

# Washington Tariff & Trade Letter

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## Commerce Publishes AD/CVD Overhaul

Commerce has proposed a series of changes to its antidumping duty (AD) and countervailing duty (CVD) regulations in a 96 page notice of proposed rulemaking published May 8.

In this proposed rule, Commerce would revise many of its procedures, codify many areas of its practice, and enhance certain areas of its methodologies and analyses to address price and cost distortions in different capacities.

### Key modifications include

- clarifying the role of references, citations, and hyperlinks in submissions, addressing issues related to scope, circumvention, and covered merchandise that have emerged since 2021, and
- allowing Commerce to place previous analysis and calculation memoranda on the record without requiring additional factual information from other parties.

### The proposal also includes

- addressing notices of subsequent authority and
- permitting responsive arguments and factual information,
- incorporating the CVD adverse facts available hierarchy in section 308, and
- tackling foreign government inactions benefiting foreign producers.

This last point covers countervailable subsidies from unpaid or deferred fees, fines, and penalties, as well as evidence of weak or nonexistent protections.

**A new section addressing the determination of a particular market situation (PMS)** and scenarios in which a PMS distorts production costs is also proposed.

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Furthermore, Commerce seeks to incorporate long-standing practices into the regulations, providing guidance on topics such as subsidies, loans, equity infusions, and export insurance.

Finally, Commerce proposes eliminating the current transnational subsidies regulation [**§ 351.527**], but reserving the provision for future consideration. Since § 351.527 was adopted, Commerce has observed through its administrative experiences that instances in which a *government provides a subsidy that benefits foreign production* are far more prevalent.

Commerce proposed four exemptions in cost-based PMS analyses:

1. not requiring consideration of four specific types of information and associated arguments,
2. not needing to consider speculative costs or prices,
3. not mandating consideration of actions by governments or public entities in other market economy countries compared to the subject country, and
4. not requiring references to historical policies and actions by the subject country's government concerning subject merchandise or significant production input.

Proposed amendments also include changing "the Secretary will" to "the Secretary will normally" in § 351.525(b)(2) and (3), ensuring no conflict with § 351.525(b)(7) and indicating Commerce's discretion.

The inclusion of "normally" recognizes the increasing complexity of global subsidy programs and provides Commerce with flexibility to address CVD law effectively, regardless of the uniqueness of foreign subsidies affecting the U.S. industry. [[FR Notice](#)]

## House Panel Whips BIS Mule

Had they been invited, Commerce's Bureau of Industry and Security would have faced a chilly reception Thursday from the *Oversight and Accountability Subcommittee of the House Foreign Affairs Committee*. **Chairman Brian Mast (R-FL)** kicked off the hearing, criticizing the Bureau for permitting American technology to be used against U.S. interests.

"The Chinese Communist party is using American technology to build more precise, more lethal weapons to sink our carriers, to kill our troops. That is Jinping's plan," Mast said. "While Xi Jinping is ready for a fight, President Biden is that guy with a quivering lip that won't look the bully in the eye and say no."

**Ranking Member Jason Crow (D-Colo)** defended the Biden administration's approach, praising its work to create a coalition of 38 nations imposing stringent export controls on Russia and Belarus in response to Russia's renewed invasion of Ukraine. He described it as the most significant and coordinated effort of its kind in history.

Crow also highlighted the U.S.'s efforts to counter China's rise, including listing hundreds of PRC-based entities for export control and securing the support of key allies such as Japan and the Netherlands.

**Nazak Nikakhtar**, former Assistant Secretary for Industry and Analysis at the U.S. Department of Commerce, testified that stronger export controls and more transparency were needed. She argued that past U.S. policies, which had allowed significant technology and manufacturing capacity to move offshore, had strengthened China's hand and weakened the U.S.

"It's ridiculous," Ms. Nikakhtar said several times, as witnesses and panelists repeated the oft-cited 98 percent approval rate of BIS licensing. **Former BIS Chief Kevin Wolf** explained the high percentage of approved export licenses was due to self-selection - applicants rarely submit applications they expect to be denied.

**Mr. Wolf argued for expanded resources for the department.** "The volume of activity being run through BIS and the significance of all the issues everybody laid out today warrants, well you know dramatically larger staff, and so at least a doubling of their current budget and the resources and the people and the expertise to go along with it."

**Mr. Mast proposed stricter controls on university research** related to items on the commerce control list. "Why not take every single thing on the commerce control list right now and just tell the universities for foreign countries of concern we don't need to do a broadly foreign countries of concern no more fundamental research exception," Mast suggested. **"Even if you intend to publish, you need to get a license from BIS before you do that, or whatever entity ends up handling export controls on dual-use items."**

Fellow Florida **Rep. Mike Waltz (R-FL)** announced his office was preparing legislation to reform BIS, although no text was made available.

Mr. Wolf, Ms. Nikakhtar, and others submitted prepared testimony on the topic, which, subcommittee members pointed out, few took the time to read prior to the hearing. [[Wolf](#)], [[Nikakhtar](#)],

Mast indicated his committee intends to hold more hearings on the topic, and that he may invite representatives of the Department of Commerce.

## China! China! China!

The Administration, Congress and the US business community remain sharply focused on China, as Beijing takes the first tentative steps towards reopening dialogue with Washington.

The first high-level contact between the two sides since China cut off direct communications with Washington following the shooting down of Chinese spy balloons, took place yesterday with a meeting between **National Security Advisor Jake Sullivan** and **Chinese Communist Party Politburo member and Director of the Office of the Foreign Affairs Commission Wang Yi** [[more](#)].

**Secretary of State Antony Blinken** told reporters the Administration is concerned about recent reports from US businesses about receiving unfair treatment in China. "I mean, one of our general concerns – and it's a concern shared by many allies and partners – is the way some of our enterprises are treated in China, certainly treated in a way that's not reciprocal to the way that many Chinese enterprises are treated, businesses are

treated, around the world,” he said during a press availability with **Spanish Foreign Minister Jose Manuel Albares**. “To the extent, of course, that China wants to have a positive business environment that attracts foreign investment, that attracts foreign businesses, the actions that it takes with regard to those businesses will have a big impact,”

## US Business Concerns

**US Chamber of Commerce President and CEO Suzanne Clark** emphasized the US business community’s rising concerns over China’s intensifying security policies and practices that are undermining China’s stated policy of openness and desire to attract new foreign investment and exports from the United States and other western countries at the Chamber’s annual China conference.

“We must safeguard our national security and values,” she told participants. “We support targeted and responsible steps to restrict Chinese access to sensitive technologies that could be used to undermine America’s national security, including export controls, technology restrictions, and scrutiny of outbound investment.”

## On Capitol Hill

The *House Foreign Affairs Subcommittee on Indo-Pacific* announced yesterday it will hold a hearing May 18 on China’s economic aggression and predatory practices.

In addition, the *House Select Committee on China* said it has scheduled a May 17 hearing on how to counter the Chinese Communist Party’s economic aggression. **Robert Lighthizer**, who was former President Trump’s US Trade Representative, is among the witnesses.

The *House Rules Committee* on Wednesday held a hearing on China’s economic coercion.

**House Rules Chairman Tom Cole (R-Okla)** said he hoped the hearing would highlight the need for House action on the bipartisan *Countering Economic Coercion Act of 2023*(HR 1135). “This bipartisan bill will extend new tools to the Administration to counter foreign adversaries using economic coercion to pressure, punish, and influence US allies and partners,” he said.

The bill would provide targeted relief to US allies subjected to economic coercion through decreased duties on goods, export financing and loan guarantees, while increasing duties on imports from countries engaging in economic coercion.

Meanwhile, **Senate Republican Leader Mitch McConnell (Ky)** took to the Senate floor, criticizing Democrats for not focusing on reauthorization of the *National Defense Authorization Act*, saying that the bill would help the United States compete against China.

“Our Democratic friends like to invoke America’s competition with China whenever they’re seeking to justify huge outlays of domestic spending. But they push the nuts and bolts of actually defending America to the back burner,” he charged.

On Wednesday, **Sen. Josh Hawley** (R-Mo) introduced legislation to raise tariffs on imports from China until the United States' bilateral trade deficit comes into balance.

Mr Hawley's bill would:

- direct the President to calculate and publish every year the total value of imports into the United States from China and the total value of exports from the United States to China;
- require the President to impose an additional duty of 25 percent on all goods imported from China if a bilateral deficit is recorded during the preceding calendar year and
- permit the President to remove the duties if, during the preceding calendar year, the United States records a bilateral surplus with China.

*Now if only he could find a cosponsor named **Smoot**..*

## Jake Calls an Audible in the War of Words With PRC

Top Chinese Diplomat Wang Yi and U.S. National Security Advisor Jake Sullivan met in Vienna on May 10 and 11 for discussions described as candid, substantive, and constructive by both sides.

The outcome of these meetings remains uncertain in terms of whether they will lead to a call between Presidents Xi and Biden or visits by Secretary of State Blinken, Treasury Secretary Yellen, or Commerce Secretary Raimondo. It is unlikely, however, that the U.S. will announce new actions against China or release information China opposes, such as the FBI spy balloon report, if they expect further high-level communication.

In an additional effort to ease tensions between the U.S. and China, **Ambassador R. Nicholas Burns** met with **Commerce Minister Wang Wentao**, and rumors suggest Wentao will meet with USTR Ambassador Tai in Detroit later this month.

Mr. Sullivan's unannounced talks with his Chinese counterpart in Vienna were aimed at resetting high-level contacts and preventing further deterioration of relations between the two countries.

The eight-hour meetings focused on various issues, including the detention of American citizens in China, transnational concerns such as counternarcotics efforts, and regional security issues like U.S. policy in the Indo-Pacific, Russia's invasion of Ukraine, and cross-Strait issues.

The U.S. reiterated its commitment to the One China policy, emphasizing the avoidance of conflict and confrontation. Despite challenges, such as U.S. sanctions against China's defense minister, the talks represent an attempt to foster constructive dialogue and address concerns from American allies about Washington's efforts to reduce tensions with Beijing.

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## Decouple from China, says Chairman Smith

The chairman of the powerful *House Ways and Means Committee* called last week for a “smart and strategic decoupling from China.” **Rep. Jason Smith** (R-Mo) opened a committee field hearing in Staten Island with a warning about China’s continued presence in US supply chains, saying that Beijing’s behavior poses a threat to the US economy.

“Congress needs to shine a light on China’s human rights abuses and predatory trade practices,” he said. “China is forging ahead with an aggressive trade agenda that cheats America, shapes the global playing field in its favor, and threatens key American supply chains and the livelihoods of American farmers and workers.”

“What should be now clear to everyone here today is that what our country needs is a smart and strategic decoupling from China,” he stated.

“Workers and small businesses being harmed by China’s unfair trade practices have been overlooked and forgotten for too long,” Rep. Smith said. “They expect us to go further and to use the tools at our disposal to level the playing field for workers, farmers, and job creators. We’re here to make sure the future of US trade includes their voices.”

Congress needs to reassert its constitutional role over trade, he said. The chairman accused the Administration of “trying to work around Congress” by negotiating framework agreements that do not require Congressional approval, unlike traditional free trade agreements.

**Ranking Democrat Richard Neal** (Mass) pointed out that in the last Congressional session, the then-Democrat controlled House approved the America COMPETES Act that was aimed at combating China’s unfair trade practices. House Republicans opposed the legislation. Mr. Neal held the Chair in the Previous Congress.

**Mr. Neal charged that Republicans’ current budget plan would cut spending on trade enforcement.** The proposed cuts “would hang American workers and businesses out to dry,” he said.

## WTO General Council: Reforms, TRIPS, e-Commerce, SDT

The World Trade Organization (WTO) General Council convened Monday to discuss various proposals for reforming the organization, a process met with mixed reviews due to the unconventional method adopted by the new chair, **Ambassador Athaliah Lesiba Molokomme** of Botswana.

Molokomme allotted individual members three minutes and coordinators of different groups five minutes to present their views. While Singapore and Japan welcomed the new method, several developing and least-developed countries expressed difficulty in articulating their assessment on the range of proposals within the limited time frame.

**Reforms.** Ambassador Molokomme, who plans to host a reform retreat soon, shared updates from her recent meetings with select members on WTO reforms. However, confusion arose when she mentioned convening high-level discussions without specifying the participants.

During the meeting, Molokomme expressed optimism towards the demonstrated interest and engagement on WTO reforms. "I believe that we are already on the right path," she said. "Members are fueling the reform discussions. Several ideas which had been put forward informally have now been translated into formal written proposals, as is reflected in the current agenda."

**Director General Ngozi Okonjo-Iweala**, chair of the Trade Negotiations Committee, highlighted the need to address development issues in the context of WTO reform. Okonjo-Iweala urged members to expedite their work on this front, emphasizing that "the eyes of Africa are on us, specifically on special and differential treatment."

She also encouraged African countries to expedite domestic processes towards the acceptance of the Fisheries Subsidies Agreement, revealing that African government officials expressed significant concern over illegal, unreported, and unregulated fishing.

Due to the time constraint imposed by Molokomme, the reform proposals discussed briefly included 1. Improving inclusiveness by reviewing and evaluating external engagement, 2. improving the operation of WTO bodies to revitalize the WTO's monitoring and deliberative function, 3. reinforcing the deliberative function, 4. making the Committee on Trade Development a focal point for consideration and coordination of work on development in the WTO, 5. India's "[30-for-30](#)" incremental changes, and 6. maximizing the value of ministerial conferences.

Brazil's proposal for hosting annual ministerial conferences did not gain traction. Additionally, the U.S.'s proposal for improving the operation of the General Council and Heads of Delegation/Trade Negotiations Committee, circulated on April 26, was not included in the discussion.

China welcomed the proposals, saying it is "really encouraging to see that the momentum of reform is gaining, and members are practicing the approach of 'reform by doing.'" China's statement suggested its support for the first channel of dispute settlement reform and the second channel of improving the WTO's functions

**TRIPS** WTO members remain divided on the extension of intellectual property flexibility for COVID-19 diagnostics and therapeutics under paragraph eight of the MC12 TRIPS Agreement, reached on June 17 last year, and substantive progress on the moratorium on e-commerce duties continues to elude delegates.

During the WTO's General Council meeting that concluded on May 9, several developing countries emphasized the need to finalize the decision on paragraph eight. **WTO Director-General Ngozi Okonjo-Iweala did not mention paragraph eight in her remarks to the General Council.** Instead, she focused on development issues and the need for a decision on dispute settlement reform. Her silence on paragraph eight has raised concerns among TRIPS negotiators.

India, South Africa, and Indonesia, among others, called for an urgent decision on paragraph eight during the General Council meeting due to the rising number of COVID-19 cases in their countries. However, opponents of the extension, such as Switzerland, the United Kingdom, the European Union, Japan, and Mexico, maintained their positions, arguing that there is no evidence that an extension is warranted at this time.

The United States has yet to take a side, as it awaits the completion of a US International Trade Commission investigation into the need for the waiver. The report is not expected until the second week of October. With the World Health Organization having declared the COVID-19 pandemic over, attention is now on what the WHO will do in ongoing discussions on the patent treaty.

**E Commerce Duties Moratorium.** Members discussed the e-commerce moratorium, which currently prevents the imposition of customs duties on electronic transmissions. The moratorium has been in place since the WTO's second ministerial meeting in Geneva in 1998.

Trade ministers at last year's MC12 meeting agreed to intensify discussions on the moratorium, instructing the General Council to hold periodic reviews based on reports submitted by relevant WTO bodies. The moratorium is set to continue until MC13, but may expire on March 31, 2024, if the meeting is delayed and no decision to extend is made.

Facilitator **Usha Chandnee Dwarka-Canabady** of Mauritius reported that two dedicated discussions on legal and regulatory frameworks and the moratorium were held on March 22 and April 20. Members agreed on the importance of engaging further on this issue, noting that the WTO could contribute as a forum for discussions, experience sharing, and provision of technical assistance and capacity building.

During the April discussions focused on the moratorium, three written submissions were circulated by Indonesia, Singapore, and the Organization of Eastern Caribbean States. However, the facilitator stated that delegations repeated well-known positions on the moratorium.

**Pakistan called for the termination of the moratorium, arguing that members need to weigh the costs faced by developing and least-developed countries (LDCs) under the moratorium.** China, an active participant in the Joint Statement Initiative on digital trade, emphasized the importance of working constructively and focusing on promoting the development of e-commerce. China also called for more intensive discussions on the development dimension to help all members, especially developing members, benefit from e-commerce.

**US Calls for WTO "Streamlining."** The United States has proposed measures to "modernize and update the General Council and Heads of Delegation/Trade Negotiations Committee agendas" of the World Trade Organization (WTO). However, critics argue that Washington's suggestions could limit the time and space for members to discuss each proposal.

The US proposal follows recent reform suggestions by Australia, India, Colombia, and other countries, aimed at improving ministerial meeting conduct, transparency, efficiency, and dialogue with international organizations. While the US did not table its proposal at the General Council (GC) meeting this week, it outlined several changes to enhance members' engagement, discussion, and efficiency.



The US recommends implementing an annotated agenda and organizing agenda items based on novelty and required or expected action. This would help facilitate more direct engagement among members and with the Director-General. It also proposes creating a separate agenda item for administrative and organizational updates, allowing for focused discussions on WTO reform.

For GC meetings, the US suggests indicating the required action for each agenda item, such as adoption, discussion, or information. It also proposes reorganizing agenda items to group similar themes or action items together, prioritizing new items requiring decisions or actions early in the meeting. Items with no updates, revisions, or previously agreed upon by a subsidiary body would appear later in the agenda.

While some members argue that the proposed changes could reduce time for meaningful discussions, the US contends that they would encourage members to use other venues to work towards consensus rather than relying on formal GC meetings for preliminary or technical deliberations.

**Senate Call to Strip China's WTO "Special" Status** Sens. John Thune (R-SD) and Angus King (I-Maine) are calling on the World Trade Organization so that China is no longer able to designate itself as a developing country, which allows it to receive the same benefits as much poorer nations.

The two senators reintroduced a resolution (SRes 202) asserting that the WTO should reform its special and differential treatment rules so globally competitive countries, such as China, are not able to self-designate as a developing country in order to gain unfair trade advantages.

The United States has repeatedly taken issue at the WTO with China's continued insistence on designating itself as a developing country.

"China, which has the world's second-largest economy after the United States, should not be able to self-designate as a developing country to gain unfair trade advantages, especially as the Chinese Communist Party takes advantage of actual developing countries through the predatory lending of the Belt and Road Initiative," Sen. Thune said.

"This designation intentionally misidentifies China's economic stature, undermines countries that are truly developing, and erodes trust in the rules-based trading system," he continued. "Meaningful reforms at the WTO need to be made, and reserving special treatment for truly developing countries would be a good start."

In addition to being the world's second-largest economy, the World Bank categorizes China as an upper-middle-income country, the senators noted.

"China calling itself a 'developing nation' – while having the world's second-largest economy – is a ridiculous economic fraud," Sen. King argued. "This preposterous self-designation is yet another example of China abusing well-intended economic guidelines at the expense of American businesses and the rest of the world. The World Trade Organization must change their rules to stop China from receiving special treatment that it doesn't deserve."

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**\*\*\* Briefs \*\*\***

**GAO: ITA's Global Markets Lacks Focus** The Commerce Department's Global Markets unit has failed to develop a comprehensive workforce plan that would help it focus export promotion priorities across its domestic and overseas workforce, according to a new report from the Government Accountability Office. [\[more\]](#)

**Third IPEF Negotiation Round Commences in Singapore** The third negotiation round of the Indo-Pacific Economic Framework (IPEF) began last week in Singapore. Participants aim to make significant progress throughout the year. Acting Assistant US Trade Representative for Southeast Asia and the Pacific, Sarah Ellerman, is heading the US delegation on the IPEF's trade pillar. [\[more\]](#)

**Commerce & USTDA Seek Climate Adaptation Input.** The U.S. Trade and Development Agency (USTDA) is seeking stakeholder input to integrate climate adaptation and resilience into its programming across priority sectors. [\[more\]](#)

**UNCTAD Calls for "Blue Deal" for Ocean Economy.** A report by the United Nations Conference on Trade and Development (UNCTAD) has called for a "Blue Deal" – a global initiative towards sustainable use of the world's oceans that are home to 80% of all life. [\[more\]](#)

**House Bill to Screen Outbound Investments.** A bipartisan group of House lawmakers have reintroduced legislation that would require the federal government to screen US outbound investments to countries like China and Russia. [\[more\]](#)

**ExIm Okays Aircraft, Energy Transactions** The US Export-Import Bank's Board of Directors voted yesterday to approve two transactions totaling nearly \$600 million in the transportation and energy sectors, subsidizing supplier finance for The Boeing Company and a controls upgrade at an Indonesian oil refinery. [\[more\]](#)

**Bipartisan Taiwan Tax Agreement Act.** A bipartisan group of senators has introduced the Taiwan Tax Agreement Act of 2023. The bipartisan legislation aims to authorize the Biden Administration to negotiate and conclude a tax agreement with Taiwan, similar to a tax treaty, to facilitate investment between the two nations and avoid double taxation. [\[more\]](#)

**AUKUS Export Control Reforms Proposed in Senate.** Two Senate Republicans have introduced legislation to speed up the process for by exporting US defense, dual-use and other controlled items and technology to the United Kingdom and Australia, S.1471, the Truncating Onerous Regulations for Partners and Enhancing Deterrence Operations (TORPEDO) Act. [\[more\]](#)

**Bill to Subsidize US Circuit Board Production.** Reps. Anna Eshoo (D-Calif) and Blake Moore (R-Utah) are introducing bipartisan legislation designed to bring printed circuit board production back to the United States and strengthen supply chain security with manufacturing subsidies and tax credits for buyers of American-made product. [\[more\]](#)

## \*\*\* Sanctions & Enforcement \*\*\*

**OFCAC Clears Czech Nuclear Supplier.** Treasury's Office of Foreign Assets Control (OFAC) has removed Czech nuclear engineering firm Škoda JS A.S. from its Sectoral Sanctions Identifications List, following the acquisition of the nuclear energy services company by Czech energy giant ČEZ. [\[more\]](#)

**EU Chief Previews 11th Sanctions Package.** European Commission President Ursula von der Leyen on Tuesday detailed a new set of sanctions targeting Russia, as well as Chinese and Iranian firms, during a meeting with Ukrainian President Volodymyr Zelenskyy. [\[more\]](#)

**Last Out, Fuhr's In as Acting Head of FCPA** David Last has resigned as chief of the Justice Department's Foreign Corrupt Practices Act unit after an 18 month stint. His deputy, David Fuhr has assumed the role of Acting Chief. [\[more\]](#)

**The Mother of All TDO's: Mahan Airways.** The saga of export enforcement actions against Iran's first private airline continues with the May 5 renewal of the temporary denial order (TDO) against Mahan Airways and associated persons first issued in March 2008. [\[more\]](#)

**BIS Continues Self-Reporting Campaign.** The Commerce Department's Bureau of Industry and Security is urging companies to come forward if they uncover potential export-control violations. [\[more\]](#)

**House Foreign Affairs Getting in on Sanctions.** The leaders of the House Foreign Affairs Committee introduced legislation yesterday to impose sanctions on activities supporting Iran's missile and drone program ahead of the October expiration of the United Nations missile ban on Iran. [\[more\]](#)

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