TRANSLATION

2023 Report on WTO Compliance of the United States

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TABLE OF ABBREVIATIONS

AMS	Aggregate Measurement of Support
ANSI	The American National Institute for Standardization
ARC	Agricultural Risk Coverage
BIS	Bureau of Industry and Security of the Department of Commerce
CEER	Combined Energy Efficiency Ratio
CFIUS	Committee on Foreign Investment in the U.S.
CSA	CHIPS and Science Act of 2022
DOC	The Department of Commerce of the U.S.
DOE	U.S. Department of Energy
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
EAR	Export Administration Regulations
ERC	End-User Review Committee
Executive Order 13873	Executive Order on Securing the Information and Communications Technology and Services Supply Chain
Executive Order 13971	Executive Order on Addressing the Threat Posed by Applications and Other Software Developed or Controlled by Chinese Companies
FCC	Federal Communications Commission
FDP	Foreign-Direct Product Rule
FIRRMA	Foreign Investment Risk Review Modernization Act of 2018
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GPA	Agreement on Government Procurement
ICs	Integrated Circuits
ICT	Information and Communications Technology
IIJA	Infrastructure Investment and Job Act
IPEF	Indo-Pacific Economic Framework
IRA	Inflation Reduction Act of 2022
IUU fishing	Illegal, Unreported and Unregulated fishing
LTAR	Less Than Adequate Remuneration
MC12	12th Ministerial Conference of the WTO
MPIA	Multi-Party Interim Appeal Arbitration Arrangement
NASA	National Aeronautics and Space Administration
NME	Non-Market Economy
NOAA	National Oceanic and Atmospheric Administration
NPE	Non-Practicing Entity
OFAC	Office of Foreign Assets Control
PLC	Price Loss Coverage
R&D	Research and Development
RFI	Request for Information

SAA	Statement of Administrative Action on the Uruguay Round Trade Agreements
SDN List	The Specially Designated Nationals and Blocked Persons List
SEER	Seasonal Energy Efficiency Ratio
SIMP	Seafood Import Monitoring Program
TBT	Technical Barriers to Trade
TRIPS Agreement	Agreement on Trade-Related Aspects of Intellectual Property Rights
TSA	Transportation Security Administration
TTC	U.S.-EU Trade and Technology Council
USDA	U.S. Department of Agriculture
USITC	United States International Trade Commission
USMCA	United States-Mexico-Canada Agreement
USTR	The Office of the United States Trade Representative
WTO	World Trade Organization

PREFACE

International trade is an important engine of global economy growth. The multilateral trading system, with the World Trade Organization (hereinafter referred to as "WTO") at its core, is the cornerstone of economic globalization and free trade. As an important pillar of global economic governance, since its inception, the WTO has made remarkable contributions to expanding international trade, ensuring full employment, stimulating economic growth, and raising living standards.

The WTO is a rule-based international organization. It has established a set of international trade norms through various agreements, which clarifies the rights and obligations of its members, and supervises the formulation and implementation of members' trade policies. In 1994, WTO members emphasized, in the *Marrakesh Agreement Establishing the World Trade Organization*, the substantial reduction of tariffs and other barriers to trade and the elimination of discriminatory treatment in international trade relations by entering into reciprocal and mutually beneficial arrangements. This fully reflects WTO members' common expectations for an open, transparent, inclusive, and non-discriminatory multilateral trading system.

The United States (hereinafter referred to as "U.S.") is the world's largest economy. It has been a major global trader, and is an important founder and principal beneficiary of the multilateral trading system. However, since 2017, pursuing the policy of "America First", the U.S. has persistently been blocking the appointments of the Appellate Body members, which led to the paralysis of the Appellate Body. The U.S. has also arbitrarily raised tariffs on imports, abused trade remedy and export control measures, granted discriminatory subsidies, instigated decoupling and fragmenting industrial and supply chains, and imposed economic coercion and sanctions of all kinds. These actions have seriously undermined the core values and basic principles of the WTO, violated U.S. international obligation of complying with WTO rules, which severely challenged the multilateral trading system and harmed WTO members' shared interests.

This Report is hereby published by the Ministry of Commerce of the People's Republic of China, with the aim of urging the U.S. to abide by the rules, honor its commitments and lead by example as a major WTO member. We also urge the U.S. to uphold the authority and efficacy of the multilateral trading system, and work together with other WTO members including the People's Republic of China (hereinafter referred to as "China"), to promote the multilateral trading system to play a greater role in global governance.

SUMMARY

This Report includes the following three parts in addition to the Preface and the Conclusion. The first part makes an overall assessment on the U.S. compliance with its WTO obligations in four aspects. As an important founder and principal beneficiary of the multilateral trading system, the U.S. should have set a good example by abiding by the rules, honoring its commitments, and upholding the authority and efficacy of the multilateral trading system. However, since 2017, in order to divert attention from its domestic challenges, pursuing "America First", the U.S. has been flouting the WTO rules and the expectations of other members, and resorting to unilateralism, protectionism and bullying hegemonism, which has brought severe shocks to the multilateral trading system.

The second part of the Report is "Specific Concerns about Policies and Measures of the United States". Based on WTO rules and the U.S. commitments under the WTO agreements, the Report expresses concerns about the U.S. trade and economic policies and measures in 11 key areas, including tariff and non-tariff barriers, industrial subsidies, agricultural subsidies, trade remedies, standards and technical regulations, trade in services, intellectual property rights, export controls and economic sanctions, investment review mechanism, "Buy America" policy, and discriminatory arrangements in international economic and trade cooperation.

The third part of the Report elaborates on the joint efforts of China and other members to address the U.S. actions and propositions that have violated the WTO rules and undermined multilateralism, including upholding true multilateralism, promoting restoration of the Appellate Body, safeguarding the legitimate rights and interests of developing members, making good use of policy review and monitoring functions of the WTO, and upholding the authority of the dispute settlement mechanism.

1 OVERALL ASSESSMENT ON THE U.S. COMPLIANCE WITH ITS WTO OBLIGATIONS

1.1 The U.S., as the world's largest economy and second-largest merchandise trader, has always been a global leader in foreign trade and investment. The U.S. has contributed to establishing the multilateral trading system, promoting multilateral economic and trade negotiations, resorting to multilateral mechanism to solve disputes, and maintaining the smooth operation of the trade policy review mechanism.

1.2 The U.S. is an important founder of the multilateral trading system. It contributed to the conclusion of the *General Agreement on Tariffs and Trade* (hereinafter referred to as "GATT") after World War II and initiated the Uruguay Round in the 1980s. As one of the most important founding members of the WTO, the U.S. played a key role in the formation of WTO rules. After the establishment of the WTO, the positive outcomes and progress achieved, such as the *Information Technology Agreement* and its expansion, the *Trade Facilitation Agreement*, as well as new issues like services domestic regulation and e-commerce, could not have been achieved without the leadership and efforts of the U.S. The U.S. also contributed to a series of outcomes of the 12th Ministerial Conference of the WTO (hereinafter referred to as "MC12") held in 2022. The U.S. used to be a critical advocate of the WTO dispute settlement mechanism and frequently settled trade disputes with other members through the multilateral mechanism.

1.3 The U.S. is a principal beneficiary of the multilateral trading system. Its financial, internet and high-tech giants, multinational corporations, and the farmers and ranchers have all benefited greatly from trade liberalization. However, the absence of a sound benefit distribution system has led to the failure of the U.S. to properly deal with its domestic income and job opportunity inequality among different classes. In addition, as a country with low savings, high consumption, and high debt, the U.S. has long had a savings shortage and has to rely on current account deficits and trade deficits for economic growth. The U.S. government attributes its domestic social problems to the so-called "unfair trade" that caused trade deficit and unemployment, and make globalization and the WTO the scapegoat of its domestic policy failures.

1.4 Since 2017, pursuing "America First", the U.S. government has adopted a series of unilateralist and trade protectionist measures, which run counter to the core values and basic principles of the multilateral trading system, as well as violate its obligations under the WTO. The U.S. practices have undermined the authority and efficacy of the multilateral trading system, disrupted the progress of globalization, and caused great damage to the stable development of the world economy and trade.

1.1 A Destroyer to the Multilateral Trading System.

1.5 The U.S. puts domestic laws over and above international rules, disregards the multilateral trading rules and the concerns of other members, defies and challenges the basic principles of the WTO, and cripples the normal functioning

of the WTO. These actions seriously threaten the existence and development of the multilateral trading system.

1.6 **Undermining the dispute settlement mechanism.** The dispute settlement mechanism, as the "crown jewel" of the WTO, provides an important safeguard for the effective implementation of the WTO rules with its binding recommendations and rulings. Since 2017, as the terms of Appellate Body members expired and vacancies arose, the U.S. has blocked appointments of new Appellate Body members on the grounds of institutional issues, which led to the "paralysis" of the Appellate Body. As of December 2022, the U.S., for 60 consecutive times, had rejected proposals from other members to launch the selection of Appellate Body members at the regular meeting of the WTO Dispute Settlement Body (hereinafter referred to as "DSB"). Even though an overwhelming majority of WTO members support the early launch of this process, the U.S. still refuses to join the consensus under the excuse of unresolved institutional concerns.[1]

1.7 This contradicts Article 17.2 of the *Dispute Settlement Understanding* (hereinafter referred to as "DSU") which provides that "vacancies shall be filled as they arise". On the one hand, the U.S. keeps blocking the appointments of new Appellate Body members, thus leading to the "paralysis" of the Appellate Body. On the other hand, the U.S. has taken full advantage of the vacancies of the Appellate Body members by appealing unfavourable panel reports and intentionally prevented the panel reports from being adopted and entering into effect. As of February 2023, there were 29 pending appeals, 11 of which were brought by the U.S., accounting for 37.93% of the total.

1.8 **Selectively implementing DSB recommendations and rulings.** Full and complete implementation of DSB recommendations and rulings is a basic obligation and common expectation of all WTO members. However, the U.S. has a very poor record in implementing DSB recommendations and rulings, with the highest number of cases placed on the surveillance agenda of DSB regular meetings and the most concerns received from other members over its implementation. Since the establishment of the WTO, the U.S. has been a respondent in 157 disputes, including 28 compliance disputes, accounting for approximately 20%. In nine disputes, the DSB authorized the complaints to take retaliatory measures against the U.S. What worries other members more is that, in December 2022, the WTO panel issued reports related to U.S. Section 232 tariffs on steel and aluminum in complaints brought by China (DS544), Norway (DS552), Switzerland (DS556), and Türkiye (DS564), and related to U.S. origin marking requirement in complaint brought by Hong Kong, China (DS597). These reports found that the tariffs on steel and aluminum imports under Section 232 and the measure of origin marking requirement violated WTO rules. At the DSB regular meeting in January 2023, China, Norway, Switzerland, Türkiye and Hong Kong, China, jointly requested that the DSB adopt the panel's recommendations and rulings in the five disputes mentioned above and that the U.S. withdrew its WTO-inconsistent measures. However, the U.S. appealed all these five recommendations and rulings before the start of the meeting. The Office of the United States Trade Representative (hereinafter

[1] WT/DSB/M/472.

referred to as "USTR") asserted that the U.S. would not implement the recommendations and rulings and also made groundless criticisms on the WTO dispute settlement mechanism.[2]

1.9 **Challenging the special and differential treatment of developing members.** In the WTO, the developing member status is self-declared. Compared to developed members, developing members enjoy special and differential treatment, a legitimate right entitled to all developing members under the WTO. However, the U.S. took the position that the special and differential treatment gave most members a pass with exemptions to new rules in the name of self-proclaimed development status .[3] Since 2019, the U.S. has submitted nine proposals[4] persistently to the WTO General Council, requesting that certain members should not enjoy the special and differential treatment in the current and future negotiations. This is contrary to the WTO common practices that the developing Member status is self-declared.

1.2 A Unilateralist and Bullying Hegemonist.

1.10 The WTO prohibits its members from taking unilateral measures against other members without authorization. But the U.S. has a long history of taking unilateral measures against other members under the disguise of so-called "national security", "human rights", "forced technology transfer", etc. By leveraging its superior or dominant positions in economy, technology and finance, the U.S. has also coerced other countries, regional groups and entities into abiding by its diplomatic policies and illegitimate demands. These practices caused destructive impacts on international trade.

1.11 **Abusing the national security exception**. Since 2017, the U.S. has initiated Section 232 investigations and imposed tariffs on steel, aluminum, and other products worldwide under the excuse of "national security". Under the coercion, some WTO members have reached agreements with the U.S. in exchange for tariff exemptions. For example, Canada and Mexico were exempted from Section 232 tariffs on steel and aluminum products on the condition of concluding the *United States-Mexico-Canada Agreement* (hereinafter referred to as "USMCA").[5] The U.S provided quota for imports of steel from Republic of Korea due to Korea's concessions in the negotiations of *U.S.-Korea Trade Agreement.*[6] The U.S. even increased the Section 232 tariff on steel imports from 25 percent to 50 percent to punish Türkiye for its position on certain

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[2] Statement from USTR Spokesperson Adam Hodge, available at: https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/december/statement-ustr-spokesperson-adam-hodge.

[3] WT/MIN(17)/ST/128.

[4] WT/GC/W/764/Rev.1.

[5] Commerce Secretary Ross: Tariffs are 'motivation' for Canada, Mexico to make a 'fair' NAFTA deal, available at: https://www.cnbc.com/2018/03/08/commerce-secretary-ross-tariffs-are-motivation-for-canada-mexico-to-make-a-fair-nafta-deal.html.

[6] President Donald J. Trump is Fulfilling His Promise on the U.S.-Korea Free Trade Agreement and on National Security, available at: https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trump-fulfilling-promise-u-s-korea-free-trade-agreement-national-security/.

political issues.[7] Since 2018, under the excuse of "national security", the U.S. has also banned the use of telecommunications equipment from certain Chinese companies, revoked their licenses from the Chinese carriers in the U.S.,[8] and blocked related investment from China. The U.S. has continuously expanded the scope and authority of security review of foreign investment and even intends to launch the so-called "investment screening mechanisms" on outbound investment and overseas operations of the U.S. companies.[9] Borderlex, a European trade policy analysis website, published a commentary in February 2023 and stated that "the recent U.S. rejection of the WTO dispute settlement panel on ruling Trump era steel and aluminium tariffs suggests Washington can declare any issue one of 'national security' in order not to apply rules."[10]

1.12 **Engaging in economic coercion.** To strengthen its dominance in high-tech fields such as semiconductors and new energy, the U.S. has resorted to state power to coerce certain companies into submitting their core confidential information, and forced certain countries, regional groups and entities to take sides. The Department of Commerce of the U.S. (hereinafter referred to as "DOC") in September 2021 required companies involved in semiconductor supply chains to provide information "voluntarily" within 45 days, which included 26 items of core data on inventories, production capacity, delivery cycle, and customer information.[11] The DOC even threatened to use the compulsory measures under the *Defense Production Act of 1950* if those companies failed to submit their information as requested.[12]

1.13 **Abusing export control and sanction measures.** The export control regime was designed to prevent the proliferation of weapons of mass destruction and their means of delivery. But the U.S. has made the regime into a black-box to hinder other countries' development and crack down foreign enterprises. The *Export Control Reform Act of 2018* even explicitly calls for the imposition of export controls to reinforce U.S. industrial base and maintain its leadership in the science, technology, engineering, and manufacturing sectors.[13] Under the

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[7] Statement from President Donald J. Trump Regarding Turkey's Actions in Northeast Syria, available at:
https://trumpwhitehouse.archives.gov/briefings-statements/statement-president-donald-j-trump-regarding-turkeys-actions-northeast-syria/.

[8] National Defense Authorization Act for Fiscal Year 2019, Sec. 889(a)(1)(B), available at:
https://www.congress.gov/115/bills/hr5515/BILLS-115hr5515enr.pdf.

[9] National Security Strategy, 33, available at:
https://www.whitehouse.gov/wp-content/uploads/2022/10/Biden-Harris-Administrations-National-Security-Strategy-10.2022.pdf.

[10] Perspectives: Adjusting to a new world of trade rules, Borderlex, available at:
https://borderlex.net/2023/02/02/perspectives-adjusting-to-a-new-world-of-trade-rules/.

[11] Notice of Request for Public Comments on Risks in the Semiconductor Supply Chain, available at:
https://www.federalregister.gov/documents/2021/09/24/2021-20348/notice-of-request-for-public-comments-on-risks-in-the-semiconductor-supply-chain.

[12] White House Weighs Invoking Defense Law to Get Chip Data, available at:
https://www.bloomberg.com/news/articles/2021-09-23/white-house-weighs-invoking-defense-law-to-get-chip-supply-data#xj4y7vzkg.

[13] Export Control Reform Act of 2018, Sec. 102, available at:
https://www.congress.gov/bill/115th-congress/house-bill/5040/text.

disguise of "national security" and "human rights", the U.S. has added a large number of Chinese entities to the "Entity List" and "Specially Designated Nationals and Blocked Persons List (hereinafter referred to as "SDN List")", and then adopted quantitative restriction measures, which severely hinder normal foreign trade and economic exchanges of relevant Chinese entities.

1.3 A Double Standard Manipulator on Industrial Policies.

1.14 WTO members shall not implement industrial policies in violation of the non-discriminatory principle of the WTO and the *Agreement on Subsidies and Countervailing Measures* (hereinafter referred to as "SCM Agreement"). For a long time, the U.S. has applied different standards with regard to industrial policies between other members and itself. On the one hand, focusing on its own needs and stage of industrial development, the U.S. implements exclusive and discriminatory industrial policies. Through providing large-scale subsidies inconsistent with WTO rules, the U.S. practices lead to over-capacity of relevant products and distortion of global market. On the other hand, the U.S. points fingers at other members, especially developing members, legitimate policies aiming at supporting their domestic industrial development.

1.15 **Long-term implemention of industrial protection policies.** The U.S championed the infant industry theory in its early years and emphasized protection of domestic industries through tariffs and government subsidies. After the Second World War, the U.S. industry was very competitive in the world. To facilitate greater access of its products into global markets, the U.S. advocated for integrating domestic industrial subsidy rules into the GATT, placing limits or prohibition on other members to support their domestic industries through subsidies. However, the U.S. did not restrain its own use of industrial policies, and shifted its government support, including subsidies, towards high-tech industries, such as the internet, information technology, national defense and aerospace, in a more covert way to promote their development. The U.S. government even recklessly subsidized relevant industries in huge amounts, completely disregarding the WTO subsidy disciplines.

1.16 **Adoption of strong hi-tech industrial policies.** The *CHIPS and Science Act of 2022* (hereinafter referred to as "CSA") allocates directly at least $39 billion to manufacturing incentives, offers a 25 percent investment tax credit for capital expenses for manufacturing semiconductors and related equipment, and provides about $200 billion for scientific research and development (hereinafter referred to as "R&D"). In addition, the CSA also comes with strong "guardrails", requiring recipients of federal financial assistance to sign a ten-year agreement with the DOC on the condition of not engaging in any significant transaction involving the material expansion of semiconductor manufacturing capacity in China or any other "foreign country of concern". Meanwhile, the U.S. has also adopted measures such as export controls to restrict or prohibit the export of chips to members that may compete with it, which curbs the industrial development of other members. Gina M. Raimondo, the Secretary of Commerce, stated publicly in February 2023 that she hoped the U.S. to be the only country in the world where every company capable of producing leading-edge chips would have a significant R&D and high-volume

manufacturing presence, and that by 2030, the U.S. would design and produce the world's most advanced chips on its shores.[14]

1.17 **Providing large-scale subsidies to domestic industries under the excuse of "addressing climate change".** In order to dominate the clean energy market, the U.S. enacted the *Inflation Reduction Act of 2022* (hereinafter referred to as "IRA") in the name of addressing climate change, which provides up to $369 billion actionable and even prohibited subsidies aiming at supporting the production and investment in clean vehicles, critical minerals, clean energy, and power-generating facilities. In the case of Clean Vehicle Credit, the IRA stipulates the domestic content requirements for critical mineral and battery component as a precondition for subsidies, i.e., the minimum percentage of the value of the applicable critical minerals contained in such batteries that are extracted, processed or recycled in the U.S. or in any country with which the U.S. has a free trade agreement in effect, and the minimum percentage of the battery components that are manufactured or assembled in North America. In addition, the IRA also requires that the critical minerals contained in the batteries shall not be extracted, processed, or recycled by a "foreign entity of concern", and the batteries shall not be manufactured or assembled by a "foreign entity of concern", and the final assembly of new electric vehicles must occur within North America. In the case of Clean Energy Credit, taxpayers must satisfy the requirement that a certain percentage of the steel, iron or manufactured products used in the construction of the production facilities should be produced in the U.S. and North America to qualify for this credit.

1.18 **Frequently criticizing other members' legitimate industrial policies.** Although the U.S. heavily subsidizes its domestic industries through industrial policies, in the meantime, it positions itself as "defender" and "judge" of the market economy system and frequently criticizes other members for supporting and developing their national economies through industrial policies. For example, since 2018, the U.S. government has levied high tariffs on Chinese exports to coerce China into abandoning its legitimate industrial policies to support technological R&D and underdeveloped regions. In several joint statements of the trilateral meetings of the Trade Ministers of Japan, the U.S. and the European Union (hereinafter referred to as "EU"), the U.S. also proposed to expand the scope of prohibited subsidies and to establish a mechanism of reversing the burden of proof for certain types of so-called "harmful subsidization".[15]

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[14] Remarks by U.S. Secretary of Commerce Gina Raimondo: The CHIPS Act and a Long-term Vision for America's Technological Leadership, available at: https://www.commerce.gov/news/speeches/2023/02/remarks-us-secretary-commerce-gina-raimondo-chips-act-and-long-term-vision.

[15] Joint Statement of the Trilateral Meeting of the Trade Ministers of Japan, the United States and the European Union, available at: https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/january/joint-statement-trilateral-meeting-trade-ministers-japan-united-states-and-european-union.

1.4 A Disturber of the Global Industrial and Supply Chains.

1.19 Driven by hegemonism and the Cold War mentality, the U.S. has adopted various protectionist practices, such as abusing the national security exception, imposing high tariffs or taking trade-restrictive measures, providing massive subsidies to support domestic industry, instigating decoupling and fragmenting industrial and supply chains, promoting "near-shoring" and "friend-shoring", etc., to excessively pursue the so-called "security" and "resilience" of industrial and supply chains. This has seriously disrupted the security and stability of the global industrial and supply chains. For the U.S., decoupling has not brought manufacturing back to the U.S. as expected, but instead imposed additional tariff burdens on its companies and households.[16] For the world, decoupling and fragmenting industrial and supply chains instigated by the U.S. does not enhance the resilience of global industrial and supply chains, but makes them more vulnerable and even fragmented.

1.20 **Utilizing unilateral tariff measures to force re-shoring of industrial chains.** One of the important purposes of the Trump administration's imposition of Section 301 tariffs on China is to force the U.S. importers to procure from the U.S. or other countries to realize its so-called "Made in America" goal. For example, one of the important factors for the USTR to decide whether to exempt a product from the Section 301 list on China is whether the related product or the like product can be obtained from the U.S. or a third country. In the four-year review of Section 301 tariffs, the USTR even began to assess the effect of Section 301 tariffs on moving supply chains away from China.[17]

1.21 **Reviewing supply chains to pursue "America First".** The Biden Administration issued *Executive Order 14017-America's Supply Chains* soon after taking office, calling for one-year sectoral supply chain assessments of six industrial bases that rely heavily on imports, and a 100-day supply chain review for four critical products.[18] In June 2021, the U.S. released the *100-Day Reviews under Executive Order 14017*, reviewing the supply chains for semiconductors, critical minerals, pharmaceuticals and active pharmaceutical ingredients, and large capacity batteries.[19] In February 2022, the U.S. also published reports of risk assessments for six areas, including public health,[20]

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[16] 2022 U.S.-China Trade Data Shows No Signs of Widespread Decoupling, available at: https://www.cato.org/blog/2022-us-china-trade-data-shows-no-signs-widespread-decoupling.

[17] Four-Year Review, Request for Comments in Four-Year Review of Actions Docket, available at: https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-china-technology-transfer/china-section-301-tariff-actions-and-exclusion-process/four-year-review.

[18] America's Supply Chains, Executive Order 14017 of February 24, 2021, available at: https://www.federalregister.gov/documents/2021/03/01/2021-04280/americas-supply-chains.

[19] Biden-Harris Administration Announces Supply Chain Disruptions Task Force to Address Short-Term Supply Chain Discontinuities, available at: https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/08/fact-sheet-biden-harris-administration-announces-supply-chain-disruptions-task-force-to-address-short-term-supply-chain-discontinuities/.

[20] Public Health Supply Chain and Industrial Base One-Year Report, available at: https://aspr.hhs.gov/MCM/IBx/2022Report/Documents/Public-Health-Supply-Chain-and-Industrial-Base%20One-Year-Report-Feb2022.pdf.

defense,[21] transportation,[22] energy,[23] information and communications technology (hereinafter referred to as "ICT") industry,[24] and agricultural products and food industry,[25] proposing various suggestions including increasing domestic infrastructure investment, increasing governmental R&D investment, expanding domestic manufacturing of critical products, leveraging partnerships with allies to diversify supply chain and combat "unfair trade".

1.22 **Disrupting industrial and supply chains by discriminatory means.** The IRA and the CSA, aiming at developing industries of the new energy and semiconductor respectively, attempt to establish relevant industries in the U.S. or its trusted partner through huge amounts of subsidies. The Acts mentioned above also discriminately restrict or exclude other members from participating in global new energy and semiconductor supply chains and forcibly alter the global industrial pattern and market division of labor. Moreover, the U.S. restricts or even prohibits the export of controlled items to certain members under the excuse of "national security" and arbitrarily cuts off other members' access to products or technologies from the U.S.

1.23 **Building exclusive industrial and supply chains through "near-shoring" or "friend-shoring".** The U.S. actively promoted the Indo-Pacific Economic Framework (hereinafter referred to as "IPEF"), the Chip 4 Alliance, the U.S.-EU Trade and Technology Council (hereinafter referred to as "TTC"), and the "Americas Partnership for Economic Prosperity" with Latin American countries, which all include the issues of security and resilience of supply chain. The fundamental goal of these arrangements is to re-establish "new" industrial and supply chains where the U.S. obtains a dominant position and which serves the interests of U.S. hegemony, and to exclude non-allied countries. This significantly undermines the stability and healthy development of global industrial and supply chains.

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[21] Securing Defense-Critical Supply Chains, available at: https://www.defense.gov/News/Releases/Release/Article/2944488/defense-department-releases-report-on-strengthening-defense-critical-supply-cha/.

[22] Supply Chain Assessment of the Transportation Industrial Base: Freight and Logistics, available at: https://www.transportation.gov/supplychains.

[23] America's Strategy to Secure the Supply Chain for a Robust Clean Energy Transition, available at: https://www.energy.gov/policy/articles/americas-strategy-secure-supply-chain-robust-clean-energy-transition.

[24] Assessment of the Critical Supply Chains Supporting the U.S. ICT Industry, available at: https://www.dhs.gov/publication/assessment-critical-supply-chains-supporting-us-ict-industry.

[25] America's Strategy to Secure the Supply Chain for a Robust Clean Energy Transition, available at: https://www.energy.gov/policy/securing-americas-clean-energy-supply-chain.

2 SPECIFIC CONCERNS OVER POLICIES AND MEASURES OF THE U.S.

2.1 Tariff and Non-Tariff Barriers

2.1 Since 2017, the U.S. has frequently used tariffs as a main tool to undermine or coerce other members, arbitrarily increased tariffs or non-tariff barriers to restrict the export of other members into the U.S. on the pretext of "forced technology transfer", "national security", "human rights", etc.

2.1.1 Tariff Peaks and Tariff Escalations

2.2 Although the U.S. simple average tariff rate remains low, 6.9% of all tariff lines are peak tariffs. The U.S. tariff schedule contains 10 tariff lines over 300%, including two tariff lines over 400%. For high-tariff products, the tariffs of products such as clothing, textiles, fish, sugar, minerals range from 30% to 50%, while tariffs of products such as coffee, dairy products, leather, shoes range from 50% to 100%. The tariffs of products such as fruits, vegetables, and tobacco exceed 100%. The tariff peaks set by the U.S. on certain products have made relevant products from other members less competitive and more difficult to access the U.S. market. In addition, the tariff escalation in the U.S. is still severe, with higher tariffs for some finished goods or semi-processed products. Such tariff structure obviously restricts the export of higher value-added semi-processed and finished goods to the U.S., to the detriment of exporters of other members.

2.1.2 "Section 301"

2.3 "Section 301" refers to Sections 301 to 310 under Title III of the Trade Act of 1974, and is fully known as "Relief from Unfair Trade Practices". Authorized under the provisions mentioned above, the USTR may impose duties or other import restrictions against foreign countries, if it, ex officio or upon request, initiates an investigation and determines that a foreign country violates U.S. trade agreements or engages in an act, policy, or practice that is unjustifiable and burdens or restricts U.S. commerce. Since the enactment of the Trade Act of 1974, the U.S. has initiated 125 investigations under "Section 301" against 36 WTO members.[26]

2.4 The U.S., in the *Statement of Administrative Action on the Uruguay Round Trade Agreements* (hereinafter referred to as "SAA"),[27] has committed to basing any section 301 determination that there has been a violation or denial of U.S. right under relevant WTO agreement on the panel or Appellate Body findings adopted by the DSB.[28] In the *United States – Sections 301–310 of the Trade Act 1974* (DS152), the U.S. also expressly, formally, repeatedly and

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[26] WT/DSB/M/412.

[27] Statement of Administrative Action on The Uruguay Round Trade Agreements, available at: https://www.govinfo.gov/content/pkg/CREC-1994-10-08/html/CREC-1994-10-08-pt1-PgE143.htm.

[28] Panel Report, United States – Sections 301–310 of the Trade Act of 1974, para. 7.112.

unconditionally confirmed the commitment mentioned above.[29] Therefore, the Panel of DS152 cautioned that should the undertaking be repudiated or in any other way removed by the U.S. Government, the finding of conformity of Section 301 with WTO agreements would no longer be warranted.[30]

2.5 Since 2017, the commitment expressed in the SAA was frequently violated by the U.S. government. Taking the Section 301 investigation of China as an example, in March 2018, the USTR released the "Report on China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation", and unilaterally claimed that numerous acts, policies and practices of the Chinese government related to technology transfer, intellectual property, and innovation are unreasonable or discriminatory and burden or restrict U.S. commerce. Then-President Donald Trump issued the Memorandum, ordering the USTR to take action against China with three measures, including imposing tariffs on Chinese imports.[31] Subsequently, the U.S. imposed Section 301 tariffs ranging from 7.5% to 25% on around $360 billion of Chinese imports in four batches, significantly exceeding the tariff concession commitments made by the U.S. under the WTO.

2.6 In order to correct above wrongdoings of the U.S., China has repeatedly raised concerns on the U.S. policies and practices regarding their inconsistency with U.S. commitments under the WTO on various occasions in the WTO, including the General Council and the Council for Trade in Goods. Since April 2018, China has requested several consultations on the Section 301 tariff under the WTO dispute settlement mechanism, i.e., DS543, DS565 and DS587. In September 2020, the Panel Report for DS543 was circulated. The Panel found that the challenged measures were *prima facie* inconsistent with Articles I:1, II:1(a) and II:1(b) of the GATT 1994, and that the U.S. failed to demonstrate that the measures were provisionally justified under Article XX(a) of the GATT 1994.[32]

2.1.3 "Section 232"

2.7 "Section 232" refers to Section 232 of the *Trade Expansion Act of 1962*, which, for the purpose of "safeguarding national security", allows the DOC to initiate investigations, *ex officio* or upon request, to determine the effects of imports of any article on the national security of the U.S. Based on the findings of the DOC, the President is authorized to take measures to adjust the imports of an article and its derivatives from other countries if it is found that the importation of the article in question is in such quantities or under such circumstances as to threaten to impair the national security, so as to address the threat.

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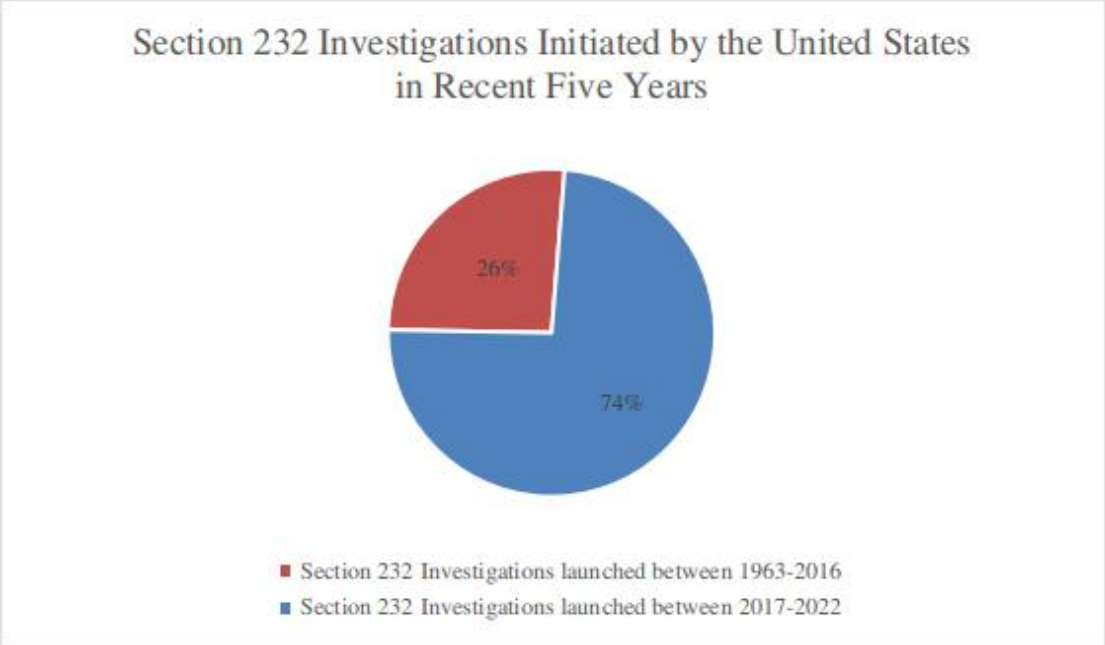
[29] *Ibid*., paras. 7.114-7.126.
[30] *Ibid*., para. 7.136.
[31] Actions by the United States Related to the Section 301 Investigation of China's Laws, Policies, Practices, or Actions Related to Technology Transfer, Intellectual Property, and Innovation, Memorandum for the Secretary of the Treasury, the United States Trade Representative, the Senior Advisor for Policy, the Assistant to the President for Economic Policy, the Assistant to the President for National Security Affairs, and the Assistant to the President for Homeland Security and Counterterrorism, available at: https://www.govinfo.gov/content/pkg/FR-2018-03-27/pdf/2018-06304.pdf.
[32] Panel Report, United States – Tariff Measures on Certain Goods from China, para. 8.1.

2.8 Since 2017, Section 232 has become a major tool for the U.S. to launch "trade wars", after being dormant for 16 years. The U.S. initiated investigations on imports of steel, aluminum, automobiles and automobile parts, uranium ore and products, titanium sponge, transformers, transformer cores, transformer regulators, and other pts.&accs., portable cranes, vanadium, NdFeB permanent magnets, etc., and has implemented import-restrictive measures, including imposing tariffs or quantitative restrictions. From 2017 to 2022, the number of Section 232 investigations initiated represents nearly a quarter of all Section 232 investigations initiated by the U.S. in the past 60 years.



Section 232 Investigations Launched in Recent 5 Years

Subject of Investigation	Year Initiated	Petitor for investigation	The Findings of Treasury or Commerce	Presidential Action
Steel	2017	DOC	threaten to impair the national security	Imposed tariffs of 25% on imported steel products from all countries except Canada and Mexico.
Aluminum	2017	DOC	threaten to impair the national security	Imposed tariffs of 10% on imported aluminum products from all countries except Canada and Mexico.
Automotive parts	2018	DOC	threaten to impair the national security	Directed the USTR to negotiate with the EU, Japan, and others to resolve "national security" threat caused

				by imported automotive parts.
Uranium ore and products	2018	Requested by Ur-Energy Inc.& Energy Fuels Inc.	threaten to impair the national security	The President did not concur with the findings of the DOC and decided not to restrict imports of uranium, but establish the U.S. Nuclear Fuel Working Group to develop recommendations on restoring and expanding domestic nuclear fuel production.
Titanium sponge	2019	Titanium Metals Corp.	threaten to impair the national security	The President concurred with the findings of the DOC but decided not to restrict imports of titanium sponge, and then directed to establish a working group with Japan to ensure access to titanium sponge in the U.S..
Transformers, transformer cores, transformer regulators, and other pts.&accs.	2020	DOC	threaten to impair the national security	N/A
Portable cranes	2020	Manitowoc Company, Inc. T	threaten to impair the national security	N/A
Vanadium	2020	AMG Vanadium LLC & U.S. Vanadium LLC	threaten to impair the national security	N/A
NdFeB permanent magnets	2021	DOC	threaten to impair the national security	President concurred with Commerce findings but did not restrict imports.

2.9 The language of Section 232 does not provide clear definition for national security. Although WTO members have the right to invoke the national security

exception, such right is not unlimited. WTO members should invoke the security exception in good faith and with due restraint. Also, there must be a necessary connection between the restrictive measures at issue and the "essential security interests" that members aim to protect. Taking the Section 232 investigation on steel and aluminum as an example, the U.S. applied additional 25% and 10% tariffs respectively on steel and aluminum, based on the findings made by the DOC that the quantities and circumstances of imports of steel and aluminum were "weakening in the national economy" and threatened to impair U.S. "national security".[33] However, the increase in the import volume of steel and aluminum did not impact U.S. national security, and reports by the U.S. showed that steel and aluminum necessary used in the military industry accounted for only 3% of their total domestic production.[34] It is obvious that the U.S. has taken the Section 232 investigations to achieve its potential trade protectionist objectives.

2.10 The U.S. implements trade protectionism on the pretext of "national security" and blatantly violates the WTO rules, that is strongly opposed by the majority of WTO members. China and other WTO members have questioned the U.S. problematic policies and practices on various occasions in the WTO such as the General Council and the Council for Trade in Goods, etc. Since April 2018, nine WTO members, including China, have successively brought WTO cases against the U.S. concerning Section 232 tariffs on steel and aluminum products.[35] In December 2022, the Panel report was issued, which found that Section 232 tariffs were inconsistent with Article II of the GATT 1994 and the commitments in the U.S. WTO Schedule of Concessions,[36] that exempting steel and aluminum products from Australia, Argentina, Brazil, and South Korea from Section 232 tariff was inconsistent with the Article I (General Most-Favoured-Nation Treatment) of the GATT 1994,[37] and that the Section 232 tariffs were inconsistent with the provisions of Article XXI (Security Exceptions) of the GATT 1994.[38] The Panel report demonstrates again that national security exceptions are not the "safe harbor" for unilateralism and protectionism.

2.1.4 Telecommunications Equipment

2.11 In recent years, the U.S. has arbitrarily expanded restrictions on telecommunications and communications equipment produced in China in the name of "national security" without any factual evidence. Firstly, the U.S. has excluded leading Chinese telecommunications enterprises from U.S.

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[33] The Effect of Imports of Steel on the National Security, available at: https://www.bis.doc.gov/index.php/documents/steel/2224-the-effect-of-imports-of-steel-on-the-national-security-with-redactions-20180111/file; The Effect of Imports of Aluminum on the National Security, available at: https://www.commerce.gov/sites/default/files/the_effect_of_imports_of_aluminum_on_the_national_security_-_with_redactions_-_20180117.pdf.

[34] *Ibid.*

[35] These dispute settlements include DS544 (China), DS547 (India), DS548 (European Union), DS550 (Canada), DS551 (Mexico), DS552 (Norway), DS554 (Russia), DS556 (Switzerland), and DS564 (Türkiye).

[36] Panel Report, United States – Certain Measures on Steel and Aluminium Products, para. 7.47.

[37] *Ibid.*, para. 7.59.

[38] *Ibid.*, para. 7.149.

government procurement. In August 2018, then-President Donald Trump signed the National Defense Authorization Act for Fiscal Year 2019, of which Section 889 prohibited administrative agencies of the U.S. from procuring or obtaining equipment produced by leading Chinese telecommunications enterprises.[39] In March 2020, then-President Donald Trump signed the *Secure and Trusted Communications Networks Act* of 2019, which required the Federal Communications Commission (hereinafter referred to as "FCC") to publish the *Covered Communications Equipment or Services List* (hereinafter referred to as "Covered List") that threatens the security of information networks of the U.S. Once a supplier or its device is included in the Covered List, it is prohibited from using the federal subsidy that is made available through a program administered by FCC to purchase, rent, lease, or otherwise obtain any covered communications equipment or service in the Covered List.[40] In March 2021, the FCC put five leading Chinese telecommunications enterprises and their subsidiaries and affiliates in the Covered List.[41]

2.12 To further ban Chinese-produced telecommunications equipment from entering the domestic market, the U.S. prohibited the use of private fund and non-federal fund in addition to the federal fund to purchase covered equipment.[42] In November 2021, President Biden signed the *Security Devices Act of 2021*, requiring that the FCC not to review or approve any application for equipment authorization for equipment that is in the Covered List.[43] In November 2022, the FCC issued an order explicitly banning the authorization of telecommunications and video surveillance equipment manufactured by entities in the Covered List, which in essence makes it impossible for relevant products to be exported to or sold in the U.S.[44]

2.13 The U.S. has blacklisted Chinese telecommunications equipment companies on the grounds of jeopardizing the security of information network and banned Chinese-produced telecommunications equipment from entering the U.S. market. Compared with telecommunications equipment manufactured in the U.S. and other members that can obtain authorization for the U.S. market, equipment manufactured by Chinese telecommunications companies is obviously treated unfavorably. The relevant policies and practices mentioned above discriminate against Chinese products when entering the U.S. market, setting obstacles to normal international trade and violating the WTO rules.

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[39] National Defense Authorization Act for Fiscal Year 2019, Sec. 889(a)(1)(B), available at: https://www.congress.gov/115/bills/hr5515/BILLS-115hr5515enr.pdf.

[40] Secure And Trusted Communications Networks Act of 2019, Sec. 2, available at: https://www.congress.gov/bill/116th-congress/house-bill/4998/text.

[41] List of Equipment and Services Covered by Section 2 of The Secure Networks Act, available at: https://www.fcc.gov/supplychain/coveredlist.

[42] 2 CFR § 200.216, available at: https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-C/section-200.216.

[43] Secure Equipment Act of 2021, Sec. 2, available at: https://www.congress.gov/bill/117th-congress/house-bill/3919/text.

[44] FCC Bans Authorizations for Devices That Pose National Security Threat, available at: https://www.fcc.gov/document/fcc-bans-authorizations-devices-pose-national-security-threat.

2.2 Industrial Subsidies

2.14 In recent years, the U.S. has frequently provided subsidies to support the development of domestic industries. These subsidy programs have been more significant than ever in terms of the degree of discrimination, the scale of subsidies, and the market-distorting effects. Certain subsidy programs are even contingent upon the use of domestic products of the U.S. or the prohibition on procuring foreign products.

2.2.1 Electric Vehicles

2.15 In order to develop domestic electric vehicle industry, the U.S. has introduced numerous subsidies for R&D, production, manufacture, consumption as well as charging equipment. Through these subsidies, the U.S. aims to achieve the goal for electric vehicles to make up 50% of all vehicles sold in the U.S. by 2030.[45] The *Clean Vehicle Credit* in the IRA provides a credit of up to $7,500 for the purchase of new electric vehicles that satisfy the critical minerals and battery components requirements.[46] Specifically, to receive the critical minerals tax credit, the vehicle's battery must contain a threshold percentage of critical minerals that should be extracted or processed in the U.S. or in a country with which the U.S. has a free trade agreement in effect, or recycled in North America.[47] To satisfy the "battery components" requirement, a threshold percentage of the components contained in the vehicle's battery should be manufactured or assembled in the U.S., Canada or Mexico.[48] In addition to the two requirements mentioned above, the following requirements should be satisfied to qualify for the $7,500 tax credit. First, for vehicles placed in service on or after April 18, 2023, the critical minerals shall not be extracted, processed or recycled by "a foreign entity of concern", and "components" in the battery shall not be manufactured or assembled by "a foreign entity of concern" either.[49] Second, the final assembly of new electric vehicles must occur within

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[45] President Biden's Economic Plan Drives America's Electric Vehicle Manufacturing Boom, available at: https://www.whitehouse.gov/briefing-room/statements-releases/2022/09/14/fact-sheet-president-bidens-economic-plan-drives-americas-electric-vehicle-manufacturing-boom/.

[46] Inflation Reduction Act of 2022, Sec. 13401, available at: https://www.congress.gov/bill/117th-congress/house-bill/5376/text.

[47] The ratio is 40% in the case of a vehicle placed in service before January 1, 2024, and the ratio rises by 10% each year until it reaches the upper limit, 80%, in 2028.

[48] The ratio is 50% in the case of a vehicle placed in service before January 1, 2024, and the ratio rises by 10% each year until it reaches 100% after 2028.

[49] A "foreign entity of concern" as defined in Section 40207(a)(5) of the Infrastructure Investment and Jobs Act (42 U.S.C. 18741(a)(5)) as cited by the IRA means a foreign entity that is (A) designated as a foreign terrorist organization by the Secretary of State under Section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)); (B) included on the list of specially designated nationals and blocked persons maintained by the Office of Foreign Assets Control of the Department of the Treasury (commonly known as the "SDN list"); (C) owned by, controlled by, or subject to the jurisdiction or direction of a government of a foreign country that is a covered nation (as defined in Section 2533c(d) of Title 10, United States Code); (D) alleged by the Attorney General to have been involved in activities for which a conviction was obtained under-- (i) Chapter 37 of Title 18, United States Code (commonly known as the "Espionage Act"); (ii) Section 951 or 1030 of Title 18, United States Code; (iii) Chapter 90 of Title 18, United States Code (commonly known as the "Economic Espionage Act of 1996"); (iv) the Arms Export

North America.[50] In February 2023, the U.S. announced the *Made in America Policies and New Technical Standards Support the Future of the Electric Vehicle Charging Industry* and required that all EV chargers funded through *Infrastructure Investment and Job Act* (hereinafter referred to as "IIJA") should be built in the U.S. and that by July 2024, at least 55 percent of the cost of all components would need to be manufactured domestically as well.[51]

2.16 In addition, the U.S. provides financial assistance for EV-related infrastructure. The IIJA[52] allocates $18.6 billion to fund existing and new EV-related projects, including the development of a nationwide network of EV charging stations, the installation of alternative fueling infrastructure, and the transition of school buses, buses, and ferries to low and/or zero emission alternatives.[53] IIJA authorizes the U.S. Department of Energy (hereinafter referred to as "DOE") to allocate $3 billion each for fiscal years 2022-2026 respectively to the program of Battery Materials Processing Grants[54] and the program of Battery Manufacturing and Recycling Grants[55] and requires that the DOE gives priority to an eligible entity that (I) is located and operates in the U.S.; (II) is owned by a U.S. entity; (III) deploys North American-owned intellectual property and content; (IV) represents consortia or industry partnerships; and (V) shall not use battery material supplied by or originating from a "foreign entity of concern".[56]

2.17 Certain new energy enterprise in the U.S. has long received huge subsidies from the U.S. Government in the form of tax incentives, policy loans, etc. According to the Los Angeles Times, government support is a crucial aid of income for the new energy enterprises. States such as Nevada, California, and Texas have used tax breaks, incentive grants, and preferential policies to attract the new energy enterprise to build vehicle factories and battery factories.[57] Nevada offered a package of incentives in 2014 that provided a new energy enterprise with $1.3 billion in tax breaks, including estimated $725 million in sales tax exemptions

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Control Act (22 U.S.C. 2751 et seq.); (v) Sections 224, 225, 226, 227, or 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2274, 2275, 2276, 2277, and 2284); (vi) the Export Control Reform Act of 2018 (50 U.S.C. 4801 et seq.); or (vii) the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.); or (E) determined by the Secretary, in consultation with the Secretary of Defense and the Director of National Intelligence, to be engaged in unauthorized conduct that is detrimental to the national security or foreign policy of the United States.

[50] Electric Vehicle (EV) and Fuel Cell Electric Vehicle (FCEV) Tax Credit, available at: https://afdc.energy.gov/laws/409.

[51] Fact Sheet: Biden- Harris Administration Announces New Standards and Major Progress for a Made-in-America National Network of Electric Vehicle Chargers, available at: https://www.whitehouse.gov/briefing-room/statements-releases/2023/02/15/fact-sheet-biden-harris-administration-announces-new-standards-and-major-progress-for-a-made-in-america-national-network-of-electric-vehicle-chargers/.

[52] Infrastructure Investment and Jobs Act, available at: https://www.congress.gov/bill/117th-congress/house-bill/3684/text.

[53] Guidebook to the Bipartisan Infrastructure Law for State, Local, Tribal, and Territorial Governments, and Other Partners, available at: https://www.whitehouse.gov/wp-content/uploads/2022/05/BUILDING-A-BETTER-AMERICA-V2.pdf.

[54] *Supra* note 52, Sec. 40207(b)(4).

[55] *Ibid.*, Sec. 40207(c)(4).

[56] *Ibid*., Sec. 40207(a)(5).

[57] Elon Musk's growing empire is fueled by $4.9 billion in government subsidies, available at: https://www.latimes.com/business/la-fi-hy-musk-subsidies-20150531-story.html.

and other incentives.[58] Reuters estimates that the Nevada plant of the new energy enterprise will save more than $300 million in payroll tax and other tax through 2024.[59] In addition, under the DOE's Advanced Technology Vehicles Manufacturing Loan Program, the DOE announced in July 2022 a $2.5 billion low-cost loan to certain automotive enterprise for battery-making facilities in Ohio, Tennessee, and Michigan.[60]

2.18 The U.S. has provided huge financial subsidies to the electric vehicle industry as well as its upstream and downstream industries in the form of grants, loans and tax incentives in order to rapidly establish, develop and expand the electric vehicle industry and the supporting industries in the U.S. The purpose of these subsidies is to displace or hinder other members' electric vehicles from entering the U.S. market. In addition, the "domestic content requirements" mentioned above, such as the requirements for areas where the critical minerals were extracted or processed, production and assembly requirements for battery components in North America, and final assembly requirements for electric vehicles in North America as specified in the IRA, could lead to the situation where only electric vehicles produced with critical minerals and battery components from the U.S. are eligible for the tax credit. At the same time, these requirements may also give a competitive edge to domestic electric vehicles and put like products imported from other members at a disadvantage. In addition, the relevant subsidies are contingent upon production or assembly in "countries with which the U.S. has a free trade agreement in effect or in North America" and exclude the "foreign entity of concern". These provisions violate the relevant WTO principles.

2.2.2 Semiconductors

2.19 The U.S. enacted the CSA, which provides huge subsidies for domestic semiconductor research and manufacturing.[61] The CSA provides $52.7 billion for "CHIPS for America Fund". This includes $39 billion in manufacturing incentives, $11 billion in R&D and workforce development programs, and the rest $2.7 billion in three other funds relating to semiconductor R&D or workforce growth. The CSA also amended the *Internal Revenue Code of 1986* to provide a 25 percent investment tax credit for capital expenses for the manufacturing of semiconductors and related equipment. Moreover, the CSA establishes rigorous "guardrails" requiring that, on or before the date on which the DOC awards federal financial assistance to a covered entity, the covered entity shall enter into an agreement with the DOC specifying that, during the ten-year period beginning on the date of the award, the covered entity may not

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[58] Tesla is taking Nevada for a ride, available at: https://www.latimes.com/business/hiltzik/la-fi-0914-hiltzik-20140914-column.html; Nevada Governor signs $1.3 billion tax break package for electric car maker Tesla, available at: https://www.reuters.com/article/us-usa-tesla-motors-nevada-idUSKBN0H704A20140912.

[59] Nevada lawmakers to consider huge tax breaks for Tesla, available at: https://www.reuters.com/article/us-usa-tesla-motors-nevada-idUKKBN0H514W20140910.

[60] Biden Administration Launches $2.5 Billion Fund to Modernize and Expand Capacity of America's Power Grid, available at: https://www.energy.gov/articles/biden-administration-launches-25-billion-fund-modernize-and-expand-capacity-americas-power.

[61] Chips and Science Act, available at: https://www.congress.gov/bill/117th-congress/house-bill/4346.

engage in any significant transaction, as defined in the agreement, involving the material expansion of semiconductor manufacturing capacity in China or any other "foreign country of concern".[62]

2.20 The fundamental purpose of the CSA is to increase the manufacturing capability and market supply of U.S. domestic semiconductor products through huge subsidies. These practices may block the supply of semiconductor products of other members from entering U.S. market or third-country markets. Moreover, the "guardrail" provisions categorically prohibit covered entities from entering into significant transactions involving the material expansion of semiconductor manufacturing capacity with certain members, including China. Such practice may cause material adverse impacts on the semiconductor trade of relevant members.

2.2.3 Photovoltaic

2.21 In addition to taking anti-dumping, countervailing, and safeguard measures against imported photovoltaic products and using the so-called "forced labor" as a pretext to suppress other members in the field of photovoltaic industry, the U.S. is also actively subsidizing its own photovoltaic industry. In respect to the solar panel, certain new energy enterprise received $497.5 million from the U.S. Treasury Department in 2015.[63] In addition, the federal government offered a tax credit for solar photovoltaic systems installed before 2020, which Business Insider estimates covers 26% of the cost of such system for consumers.[64,65] In 2016, the state of New York allocated $750 million to the solar-panel factory that the new energy enterprise planned to build in Buffalo, about $350 million of which was spent on facilities and $400 million on equipment manufacturing.[66]

2.22 The IRA will also provide significant subsidies to the U.S. photovoltaic industry to secure its leading position in the photovoltaic market. First, it is provided in Section 13102 "Extension and Modification of Energy Credit" that the taxpayer is eligible for a 30% tax credit of the cost of a solar PV system and such credit will be extended for another ten years to 2032. Second, IRA also provides credits which were previously only applicable to wind farms for solar facilities, and the amount of production tax credit is $0.025 per KWH in the first ten-year lifecycle of a solar energy project. Third, the IRA also extends the tax credit to the whole industry chain of photovoltaic production (including

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[62] CHIPS and Science Act Will Lower Costs, Create Jobs, Strengthen Supply Chains, and Counter China, available at: https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/09/fact-sheet-chips-and-science-act-will-lower-costs-create-jobs-strengthen-supply-chains-and-counter-china/.

[63] Elon Musk's growing empire is fueled by $4.9 billion in government subsidies, available at: https://www.latimes.com/business/la-fi-hy-musk-subsidies-20150531-story.html.

[64] Elon Musk is speaking out against government subsidies. Here's a list of the billions of dollars his businesses have received, available at: https://www.businessinsider.com/elon-musk-list-government-subsidies-tesla-billions-spacex-solarcity-2021-12.

[65] Homeowner's Guide to the Federal Tax Credit for Solar Photovoltaics, available at: https://www.energy.gov/eere/solar/homeowners-guide-federal-tax-credit-solar-photovoltaics.

[66] Tesla promises to help build solar panels in New York — but only if the SolarCity merger passes, available at: https://www.businessinsider.com/tesla-solarcity-panasonic-buffalo-billion-solar-2016-10.

polysilicon, PV wafers, cells, modules, backplates, inverters, etc.) in order to boost domestic manufacturing capacity through credits of different amounts.[67] Meanwhile, the IRA provides an additional domestic content bonus credit of 10% in relation to the energy credit if the taxpayer could prove that any steel, iron, or manufactured product which is a component of such facility is produced in the U.S.[68]

2.23 These subsidies may displace or hinder the entry of other members' photovoltaic products in the U.S. market. In addition, "domestic content bonus credit" contained by certain subsidies may lead to discrimination against foreign manufactures.

2.2.4 Clean Energy

2.24 In order to secure a leading position in the clean energy market, the U.S. Government enacted the IRA. The IRA provides for $737 billion, including nearly $369 billion in industries related to climate change. It also provides nine tax credits in the clean energy sector,[69] ensuring that huge governmental subsidies can be used in the domestic clean energy industry and support its rapid establishment and development. These tax credits are discriminatory as they involve "domestic content requirement".

Tax Credit Requirements	Measures Involved	Notes
Domestic Production	Sustainable Aviation Fuel Credit	/
	Credit for Production of Clean Hydrogen	/
	Advanced Manufacturing Production Credit	/
	Clean Fuel Production Credit	/
	Clean Electricity Production Credit	Clean Electricity Production Credit includes both domestic production requirement and domestic content requirement
Domestic Content	Clean Electricity Production Credit	
	Renewable Electricity Production Credit	/
	Energy Credit	/
	Clean Electricity Investment Credit	/

[67] Inflation Reduction Act Could Provide Major Boost for Renewable Energy and CleanTech Industries, available at: https://www.globalxetfs.com/inflation-reduction-act-could-provide-major-boost-for-renewable-energy-and-cleantech-industries/.

[68] *Supra* note 46, Sec. 13101.

[69] Including Sustainable Aviation Fuel Credit, Credit for Production of Clean Hydrogen, Advanced Manufacturing Production Credit, Clean Fuel Production Credit, Clean Electricity Production Credit, Renewable Electricity Production Credit, Energy Credit, Clean Electricity Investment Credit, etc.

2.25 The U.S. offers industry-specific tax credits to attract clean energy companies to invest and build factories in the country. This increases U.S. clean energy production capacity but seriously distorts the global market and industrial distribution of clean energy products. Such credits may displace or hinder the entry of the clean energy products from other members in the U.S. market.

2.26 To get the above-mentioned credits with "domestic content requirements", the taxpayer must prove that any steel, iron, or manufactured product which is a component of such facility is produced in the U.S. in sufficient and reasonably available quantities. Taking "Renewable Electricity Production Credit" for example, qualified facilities that produce renewable electricity must contain steel or iron that is produced in the U.S., or at least 40 percent of the total costs of the finished product are mined, produced, or manufactured in the U.S. Such provision extends the credit to steel, iron, and manufactured products necessary for the production facilities, which encourages manufacturers of renewable electricity production facilities to purchase steel, iron, and finished products produced in the U.S. and excludes foreign competitors in the upstream industry.

2.2.5 Critical Minerals

2.27 In recent years, the U.S. has begun to subsidize the domestic production of critical minerals and materials. In accordance with the "Industrial Base Analysis and Sustainment Program" (hereinafter referred to as "IBAS Program"), the Department of Defense will award $35 million to certain U.S. rare earth companies to support their factory which strip and processes heavy rare earth elements, as well as to establish a completed "end-to-end" domestic permanent magnet supply chain. Encouraged by this governmental "catalytic funding", certain rare earth company announced a further $700 million investment for the construction of the magnet supply chain.[70]

2.28 The IIJA also subsidizes critical minerals and materials. First, it allocates nearly $8.7 million to the National Geological and Geophysical Data Preservation Program for fiscal year 2022,[71] and $5 million for each of fiscal years from 2023 to 2025,[72] so as to provide for preservation of samples to track geochemical signatures from critical minerals. Second, the DOE and the National Science Foundation are required to coordinate efforts to allocate $100 million for each of fiscal years from 2021 to 2024 to support critical minerals mining and recycling research. Third, the projects that increase the domestically produced supply of critical minerals are incorporated into the loan guarantee projects of the DOE to increase the funds that are critical to the domestically produced supply of critical minerals and energy transformation.[73]

2.29 The DOE also used funds up to $156 million received from the IIJA to build its first-of-a-kind facility to extract and strip rare earth elements and critical minerals from non-traditional sources, such as mining waste. This is an effort relieve the pressure that more than 80% of the rare earth elements of the U.S.

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[70] Securing a Made in America Supply Chain for Critical Minerals, available at: https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/22/fact-sheet-securing-a-made-in-america-supply-chain-for-critical-minerals/.

[71] *Supra* note 52, Sec. 41003.

[72] *Ibid.*, Sec. 40203.

[73] *Ibid.*, Sec. 40401.

are currently imported from offshore suppliers.[74] Moreover, as mentioned above, the content of critical minerals is an important factor in the IRA to qualify for the clean vehicle credits, which aims at promoting the downstream to use the critical minerals-related industries that have been created by the huge amount of subsidies.

2.30 The financial contribution in the form of grants provided by the U.S. to the critical minerals industry covers every step of the critical minerals industrial chain, including detection, mining, extraction, separation, sales, and recycling, and constitutes large-scale industrial subsidy policies. Such subsidies may displace or hinder the entry of other members' critical minerals into the U.S. market and seriously distort the international trade.

2.2.6 Aviation

2.31 The U.S. has long dominated the aviation industry, which the U.S. government has never stopped subsidizing. The U.S. aviation industry has long enjoyed high subsidies from both federal and state governments. The Appellate Body in the dispute DS353 found that the National Aeronautics and Space Administration (hereinafter referred to as "NASA"), the Department of Defense, the DOC, and the states of Washington, Kansas and Illinois, etc. had provided illegal subsidies of more than $5.3 billion for a long time to an aerospace enterprise, in the form of R&D subsidies of the federal government departments and tax incentives of local governments. The Appellate Body's ruling required the U.S. to take appropriate steps to remove the adverse effects or withdraw the subsidy.[75] As the U.S. failed to fully implement the Appellate Body's recommendations and rulings, the EU challenged the U.S. under Article 21.5 of DSU. In March 2019, the Appellate Body report concerning compliance was circulated, which found that the U.S. federal government and the state governments still granted wrongful subsidies to the aerospace enterprise mentioned above. In October 2020, the WTO authorized the EU to take countermeasures on goods and services against the U.S. at a level not exceeding, in total, $3.99 billion annually.[76] Although the EU and the U.S. agreed on a cooperative framework in June 2021 stating that each sides intends to suspend application of its countermeasures for five years, this does not imply that the U.S. will totally abolish subsidies to the aerospace enterprise. The U.S. will maintain huge subsidies for the aviation industry in various forms.[77]

2.2.7 Biotechnology and Biomanufacturing

2.32 The U.S. Government pays close attention to biotechnology and biomanufacturing. In September 2022, the U.S. announced the new investments

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[74] Biden-Harris Administration Announces $156 Million for America's First-of-a-Kind Critical Minerals Refinery, available at: https://www.energy.gov/articles/biden-harris-administration-announces-156-million-americas-first-kind-critical-minerals.

[75] One-page summary of key findings of DS353, available at: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds353_e.htm.

[76] *Ibid*.

[77] USTR Announces Joint U.S.-E.U. Cooperative Framework for Large Civil Aircraft, available at: https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/june/ustr-announces-joint-us-eu-cooperative-framework-large-civil-aircraft.

and resources for Biden Administration's national biotechnology and biomanufacturing initiative, with funding of more than $2 billion in government investment or subsidies. This includes $1 billion in bioindustrial domestic manufacturing infrastructure, $270 million to support the advanced development of bio-based materials for defense supply chains to replace traditional petroleum-based materials, $500 million for sustainable fertilizer production, $200 million to support enhancements to biosecurity and cybersecurity, and more than $200 million to promote biomanufacturing in states. Moreover, the U.S. announced $178 million to advance innovative research efforts in biotechnology and bioproducts, $100 million for R&D for conversion of biomass to fuels and chemicals, $60 million to de-risk the scale up of biotechnology and biomanufacturing that will lead to commercialization of biorefineries, and $40 million to expand the role of biomanufacturing for active pharmaceutical ingredients (APIs), antibiotics, and the key starting materials needed to produce essential medications and respond to pandemics.[78]

2.33 The U.S. has invested heavily to advance R&D in domestic biotechnology and biomanufacturing, with the aim to maintain its global dominance in such areas. Such subsidies could lead to unfair competition and harm the biomanufacturing sector of other members, including China. The US is also likely to follow the precedent in the semiconductor and communications sectors by restricting normal trade in Chinese biological products under the excuse of "national security", which may violate the WTO rules.

2.2.8 Notification of Subsidies

2.34 The U.S. publicly criticized other members for their incomplete and untimely notifications of subsidies to the WTO and their failure to comply with the transparency requirements of the WTO. However, the U.S. provided tax incentives, grants, and other forms of subsidies to high-tech industries like semiconductors, computers, new materials, new energy and biomedicine. A large number of subsidy policies in these sectors were not notified as required by the WTO, and the submitted notification of subsidies have many flaws.

2.35 Taking the New and Full Notification of subsidies submitted by the U.S. in 2021 as an example,[79] there are four main issues. First, duration of subsidy was not certain. The duration of many subsidy programs at federal level were "indefinite", and only a few programs at sub-federal level specified the duration. Second, the amount of some programs were not clear. At federal level, programs like the "Second Generation Biofuel Credit", were notified without specific subsidy amount[80]. At sub-federal level, criteria and standard for providing subsidies are notified instead of the amount of subsidy granted or maintained in many programs. Third, industries aimed to support were unidentified. The notification failed to specify the goals and legal basis of many sub-federal subsidy policies as required, and the program titles and industries

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[78] Fact Sheet: The United States Announces New Investments and Resources to Advance President Biden's National Biotechnology and Biomanufacturing Initiative, available at: https://www.whitehouse.gov/briefing-room/statements-releases/2022/09/14/fact-sheet-the-united-states-announces-new-investments-and-resources-to-advance-president-bidens-national-biotechnology-and-biomanufacturing-initiative/.

[79] G/SCM/N/372/USA.

[80] *Ibid.*

they aimed to support were rather ambiguous and vague. It is hard to identify the specific industries benefited from these programs. Fourth, some subsidies were not included. For example, the "Certified Development Company (504) Loan Program" administered by the Small Business Regulatory Agency, the "Office of Science Financial Assistance Program" administered by the DOE and some other programs at federal level were not found in the notification, while the "Beef Initiative Grants" at sub-federal level administered by the Missouri Department of Economic Development was also not included in the notification either. Those above-mentioned subsidy programs are disclosed on the USAspending website.[81]

2.3 Agricultural Subsidies

2.36 The U.S. is the world's largest country in terms of agriculture production and competitiveness, with a total grain production of 417.42 million tons and a total domestic grain consumption of 351.58 million tons in 2020.[82] The U.S. is also the world's largest agricultural exporter, with a largest global market share of 9.3% in 2018.[83] The U.S. has been able to maintain advantage in the world agricultural market through providing large amount of subsidies. The following concerns have been identified in the U.S. agricultural subsidy:

2.37 First, rising amount of agricultural subsidies is contrary to the WTO's mandate of "substantial progressive reductions in agricultural support and protection". Second, increasing Amber Box outlays may exceed its aggregate measurement of support (hereinafter referred to as "AMS") commitments. Third, high concentration of Amber Box outlays on agricultural products may constitute disguised export subsidies to soybean, cotton and corn. In addition, problems exist in the classification of measures concerning the U.S. notifications of subsidies for agricultural products, which may constitute circumvention of its AMS commitments.

2.3.1 Amount of Agricultural Subsidies.

2.38 In December 2018, the U.S. enacted the *Agriculture Improvement Act of 2018*.[84] The budget for agricultural subsidies has been increased comparing with the *Agriculture Act of 2014* as estimated by the congressional Budget Office. Comparing with the *Agriculture Act of 2014*, spending on the *Agriculture Improvement Act of 2018* would increase by 10.15% from 2019 to 2023 reaching $428.2 billion.[85]

2.39 In addition to the budget increase, the *Agriculture Improvement Act of 2018* provides increased support for agriculture and farmers in terms of frequency,

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[81] Source: USASpending, available at: https://www.usaspending.gov/.
[82] World Agricultural Supply and Demand Estimates, available at: https://usda.library.cornell.edu/concern/publications/3t945q76s?locale=en&page=54#release-items.
[83] Source: United Nations Merchandise Trade Statistics Database, available at: https://comtrade.un.org/.
[84] Agriculture Improvement Act of 2018, available at: https://www.congress.gov/bill/115th-congress/house-bill/2.
[85] The 2018 Farm Bill (P.L. 115-334): Summary and Side-by-Side Comparison, available at https://crsreports.congress.gov/product/pdf/R/R45525.

scope, and payment methods. The *Agriculture Improvement Act of 2018* has implemented, and enhances the Price Loss Coverage (hereinafter referred to as "PLC") and the Agricultural Risk Coverage (hereinafter referred to as "ARC"), which are in the Amber Box. Starting from 2021, agricultural producers would be able to choose between the PLC and ARC annually in each of the remaining three crop years. The *Agriculture Improvement Act of 2018* provides greater support to farmers, while in *Agriculture Act of 2014* provides that the farmers could only choose between PLC and ARC at the beginning of the implementation of Bill is implemented and could not change their choices later.

2.40 The U.S. also enhanced support to agriculture through temporary subsidies under numerous titles. For example, in 2018, the U.S. Department of Agriculture (hereinafter referred to as "USDA") authorized programs of $12 billion to assist farmers in response to trade damage from unjustified retaliation.[86] In 2019, the funding for such programs rose to $16 billion.[87] The U.S. has taken measures, *i.e.*, Supplemental Appropriations for Agriculture and Coronavirus Food Assistance Program in response to the impact of COVID-19 on agriculture. As for the Supplemental Appropriations for Agriculture, the U.S. passed the *Coronavirus Aid, Relief and Economic Security Act* [88] in March 2020, providing $9.5 billion to the USDA . As for the Coronavirus Food Assistance Program, the USDA announced the first round of direct support from the Coronavirus Food Assistance Program in April, 2020,[89] providing a total of $16 billion in financial assistance to farmers, ranchers, and consumers affected by the COVID-19 pandemic, and distributed $3 billion in products purchasing through food banks, faith-based organizations, and other non-profit organizations. In September 2020, the USDA announced the Coronavirus Food Assistance Program 2, adding funds up to another $14 billion.[90]

2.41 The U.S. has substantially increased the support for agriculture through the *Agriculture Improvement Act of 2018* and introduced a large number of temporary subsidies, which have significantly increased the subsidies to farmers in terms of availability. Such policies of the U.S. are contrary to the WTO reform objective of "substantial progressive reductions in agricultural support and protection" .

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[86] USDA Announces Details of Assistance for Farmers Impacted by Unjustified Retaliation, available at: https://www.usda.gov/media/press-releases/2018/08/27/usda-announces-details-assistance-farmers-impacted-unjustified.

[87] USDA Announces Support for Farmers Impacted by Unjustified Retaliation and Trade Disruption, available at: https://www.usda.gov/media/press-releases/2019/05/23/usda-announces-support-farmers-impacted-unjustified-retaliation-and.

[88] COVID-19, U.S. Agriculture, and USDA's Coronavirus Food Assistance Program (CFAP), available at: https://crsreports.congress.gov/product/pdf/R/R46347.

[89] USDA Announces Coronavirus Food Assistance Program, available at: https://www.usda.gov/media/press-releases/2020/04/17/usda-announces-coronavirus-food-assistance-program.

[90] Coronavirus Food Assistance Program 2 Data, available at: https://www.farmers.gov/coronavirus/pandemic-assistance/cfap2/data.

2.3.2 Amber Box Spending.

2.42 The total AMS commitment of the is $19.1 billion annually. However, the U.S. has been increasing its amber box spending in recent years, reaching $18.25 billion in the marketing year of 2019-2020, close to its committed level.[91] Some WTO members have expressed concerns and noted the U.S. policy is contrary to the objective of "substantial progressive reductions in agricultural support and protection". The U.S. Amber Box spending has increased on a continuous basis and reached $37.7 billion in 2020.[92]

Unit: $0.1 billion[93]

Year	Amber Box Spending	Including: Current Total AMS	Margin between Amber Box Spending and Current Total AMS ("De Minimis" support)
2017	126	40	86
2018	234	131	103
2019	360	182	178
2020	377	160	217

2.3.3 Product-Specific Support.

2.43 Product-specific supports of the U.S. are highly concentrated on product for export, such as soybeans, cotton and corn, which may constitute disguised export subsidies and a violation of the WTO rules. In the marketing year of 2018-2019, the U.S. provides nearly $8.5 billion product-specific AMS for soybeans, accounting for 23.08% of the annual value of production, which is a sharp increase of $1.6 billion comparing with the previous year.[94] In the marketing year of 2020-2021, the U.S. provides nearly $1.055 billion product-specific AMS for cotton, accounting for 18.49% of the annual value of production.[95] The product-specific support for corn rose from $2.1 billion in the marketing year of 2018-2019 to $4.9 billion in the marketing year of 2020-2021.[96]

2.44 Such product-specific supports promoted indirectly the sustained increase in exports of agricultural products, which may constitute disguised export subsidies. The exports of soybeans of the U.S. have expanded between 2019 and 2021, reaching $27.4 billion in 2021, a rise of 7% on the previous year, and the export of corn in the U.S. increased 34.6% in 2020.

2.3.4 Notification of Agricultural Subsidies.

2.45 There are two set of main problems in the U.S. notification of domestic support.

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[91] Agriculture in the WTO: Rules and Limits on U.S. Domestic Support, available at: https://sgp.fas.org/crs/row/R45305.pdf.
[92] G/AG/W/226.
[93] *Ibid.*
[94] *Ibid.*
[95] G/AG/N/USA/166.
[96] *Supra* note 92.

2.46 First, the classification of measures. The U.S. notified the PLC and ARC as "non-product specific supports". Some WTO members hold the view that the above-mentioned supports are in fact related to the production and pricing of specific products and therefore should be notified as "product-specific supports". Some other WTO members also challenged the U.S. for notifying the funds for the management of the Federal Crop Insurance Program as "infrastructural services supports" in the Green Box. If the above supports are classified as "product-specific supports", the U.S. current total AMS may exceed its total AMS commitments.

2.47 Second, the U.S. to circumvent WTO rules on "de minimis" support in order to avoid its AMS limit. The U.S. combined programs covering different products, and failed to reflect the specific Amber Box spending for individual products. For example, the U.S. notified the Livestock Indemnity Program and the Livestock Forage Disaster Program under the program for livestock covering specific livestock such as beef cattle, calves, sheep, and lambs. Some WTO members required the U.S. to explain why the above-mentioned supports were reported on a combined basis.[97]

2.4 Trade Remedies.

2.48 The U.S. applies trade remedies on a discriminatory basis in its anti-dumping and countervailing investigations against WTO members including China. As a result, in most such investigations, unreasonably high anti-dumping and countervailing duties are often imposed on the respondents who were often forced to quit the U.S. market. Some of the subject products had therefore even been kept out of the U.S. market for many years.

2.4.1 "Surrogate Country" Methodology.

2.49 Pursuant to Section 771(18) of the *Tariff Act of 1930*, the DOC may determine at any time that a foreign country is a "non-market economy (hereinafter referred to as "NME") country". Under this Act, if the country does not operate on market principles of cost and pricing structures, and sales of merchandise in such country do not reflect the fair value of the merchandise, such country shall be determined as a "NME country". According to U.S. legislation, the following six factors shall be taken into account, *i.e.*, the extent to which the currency of the foreign country is convertible into the currency of other countries; the extent to which wage rates in the foreign country are determined by free bargaining between labor and management; the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country; the extent of government ownership or control of the means of production; the extent of government control over the allocation of resources and over the price and output decisions of enterprise and such other factors as the administering authority considers appropriate. However, the determination process by the U.S. is unilateral, subjective and arbitrary. For example, the U.S. determined Russia as a market economy country in 2002 and reconfirmed this status in October 2021. But in November 2022, the U.S. changed its determination and considered Russia a "NME country".

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[97] *Ibid*.

2.50 The determination of a "NME country" means that the DOC is authorized not to use the cost and pricing of the concerned country in anti-dumping investigations, i.e., adopting the so-called "surrogate country" methodology. In October 2017, the DOC re-determined China as a "NME" in a memorandum issued during its anti-dumping investigation of certain aluminum foil from China[98] and decided to continue to use the surrogate methodology with respect to the anti-dumping investigations targeting Chinese products. No definition of "NME" could be found in WTO rules. The U.S. appears to violate WTO rules and breaches international obligations it should assume.

2.51 In terms of the surrogate country methodology, the DOC has great discretion. Also, the selection process and results are unpredictable. In practice, the DOC usually chooses surrogate prices that result in the maximum dumping margin to achieve the alleged vigorous enforcement of the anti-dumping legislation, which could raise the dumping margin of respondents significantly. In the anti-dumping investigations where the surrogate country methodology is adopted, the average anti-dumping duty of Chinese respondents is often many times higher than that of the so-called "market economy countries", which deviates from the objective economic reality.

2.4.2 Separate Rates.

2.52 According to Article 6.10 of the *Anti-Dumping Agreement*, the authorities shall, as a rule, determine an individual margin of dumping for each known exporter or producer concerned of the product under investigation. However, in anti-dumping investigations involving a so-called "NME", the DOC makes a rebuttable presumption that all companies within the country constitute a single entity that is subject to government controls and, thus, should be assigned a single anti-dumping duty rate. Only if the exporters or manufacturers in a "NME" passed the so-called "separate rate test", would they be granted separate rates, which are different from the single anti-dumping duty rate applied NME-wide. The companies should be assigned a single anti-dumping duty rate applied NME-wide, if they fail to demonstrate they are, both *de jure* and *de facto*, not controlled by the government.

2.53 Vietnam and China have successively challenged the U.S. on the separate rate issue under the WTO dispute settlement mechanism. The Panel ruled in the *U.S. – Anti-Dumping Measures on Certain Shrimp from Viet Nam* (DS429) and the *U.S. – Certain Methodologies and their Application to Anti-Dumping Proceedings Involving China* (DS471) that the DOC's rebuttable presumption violated Article 6.10 and Article 9.2 of the *Anti-Dumping Agreement*.[99] As the U.S. failed to implement the DSB ruling, in September 2018, China requested DSB authorization to suspend concessions or other obligations to the U.S. In November 2019, the WTO Arbitrator determined that China might request

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[98] China's Status as a Non-Market Economy, available at: https://enforcement.trade.gov/download/prc-nme-status/prc-nme-review-final-103017.pdf.

[99] Panel Report, United States – Anti-Dumping Measures on Certain Shrimp from Viet Nam, para. 7.166 and para. 7.208; Panel Report, US – Certain Methodologies and their Application to Anti-Dumping Proceedings Involving China, para. 7.388.

authorization from the DSB to take countermeasures against the U.S., in the area of goods, at a level not exceeding $3.579 billion annually.[100]

2.4.3 Public Body.

2.54 One of the most important legal elements in determining the existence of a subsidy program is the granting of a financial contribution by the "government" or any "public body". The *SCM Agreement* does not define a "public body". The U.S. began applying its countervailing duty legislation to imports from China in 2007. In countervailing investigations, the U.S. determined that all Chinese state-owned banks and state-owned enterprises were "public bodies" and further considered loans and production inputs provided by them to exporters as fiscal assistance. As a result, the U.S. imposed high countervailing duties on Chinese exporters.

2.55 In early countervailing investigations, the DOC mainly considered governmental ownership over an entity as the criterion determining whether such entity is a "public body". For this reason, China challenged the U.S. under the WTO dispute settlement mechanism (DS379). The Appellate Body held that the U.S.' use of the ownership criterion to identify a "public body" was inconsistent with WTO rules. A "public body" must be "an entity that possesses, exercises, or is vested with governmental authority".[101] The Appellate Body further elaborated on several possible cases for identifying a "public body", in particular whether the government has a "meaningful control" over an entity and its conduct. [102]

2.56 At present, the U.S. failed to implement the Appellate Body's recommendations and rulings in good faith. In its anti-dumping investigations against China, the DOC identifies state-owned enterprises as "public bodies" without exception, and any respondent's purchase of raw materials, water, electricity, gas and other production inputs from state-owned enterprises would be deemed as having obtained subsidies. In its countervailing investigations involving China, the main source of the subsidy margin is the "Less Than Adequate Remuneration (hereinafter referred to as "LTAR")" Programs determined on the basis of arbitrary determination of "public bodies". For example, in the 2018 countervailing duty administrative review against certain aluminum foil from China, the subsidy margin determined for purchasing production inputs from state-owned enterprises (the Electricity for LTAR Program and the Aluminum for LTAR Program) accounts for as much as 76% of the total subsidy margin calculated for the mandatory respondents.[103] In fact, the so-called "LTAR" Programs for Chinese products are once made up by the U.S.

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[100] US – Anti-Dumping Methodologies (China), available at: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds471_e.htm.

[101] Appellate Body Report, US – Anti-Dumping and Countervailing Duties (China), para. 317.

[102] *Ibid*., para. 318.

[103] Certain Aluminum Foil from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2019, available at: https://www.federalregister.gov/documents/2021/12/27/2021-28043/certain-aluminum-foil-from-the-peoples-republic-of-china-final-results-of-countervailing-duty.

2.4.4 External benchmark.

2.57 Article 14(d) of the *SCM Agreement* provides that the adequacy of remuneration shall be determined in relation to prevailing market conditions for the goods or services in question in the country of provision or purchase. The DOC would first recognize the raw material or production input purchased by a respondent from a state-owned enterprise as subsidies. After that, in its calculation of benefits, the DOC usually believes that the in-country price of the relevant production input has been distorted by the intervention of the Chinese government, thus the in-country price is not a proper benchmark for calculating the benefits. The DOC further believes that other external benchmarks, such as the international market price, shall be used instead to calculate the amount of subsidies obtained by Chinese respondents, according to which high countervailing duties are then imposed as a result.

2.58 In the *U.S. – Countervailing Measures (China)* (DS437), China challenged the U.S. on the application of external benchmarks under the WTO dispute settlement mechanism. The Appellate Body reversed the Panel's finding that an external benchmark could be applied, and held that in all of the investigations at issue, DOC had simply discarded the in-country price based on the finding of the government's predominant role in the relevant market through ownership and control of certain entities without an examination of whether or not they are market determined or distorted by governmental intervention.[104] Although the U.S. re-initiated investigations based on the Appellate Body Report, it ultimately refused to use the Chinese in-country price as the benchmark. In the compliance proceeding, the Appellate Body held that the central inquiry under Article 14(d) of the *SCM Agreement* in choosing an appropriate benefit benchmark is whether government intervention results in price distortion. Thus, government intervention in market alone would not justify the decision by an investigating authority to reject in-country prices.[105] Due to the U.S.' failure to implement the DSB recommendations and rulings, in October 2019, China requested DSB authorization to suspend concessions or other obligations to the U.S. In January 2022, the Arbitrator determined that China might request authorization from the DSB to suspend concessions or other obligations at a level not exceeding $645.121 million *per annum*.[106]

2.59 In the current countervailing investigations against China, the U.S. still persists in its wrong practice of using external benchmark, which results in the imposition of high countervailing duties on Chinese respondents.

2.4.5 Zeroing.

2.60 "Zeroing" is a special methodology to calculate the dumping margin. It artificially inflates the magnitude of dumping, resulting in higher margins of dumping and making a positive determination of dumping more

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[104] Appellate Body Report, United States – Countervailing Duty Measures on Certain Products from China, para. 4.107.

[105] Appellate Body Report, US – Countervailing Measures (China) (Article 21.5), para. 5.141.

[106] United States – Countervailing Duty Measures on Certain Products from China, available at: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds437_e.htm.

likely.[107] In many WTO disputes concerning "zeroing", panels and the Appellate Body have repeatedly ruled that the method of "zeroing" violates the requirement of fair comparison set forth in Article 2.4 of the *Anti-dumping Agreement*.

2.61 The U.S. has been a major practitioner of "zeroing" for a long time. Even after its relevant practices were ruled by panels and the Appellate Body as violating the WTO rules, the U.S. still stubbornly explores new approaches to apply "zeroing" in the anti-dumping investigation. In its current practices, the DOC continues to adopt the "differential pricing" analysis to determine the existence of targeted dumping, and resort to zeroing when calculating the dumping margin by comparing the weighted-average normal value with the export price of an individual transaction. Such methodology increases the dumping margin artificially.

2.62 In the 2020 administrative review of the anti-dumping investigation against tapered roller bearings and parts from China in 2020, the DOC applied the "differential pricing" analysis to compare the export price and normal value of the products under investigation exported to the U.S. by Chinese respondents. The DOC determined the existence of price difference and applied "zeroing" to calculate the dumping margin. The DOC determined that the dumping margin of certain mandatory respondent was 36.75%. However, without the "differential pricing methodology", the dumping margin of the enterprise could only be 28.01%.[108] The application of "differential pricing" and "zeroing" artificially increased the dumping margin of the mandatory respondent by 31%.

2.4.6 Adverse Facts Available.

2.63 Article 6.8 and Annex 2 of the *Anti-Dumping Agreement* and Article 12.7 of the *SCM Agreement* all allow investigating authorities to make determinations based on available facts. A similar provision can also be found in Section 776(a)(2) of the *Tariff Act of 1930*. The *Trade Preferences Extension Act of 2015* amended the rule of "Adverse Facts Available" in anti-dumping and countervailing investigations, adding procedural rules on the application of "Adverse Facts Available", granting extensive discretion to investigating authorities, and allowing the DOC to use such a rule to the largest extent to determine high punitive tariff rates against exporters.

2.64 In countervailing investigations against China initiated by the U.S., the Chinese government and respondents have cooperated fully and strived to meet the demands of the investigating authority to the greatest extent. However, the investigating authority repeatedly ignored the realities of the respondents and required a large amount of evidence without considering whether such

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[107] Appellate Body Report, US – Softwood Lumber V (Article 21.5 – Canada) (2005), para. 142; and Appellate Body Report, US – Zeroing (Japan) (2007), para. 146.

[108] Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results and Intent to Rescind the Review, in Part; 2019-2020, available at: https://www.federalregister.gov/documents/2021/07/08/2021-14559/tapered-roller-bearings-and-parts-thereof-finished-and-unfinished-from-the-peoples-republic-of-china.

information would help the investigating authority with the determination. If the respondents fail to provide the information requested by the investigating authority (whether or not the information is relevant to the investigation), the investigating authority will apply the "Adverse Facts Available" against the respondents solely on that basis.

2.65 The DOC imposes a burden of proof that is almost impossible to meet on the Chinese government or Chinese respondents in its investigations, which goes far beyond the scope of "necessary information" required by Article 6.8 of the *Anti-Dumping Agreement* and Article 12.7 of the *SCM Agreement*. Moreover, the U.S. also does not comply with the requirement of "special circumspection" in using the information from a secondary source in making its determinations as required by Article 7 of Annex 2 of the *Anti-Dumping Agreement*.

2.4.7 Sunset Review.

2.66 Pursuant to Article 11.3 of the *Anti-Dumping Agreement* and Article 21.3 of the *SCM Agreement*, any definitive anti-dumping duty and countervailing duty shall be terminated on a date within five years from its imposition unless the authorities determine, in a review initiated on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry. The purpose of the sunset review set up by the WTO is to permit periodic reviews of anti-dumping or countervailing measures and terminate subsequently the measures that no longer need to be maintained. However, in practice, the sunset review has been an instrument for the U.S. to maintain anti-dumping and countervailing measures.

2.67 According to Section 751(c) of the *Tariff Act of 1930*, the sunset review is initiated automatically, and there is no need for the domestic industry to file a duly substantiated request. Therefore, the sunset review in the U.S. is more easily initiated. In terms of the determination standard, the U.S. also adopts a rather low standard to determine that the expiry of the duty is likely to lead to continuation or recurrence of dumping and injury. As a result, it is unlikely that the U.S. will terminate the anti-dumping and countervailing measures after the sunset review. The DOC's investigations and decisions are not based on "sufficient evidence", and the determination standards are relatively low, which appears to be inconsistent with Article 11.3 of the *Anti-Dumping Agreement* and Article 21.3 of the *SCM Agreement*. This hardly leaves much room for the respondents to defend themselves.

2.68 According to statistics, by the end of 2022, among the effective anti-dumping measures which the U.S. has taken against China, 14.8% of which had been in force for 15 to 20 years; 25.7% had been in force for ten to 15 years; and 26.5% had been in force for five to ten years. Among the 668 sunset reviews initiated by the U.S. over the past decade, 50 were determined to be expired, accounting for only 7%.[109] As of the end of 2022, the longest-lasting anti-dumping measure imposed by the U.S. is the measure against prestressed concrete steel wire strand from Japan in December 1978, which has lasted for more than 44 years.[110] In addition, the anti-dumping measures against potassium

[109] Source: China Trade Remedies Information, available at: https://cacs.mofcom.gov.cn/.

[110] Sunset Review A-588-068, available at: https://access.trade.gov/Resources/frn/summary/japan/04-10485-1.pdf.

permanganate from China imposed in January 1984[111] and carbon steel tubing from Chinese Taipei imposed in May 1984 lasted for nearly 39 years.[112]

2.5 Standards, Technical Regulations and Conformity Assessment Procedures.

2.69 In recent years, the U.S. has unduly restricted the export of Chinese products to the U.S. by adopting technical measures. It is contrary to the principles in the *Technical Barriers to Trade* (hereinafter referred to as "TBT") *Agreement, as* not creating unnecessary obstacles to international trade, nor constituting unjustifiable discrimination.

2.5.1 Energy Conservation Standards for Room Air Conditioners.

2.70 In April 2022, the U.S. notified the WTO of its draft revision to the energy conservation standards for room air conditioners, which involves room air conditioners, motors, fans, temperature and humidity regulating components, and relevant alternative refrigerants.

2.71 The U.S. energy conservation standards for room air conditioners deviates from international standards, affecting the normal trade flows. Detailed concerns are as follows: First, the testing methods of energy efficiency for room air conditioners in this regulation are different from the testing methods adopted by the majority of members under the international standard ISO 16358. The EU, Japan, Republic of Korea and Australia have adopted seasonal energy efficiency ratio as standards for product performance evaluation. While the U.S. still uses the combined energy efficiency ratio (hereinafter referred to as "CEER") as the evaluation standards. Second, there are two testing methods targeted to the CEER in this regulation, which are for fixed frequency air conditioners and frequency conversion air conditioners. Applying two methods for one index cannot reflect the real gap between fixed frequency and frequency conversion products, and causes confusions in index calculation. Third, compared with the current index, the CEER index of energy conservation standards is raised by 20%-50% generally, and the rapidly rising standards will lead to a significant increase in the design, manufacturing and logistics cost of export enterprises.[113]

2.5.2 Certification for Civil Aviation Security Screening Equipment.

2.72 In the Airport Security Program, the U.S. Transportation Security Administration (hereinafter referred to as "TSA") approves airport security equipment. In the TSA's review of Chinese civil aviation security screening equipment, the certification standards are not open, and TSA did not explain the

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[111] USITC Makes Determination in Five-Year (Sunset) Review Concerning Potassium Permanganate from China, available at: https://www.usitc.gov/press_room/news_release/2021/er1105ll1843.htm.

[112] Light-Walled Welded Rectangular Carbon Steel Tubing from Taiwan: Final Results of the Expedited Sunset Review of the Antidumping Duty Order, available at: https://www.federalregister.gov/documents/2022/10/25/2022-23218/light-walled-welded-rectangular-carbon-steel-tubing-from-taiwan-final-results-of-the-expedited.

[113] United States – Energy Conservation Program: Energy Conservation Standards for Room Air Conditioners (ID 755), available at: https://tradeconcerns.wto.org/ES/stcs/details?imsId=755&domainId=TBT.

reasons for refusal of the certification. The TBT Agreement requires that conformity assessment procedures should be prepared, adopted and applied in a manner which is consistent with the non-discrimination principle and does not create unnecessary obstacles to international trade. When implementing the conformity assessment procedure, the competent body should inform the applicant in a precise and complete manner of all deficiencies as well as the results of the assessment.

2.73 In addition, the U.S. has lobbied its partners or allies to refuse to use equipment made by Chinese companies. For example, in May 2022, the U.S. ambassador to Mexico sent a letter to Mexico's foreign minister, and urge Mexico not to purchase baggage and cargo security scanners made by Chinese companies, because "no Chinese scanning equipment meets the United States' standards for quality control".[114] The U.S. has also tried to convince its European allies that security equipment made by Chinese companies poses a threat to the security and operation of Western equipment.[115]

2.5.3 Participation of Foreign Enterprises in Standardization Activities.

2.74 The American National Institute for Standardization (hereinafter referred to as "ANSI") is the only member of the International Organization for Standardization in the U.S. The ANSI does not develop standards itself; rather, it accredits organizations or institutions which develop standards. The ANSI connects the government system and the non-government system, and acts as a bridge between the federal government and the non-government standardization system. It coordinates and guides national standardization activities, assists the setting, research and applying bodies for standards, and provides domestic and foreign standardization information. The ANSI updates *the U.S. Standards Strategy* every five years to provide recommendations and guidance on how the U.S. standards system can support competitiveness of the U.S. or can reflect national priorities of the U.S.[116]

2.75 In principle, the ANSI allows international members to join, but foreign companies who wish to apply for membership are subject to the review of the U.S. Executive Committee. In practice, it is difficult for Chinese enterprises to participate in the U.S. standard-setting process. Also, it is difficult for their voices to be heard. The U.S. standardizing bodies also hold negative attitudes toward China's participation in the standard-setting process and even exclude Chinese stakeholders from this process. For example, the U.S. stays wary of China's participation in international standardization. The National Institute of Standards and Technology of the U.S. DOC has issued a Request for Information (hereinafter referred to as "RFI"), soliciting the negative information and countermeasures on Chinese participation in international standards development, so as to mitigate any undue influence of the PRC and "bolster United States public and private sector participation in international

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[114] U.S. urges Mexico not to buy Chinese scanners for the border, available at: https://www.washingtonpost.com/world/2022/10/21/mexico-border-china-technology/.

[115] U.S. Presses Europe to Uproot Chinese Security-Screening Company, available at: https://www.wsj.com/articles/u-s-presses-europe-to-uproot-chinese-security-screening-company-11593349201.

[116] United States Standards Strategy, available at: https://www.ansi.org/resource-center/publications-subscriptions/usss.

standards-setting bodies".[117] The DOC also excludes Chinese enterprises from the international professional standard organizations that are registered in the U.S., and restricts their participation in the activities of standardization.

2.76 The standardization bodies of the U.S. should comply with the requirements of Annex 3 of the TBT Agreement. The ANSI shall ensure that standards are not prepared, adopted, or applied with a goal of, or with the effect of, creating unnecessary obstacles to international trade and shall treat all WTO members equally. Unfortunately, the U.S. has not complied with the relevant rules.

2.5.4 Seafood Import Monitoring Program.

2.77 In December 2016, the U.S. National Oceanic and Atmospheric Administration (hereinafter referred to as "NOAA") established the Seafood Import Monitoring Program (hereinafter referred to as the "SIMP") in accordance with the *Magnuson-Stevens Fisheries Conservation and Management Act*, which was officially implemented in January, 2018.[118] Under the SIMP, the U.S. has set the report and record-keeping requirements for 1,100 species of imported fish and fish products in 13 major categories, including Abalone, Atlantic cod, Blue crab (Atlantic), etc., and monitored imports so as to avoid illegal, unreported and unregulated fishing (hereinafter referred to as "IUU fishing") or the importation of counterfeit seafood. The importers must obtain the International Fisheries Trade Permit issued by the NOAA and report the key chain of custody data.[119] In December 2022, the NOAA announced that it planned to increase the number of species covered by import monitoring of the SIMP from 1,100 to 1,670.

2.78 There are some problems with the SIMP. First, the selection criteria for monitoring objects of the SIMP are not transparent. The U.S. has not explained how to determine whether the monitoring object belongs to IUU fishing. Second, the SIMP does not take into account the differences between aquaculture products and wild caught products. The SIMP lacks scientific basis and does not really achieve the goal of combating IUU fishing. The excessive and cumbersome information and data requirements of the SIMP have caused a heavy burden on seafood exporters to the U.S. In addition, as a "conformity assessment procedure" , the U.S. has not make its notification on the SIMP to the TBT Committee, which impaired the rights of other members under the TBT Agreement.

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[117] NIST Requests Information on Chinese Participation in International Standards Development, available at:
https://www.asme.org/government-relations/capitol-update/nist-requests-information-on-chinese-participation-in-international-standards-development.

[118] Magnuson-Stevens Fishery Conservation and Management Act; Seafood Import Monitoring Program, available at:
https://www.federalregister.gov/documents/2016/12/09/2016-29324/magnuson-stevens-fishery-conservation-and-management-act-seafood-import-monitoring-program.

[119] Seafood Import Monitoring Program Facts and Reports, available at:
https://www.fisheries.noaa.gov/international/international-affairs/seafood-import-monitoring-program-facts-and-reports.

2.6 Trade in Services.

2.79 Whether in terms of the total amount of trade in services or the surplus in services, the U.S. remains a leading trader in service. The service sector of the U.S. is relatively open in general. However, in recent years, the U.S. has used government power in relevant fields to interfere with the normal business operations of enterprises to varying degrees, which has raised widespread concerns.

2.6.1 Telecommunication Services.

2.80 In the field of telecommunications and information communication technology, the U.S. has long advocated trade liberalization. However, in recent years, the U.S. government improperly regards the supply chain security of communications equipment and services as a national security issue. The U.S. has politicized the issue of supply chain security and restricted the operation and development of foreign ICT companies in the U.S. market, and the Chinese telecommunications companies are the first to be affected.

2.81 As a type of regulatory measures of communication services, the "214 certificate" is a certificate issued by the FCC under Section 214 of the *Communications Act of 1934* to provide international common carrier communications services between the U.S. and foreign countries, and to provide domestic interstate common carrier communications services in the U.S. based on the authorization. The FCC denied the 214 certificate applications of certain Chinese telecommunication enterprises[120] and revoked the 214 certificates of certain Chinese telecommunication enterprises[121] on the ground of "national security". The result of the denial and revocation is that these companies are no longer permitted to operate in the way permitted under Section 214 of the *Communications Act of 1934* of the U.S.[122]

2.82 In its WTO commitments on value-added telecommunication services and on basic telecommunication services, the U.S. has made commitments on their market access; and the limitations for the cross-border supply and commercial presence are stated as "none".[123] The above measures of the U.S. deprived Chinese enterprises that have obtained corresponding telecommunications licenses of their legitimate business rights and interests in the U.S., seriously affected the cross-border provision of telecommunication services in relevant fields, and caused huge costs to providers and users of corresponding telecommunication services and products, which is suspected of violating the commitments of the U.S. under the *General Agreement on Trade in Services* (hereinafter referred to as "GATS").

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[120] FCC Denies China Mobile Telecom Services Application, available at: https://www.fcc.gov/document/fcc-denies-china-mobile-telecom-services-application.

[121] China Telecom Americas Order on Revocation and Termination, available at: https://www.fcc.gov/document/china-telecom-americas-order-revocation-and-termination.

[122] Communications Act of 1934, Sec. 214, available at: https://transition.fcc.gov/Reports/1934new.pdf.

[123] GATS/SC/90, GATS/SC/90/Suppl.2 (1997).

2.6.2 Digital Services and Internet Services.

2.83 In May 2019, then-President Trump issued an Executive Order on Securing the Information and Communications Technology and Services Supply Chain (hereinafter referred to as "Executive Order 13873").[124] The Executive Order 13873 prohibits any acquisition, importation, transfer, installation, dealing in, or use of any foreign information and communications technology or service (transaction) that may pose an unacceptable risk to the national security, foreign policy, and economy of the U.S. In August 2020, then-President Trump issued two executive orders (hereinafter referred to as "Executive Order 13942" and "Executive Order 13943") to impose comprehensive restrictions on two "Chinese connected software applications". The Executive Orders require the removal of the two aforementioned Chinese connected software applications from app stores in the U.S. on the national security ground and prohibit internet service providers from providing technical support for the two aforementioned Chinese connected software applications in the U.S.[125] In August 2020, then-President Trump signed another executive order, also citing "national security" as an excuse to force certain Chinese internet technology enterprise to divest or spin-off its business in the U.S. related to one of the connected software applications.[126] In January 2021, the U.S. issued the Executive Order on Addressing the Threat Posed by Applications and Other Software Developed or Controlled by Chinese Companies (hereinafter referred to as "Executive Order 13971"). The Executive Order 13971 prohibits certain transactions and activities with persons that "develop or control" eight Chinese connected software applications.[127] In January 2021, the U.S. government released an interim final rule on "Securing the Information and Communications Technology and Services Supply Chain".[128] The rule grants the DOC the authority to review certain transactions between U.S. persons and foreign persons that have been "designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary".[129]

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[124] Securing the Information and Communications Technology and Services Supply Chain, available at:
https://www.federalregister.gov/documents/2019/05/17/2019-10538/securing-the-information-and-communications-technology-and-services-supply-chain.

[125] TikTok; Steps to Address the Threat and National Emergency with Respect to Information and Communications Technology and Services Supply Chain (EO 13942); WeChat; Steps to Address the Threat and National Emergency with Respect to Information and Communications Technology and Services Supply Chain (EO 13943), available at:
https://www.federalregister.gov/documents/2020/08/11.

[126] Regarding the Acquisition of Musical.ly by Bytedance Ltd., available at:
https://home.treasury.gov/system/files/136/EO-on-TikTok-8-14-20.pdf.

[127] Addressing the Threat Posed by Applications and Other Software Developed or Controlled by Chinese Companies, available at:
https://www.federalregister.gov/documents/2021/01/08/2021-00305/addressing-the-threat-posed-by-applications-and-other-software-developed-or-controlled-by-chinese.

[128] Securing the Information and Communications Technology and Services Supply Chain, available at:
https://www.federalregister.gov/documents/2021/01/19/2021-01234/securing-the-information-and-communications-technology-and-services-supply-chain.

[129] *Ibid.*

2.84 The above practices of the then-president Trump's administration have been widely criticized by the domestic and international communities. In particular, the executive order's accusation that relevant apps "threaten national security" is widely regarded by the international community as an "abuse of power" and a reflection of the U.S. abandonment of free competition and its pursuit of technology nationalism. Subsequently, in June 2021, the Biden Administration issued a new executive order[130] revoking the three aforementioned Executive Orders regarding multiple Chinese apps and announced that the U.S. would evaluate by a rigorous, evidence-based analysis against the undue risk caused by certain ICT and relevant trade in services. While this initiative in some way corrected the previous administration's unreasonable targeting of Chinese companies, it does not fundamentally change the discriminatory attitude of the U.S. government toward Chinese technology companies. The new executive order merely directs the DOC to conduct security assessments of software applications associated with "foreign adversaries" and to take actions as appropriate.

2.85 In December 2022, the Congress passed the *Consolidated Appropriations Act 2023*. Section 102 of this Act states that within 60 days of the effective date of the Act, the Director of the Office of Management and Budget shall develop a list of standards and guidelines for the Executive Branch to remove applications covered by this section of the Act from federal government devices. Under Section 101, the term "covered application" refers to Chinese connected software applications, and subsequent applications or services developed or provided by certain Chinese internet technology enterprise and any successor application or service developed or provided by this Chinese internet technology enterprise or an entity owned by this Chinese internet technology enterprise.[131] In fact, the Committee on Foreign Investment in the U.S. (hereinafter referred to as "CFIUS") review of this Chinese internet technology enterprise is continuing.

2.86 Considering that the U.S. has made broad market access commitments in the WTO about computer-related services and telecommunication services, the relevant measures severely restrict Chinese companies from providing relevant services through Mode 1 (cross-border supply) and Mode 3 (commercial presence) in the U.S. Such measures are suspected of violating the commitments made by the U.S. under GATS. China has raised and will continue to raise concerns with the U.S. at the WTO Council for Trade in Services, requesting the U.S. to stop its unreasonable oppression of Chinese companies and create a level playing field for all companies of members, including Chinese companies, to operate in the U.S.

2.6.3 Shipping and Maritime Services.

2.87 WTO members have constantly raised concerns over the *Merchant Marine Act of 1920,* and believe that such restrictive measures violate the basic principles

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[130] Executive Order on Protecting Americans' Sensitive Data from Foreign Adversaries, available at: https://www.whitehouse.gov/briefing-room/presidential-actions/2021/06/09/executive-order-on-protecting-americans-sensitive-data-from-foreign-adversaries/.

[131] Consolidated Appropriations Act, 2023, Sec. 102, available at: https://www.congress.gov/bill/117th-congress/house-bill/2617/actions.

of the WTO and restrict fair competition in the industry. In June, 2022, President Biden officially signed the *Ocean Shipping Reform Act of 2022*.[132] The Act introduced a number of specific measures based on the principle of protecting the interests of shippers and promoting exports of the U.S. For example, in terms of securing export cargo of the U.S., the protection of the interests of cargo owners is highlighted by emphasizing that carriers must not unreasonably prioritize carrying empty containers and refuse or restrict the carriage of heavy containers. The law also introduces measures to encourage cargo owners to defend their rights, dispelling their concerns about the cost of litigation and shipowner retaliation. These measures will result in foreign shipping companies taking on more compliance obligations when dealing with matters such as customer marketing, pricing, container management arrangements, etc. In addition, the Act increases the carrier's liability and harms the flexibility of the carrier's price policy. For example, the Act broadens the scope of service contract clauses that carriers are required to file and authorizes the U.S. Federal Maritime Commission to set standards necessary for registered national shipping exchanges.[133] Given that many commercial services depend on shipping services, the move of the U.S. is closely watched by all stakeholders.

2.7 Intellectual Property Rights.

2.88 For years, based only on its domestic political agenda and the need for trade protection, the U.S. has released the yearly "Notorious Markets List", and has spared no effort to smear the intellectual property rights protection status of other members, groundlessly accusing other members of intellectual property infringement, trade secret theft and forced technology transfer, and has repeatedly provoked intellectual property disputes. The U.S. takes unilateral actions in the name of intellectual property rights protection with an aim to suppress its competitors and enforce technological blockade of foreign leading technology companies, disrupting normal international trade, and seriously affecting the international cooperation in intellectual property innovation and protection. The U.S. has ignored the multilateral consensus and the basic principles on promoting the transfer and dissemination of technology, protecting the public interest, and preventing the abuse of rights embedded in the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (hereinafter referred to as the "TRIPS Agreement"). The U.S. abuses its power and influence in technology and rules to connive with the theft of foreign intellectual property by domestic institutions and to refuse to implement the DSB rulings under the TRIPS Agreement. In addition, the copyright protection in the U.S. is worrisome.

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[132] Ocean Shipping Reform Act, available at: https://www.congress.gov/bill/117th-congress/senate-bill/3580?q=%7B%22search%22%3A%5B%22Ocean+Shipping+Reform+Act%22%2C%22Ocean%22%2C%22Shipping%22%2C%22Reform%22%2C%22Act%22%5D%7D&s=2&r=1.

[133] *Ibid.,* Sec. 4.

2.7.1 "Special Section 301" .

2.89 "Special Section 301" is a section under the *Trade Act of 1974* of the U.S. regarding intellectual property protection, named "identification of countries that deny adequate protection, or market access, for intellectual property rights". Under the mandate of Special Section 301 provision, the U.S. unilaterally claims that other countries or regions fail to provide effective protection or fair market access for U.S. intellectual property rights, or have specific drawbacks in intellectual property protection, legal enforcement proceedings, or market access. To facilitate administration of the statute, the U.S. identifies the "Priority Foreign Country" and has created "Priority Watch Lists", "Watch Lists" and "Section 306 Monitoring". Under this framework, the U.S. forces countries and regions on the lists to revise their policies. For those who refuse to do so, the U.S. will impose retaliatory trade measures or economic sanctions . Furthermore, according to Section 306 of the *Trade Act of 1974,* the U.S. monitors trading partners' implementation of bilateral intellectual property agreements. To those who it judges having failed to take appropriate steps to implement the relevant obligations, the U.S. will take actions according to Section 301 against trading partners.[134]

2.90 Provisions of the "Special Section 301" have long been the U.S. tool for pursuing unilateral policies, the intention of which is to force other countries to open their markets to U.S. products and services under the disguise of providing adequate and effective protection for U.S. intellectual property. Provisions of the "Special Section 301" take advantage of the hegemonic status of the U.S. to force other countries or regions to comply with its intellectual property standards. By unilateral standards development, unilateral interpretations, unilateral investigations, unilateral reports and unilateral sanctions, the U.S. manages to seize its leading position in the field of intellectual property as well as trade and investment.

2.7.2 "Section 337" .

2.91 "Section 337" refers to Section 337 of the U.S. *Tariff Act of 1930* and related amendments. The "Section 337" Investigation is a quasi-judicial procedure conducted to investigate intellectual property infringement and other unfair competition practices in import, in order to determine whether infringement exists and whether remedial measures are necessary.

2.92 With an intensifying tendency hollowing out in American companies, non-practicing entity (hereinafter referred to as "NPE") and hollowed-out enterprises take advantage of the strong effect of the "Section 337" in preventing foreign competitors from entering the U.S. market. NPE and hollowed-out enterprises with numerous patents but poor physical operations often threaten to file "Section 337" aiming to seek patent fees, transforming the investigation as an important weapon for the U.S. to "snipe" foreign companies in the field of electronic communications. WTO members have raised concerns on this issue for years, and as one of them, China is the main victim of the abuse the U.S. abuse of this tool. According to the data of the "USITC

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[134] 19 U.S.C. § 2416, available at: https://uscode.house.gov/view.xhtml?req=granuleid:USC-1999-title19-section2416&num=0&edition=1999.

Investigations Database System", since the first "Section 337" Investigation in 1972, United States International Trade Commission (hereinafter referred to as "USITC") has initiated 1,292 investigations till 2021, among which 354 investigations targeted China, accounting for 27.4% of the total. Since China's accession to the WTO in 2001, USITC has significantly intensified its intellectual property investigations on Chinese exporters. Between 2002 and 2021, USITC launched 342 investigations targeting China, accounting for 96.61% of the total investigations involving China since 1972. In 2021, there were as many as 26 investigations involving China, accounting for 50.98% of the total number of investigations launched that year.[135]

2.7.3 Theft of Intellectual Property and Data.

2.93 The U.S. frequently accuses other members of stealing its intellectual property. However, in fact, the U.S. has been stealing other members' trade secrets, data and undisclosed information through various means for a long time, seriously violating TRIPS Agreement's basic principles on intellectual property protection, failing to fulfill its obligations under Article 39 of the TRIPS Agreement on the protection of undisclosed information, and posing a serious threat to the national or regional security of the victim members.

2.94 With a wide range of targets and high frequency of attacking, cyber attacks and telephone surveillance are major methods for the U.S. to steal other members' secrets, data and information. According to statistics results from National Computer Network Emergency Response Technical Team/Coordination Center of China, in the first half of 2021, the center captured about 23.07 million malicious program samples, with daily average transmission exceeding 5.82 million times, involving about 208,000 malicious program families, about half of which originated from the U.S.[136] In September 2022, Northwestern Polytechnical University of China was attacked by the U.S. National Security Agency. The university's core technical data, including critical network device configuration, network management data and operation and maintenance data, were stolen during the attack. Investigations have unveiled that the U.S. used 41 special cyber attack weapons for the attack. What's more, the Tailored Access Operations under the U.S. National Security Agency has carried out tens of thousands of malicious cyber attacks on cyber targets in China over the years, taking control of relevant network equipment and obtaining large amounts of data.[137] According to reports, the U.S. has also conducted monitoring and information theft of global broadcasting, telecommunications, and the Internet through related intelligence-gathering projects.[138] According to a report by the

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[135] Source: USITC Investigations Database System, available at: https://pubapps2.usitc.gov/337external/.

[136] Monitoring Data Analysis Report on the Cybersecurity of China in the First Half of 2021, available at: https://www.cert.org.cn/publish/main/upload/File/first-half%20%20year%20cyberseurity%20report%202021.pdf.

[137] Investigation Report on the Cyber Attack of the US National Security Agency on Northwestern Polytechnical University, available at: http://news.cctv.com/2022/09/27/ARTIHRBJPVBb1QkxfnSMe5Zn220927.shtml.

[138] China Cybersecurity Industry Alliance, Review of Cyberattacks from US Intelligence Agencies – Based on Global Cybersecurity Communities' Analyses, April 2023, available at:

Global Times in June 2022, the U.S. military and government cyber agencies remotely stole more than 97 billion pieces of global Internet data within 30 days.[139]

2.7.4 Biopiracy.

2.95 American biotechnology companies are notorious for their rampant engagement in "biopiracy". Relying on its economic and technological advantages, American biotechnology companies commercially exploit genetic resources obtained at low cost from developing countries and apply for patent protection, so as to gain huge profits. In 1997, an agriculture enterprise in the U.S. applied for 20 patents after hybridizing basmati rice with an American long indica rice, which severely restricted the export of basmati rice from India. The top agriculture enterprises of the U.S. took advantage of the ineffective enforcement of international intellectual property rules and the weakness of developing members in the protection and utilization of intellectual property rights, wantonly stealing biological genetic resources, appropriating a large number of local excellent crop trait genes of developing members. For example, the U.S. applied a large number of patents around the world on the genes for high-yield traits of soybeans originating from China, and then monopolized the market by abusing its technology and market advantages. After the completion of patent registration, the U.S. agriculture enterprises in turn charged high patent fees from many members, including the members where the patented genetic resources originating from. Such biopiracy conduct seriously damages the intellectual property rights and food security of the developing members.

2.7.5 Poor Copyright Protection.

2.96 **Non-compliance with the recommendations and rulings of the dispute settlement procedure under the TRIPS Agreement.** The relevant provisions of Section 110(5) of the *U.S. Copyright Act* on "business exemption" have already been ruled as violating relevant provisions of TRIPS Agreement by the WTO panel. However, the U.S. refused to implement the rulings and recommendations of the WTO panel and turns out to be the only WTO member who refuses to comply with the recommendations and rulings of the dispute settlement procedure under the TRIPS Agreement. The U.S. amended the *U.S. Copyright Act* in 1998. Section 110 of the *U.S. Copyright Act* restricted the exclusive rights of the copyright holders, waving the payment of royalty of certain types of music played in public places under certain conditions. The EU therefore initiated a WTO dispute complaint regarding these provisions. The panel of the dispute found that the "commercial exception" clauses of the *U.S. Copyright Act* violate the relevant provisions of the TRIPS Agreement and recommends that the U.S. to revise Section 110(5) into conformity with its obligations under the TRIPS Agreement. Since the U.S. refused to implement the Panel's ruling, in January 2002, the EU requested authorization from the

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http://www.china-cia.org.cn/AQLMWebManage/Resources/kindeditor/attached/file/20230411/20230411161526_0531.pdf.

[139] Exclusive: Report reveals how US spy agencies stole 97b global internet data, 124b phone records in just 30 days, available at: https://www.globaltimes.cn/page/202206/1268024.shtml.

DSB to retaliate.[140] However, the U.S. by far has not revised the *U.S. Copyright Act* as recommended by the panel.

2.97 **Rampant counterfeiting.** According to relevant reports, the number of visits to pirate websites (covering the areas of publishing, movies, music, software, etc.) in the U.S. has ranked first in the world for two consecutive years, and the status of intellectual property rights protection in the U.S. is worrying. From January to September 2021, there were 13.5 billion visits to pirate websites in the U.S. While in the first eight months of 2022, this number has surged to 15.5 billion. During the same time periods, the numbers of visits to pirate websites in the world were 132 billion and 141.7 billion, respectively. American piracy "enthusiasts" account for over one-tenth of the global total.[141]

2.8 Export Controls and Economic Sanctions.

2.98 Abuse of export controls and economic sanctions is an important means for the U.S. to suppress other countries or entities. In particular, the extraterritorial application of export controls and economic sanctions has severely hindered normal trade and economic exchanges among WTO members and undermined the stability and security of the global supply chain.

2.8.1 Export Controls.

2.99 The goal of the U.S. export control measures has shifted from non-proliferation of weapons of mass destruction and their means of delivery to maintaining its leadership in science and technology, consolidating its technology hegemony, and cracking down on other countries and their enterprises under the pretext of "national security", "human rights" and so forth.

2.100 First, the decision to put the relevant entities in the export control list is arbitrary. Section 744.16 of the *Export Administration Regulations* (hereinafter referred to as "EAR") states that the Entity List identifies persons reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the U.S. The standard of proof for "reasonable belief" is very low, even lower than requirement for "prima facie evidence". In practice, the addition of most Chinese enterprises have no nexus to national security at all. The U.S. government often first aims to crack down on certain Chinese companies and then finds the corresponding "grounds" related to so-called "national security" to put the relevant enterprises in the Entity List.

2.100 By the end of 2022, there were 2216 entities in the Entity List managed by the Bureau of Industry and Security of the Department of Commerce (hereinafter referred to as "BIS"),[142] of which 521 are Chinese entities. Among the Chinese

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[140] DS160: United States – Section 110(5) of US Copyright Act, available at: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds160_e.htm.

[141] Akamai Research Reveals Extensive Global Piracy Demand, Industry and Regional Trends | Akamai, available at: https://www.akamai.com/newsroom/press-release/akamai-research-reveals-extensive-global-piracy-demand-industry-and-regional-trends.

[142] Search the Consolidated Screening List (CSL), available at: https://www.trade.gov/data-visualization/csl-search.

entities, 79 were added to the list in 2019, 147 in 2020, 82 in 2021, and 68 from January 2022 to January 2023.[143] More than 70% of the entities or individuals in the current Entity List were added since 2017, covering a wide range of high-tech areas in China. The frequently used excuse for adding Chinese entities to the Entity List is the so-called "national security" threat. "Human rights" and other issues are also quoted. However, no factual evidences were disclosed by the U.S. to demonstrate that these parties jeopardize the "national security" of the U.S. or are involved in "human rights violations". Other WTO members have also expressed doubts about U.S. export controls. For example, U.S. export control measures against Iran also seriously hindered the transactions between European companies and Iran, and a large number of European companies were forced to divest from the Iranian market for fear of U.S. sanctions. Companies and governments of these European countries have expressed objections towards the U.S. approach.[144]

2.101 Second, it is very difficult for entities to be removed from the Entity List. Pursuant to Section 744.16(e) of the EAR, any entity added to the Entity List must make an application to the End-User Review Committee (hereinafter referred to as "ERC") to be removed from the Entity List. It is worth noting that the ERC's decision to add entities to the Entity List shall be approved by a majority vote, but the decision to remove the relevant entity from the Entity List requires a unanimous vote. In other words, a "lenient standards for entry and strict standards for removal" method is adopted for the review of the Entity List. Furthermore, the ERC's decision on the removal application is a final agency action, and no appeal is allowed. In practice, this poses great obstacles for Chinese entities applying for removal from the Entity List. So far, very few entities have successfully requested removal from the Entity List. Even if the request for removal was approved eventually, the entities often already suffer great losses at the time of approval.

2.102 Third, the licensing procedure is complicated and difficult. In recent years, the U.S. continues to expand the scope of control by adding new controlled items and restricting the use of export license exceptions, resulting in increasing licensing requirements. According to U.S. export control rules, enterprises need to complete 29 steps for the confirmation of requirements before exporting, which is complicated and cumbersome, bringing many obstacles and inconveniences to normal trade activities. Even after completing the complicated licensing procedures, companies may still not be able to obtain export licenses. Additionally, according to BIS, the value of licenses rejected by BIS to China amounted to $291.1 billion in 2021,[145] while U.S. exports to

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[143] Source: Notices of the U.S. government regarding adding relevant Chinese entities to the Entity List. For example, Notice available at: https://www.bis.doc.gov/index.php/documents/federal-register-notices-1/3199-87-fr-77505-entity-list-rule-0694-aj04-effective-12-16-22-published-12-19-22/file.

[144] The Diplomat, Europe's Misgivings About Sanctions Don't Bode Well for US Export Controls, available at: https://thediplomat.com/2023/02/europes-misgivings-about-sanctions-dont-bode-well-for-us-export-controls/.

[145] 2021 Statistical Analysis of US Trade with China, available at: https://www.bis.doc.gov/index.php/country-papers/2971-2021-statistical-analysis-of-u-s-trade-with-china/file.

China amounted to $151.1 billion in the same year.[146] This shows that the value of exports whose license applications were rejected by BIS far exceeded the total export. A significant amount of U.S. trade with China is halted due to denied licenses.

2.103 Fourth, international trade suffers from extensive restrictions. In addition to the export control lists, the U.S. Government has also amended certain export control rules to limit the ability of relevant entities to obtain advanced technologies and products from any region of the world. The most outrageous example is the modification of the Foreign-Direct Product Rule (hereinafter referred to "FDP") specifically targeting Chinese entities. In August 2020, BIS modified the FDP to directly target certain top Chinese telecommunication enterprise and its affiliates.[147] As a result, any item designed, developed, or produced by an entity based on specific U.S. software or technology cannot be supplied to the Chinese telecommunication enterprise for production, development or use without an export license issued by BIS. In October 2022, BIS issued interim final rules[148] imposing new controls on advanced computing integrated circuits (hereinafter referred to as "ICs"), computer commodities that contain such ICs, and certain semiconductor manufacturing items. They include new ECCN codes, new FDP rules for related products, new end-use and end-user controls, and expanded restrictions on relevant Chinese entities. In particular, the rules impose licensing requirement for "U.S. persons" that "support" the "development" or "production" of certain ICs in China.

2.104 Fifth, the implementation mechanisms and processes have no transparency. In recent years, the U.S. has frequently made use of the "specific notice" mechanism provided under Section 744.21(b) of the EAR. Specifically, the U.S. made export license requirements on the export, re-export or transfer (domestic) of any item subject to EAR control simply by issuing a notice or through individual notification or separate notice to the relevant entity. Since such notifications are not made public, interested parties usually get informed of the rules only through media or other channels after they become effective. These interested parties therefore have no opportunity to challenge or comment on the relevant rules. For example, prior to the release of rules on semi-conductors, the U.S. gave "verbal guidance" to U.S. leading suppliers, requiring them not to export chipmaking equipment capable of producing semiconductors with sub-14 nanometer processes to China unless they obtain the DOC licenses.[149]

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[146] U.S. Trade with China, available at: https://www.bis.doc.gov/index.php/country-papers/2971-2021-statistical-analysis-of-u-s-trade-with-china/file.

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

[148] Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use; Entity List Modification, available at: https://public-inspection.federalregister.gov/2022-21658.pdf.

[149] Exclusive: Biden to hit China with broader curbs on U.S. chip and tool exports -sources, available at:

2.105 Sixth, the export control measures are implemented in an unreasonable way. There are various types of export control measures in the U.S., and the time they enter into force are different. As trade regulations, these rules lack predictability and stability, and the implementation is neither fair nor reasonable, causing serious obstacles to international trade. This is mainly reflected in two aspects. Firstly, the decision to add entities to the export control lists often takes effect immediately on the day of publication, and the listed entities have no opportunity to comment or to raise challenges to the decision. For example, in August 2022, the DOC added certain Chinese technology enterprises to the entity list, and this decision took effect on the same day.[150] Secondly, U.S. export control measures have confusing effects, which are not conducive to the fair, impartial and reasonable implementation of trade regulations and effective operation of international trade. For example, U.S. export control measures contain "interim final rules" that come into effect on the date of publication but may be revised by BIS and other agencies based on public comments, and if no revision is to be made, BIS may issue a "final rule". The interested parties usually have to spend a considerable amount of time to confirm the status and effective date of the rules, which hinders smooth and efficient operation of international trade.

2.106 To sum up, U.S. export control measures against China are apparently justified under the disguise of "national security". But in reality, they have gone beyond their boundaries, violating the principles of good faith and proportionality of international law. In December 2022, China requested consultation (DS615) at the WTO with respect to certain U.S. measures related to the trade in certain semiconductor items destined for or in relation to China. China alleges that these measures are inconsistent with the U.S. obligations under the WTO framework, including most-favored-nation treatment and general elimination of quantitative restrictions, etc.

2.8.2 Economic Sanctions.

2.107 Relying on its economic and political strength, the U.S. has become the main user of economic sanctions. As of May 2022, the Office of Foreign Assets Control (hereinafter referred to as "OFAC") of the U.S. Treasury Department has administered a total of 37 sanctions programs. These sanctions are mainly region-related, such as the Balkans, Iran, Cuba, Syria, Hong Kong China, etc. Other sanctions programs are related to specific matters, such as Counter-Terrorism Sanctions, Cyber-Related Sanctions, Non-Proliferation Sanctions, and the Global Magnitsky Sanctions.[151] According to the *2021 Sanctions Review* issued by the U.S. Department of the Treasury, as of fiscal

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https://www.reuters.com/business/exclusive-biden-hit-china-with-broader-curbs-us-chip-tool-exports-sources-2022-09-11/

[150] Additions of Entities to the Entity List, available at: https://www.federalregister.gov/documents/2022/08/24/2022-18268/additions-of-entities-to-the-entity-list.

[151] Sanctions Programs and Country Information, available at: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information.

year 2021, the U.S. had imposed more than 9400 sanctions that had taken effect.[152]

2.108 The U.S. has abused unilateral sanctions, especially secondary sanctions, by means of "long-arm jurisdiction". By exercising judicial power and comprehensively using administrative, economic, financial and other means, the U.S. holds non-U.S. entities and individuals that fail to comply with U.S. sanction laws and regulations accountable and ensures the extraterritorial effects of such laws and regulations. An example would be U.S. secondary sanctions against Iran. If a transaction between a third-country financial institution and Iran meets the criteria for a "significant transaction",[153] the third-country financial institution may be subject to sanctions by a U.S. official agency. Once imposed, this measure may prohibit transactions between U.S. persons and the third-country financial institution or require U.S. financial institutions to freeze or restrict the third-country financial institution's agent accounts in the U.S. In addition, the *Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996* (Helms–Burton Act) promulgated by the U.S. in the 1990s also entails provisions of secondary sanction, which have aroused strong dissatisfaction among WTO members including the EU. The EU passed the Council Regulation (EC) No 2271/96 in 1996 and even initiated dispute settlement proceedings at the WTO.[154] In the "Havana Club" dispute, the EU litigated at the WTO over Section 211 of the U.S. *Omnibus Appropriations Act of 1998*, claiming that it bars courts in the U.S. from recognizing trademarks of Cuban origin that are "the same as or substantially similar"[155] to those used by businesses confiscated under Cuban law, even if the former owners have abandoned their marks for decades. In 2002, the DSB found that Section 211(a)(2) and (b) of the *Omnibus Appropriations Act of 1998* violated both the national treatment and the most-favored nation obligations under the TRIPS Agreement.[156]

2.109 The SDN List is the most important list for U.S. economic sanctions. It is published and managed by OFAC. Once an entity is added to the SDN List, the U.S. would freeze all property and interests in property of that entity owned or controlled by a U.S. entity or a foreign entity connected to the U.S. Also, transactions with entities in the SDN List is also prohibited. According to the 50 Percent Rule under the SDN List, any entity owned in the aggregate, directly or indirectly, 50 percent or more by one or more blocked persons is itself considered to be a blocked person or entity to the measures aforementioned. Businesses in third countries may face the risk of secondary sanctions when conducting transactions with the individual or entity in the SDN List if the individual or entity is marked "additional sanctions information – subject to

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[152] The Treasury 2021 Sanctions Review, available at: https://home.treasury.gov/system/files/136/Treasury-2021-sanctions-review.pdf.

[153] Iranian Financial Sanctions Regulations, § 561.201, available at: https://www.ecfr.gov/current/title-31/subtitle-B/chapter-V/part-561.

[154] DS38: United States – The Cuban Liberty and Democratic Solidarity Act, available at: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds38_e.htm.

[155] United States – Section 211 Omnibus Appropriations Act of 1998, para. 3.

[156] DS176: United States – Section 211 Omnibus Appropriations Act of 1998, available at: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds176_e.htm.

secondary sanctions". As of the end of 2022, the total number of Chinese individuals and entities in the SDN List is 396.[157]

2.110 The long-term and frequent imposition of economic sanctions by the U.S. government has not only failed to resolve disputes, but also intensified tension among WTO members, impacted the international order, and even triggered humanitarian disasters. Especially in recent years, in order to maintain its economic and technological leadership, the U.S. has abused economic sanctions to interfere in normal international commercial transactions and competition, under the pretext of "national security", "human rights" and so forth. The U.S. has even used secondary sanctions to prohibit non-U.S. companies from conducting normal trade with the sanctioned persons. The economic sanctions of the U.S. have fundamentally violated the basic goals of trade liberalization and facilitation of the WTO. These economic sanction actions have violated the basic principles and relevant rules of the WTO, which have posed widespread concerns among many other members and companies.

2.9 Investment Review Mechanism.

2.111 The U.S. is the first country in the world to implement security reviews on foreign investment. CFIUS was established in 1975 to supervise foreign investment. In recent years, the U.S. has promulgated more rules to strengthen its foreign investment security review mechanism. The U.S. takes two types of measures through legislation and executive orders, namely expanding the scope of national security in foreign investment review and strengthening CFIUS's authority of reviewing investments from certain countries.

2.112 The *Foreign Investment Risk Review Modernization Act of 2018* (hereinafter referred to as the "FIRRMA")[158] not only expands the scope of transactions subject to the CFIUS review,[159] but also requires the U.S. Secretary of Commerce to submit to Congress and CFIUS a report on foreign direct investment transactions conducted by entities of China in the U.S. every two years.[160] To further implement FIRRMA, in October 2018, CFIUS issued a Pilot Program involving 27 industries to review non-controlling and non-passive investments in companies involved in critical technologies related to specific industries.[161]

2.113 In September 2022, the U.S. President Biden signed the first executive order for the security review on foreign investment, requiring CFIUS to focus on investments from foreign adversarial or other countries of special concern related to specific industries. The executive order essentially provides a basis for CFIUS' discriminatory review of covered transactions taking "national

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[157] Source: Notices of the U.S. government regarding adding relevant Chinese entities to the SDN List. For example, Notice available at: https://home.treasury.gov/news/press-releases/jy1154.

[158] Foreign Investment Risk Review Modernization Act of 2018, available at: https://home.treasury.gov/sites/default/files/2018-08/The-Foreign-Investment-Risk-Review-Modernization-Act-of-2018-FIRRMA_0.pdf.

[159] Summary of the Foreign Investment Risk Review Modernization Act of 2018, available at: https://home.treasury.gov/system/files/206/Summary-of-FIRRMA.pdf.

[160] *Supra* note 158, Sec. 1719.

[161] Treasury Releases Interim Regulations for FIRRMA Pilot Program, available at: https://home.treasury.gov/news/press-releases/sm506.

security" as an excuse.[162] The executive order will further strengthen CFIUS's oversight of foreign investment, especially for U.S.-related mergers and acquisitions involving the targeted countries in areas such as microelectronics, artificial intelligence, biotechnology, quantum computing, sensitive data and cybersecurity.

2.114 As a result of the expansion of the review authority of CFIUS, any target company with substantial business operation in the U.S., regardless of whether it is a U.S. company or not, might fall under CFIUS's authority, and its transactions may therefore be blocked after the review. On the excuse of "national security", CFIUS continuously expanded of its authority and imposed greater emphasis on certain countries and the science and technology industry. Fundamentally, the CFIUS review aims to maintain the leading position of the U.S. in science and technology innovation and suppress the development of other countries' emerging science and technology industries, by interfering in normal cross-border investment and mergers and acquisitions.

2.115 The tightening rules of risk review on foreign investment reflects excess arbitrariness and discrimination, affecting normal business activities of foreign investors in the U.S., including those from China. According to the *2021 Statistical Bulletin of China's Outward Foreign Direct Investment*, China's outward FDI flows to the U.S. in 2021 were $5.58 billion, with a 7.3% year-on-year decrease. Since 2018, China's outward FDI flows to the U.S. have been on a downward trend in general, and in 2019, in particular, China's outward FDI flows to the U.S. decreased by 49.1% from the previous year.[163] The arbitrary and discriminatory nature of the CFIUS review creates barriers for the service providers from other WTO members to enter the U.S. market. This seriously disrupts the liberalization and facilitation of international trade and investment, and harms U.S. own interests in attracting investment and boosting employment. In light of the broad commitments made by the U.S. under the GATS, the abuse of national security measures by the U.S. to conduct investment reviews becomes a suspected violation of the market access and national treatment commitments made by the U.S. at the WTO.

2.10 Buy American.

2.116 In recent years, the use of federal funds to increase purchases of American-made goods and services has been a major part of the U.S. government's approaches to invest in domestic production and rejuvenate domestic manufacturing. As early as in 2009, the U.S. promulgated the *American Recovery and Reinvestment Act of 2009*, which stipulates in Section 1605 "Use of American Iron, Steel, and Manufactured Goods" that none of the

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[162] President Biden Signs Executive Order to Ensure Robust Reviews of Evolving National Security Risks by the Committee on Foreign Investment in the United States, available at: https://www.whitehouse.gov/briefing-room/statements-releases/2022/09/15/fact-sheet-president-biden-signs-executive-order-to-ensure-robust-reviews-of-evolving-national-security-risks-by-the-committee-on-foreign-investment-in-the-united-states/.

[163] Source: 2018 Statistical Bulletin of China's Outward Foreign Direct Investment, 2019 Statistical Bulletin of China's Outward Foreign Direct Investment, 2020 Statistical Bulletin of China's Outward Foreign Direct Investment, 2021 Statistical Bulletin of China's Outward Foreign Direct Investment.

funds appropriated or otherwise made available by the *American Recovery and Reinvestment Act* may be used, with certain exceptions, in a project of a public building or public work unless all of the iron, steel, and manufactured goods used as construction material in the project are produced in the U.S.

2.117 Even though Section 1605 of the *American Recovery and Reinvestment Act of 2009* provides in subparagraph (d) that "this section shall be applied in a manner consistent with U.S. obligations under international agreements", the practice has led to widespread controversies and concerns from the manufacturing industries, businesses, and major trading partners of the U.S. The EU and Canada have strongly criticized this practice taken by the U.S. and even expressed their intention to resort to the WTO dispute settlement mechanism.[164] In the meantime, a wide range of developing members that neither are parties to the *WTO Agreement on Government Procurement* (hereinafter referred to as the "GPA") nor have entered into bilateral arrangements with the U.S. are still excluded from participating in the massive economic stimulus package of the U.S.[165]

2.118 In April 2017, then-President Donald Trump signed *the Presidential Executive Order on Buy American and Hire American* (hereinafter referred to as the "Executive Order"). With respect to "Buy American", the Executive Order requires all relevant government agencies to monitor, enforce, and comply with Buy American Laws as of the date of the issuance of the Executive Order. According to the Executive Order, "Buy American Laws" means all statutes, regulations, rules, and Executive Orders relating to Federal procurement or Federal grants including those require, or provide a preference for, "Buy America". "Buy America" includes the purchase or acquisition of goods, products, or materials produced in the U.S., including iron, steel, and manufactured goods. It also provides recommendations on how to maximize the use of "goods, products, and materials produced in the U.S." The Secretary of Commerce and the USTR are also requested to assess the impacts of all U.S. free trade agreements and the GPA on the implementation of Buy American Laws, including their impacts on the implementation of domestic procurement preferences. In addition, the Executive Order calls for a comprehensive assessment of the use of waivers and imposes stricter requirements on the conditions under which waivers can be applied.[166] In August 2020, then-President Trump signed the *Executive Order on Ensuring Essential Medicines, Medical Countermeasures, and Critical Inputs Are Made in the U.S.*, requiring the U.S. government to accelerate the development of domestic production capacity of essential medicines and critical inputs. In addition, it is required to reduce dependence on foreign manufacturers for essential medicines,

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[164] Buy American plan hurts U.S. leadership: EU, Canada, available at: https://www.reuters.com/article/canada-us-usa-buyamerican-idCATRE5115PM20090202.

[165] American Recovery and Reinvestment Act of 2009, available at: https://www.congress.gov/bill/111th-congress/house-bill/1/text.

[166] Presidential Executive Order on Buy American and Hire American, available at: https://trumpwhitehouse.archives.gov/presidential-actions/presidential-executive-order-buy-american-hire-american/.

medical countermeasures, and critical inputs to ensure sufficient and reliable long-term domestic production of these products.[167]

2.119 Since 2021, the U.S. government has spared no effort to strengthen its "Buy American" policy. In January 2021, President Biden signed *the Executive Order on Ensuring the Future Is Made in All of America by All of America's Workers* just five days after taking office, which not only calls for a purchase of American-made products and services with $400 billion government budget in four years, but also imposes stricter restrictions on the federal government's procurement of foreign products.[168] In March 2022, President Biden once again enhanced the "Buy American" policy, officially announcing that the local content requirements in the federal government's purchases of domestic parts would gradually increase to 60% in 2022, and to 65% and 75% in 2024 and 2029, respectively. In addition, the U.S. government also said it would increase margin of price preference for the federal procurement of critical products. The critical products include semiconductors, active pharmaceutical ingredients, large capacity batteries, and etc.[169] In February 2023, President Biden announced a new standard in his 2023 State of the Union Address, requiring that all building materials used in federal infrastructure projects to be made in the U.S.

2.120 In addition to the above measures, the requirement to use federal funds to "buy American" or to "manufactured or sold in the U.S." is also heavily embedded in various bills enacted to boost manufacturing, as a condition for receiving government subsidies. For example, Division G, Title IX, "Build America, Buy American", of the IIJA signed by President Biden in November 2021, specifies the requirement of prioritizing the procurement of domestic products. It states that constructing, renovating, maintaining or repairing infrastructure programs within the U.S., the priority in the procurement program must be given to the iron, steel, manufactured goods and construction materials produced in the U.S. if the funds used are from U.S. federal financial assistance programs.[170] To be specific, in the case of iron or steel products, all manufacturing processes, from the initial melting stage through the application of coatings, shall occur in the U.S.[171] In the case of manufactured products, the manufactured product shall be manufactured in the U.S. and the cost of the components of the manufactured product that are mined, produced, or manufactured in the U.S. shall be greater than 55% of the total cost of all components of the

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[167] Executive Order on Ensuring Essential Medicines, Medical Countermeasures, and Critical Inputs Are Made in the United States, available at: https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-ensuring-essential-medicines-medical-countermeasures-critical-inputs-made-united-states/.

[168] Executive Order on Ensuring the Future Is Made in All of America by All of America's Workers, available at: https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/25/executive-order-on-ensuring-the-future-is-made-in-all-of-america-by-all-of-americas-workers/.

[169] Biden-Harris Administration Delivers on Made in America Commitments, available at: https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/04/fact-sheet-biden-harris-administration-delivers-on-made-in-america-commitments/.

[170] *Supra* note 52, Sec. 70914(a).

[171] *Ibid*., Sec. 70912(6)(A).

manufactured product.[172] In the case of construction materials, all manufacturing processes for the construction materials shall occur in the U.S.[173]

2.121 Challenges to the "Buy American" policy of the U.S. are raised constantly from both the U.S. public and its trading partners. In January 2022, a study by the Cato Institute, a leading U.S. think tank, finds that while measures mandating the purchase of American products have a certain superficial appeal, they come with rising costs of goods purchased by the government, resulting in reduced purchases and additional pressure on fiscal deficit.[174] In addition, the "Buy America" review imposes a regulatory burden on the U.S. government while increasing enforcement costs significantly and slowing down project construction. The move does not serve the nation's purpose of improving infrastructure.[175] Likewise, WTO members also express concerns over "Buy American", with the EU indicating to the "Buy American" requirement as an important obstacle for EU suppliers to access the U.S. government procurement market.[176]

2.122 As a WTO Member, the U.S. needs to ensure that the "Buy American" policy is consistent with all of its obligations under the WTO agreements. The impact of apparent discriminatory policy spillover from the "Buy American" policy continue to expand, which may violated of the GPA's basic principle of non-discriminatory treatment and constitute restrictions for other Parties to the GPA that seriously distort global trade and investment in related industries. For non-Parties to the GPA, it remains to be seen whether the scope of application of the relevant measures goes beyond the scope of government procurement; if so, these measures may violate the commitments of the U.S. under other WTO agreements.

2.11 Discriminatory Arrangements in International Economic and Trade Cooperation.

2.123 In recent years, on the one hand, the U.S. has prevented other trading partners from deepening their trade and economic cooperation by embedding the "poison pill clauses" and other rules in regional agreements, which jeopardized the liberalization and facilitation of international trade and economic rules. On the other hand, the U.S. has instigated the so-called "nearshoring/friend-shoring" based on values, and disrupted global supply chains with discriminatory and exclusionary tactics.

2.11.1 "Poison Pill Clause".

2.124 Although the so-called "market economy standard" promoted by the U.S. in the multilateral fora has been widely opposed by WTO members, the U.S. still

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[172] *Ibid.,* Sec. 70912(6)(B).
[173] *Ibid.,* Sec. 70912(6)(C).
[174] Rethink "Buy America" and other U.S. Procurement Mandates, available at https://www.cato.org/blog/cato-trade-teams-2022-policy-wish-list.
[175] *Ibid*.
[176] Government Procurement Performance requirements for non-services, including LCR (TRIMs), available at: https://trade.ec.europa.eu/access-to-markets/pt/barriers/details?barrier_id=11190&sps=false.

insists on embedding the "market economy" issue in the form of "poison pill clauses" in the regional trade agreement led by the U.S. In November 2018, the U.S., Mexico, and Canada signed the USMCA to replace the *North American Free Trade Agreement.*[177] The USMCA is just a tripartite agreement among the U.S., Mexico and Canada. However, Article 32.10 of the USMCA states that if a Party intends to negotiate a free trade agreement with a "NME", it shall notify the other Parties three months prior to the commencement of negotiations and shall provide the other Parties with an opportunity to review the full text of the bilateral agreement, including any annexes and side instruments, no later than 30 days prior to the date of signing, so that the Parties can review the text of the agreement and assess its potential impact on the USMCA. Any Party entering into a free trade agreement with a "NME" shall allow the other Parties to terminate the USMCA and replace it with a (new) bilateral agreement within six months of notification. In addition, Annex 14-D of the USMCA (Mexico-U.S. Investment Disputes) clearly states that a party to a qualifying investment dispute does not include an investor that is owned or controlled by a person of a non-Annex Party that, on the date of signature of this Agreement, the other Annex Party has determined to be a NME. In short, the USMCA does not allow any party to negotiate and sign free trade agreements with "NME" countries without risking expulsion from the agreement. Regarding the investment dispute resolution between Mexico and the U.S., companies invested by a "NME" are not qualified as claimants.

2.125 Such practice of forcing other members to make an either-or choice not only violates the autonomy of other members and third parties to negotiate and conclude agreements, but also goes against the original objective of the establishment of free trade areas among WTO members as per Article XXIV of the GATT, that is, "the contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreement". U.S. then Secretary of Commerce Ross did not even shy away from calling this new provision in the USMCA "a poison pill that could be replicated".[178]

2.11.2 "Nearshoring/Friend-shoring" Strategy.

2.126 Reducing the supply chain dependence on a single country, especially on "foreign adversaries", is an industrial strategy emphasized by the U.S. government on supply chain resilience or diversification. Since 2020, while taking a number of measures to develop its domestic industries and enhance its industrial competitiveness, the U.S. has made more efforts to form industrial alliances centered around itself. These alliances are constructed with the aim of developing supply chains that exclude non-allied countries such as China. In May 2020, Bonnie Glick, Deputy Administrator of the U.S. Agency for International Development, used the concept of "allied-shoring" for the first

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[177] Agreement between the United States of America, the United Mexican States, and Canada 12/13/19 Text, available at: https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between.

[178] Exclusive: U.S. Commerce's Ross eyes anti-China 'poison pill' for new trade deals, available at: https://www.reuters.com/article/us-usa-trade-ross-exclusive-idUSKCN1MF2HJ.

time in an interview with the media, stressing that the U.S. needed to consider "nearshoring" and "friend-shoring" of the supply chain to encourage enterprises to return to the U.S., or at least to conduct business with its allies, in order to prevent the security of the supply chain of the U.S. from being threatened.[179] In June 2021, the U.S. government issued the *100-Day Reviews under Executive Order 14017*, which formally used the concepts of ally and friend-shoring.[180] In her speech at the Atlantic Council in April 2022, the Secretary of Treasury of the U.S., Janet L. Yellen, strongly advocated for the "friend-shoring" of supply chains to a large number of "trusted countries", so as to continue to ensure the security of supply chains in the face of dual context of the COVID-19 pandemic and great power competition.[181]

2.127 The U.S. "values-driven trade policy" approach calls for countries that share "common values" to develop policies that encourage businesses to manufacture products domestically and prevent countries with different values from disrupting the U.S. or its allies' economies. For the Indo-Pacific region, the U.S. released the *U.S. Strategic Framework for the Indo-Pacific* in January 2021,[182] which emphasizes the promotion of the values of the U.S. throughout the region to maintain influence and thereby counteract the influence of the so-called "Chinese system". In May 2022, the U.S. launched the IPEF for Prosperity, in which economic resilience was included as one of its four pillars, and claimed to "present Indo-Pacific countries an alternative to China's approach."[183] In addition, the U.S. has held the Quadrilateral Security Dialogue to emphasize supply chain cooperation and vigorously promoted the establishment of a "Chip 4" alliance.[184] In the Atlantic region, the U.S. and the EU established the TTC in June 2021, which puts emphasis on deepening cooperation in strengthening supply chain security and export control.[185] In Latin America, the "Americas Partnership for Economic Prosperity" proposed by the U.S. also covers the issue of resilient supply chains.[186]

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[179] USAID's Bonnie Glick: Trump's Ultimatum to the WHO for COVID 19 Failures, available at: https://www.youtube.com/watch?v=_7okwaCoCGM.

[180] 100-Day Reviews under Executive Order 14017, available at: https://www.whitehouse.gov/wp-content/uploads/2021/06/100-day-supply-chain-review-report.pdf.

[181] Remarks by Secretary of the Treasury Janet L. Yellen on Way Forward for the Global Economy, available at: https://home.treasury.gov/news/press-releases/jy0714.

[182] U.S. Strategic Framework for the Indo-Pacific, available at: https://trumpwhitehouse.archives.gov/wp-content/uploads/2021/01/IPS-Final-Declass.pdf.

[183] In Asia, President Biden and a Dozen Indo-Pacific Partners Launch the Indo-Pacific Economic Framework for Prosperity, available at: https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/23/fact-sheet-in-asia-president-biden-and-a-dozen-indo-pacific-partners-launch-the-indo-pacific-economic-framework-for-prosperity/.

[184] US struggles to mobilise its East Asian 'Chip 4' alliance, available at: https://www.ft.com/content/98f22615-ee7e-4431-ab98-fb6e3f9de032.

[185] U.S.-EU Summit Statement, available at: https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/15/u-s-eu-summit-statement/.

[186] President Biden Announces the Americas Partnership for Economic Prosperity, available at: https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/08/fact-sheet-president-biden-announces-the-americas-partnership-for-economic-prosperity/.

2.128 U.S.'s approach could further force countries to take sides and could even split the world economy into rival camps, pushing globalization back even further. The policy of "friend-shoring" in the U.S. has been questioned by economists. For example, the economist Helena Schweiger from the European Bank for Reconstruction and Development argues that "from an economic point of view, friend-shoring doesn't make sense because it reduces the economic growth of everyone involved. Keeping world trade as open as possible is better than new restrictions." Raghuram Rajan, a former governor of India's central bank and an economist, warned that "friend-shoring" would mean transacting only with countries at similar levels of development; the benefits of a global supply chain stem precisely from the fact that it involves countries with very different income levels, allowing each to bring its comparative advantage to the production process. "I understand the national interest in certain critical raw materials and that you don't want to be dependent on them," says Johannes Fritz of the Swiss think tank Global Trade Alert. "General diversification is necessary. The question is whether you should fall into friend-foe thinking."[187] In November 2022, the WTO Director-General Ngozi Okonjo-Iweala pointed out at a press conference that if the global economy were to divide into two trading blocs, it would reduce global gross domestic product by 5% in the long run. "Protectionism, decoupling, fragmentation is very disruptive and it will be very costly."[188] In January 2023, Okonjo-Iweala told Reuters during the World Economic Forum in Davos, "Who is a friend? You're not too sure they'll be a friend tomorrow, we've seen examples of that."[189]

2.129 Whether "nearshoring" or "friend-shoring", this approach of bringing in allies to exclude other countries from the trading system is based on Cold War mentality, "values-driven trade policy" and politicalized supply chain issues. Like the "poison pill clause" created by the U.S., the implementation of "nearshoring" or "friend-shoring" is also a reflection of the deviation of the U.S. from the basic principles of openness and inclusiveness advocated by the WTO. It is contrary to the original intention of Article XXIV of the GATT to establish a free trade area among WTO members. What is worse, "nearshoring" and "friend-shoring" create linkages between, on the one hand, the provision of significant subsidies to key industries and, on the other hand, the prohibition of investing in specific countries or the production in the U.S. or certain countries. Such practices of the U.S. constitute discriminatory practices against WTO members who were not "chosen" by the U.S., which violate the basic principles of the WTO.

2.11.3 Technical Cooperation and Control.

2.130 The U.S. government strengthens export control cooperation with its allies or partners while coordinating the establishment of multi-party export control lists

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[187] Trade only with "friends"? German media: "friend-shoring" is not only meaningless but also dangerous, available at:
https://cacs.mofcom.gov.cn/cacscms/article/zjdy?articleId=174246&type=.

[188] IMF and WTO leaders warn don't 'pull the plug' on global trade, available at:
https://www.reuters.com/business/imfs-georgieva-wto-leader-dont-pull-plug-global-trade-2022-11-29/.

[189] Davos 2023-Be careful on 'friend-shoring', WTO's Ngozi warns, available at:
https://www.reuters.com/world/davos-2023-be-careful-friend-shoring-wtos-ngozi-warns-2023-01-19/.

on national security grounds. At the same time, it lobbies its allies or partners to impose the same technology export control measures on China. In doing so, it seeks to not only curtail China's access to advanced technologies, but also block the export of advanced production equipment to China.

2.131 Based on "shared democratic values" between the U.S. and the EU, working groups in ten specific areas were set up under TTC, covering export control, standards, intellectual property, etc.[190] The cooperation between the U.S. and the EU in technological standards and export controls could intersect, thereby affecting the establishment of emerging technology standards and the normal export of emerging technologies. This could create a ripple effect that would disrupt global high-tech industrial and supply chains.[191]

2.132 The U.S. keeps introducing new export control measures against China with regard to semiconductors, advanced computing and supercomputers. The impact of these measures is not only felt by U.S. companies and "U.S. persons", but also reflected in the export control actions of the allies or partners of the U.S. Since 2018, the Dutch government has refused permission for its domestic semiconductor manufacturer to export its most advanced equipment to China as the U.S. presumably speculated that these devices "might" be used as items for military purposes.[192] According to a Reuters report in February 2023, the U.S., Japan, and the Netherlands reached an agreement on semiconductor export control measures targeting China, adding new export control requirements for the export of chip manufacturing equipment to China, aiming to impose new restrictions on exports of chipmaking tools to China.[193]

2.133 To sum up, by narrowing its technology exports to China, working with the EU in export controls to expand the scope of control, and lobbying allies or partners to collectively implement export control measures, the U.S. aims at limiting China's ability to obtain advanced technology and advanced manufacturing equipment from around the world and putting in place a technological blockade on China in all areas. The above-mentioned U.S. export control measures contradict the original purposes of the export control system, seriously disrupt the global pattern of relevant industries formed based on the laws of the market, and violate the basic principles of the WTO.

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[190] U.S.-EU Joint Statement of the Trade and Technology Council, available at: https://www.whitehouse.gov/briefing-room/statements-releases/2022/12/05/u-s-eu-joint-statement-of-the-trade-and-technology-council/.

[191] U.S.-EU Summit Statement, available at: https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/15/u-s-eu-summit-statement/.

[192] Netherlands plans new curbs on chip-making equipment sales to China -Bloomberg News, available at: https://www.reuters.com/technology/netherlands-plans-curbs-china-chip-exports-deal-with-us-bloomberg-news-2022-12-08/.

[193] U.S. official acknowledges Japan, Netherlands deal to curb chipmaking exports to China, available at: https://www.reuters.com/technology/us-official-acknowledges-japan-netherlands-deal-curb-chipmaking-exports-china-2023-02-01/.

3 EFFORTS TO ADDRESS U.S. NON-COMPLIANCE WITH WTO RULES AND DESTRUCTION TO MULTILATERALISM

3.1 Since 2017, pursuing "America First", the U.S. government has adopted a series of unilateralist and protectionist measures against its major trading partners, imposed its own interests over those of other countries, and disrupted the global economic and trade order. The U.S. has also specifically targeted China and constantly provoked frictions between China and the U.S., ignoring the differences in the development stage and economic system of the two countries, as well as the crucial role of China-U.S. economic and trade relations in the world's prosperity and stability. The restrictive trade measures taken by the U.S. against China are not good for China, the U.S., or even the rest of the world. In the face of the frictions between China and the U.S., China has always adhered to the principle of multilateralism, actively resolved China-U.S. economic and trade disputes through the multilateral trading system. At the same time, China has been committed to stabilizing China-U.S. economic and trade relations through both bilateral and multilateral dialogues and consultations.

3.1 Upholding True Multilateralism.

3.2 China remains committed to adhering to the right course of economic globalization, upholding true multilateralism and promoting multilateral institutions such as the WTO to better play its role. Notably, in recent years, unilateralism and protectionism have been rising, and the multilateral trading system has been under heavy blows. Against such a backdrop, China has proactively taken a series of measures to uphold the authority and efficacy of the multilateral trading system.

3.3 In June 2018, the Chinese government published a white paper titled *China and the World Trade Organization.*[194] That white paper gives a full account of China's fulfillment of its WTO commitments, explains China's principle stances and policy propositions regarding the multilateral trading system, and emphasizes China's firm support for the WTO to play a greater role in global governance. In November 2018, China released *China's Position Paper on WTO Reform*,[195] which sets out China's basic principles and specific propositions on WTO reform. In May 2019, China submitted a document titled *China's Proposal on WTO Reform*[196] to the WTO, outlining 12 proposals in four priority areas of action. In November 2019, China hosted an informal WTO Ministerial Meeting in Shanghai, where more than 30 ministers or representatives of WTO members exchanged views on WTO reform and other issues to build consensus on supporting the multilateral trading system. In June

[194] Full Text: China and the World Trade Organization, available at: http://www.scio.gov.cn/zfbps/32832/Document/1632334/1632334.htm.
[195] China's Position Paper on WTO Reform (Chinese and English texts), available at: http://sms.mofcom.gov.cn/article/cbw/201812/20181202817611.shtml.
[196] China's Proposal on WTO Reform, available at: http://images.mofcom.gov.cn/sms/201905/20190514094326062.pdf.

2022, during its BRICS presidency, China, together with other BRICS countries, issued the *BRICS Statement on Strengthening the Multilateral Trading System and Reforming the WTO*.[197] China also actively participates in the discussions of the G20, APEC, SCO and other platforms to speak with one voice with other members for upholding the multilateral trading system.

3.2 Promoting the Restoration of the Appellate Body.

3.4 The Chinese government has actively promoted WTO reform, advocating that the reform should prioritize key issues that threaten the existence of the WTO, especially the deadlock in the appointment of Appellate Body members. At the same time, China has also conducted dialogues and cooperation on WTO reform with the EU and other WTO members. In 2018, China, together with 11 other WTO members including the EU and Canada, submitted the *Joint Proposal to the WTO to Promote the Selection of Members of the Appellate Body*.[198,199] In an attempt to end the deadlock of Appellate Body member appointment, the Facilitator designated by the WTO General Council consecutively submitted four reports[200] in response to the systematic concerns raised by the U.S. on the Appellate Body. In particular, the *Walker Text* circulated by the Facilitator in December 2019 was widely supported by WTO members. However, the U.S. disregarded the widespread appeal of WTO members and objected to the report.[201]

3.5 At MC12 held in June 2022, Members committed to discussing the dispute settlement mechanism with a view to restoring a fully functioning Appellate Body by 2024.[202] However, the U.S. still rejected the proposal to launch the selection process of the Appellate Body members.[203]

3.6 In order to uphold the multilateral trading system and ensure the effective operation of the dispute settlement mechanism, against the backdrop of the impasse in Appellate Body members appointment, in April 2020, 19 members, including China and the EU, formally circulated a communication proposing the establishment of a Multi-Party Interim Appeal Arbitration Arrangement (hereinafter referred to as "MPIA")[204] pursuant to Article 25 of the DSU to temporarily substitute the Appellate Body, which had been paralyzed due to the obstruction by the U.S. As of March 2023, the total number of MPIA participants amounted to 26 WTO members.[205] Since the first case under the

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[197] BRICS Statement on Strengthening the Multilateral Trading System and Reforming the WTO, available at: http://images.mofcom.gov.cn/gjs/202206/20220610182308761.pdf.
[198] WT/GC/W/752.
[199] WT/GC/W/753/Rev.1.
[200] JOB/GC/215; JOB/GC/217; JOB/GC/220; JOB/GC/222.
[201] WT/GC/W/791.
[202] MC12 Outcome Document, available at: https://www.wto.org/english/thewto_e/minist_e/mc12_e/documents_e.htm.
[203] WT/DSB/W/609/REV.21.
[204] JOB/DSB/1/Add.12.
[205] Source: Statistics from the MPIA website, available at: https://wtoplurilaterals.info/plural_initiative/the-mpia/.

MPIA, i.e. DS591, participants have actively used the MPIA for appeals, and certain positive results have been achieved.

3.3 Safeguarding the Legitimate Rights and Interests of Developing Members.

3.7 In response to the requests by the U.S. for clarification on the issue of development,[206] disentitlement of self-declaration of developing members, and differentiation of developing members based on certain criteria.[207] in February 2019, members including China, India, South Africa, Venezuela, Laos PDR, Bolivia, Kenya, Central African Republic, Pakistan and Cuba jointly submitted to the WTO an analytical paper titled *The Continued Relevance of Special and Differential Treatment in Favor of Developing Members to Promote Development and Ensure Inclusiveness*,[208] firmly safeguarding the legitimate right of developing members to enjoy special and differential treatment in the WTO. In October 2019, 53 members, including China, India, Pakistan, and the African Group, jointly submitted a *Statement on Special and Differential Treatment to Promote Development*,[209] upholding developing members' unconditional right of special and differential treatment.

3.8 In *China's Proposal on WTO Reform*[210] submitted to the WTO, China also clearly stated that the WTO should fully support the integration of developing members into the multilateral trading system, uphold the development interests and special and differential treatment of developing members, address the "development deficit" in existing WTO rules, resolve the difficulties encountered by developing members in their integration into economic globalization and help attain the sustainable development goals in the United Nations 2030 Agenda. China suggests that: First, enhance the implementation and monitoring of existing special and differential treatment provisions, particularly the implementation of duty-free and quota-free treatment and the preferential treatment to services and services suppliers of the LDCs. Second, provide more targeted and concrete technical assistance to ensure the integration of developing members into the multilateral trading system and global value chains. Third, advance the negotiations on special and differential treatment provisions in accordance with the Doha Ministerial Declaration. Fourth, accord adequate and effective special and differential treatment to developing members in future negotiations on trade and investment rules. Fifth, encourage developing members to actively assume obligations commensurate with their level of development and economic capability.

3.9 China, as a developing member, has always stood firmly with other developing members, and supported other developing members in defending their rights to development. China has never claimed the same flexibility as other members with relatively lower degree of development as the U.S. alleges. When China joined the WTO, it enjoyed less special and differential treatment than most

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206 WT/MIN17/ST128.
207 WT/GC/W/757/Rev.1.
208 WT/GC/W/765/Rev.1.
209 WT/GC/202/Rev.1.
210 *Supra* note 196.

other developing members. Since its accession to the WTO, China has never used special and differential treatment as an "excuse" to refuse to open its market. Instead, it has actively contributed to global trade liberalization and facilitation. For example, as the only major developing member in the negotiations of *Information Technology Agreement expansion,* China has made important contributions to achieving outcomes. China's transition period for implementing the *Trade Facilitation Agreement* is shorter than the average of developing members, and no technical assistance is requested. Neither has China demanded special and differential treatment in negotiations on services domestic regulation. During the negotiations of TRIPS waiver on COVID-19 vaccines, China voluntarily committed not to availing itself of this flexibility. In fact, China has been actively undertaking obligations commensurate with its level of development and economic capability, safeguarding the legitimate rights and interests of developing members and upholding the multilateral trading system.

3.4 Making Good Use of the Trade Policy Review and Monitoring Function of the WTO.

3.10 China and other WTO members have also been trying to monitor U.S. compliance with WTO rules and its commitments through the trade policy review mechanism. During the 15th Trade Policy Review of the U.S. in December 2022, China listed a range of unilateralist and protectionist practices of the U.S., including but not limited to the introduction of a wide range of discriminatory subsidies, unilateral imposition of high tariffs on large-scale products under Section 301, and abuse of export control measures. China pointed out that the U.S. had failed to lead the multilateral trading system by example, but on the contrary turned to be a destroyer to the multilateral trading system, a unilateralist and bullying hegemonist, a double standards manipulator and a disturber of the global industrial and supply chains. With the rhetoric of "re-engaging with multilateralism" while based on "America First" in reality, its measures run counter to the basic principles of the multilateral trading system.

3.11 A total of 65 members took the floor during this review process. In addition to China, members such as the EU, Republic of Korea, Japan, Canada, New Zealand, Brazil, South Africa, and Türkiye also expressed concerns over the systemic impact of relevant trade policy measures of the U.S. on the multilateral trading system. At the same time, 32 WTO members put forward more than 2,000 written questions to the U.S., concerning the consistency of the IRA, the *Chip and Science Act* and their related measures with WTO rules, as well as the U.S. government procurement policies and the abuse of the national security concept. The WTO members share common concerns on the economic and trade policies of the U.S.

3.12 In addition to the trade policy review mechanism, China and other members have raised their questions and concerns over the U.S. trade policies and their inconsistency with WTO rules in the regular meetings of the WTO bodies including General Council, Council for Trade in Goods, Council for Trade in

Services, Council for Trade-Related Aspects of Intellectual Property Rights and relevant WTO committees.

3.5 Upholding Authority of the WTO Dispute Settlement Mechanism.

3.13 For over two decades since its accession to the WTO, China has been actively utilizing the WTO dispute settlement mechanism to settle trade disputes with WTO members. To address the violations of the U.S., China has initiated many cases under the WTO dispute settlement mechanism. By the end of 2022, China had initiated a total of 23 cases as the complainant, of which 17 cases were filed against the U.S., accounting for 74% of the total. Among the cases initiated by China against the U.S., 11 cases are related to the abuse of trade remedy measures, including anti-dumping, countervailing, safeguard measures and special safeguard measures, one case is related to sanitary and phytosanitary measures on Chinese poultry products, one case is related to renewable energy subsidies imposed by the U.S., three cases are related to Section 301 tariff measures, and one case is related to the export control measures on Chinese semiconductor products. In December 2022, the Chinese government requested for consultations with the U.S. under the WTO dispute settlement mechanism (DS615) concerning the frequent abuse of export control measures to suppress relevant Chinese entities and harm China's interests.

3.14 By resorting to the dispute settlement mechanism in accordance with WTO rules to address the non-compliance of the U.S., China has not only protected the trade interests of Chinese enterprises, and effectively curbed unilateralist, protectionist and bullying practices by the U.S., but also safeguarded the authority of the multilateral trading system. In addition, in the process of challenging the non-compliance of the U.S., many of China’s claims on rule interpretations have been supported by WTO panels and the Appellate Body, contributing to clarification on multilateral trade rules to some extent.

CONCLUSIONS

In recent years, economic globalization has suffered setbacks. With rising unilateralism and protectionism, the multilateral trading system with the WTO at its core has encountered serious challenges. As an important member of the WTO, the U.S. should have taken the lead in complying with WTO rules, upholding the basic principles and core values of the WTO, and enhancing the authority and efficacy of the WTO, with a view that this organization can play a more active role in maintaining a free and open international trade order, promoting global economic recovery from the pandemic, and ensuring peace, development and stability in the world. Regrettably, the U.S. did just the contrary.

It is hoped that this Report will help urge the U.S. to fulfill its commitments, abide by the rules, and truly return to the community of the rules-based, open, transparent, inclusive and non-discriminatory multilateralism as soon as possible, playing its due role in safeguarding the authority, integrity and efficacy of the multilateral trading system. China will continue to closely monitor the U.S. fulfillment of its obligations under the WTO. Meanwhile, China will, as always, work closely with all WTO members, firmly uphold the multilateral trading system, fully and deeply participate in WTO reform, and collectively advance the multilateral trading system to play a greater role in global economic governance.