviews that Federal agencies conducted pursuant to EO 14017 will inform OMB’s forthcoming list of critical items. The reviews sought to identify supply chain vulnerabilities, including critical products and components for which the United States lacks domestic production capacity, in six sectors: (1) information and communications technology (ICT); (2) energy; (3) agriculture; (4) public health; (5) defense; and (6) transportation.<sup>[17]</sup> Several of the reviews, including those of the ICT, energy, and transportation sectors, recommended the use of Federal procurement preferences to stimulate demand for critical products made domestically.

After OMB finalizes the list of critical items, it will publish the list in the Federal Register for public comment no less frequently than once every four years. The final rule provides that “unsolicited recommendations for deletions from this list may be submitted at any time and should provide sufficient data and rationale to permit evaluation[.]”

#### *Potential replacement of the “component test”*

In EO 14005, President Biden directed the FAR Council to consider proposing regulations that would replace the “component test” (described above and now called the “domestic content test”) with a test under which domestic content “is measured by the value that is added to the product through U.S.-based production or U.S. job-supporting economic activity,” rather than the cost of components. The FAR Council did not include this change in the proposed rule or the final rule. Instead, the FAR Council’s Federal Register notice on the proposed rule sought public comments regarding “the strengths and shortcomings of the ‘component test,’ as currently structured,” as well as “how domestic content might be better calculated to support America’s workers and businesses[.]” The preamble to the final rule states that the FAR Council and the MIAO will consider the public comments received on this and other topics “as well as related initiatives to strengthen domestic supply chains.”

#### **Outlook**

The increased domestic content thresholds established by the final rule may require some companies to alter their sourcing and manufacturing practices in order to continue benefiting from domestic preferences under the BAA. The enhanced price preferences for domestic “critical” goods will also make it more difficult for foreign suppliers to compete for certain US government contracts, though the impact of this change will depend on the magnitude of the enhanced preferences and the breadth of the list of critical products. Companies should carefully assess the impact of these changes, including whether existing trade agreements such as the GPA or the USMCA entitle their goods to non-discriminatory treatment in Federal government procurement.

The final rule can be viewed here.

#### **Biden Administration Announces Plans to Address Supply Chain Risks in Critical Sectors**

On February 24, 2022, the Biden Administration published the results of its yearlong reviews of supply chain vulnerabilities in six critical sectors: (1) information and communications technology (ICT); (2) energy; (3) agriculture; (4) public health; (5) defense; and (6) transportation. Federal agencies conducted the reviews pursuant to President

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<sup>[16]</sup> Id.

<sup>[17]</sup> The reviews were conducted by the Departments of Commerce, Homeland Security, Energy, Agriculture, Health and Human Services, Defense, and Transportation. The findings of the reviews are available at <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/24/the-biden-harris-plan-to-revitalize-american-manufacturing-and-secure-critical-supply-chains-in-2022>.

Biden's Executive Order 14017 of February 24, 2021, which directed agencies to identify supply chain risks in these sectors and to provide policy recommendations for mitigation.<sup>[1]</sup>

Reflected in each of the supply chain reviews is an overarching concern that the United States lacks domestic production capacity for key raw materials, inputs, and finished products, and thus is reliant on foreign sources (including adversaries) for many critical items. Accordingly, many of the policy recommendations presented in the reports aim to establish or expand domestic manufacturing capacity in the critical sectors. The recommendations rely primarily on domestic policy tools, such as subsidies, tax credits, and regulatory reforms. However, some of the recommendations involve the use of trade policy tools, including domestic content requirements for US government procurement, trade enforcement mechanisms, and export financing.

This alert discusses the key findings and recommendations of the supply chain reviews, particularly as they relate to international trade.

### Scope of supply chain reviews

The supply chain reviews covered the following products and sectors:

- The US Departments of Commerce (DOC) and Homeland Security (DHS) conducted the review of critical Supply chains supporting the US **information and communications technology** industry. For this assessment, the scope of the ICT industrial base consisted of “communications equipment, data storage, and end-user devices, as well as critical software including firmware and open-source software.” These products were identified in part based on the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency's (CISA) National Critical Function criteria (which describes the functions of government and the private sector “so vital to the United States that their disruption, corruption, or dysfunction would have a debilitating effect on national security, economic security, public health or safety.”) Within this defined scope, DOC and DHS focused on the supply chains of a select number of components, devices, and software foundational to multiple facets of the nation's ICT industrial base.
- The US Department of Energy (DOE) conducted the review of the **energy** supply chain. DOE's report focused on 11 technologies and two “crosscutting topics” for priority deep dive assessments. The technologies evaluated included: carbon capture materials; electric grid including transformers and high voltage direct current (HVDC); energy storage; fuel cells and electrolyzers; hydropower including pumped storage hydropower (PSH); neodymium magnets; nuclear energy; platinum group metals and other catalysts; semiconductors; solar photovoltaics (PV); and wind. The crosscutting topics were cybersecurity and digital components and commercialization and competitiveness.
- The US Department of Agriculture (USDA) conducted the review of the US **agri-food** supply chain. USDA defined the US agri-food supply chain as covering “an integrated system from ‘farm to fork’ including food production, processing, distribution, and consumption, including the inputs needed at each of these steps.”
- The US Department of Health and Human Services (HHS) conducted the review of the **public health supply chain and industrial base**. HHS defined the public health supply chain as that which (1) “produces and delivers medical supplies to support the healthcare and public health (HPH) sector,” including both domestic and international suppliers and manufacturers; and (2) “provides PPE, DME, diagnostics, other medical devices, and pharmaceuticals (therapeutics and vaccines) to the American people.” HHS defined the public health industrial base as including (1) “all entities manufacturing or producing medical products and medical countermeasures

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<sup>[1]</sup> Please refer to the W&C US Trade Alert dated March 3, 2021.

(MCMs) including medical devices, medical equipment, pharmaceutical products, and other products designed to improve patient outcomes”; and (2) associated workforces, including research and development facilities, which help produce essential medicines, MCMs, and critical inputs for the HPH sector.

- The US Department of Defense (DOC) conducted the review of **defense-critical** supply chains. DOD’s review focused on four priority areas: (1) kinetic capabilities, including current missiles systems and advanced and developing missile capabilities, including hypersonic weapons technology and directed energy weapons; (2) energy storage and batteries, including high-capacity batteries, with a particular focus on lithium batteries; (3) castings and forgings, including metals or composites developed into key parts and tools through high-intensity processes; and (4) microelectronics, including State-of-the-Practice (SOTP) and legacy microelectronics as well as State-of-the-Art (SOTA) microelectronics.
- The US Department of Transportation (DOT) conducted the review of the **transportation** supply chain. DOT’s review focused on how “freight, logistics, and distribution elements affect supply chain resilience.”

### Supply chain risks and vulnerabilities

Each of the supply chain reviews highlights the United States’ dependence on foreign-sourced materials as a key economic and security vulnerability. In the ICT sector, DOC and DHS highlight “the lack of a domestic ecosystem for many segments of ICT production” and “overreliance on single-source and single-region suppliers” (particularly for production of printed circuit boards, displays, and electronics assemblies). In the energy sector, DOE highlights the lack of US production of many raw materials needed for clean energy technology, such as rare earth elements and precious metals, and the geographical concentration of supply chains for solar and battery technologies in countries “with geopolitical risks” and unfair trade practices. In its review of the defense supply chain, the US Department of Defense (DOD) discusses China’s role in the global supply chain for advanced batteries, as well as “foreign dominance” in the commercial production of semiconductors. The reviews of the health, transportation, and agricultural supply chains raise similar concerns.

### Planned actions and recommendations to “reshore” critical manufacturing

The supply chain reviews and an accompanying White House statement discuss several planned actions and recommendations to mitigate supply chain vulnerabilities in the critical sectors. Many of these initiatives involve the use of domestic policy tools to promote US manufacturing. For example, several of the reports urge Congress to fund programs created by the Creating Helpful Incentives to Produce Semiconductors for America (CHIPS) Act, which would provide grants to companies that invest in semiconductor manufacturing facilities in the United States. Other domestic policy recommendations include the expansion of tax credits for US manufacturing (particularly for clean energy technologies and related inputs), new federal support for research and development, and streamlining Federal laws and regulations to facilitate domestic mining of critical minerals.

In addition to domestic measures, the Biden Administration will seek to use trade policy tools to promote domestic manufacturing, including the following:

- **Domestic content requirements for public procurement.** The Biden Administration will seek to enhance domestic content preferences for federal government procurements subject to the Buy American Act (BAA).<sup>[2]</sup> Specifically, the White House Office of Management and Budget (OMB) will soon issue regulations creating a new category of “critical” products that, if produced domestically, will be eligible for enhanced price

<sup>[2]</sup> The Buy American Act requires the federal government to buy domestic “articles, materials, and supplies” when they are acquired for public use, subject to exceptions for nonavailability of domestic products, unreasonable cost of domestic products, acquisitions subject to certain trade agreements, and situations where it would not be in the public interest to buy domestic products. See *generally* 41 U.S.C. §§ 10a-10d.

preferences under the BAA. The Federal Acquisition Regulatory Council contemplated the creation of such a list in a proposed rule issued in August 2021, but has not yet finalized the rule or the list of critical products.<sup>[3]</sup> The published supply chain reviews indicate that ICT products and services, materials used in the energy sector, and elements of transportation infrastructure (e.g., cranes and chassis) may be among the products eligible for enhanced price preferences under the forthcoming regulations. The Biden Administration contends that this policy will promote US manufacturing by creating a steady source of demand for critical products and components manufactured domestically. The new regulations are expected to be issued in the coming days.

The Biden Administration also will seek to leverage the recent expansion of the “Buy America” statutes to promote the use of US-origin ICT products in infrastructure projects. Distinct from the Buy American Act, which governs direct procurement by Federal agencies, the Buy America statutes place domestic content restrictions on infrastructure projects that receive Federal funding and that non-Federal government agencies, such as state and local governments, carry out.<sup>[4]</sup> The Buy America statutes historically have been limited to transportation projects, but the Bipartisan Infrastructure Law (BIL) enacted in November 2021 significantly expanded them to cover other areas, such as broadband infrastructure, utilities, and electrical transmission projects. Accordingly, the ICT supply chain review recommends implementing “strong Buy America provisions used in projects financed by the Bipartisan Infrastructure Law” and recommends that federal agencies coordinate with OMB “to identify ICT products, such as printed circuit boards and fiber optic cables, eligible for such provisions.”

Though the supply chain reviews call for increased use of domestic content preferences in public procurement, they specify that domestic content preferences should be implemented “consistent with U.S. international trade obligations.” Relevant trade agreements to which the United States is a party include the WTO Agreement on Government Procurement (GPA) and certain US free trade agreements, under which the United States affords non-discriminatory treatment to goods from participating foreign countries when conducting covered procurements.

- **Expansion of Export-Import Bank Financing to domestic transactions with an “export nexus.”** The Biden Administration will seek to establish a new “domestic financing initiative” under the auspices of the Export-Import Bank of the United States (EXIM) to promote US manufacturing. This initiative would expand EXIM’s financing capability by allowing it to provide medium and long-term loans and guarantees for domestic manufacturing or infrastructure facilities with an “export nexus.” Additionally, the initiative would give “financing priority” to environmentally beneficial, small business, and “transformational export area” transactions, including semiconductors, biotech and biomedical products, renewable energy, and energy storage. EXIM has announced that its Board of Directors will vote on the proposed domestic financing initiative this spring.
- **Trade enforcement.** Several of the recommendations involve the use of trade remedies and other enforcement tools to protect US industry from unfair competition. However, these recommendations largely reaffirm existing policies, or are general in nature. For example, DOE notes that US solar manufacturers have faced unfair import competition stemming from “non-market practices,” and affirms that the US government “will continue to provide the trade remedies that U.S. firms are entitled to under U.S. law[.]” Separately, DOC and DHS recommend “work[ing] with partners and allies to implement a comprehensive strategy to counter unfair foreign competition that erodes the resilience of ICT supply chains.” They do not elaborate on what the strategy would entail.

<sup>[3]</sup> Please refer to the W&C US Trade Alert dated August 5, 2021.

<sup>[4]</sup> See, e.g., 49 U.S.C. § 5323(j) (for projects funded by the Federal Transit Administration); 23 U.S.C. § 313 (for the Federal Highway Administration); 49 U.S.C. Chapters 244, 246, and § 24405 (for the Federal Railroad Administration); 49 U.S.C. §50101 (for the Federal Aviation Administration); and 49 U.S.C. § 24305 (for Amtrak).

- **International coordination.** Several of the reports recommend engaging with US allies to promote supply chain resiliency, in some cases by facilitating trade. For example, DOC and DHS recommend that the Biden Administration encourage partners and allies to join the World Trade Organization (WTO)'s Information Technology Agreement (ITA) and the WTO ITA Expansion, in which parties have committed to reduce tariffs on ICT products. Other recommendations propose more generally to “coordinate” with international partners on topics such as investment in ICT manufacturing capacity, information-sharing on supply chain challenges, and promotion of strong sustainability, labor and security standards.

These announcements do not portend major shifts in the Biden Administration’s trade policy, such as the imposition of significant new import restrictions or the pursuit of new free trade agreements to deepen trade with allies. Of the policy initiatives presented, the changes to US procurement policy and the proposed expansion of EXIM financing are likely to have the greatest commercial significance, though the Administration has not yet published the details of these measures. Companies operating in critical sectors should closely monitor these forthcoming initiatives and consider the risks and opportunities they present.

The supply chain reports can be viewed [here](#).

## **US House of Representatives Approves Legislation to Terminate Normal Trade Relations with Russia and Belarus**

On March 17, 2022, the US House of Representatives approved legislation to terminate normal trade relations with Russia and Belarus. The legislation would (1) deny “most-favored nation” (MFN) tariff treatment to imports from these countries; (2) direct the Office of the US Trade Representative (USTR) to encourage other countries to do the same, and consider taking steps towards the suspension of Russia’s participation in the WTO, and (3) extend the President’s authority to impose sanctions under the Global Magnitsky Human Rights Accountability Act. We provide an overview of the legislation below.

### **Suspension of normal trade relations with Russia and Belarus**

Beginning on the day after the date of enactment of the legislation, imports originating from Russia and Belarus would no longer be eligible for the “most-favored nation” (MFN) tariff rates the United States currently applies to imports from all WTO Member countries. Instead, imports originating from Russia and Belarus would be subject to the duty rates set forth in “Column 2” of the Harmonized Tariff Schedule of the United States, which average approximately 32.3% (versus an average MFN rate of 3.3%). The legislation also would authorize the President to increase the rates of duty applicable to products of Russia and Belarus above the levels set forth in Column 2. This authority would expire in 2024.

The proposed legislation would authorize the president to restore normal trade relations with Russia and Belarus if the President submits a “certification” to Congress that Russia or Belarus (or both):

- has reached an agreement relating to the respective withdrawal of Russian or Belarusian forces (or both, if applicable) and cessation of military hostilities that is accepted by the free and independent government of Ukraine;
- poses no immediate military threat of aggression to any North Atlantic Treaty Organization member; and
- recognizes the right of the people of Ukraine to independently and freely choose their own government.

The restoration of MFN tariff rates would take effect 90 days after the President submits the certification, unless Congress enacts a joint resolution of disapproval during the 90-day period.

**“Cooperation and Accountability” at the WTO**

The legislation would direct USTR to use “the voice and influence” of the United States at the WTO to:

- condemn the recent aggression in Ukraine;
- encourage other WTO members to suspend trade concessions to the Russian Federation and the Republic of Belarus;
- consider further steps with the view to suspend the Russian Federation’s participation in the WTO; and
- seek to halt the accession process of the Republic of Belarus at the WTO and cease accession-related work.

The bill will now move to the Senate for consideration.

## US Trade Negotiations

### US Trade Representative Seeks Input on Trade Pillar of the Indo-Pacific Economic Framework

On March 10, the Office of the US Trade Representative (USTR) published a Federal Register notice seeking comments on the “trade pillar” of the proposed Indo-Pacific Economic Framework (IPEF). USTR is seeking public comments to inform its negotiating objectives and positions for the IPEF’s trade pillar, and to identify potential negotiating partners. USTR’s notice envisions a relatively narrow scope for the trade pillar, which will exclude market access commitments and focus instead on digital trade, labor and environmental standards, agriculture, and less controversial issues such as regulatory practices and transparency. USTR contends that this approach will be “an important step towards strengthening U.S. economic engagement in the Indo-Pacific region and promoting durable, broad-based economic growth.”

#### Background

President Biden announced his intention to pursue the IPEF at the East Asia Summit in October 2021, stating that the United States would explore with partners “the development of an Indo-Pacific economic framework that will define our shared objectives around trade facilitation, standards for the digital economy and technology, supply chain resiliency, decarbonization and clean energy, infrastructure, worker standards, and other areas of shared interest.”<sup>[1]</sup> President Biden’s announcement came shortly after China’s formal request to accede to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). China’s request and the recent completion of other trade agreements in the region have placed considerable pressure on the Biden Administration to lay out its own strategy for economic engagement with Indo-Pacific countries.

The Biden Administration has emphasized that the proposed IPEF is not a comprehensive trade agreement, will not include market access commitments, and will not require approval by the US Congress.<sup>[2]</sup> Instead, the IPEF’s trade pillar will focus on a small subset of issues addressed in past free trade agreements, such as digital trade, and the remaining pillars will address non-trade issues such as “clean energy, decarbonization, and infrastructure,” supply chain resiliency, taxation, and anti-corruption.<sup>[3]</sup> The Administration has downplayed suggestions that the IPEF is intended to be a stepping-stone for US accession to the CPTPP, and has indicated repeatedly that it views the CPTPP as outdated and inconsistent with current US priorities.<sup>[4]</sup> Though the US business community continues to advocate US participation in the CPTPP, it has welcomed the IPEF as a potential first step towards more comprehensive regional engagement.<sup>[5]</sup>

The Biden Administration’s broader Indo-Pacific Strategy, published on February 11, 2022, outlined the following vision for the IPEF:

<sup>[1]</sup> “Readout of President Biden’s Participation in the East Asia Summit,” The White House, October 27, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/27/readout-of-president-bidens-participation-in-the-east-asia-summit/>.

<sup>[2]</sup> “Biden Promised to Confront China. First He Has to Confront America’s Bizarre Trade Politics.” Politico, January 31, 2022, <https://www.politico.com/news/magazine/2022/01/31/biden-china-trade-politics-00003379>.

<sup>[3]</sup> According to USTR’s Federal Register notice, USTR will lead negotiations on the trade pillar, whereas the US Department of Commerce will lead negotiations on the remaining pillars.

<sup>[4]</sup> “U.S. won’t join CPTPP but will seek new framework: Raimondo,” Nikkei Asia, November 16, 2021, <https://asia.nikkei.com/Economy/Trade/U.S.-won-t-join-CPTPP-but-will-seek-new-framework-Raimondo>; US trade representative admits need for ‘course correction’ in Asia, Financial Times, November 18, 2021, <https://www.ft.com/content/24c37975-f48f-435a-9c32-e69090412763>.

<sup>[5]</sup> “Multi-Association Letter to Biden Administration Calling for Ambitious Indo-Pacific Economic Framework,” Business Roundtable, February 22, 2022, <https://www.businessroundtable.org/multi-association-letter-to-biden-administration-calling-for-ambitious-indo-pacific-economic-framework>.

Alongside our partners, the United States will put forward an Indo-Pacific economic framework—a multilateral partnership for the 21st century. This economic framework will help our economies to harness rapid technological transformation, including in the digital economy, and adapt to the coming energy and climate transition. The United States will work with partners to ensure that citizens on both sides of the Pacific reap the benefits of these historic economic changes, while deepening our integration. We will develop new approaches to trade that meet high labor and environmental standards and will govern our digital economies and cross-border data flows according to open principles, including through a new digital economy framework. We will work with our partners to advance resilient and secure supply chains that are diverse, open, and predictable, while removing barriers and improving transparency and information sharing. We will make shared investments in decarbonization and clean energy, and work in the Asia-Pacific Economic Cooperation (APEC) to promote free, fair, and open trade and investment, during our host year, in 2023, and beyond.

### **Request for Public Comments on the IPEF Trade Pillar**

USTR's Federal Register notice states that the IPEF's trade pillar will focus on promoting "fair and resilient trade." Under this pillar, USTR aims to develop "high-standard, worker-centered commitments" in the following areas:

- Labor
- Environment and climate
- Digital economy
- Agriculture
- Transparency and good regulatory practices
- Competition policy
- Trade facilitation

USTR's notice indicates that it intends to incorporate at least some elements of prior US trade agreements and develop new disciplines in the IPEF, stating that "[t]he United States will build upon high-standard trade commitments and develop new approaches in trade policy to advance a broad set of worker-centered priorities, and promote durable, broad-based economic growth." However, USTR's notice emphasizes that "at this time, the Administration is not seeking to address tariff barriers."

USTR is seeking public comments on the above-mentioned aspects of the IPEF, as well as "general objectives" of the proposed agreement, issues of particular relevance to small and medium sized-businesses, and "other measures or practices, including those of third-country entities," that undermine fair market opportunities for US business. The deadline for submitting comments on these topics is April 9, 2022.

USTR's Federal Register notice can be viewed [here](#).

## Petitions and Investigations

### **US Department of Commerce Issues Affirmative Preliminary Determinations in Antidumping and Countervailing Duty Investigations of Freight Rail Coupler Systems and Certain Components Thereof from China**

On March 1, 2022, the US Department of Commerce (DOC) announced its affirmative preliminary determination in the countervailing duty (CVD) investigation of freight rail coupler systems and certain components thereof from China. In the CVD investigation, DOC preliminarily determined that imports of the subject merchandise from China received countervailable subsidies valued at 265.99 percent.

Subsequently, on March 9, 2022, DOC announced its affirmative preliminary determination in the antidumping duty (AD) investigation of freight rail coupler systems and certain components thereof from China. In the AD investigation, DOC preliminarily determined that imports of the subject merchandise from China were sold in the United States at dumping margins of 147.11 percent.

DOC initiated these investigations in response to petitions filed by the Coalition of Freight Coupler Producers, the members of which are McConway and Torley, LLC (M&T) (Pittsburgh, PA) and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (the USW) (Washington, DC).

The scope of these investigations covers freight rail car coupler systems and certain components thereof. Freight rail car coupler systems are composed of, at minimum, four main components (knuckles, coupler bodies, coupler yokes, and follower blocks, as specified below) but may also include other items (e.g., coupler locks, lock lift assemblies, knuckle pins, knuckle throwers, and rotors). The components covered by the investigations include: (1) E coupler bodies; (2) E/F coupler bodies; (3) F coupler bodies; (4) E yokes; (5) F yokes; (6) E knuckles; (7) F knuckles; (8) E type follower blocks; and (9) F type follower blocks, as set forth by the Association of American Railroads (AAR). The freight rail coupler components are included within the scope of the investigations when imported individually, or in some combination thereof, such as in the form of a coupler fit (a coupler body and knuckle assembled together), independent from a coupler system.

The coupler systems that are the subject of these investigations are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting number 8607.30.1000. Unfinished subject merchandise may also enter under HTSUS statistical reporting number 7326.90.8688. Subject merchandise attached to finished rail cars may also enter under HTSUS statistical reporting numbers 8606.10.0000, 8606.30.0000, 8606.91.0000, 8606.92.0000, 8606.99.0130, 8606.99.0160, or under subheading 9803.00.5000 if imported as an Instrument of International Traffic. A full description of the scope can be found in DOC's Federal Register notices.

DOC is scheduled to issue its final determination in the AD investigation by May 23, 2022, and the US International Trade Commission (ITC) is scheduled to issue its final determination of injury by July 7, 2022. If both agencies issue affirmative final determinations, DOC will issue an antidumping duty order on imports of this product from China. If either agency issues a negative final determination, the investigation will be terminated.

DOC is scheduled to issue its final determination in the CVD investigation by May 16, 2022, and the ITC is scheduled to issue its final determination of injury by June 30, 2022. If both agencies issue affirmative final determinations, DOC will issue a countervailing duty order on imports of this product from China. If either agency issues a negative final determination, the investigation will be terminated.

According to DOC, imports from China under HTSUS subheading 8607.30.1000 were valued at approximately \$28 million in 2020.

## US Department of Commerce Issues Preliminary Determinations in Countervailing Duty Investigations of Oil Country Tubular Goods from Russia and South Korea

On March 9, 2022, the US Department of Commerce (DOC) announced its affirmative preliminary determination in the countervailing duty (CVD) investigation of oil country tubular goods (OCTG) from Russia and its negative preliminary determination in the CVD investigation of OCTG from South Korea. In its investigations, DOC preliminarily determined that imports of OCTG from Russia received countervailable subsidies ranging from 1.37 to 1.68 percent. DOC preliminarily determined that imports of OCTG from Korea received countervailable subsidies of 0.17 percent (below the *de minimis* level) for Hyundai Steel Corporation, and of 0 percent for SeHA Steel Corporation.

The petitioners in these investigations are Borusan Mannesmann Pipe U.S., Inc. (Baytown, TX); PTC Liberty Tubulars LLC (Liberty, TX); U.S. Steel Tubular Products, Inc. (Pittsburgh, PA); United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (Pittsburgh, PA); and Welded Tube USA, Inc. (Lackawanna, NY).

The merchandise covered by the investigations is certain oil country tubular goods, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than case iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish ( e.g., whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the investigations also covers OCTG coupling stock.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise processed in a third country, including by performing any heat treatment, cutting, upsetting, threading, coupling, or any other finishing, packaging, or processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the OCTG.

Excluded from the scope of the investigations are: Casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise subject to these investigations is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.1010, 7304.29.1020, 7304.29.1030, 7304.29.1040, 7304.29.1050, 7304.29.1060, 7304.29.1080, 7304.29.2010, 7304.29.2020, 7304.29.2030, 7304.29.2040, 7304.29.2050, 7304.29.2060, 7304.29.2080, 7304.29.3110, 7304.29.3120, 7304.29.3130, 7304.29.3140, 7304.29.3150, 7304.29.3160, 7304.29.3180, 7304.29.4110, 7304.29.4120, 7304.29.4130, 7304.29.4140, 7304.29.4150, 7304.29.4160, 7304.29.4180, 7304.29.5015, 7304.29.5030, 7304.29.5045, 7304.29.5060, 7304.29.5075, 7304.29.6115, 7304.29.6130, 7304.29.6145, 7304.29.6160, 7304.29.6175, 7305.20.2000, 7305.20.4000, 7305.20.6000, 7305.20.8000, 7306.29.1030, 7306.29.1090, 7306.29.2000, 7306.29.3100, 7306.29.4100, 7306.29.6010, 7306.29.6050, 7306.29.8110, and 7306.29.8150.

The merchandise subject to the investigations may also enter under the following HTSUS item numbers: 7304.39.0024, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.39.0062, 7304.39.0068, 7304.39.0072, 7304.39.0076, 7304.39.0080, 7304.59.6000, 7304.59.8015, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050, 7304.59.8055, 7304.59.8060, 7304.59.8065, 7304.59.8070, 7304.59.8080, 7305.31.4000, 7305.31.6090, 7306.30.5055, 7306.30.5090, 7306.50.5050, and 7306.50.5070.

A full description of the scope can be found in DOC's Federal Register notice.

DOC is scheduled to issue its final determination in these investigations by July 18, 2022, and the US International Trade Commission (ITC) is scheduled to issue its final determinations of injury by September 1, 2022. If both agencies issue affirmative final determinations, DOC will issue antidumping duty orders on imports of this product from Russia and/or Korea. If either agency issues a negative final determination, the investigations will be terminated.

According to DOC, imports of certain OCTG products from Russia and Korea were valued at approximately \$31.4 million and \$194.6 million, respectively, in 2020.