AWPA
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# Quarterly Trade Policy Report

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## I. Washington Update

The new 118th Congress is off to a relatively slow start, with no public laws enacted during the first two months of the year – in part because each chamber had to spend several weeks organizing its leadership and committee structure prior to beginning work on a substantive agenda. The Democratically-controlled Senate has largely been focused on confirmation of President Biden's Judicial and Executive Branch nominees. The new Republican House, meanwhile, has been moving through a number of GOP leadership's early legislative priorities and its oversight agenda, including a greater focus on field hearings outside of Washington.

Legislative activity, however, is expected to pick up soon. On March 9, President Biden submitted to Congress his Fiscal Year 2024 Budget, formally kicking off the budget and appropriations season. Following receipt of the budget, the House and Senate Appropriations Committees and various authorizing committees began holding hearings with agency officials, as legislators craft their FY24 spending bills. And looming over much of the process will be the federal debt limit, which is expected to be breached sometime this summer absent Congressional action to raise it.

Congress is also gearing up to begin work on the FY24 National Defense Authorization Act, with the House and Senate Armed Services Committees expecting to begin markups ahead of the Memorial Day recess – and begin floor action as soon as June.

Finally, with Republicans now in control of the House and a slim Democratic majority in the Senate, Congressional Republicans are pressing forward with a number of Congressional Review Act (CRA) resolutions seeking to overturn various Biden Administration regulations. Notably, CRA resolutions require only a simple majority to pass, meaning Senate Republicans need to attract only two Democratic votes for passage. Already, both chambers have passed a joint resolution related to the Department of Labor's ESG retirement investing rule. As a result, we expect to see President Biden's first veto in the coming days. And more could follow, with CRA votes likely on the EPA's Waters of the United States (WOTUS) rule, the EPA's recently finalized heavy-duty engine and vehicle emissions standards, and the COVID-19 national emergency. While no CRA resolutions are expected to garner enough votes to overturn a veto, they will take up valuable floor time in the Senate, put vulnerable Democrats in a tough spot, and keep the Biden Administration on the defensive.

## II. Trade Policy Update

### A. Section 232 | Steel and Aluminum Tariffs

As we enter year five of the Section 232 steel and aluminum tariffs, major changes to the program are unlikely in the near-term. The Biden Administration has suggested no additional "alternative" arrangements are anticipated following the implementation of Tariff-Rate Quota (TRQ) arrangements with the European Union, Japan and the United Kingdom over the past year. While there had been rumors of a possible TRQ arrangement with Taiwan, the prospects of such an agreement appear to have faded.

Notably, President Biden did utilize the existing Section 232 framework to further increase tariffs on Russian aluminum imports as part of a suite of actions taken on February 24, the one-year anniversary of Russia's unprovoked invasion of Ukraine (*more details below*).

The Section 232 program continues to receive bipartisan support on Capitol Hill. In late February, more than three dozen Members of the Congressional Steel Caucus, led by Chairman Rick Crawford (R-AR) and Vice Chairman Frank Mrvan (D-IN), sent a letter to President Biden detailing the challenges currently confronting the U.S. steel industry. The letter urged the President to maintain the Section 232 tariffs and quotas and to ensure strong trade remedy laws to address unfair trade practices.

Also in February, a bipartisan group of Senators wrote to Commerce Secretary Gina Raimondo and United States Trade Representative Katherine Tai urging them to "take action against the unsustainable surge of Mexican steel imports," including via quotas or reinstatement of the Section 232 tariffs. The letter – largely focused on imports of steel conduit – was led by Senator Tom Cotton (R-AR) and signed by Senators Sherrod Brown (D-OH), John Boozman (R-AR), Bob Casey (R-PA), Thom Tillis (R-NC), Tammy Baldwin (D-WI), Ted Budd (R-NC), Elizabeth Warren (D-MA), Katie Britt (R-AL), Tina Smith (D-MN), Rick Scott (R-FL), Marco Rubio (R-FL), and J.D. Vance (R-OH). In response to the letter, the Mexican Senate passed a resolution calling on Mexico's Ministry of Economy to begin gathering information about U.S. exports to Mexico in order to consider retaliatory measures if Washington were to reimpose Section 232 duties.

*U.S.-EU Global Arrangement*

Launched in conjunction with the TRQ deal with the EU struck in late October 2021, bilateral discussions related to non-market excess capacity and carbon intensity are ongoing with the European Commission via the U.S.-EU "Global Arrangement on Sustainable Steel and Aluminum," with an ambitious schedule. Negotiators are scheduled to conclude work on the Global Arrangement negotiations by October 2023, with the agreement notionally taking effect on January 1, 2024.

Our December 2022 report included a detailed status update, including with regards to a U.S. government "concept paper" shared with EU negotiators. In late February, USTR provided the domestic steel industry with an update on the status of the negotiations, including the EU's response to the U.S. concept paper.

The EU's general framework appears to be one of coordination of each side's respective measures as opposed to the joint framework envisaged in the U.S. concept paper. It is our understanding that some of the notable differences include:

- While the EU assents to the creation of a "club" of trading partners, it cites only that a new member can have no more than "X" percent (e.g., 5 percent) above the average carbon intensity of existing members as a membership criterion and that the addition of new members must be agreed upon unanimously by existing members. Based on the EU's vision, there would be no necessary consistency of border measures across the club membership.

- With respect to addressing non-market economy practices, the EU proposal speaks only of "commitments" rather than "standards" and refers only to how to address third parties' practices (e.g., through trade remedy measures) rather than to clarify anything that would relate to a member's domestic market. The EU's position here appears to be based on concerns about the WTO-consistency of measures that target excess capacity only in non-market economy countries.

- On climate-related subsidies, however, the EU calls for "legally binding principles" that would encompass extensive notification and monitoring requirements and would establish a "green box" for certain subsidies that would protect them from CVD measures, among other actions.

- The EU's paper proposes prohibiting discriminatory non-tariff barriers and calls for the amendment of existing measures that would violate this prohibition (e.g., the Inflation Reduction Act (IRA) and other measures with local content criteria). It also proposes that each side agrees that a certain proportion of government procurement must be of zero or near-zero carbon-containing products.

- With respect to carbon-related border measures, the EU paper indicates that any such measures must be WTO-consistent, but they suggest that there may be some scope for "trade facilitation" for Global Arrangement members that ostensibly could make space for some flexibility in how the EU's Carbon Border Adjustment Measure (CBAM) is administered.

- The EU paper proposes enhanced cooperation on emerging technologies to decarbonize and to mobilize support for least developed countries to take steps to decarbonize.

- Finally, the EU insists that in return for such an Arrangement, the U.S. must "permanently remove" its Section 232 measures.

USTR has indicated that an exemption from CVD measures is unacceptable and that the Section 232 measures cannot be lifted unless there is some kind of equivalent replacement. With respect to next steps, EU Trade Commissioner Valdis Dombrovskis was scheduled to visit the United States in early March for high-level talks regarding the status of the Global Arrangement, as well as the EU's concerns with IRA. While his trip was canceled for health reasons, a virtual meeting between USTR Tai and Commissioner Dombrovskis remains possible.

*USITC Report on Economic Impact of Tariffs*

On March 15, 2023, the United States International Trade Commission (USITC) published a report on the economic effects of the Section 232 steel and aluminum tariffs and the Section 301 China tariffs. The report, *Economic Impact of Section 232 and 301 Tariffs on U.S. Industries*, was prepared in response to report language accompanying the Fiscal Year 2022 omnibus appropriations bill, enacted last March.

With respect to the Section 232 tariffs, the report found:

- "U.S. importers bore nearly the full cost of these tariffs because import prices increased at the same rate as the tariffs. The USITC estimated that prices increased by about 1 percent for each 1 percent increase in the tariffs under sections 232 and 301."

- "Section 232 tariffs reduced imports of affected steel products by 24 percent, increased the price of steel products in the United States by 2.4

percent, and increased U.S. production of steel products by 1.9 percent. U.S. production of steel was $1.3 billion higher in 2021 due to section 232 tariffs."

- "Section 232 increased domestic sourcing, and reduced production in downstream industries in the United States that use steel and aluminum products as inputs because of increased prices, although the magnitude of those effects varied across industries. Section 232 tariffs increased prices in downstream industries 0.2 percent on average, and decreased production in downstream industries 0.6 percent on average. U.S. production in downstream industries was $3.5 billion less in 2021 due to section 232 tariffs."

With respect to the Section 301 tariffs, the report concluded, "Across all affected sectors, section 301 tariffs reduced imports from China by 13 percent, increased the value of U.S. production by 0.4 percent, and increased the price of U.S. products by 0.2 percent." With respect to specific sectors, the report found that the effects of the tariffs varied.

The USITC references the report's somewhat limited scope, noting:

*The report does not estimate the tariffs' effects on other factors, for example, investment or their contribution to the national security or intellectual property protection concerns that led to the tariffs' imposition. The analysis focuses on short-term effects during 2018 to 2021 and does not address long-term effects as it is not a forward-looking analysis. The report is not an assessment of the complete, economy-wide impacts of the tariffs under sections 232 and 301 and cannot be used to draw broad conclusions about whether the tariffs under sections 232 and 301 did or did not produce a net benefit for the U.S. economy overall.*

Further, Commissioner Jason Kearns included "Additional Views" in the report, stressing its inadequate cost-benefit analysis and its failure to present additional context for the implementation of the Section 232 and 301 tariffs in the first place. He wrote, "In short, the report estimates some of the costs and benefits associated with the section 232 and 301 actions; it does not describe or estimate the considerable costs of inaction (in other words, the costs of failing to respond to China's trade-distorting policies and practices through such measures as the section 232 and 301 tariffs)."

It is unlikely that the report will influence the Biden Administration's approach to either program. However, the report will likely renew calls for repeal by those long opposed to the 232 and 301 tariffs, be it on Capitol Hill or within the business community.

*WTO Challenges*

On December 9, 2022, the World Trade Organization (WTO) released Panel reports regarding the challenges to the United States' Section 232 measures on steel and aluminum brought by China, Norway, Switzerland and Turkey. The challenges were brought in 2018 following implementation of the Section 232 national security tariffs by the Trump Administration. In a statement released in response to the reports, USTR said it "strongly rejects" the Panels' conclusions and does not intend to remove the Section 232 duties as a result of the disputes.

Subsequently, in late January, the United States Government announced its intent to appeal the decisions, reiterating its belief that "the WTO is not the appropriate venue to adjudicate matters of national security." The WTO Appellate Body remains without a quorum, meaning the cases are effectively in limbo and no action to implement the panel decisions is required on the part of the United States.

### B. U.S.-China Relations

*Political Tensions*

U.S.-China relations continue to deteriorate, most recently with respect to China's deepening ties with Russia, including the Biden Administration's belief that the Chinese are considering providing military aid to Moscow. Tensions were already running high following the Chinese surveillance balloon that flew across the continental United States before being shot down over the Atlantic by U.S. forces in early February. That incident, and the Chinese government's response, prompted Secretary of State Antony Blinken to cancel a planned trip to Beijing, where he was expected to meet with President Xi.

More broadly, the Biden Administration has largely stuck to its "Invest, Align, Compete" strategy when it comes to the People's Republic of China. And much of President Biden's domestic messaging of late is focused on the importance of recent domestic infrastructure investments, including the landmark Infrastructure Investment and Jobs Act, the Inflation Reduction Act, and the CHIPS + Science Act – all enacted over the past 15 months. On the international front, the Biden Administration continues to prioritize a host of global trade and economic initiatives with global allies, from the EU to the Indo-Pacific to the Western Hemisphere – all with an eye on building a coalition to counter China's global influence.

Meanwhile, the People's Republic of China appears to be a unifying force in a divided Congress (*more below*).

### C. Section 301 (China) Tariffs

*USTR's Quadrennial Review*

The Office of the U.S. Trade Representative (USTR) has yet to announce any actions stemming from its statutorily-required four-year review of the tariff actions in the Section 301 investigation of China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation. In mid-January, USTR concluded its second public comment period of the quadrennial review, which was announced in May 2022. The second public comment period sought stakeholder feedback on: (1) the effectiveness of the actions in achieving the objectives of the investigation; (2) other actions that could be taken; and (3) the effects of the actions on the U.S. economy, including consumers.

At this point, it appears unlikely that USTR's review will result in the wholesale lifting of the China tariffs, but changes to the program are possible – e.g., removal of specific HTS lines from coverage and/or reinstatement of the single product exclusion process conducted by the agency.

*Section 301 Product Exclusions*

On December 16, 2022, USTR announced a nine-month extension of 352 product exclusions that had been scheduled to expire at the end of 2022. These exclusions were initially reinstated on March 28, 2022. In issuing its determination, USTR noted the receipt of public comments that indicated that "the reinstatement … was appropriate based on the unavailability of particular products outside of China, or possible severe economic harm." USTR also stated that the determination reflected the advice of advisory committees and the interagency Section 301 committee. The list covers a variety of products, including industrial components (e.g., pumps and motors), chemicals, and certain consumer goods (e.g., backpacks and bicycles).

In its notice announcing the extension, USTR noted that it would "help align further consideration of these exclusions with the ongoing comprehensive four-year review." The extension was applied as of January 1, 2023, and will extend through September 30, 2023.

Separately, in early February, USTR announced that it was seeking public comment on whether to further extend approximately 80 COVID-related product exclusions. The exclusions – initially granted in December 2020 – were previously scheduled to expire on February 28, 2023. In conjunction with the public comment process, the agency announced an interim 75-day extension, running through May 15, 2023.

*"Master Litigation"*

The U.S. Court of International Trade (CIT) could soon issue a second decision in the Section 301 tariff litigation, which covers USTR's List 3 and List 4A tariffs on Chinese imports. Such a decision would follow the CIT's directing USTR to address certain issues as part of a remand redetermination. The CIT heard oral arguments regarding the remand on February 7, 2023.

Once a final judgment is issued by the CIT, either one or more importers or the United States may appeal to the U.S. Court of Appeals for the Federal Circuit. Presuming the CIT's approval of USTR's remand results, we expect Plaintiffs (i.e., U.S. importers that paid the Section 301 tariffs on List 3 and 4A products) to appeal.

**D. U.S.-Mexico-Canada Agreement (USMCA)**

*North American Auto Production*

In December 2022, a U.S.-Mexico-Canada Agreement (USMCA) dispute settlement panel ruled that the U.S. government's interpretation of the USMCA's automotive rules of origin (ROOs) is inconsistent with the Agreement. The ruling was shared with all three parties (i.e., the U.S., Canadian, and Mexican governments) on December 14, but was not released publicly until January 10, 2023.

The panel agreed with the Canadian and Mexican governments, which had challenged the United States' Regional Value Content (RVC) "strict" calculation, arguing that the total value of core auto parts deemed originating (even if they include foreign content) should be included in the calculation. These rules of origin determinations are important for the industry because they could affect the percentage of steel products that must be sourced in the United States, Canada, and Mexico for inclusion in vehicles/vehicle components in order for them to be considered originating in one of the three USMCA countries (and, thus, eligible for duty-free treatment when moving across borders). It is unclear as to whether this decision would have a direct impact on the steel-specific provisions of the Agreement's automotive rules.

Following the public release of the decision, USTR issued the following statement: "The disappointing USMCA panel interpretation of the agreement could result in less North American content in automobiles, less investment across the region, and fewer American jobs. We are reviewing the report and considering next steps. We will engage Mexico and Canada on a possible resolution to the dispute, including the implications of the Panel's findings for investment in the region."

Under the terms of the USMCA, there is no mechanism for the United States to appeal the panel decision. Instead, within 45 days from receipt of a final report, the parties must "endeavor to agree on the resolution of the dispute." If a resolution is not reached, Canada and Mexico would have the right to "suspend application of benefits … of equivalent effect to the non-conformity." Despite passage of the deadline, no announcement has been made by any of the countries regarding the 45-day resolution process, although ostensibly, under the terms of the dispute settlement process, Mexico and Canada now have the right to suspend certain benefits under the USMCA.

Separately, the United States International Trade Commission (USITC) continues its Section 332 fact-finding investigations regarding the economic impact and operation of the USMCA ROOs. In accordance with the USMCA Implementation Act, the USITC is required to transmit a report to Congress on the auto ROOs by no later than June 30, 2023.

*Other Irritants and Disputes*

On March 6, 2023, USTR announced that it is requesting technical consultations with the Mexican government regarding certain of Mexico's agricultural biotechnology policies –including, primarily, its ban on imports of genetically modified corn – which the United States views as inconsistent with Mexico's commitments under the USMCA. These will be the first consultations under the Agreement's chapter governing safety regulations related to agricultural products. Should the bilateral consultations not resolve the matter, the United States could initiate a dispute resolution process.

Separately, the governments of the United States, Canada, and Mexico continue dispute settlement consultations related to certain Mexican energy policies that – the United States and Canada contend – unduly favor Mexico's state-owned electrical utility CFE, as well as state-owned oil and gas company PEMEX, in violation of the USMCA. As previously reported, last July, the United States requested dispute settlement consultations with Mexico under the USMCA. Canada quickly announced it would join the United States' request for consultations – in addition to launching its own. Neither the United States nor Canada has requested the establishment of a dispute settlement panel, but either could do so should consultations not result in meaningful changes to Mexico's energy policies.

*Labor Disputes / Rapid Response Mechanism*

In late January, the United States asked the Mexican government to review whether workers at the Manufacturas VU (VU) facility in the State of Coahuila are being denied the right of free association and collective bargaining. The request is the second time the United States has asked Mexico to review labor conditions at this facility in response to a petition. More broadly, this was the sixth time the United States has formally invoked the USMCA's Rapid Response Labor Mechanism (RRM). The previous five instances – also involving Mexican automotive parts facilities – were all resolved successfully under the RRM.

### E. Other Bilateral / Multilateral Initiatives

As detailed in previous reports, there is bipartisan Congressional concern regarding the Biden Administration's pursuit of broad bilateral and multilateral trade and economic initiatives in lieu of formal free trade agreements (FTAs). Most recently, with the Biden Administration's 2023 Trade Policy Agenda lacking any mention of FTAs, bipartisan Members of Congress have expressed frustration with the lack of movement on comprehensive bilateral deals. The Administration's current focus leaves Congress largely on the sidelines, as its leverage in developing trade agreements hinges on the requirement for passage of implementing legislation (along with Trade Promotion Authority (TPA) to facilitate Congress' consideration of such legislation) – steps the Biden Administration does not need to pursue absent the negotiation of formal FTAs.

*Recent developments:*

*U.S.-Taiwan Initiative on 21st Century Trade.* In mid-January, trade officials from the United States and Taiwan met in Taipei, Taiwan for an in-person negotiating round for the U.S.-Taiwan Initiative on 21st-Century Trade, launched in June 2022. The four-day negotiating round included discussions related to trade facilitation, anticorruption, small and medium-sized enterprises, good regulatory practices, and services domestic regulation. According to USTR's readout, officials "pledged to maintain an ambitious negotiating schedule in the months ahead to continue this momentum." Notably, perhaps in a nod to Congress's desire for a more consultative role, Congressional staff traveled to Taipei and were briefed by USTR officials throughout the round. Following a visit to Taiwan in February, Rep. Gallagher (R-WI) – chair of the new House Select Committee on China – expressed frustration over the absence of a market access component to the talks and emphasized his desire to see a formal U.S.-Taiwan FTA.

*Indo-Pacific Economic Framework for Prosperity.* The first in-person negotiating round for the Indo-Pacific Economic Framework (IPEF) took place in Australia in mid-December and a special negotiating round (focused on the Commerce Department's pillars of Supply Chains, Clean Economy, and Fair Economy) was held last month. The second negotiating round is currently underway in Bali, Indonesia and will run through March 19.

*U.S.-EU Trade and Technology Council (TTC)*. On December 5, 2022, high-level U.S. and EU officials convened in College Park, Maryland for a meeting of the TTC, which was formally launched last fall. During a ministerial meeting, the two governments agreed to launch a new Transatlantic Initiative for Sustainable Trade "to advance our shared objective of achieving a green and sustainable future." The U.S. government also agreed to address "constructively" the EU's concerns with certain Inflation Reduction Act provisions, e.g., the revised EV tax credit. Since that time, both governments have noted progress on discussions related to the EU's IRA concerns – including whether, for instance, the U.S. Department of the Treasury will make IRA regulations more "flexible." Treasury has yet to release promised details on how it will interpret and implement the revised EV tax credit, although guidance may be released yet this month.

On March 10, President Biden met with EU Commission President von der Leyen at the White House. According to a joint statement, in addition to discussing the continued U.S.-EU response to Russia's invasion of Ukraine, the leaders focused a great deal on climate and sustainability issues. The governments announced the launch of the Clean Energy Incentives Dialogue "to coordinate our respective incentive programs [the EU's Green Deal Industrial Plan and the U.S.' Inflation Reduction Act] so that they are mutually reinforcing." The leaders also announced negotiations on a "targeted critical minerals agreement" to allow the EU to qualify for the IRA's EV tax credit requirements.

A high-level meeting of the TTC co-chairs is expected to be held in Sweden mid-year.

*U.S.-United Kingdom.* One of the long-running stumbling blocks to a U.S.-UK trade agreement was seemingly addressed with the recent "Windsor Framework" – negotiated by Britain and the EU – which sets Northern Ireland trade rules post-Brexit. Supporters on Capitol Hill seized on the announcement as an opportunity to press for renewed U.S.-UK FTA talks, first launched by the Trump Administration in 2019. For its part, the Biden Administration has lauded the Windsor Framework, but has not suggested the development would cause it to re-engage in formal trade talks. Meanwhile, the two governments continue to collaborate on trade and economic priorities through the U.S.–UK Dialogues on the Future of Atlantic Trade.

*U.S.-Kenya*. The United States and Kenya continue to engage via the U.S.-Kenya

Strategic Trade and Investment Partnership (STIP) launched last summer. "Conceptual Discussions" were held in Washington in February, and USTR has pledged to make rapid progress on the trade initiative, which it hopes will be a model for engagement with other countries in the region. An in-person negotiating round will be held April 17-20 in Kenya.

### F. Multilateral Steel Developments

*OECD Steel Committee*

The OECD Steel Committee met March 13-14 in Paris in a hybrid in-person/virtual format. At that meeting, in addition to the Committee's ongoing reporting of global steel market conditions and steel trade policy developments, the participants focused on reviewing continued work on developments in the Chinese market and implications for world steel markets, activities focused on decarbonization and industrial restructuring in steel and steel-related sectors (including the results of a half-day workshop jointly held on February 27 by the Steel Committee and the International Energy Agency that will feed into G7 consideration this year), and reports from the German and Japanese governments regarding work on steel during their G7 presidencies as well as from the Indian government regarding steel-related work in the G20. In terms of future work, the Committee will consider Secretariat proposals for shaping analytical work on the steel sector's green transition, including links with excess capacity, how to move forward on the work concerning steel subsidies, and launching a "Supply Chain Observatory" that would create a clearing house for expanding the raw material data and information base, raise awareness of supply chain risks at an early stage, and identify solutions to foster greater and more reliable raw material availability.

*Global Forum on Steel Excess Capacity ("GFSEC")*

The GFSEC's status and future remain unclear, given the withdrawal of several major G20 steel-producing countries in recent years. The remaining participants (following the departures of China, Saudi Arabia, Indonesia and, effectively, India) have agreed to continue information-gathering on global excess steelmaking capacity and the related impact of government subsidies and supports under the interim terms of reference approved last year, while two basic options are being considered regarding the group's future. The first option would be to recast the work as a self-standing initiative and discontinue its already tenuous relationship with the G20 process. The second option would be to fold the work into the scope and mandate of the OECD Steel Committee, a course that the U.S. government currently favors.

A formal meeting of the GFSEC (at the sub-ministerial level) was held March 15, following the March 13-14 OECD Steel Committee meeting. The March 15 gathering included a one-hour "open discussion on the nature of steel excess capacity" with industry stakeholders. In weighing the two options for the future, the EU is apparently keen to have the Secretariat undertake outreach efforts to see if departed governments could be persuaded to re-engage and, more particularly, whether potential new participants such as Vietnam, Malaysia, and the Philippines could be enticed to join the work. Originally, it was envisaged that a decision would be made by June on whether to remain stand-alone or merge with the Steel Committee, but the EU proposed that further time be allowed for the Secretariat to undertake the outreach. The U.S. government is inclined to stick with a June deadline given its doubts about the ultimate success of any outreach efforts and the need to focus scarce Secretariat resources on the substantive issues relating to capacity, etc. Our understanding is that most U.S. industry stakeholders have expressed support for the option of folding the work into the OECD Steel Committee and not wasting too much time trying to persuade some of the reluctant governments to rejoin, although a focus on developments in China and the Belt and Road projects in third countries continues to require much attention. As it is already a Steel Committee practice to invite non-member government and industry observers from major steelmaking countries to attend Steel Committee meetings, the participation of emerging steelmaking countries might still be possible.

*North American Steel Trade Committee*

The North American Steel Trade Committee has not met since Canada hosted a virtual meeting in March of last year. Since the relaxation of COVID precautions, the United States (as the next rotational host) has been working to iron out logistical and security arrangements to permit a large, in-person gathering on government premises. Dates at the end of April had been tentatively agreed upon, but the Mexican government subsequently indicated that it could not attend at that time due to conflicting scheduling demands from higher levels of its government. The United States is currently seeking to confirm new dates within the May-August period – most likely in August.

**G. EU Scrap Export Restrictions**

As part of the European Green Deal, the European Commission is considering a proposal to amend the trading bloc's Waste Shipment Regulations (WSR). In addition to prohibiting exports of waste for disposal, the WSR would also restrict the export of non-hazardous waste – including uncontaminated steel scrap – to both OECD and non-OECD countries, with exceptions based on the recipient country's management of the waste in an "environmentally sound manner."

In late February, Members of both the United States Senate and the House of Representatives wrote to USTR Tai expressing concerns with the WSR proposal and its potential distortion of global scrap markets and steel supply chains and urging the agency to "engage with the EU to ensure these onerous restrictions are not adopted." In their letters, the Members noted that the proposal fails to meaningfully distinguish between problematic (e.g., plastics) and non-problematic (e.g., steel scrap) waste and, further, that the proposal would establish burdensome monitoring and reporting requirements for scrap exports.

The Senate letter was signed by Senators Manchin (D-WV), Tillis (R-NC), and Young (R-IN). Signatories on the House letter were Representatives Sewell (D-AL) and Tenney (R-NY).

**H. Congress / Trade Legislation**

*Expired Trade Measures*

The 117th Congress concluded without action on a variety of trade measures, many with strong bipartisan support. While Trade Adjustment Assistance (TAA) – a top priority for the labor community – was renewed for one year in a year-end government funding bill, Congress failed to reauthorize the Generalized System of Preferences (GSP) trade preference program and did not enact a new Miscellaneous Tariff Bill. Whether a reauthorization package can come together this year is uncertain, as is a legislative vehicle.

Congress has also failed to reauthorize Trade Promotion Authority, which expired in July 2021. While wholesale renewal of TPA is unlikely, particularly given the lack of interest on the part of the Biden Administration to pursue free trade agreements, bipartisan Members of Congress have begun pressing for country-specific trade promotion authority. In early March, for instance, Senators Coons (D-DE) and Thune (R-SD) introduced legislation to authorize the administration to negotiate and conclude a comprehensive free trade agreement with the United Kingdom. The so-called UNITED

Act also encourages the Biden Administration to build on the "high standards" set by the USMCA "in order to ensure that U.S. workers and companies can compete on a level playing field." Bipartisan Members of Congress have also prioritized FTAs with Taiwan, Kenya, and the EU. At the end of the day, however, Congress is unlikely to spend time on such initiatives because even if passed, TPA cannot force the Administration to negotiate free trade deals.

*Customs Reauthorization and Trade Enforcement*

Meanwhile, Congress has begun contemplating a reauthorization package for U.S. Customs and Border Protection (CBP). Such legislation would include trade facilitation provisions, as well as trade enforcement provisions. In a February Senate Finance Committee hearing designed to kick off the process, Chairman Wyden (D-OR) and Ranking Member Crapo (R-ID) made clear that Customs reauthorization legislation was a bipartisan priority and the committee discussed a range of topics including: the need for more streamlined customs processes, better data collection and information sharing (among government partners and with the private sector), and the need for more CBP trade personnel and resources. While the trade agenda in the House is not as developed, the House Ways and Means Committee has indicated that reauthorization of CBP is a possibility.

During the February Senate Finance Committee hearing, several Senators and witnesses noted that trade facilitation and trade enforcement are not mutually exclusive. We anticipate that the Customs reauthorization could serve as the vehicle for trade enforcement legislation. Specifically:

- The bipartisan Leveling the Playing Field Act 2.0, which would strengthen U.S. trade laws to address successive investigations, circumvention, and impact of third-country subsidies, among other novel unfair trade practices. The bill is expected to be re-introduced in the coming weeks by Senators Brown (D-OH) and Young (R-IN) and Representatives Johnson (R-OH) and Sewell (D-AL).

- Bipartisan customs fraud legislation, which would update U.S. customs laws to more effectively punish bad actors and deter future misconduct.

And while we expect continued Congressional oversight of CBP's enforcement of the Uyghur Forced Labor Prevention Act (UFLPA) – which took effect last summer – it remains uncertain whether legislative tweaks to the new law would be included in a broader Customs / trade package. Notably, Chairman Wyden is particularly focused on addressing forced labor in automotive supply chains. In late December, he wrote to eight major automakers on the issue in the wake of a report by researchers at the Helena Kennedy Centre for International Justice at Sheffield Hallam University. That report highlighted a variety of auto parts and materials produced in China's Uyghur Region, including steel.

*Countering the People's Republic of China*

As noted above, China is a major focus of this Congress and is one of few areas where we may see bipartisan cooperation on legislative initiatives. In January, the House voted 365-65 to create a new Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party. The Select Committee, chaired by Congressman Gallagher (R-WI), held its inaugural hearing in "primetime" on February 28, entitled, "The Chinese Communist Party's Threat to America." The hearing covered a diverse set of topics including national security (Taiwan; Russia / Ukraine; the CCP's civil-military fusion), technology and digital surveillance (TikTok), economic security (supply chains; China's trade practices and the implications for U.S. manufacturing), human rights (democracy protests / China's use of forced labor), and public health (the origins of COVID-19 and China's role in the fentanyl crisis). The Select Committee does not have legislative authority, but is expected to conduct investigations and make legislative recommendations to a number of standing committees. More broadly, more than a dozen China-related hearings and mark-ups in various committees have been held in recent weeks, and Democrats and Republicans in both chambers have introduced approximately 130 pieces of China-related legislation since the beginning of the new Congress in January.

### I. Buy America

*Build America, Buy America Act (BABAA) Implementation*

The White House and various federal agencies continue their work to implement the Build America, Buy America (BABA) Act, enacted in November 2021 as part of the Infrastructure Investment and Jobs Act (aka the Bipartisan Infrastructure Law). Previous reports have detailed implementation efforts, including waivers of the BABA requirements for various agencies, programs, and certain covered products. For example, most agencies have, to date, punted on application of the BABA to construction materials used in federal-aid infrastructure projects. As opposed to iron and steel products, "construction materials" had not previously been covered by Buy America policies and agencies have been awaiting further guidance from the White House.

That guidance came on February 8 – a day after President Biden raised the issue in his State of the Union address – when the White House Office of Management and Budget's (OMB) Made In America Office unveiled proposed standards to determine if construction materials for federally-funded infrastructure projects are made in the United States. The proposed guidance includes standards for each of the construction materials enumerated in the IIJA, including non-ferrous metals (e.g., copper and aluminum), plastic and polymer-based products, glass (including optic glass), lumber, and drywall. And for iron and steel products – long covered by the nation's Buy America laws – OMB also sought feedback on whether to adopt a definition for "predominantly" iron or steel items. OMB's comment period closed March 13 and the timing for final guidance remains uncertain.

### J. Response to Russia's Invasion of Ukraine

*Response to Russia's Invasion of Ukraine*

On February 24, 2023, in conjunction with the one-year anniversary of Russia's invasion of Ukraine, the Biden Administration announced a series of additional actions designed to both support Ukraine and hold Russia accountable for its aggression. Specifically:

- President Biden issued a proclamation to increase tariffs on Russian aluminum pursuant to Section 232 of the Trade Expansion Act of 1962, along with a second round of tariff increases on certain Russian products under the Suspending Normal Trade Relations with Russia and Belarus Act – all effective March 10, 2023.

- The actions increased tariffs on most Russian metal and metal products – including inputs such as pig iron and ferrous scrap – doubling them from 35 to 70 percent. In addition, Column 2 tariffs on Russian unwrought titanium products were increased to 70 percent.
- Tariffs on additional Russian products, such as chemicals and minerals, were increased to 35 percent.
- With respect to aluminum, the combined actions will increase the tariff rate on Russian imports to 270 percent.

- The Department of the Treasury imposed sanctions on over 200 individuals and entities, including both Russian and third-country actors.
    - Additionally, the Office of Foreign Assets Control (OFAC) issued a new determination to E.O. 14024 that identifies and authorizes OFAC to impose sanctions on actors operating within the metals and mining sector of the Russian economy. As a result, any person determined to operate within that sector may risk blocking sanctions.

- The Department of Commerce announced several export control actions, listing nearly 90 Russian and third country companies, including in China among other countries, on the Entity List for engaging in sanction evasion and backfill activities in support of Russia's defense sector. See more on Treasury's and Commerce's actions on Kelley Drye's blog here.

- Finally, the Department of State announced additional financial sanctions here.

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