

US Multilateral Trade and Policy Developments

Japan External Trade Organization

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Trade Policy Developments

US Environmental Protection Agency Issues Final Rule on Reporting Historical Imports and Production of PFAS

On September 28, 2023, the US Environmental Protection Agency (EPA) unveiled its finalized reporting and recordkeeping rule for Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS).¹ The new rule requires all persons who have manufactured or imported products containing PFAS at any time since 2011 to report those activities to the EPA. Covered persons will have to examine production processes and supply chains more carefully than in the past, creating a significant new compliance requirement for a broad set of importers and manufacturers. The EPA itself estimates that total compliance costs for industry could be over \$800 million.

PFAS are a class of durable synthetic organic compounds widely used in industry for their water-, oil-, and stain-resistant properties. Some of these compounds can persist in nature for long spans of time and are increasingly bioaccumulating in wildlife and humans. In recent years, research has begun to suggest there are links between certain PFASs and cancer, birth defects, immune system suppression, increased cholesterol levels, and hormone interference.² Public concerns are serious enough that jurisdictions are increasingly monitoring and even banning the substances.

Scope of coverage

Persons that have manufactured PFAS, manufactured products containing PFAS, imported PFAS, or emitted PFAS during a manufacturing process at any time since January 1, 2011, for a commercial purpose may be subject to the reporting rule. Exempt from this requirement are persons that have only “processed, distributed in commerce, used, and/or disposed of PFAS,” but not produced or imported PFAS. Potentially affected industries include construction, manufacturing, wholesale trade, retail trade, and waste management. The EPA is advising companies to carefully examine the rule’s applicability criteria to determine whether it covers them.

For this rule, the EPA is using a structural definition of PFAS instead of an exhaustive list of specific chemical compounds. The final rule defines PFAS as including at least one of the below three chemical structures:

- R-(CF₂)-CF(R')R”, where both the CF₂ and CF moieties are saturated carbons;
- R-CF₂OCF₂-R', where R and R' can either be F, O, or saturated carbons; and
- CF₃C(CF₃)R'R”, where R' and R” can either be F or saturated carbons.

The definition may not match definitions of PFAS used elsewhere, as the EPA has customized the definition to fit the needs of the law. The final definition is also broader than the definition the EPA had earlier proposed in the draft rule, which had focused strictly on highly persistent, fully fluorinated PFASs. The EPA broadened the rule to target additional compounds that may be persistent in the environment.

The EPA’s February 2023 TSCA Chemical Substance Inventory identified 1,462 such PFAS compounds manufactured, processed, or imported in the United States between 2006 and 2023.³ These compounds are in thousands of products, including semiconductors, printed circuit boards, vehicles, pharmaceuticals, cosmetics,

¹ “TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances,” September 28, 2023, accessible here: <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/tsca-section-8a7-reporting-and-recordkeeping>.

² “Our Current Understanding of the Human Health and Environmental Risks of PFAS,” June 2023, accessible here: <https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas>.

³ TSCA Chemical Substance Inventory is accessible here: <https://www.epa.gov/tsca-inventory>.

clothing, food packaging, fire extinguishing foams, paints, upholstery, and cookware. Limited past attention to tracking them means companies may not be aware that their products contain covered substances.

The reporting obligation

The regulations require that covered persons file a report describing the product's uses, production volumes, disposal, exposures, and hazards with the EPA. Covered persons have 18 months from the time the regulation becomes effective to file these reports. Small manufacturers whose reporting obligations are only for imported articles will have 24 months to file the report.⁴ This is a one-time report and there are no continuing obligations, other than a requirement to retain all records of the report for five years.

Under the law, the reports should include the following information for each year the activity occurred:

- "The covered common or trade name, chemical identity and molecular structure of each chemical substance or mixture;"
- "Categories or proposed categories of use for each substance or mixture;"
- "Total amount of each substance or mixture manufactured or processed, the amounts manufactured or processed for each category of use, and reasonable estimates of the respective proposed amounts;"
- "Descriptions of byproducts resulting from the manufacture, processing, use, or disposal of each substance or mixture;"
- "All existing information concerning the environmental and health effects of each substance or mixture;"
- "The number of individuals exposed, and reasonable estimates on the number of individuals who will be exposed, to each substance or mixture in their places of work and the duration of their exposure;" and
- "The manner or method of disposal of each substance or mixture, and any change in such manner or method."

There is a streamlined reporting processes available for persons that imported articles containing PFAS if they are unable to ascertain the information listed in the general questionnaire. These streamlined reports include company site information, descriptions of the covered PFAS, categories and sectors of use, industrial processing categories, consumer use information, PFAS concentration, and production volume.

The rule's reporting standard is "information known to or reasonably ascertainable by the manufacturer" and includes some practical limits on how far companies must go to identify PFAS in their products. This standard generally requires covered persons evaluate their current level of knowledge of their manufacturing (or importing) processes and evaluate what a similarly situated reasonable person could be expected to know. The EPA expects covered persons to conduct a detailed inquiry throughout their organizations and potentially with suppliers and customers.

Covered persons should submit the reports electronically through the PFAS 8(a)(7) reporting tool on the EPA's Central Data Exchange (CDX).⁵ The regulations include instructions on how companies should protect confidential business information in their reports, as the reports' contents will be publicly accessible.

The EPA's efforts to regulate PFAS

⁴ Small manufacturers are defined in 40 CFR 704.3.

⁵ CDX is accessible here: <https://cdx.epa.gov/>.

Congress instructed the EPA to develop this reporting rule in the National Defense Authorization Act for Fiscal Year 2020's amendments to the Toxic Substances Control Act (TSCA).⁶ The EPA has been developing the rule since then, publishing a proposed rule for public comments in June 2021,⁷ convening a Small Business Advocacy Review (SBAR) Panel in April 2022,⁸ and issuing an Initial Regulatory Flexibility Analysis (IRFA) in November 2022.⁹ The final rule will enter effect 30 days after the EPA publishes it to the Federal Register.

Implementing the reporting rule is part of a broader EPA PFAS Strategic Roadmap, announced in October 2021.¹⁰ The Roadmap is an EPA-wide strategy to improve research on PFAS, begin restricting PFAS pollution, and remediating PFAS contamination. Other proposed activities include creating a national health testing strategy, introducing nationwide drinking water monitoring and PFAS limits for drinking water, creating new industrial emissions limits, designating certain PFAS as regulated hazardous substances, updating PFAS disposal guidance, improving research on PFAS air emissions, developing human toxicity assessments, launching a new voluntary program to reduce use of PFAS, and improving public outreach. The EPA has already begun moving forward with new rules on drinking water, hazardous substance designations, effluent guidelines, and chemical safety.

A pre-publication copy of the EPA's final rule is accessible here: https://www.epa.gov/system/files/documents/2023-09/prepublicationcopy_7902-02_fr-doc_aa_esignatureverified_2023-09-28.pdf.

US Congress Considering New Bills on Supply Chain Security

In September 2023, members of the House of Representatives introduced three new bills and circulated a discussion draft of another that all seek to strengthen the US industrial base and protect critical supply chains. These new bills, as well as a September congressional hearing meant to promote them, are the latest efforts to shift how the US government thinks about private sector supply chains and reliance on international trade. Congress passed laws in 2022 that strengthen and onshore supply chains for green energy manufacturing and semiconductors, but the broader trade and supply chain policy proposals that members of Congress are discussing have so far not become successful legislation.

The hearing and different political interests

The current set of bipartisan supply chain security bills focus on establishing federal agencies responsible for monitoring supply chains and ordering feasibility studies for broader supply chain reshoring efforts. The House Subcommittee on Innovation, Data, and Commerce of the Committee on Energy and Commerce discussed several of these new supply chain security bills in a hearing on September 20, 2023. At the hearing, members of Congress and witnesses called for measures that would improve monitoring of supply chain risks, onshore more manufacturing activity, reduce trade with China, and establish new subsidies for domestic industries, among other policy options.¹¹

⁶ TSCA section 8(a)(7), accessible here: <https://uscode.house.gov/view.xhtml?path=/prelim@title15/chapter53&edition=prelim>.

⁷ "Proposed Rule: Toxic Substances Control Act Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances," EPA-HQ-OPPT-2020-0549, June 28, 2021, accessible here: <https://www.regulations.gov/document/EPA-HQ-OPPT-2020-0549-0001>.

⁸ SBAR Panel: TSCA Section 8(a)(7) Rule: Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances, accessible here: <https://www.epa.gov/reg-flex/sbar-panel-tsc-section-8a7-rule-reporting-and-recordkeeping-requirements-perfluoroalkyl>.

⁹ "Initial Regulatory Flexibility Analysis and Updated Economic Analysis for TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances," November 2022, accessible here: https://www.epa.gov/system/files/documents/2022-11/2070-AK67_TSCA_8a7_IRFA_11-25-22_clean.pdf.

¹⁰ "PFAS Strategic Roadmap: EPA's Commitments to Action 2021-2024," April 24, 2023, accessible here: <https://www.epa.gov/pfas/pfas-strategic-roadmap-epas-commitments-action-2021-2024>.

¹¹ "Mapping America's Supply Chains: Solutions To Unleash Innovation, Boost Economic Resilience, And Beat China," September 20, 2023, accessible here: <https://energycommerce.house.gov/events/innovation-data-and-commerce-committee-hearing-mapping-america-s-supply-chains-solutions-to-unleash-innovation-boost-economic-resilience-and-beat-china>.

There are significant partisan differences over how Congress should approach these issues, which the hearing highlighted. Republican subcommittee chair Rep. Gus Bilirakis (R-FL) expressed frustration with the lack of legislative action on construction permitting reform and Democrats' focus on costly industrial subsidies. Instead, he called for supply chain measures to prioritize the security of emerging technologies and critical supply chains.

Democrats, besides advocating for manufacturing subsidies, are also pushing for supply chain legislation to include labor unions as a key stakeholder. The more expansive Democrat proposals are in the Supply CHAINS Act¹² and several related bills, which combine the establishment of an executive branch office to monitor supply chains with subsidy programs for domestic manufacturing. Republicans excluded the Supply CHAINS Act from the committee hearing, and it will not move forward in a Republican-led House. These partisan efforts may however reemerge after the next election cycle.

Overview of the major bipartisan bills

- **H.R. XXXX, to establish a supply chain resiliency and crisis response program in the Department of Commerce, and for other purposes:**¹³ This bill, which is still under development, would establish a Supply Chain Resilience and Crisis Response Program at the Department of Commerce. The program would promote US leadership in critical industries and partner with private industry to promote supply chain resilience. Under the current discussion draft, the program would map and monitor critical supply chains, identify current and future supply chain vulnerabilities, look for opportunities to reduce supply chain vulnerabilities, build US critical industry capacity, develop contingency plans for supply chain crises, and promote diverse supply chains. The program would publish a report every two years on critical supply chain security matters, including identifying a list of critical supply chain industries. According to the draft bill, these industries should include artificial intelligence, autonomous vehicles, blockchain, quantum computing, 5G, internet of things, nanotechnology, robotics, microelectronics, and semiconductors.

Rep. Larry Bucshon (R-IN) is leading the bill's development, and it was one of the priorities for the September House hearing. Representatives are still revising the bill as they look for a compromise that could bring it to the floor for a successful vote. Democrats have expressed skepticism of the current draft of the bill, objecting to its exclusion of labor unions from the list of stakeholders the Commerce program would have to consult. Discussions are continuing, however, and there may be a route to a bipartisan bill.

- **H.R. 5390, the Critical Infrastructure Manufacturing Feasibility Act:**¹⁴ H.R. 5390 would require the Commerce Department to identify high-demand products for which the United States relies on foreign sources and develop proposals for manufacturing those products in the United States. The bill's priority sectors would be chemicals, commercial facilities, communications, critical manufacturing, hydroelectric dams, defense industrial base, emergency services, energy, financial services, food and agriculture, government facilities, healthcare and public health, information technology, nuclear reactors and materials, transportation systems, and water and wastewater systems.¹⁵

¹² H.R.763 - Supply CHAINS Act, accessible here: <https://www.congress.gov/bill/118th-congress/house-bill/763>.

¹³ "To establish a supply chain resiliency and crisis response program in the Department of Commerce, and for other purposes," discussion draft, accessible here: <https://www.congress.gov/118/meeting/house/116387/documents/BILLS-118pih-ToestablishasupplychainresiliencyandcrisisresponseprogramintheDepartmentofCommerceandforotherpurposes.pdf>.

¹⁴ H.R.5390 - Critical Infrastructure Manufacturing Feasibility Act, accessible here: <https://www.congress.gov/bill/118th-congress/house-bill/5390>.

¹⁵ H.R. 5390 relies on the critical sectors established in "Presidential Policy Directive -- Critical Infrastructure Security and Resilience," February 12, 2013, accessible here: <https://obamawhitehouse.archives.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil>.

Rep. Mariannette Miller-Meeks (R-IA), supported by two Republican and five Democrat co-sponsors, introduced the bill on September 12, 2023. It was referred to the House Committee on Energy and Commerce.

- **H.R. 5398, the Advancing Tech Startups Act:**¹⁶ The goal of the bill is to reduce US dependence on foreign technology by expanding US innovation and technology industries. H.R. 5398 would require the Department of Commerce to conduct a two-year study on the effect of technology startups on the US economy and develop proposals for promoting the growth of the sector. The study would include mapping jurisdictions and relevant regulations, surveying relevant markets and supply chains, and identifying federal laws and regulations that are barriers to tech startups. Congress could use the results of the study to inform future legislation to facilitate tech startups.

Rep. Bill Johnson (R-OH) and Rep. Dean Phillips (D-MN) introduced the bill on September 12, 2023. It was referred to the House Committee on Energy and Commerce.

- **H.R.5703, Strategic Homeland Investment in Economic and Logistical Defense (SHIELD) Act:**¹⁷ The SHIELD Act would establish an Office of Economic and Security Preparedness and Resilience as an executive branch office, unlike the other bills that are establishing offices within the Department of Commerce. The office would oversee government efforts to ensure robust supply chains and protect domestic production of critical products (semiconductors, critical minerals, pharmaceuticals, and metal castings and forgings). The office would also develop performance measures for supply chain resiliency and gather data on supply chain dependences involving China. The bill would also establish a separate Defense Mobilization Unit executive branch office, which would assess gaps in the US defense industrial base and recommend policy responses.

Rep. Rosa DeLauro (D-CT) and Rep. Jim Banks (R-IN) introduced H.R.5703 on September 26, 2023. It was referred to the House Committee on Energy and Commerce.

US and EU Officials Fail to Reach Agreement on Global Arrangement on Sustainable Steel and Aluminum; Reaffirm Commitments in Other Areas

On October 20, 2023, President of the European Council, Charles Michel, and the President of the European Commission, Ursula von der Leyen met with US President Joe Biden for the EU-US Summit in Washington. Despite speculations that an interim agreement would be reached on the Global Arrangement on Sustainable Steel and Aluminum (GASSA), the discussions of the EU-US Summit focused on less controversial topics, such as support for Ukraine and the common position in relation to the situation in the Middle East.

With respect to the GASSA, the leaders simply acknowledged the progress in negotiations on the arrangement and confirmed an agreement could not be reached in the initially established timeframe (*i.e.*, by October 31, 2023), but should be expected in the next two months. The EU-US Joint Statement states: “On 31 October 2021, we announced that we would negotiate within two years an arrangement (...) Throughout these two years, we have made substantial progress to identify the sources of non-market excess capacity. We have also achieved a better understanding of the tools to address the emissions intensity of the steel and aluminum industries. We look forward to continuing to make progress on these important objectives in the next two months.”¹⁸

The absence of tangible outcomes regarding the GASSA can be attributed to the existing controversial points between the two sides, which seem too profound to bridge. The United States has stated that it will only abolish its tariffs on EU steel and aluminum imports – currently on a two-year pause – if the EU commits to imposing similar

¹⁶ H.R.5398 - Advancing Tech Startups Act, accessible here: <https://www.congress.gov/bill/118th-congress/house-bill/5398>.

¹⁷ H.R.5703 - SHIELD Act, accessible here: <https://www.congress.gov/bill/118th-congress/house-bill/5703>.

¹⁸ The EU-US Joint Statement is accessible here: <https://www.consilium.europa.eu/media/67448/us-eu-statement-final.pdf>.

tariffs on China. The United States argues that China is saturating the market with low-priced metals. On the other hand, the EU emphasizes its obligation to adhere to international trade rules, by initiating an investigation to confirm China is subsidizing its producers.

With respect to the EU-US Critical Minerals Agreement, which would enable European producers to benefit from incentives under the Inflation Reduction Act (IRA), EU and US leaders have also simply noted progress on negotiations, but no significant breakthrough was announced, nor a specific timeline for reaching an agreement was provided. The Joint Statement reads: “We have made progress toward a targeted critical minerals agreement for the purpose of expanding access to sustainable, secure, and diversified high-standard critical mineral and battery supply chains and enabling those minerals extracted or processed in the European Union to count toward requirements for clean vehicles in the Section 30D clean vehicle tax credit of the Inflation Reduction Act. We look forward to continuing to make progress and consulting with our respective stakeholders on these negotiations in the coming weeks.”

Commitments and common position on other relevant topics

As announced in a background briefing the day before the Summit, the discussions covered several key topics.

- **Trade-related cooperation:** In addition to noting progress in relation to the GASSA and the EU-US Critical Minerals Agreement, the parties stressed the importance of increasing economic resilience and security by addressing non-market practices, enhancing supply chain security, addressing threats to technology security and risks of leakage, and countering economic coercion.
- **Climate change, energy, and green and digital transitions:** The leaders emphasized their dedication to combating climate change, with a target of achieving climate neutrality by 2050. This includes initiatives to combat the loss of biodiversity and to prioritize ocean conservation. With the upcoming 28th United Nation Climate Change Conference (COP28) in Dubai, both sides are actively pushing for ambitious environmental measures, especially from major global players. They also highlighted their commitment to the Global Methane Pledge, initiated in November 2021, which seeks collaborative efforts from countries worldwide to substantially reduce methane emissions.
- **Artificial Intelligence (AI) and emerging technologies:** As announced in previous Trade and Technology Council (TTC) meetings, the parties are working together on AI risk management and benefits, aligned with global entities like the G7 and OECD. They are emphasizing trustworthy AI through the TTC Joint Roadmap and plan to endorse a conduct code for AI systems. Their goal is to use AI for public sectors like agriculture and health. They also recognized the importance of research collaboration in other critical and emerging technologies, such as quantum and renewable energies.
- **China and Indo-Pacific relations:** Both sides advocate for a free and open Indo-Pacific, promoting stability, prosperity, democratic values, and international law. Their strategies for the region include enhancing maritime awareness, countering foreign information manipulation, increasing cyber coordination, and upholding human rights. They strongly support ASEAN's central role and are committed to partnering with Pacific Island nations. With respect to China, the EU and US leaders urged China to engage in global discussions on issues like climate change and health and expressed intent for a collaborative and constructive relationship. To ensure sustainable economic ties with China, both sides announced a focus on bolstering their own economies, minimizing vulnerabilities, and protecting advanced technologies. Concerns were raised about maritime disputes in the China Seas and human rights violations in China.

US Commerce Department Issues Updated Semiconductor Export Controls

The US Department of Commerce's Bureau of Industry and Security (BIS) published three updated rules for its semiconductor export controls on October 17, 2023. The updates widen the controls to cover more types of

advanced semiconductors, add restrictions on overseas subsidiaries, expand coverage of wafer manufacturing equipment, extend some of the controls to all countries subject to US arms embargoes,¹⁹ and add new Chinese companies to the Entity List. BIS intends for these updates to close certain pathways that companies are using to bypass the previous controls, maintaining the original controls' continued effectiveness. Some of these changes will be significant for semiconductor fabricators and manufacturing equipment suppliers. Stakeholders should examine the changes detailed in the rules carefully to determine applicability of the newly covered products, countries, entities, and US person activities.

BIS issued the original interim final rule for semiconductor export controls targeting China and Hong Kong (later adding Macau) on October 7, 2022.²⁰ The rules amended the Export Administration Regulations (EAR), establishing new controls on advanced semiconductors and related manufacturing activities (Advanced Computing Rule). In particular, the new controls established new Export Control Classification Numbers (ECCNs) and license requirements for certain integrated circuits (ICs or chips), computer commodities, and other software and technology; expanded the scope of foreign-produced items subject to the EAR and associated licensing requirements for 28 existing entities on the Entity List; added two new provisions to the Foreign-Direct Product (FDP) rules; and restricted the activities of US persons.

Advanced computing chips interim final rule updates

The changes to the advanced computing and supercomputing chips export controls adjust the parameters used for determining whether a chip is restricted and impose new measures to reduce circumvention risks, as well as respond to relevant stakeholder comments BIS received in response to the October 2022 rules. Preventing circumvention is an important priority for these changes, with BIS limiting previously uncontrolled chips that are functionally similar to those covered by the previous controls and Chinese company subsidiaries in third countries that may be obtaining access to controlled chips. The changes include, but are not limited to, the following actions:

- **Expanding coverage of chips:** Reorganizes and expands ECCN 3A090 to control a broader set of chips and counter efforts to design new chips that fall just outside the coverage of the original controls. The changes revise ECCN 3A090 to remove paragraph a and adding in its place simplified control paragraphs .a and .b, along with a conforming change to ECCN 3A991.p. The updated controls will now restrict chips if they exceed either the original performance threshold rule or a new performance density threshold parameter, replacing the original "interconnect bandwidth" parameter. BIS expects the performance density threshold will prevent companies from working around the previous performance parameters by purchasing large numbers of small chips and then combining them to perform the work of larger, more powerful chips. The changes to the chips controls also replaces the original criterion "any other item on CCL [Commerce Control List] that meet or exceed the performance parameters of 3A090 or 4A090" by specifically identifying those items in new .z paragraphs in the ECCNs.
- **Introducing new notification requirements for other chips:** Certain consumer-grade chips under these expanded classifications will be subject to a new License Exception Notified Advanced Computing (NAC). The License Exception NAC will require companies to file an advance notification with BIS for certain chips that fall

¹⁹ The categories of embargoed countries included in the various lists referenced in these rules can be found in the Country Group D table of "Supplement No. 1 to Part 740, Title 15," accessible here: <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-740/appendix-Supplement%20No.%201%20to%20Part%20740>.

²⁰ "Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use; Entity List Modification," 87 FR 62186 (October 13, 2023), accessible here: <https://www.federalregister.gov/documents/2022/10/13/2022-21658/implementation-of-additional-export-controls-certain-advanced-computing-and-semiconductor>.

just outside the restriction thresholds. BIS will have 25 days to determine whether the transaction may proceed or will require a license.

- **Expanding the consumer product exception:** ECCNs 3A991.p and 4A994.l will be eligible for License Exception Consumer Communication Devices (CCD, 15 CFR 740.19), exempting certain chips used in consumer product applications from the controls.
- **Expanding export controls to other arms-embargoed countries:** Expands coverage of the National Security (NS) and Regional Stability (RS) license requirements to countries listed in Country Groups D:1, D:4, and D:5 that are not also in Country Groups A:5 or A:6 (restricted countries). BIS will review licenses for China, Macau, and Country Group: D:5 (prohibited countries) under a presumption of denial, while the other restricted countries will usually be reviewed under a presumption of approval. The rule also expands the FDP rules to all prohibited countries and to entities worldwide with ultimate parent companies in the prohibited countries.
- **New end-use controls for companies with a prohibited country parent:** Adds two new end-use controls on (i) chips for entities outside of restricted countries whose ultimate parent is headquartered in a prohibited country and (ii) transfer within or from prohibited countries of controlled technologies used in production of chips. The purpose of this expansion is to prevent Chinese-owned entities from acquiring chips for the creation of data centers in third countries.
- **Elaborating on diligence guidance:** Adding new red flags to assist with compliance, including on recognizing products covered by the FDP rules. BIS expects this elaborated guidance to help prevent covered companies from circumventing the controls by hiring foundries to manufacture restricted chips.
- **Includes a Temporary General License:** Adding a new Temporary General License (TGL) for advanced computing items for certain end uses.
- **Expanding the US person restriction:** Expands the restrictions on US persons to include license requirements for US persons that support activities that will be used to develop semiconductors at a prohibited entity facility.

The updated chips rules do not include new restrictions on cloud computing services (referred to as infrastructure as a service), but BIS is considering such an action. BIS is concerned that Chinese companies are using offshore data processing services to circumvent the export controls. The new rules seek public feedback on how BIS could handle circumvention risks associated with these computing services in future rules, among other topics on which BIS is seeking feedback. The Biden administration then went further in exploring controls on cloud computing with an Executive Order (EO) on AI safety, issued on October 30, 2023.²¹ The EO instructs the Commerce Department to develop a rule requiring US providers of infrastructure as a service to report foreign persons who use their services to train certain large AI models. BIS may use the information gathered through this reporting system to inform the development of future export controls.

Semiconductor manufacturing equipment interim final rule updates

The updates to the semiconductor manufacturing equipment (SME) export controls make various changes to the product, person, and country coverage, as well as responding to relevant comments BIS received in response to the October 2022 rules. The changes include, but are not limited to, the following actions:

- **Expanding SME coverage:** Adding more types of SME to those that had been previously described under ECCN 3B090, moving all such items to expanded ECCN 3B001 and ECCN 3B002 and retiring ECCN 3B090.

²¹ Executive Order 14110 of October 30, 2023, "Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence," 88 FR 75191, accessible here: <https://www.federalregister.gov/documents/2023/11/01/2023-24283/safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence>.

These additions are items related to fabricating logic integrated circuits with non-planar transistor architecture or with a production technology node of 16/14 nanometers or less. BIS has also revised other parts of the rule to account for this change.

- **Ending exemptions for certain SME containing US inputs:** Lowering the US-origin *de minimis* value to 0% for items described in the new ECCN 3B001.f.1.b.2.b, essentially ending a previous exemption. The *de minimis* rule had allowed certain SME from Japan and the Netherlands that contained certain US content to still be shipped to China. Those machines will now fall under the BIS export controls unless they are already subject to local export controls.
- **Expanding controls to all arms-embargoed countries:** Expanding the SME license requirements and end-use controls to include all countries subject to a US arms embargo (Country Group D:5), in addition to China and Macau.
- **Adding a new TGL:** Adding a new TGL to provide SME producers in the United States and in Country Groups A:5 and A:6 until December 31, 2025, to identify alternative sources of supply outside of Country Group D:5, or to acquire individually validated licenses.
- **Refining US person controls:** Revising and reformatting the US persons activities controls and supercomputer and semiconductor manufacturing end-use controls to improve focus on activities that support advanced semiconductor facilities.

Entity List additions final rule

The Entity List update adds two new Chinese semiconductor companies and various subsidiaries²² to the Entity List and harmonizes existing listings with the updated license review process. BIS asserts these companies are engaged in the development of advanced computing integrated circuits, which contradicts US security interests described in the updated export control regulations. Licenses for exports, reexports, and transfers (in-country) to these companies of all items subject to the EAR (including foreign produced items made with US technology, the FDP rules) will have a presumption of denial. The Entity List change includes a savings clause, allowing certain active shipments to proceed under the previous rules.

Implementation and public feedback

The updated semiconductor and manufacturing equipment export controls are effective 30 days after publication on November 17, 2023. Stakeholders will have 60 days to submit comments on the two export control rules, with comments due no later than December 18, 2023. The Entity List additions were effective upon their circulation on October 17, 2023.

BIS will likely continue publishing updates to the export controls annually, to account for changing trade patterns and technologies. In developing these updates, BIS will consider stakeholder feedback submitted in response to the current update's call for input.

- The updated interim final rule for export controls on certain advanced computing items; supercomputer and semiconductor end use, is accessible here: <https://www.federalregister.gov/documents/2023/10/25/2023-23055/implementation-of-additional-export-controls-certain-advanced-computing-items-supercomputer-and>.

²² Beijing Biren Technology Development Co., Ltd.; Guangzhou Biren Integrated Circuit Co., Ltd.; Hangzhou Biren Technology Development Co., Ltd.; Light Cloud (Hangzhou) Technology Co., Ltd.; Moore Thread Intelligent Technology (Beijing) Co., Ltd.; Moore Thread Intelligent Technology (Chengdu) Co., Ltd.; Moore Thread Intelligent Technology (Shanghai) Co., Ltd.; Shanghai Biren Information Technology Co., Ltd.; Shanghai Biren Integrated Circuit Co., Ltd.; Shanghai Biren Intelligent Technology Co., Ltd.; Superburning Semiconductor (Nanjing) Co., Ltd.; Suzhou Xinyan Holdings Co., Ltd.; and Zhuhai Biren Integrated Circuit Co., Ltd.

- The updated interim final rule for export controls on semiconductor manufacturing items is accessible here: <https://www.federalregister.gov/documents/2023/10/25/2023-23049/export-controls-on-semiconductor-manufacturing-items>.
- The Entity List additions are accessible here: <https://www.federalregister.gov/documents/2023/10/19/2023-23048/entity-list-additions>.

BIS plans to hold a virtual public briefing on the updated export controls on November 6, 2023. Interested stakeholders can find information about the briefing on BIS' export controls update announcement page, accessible here: <https://www.bis.doc.gov/index.php/about-bis/newsroom/2082>.

Trade Agreements

United States and United Kingdom Explore New Trade Agreement

The United States and the United Kingdom have begun to negotiate a limited free trade agreement (FTA), reportedly modeled after Indo-Pacific Economic Framework for Prosperity (IPEF). Negotiations began in October 2023 (running alongside negotiations for the already announced US-UK Critical Minerals Agreement) with a goal of completing a foundational agreement in early 2024. Though still short of a traditional FTA, the agreement would go farther than what the parties had previously acknowledged.

According to UK Government sources, negotiations are building on the framework of the “Atlantic Declaration” that President Biden and Prime Minister Rishi Sunak announced in Washington in June 2023.²³ The Atlantic Declaration covered issues relating primarily to security and defense cooperation, but it also included limited trade commitments dealing foremost with negotiations on critical minerals that would allow the UK to cash in on the Inflation Reduction Act’s green vehicle subsidies and the establishment of a US-UK data bridge to facilitate bilateral data flows as well as trans-Atlantic cooperation on critical and emerging technologies such as artificial intelligence and supply chains security.

At the time, Prime Minister Sunak said an FTA with the United States was not a priority, which UK Trade Minister Badenoch recently repeated. An FTA with the United States remains a highly sought-after prize for the UK, but the market access component is considered too politically challenging in the context of a UK General Election within the next twelve months or so, particularly on agriculture and imports of products such as hormone-fed beef and chlorinated chicken that currently are banned under UK sanitary and phytosanitary regulations which were carried over from the EU. The United States has repeatedly made clear that it would want those bans lifted in an FTA, but public support for that in the UK is lacking and the political calendar next year does not allow time to try to change that.

Nonetheless, Prime Minister Sunak’s Government is eager to seal a trade agreement of sorts with the United States before the General Election (as well as an FTA with India). Work on a limited trade agreement appears to be moving ahead, and if it is in the first half of next year, it could help the Tory Party push back against its domestic critics of Brexit and burnish its free trade credentials. According to a UK Government statement, “[t]he UK and the US are rapidly expanding the work we do together across the full spectrum of our economic, technological, commercial and trade relations.” This could include negotiations on aspects of agricultural trade, as well as labor rights, the environment, supply chains, services regulation, and the digitization of trade documents. In parallel, the UK is continuing its program of securing non-binding trade and investment Memoranda of Understanding with individual US states, the latest of which (with Washington State) was wrapped up in the last few weeks. Florida, California, Colorado, and Illinois are also on the UK’s wish list in that regard.

The view from Congress

Reports of the negotiations drew immediate rebuke from members of the US Congress who oversee trade policy, including Senate Finance Chair Ron Wyden (D-OR), Sen. Mike Crapo (R-ID), and Sen. Sen. John Thune (R-SD). Pro-trade members of Congress are becoming increasingly frustrated with the Biden administration for both its lack of Congressional engagement and the lack of market access in the administration’s trade proposals. Despite interest in a US-UK FTA among some constituencies in the United States, the Biden administration has resisted negotiating full FTAs with any country and has not sought Congressional approval for FTA negotiating authority.

²³ “The Atlantic Declaration: A Framework for a Twenty-First Century U.S.-UK Economic Partnership,” accessible here: <https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/08/the-atlantic-declaration-a-framework-for-a-twenty-first-century-u-s-uk-economic-partnership/>.

The Trump administration had launched FTA negotiations in 2020, but these negotiations stalled amidst increasing skepticism of FTAs in Washington and the unresolved status of the 1998 Belfast/Good Friday Agreement. Though there has been support in Congress for an FTA with the UK since Brexit, many Members tied their support for a deal to the maintenance of the Good Friday Agreement. The Windsor Framework, agreed to in March 2023 to resolve post-Brexit relations between the UK and Ireland, reopened the door for negotiations in the eyes of those who were concerned about the Good Friday Agreement. On March 2, 2023, Senators John Thune (R-SD) and Chris Coons (D-DE) re-introduced the Undertaking Negotiations on Investment and Trade for Economic Dynamism Act (UNITED Act), which would authorize trade negotiations with the UK.²⁴ The legislation would reopen Trade Promotion Authority (TPA) specifically for negotiating an FTA with the United Kingdom. The Senators pointed the Windsor Framework's respect of the Good Friday Agreement as motivation for the timing of their bill.

The UNITED Act would encourage USTR to pursue a full FTA based on the standards established in the US-Mexico-Canada Agreement (USMCA). It would authorize negotiating authority through March 1, 2025, which Congress could extend later if needed. The bill would also set out criteria for what Congress would want the FTA to include. This bill references the same criteria set out in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015. This was the previous version of TPA, which expired in 2021 when the Biden administration did not seek its renewal. The 2015 TPA added stronger standards for labor and environment chapters than previous versions of the TPA had included. It was the legal basis for the United States' negotiation of both USMCA and the Trans-Pacific Partnership (TPP). The UK joined the successor agreement to the TPP, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), in July 2023.

US-Kenya Strategic Trade and Investment Partnership Negotiators Meet

The United States and Kenya held the second negotiating round of the Strategic Trade and Investment Partnership (STIP) in Washington, DC, from October 4-7, 2023. The negotiations focused on the agriculture, anti-corruption, and services domestic regulation chapters, as well as conceptual discussions about inclusivity in trade.

The parties held STIP's first detailed negotiating round on April 17-20, 2023, in Nairobi.²⁵ Those negotiators discussed the proposed texts for the chapters on agriculture; anticorruption; micro-, small-, and medium-sized enterprises (MSMEs); and services domestic regulation. This followed conceptual discussions on February 6-10, 2023, where work on the agreement began. Ahead of the October round, President Biden and Kenyan President William Ruto had a call where the leaders recognized the need to accelerate the negotiations. The parties have not yet announced the dates of the next negotiating round.

Like in the IPEF and the US-Taiwan Initiative on 21st-Century Trade Agreement negotiations, USTR is avoiding discussing market access commitments. President Biden is also unlikely to seek Congressional approval for the final deal, preferring to approach STIP as an executive agreement.

In May 2023, USTR published summaries²⁶ of what it had proposed for the agriculture, anticorruption, MSMEs, and services domestic regulation chapters:

- **Agriculture:** USTR describes its agriculture trade proposals as expanding market access and advancing food security. These provisions include commitments to regulatory transparency and cooperation, science-based decision making in health regulations, clear rules on food export restrictions, and trade facilitation. This is only

²⁴ S.629 - UNITED Act, accessible here: <https://www.congress.gov/bill/118th-congress/senate-bill/629>.

²⁵ USTR's readout of the April negotiating round is accessible here: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/april/readout-april-negotiating-round-under-us-kenya-strategic-trade-and-investment-partnership>.

²⁶ "U.S.-Kenya Strategic Trade and Investment Partnership Summary of Texts Proposed by the U.S. Side," May 2023, accessible here: <https://ustr.gov/sites/default/files/2023-05/U.S.-Kenya%20STIP%20Chapter%20Summaries%20May%202023.pdf>.

part of the agriculture chapter, with USTR planning to propose more provisions later. Like other trade agreements USTR is pursuing, USTR would probably not seek tariff cuts or disciplines on sanitary and phytosanitary measures that go beyond existing WTO commitments.

- **Anticorruption:** The anticorruption chapter's commitments seek to prevent and combat bribery and other forms of corruption as well as address the treatment of corrupt public officials. The chapter includes efforts to ban corruption and money laundering, enhance whistle blower protection, and promote government and corporate transparency. The chapter also includes a commitment that obligates governments to adopt legislation that could deny entry to corrupt public officials from third countries, a provision that the United States began adding to its proposed trade agreements in recent years.
- **MSMEs:** The SME chapter contains commitments in support of trade and investment among SMEs, including through training and education programs, digital trade promotion, and improvements to SME access to credit. It would also establish an ongoing US-Kenya MSME dialogue to promote trade.
- **Services Domestic Regulation:** The services domestic regulation chapter is meant to ensure fair and transparent treatment of foreign services suppliers applying for business licenses. The text builds upon the World Trade Organization's Joint Initiative on Services Domestic Regulation, a plurilateral agreement signed in December 2021.²⁷ Though past trade agreements have included commitments on services market access, this chapter's approach is a new addition to USTR's model trade agreement. It first appeared in the US-Taiwan Initiative on 21st-Century Trade Agreement, signed on June 1, 2023. Whereas in the WTO Declaration, Members commit to opening only specifically listed sectors, the proposed USTR chapter would cover almost all sectors by default.

STIP would also include sections focusing on digital trade; environment and climate action; good regulatory practices; protecting worker's rights; supporting the participation of women, youth, and others in trade; standards collaboration; and trade facilitation and customs procedures.

The Biden administration is calling STIP a model of engagement with other African countries. It is, however, less ambitious than a full FTA and will not provide the same benefits to traders and investors. Kenya, for its part, believes it can leverage STIP to eventually negotiate a full bilateral FTA with the United States. The Biden administration has not committed to that, but the Trump administration's previous efforts to negotiate a bilateral FTA and support for the proposal by some members of Congress suggest an opportunity may eventually emerge.

There are good reasons for business communities in both countries to support negotiating a full FTA. Though most Kenyan exports to the United States are already tariff-free under the African Growth and Opportunity Act (AGOA, an extension of the Generalized System of Preferences for developing countries in Africa), exporters believe the permanence of a formal treaty would make that market access more reliable. US exporters would also benefit. Kenya's average applied tariff rate in 2022 was 14.3%, with especially high tariffs on agriculture products that US companies export. US exporters also want to see improvements to Kenya's complicated import rules for food imports, weak intellectual property protections, and restrictions on cross-border data flows. The United States could further seek improved access to Kenya's government procurement market, as Kenya is not a member of the WTO Government Procurement Agreement. The narrower STIP negotiations will probably not resolve any of these issues, though some progress on the agriculture non-tariff barriers may be possible.

While the United States has been absorbed by internal debates about the value of traditional FTAs, the European Union and United Kingdom have negotiated FTAs with Kenya in the past few years. The relative improvement in

²⁷ More information on the WTO's Services Domestic Regulation work is accessible here: https://www.wto.org/english/tratop_e/serv_e/jsdomreg_e.htm.

European market access will put US exporters at a new competitive disadvantage in one of Africa's largest and most developed economies.

IPEF

IPEF Members Meet in Malaysia for Sixth Negotiating Round

The 14 countries negotiating the Indo-Pacific Economic Framework for Prosperity (IPEF) met in Kuala Lumpur, Malaysia from October 15-24, 2023, for a sixth full negotiating round.²⁸ Negotiations on IPEF's Pillar I (Trade), Pillar III (Clean Economy), and Pillar IV (Fair Economy) continued at the meeting, while officials also continued discussions on implementing the IPEF Supply Chain Agreement (Pillar II). The negotiators reported that they "continued to make progress on negotiations towards high-standard outcomes" at the meeting but did not announce any specific results.

Progress on the four pillars

Though details were not released, Pillars III and IV are reportedly close to completion, while Pillar I has been more challenging. The parties plan to announce their progress at the APEC Leaders' Summit in November, though negotiations on some sections of Pillar I will likely continue into 2024.

□ Pillar I (Trade)

Pillar I of the agreement is the pillar that most closely resembles a traditional free trade agreement (FTA), though it will not include most of the market access commitments that are typical in an FTA. The pillar includes chapters on digital trade, labor standards, environmental protection, technical assistance, inclusivity, agriculture, services domestic regulation, customs and trade facilitation, good regulatory practices, and competition policy. The trade pillar appears to be the farthest from completion, with significant disagreements over several chapters, including digital trade, labor, environment, and dispute settlement. Other chapters, including trade facilitation, good regulatory practices, services domestic regulation, inclusivity, and possibly the agriculture appear closer to settlement.

The digital trade chapter has been particularly challenging, with debates ongoing about the strength of the commitments that it should include. The countries negotiating the chapter appear divided between some that support high standard commitments on topics like cross-border data flows and server localization, while others are seeking weaker commitments. The Biden administration itself is facing internal divisions on its digital trade negotiating objectives and is moving away from the United States' traditional focus on high-standard digital market access commitments. USTR recently announced it would no longer seek commitments on cross-border data flows, server localization, and source code protection at the WTO. Scaling back US demands in the IPEF digital chapter in such a way would likely ease the path to a quick compromise on the chapter, though it would also make the chapter less commercially meaningful for industry.

The labor, environment, and dispute settlement chapters are also reportedly far from completion, due to disagreements over how far-reaching they should be. In the labor chapter, the United States is still seeking an enforceable response mechanism for labor complaints similar the Rapid Response Mechanism in the US-Mexico-Canada Agreement (USMCA), which is encountering opposition from other parties. Some parties are also pursuing more advanced commitments in the environment chapter, including restrictions on fuel subsidies, which have also proven controversial.

²⁸ "Joint U.S. Department of Commerce and USTR Readout of Sixth Indo-Pacific Economic Framework Negotiating Round in Malaysia," US Department of Commerce, October 25, 2023, accessible here: <https://www.commerce.gov/news/press-releases/2023/10/joint-us-department-commerce-and-ustr-readout-sixth-indo-pacific>.

Ahead of the round, USTR held a virtual ministerial call to discuss Pillar I with the other parties, where they said they were “eager to make significant progress by the end of the year.” Attendees acknowledged that the full Trade Pillar will not be completed in time for its original target at the November APEC Summit, with USTR saying it is targeting completion of several sections of the Pillar instead. Ambassador Tai said the parties would have to continue negotiating several outstanding sections in 2024, as well as developing plans for ongoing cooperation.²⁹

□ **Supply Chain Agreement (Pillar II)**

The US Department of Commerce published the completed text of IPEF’s Pillar II, the Agreement Relating to Supply Chain Resilience, on September 7, 2023.³⁰ The Pillar II agreement is the first the parties have finished and will facilitate collaboration efforts among the IPEF partners on supply chain resilience, emergency response, and worker rights programs. It does not in itself contain binding commitments on market access or other trade-related matters. Instead, it creates several standing bodies that will examine questions of supply chain resilience and support reform and cooperation efforts. Now that the agreement is complete, the parties are beginning to discuss the implementation of these bodies.

□ **Pillar III (Clean Economy)**

Pillar III covers environmental protection, especially policies and cooperative work programs for responding to climate change. The pillar appears close to completion, though full details have not been released. It will likely focus on fostering cooperation to help each IPEF participant meet its environmental goals (including those of the Paris Agreement), rather than developing new commitments. The US Commerce Department described the goals as advancing “cooperation on research, development, commercialization, availability, accessibility, and deployment of clean energy and climate friendly technologies, and facilitate investment towards climate-related projects in the region.”³¹

□ **Pillar IV (Fair Economy)**

Pillar IV is seeking “progress on anti-corruption measures and tax initiatives, including through enhanced cooperation on capacity building and technical assistance,” according to past statements. The negotiations on Pillar IV have moved quickly in recent months, with the parties reportedly resolving most of the outstanding issues.

Approaching the APEC Summit

The parties are targeting the November 2023 APEC Leaders’ Summit in San Francisco, California, for a substantial conclusion to the IPEF negotiations. The unveiling may happen in an IPEF leaders’ event on the sidelines of APEC, though the details are not confirmed. It is not yet certain if the negotiators can achieve this ambitious timeline and an extra negotiating round will take place ahead of APEC in San Francisco from November 5-12, 2023. Pillars III and IV are nearing completion and could be ready by November. Pillar I, on the other hand, will only have a few of the easier to negotiate chapters completed. The parties may choose to finalize a few chapters of Pillar I during the APEC meetings, releasing a partial trade agreement like the US-Taiwan trade agreement negotiated in May 2023.

²⁹ “Readout of Virtual IPEF Ministerial Meeting Hosted by Ambassador Tai,” October 5, 2023, accessible here: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/october/readout-virtual-ipef-ministerial-meeting-hosted-ambassador-tai>.

³⁰ U.S. Department of Commerce Publishes Text of Landmark Indo-Pacific Economic Framework for Prosperity (IPEF) Supply Chain Agreement, accessible here: <https://www.commerce.gov/news/press-releases/2023/09/us-department-commerce-publishes-text-landmark-indo-pacific-economic>.

³¹ “Press Statement for the Trade Pillar, Clean Economy Pillar, and Fair Economy Pillar,” accessible here: <https://www.commerce.gov/news/press-releases/2023/05/press-statement-trade-pillar-clean-economy-pillar-and-fair-economy>.

Discussions for the remaining Pillar I chapters will then slip into 2024, which will introduce new challenges. As 2024 is a presidential election year in the United States, the Biden administration will likely resist making any compromises that could upset domestic labor unions and environmental groups. Given the opposition among some IPEF parties to the high labor and environmental standards USTR is seeking, it will become increasingly difficult to settle Pillar I as the election draws closer.

The parties have not yet announced their plans for the next full negotiating round. The negotiators may meet for an additional negotiating round alongside the APEC meetings in an effort to complete as much of the agreement as possible.

APEP

Western Hemisphere Leaders to Discuss Americas Partnership for Economic Prosperity (APEP) Negotiations in November 2023

The leaders of the 12 member countries of the Americas Partnership for Economic Prosperity (APEP), an economic cooperation agreement for the Western hemisphere modeled on the IPEF, will meet in Washington, DC on November 3, 2023. They plan to discuss the status and outlook for negotiations following the formal announcement of APEP in June 2022. Trade ministers endorsed the negotiations in a January 2023 ministerial meeting but did not advance to text-based negotiations.

The Biden administration originally announced plans for APEP at the June 2022 Summit of the Americas. At the time, the United States proposed that the agreement could cover reinvigorating the Inter-American Development Bank; supply chain security, tax, and anti-corruption programs; improving public services; accelerating the green energy transition; labor rights; and trade facilitation but provided little detail on what these topics could include.³²

Like other economic agreements the Biden administration is negotiating, APEP will not include market access. Barbados, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Mexico, Panama, Peru, Uruguay, and the United States are the current members of the APEP negotiations although the Biden administration seeks to expand membership to more countries in the region.

US Senators advocating for closer trade relations with countries in the Western Hemisphere have questioned the Biden administration's commitment to a substantive agreement. Most recently, in an October 5 letter to the United States Trade Representative (USTR), Sen. Tim Kaine (D-VA) questioned why the Biden administration appeared to be backing away from a strong, text-based agreement for APEP. Sen. Kaine is among several legislators who have long advocated for stronger trade relations in the Western Hemisphere and has argued that the United States could adopt a regional framework based on the US-Mexico-Canada Agreement (USMCA). This approach goes beyond the options the Biden administration is considering, but it may have bipartisan support in Congress. Sen. Bill Cassidy (R-LA) and Rep. Maria Elvira Salazar (R-FL) are developing a new bill, the "Americas Act," which would create a pathway for more countries to join the USMCA.

³² Fact Sheet: President Biden Announces the Americas Partnership for Economic Prosperity," June 2022, accessible here: <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/08/fact-sheet-president-biden-announces-the-americas-partnership-for-economic-prosperity/>.

Petitions & Investigations

Petitions

US Union Files Antidumping Petition on Truck and Bus Tires from Thailand

On October 17, 2023, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (USW) filed an antidumping duty (ADD) petition against imports of truck and bus tires from Thailand. The ADD petition alleges that the imported tires are being sold in the United States at less than fair value and have materially injured the domestic tire industry and threaten further industry if duties are not imposed. The International Trade Commission (ITC) published its announcement that it had instituted the preliminary investigation (No. 731–TA–1658 (Preliminary)) on October 30, 2023 and that it will reach its preliminary determination by December 1, 2023 (unless DOC extends the time).³³

The dumping rate alleged in the ADD petition is 47.81%. According to the petitioners' data, the United States imported \$1.779 billion of the covered product in 2022, up from \$1.131 billion in 2021, and \$692 million 2020. The US market share of Thai imports increased from 20% to 30.7% from 2020 to 2022. The petitioner identifies Huayi Group (Thailand) Co., Ltd.; General Rubber (Thailand) Co., Ltd.; Zhongce Rubber Thailand; Deestone Corp. Public Co.; Prinx Chengshan Tire (Thailand) Co.; Bridgestone Tire Manufacturing (Thailand) Company Limited; Llit (Thailand) Co., Ltd.; and Maxxis International (Thailand) Co., Ltd. as Thailand-based manufacturers that it believes are selling the subject merchandise at less than fair value.

The petitioner, USW, represents workers at five domestic producer facilities owned by Bridgestone Americas, Goodyear Tire & Rubber Company, and Sumitomo Rubber. USW estimates that these facilities represent approximately 60% of domestic manufacturing capacity. The rest of the US capacity is accounted for by Continental, Michelin, Specialty, and Yokohama factories, which are not part of the petition. USW previously obtained ADD³⁴ and CVD³⁵ actions against truck and bus tires from China in February 2019, which remain in effect.

Covered product

The scope of the investigation covers truck and bus tires. Truck and bus tires are new pneumatic tires, of rubber, with a truck or bus size designation. Truck and bus tires covered by the scope may be tube-type, tubeless, radial, or non-radial.

Subject tires have, at the time of importation, the symbol "DOT" on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Subject tires may also have one of the following suffixes in their tire size designation, which also appear on the sidewall of the tire: (1) TR identifies tires for service on trucks or buses to differentiate them from similarly sized passenger car and light truck tires; and (2) HC identifies a 17.5-inch rim diameter code for use on low platform trailers. All tires with a "TR" or "HC" suffix in their size designations are covered by the scope regardless of their intended use.

³³ "Truck and Bus Tires From Thailand; Institution of Antidumping Duty Investigation and Scheduling of Preliminary Phase Investigation," 88 FR 74208 (October 17, 2023), accessible here: <https://www.federalregister.gov/documents/2023/10/30/2023-23800/truck-and-bus-tires-from-thailand-institution-of-antidumping-duty-investigation-and-scheduling-of>.

³⁴ "Truck and Bus Tires From the People's Republic of China: Antidumping Duty Order," 84 FR 4436 (February 15, 2019), accessible here: <https://www.federalregister.gov/documents/2019/02/15/2019-02656/truck-and-bus-tires-from-the-peoples-republic-of-china-antidumping-duty-order>.

³⁵ "Truck and Bus Tires From the People's Republic of China: Amended Final Determination and Countervailing Duty Order," 84 FR 4434 (February 15, 2019), accessible here: <https://www.federalregister.gov/documents/2019/02/15/2019-02657/truck-and-bus-tires-from-the-peoples-republic-of-china-amended-final-determination-and>.

In addition, all tires that lack one of the above suffix markings, as well as all tires that include any other prefix or suffix in their sidewall markings, are included in the scope, regardless of their intended use, as long as the tire is of a size that fits trucks or buses. Sizes that fit trucks and buses include, but are not limited to, the numerical size designations listed in the “Truck-Bus” section of the Tire and Rim Association Year Book, as updated annually. The scope includes all tires that are of a size that fits trucks or buses, unless the tire falls within one of the specific exclusions set out below.

Truck and bus tires, whether or not mounted on wheels or rims, are included in the scope. However, if a subject tire is imported mounted on a wheel or rim, only the tire is covered by the scope. Subject merchandise includes truck and bus tires produced in the subject country whether mounted on wheels or rims in the subject country or in a third country. Truck and bus tires are covered whether or not they are accompanied by other parts, e.g., a wheel, rim, axle parts, bolts, nuts, etc. Truck and bus tires that enter attached to a vehicle are not covered by the scope.

Specifically excluded from the scope are the following types of tires: (1) pneumatic tires, of rubber, that are not new, including recycled and retreaded tires; (2) non-pneumatic tires, such as solid rubber tires; and (3) tires that exhibit each of the following physical characteristics: (a) The designation “MH” is molded into the tire’s sidewall as part of the size designation; (b) the tire incorporates a warning, prominently molded on the sidewall, that the tire is for “Mobile Home Use Only;” and (c) the tire is of bias construction as evidenced by the fact that the construction code included in the size designation molded into the tire’s sidewall is not the letter “R.”

The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.20.1015 and 4011.20.5020. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.90.10, 4011.90.20, 4011.90.80, 8708.70.45, 8708.70.60, and 8716.90.5059. While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

Petition Filed for Antidumping and Countervailing Duties on Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and Vietnam

On October 25, 2023, the American Shrimp Processors Association filed an ADD petition on imports of frozen warmwater shrimp from Ecuador and Indonesia, and a countervailing duty (CVD) petition against frozen warmwater shrimp from Ecuador, India, Indonesia, and Vietnam. The ADD petition alleges that imports of frozen warmwater shrimp from Ecuador and Indonesia are being sold in the United States at less than fair value. The CVD petition alleges that the governments of Ecuador, India, Indonesia, and Vietnam are providing countervailable subsidies with respect to the production and export of frozen warmwater shrimp. Petitioners allege that the domestic industry has been materially injured and is threatened with further material injury because of the subject imports.

Covered product

The petitioners describe the merchandise subject to the investigation as certain frozen warmwater shrimp and prawns whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off, deveined or not deveined, cooked or raw, or otherwise processed in frozen form. The frozen warmwater shrimp and prawn products included in the scope, regardless of definitions in the HTSUS, are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp

(*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope. In addition, food preparations, which are not "prepared meals," that contain more than 20% by weight of shrimp or prawn are also included in the scope.

Excluded from the scope are: (1) breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the Pandalidae family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.36.0020 and 0306.36.0040); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); (7) certain dusted shrimp; and (8) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) that is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by the scope are currently classified under the following HTSUS subheadings: 0306.17.0004, 0306.17.0005, 0306.17.0007, 0306.17.0008, 0306.17.0010, 0306.17.0011, 0306.17.0013, 0306.17.0014, 0306.17.0016, 0306.17.0017, 0306.17.0019, 0306.17.0020, 0306.17.0022, 0306.17.0023, 0306.17.0025, 0306.17.0026, 0306.17.0028, 0306.17.0029, 0306.17.0041, 0306.17.0042, 1605.21.1030, and 1605.29.1010.

These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope is dispositive.

Investigations

DOC Makes Affirmative Determination in Five-Year Review of ADD Order on Certain Tin Mill Products from Japan

On October 5, 2023, the DOC issued the final results of its expedited five-year review of the ADD order on certain tin mill products from Japan.³⁶ The review found that revoking the order would likely lead to the continuation or recurrence of dumping. DOC maintained the dumping margin at 95.29%.

The ITC's concurrent review is ongoing. On September 5, 2023, the ITC issued a notice that it is proceeding with a full review to determine whether revocation of the ADD order on tin- and chromium-coated steel sheet from Japan (Investigation No. 731-TA-860) would likely lead to the continuation or recurrence of material injury within a reasonably foreseeable time.³⁷ The decision is based on the ITC's determination that the domestic and respondent interested party group responses to its notice of initiation, issued on June 1, 2023, were adequate.

³⁶ "Certain Tin Mill Products From Japan: Final Results of the Expedited Fourth Sunset Review of the Antidumping Duty Order," 88 FR 69133 (October 5, 2023), accessible here: <https://www.federalregister.gov/documents/2023/10/05/2023-22127/certain-tin-mill-products-from-japan-final-results-of-the-expedited-fourth-sunset-review-of-the>.

³⁷ "Tin- and Chromium-Coated Steel Sheet From Japan; Notice of Commission Determination To Conduct a Full Five-Year Review," 88 FR 64464 (September 5, 2023), accessible here: <https://www.federalregister.gov/documents/2023/09/19/2023-20183/tin--and-chromium-coated-steel-sheet-from-japan-notice-of-commission-determination-to-conduct-a-full>.

The products covered by the ADD order are tin mill flat-rolled products that are coated or plated with tin, chromium or chromium oxides. Flat-rolled steel products coated with tin are known as tin plate. Flat-rolled steel products coated with chromium or chromium oxides are known as tin-free steel or electrolytic chromium-coated steel. The products are classified under HTSUS 7210.11.0000, 7210.12.0000, 7210.50.0000, 7212.10.0000, and 7212.50.0000 if of non-alloy steel and under HTSUS 7225.99.0090, and 7226.99.0180 if of alloy steel. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive.

DOC Initiates Aluminum Lithographic Printing Plates ADD Investigations for China and Japan and a CVD Investigation for China

On October 25, 2023, the Department of Commerce (DOC) announced the initiation of its less-than-fair-value investigations concerning imports of aluminum lithographic printing plates (printing plates) from China and Japan. DOC will investigate whether imports of printing plates from China and Japan are being, or are likely to be, sold in the United States at less than fair value. The period of investigation for Japan is July 1, 2022, through June 30, 2023, while for China it will be January 1, 2023, through June 30, 2023 (as China is a non-market economy).

DOC concurrently issued an initiation notice of a CVD investigation on printing plates from China.³⁸ The CVD petition against China accompanied the ADD petition and alleges that the government of China is providing countervailable subsidies to producers of printing plates in China.

Previously, on October 4, 2023, the ITC announced in the Federal Register that it had begun the preliminary phase of an ADD and CVD investigation into whether there is a reasonable indication that the US industry is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by imports of printing plates from China and Japan.³⁹ The ITC will reach its preliminary determination in the investigations by November 13, 2023 and transmit the decision to ITA by November 20, 2023. A negative ITC determination for either country will result in the investigation for that country being cancelled.

The investigation is in response to a petition from Eastman Kodak Company, which was filed on September 28, 2023. The petitioner alleges that the covered products are sold in the United States at less than fair value by China and Japan and subsidized by the government of China. The petition alleges dumping margins of 107.64% for China and 23.52% for Japan.

The covered products are aluminum lithographic printing plates under HTSUS 3701.30.0000 and 3701.99.6060. The product may also enter under HTSUS 3701.99.3000 and 8442.50.1000. The written description of the covered product, included below, is dispositive. This description has been slightly revised following requests for clarification from DOC to the petitioner.

Aluminum lithographic printing plates consist of a flat substrate containing at least 90 percent aluminum. The aluminum-containing substrate is generally treated using a mechanical, electrochemical, or chemical graining process, which is followed by one or more anodizing treatments that form a hydrophilic layer on the aluminum-containing substrate. An image-recording, oleophilic layer that is sensitive to light, including but not limited to ultra-violet, visible, or infrared, is dispersed in a polymeric binder material that is applied on top of the hydrophilic layer, generally on one side of the aluminum lithographic printing plate. The oleophilic light-sensitive layer is capable of capturing an image that is

³⁸ "Aluminum Lithographic Printing Plates From the People's Republic of China: Initiation of Countervailing Duty Investigation," 88 FR 73313 (October 25, 2023), accessible here: <https://www.federalregister.gov/documents/2023/10/25/2023-23531/aluminum-lithographic-printing-plates-from-the-peoples-republic-of-china-initiation-of>.

³⁹ "Aluminum Lithographic Printing Plates From China and Japan; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations," 88 FR 68669 (October 4, 2023), accessible here: <https://www.federalregister.gov/documents/2023/10/04/2023-21930/aluminum-lithographic-printing-plates-from-china-and-japan-institution-of-antidumping-and>.

transferred onto the plate by either light or heat. The image applied to an aluminum lithographic printing plate facilitates the production of newspapers, magazines, books, yearbooks, coupons, packaging, and other printed materials through an offset printing process, where an aluminum lithographic printing plate facilitates the transfer of an image onto the printed media. Aluminum lithographic printing plates within the scope of this investigation include all aluminum lithographic printing plates, irrespective of the dimensions or thickness of the underlying aluminum substrate, whether the plate requires processing after an image is applied to the plate, whether the plate is ready to be mounted to a press and used in printing operations immediately after an image is applied to the plate, or whether the plate has been exposed to light or heat to create an image on the plate or remains unexposed and is free of any image.

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

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

ITC Institutes five-year review for Antidumping Duties on Clad Steel Plate from Japan

On November 1, 2023, the ITC published an announcement that it is instituting the fifth five-year review of the ADD order on clad steel plate from Japan (Investigation No. 731-TA-739).⁴⁰ The review will determine whether revocation of the ADD order would be likely to lead to continuation or recurrence of material injury. Parties interested in the review should submit responses to the ITC by December 1, 2023. Comments on the adequacy of the responses are then due by January 11, 2024. The ITC will assess the adequacy of the responses it receives from the interested parties in determining whether it should conduct a full review or an expedited review of the order. If the ITC decides to pursue an expedited review, it will make its determination based on facts available.

DOC intends to announce the initiation of its portion of the fifth five-year review later in November 2023.⁴¹ DOC's review will determine whether revocation of the ADD order would likely lead to a continuation or recurrence of dumping.

The scope of the order is all clad steel plates from Japan with a width of 600 millimeters (mm) or more and a composite thickness of 4.5 mm or more. Clad steel plate is a rectangular finished steel mill product consisting of a layer of cladding material (usually stainless steel or nickel) which is metallurgically bonded to a base or backing of ferrous metal (usually carbon or low alloy steel) where the latter predominates by weight. Cladding is the association of layers of metals of different colors or natures by molecular interpenetration of the surfaces in contact. Products under this order are classified in HTSUS 7210.90.10.00, though the written description is dispositive.

⁴⁰ "Clad Steel Plate from Japan; Institution of a Five-Year Review," 88 FR 75026 (November 1, 2023), accessible here: <https://www.federalregister.gov/documents/2023/11/01/2023-24016/clad-steel-plate-from-japan-institution-of-a-five-year-review>.

⁴¹ "Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review," 88 FR 67730 (October 2, 2023), accessible here: <https://www.federalregister.gov/documents/2023/10/02/2023-21705/antidumping-or-countervailing-duty-order-finding-or-suspended-investigation-advance-notification-of>.