



---

**Trade Policy Review Body**

**TRADE POLICY REVIEW**

REPORT BY THE SECRETARIAT

UNITED STATES

*Revision*

This report, prepared for the fifteenth Trade Policy Review of the United States, has been drawn up by the WTO Secretariat on its own responsibility. The Secretariat has, as required by the Agreement establishing the Trade Policy Review Mechanism (Annex 3 of the Marrakesh Agreement Establishing the World Trade Organization), sought clarification from the United States on its trade policies and practices.

Any technical questions arising from this report may be addressed to Angelo Silvy (tel. 022 739 5249), Cato Adrian, Denby Probst (tel. 022 739 5847), and Cristian Ugarte.

Document WT/TPR/G/434 contains the policy statement submitted by the United States.

## CONTENTS

<b>SUMMARY .....</b>	<b>11</b>
<b>1 ECONOMIC ENVIRONMENT .....</b>	<b>17</b>
1.1 Main Features of the Economy .....	17
1.2 Recent Economic Developments .....	19
1.2.1 GDP and employment.....	19
1.2.2 Fiscal policy .....	21
1.2.3 Monetary policy .....	28
1.2.4 Balance of payments.....	31
1.3 Developments in Trade and Investment .....	32
1.3.1 Trends and patterns in merchandise and services trade .....	32
1.3.1.1 Merchandise trade.....	32
1.3.1.2 Services trade .....	35
1.3.2 Trends and patterns in FDI .....	36
<b>2 TRADE AND INVESTMENT REGIMES.....</b>	<b>38</b>
2.1 General Framework .....	38
2.2 Trade Policy Formulation and Objectives.....	38
2.2.1 Trade policy formulation .....	38
2.2.2 Trade policy objectives and direction.....	39
2.2.2.1 New directions.....	41
2.3 Trade Agreements and Arrangements .....	41
2.3.1 WTO .....	41
2.3.2 Regional and preferential agreements .....	42
2.3.2.1 Reciprocal agreements .....	42
2.3.2.1.1 United States-Mexico-Canada Agreement (USMCA) .....	43
2.3.2.1.2 Amendments to the FTAs with the Republic of Korea and with Morocco .....	44
2.3.2.2 Unilateral preferences.....	45
2.3.3 Other agreements and arrangements .....	49
2.4 Investment Regime .....	51
2.4.1 Investment framework .....	51
2.4.2 Investment promotion.....	53
2.4.3 Investment screening and restrictions .....	53
2.4.3.1 Investment screening .....	53
2.4.3.1.1 Committee on Foreign Investment in the United States (CFIUS).....	53
2.4.3.2 Investment restrictions.....	55
<b>3 TRADE POLICIES AND PRACTICES BY MEASURE.....</b>	<b>57</b>
3.1 Measures Directly Affecting Imports.....	57
3.1.1 Customs procedures, valuation, and requirements .....	57
3.1.1.1 Customs procedures and operations .....	57
3.1.1.2 Import procedures and formalities .....	58

---

3.1.1.3	Policy and strategies .....	59
3.1.1.4	Foreign Trade Zones (FTZs) and bonded warehouses .....	60
3.1.1.5	Violations and enforcement .....	62
3.1.1.6	Trade facilitation .....	63
3.1.1.6.1	Single window .....	64
3.1.1.6.2	Advance rulings .....	64
3.1.1.6.3	Trusted trader/Authorized economic operator/Advance security programs .....	65
3.1.1.6.4	Expedited shipments .....	66
3.1.1.7	Customs valuation .....	66
3.1.2	Rules of origin .....	67
3.1.2.1	Non-preferential rules of origin .....	67
3.1.2.2	Preferential rules of origin .....	67
3.1.2.3	Country of origin marking requirements.....	68
3.1.3	Tariffs .....	69
3.1.3.1	Nomenclature and HTSUS changes.....	69
3.1.3.2	Applied rates .....	70
3.1.3.3	Bound rates .....	71
3.1.3.4	Duty suspensions.....	71
3.1.3.5	Tariff-rate quotas (TRQs) .....	73
3.1.3.6	Preferential tariffs .....	74
3.1.4	Other charges affecting imports.....	75
3.1.4.1	Fees for processing merchandise.....	75
3.1.4.1.1	Merchandise Processing Fee .....	75
3.1.4.1.2	COBRA fees .....	75
3.1.4.2	Harbor Maintenance Tax .....	75
3.1.4.3	Excise taxes .....	76
3.1.5	Import prohibitions, restrictions, and licensing .....	79
3.1.5.1	Prohibitions, restrictions, and quantitative measures .....	79
3.1.5.2	Import licensing.....	80
3.1.5.3	Other restrictions on imports.....	81
3.1.6	Anti-dumping, countervailing and safeguard measures .....	81
3.1.6.1	Anti-dumping and countervailing measures .....	81
3.1.6.1.1	Legal and administrative framework .....	81
3.1.6.1.1.1	Main laws and regulations .....	81
3.1.6.1.1.2	Administrative procedures .....	82
3.1.6.1.1.3	New Regulations on Administration and Enforcement of AD and CVD Laws .....	84
3.1.6.1.1.4	Suspension agreements .....	87
3.1.6.1.1.5	Administrative reviews .....	87
3.1.6.1.1.6	Sunset reviews.....	88
3.1.6.1.1.7	Circumvention rulings .....	89

---

3.1.6.1.1.8	Scope rulings .....	91
3.1.6.1.1.9	Determination of evasion of AD/CVD orders .....	91
3.1.6.1.2	Anti-dumping measures .....	94
3.1.6.1.3	Countervailing measures .....	97
3.1.6.1.4	EAPA investigations .....	98
3.1.6.2	Safeguards .....	99
3.1.6.2.1	Main laws and regulations .....	99
3.1.6.2.2	Safeguard investigations 2018-21 .....	100
3.1.6.2.2.1	Crystalline silicon photovoltaic cells .....	100
3.1.6.2.2.2	Large residential washers .....	102
3.1.6.2.2.3	Fresh, chilled, or frozen blueberries .....	104
3.1.7	Other measures affecting imports .....	104
3.1.7.1	Section 232 investigations .....	104
3.1.7.1.1	Legal and administrative framework .....	104
3.1.7.1.2	Steel investigation .....	105
3.1.7.1.3	Aluminium investigation .....	109
3.1.7.1.4	Investigation into auto imports .....	110
3.1.7.1.5	Investigation into uranium imports .....	110
3.1.7.2	Section 301 of the Trade Act of 1974 .....	111
3.1.7.2.1	Section 301 regulatory framework, procedures and determinations .....	111
3.1.7.2.2	Section 301 cases .....	113
3.1.7.2.2.1	China technology transfer regime .....	113
3.1.7.2.2.2	EU beef trade .....	115
3.1.7.2.2.3	EU Civil Aircraft .....	115
3.1.7.2.2.4	France's Digital Services Tax (DST) .....	117
3.1.7.2.2.5	DSTs in 10 economies .....	118
3.1.7.2.2.6	Viet Nam currency .....	119
3.1.7.2.2.7	Viet Nam timber .....	120
3.2	Measures Directly Affecting Exports .....	121
3.2.1	Customs procedures and requirements .....	121
3.2.2	Taxes, charges, and levies .....	121
3.2.3	Export prohibitions, restrictions, and licensing .....	121
3.2.4	Export support and promotion .....	124
3.2.4.1	Drawback regime .....	125
3.2.5	Export finance, insurance, and guarantees .....	125
3.2.5.1	Export-Import Bank (EXIM) .....	125
3.2.5.2	Small Business Administration (SBA) export loan programs .....	127
3.2.5.3	The U.S. International Development Finance Corporation (DFC) .....	128
3.2.5.4	Private Export Funding Corporation (PEFCO) .....	129
3.3	Measures Affecting Production and Trade .....	130

---

3.3.1	Incentives.....	130
3.3.2	Standards and other technical requirements .....	133
3.3.3	Sanitary and phytosanitary requirements.....	137
3.3.4	Competition policy .....	141
3.3.5	State trading, state-owned enterprises, and privatization .....	147
3.3.6	Government procurement.....	148
3.3.6.1	Institutional framework and general policies.....	148
3.3.6.2	Legal and regulatory framework .....	152
3.3.6.3	Transparency .....	156
3.3.6.4	U.S. government procurement market.....	157
3.3.6.5	Market access conditions for trading partners .....	158
3.3.6.6	Set-asides and preferences .....	160
3.3.6.7	Enforcement.....	162
3.3.7	Intellectual property rights.....	163
3.3.7.1	Overview .....	163
3.3.7.2	General regulatory framework .....	164
3.3.7.3	Patents.....	166
3.3.7.4	Industrial designs .....	171
3.3.7.5	Trademarks.....	171
3.3.7.6	Geographical indications .....	175
3.3.7.7	Trade secret protection.....	176
3.3.7.8	Copyright.....	177
3.3.7.9	Enforcement.....	183
3.3.7.9.1	Main provisions, institutions, and actions .....	183
3.3.7.9.2	Special 301 .....	185
3.3.7.9.3	Section 337 investigations.....	186
<b>4</b>	<b>TRADE POLICIES BY SECTOR.....</b>	<b>188</b>
4.1	Agriculture, Forestry, and Fisheries.....	188
4.1.1	Main features .....	188
4.1.1.1	Major support programs.....	191
4.1.1.1.1	General legal framework .....	191
4.1.1.1.2	Price Loss Coverage (PLC).....	192
4.1.1.1.3	Agriculture Risk Coverage (ARC) .....	192
4.1.1.1.4	Marketing assistance loans .....	193
4.1.1.1.5	Crop insurance.....	194
4.1.1.1.6	Dairy sector.....	195
4.1.1.1.7	Sugar .....	197
4.1.1.1.8	Other Farm Act and disaster programs.....	198
4.1.1.1.9	<i>Ad hoc</i> assistance for loss of traditional export markets .....	199
4.1.1.1.10	COVID-19 measures .....	201

---

4.1.1.2 Trade measures .....	202
4.1.1.2.1 Imports .....	202
4.1.1.2.2 Exports .....	203
4.1.1.2.3 Food aid .....	204
4.1.1.3 Levels of support .....	204
4.1.2 Forestry .....	207
4.1.2.1 Production, trade, and border measures .....	208
4.1.2.2 Framework, policy, and forest management .....	211
4.1.2.3 Support measures and pandemic-related matters .....	212
4.1.2.4 International cooperation and agreements .....	214
4.1.3 Fisheries .....	214
4.1.3.1 Production and trade .....	215
4.1.3.2 Import, export, and investment provisions .....	217
4.1.3.3 Policy, fisheries management, and support measures .....	219
4.1.3.4 International agreements and cooperation .....	222
4.2 Energy .....	223
4.2.1 General .....	223
4.2.2 Crude oil .....	224
4.2.3 Natural gas .....	225
4.2.4 Coal .....	225
4.2.5 Renewable energy .....	225
4.2.6 Nuclear energy .....	226
4.2.7 Electricity .....	226
4.3 Manufacturing .....	228
4.3.1 Border measures .....	229
4.3.2 Main policy developments .....	230
4.3.3 COVID-related measures and other support .....	231
4.3.4 Small businesses .....	233
4.4 Services .....	235
4.4.1 Financial services .....	235
4.4.1.1 Overview .....	235
4.4.1.2 Legislation and regulation .....	236
4.4.1.3 Consolidated financial sector regulation .....	240
4.4.1.4 Banking services .....	240
4.4.1.5 Insurance services .....	242
4.4.1.6 Securities services .....	246
4.4.2 Telecommunications .....	249
4.4.3 Transport .....	253
4.4.3.1 Air transport and airports .....	253
4.4.3.1.1 Air transport .....	253

4.4.3.1.2 Airports.....	257
4.4.3.2 Maritime transport, port services, and shipbuilding.....	258
4.4.3.2.1 Maritime transport .....	258
4.4.3.2.2 Port services.....	264
4.4.3.2.3 Shipbuilding and ship repairs .....	265
4.4.4 Medical professional and health services .....	267
4.4.4.1 Overview .....	267
4.4.4.2 Regulatory framework .....	268
4.4.4.2.1 Recent developments and issues.....	270
4.4.4.2.2 Trade.....	272
4.4.4.3 GATS commitments.....	273
4.4.4.4 Provisions in FTAs .....	273
4.4.5 E-commerce.....	274
<b>5 APPENDIX TABLES .....</b>	<b>278</b>

## CHARTS

Chart 1.1 Merchandise trade by main HS section, 2018 and 2021 .....	34
Chart 1.2 Merchandise trade by main origin and destination, 2018 and 2021.....	35
Chart 1.3 Direct investment position on a historical-cost basis, by selected partner, 2018 and 2020 .....	37
Chart 3.1 Frequency distribution of MFN tariff rates, 2021.....	70
Chart 4.1 Exports and imports of agricultural products, 2000-20.....	190
Chart 4.2 Farm sector income, 2000-22.....	191
Chart 4.3 Green Box support in the United States, 2001-02 - 2019-20 .....	206
Chart 4.4 Amber Box support in the United States, 2001-02 - 2019-20.....	206
Chart 4.5 U.S. electricity net generation by major sources, 1950-2021.....	227

## TABLES

Table 1.1 Selected economic indicators, 2017-21.....	17
Table 1.2 Gross domestic product by expenditure, 2017-21 .....	19
Table 1.3 CBO forecasts, FY2022-25.....	21
Table 1.4 Federal government revenue and expenditure, 2017-21 .....	26
Table 1.5 OMB budget totals and estimates, FY2020-26.....	27
Table 1.6 Main monetary and price indicators, 2017-21 .....	30
Table 1.7 Current and capital accounts, 2017-21 .....	31
Table 2.1 Trade under FTAs, 2021.....	43
Table 2.2 Imports under unilateral trade preferences, 2018-21.....	45
Table 2.3 Summary of changes to GSP beneficiaries and eligibility, July 2018-February 2022 .....	46
Table 2.4 Summary of changes to AGOA beneficiaries, July 2018-February 2022 .....	47

---

Table 2.5 U.S. International investment agreements, 2022 .....	52
Table 2.6 Overview of regulations to implement the FIRRMA, 2018-22 .....	54
Table 2.7 Foreign investment restrictions, 2022.....	56
Table 3.1 Key figures for customs operations, FY2018-21 .....	58
Table 3.2 Overview of FTZs, 2018-20 .....	61
Table 3.3 CBP enforcement statistics, FY2018-21.....	63
Table 3.4 CTPAT key figures, FY2019-21.....	65
Table 3.5 Overview of changes to the HTSUS, 2017-21.....	70
Table 3.6 Structure of the tariff schedules, selected years.....	71
Table 3.7 Summary of duty suspension petitions and enactments, 2016 and 2019.....	72
Table 3.8 Tariff-rate quotas and fill rates, other products, 2018-20 .....	74
Table 3.9 Summary analysis of tariffs according to FTA agreements, 2021 .....	74
Table 3.10 COBRA fees, FY2022.....	75
Table 3.11 Excise taxes, 2022 .....	78
Table 3.12 Final Regulations to Improve Administration and Enforcement of Anti-dumping and Countervailing Duty Laws, 2021 .....	85
Table 3.13 Anti-circumvention determinations made 1 January 2018-31 January 2022 .....	90
Table 3.14 Timeline for an EAPA investigation .....	92
Table 3.15 Timetable for administrative review under the EAPA .....	94
Table 3.16 Anti-dumping measures in force, by trading partner (including suspension agreements), 2018-2021 (31 December).....	95
Table 3.17 Anti-dumping investigations terminated by negative determinations, 2018-21 .....	96
Table 3.18 Anti-dumping orders revoked 2018-21.....	97
Table 3.19 EAPA investigations (eligible for public disclosure), 2016-February 2022 .....	98
Table 3.20 Safeguard measures applied on imports of CSPV cells, 2018-26.....	101
Table 3.21 Safeguard measures applied on large residential washers, 2018-23.....	103
Table 3.22 Proposed measures to counter the effect DST application, following Section 301 investigations .....	118
Table 3.23 Items subject to export controls, including licensing .....	122
Table 3.24 EXIM authorizations, FY2017-21 .....	126
Table 3.25 Approved applications and loan amounts under SBA export loan programs, FY2017-20 .....	128
Table 3.26 Federal subsidy programs (non-agriculture), FY2018-20 .....	131
Table 3.27 DOJ actions against anti-competitive practices, FY2018-21.....	144
Table 3.28 Sherman Act violations yielding a corporate fine of USD 10 million or more in FY2018-21 .....	145
Table 3.29 FTC actions against anti-competitive practices, FY2018-21 .....	146
Table 3.30 Government corporations and independent establishments, 2022 .....	147
Table 3.31 Government-sponsored enterprises .....	148
Table 3.32 Government spending by main agency, FY2018-21 .....	157
Table 3.33 U.S. thresholds in Appendix I to the GPA, in SDR and in USD, 2020-21 and 2022-23 .....	158



Table 3.34 Procurement thresholds for trade agreements, 2020-21 and 2022-23.....	158
Table 3.35 Socio-economic procurement small business procurement programs .....	161
Table 3.36 Government-wide small business procurement goals and results, FY2017-20.....	162
Table 3.37 Private fixed investment in IP products by type, 2017-20.....	163
Table 3.38 Patent applications, grants, and pendencies, FY2017-21 .....	169
Table 3.39 Patents issued by the United States to residents of foreign countries and territories, FY2017-21 .....	170
Table 3.40 Percentage of utility patents issued to micro, small, and large entities, FY2017-21 .....	170
Table 3.41 Trademarks registered, renewed, and published, FY2015-21 .....	174
Table 3.42 Trademarks issued by the United States to residents of foreign countries and territories, FY2017-21 .....	175
Table 3.43 Main amendments to the Copyright Act since 2018.....	178
Table 3.44 Rules made by the Copyright Office to implement the Music Modernization Act, as of January 2022.....	181
Table 4.1 Value of production, 2016-20 .....	188
Table 4.2 U.S. and world production and trade of selected commodities, FY2017-18-2021-22 ...	189
Table 4.3 Commodity Loan Rates, 2018 and 2021.....	193
Table 4.4 DMC schedule of premiums .....	195
Table 4.5 Total PSE and single commodity transfer values for selected commodities, 2016-20 .....	205
Table 4.6 Forestry production volumes, 2018-21 .....	208
Table 4.7 Wood and wood product trade, 2018-21 .....	208
Table 4.8 Legal framework, main laws and regulations, 2022 .....	211
Table 4.9 Forestry support measures, FY2021 .....	213
Table 4.10 U.S. Production of fish and aquaculture, 2017-20.....	215
Table 4.11 Imports and exports of fish and fish products, 2018-21 .....	216
Table 4.12 Key fisheries legislation, 2022.....	221
Table 4.13 Fisheries subsidies notified to the WTO .....	222
Table 4.14 Evolution of the manufacturing sector, 2015-21 .....	228
Table 4.15 L&H insurance: U.S. life and annuities subsector direct premiums written .....	243
Table 4.16 U.S. primary and secondary equity markets, FY2020 and FY2021.....	246
Table 4.17 Selected telecommunications indicators, 2015-20 .....	249
Table 4.18 Trade in health services, 2015-20 .....	273

## BOXES

Box 1.1 The CARES Act.....	22
Box 1.2 American Rescue Plan Act of 2021: summary .....	25
Box 2.1 Overview of Unilateral Preference Programs, 2022 <sup>a</sup> .....	46
Box 2.2 Overview of other new agreements or arrangements .....	50
Box 3.1 CBP's Office of Trade "Strategy 2020-2025" Primary Goals .....	59

---

Box 3.2 U.S.-EU joint statement on steel and aluminum, 31 October 2021.....	107
Box 3.3 E.O. 14005 of 25 January 2021.....	150
Box 3.4 The Trademark Modernization Act of 2020.....	173
Box 4.1 Key healthcare facts, 2020 .....	268
Box 4.2 Selected HHS federal waivers and policy changes due to COVID-19 impacting supply of medical services.....	271

#### APPENDIX TABLES

Table A1.1 Merchandise exports by HS section and main chapter, 2017-21 .....	278
Table A1.2 Merchandise imports by HS section and main chapter, 2017-21.....	279
Table A1.3 Merchandise exports and by trading partner, 2017-21 .....	280
Table A1.4 Merchandise imports by trading partner, 2017-21 .....	281
Table A1.5 U.S. trade in services by type of service (Modes 1, 2, and 4), 2017-21.....	282
Table A2.1 Activity in WTO dispute settlement disputes to which the United States is a Party, August 2018-March 2022 .....	285
Table A2.2 Selected U.S. notifications to the WTO, August 2018-March 2022 .....	286
Table A3.1 Summary analysis of United States MFN tariff, 2021 .....	289
Table A3.2 Tariff-rate quotas and fill rates, agricultural products, 2018-20.....	290
Table A3.3 Import prohibitions, restrictions, and other measures 2022 .....	292
Table A3.4 Products subject to import licensing, 2022 .....	293
Table A3.5 Final changes in U.S. export controls, August 2018-January 2022 .....	295
Table A3.6 Summary of IP protection, December 2021 .....	299

---

## SUMMARY

1. The United States has a large economy that is highly integrated with the rest of the world. After a period of stable economic growth in 2018 and 2019, when real GDP expanded by 2.9% and 2.3%, respectively, the U.S. economy suffered the effects of the COVID-19 pandemic. Real GDP contracted by 3.4% in 2020 after 11 consecutive years of expansion. The economy experienced a rapid rebound in 2021, aided by the support packages put in place by the Government and by an easing of monetary conditions. This led to a real GDP growth rate of 5.7% in 2021.

2. During most of the review period (mid-2018 to early 2022), fiscal policy continued to be expansionary. Despite solid economic growth, the federal government deficit rose from 2.8% of GDP in calendar year 2017 to 5.4% of GDP in 2019. As a response to the COVID-19 pandemic, the authorities put in place several support packages, including the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), the Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020, the American Rescue Plan Act of 2021 (ARP Act), the Infrastructure Investment and Jobs Act of 2021, and some parts of the Consolidated Appropriations Act of 2021, which together provided an estimated USD 8.3 billion in emergency funding for federal agencies to respond to the COVID-19 outbreak. As a result, the federal government deficit rose to 14.9% of GDP in FY2020 and to 13.9% of GDP in FY2021. Reflecting the higher deficits, public debt as a share of GDP continued to rise, to some 100%.

3. The Federal Reserve continued to conduct an expansionary monetary policy during the period under review. In response to the effects of the pandemic, the Federal Reserve committed to using its full range of policy tools to support the U.S. economy, promoting its maximum-employment and price-stability goals. In this respect, it introduced facilities to support the flow of credit, in some cases backed by the Treasury, using funds appropriated under the CARES Act. After slightly exceeding the longer-run 2% goal at times in 2018, 12-month personal consumption expenditures (PCE) inflation remained below 2% throughout 2019 and 2020 (1.3% in 2020), allowing the Federal Reserve space for a more accommodative policy. In 2021, the PCE index rose rapidly, by 5.8%, reflecting in part a sharp increase in energy prices, as well as supply shortages linked to the pandemic. Inflation accelerated in early 2022, to a year-on-year rate of 6.6% in March, driven by higher energy and food prices.

4. The U.S. current account deficit continued increasing during the period under review, moving from 2.1% to 2.9% of GDP in 2020 and 3.6% in 2021. The increase in the deficit partly reflects the disruption in trade flows due to the pandemic. U.S. imports and exports of goods declined during the initial part of the review period, but exports declined more significantly, by 14.1%, while imports declined by about half that level, by 7.9%. Thereafter, in 2021, both imports and exports recovered significantly, reaching their highest level during the period. The merchandise trade deficit, at USD 946 billion in 2018, increased to USD 1.18 trillion in 2021, its highest level during the period due to a large surge in imports. The main products traded, as well as the main sources and destinations for U.S. trade, did not change significantly during the period. Despite significant declines during the review period, the United States maintained a surplus in cross-border services trade, although it fell to USD 230 billion in 2021, the lowest level since 2012. Travel and transport were in particular negatively impacted by the COVID-19 pandemic. The European Union and the United Kingdom were the United States' main services trading partners during the period.

5. In 2021 the U.S. Administration put in place its "Build Back Better" agenda, which includes, *inter alia*, putting workers at the center of trade policy, tackling the COVID-19 pandemic, promoting a sustainable environment and climate path, promoting equitable economic growth around the world, and addressing main trading partners' economic trade practices through a comprehensive strategy. Recent legislation and initiatives have included the ARP Act that provided funding for COVID-19 vaccines and addressed medical supply chains, and several other initiatives that address supply chains more generally as well as critical infrastructure. In the WTO, the United States continues to push a robust reform agenda that has focused on reinforcing the WTO's negotiating function and on systemic issues. The United States has been active in making proposals in the fisheries subsidies and agriculture negotiations, as well as in its participation in the Joint Statement Initiatives and in the different WTO committees.

6. The United States is a party to 14 free trade agreements (FTAs) covering trade with 20 countries. The main development during the review period was the conclusion and implementation of the revised agreement with Canada and Mexico, the

United States-Mexico-Canada Agreement (USMCA), which entered into force in July 2020. There were also some amendments to the FTAs with the Republic of Korea and Morocco. In terms of unilateral preferences, the GSP program expired in December 2020 and as of March 2022 had not been renewed; the renewal of preferences under the Caribbean Basin Trade Partnership Act (CBTPA) was extended until 2030. Other agreements involving trade issues were concluded during the review period, with Japan, China, and the European Union, covering a range of products or subjects.

7. During the review period, the U.S. investment regime underwent a number of significant changes, including passing a new law and rules expanding the types of foreign investment subject to examination, the introduction of new reporting requirements for certain types of foreign direct investment, and the formalization and streamlining of the committee for the assessment of foreign investment in the telecommunications sector. A number of these changes have moved the U.S. policy direction towards greater scrutiny of foreign investment transactions on national security grounds. In terms of investment restrictions, there remain 14 main categories of long-standing requirements or restrictions on foreign investment.

8. The U.S. Customs and Border Protection (CBP) pursued new ways to modernize its customs procedures during the period under review. Several pilot projects were launched to facilitate the movement of legitimate trade securely, specific customs-related COVID-19 matters were addressed, and further developments were made to its single window application. Initiatives were also undertaken to reduce intellectual property rights violations at the border. Revenues collected by CBP nearly doubled over the period, from USD 40 billion in FY2017 to USD 79 billion in FY2019, mainly due to the collection of the special additional duties.

9. The U.S. tariff regime did not change significantly during the review period and tariff levels remained nearly the same as in 2018. The simple average rate remains low at 4.8% overall in 2021. Tariffs on agricultural products (WTO definition) averaged 9.2%, more than double the average for non-agricultural products (4.0%). High tariffs were mainly concentrated in the dairy and tobacco sectors. The Miscellaneous Tariff Bill Act of 2018 provided for duty reductions or suspensions on 1,655 tariff lines. U.S. preferential tariffs did not change significantly during the period. The United States continued to apply the Merchandise Processing Fee (MPF), COBRA fees, the Harbor Maintenance Tax (HMT), and excise taxes on imports; several changes were made to excise taxes, the thresholds of the MPF, and the way HMT revenues were disbursed.

10. Most of the products subject to import prohibitions, restrictions, or licensing remained unchanged during the review period. However, the American Innovation and Manufacturing (AIM) Act of 2020 set up an allowance and trading program for importers of certain hydrofluorocarbons and new rules were put in place to implement amendments to the Lacey Act for the importation of certain plant and plant products. Amendments to the Marine Mammal Protection Act also imposed new prohibitions on shrimp and other fish and fish products caught in the Upper Gulf of California.

11. The United States continues to be an active user of anti-dumping (AD) duties. Between 2018 and 2021, 178 AD investigations were initiated. There were 489 AD orders on imports from 58 trading partners in place as of end-2021 – up from 340 on 30 June 2018, 48.0% of which were applied on iron and steel products. The average duration of an AD measure at the end of 2021 was 10.4 years, down from 11 years in 2017. Of the 169 countervailing duty (CVD) measures in place as of end-2021, some 46% were applied on iron and steel products. There were 316 sunset review initiations of AD and CVD orders and suspension agreements during the period from 1 January 2018 to 31 December 2021; 250 were reviews of AD duties orders. Of the 186 orders for which the review had been concluded as of end-2021, 173 were continued, 9 were revoked, and 4 suspension agreements were renewed. In September 2021, Final Regulations to Improve Administration and Enforcement of Anti-dumping and Countervailing Duty Laws were issued and notified to the WTO; they seek to strengthen the administration and enforcement of U.S. AD/CVD laws by establishing new procedures for scope, circumvention, and covered merchandise inquiries, and making substantive and technical revisions with respect to other areas, such as new shipper reviews.

12. The Enforce and Protect Act (EAPA), allows CBP to investigate whether there has been evasion of AD/CVD duties. Between August 2016, when EAPA came into effect, and October 2021, CBP initiated 56 investigations eligible for public disclosure. As of February 2022, CBP had made a final determination in 51 cases, 45 of which were affirmative determinations of evasion. Final measures include suspending liquidation of unliquidated entries, adjusting and changing duty rates, and requiring single transaction bonds. The products for which evasion was found were, to a large extent,

steel products, but also include aluminum products, plywood, furniture, glycine, and paper. U.S. legislation allows the Department of Commerce (USDOC) to conduct investigations to determine if changes to an imported product or the place where the imported product is assembled constitute circumvention of an AD/CVD order. When such issues arise, USDOC issues "scope rulings" that clarify the scope of an order or suspended investigation with respect to particular products. Between 1 January 2018 and 31 January 2022, 169 final scope rulings were made. About half of the rulings were linked to steel, iron, and aluminum products. USDOC also made 27 anti-circumvention determinations between 1 January 2018 and 31 January 2022, linked mostly to investigations on steel products, as well as chemical, wood, and paper products.

13. The two safeguard measures (on crystalline silicon photovoltaic cells, and large residential washers) in force before 2018 were renewed during the period under review, but no new measures were applied. Five new Section 232 (national security) investigations were initiated and completed during the review period: on automobiles and auto parts (February 2019); uranium (April 2019); titanium sponge (November 2019); lamination for stacked cores (October 2020); and vanadium (February 2021). Additional tariffs applied on steel and aluminum imports resulting from Section 232 investigations initiated in 2018 remain in place; however, the United States reached an agreement with the European Union in October 2021 to suspend the additional tariffs and replace them by tariff quotas. More recently, similar agreements were reached with Japan and the United Kingdom. Under Section 301 of the Trade Act of 1974, trade measures may be imposed on foreign countries that maintain an act, policy, or practice that violates or denies U.S. rights or benefits under trade agreements, or burdens or restricts U.S. commerce. During the review period, there were seven Section 301 cases active; they all resulted in an agreement, but in one case additional duties remain in force (China technology transfer regime), although exclusions apply.

14. U.S. export controls are guided by national security and the pursuit of foreign policy objectives. The United States cooperates with other countries in many instances to restrict exports of defense articles and dual-use goods and technologies or to deter the proliferation of nuclear, chemical, and biological weapons and related technologies. The Export Control Reform Act of 2018 constitutes the principal legal instrument for controls on dual-use and less sensitive military items. Export controls also apply to countries subject to economic sanctions by the United States. Numerous modifications to the export control regime took place during the period under review, relating, for example, to changes in controls of munitions, dual-use goods and technologies, and missile technology, as well as sanctions or embargoes towards specific countries or entities. Temporary export restrictions applied to certain scarce critical health and medical resources between April 2020 and June 2021 in response to the COVID-19 pandemic.

15. Created in 2018, the U.S. International Development Finance Corporation (DFC) is the successor agency to the Overseas Private Investment Corporation by statute. Its stated purpose is to mobilize and facilitate the participation of private sector capital and skills in the economic development of less developed countries and countries in transition. Its five-year strategy (Roadmap for Impact) foresees the DFC's own commitment of USD 25 billion to generate an additional USD 50 billion in private investment in key sectors. The Export-Import Bank (EXIM), the official export credit agency, has been reauthorized through 2026. EXIM's Congressional mandates include mandates addressing small businesses, sub-Saharan Africa, environmentally beneficial goods and services, and China and transformational exports. As a long-standing impasse restricting EXIM's ability to engage in long-term finance was resolved in 2019, EXIM still has more than USD 90 billion of available lending authority.

16. Federal government agencies and departments may provide businesses with grants, loans, insurance, property, counselling, and other assistance, and support is also available from state, territorial, and local authorities and agencies. Subsidy programs are notified to the WTO on a regular basis. The disruption of economic activity caused by the COVID-19 pandemic prompted additional assistance on an unprecedented scale. Nearly USD 1 trillion, including forgivable loans, was channeled through the Small Business Administration, notably through the Paycheck Protection Program and COVID-19 Economic Injury Disaster Loans.

17. As regards competition policy, the United States recently adopted a "whole-of-government" approach to fostering competition in U.S. markets and to vigorously enforcing antitrust laws. Some recent legislative developments included the permanent extension of incentives for corporations to self-report their involvement in criminal antitrust conspiracies and the enhancement of protections for employees denouncing criminal antitrust violations. Mergers in the healthcare and

pharmaceutical industry drew significant activity for enforcement agencies during the review period. Savings to U.S. consumers related to merger and non-merger enforcement activities by antitrust agencies were estimated at USD 12.9 billion in FY2019 and FY2020.

18. During the review period, the United States continued to actively notify its proposed and adopted technical barriers to trade (TBT) and sanitary and phytosanitary (SPS) measures in the respective WTO Committees. The private sector leads the development of voluntary consensus standards (VCS), which are based on needs or concerns identified by industry, government, and consumers. Technical regulations can be established at the federal or sub-federal level and rely heavily on VCS developed by the private sector making them mandatory by reference. When developing technical regulations, government agencies are requested to ensure that imported goods are treated no less favorably than like domestic products. Regarding SPS requirements, the adoption of equivalence determinations for food products, the issuance of a regulation regarding laboratory accreditation, and a further digitalization of procedures, including the exchange of electronic phytosanitary certificates, were the main developments during the review period.

19. The United States is a party to the Agreement on Government Procurement (GPA). Government procurement at the federal and state levels is decentralized. A number of "Made in America Laws" are in place for procurement not covered by the GPA or other trade agreements. Regulatory changes were introduced in January 2021, which put in place the new Made in America initiative and established the Made in America Office (MIAO) within the Office of Management and Budget (OMB). The new policy aims at increasing procurement from domestic sources and reducing the number of waivers to Buy American provisions by making them subject to review. Also in January 2021, a Final Rule was published that modified the implementation of the Buy American Act (BAA) by increasing the domestic content requirements to 55%, and the margin of price preference for domestic end products and construction material contained in the BAA from 6% to 20% for large businesses, and from 12% to 30% for small businesses. Also, foreign iron and steel products must be less than 5% of the cost of all components in the product. U.S. procurement policy makes use of set-aside programs to foster the participation of small businesses, veteran-owned small businesses, small disadvantaged businesses, HUBZone businesses, and women-owned small businesses in the procurement process. Under the Small Business Act, government purchases with an anticipated value above the micro-purchase threshold of USD 10,000, and up to USD 250,000, are to be automatically and exclusively set aside for small businesses, provided there are at least two or more small business concerns that are competitive in terms of market prices, quality, and delivery. The same applies for construction contracts with a value of USD 1.5 million or more.

20. The United States is a top producer and exporter of goods and services that embody intellectual property (IP). It is estimated that IP is present in some 60% of U.S. goods exports and that IP-intensive industries account for over one third of U.S. GDP. During the period under review, amendments to IP legislation were introduced and notified to the WTO, including changes aimed at modernizing copyright-related issues for music and audio recordings due to new forms of technology like digital streaming; the implementation of the Marrakesh Treaty, which modifies the copyright exceptions for blind or print disabled persons; modifications to the U.S. Plant Variety Protection Act; and the implementation of the Trademark Modernization Act of 2020, which modified a number of aspects of trademark law, including to provide for third-party submission of evidence during examination, flexible response periods, *ex parte* expungement and re-examination, and new grounds for cancellation.

21. The United States is the world's largest agricultural exporter. The Agriculture Improvement Act of 2018 reauthorized the key revenue support programs (Agriculture Risk Coverage and Price Loss Coverage) through FY2023 with minor changes. Crop insurance, which has permanent authorization, continues with some expansion in livestock insurance options. Overall, mandatory conservation spending is projected to increase by 2% compared with the previous five-year cycle. The United States Department of Agriculture (USDA) assists producers in reducing greenhouse gas (GHG) emissions, enhancing carbon sequestration, and adapting to a changing climate. Considerable *ad hoc* support was also made available to agricultural producers during the period under review. The trade mitigation package, announced in July 2018 to assist farmers experiencing difficulties as a result of foreign retaliatory action, included payments to eligible farmers under the Market Facilitation Program (MFP), purchases of commodities for domestic nutrition assistance programs under the Food Purchase and Distribution Program (FPDP), and an Agricultural Trade Promotion Program (ATP) for the development of alternative foreign markets. Payments under the MFP totaled nearly USD 27 billion between 2018 and 2020, when the program was phased out. Estimated outlays

under the FPDP were USD 1,144 million in FY2019 and USD 1,203 million in FY2020. The ATP allocated USD 300 million to 59 organizations in 2019. USDA received funding for measures to mitigate or prevent the effects of the COVID-19 pandemic in FY2020 to which nearly USD 87 billion of supplementary appropriations were added in FY2021. Almost USD 50 billion of the USD 78.5 billion in total COVID-19 outlays in FY2021 were spent to boost the Supplemental Nutrition Assistance Program. The initial Coronavirus Food Assistance Program (CFAP) announced in April 2020 comprised USD 16 billion in direct support to eligible farmers and ranchers and USD 3 billion for food purchases. As additional funding became available through the USDA Commodity Credit Corporation (CCC), CFAP 2 was launched in summer 2020. CFAP (1 and 2) payments totaled USD 23.5 billion in 2020 and USD 9.3 billion in 2021 (projected); CCC-funded payments, some USD 12 billion, were mostly paid in FY2021.

22. The forestry sector accounts for between 2% and 3% of U.S. merchandise trade, while trade in fish and fish products is slightly above 1% of the total. While the United States is a major producer and exporter of roundwood, it has an overall trade deficit in wood and wood-related products. Overall, the sector does not have high tariffs except for AD and CVD duties on certain products but maintains certain import/export prohibitions or controls. During the review period, the United States undertook a number of forest-related initiatives related to the environment such as launching its Plan to Conserve Global Forests. As the largest importer and second-largest consumer of fish and fish products in 2018, the United States maintained a trade deficit over the period although remaining a significant producer of marine, inland, and aquaculture fish. The United States maintains verification or monitoring programs that require additional procedures upon importation, such as the Seafood Import Monitoring Program (SIMP).

23. Fossil fuels constitute nearly 80% of the domestic supply of primary energy as rising output of crude oil and natural gas has outstripped declining production of coal. The United States became the world's largest producer of crude oil in July 2018 and has consistently been the world's number-one producer of natural gas since 2011. It became a net energy exporter during 2019. In April 2021, the administration announced a new target for U.S. economy-wide net GHG pollution: it should equal 50% to 52% of the 2005 level by 2030, and net-zero emissions should be reached no later than 2050. A National Climate Task Force has been formed to mobilize action on climate change by all federal agencies. Regarding electricity generation, natural gas and renewable energy sources are gradually replacing coal-fired power plants. Federal tax credit programs play a key role in the construction of new generation capacity in renewables.

24. Despite a shrinking contribution to GDP, manufacturing remains the main exporting sector of the U.S. economy, accounting for nearly 55% of all exports. Petroleum gases, electronic integrated circuits, and immunological products were the fastest-growing manufacturing exports during the review period. The manufacturing of durable goods was notably hit by the outbreak of the COVID-19 pandemic, but so were other industries. Pharmaceutical manufacturers developing COVID-19 vaccines and related goods received government assistance, as the authorities aimed at accelerating the domestic production of medicines, personal protective equipment, critical inputs, finished drugs, and other finished devices. SMEs in manufacturing, an important source of employment opportunities, benefited also from assistance to counter the impact of the pandemic.

25. The financial services sector is a substantial contributor to the U.S. economy, accounting for some 8.5% of GDP in 2021. The United States continued to run a significant surplus in trade in financial services during the period under review. As of end-2021, there were 2,129 "large" commercial banks in the United States, each with consolidated assets of USD 300 million or more. At the same date, total banking system assets were USD 21.6 trillion. The United States is the largest insurance market in the world, with net insurance premiums that amounted to USD 1.28 trillion in 2020. U.S. financial markets were strongly impacted by the onset of the COVID-19 pandemic. The Federal Reserve responded by adopting temporary measures such as the reduction of the primary credit rate by 150 basis points to 0.25%, and a reduction of the reserve requirement ratios to 0% effective in March 2020. It also encouraged banks to use their capital and liquidity buffers. Measures to support credit allocation were also put in place.

26. In telecommunications, the steady increase of broadband subscriptions was matched by significant decreases of mobile and fixed phone subscriptions. A consolidation of U.S. telecommunication providers and the deployment of the 5G commercial networks, including the spectrum reallocation, were among the salient market developments during the review period. On the policy side, efforts seeking to reduce the digital divide in services, the establishment of the

Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector, and a growing interest among policymakers in the security and protection of telecommunications infrastructure shaped the main regulatory changes.

27. The air transport sector was severely hit by the travel restrictions and quarantine requirements related to the COVID-19 pandemic and although a strong recovery took place in the second half of 2021, airline travel has not yet recovered to levels observed in 2019. To counter the impact of COVID-19-related lockdowns, several assistance programs to passenger air carriers, cargo air carriers, aviation contractors, and airports were authorized. The Government continues to implement support programs to ensure essential air service to small communities, with a particular focus on Alaska. The recently enacted Infrastructure Investment and Jobs Act foresees investment in airport infrastructure up to USD 20 billion in next five years.

28. Waterborne shipping carries more tonnage in U.S. international trade than any other mode of transportation. The size of the U.S.-flagged, privately owned fleet of self-propelled, cargo-carrying vessels of 1,000 gross tons and above continued to decline over the period under review: as of October 2021, there were 180 privately owned vessels with a capacity of 8.2 million dead weight tons, 1 less than in 2018. The United States maintains restrictions to cabotage services of both cargo and passengers under the coastwise laws, as the Jones Act reserves cargo service between two points in the United States (including its territories and possessions), either directly or via a foreign port, for ships that are registered and built (or repaired) in the United States and that are at least 75% owned by a U.S. corporation, and on which 100% of the officers and 75% of the crew are U.S. citizens. In general, the same requirements apply to the domestic passenger service under the Passenger Vessel Services Act of 1886. Waivers to the Jones Act and other coastwise laws are granted under limited circumstances.

29. The U.S. healthcare sector is one of the largest in the world and an important employer. During the review period, there was an initial decline in revenues and employment, followed by rising costs and medical supply chain issues. The Government responded to the pandemic with a number of appropriation measures that supported the sector in many ways, including through emergency funding. There was also unprecedented use of telehealth in 2020, with temporary measures put in place to waive existing regulations. Trade in healthcare services is relatively limited but growing, and potential exists for future expansion, in part driven by technological developments and measures taken during the COVID-19 pandemic.

30. E-commerce accounts for 12.5% of the U.S. trade in physical goods, an ever-increasing share. Online platforms, which have evolved towards digital marketplaces, have diversified their offering and provision of services reflecting the digitalization of new economic sectors. The United States keeps a decentralized, market-driven approach to regulate digital services on specific issues and/or sectors while simultaneously supporting the digital transformation. Combating cross-border fraud and other deceptive practices remains a sustained effort by the U.S. authorities. Recent concerns regarding cybersecurity and privacy led to the establishment of the Cybersecurity and Infrastructure Security Agency. The United States opposes the establishment of digital services taxes, seeks to ensure market access for digital services through trade agreements, and participates in the ongoing plurilateral negotiation on e-commerce at the WTO.



## 1 ECONOMIC ENVIRONMENT

### 1.1 Main Features of the Economy

1.1. The United States has a large economy that is highly integrated into the global economy. U.S. GDP is the largest in the world. During the review period, most economic sectors were negatively affected by the COVID-19 pandemic; however, a strong recovery has been underway since 2021, partly as a response to the different economic packages put in place in 2020 and 2021 to bolster the economy, equivalent to some 25% of GDP.

1.2. The U.S. economy is dominated by the services sector; the share of services in GDP has risen from some 68.1% in 2017 to 68.7% in 2020 and 2021, excluding government services. If government services are taken into account, the share of services in GDP is about 80%. Among services, the most significant are real estate and rental and leasing (12.8% of GDP); finance and insurance (8.5%); professional, scientific, and technical services (7.7%); and health care and social assistance (7.3%). The share of manufacturing, on the other hand, has continued declining, from 11.3% of GDP in 2017, to 11.1% in 2021. Agriculture's contribution to GDP is small, about 0.9% of GDP in 2021, while mining accounted for 1.2% of GDP and construction for 4.2% in the same year (Table 1.1). Government accounted for 12.1% of GDP in 2021, slightly less than in 2017 (12.6%); the Federal Government accounted for 3.9% of GDP, while state and local governments have an 8.3% share of GDP.<sup>1</sup>

**Table 1.1 Selected economic indicators, 2017-21**

	2017	2018	2019	2020	2021
GDP (current USD billion)	19,480	20,527	21,373	20,894	22,996
Real GDP (chained 2012 USD billion)	18,079	18,607	19,033	18,385	19,427
Real GDP growth (%)	2.3	2.9	2.3	-3.4	5.7
GDP per capita (current USD)	59,596	62,432	64,665	62,978	69,221
<b>GDP by industry (% of current GDP)</b>					
Private industries	87.4	87.6	87.7	87.2	87.9
Agriculture, forestry, fishing, and hunting	0.9	0.9	0.8	0.8	1.1
Farms <sup>a</sup>	0.7	0.7	0.6	0.6	0.9
Forestry, fishing, and related activities	0.2	0.2	0.2	0.2	0.2
Mining	1.4	1.6	1.4	0.9	1.2
Oil and gas extraction	0.9	1.0	0.9	0.5	0.8
Mining, except oil and gas	0.3	0.3	0.3	0.3	0.3
Support activities for mining	0.2	0.3	0.3	0.1	0.1
Utilities	1.6	1.6	1.6	1.6	1.6
Construction	4.1	4.1	4.2	4.3	4.2
Manufacturing	11.3	11.4	11.1	10.9	11.1
Durable goods	6.3	6.3	6.2	6.1	6.0
Of which:					
Computer and electronic products	1.4	1.5	1.4	1.5	1.5
Machinery	0.8	0.8	0.8	0.8	0.7
Motor vehicles, bodies, and parts	0.8	0.8	0.7	0.7	0.8
Fabricated metal products	0.8	0.8	0.8	0.7	0.7
Other transportation equipment	0.8	0.8	0.8	0.6	0.6
Non-durable goods	4.9	5.0	4.9	4.8	5.1
Of which:					
Chemical products	1.9	1.8	1.8	1.9	1.9
Food, beverage and tobacco products	1.4	1.3	1.3	1.4	1.4
Petroleum and coal products	0.7	0.9	0.8	0.5	0.9
Services	68.1	68.1	68.7	68.7	68.7
Wholesale trade	6.0	5.9	6.0	6.0	6.0
Retail trade	5.6	5.5	5.5	5.8	6.0
Transportation and warehousing	3.1	3.2	3.2	2.7	2.8
Information	5.2	5.2	5.3	5.6	5.7
Finance, insurance, real estate, rental, and leasing	20.6	20.7	20.8	22.0	21.2
Finance and insurance	7.8	7.9	7.9	8.6	8.5
Real estate and rental and leasing	12.9	12.8	13.0	13.4	12.8
Professional and business services	12.5	12.6	12.8	12.9	12.9
Professional, scientific, and technical services	7.5	7.6	7.7	7.8	7.7
Management of companies and enterprises	1.9	1.9	1.9	2.0	1.9
Administrative and waste management services	3.1	3.1	3.2	3.1	3.3
Educational services, health care, and social assistance	8.8	8.7	8.8	8.6	8.4
Educational services	1.3	1.3	1.3	1.2	1.1
Health care and social assistance	7.5	7.4	7.5	7.4	7.3
Arts, entertainment, recreation, accommodation, and food	4.3	4.2	4.3	3.2	3.7
Arts, entertainment, and recreation	1.1	1.1	1.1	0.8	0.9

<sup>1</sup> These figures are in terms of value added; the ratio of current government spending to GDP is 3:1.

	2017	2018	2019	2020	2021
Accommodation and food services	3.1	3.1	3.1	2.4	2.8
Other services, except government	2.1	2.1	2.1	2.0	1.9
Government	12.6	12.4	12.3	12.8	12.1
Federal	3.9	3.8	3.8	4.1	3.9
General government	3.6	3.5	3.5	3.7	3.6
National defense	2.1	2.0	2.0	2.1	2.0
Nondefense	1.5	1.5	1.5	1.6	1.5
Government enterprises	0.3	0.3	0.3	0.3	0.3
State and local	8.7	8.6	8.5	8.7	8.2
General government	7.9	7.8	7.7	8.1	7.6
Government enterprises	0.7	0.7	0.7	0.6	0.6
<b>Employment</b>					
Total employment <sup>b</sup> (thousands)	152,179	154,673	156,872	147,564	..
<b>Employment by industry (% of total employment)</b>					
Private industries	83.8	83.9	84.0	83.4	..
Agriculture, forestry, fishing, and hunting	0.9	0.9	0.9	0.9	..
Farms <sup>b</sup>	0.5	0.5	0.5	0.5	..
Forestry, fishing, and related activities	0.4	0.4	0.4	0.4	..
Mining	0.4	0.4	0.4	0.4	..
Oil and gas extraction	0.1	0.1	0.1	0.1	..
Mining, except oil and gas	0.1	0.1	0.1	0.1	..
Support activities for mining	0.2	0.2	0.2	0.2	..
Utilities	0.4	0.4	0.3	0.4	..
Construction	4.7	4.8	4.9	5.0	..
Manufacturing	8.2	8.2	8.2	8.2	..
Durable goods	5.1	5.1	5.1	5.1	..
Of which:					
Fabricated metal products	0.9	0.9	0.9	0.9	..
Computer and electronic products	0.7	0.7	0.7	0.7	..
Machinery	0.7	0.7	0.7	0.7	..
Motor vehicles, bodies and trailers, and parts	0.6	0.6	0.6	0.6	..
Other transportation equipment	0.4	0.5	0.5	0.5	..
Non-durable goods	3.1	3.1	3.0	3.1	..
Of which:					
Food and beverage and tobacco products	1.2	1.2	1.2	1.3	..
Chemical products	0.5	0.5	0.5	0.6	..
Plastics and rubber products	0.5	0.5	0.5	0.5	..
Services	69.2	69.2	69.3	68.5	..
Wholesale trade	3.9	3.8	3.8	3.8	..
Retail trade	10.5	10.3	10.0	10.1	..
Transportation and warehousing	3.4	3.5	3.7	3.9	..
Information	1.8	1.8	1.8	1.8	..
Finance and insurance	4.1	4.1	4.1	4.4	..
Real estate and rental and leasing	1.5	1.5	1.5	1.5	..
Professional, scientific, and technical services	6.0	6.1	6.1	6.5	..
Management of companies and enterprises	1.5	1.5	1.5	1.6	..
Administrative and waste management services	6.0	6.0	6.0	5.8	..
Educational services	2.4	2.4	2.4	2.4	..
Health care and social assistance	12.9	12.9	13.0	13.4	..
Arts, entertainment, and recreation	1.5	1.6	1.6	1.2	..
Accommodation and food services	9.0	9.0	9.0	7.6	..
Other services, except government	4.6	4.7	4.7	4.5	..
Government	16.2	16.1	16.0	16.6	..
Federal	3.3	3.3	3.3	3.5	..
General government	2.9	2.8	2.8	3.1	..
Government enterprises	0.5	0.4	0.4	0.5	..
State and local	12.9	12.8	12.7	13.0	..
General government	12.1	12.0	11.9	12.3	..
Government enterprises	0.8	0.8	0.8	0.8	..
<b>Unemployment rate (%)</b>	<b>4.4</b>	<b>3.9</b>	<b>3.7</b>	<b>8.1</b>	<b>5.4</b>
Goods trade to GDP ratio	20.3	20.8	20	18.4	20.4

.. Not available.

a NAICS crops and animal production.

b Domestic full-time and part-time employees.

Source: WTO Secretariat, based on Bureau of Economic Analysis (BEA). Viewed at: <http://www.bea.gov/>; and Bureau of Labor Statistics (BLS). Viewed at: <http://www.bls.gov/>.

1.3. In terms of employment, the private services sector accounted for 68.5% of the total in 2020, followed by health care and social assistance at 13.4%; retail trade at 10.1%; accommodation and food services at 7.6%; and professional, scientific, and technical services at 6.5%. Employment in manufacturing accounted for 8.2% of total employment in 2020, while that in construction represented 5.0% and that in agriculture 0.9%. Government employment (public services) accounted for 16.6% of total employment in 2020.

## 1.2 Recent Economic Developments

### 1.2.1 GDP and employment

1.4. After a period of stable economic growth in 2018 and 2019, when real GDP expanded by 2.9% and 2.3%, respectively, the U.S. economy, like that of the rest of the world, entered a recession, as it was considerably affected by the COVID-19 pandemic. Real GDP contracted by 3.4% in 2020 after 11 consecutive years of expansion. The economy experienced a swift rebound in 2021, aided by the support packages put in place by the Government and by an easing of monetary conditions. This led to a real GDP growth rate of 5.7% in 2021 (Table 1.2).

**Table 1.2 Gross domestic product by expenditure, 2017-21**

	2017	2018	2019	2020	2021
<b>Percentage of current GDP</b>					
Personal consumption expenditures	68.0	67.8	67.5	67.2	68.5
Goods	21.3	21.2	21.0	22.3	23.8
Durable goods	7.2	7.2	7.1	7.7	8.8
Non-durable goods	14.2	14.1	13.9	14.5	15.0
Services	46.6	46.6	46.6	45.0	44.6
Gross private domestic investment	17.4	17.7	17.9	17.4	17.9
Fixed investment	17.2	17.4	17.6	17.7	18.0
Non-residential	13.3	13.5	13.7	13.4	13.3
Residential	3.9	3.9	3.8	4.3	4.7
Change in private inventories	0.2	0.3	0.3	-0.3	-0.1
Net exports of goods and services	-2.8	-2.9	-2.8	-3.1	-4.0
Exports	12.2	12.3	11.8	10.2	10.8
Goods	7.9	8.1	7.7	6.8	7.6
Services	4.3	4.2	4.1	3.4	3.2
Imports	15.0	15.2	14.6	13.3	14.8
Goods	12.2	12.5	11.8	11.1	12.4
Services	2.8	2.8	2.8	2.2	2.4
Government consumption expenditures and gross investment	17.4	17.4	17.4	18.5	17.6
Federal	6.5	6.5	6.6	7.2	6.8
State and local	11.0	10.9	10.8	11.3	10.8
<b>Real growth rates, %</b>					
GDP	2.3	2.9	2.3	-3.4	5.7
Personal consumption expenditures	2.4	2.9	2.2	-3.8	7.9
Goods	3.9	4.0	3.4	4.6	12.2
Durable goods	6.3	7.0	4.3	7.7	18.1
Non-durable goods	2.7	2.4	2.9	3.1	9.1
Services	1.8	2.4	1.7	-7.5	5.8
Gross private domestic investment	4.0	5.7	3.4	-5.5	9.8
Fixed investment	4.1	4.8	3.2	-2.7	7.8
Non-residential	4.1	6.4	4.3	-5.3	7.4
Residential	4.0	-0.6	-0.9	6.8	9.2
Change in private inventories	-5.9	95.5	14.3	-156.3	-22.9
Net exports of goods and services	5.6	8.1	4.8	4.1	36.2
Exports	4.1	2.8	-0.1	-13.6	4.5
Goods	4.1	4.2	-0.1	-10.2	7.6
Services	4.0	0.2	-0.1	-19.8	-1.5
Imports	4.4	4.1	1.1	-8.9	14.0
Goods	4.5	5.1	0.5	-5.6	14.6
Services	4.3	0.0	3.9	-22.6	11.4
Government consumption expenditures and gross investment	0.5	1.4	2.2	2.5	0.5
Federal	0.4	3.0	3.8	5.0	0.6
State and local	0.6	0.4	1.3	0.9	0.4

Source: WTO Secretariat, based on BEA. Viewed at: <http://www.bea.gov/>.

1.5. Personal consumption expenditures accounted for 68.5% of GDP in 2021 and were the main source of growth, expanding by 7.9% in real terms, after the devastating effect of the pandemic in 2020, which led to a 3.8% real contraction. Growth was particularly strong for durable goods, which expanded by 18%. Consumer spending contributed 5.27 percentage points to GDP growth (5.7%) in 2021, evenly distributed among goods and services (some 2.69 percentage points for goods and 2.58 percentage points for services). Consumption of non-durable goods contributed 1.39 percentage points to growth, while consumption of durable goods contributed 1.31 percentage points to annual GDP growth. Household consumption expenditures (for services including health care and housing and utilities) contributed 2.92 percentage points to GDP growth. The main categories of consumption spending in 2021 were: food services and accommodation (0.88 percentage points), health care (0.79 percentage points), other nondurables (0.48 percentage points), clothing and footwear (0.45 percentage points), recreational goods (0.43 percentage

points), motor vehicles and parts (0.37 percentage points), recreational services (0.33 percentage points), and furnishings and household equipment (0.27 percentage points).<sup>2</sup>

1.6. Gross private domestic investment contributed 1.72 percentage points to growth in 2021; the contribution of fixed investment to growth was 1.37 percentage points, of which the contribution of non-residential fixed investment was 0.97 percentage points. Of that, intellectual property products contributed 0.51 percentage points to growth in 2021. The contribution of residential investment was 0.39 percentage points. The contribution of government consumption and gross investment was slightly positive (0.09 percentage points), and net exports made a negative contribution of 1.40 percentage points to real GDP growth. Non-residential fixed investment grew by 7.4% in 2021, compared with a decline of 5.3% in 2020. The increase in non-residential fixed investment reflected increases in equipment, led by information processing equipment. Growth in overall private fixed investment (residential and non-residential) was 7.7% in 2021, compared with a contraction of 2.7% in 2020; growth in overall investment was 9.8%, compared to -5.5% in 2020.

1.7. The acceleration of growth in 2021 reflected increases in all major subcomponents, led by personal consumption expenditure in both goods and services, non-residential fixed investment, exports, residential fixed investment, and private inventory investment. Imports increased by 14%, after having contracted by 8.9% in 2020. The 4.6% increase in exports, after a 13.6% decline in 2020, reflected an increase in exports of goods, mainly non-automotive capital goods, partly offset by a decrease in exports of services, led by travel. Current-dollar GDP increased by 10% in 2021 to USD 22.99 trillion, in contrast to a 2.2% decrease in 2020. The price index for gross domestic purchases rose 3.9% in 2021, compared with a 1.2% increase in 2020.<sup>3</sup>

1.8. Labor productivity growth averaged 1.5% in 2018 and 2019, and increased to 2.4% in both 2020 and 2021, partly due to an increase in unemployment (2020) and the strong economic recovery (2021). A decline in productivity growth is expected for 2022 and beyond, as the labor market recovers. In 2018, the OECD noted that contributing factors to slowing productivity included the slow pace of non-residential investment, weak rates of business entry and exit, tighter regulations, and the lack of knowledge spillovers across firms.<sup>4</sup> In its 2020 Survey, the OECD suggests that reforms are essential to lift productivity growth and ensure that all benefit from future growth. Productivity has been sluggish for a variety of reasons, and policies are needed to support labor mobility and competition to help workers and businesses avoid scarring effects and fully recover from the crisis.<sup>5</sup>

1.9. The Office of Management and Budget's (OMB) FY2022 Budget forecasts real GDP growth of 3.3% in 2022, 2.2% in 2023, 1.8% in 2024 and 2025, and 1.9% in the following two years, with consumer price index (CPI) increases of around 2.3%-2.5%, and an unemployment rate stabilizing at around 3.8%.<sup>6</sup> These forecasts now seem a bit optimistic with respect to inflation.

1.10. The OECD forecasts real GDP growth of 3.7% in 2022 and 2.4% in 2023, driven by strong private consumption and a recovery of gross fixed capital formation (3.8% and 3.6% growth in 2022 and 2023, respectively). Net exports are expected to make a negative contribution to GDP growth. The GDP deflator is expected to be 3.7% and 2.4% in 2022 and 2023, respectively, while an unemployment rate of 3.8% is expected in 2022, falling to 3.4% in 2023.<sup>7</sup> The IMF, on the other hand, expects real GDP growth of 4% in 2022.<sup>8</sup> The IMF considers that the policy program proposed by the Administration to deal with the effect of the pandemic may be viewed as an opportunity to

<sup>2</sup> Bureau of Economic Analysis (BEA) (2022), "Gross Domestic Product (Third Estimate), Corporate Profits, and GDP by Industry, Fourth Quarter and Year 2021", 30 March. Viewed at: [https://www.bea.gov/sites/default/files/2022-03/gdp4q21\\_3rd.pdf](https://www.bea.gov/sites/default/files/2022-03/gdp4q21_3rd.pdf).

<sup>3</sup> BEA (2022), "Gross Domestic Product (Third Estimate), Corporate Profits, and GDP by Industry, Fourth Quarter and Year 2021", 30 March.

<sup>4</sup> OECD (2018), *OECD Economic Surveys: United States, Overview*, June. Viewed at: <http://www.oecd.org/economy/surveys/Overview-United-States-2018-OECD.pdf>.

<sup>5</sup> OECD (2020), *OECD Economic Surveys: United States, Overview*, July. Viewed at: <https://www.oecd.org/economy/surveys/United-States-Economic-Survey-Overview.pdf>.

<sup>6</sup> OMB (2021), *Mid-Session Review. Budget of the U.S. Government. Fiscal Year 2022*, August. Viewed at: [https://www.whitehouse.gov/wp-content/uploads/2021/08/msr\\_fy22.pdf](https://www.whitehouse.gov/wp-content/uploads/2021/08/msr_fy22.pdf).

<sup>7</sup> OECD (2022), *United States Economic Snapshot: Economic Forecast Summary (December 2021)*. Viewed at: <https://www.oecd.org/economy/united-states-economic-snapshot/>.

<sup>8</sup> IMF (2022), *Country Data: United States*. Viewed at: <https://www.imf.org/en/Countries/USA#countrydata>.

remake the economy with higher productivity, increased labor force participation, and a less polarized distribution of income and wealth.<sup>9</sup>

1.11. The Congressional Budget Office (CBO) forecasts for FY2022 to FY2025 project real GDP growth of 6.1% in FY2022, slowing to 2.0 in FY2023, and to just above 1% in the following two years (Table 1.3). Real potential GDP growth, which increased from 1.9% in FY2020 and 2021 to 2.1% in FY2022, reflects the effect of the economic packages implemented to recover from COVID-19; however, according to CBO estimates, the effect will be temporary and potential growth will return to 1.9% by FY2025.

**Table 1.3 CBO forecasts, FY2022-25**

	Units	2022	2023	2024	2025
<b>Output</b>					
GDP	USD billion	24,323	25,356	26,191	27,077
	% change	8.6	4.2	3.3	3.4
Real GDP	USD billion	20,480	20,899	21,125	21,380
	% change	6.1	2.0	1.1	1.2
<b>Potential GDP</b>					
Real potential GDP	% change	2.1	2.1	2.0	1.9
Noncyclical rate of unemployment	%	4.4	4.4	4.4	4.4
Output gap	% potential GDP	2.1	2.1	1.1	0.5
Potential total factor productivity	% change	1.1	1.1	1.1	1.1
Potential labor productivity	% change	1.9	2.0	1.8	1.7
<b>Prices</b>					
Consumer price index, all urban consumers (CPI-U)	% change	2.7	2.3	2.3	2.4
CPI-U, excluding food and energy	% change	2.6	2.5	2.5	2.5
Nominal exchange rate index (export weighted)	1970Q1=100	186.8	186.4	186.6	186.6
<b>Labor</b>					
Unemployment rate, civilian, 16 years or older	%	4.1	3.7	3.9	4.2
Labor productivity (non-farm business sector)	% change	1.9	0.7	1.5	2.0
<b>Interest rates</b>					
10-year Treasury Note	%	1.9	2.0	2.2	2.5
3-month Treasury Bill	%	0.1	0.1	0.4	0.8
Federal funds rate	%	0.1	0.1	0.5	1.0
<b>Components of GDP (real)</b>					
Personal consumption expenditures	% change	5.1	2.8	1.7	1.4
Gross private domestic investment	% change	10.5	-0.3	-1.2	0.7
Government consumption and gross investment	% change	2.1	0.0	0.2	0.5
Exports	% change	9.9	4.9	1.6	1.2
Imports	% change	5.5	2.3	0.4	0.9

Source: CBO. Viewed at: <https://www.cbo.gov/>.

## 1.2.2 Fiscal policy

1.12. During most of the review period, fiscal policy continued to be expansionary. As was noted in the previous Review, in 2018 fiscal policy turned pro-cyclical, with the enactment of the Tax Cuts and Jobs Act of 2017 (TCJA), the Bipartisan Budget Act of 2018, and the Consolidated Appropriations Act of 2018. The TCJA cut personal and business taxes significantly. On the other hand, discretionary expenditure limits were increased every year with respect to their original goal.<sup>10</sup> The Bipartisan Budget Act of 2018 (P.L. 115-123) increased the defense limit by USD 80 billion (to USD 629 billion) and the non-defense limit by USD 63 billion (to USD 579 billion) in FY2018 and by USD 85 billion (to USD 647 billion) and USD 68 billion (to USD 597 billion), respectively, in FY2019. The Bipartisan Budget Act of 2019 (P.L. 116-37) increased the discretionary defense cap by USD 90 billion (to USD 667 billion) and the non-defense cap by USD 78 billion (to USD 622 billion) in FY2020, and by USD 81 billion (to USD 672 billion) and USD 72 billion (to USD 627 billion), respectively, in FY2021.

<sup>9</sup> IMF (2021), *United States: Staff Report for the 2021 Article IV Consultation*, IMF Country Report No. 21/162. Viewed at: <https://www.imf.org/en/Publications/CR/Issues/2021/07/22/United-States-2021-Article-IV-Consultation-Press-Release-Staff-Report-and-Statement-by-the-462540>.

<sup>10</sup> The Budget Control Act of 2011 (BCA) (P.L. 112-25) established legal limits on the amount of discretionary spending that could be provided each fiscal year. Similar limits on discretionary spending had previously been in effect between FY1991 and FY2002, and the BCA reinstituted limits for FY2012-21. Under the BCA, two separate spending limits have been in effect: one for defense discretionary spending and one for non-defense discretionary spending. The caps were intended to contribute to reducing the fiscal deficit over the FY2012-21 period. The increases in the limits or caps in the different Budget Acts refer to the initial cap fixed in 2011 for that fiscal year. Congressional Research Service (CRS) (2021), *Expiration of the Discretionary Spending Limits: Frequently Asked Questions*, 8 April. Viewed at: [https://crsreports.congress.gov/product/pdf/R/R46752#:~:text=The%20Bipartisan%20Budget%20Act%20of,billion%20\(to%20%24622%20billion\).](https://crsreports.congress.gov/product/pdf/R/R46752#:~:text=The%20Bipartisan%20Budget%20Act%20of,billion%20(to%20%24622%20billion).)



The discretionary expenditure caps expired in FY2021; unless the limits are extended by law, there are no similar statutory limits for FY2022 or beyond.<sup>11</sup>

1.13. The COVID-19 pandemic and the ensuing emergency measures put in place to combat it, including lockdowns, had a strongly negative effect on the U.S. economy and hit certain activities particularly hard. As an initial response to the pandemic, the authorities put in place the Coronavirus Preparedness and Response Supplemental Appropriations Act of 6 March 2020 (P.L. 116-123), which provided USD 8.3 billion in emergency funding for federal agencies to respond to the COVID-19 outbreak.<sup>12</sup> The Act funded programs that addressed issues such as: (i) the development, manufacturing, and procuring of vaccines and other medical supplies; (ii) grants for state, local, and tribal public health agencies and organizations; (iii) loans for affected small businesses; and (iv) humanitarian assistance and support for health systems in the affected countries.

1.14. The Families First Coronavirus Response Act of 18 March 2020 (P.L. 116-127) provided paid sick leave, tax credits, and free COVID-19 testing; expanding food assistance and unemployment benefits; and increased Medicaid funding, all for an estimated USD 192 billion. Division A of the Act, the Second Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020 provided FY2020 supplemental emergency spending appropriations (exempt from discretionary spending limits) for federal agencies to respond to the COVID-19 outbreak and allowed the Department of Agriculture (USDA) to approve state plans to provide emergency support under the Supplemental Nutrition Assistance Program (SNAP). Division D, the Emergency Unemployment Insurance Stabilization and Access Act of 2020, funds emergency grants for FY2020 to administer unemployment programs in states meeting certain requirements. Division G, Tax Credits for Paid Sick and Paid Family and Medical Leave, allows a credit against payroll taxes for 100% of employer-paid qualified sick leave wages. Transfers from the general fund of the Treasury are authorized to cover reductions in revenue resulting from this credit.<sup>13</sup>

1.15. The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (P.L. 116-136), enacted on 27 March 2020, put in place a number of measures and programs to deal with the emergency situation created by the COVID-19 pandemic and counter some of its negative effects in the short term. The CARES Act provided a broad range of emergency funding benefits, totaling some USD 2.3 trillion (some 11% of GDP), including a USD 349 billion Paycheck Protection Program (PPP), administered by the Small Business Administration (SBA) (Box 1.1). Under the PPP, eligible businesses could receive guaranteed loans during a prescribed period that, under certain circumstances, could be forgiven and become grants. Another important feature of the CARES Act was the USD 500 billion authorization for the Department of the Treasury (through the Federal Reserve) to support loans and guarantees and provide other financial support to eligible businesses and non-profits, as well as state and local governments. The Act also provided USD 293 billion as one-time tax rebates to individuals; USD 268 billion to expand unemployment benefits; USD 150 billion in transfers to state and local governments; and USD 100 billion for hospitals. The main provisions are listed in Box 1.1, many of which lapsed at the end of December 2020, but some were prolonged by the American Rescue Plan Act of 2021 (ARP Act) (Box 1.2).

### Box 1.1 The CARES Act

#### Title I—Keeping American Workers Paid and Employed Act

**Paycheck Protection Program:** Provided increased loan amounts for eligible small businesses for payroll obligations, emergency grants to cover immediate operating costs, and loan forgiveness. Provided USD 349 billion for relief from 15 February to 30 June 2020 through changes to the SBA loan programs. Loan amounts are a maximum USD 10 million per eligible borrower, with an interest rate above 4%. The CARES Act permits complete deferment of loan payments for up to one year and eliminates any guaranty requirement.

**Economic Injury Disaster Loans (EIDLs):** The Act expands the SBA's EIDL program for small businesses located in declared disaster areas that have suffered substantial economic injury. EIDL amounts are generally limited to USD 2 million. The CARES Act made available, up to 31 December 2020, grants of up to USD 10,000 per beneficiary to cover immediate operating costs of eligible businesses. These grants do not need to be repaid.

<sup>11</sup> CRS (2021), *Expiration of the Discretionary Spending Limits: Frequently Asked Questions*, 8 April.

<sup>12</sup> Coronavirus Preparedness and Response Supplemental Appropriations Act of 6 March 2020 (P.L. 116-123). Viewed at: <https://www.congress.gov/bill/116th-congress/house-bill/6074>.

<sup>13</sup> Families First Coronavirus Response Act of 18 March 2020 (P.L. 116-127). Viewed at: <https://www.congress.gov/bill/116th-congress/house-bill/6201>.

**Title II—Assistance for American Workers, Families, and Businesses**

Provides relief to individuals and businesses economically impacted by COVID-19 through expanded unemployment benefits and individual cash recovery rebates, and establishes an employee retention credit for employers subject to closure.

**Unemployment benefits:** The Act provides for the payment of USD 600 per week (Federal Pandemic Unemployment Compensation) from the Federal Government in addition to the amount a worker receives from the state.

**Recovery rebates:** The CARES Act provides for individual recovery rebates. Individuals earning less than USD 75,000 in adjusted gross income received a one-time cash payment of USD 1,200 and families received USD 500 per minor child.

**Employee retention credit:** Payroll tax credit for 50% of wages paid for employers whose operations were fully or partially suspended due to COVID-19, or gross receipts declined by more than 50%. The credit was provided from 13 March 2020 through 31 December 2020, and generally was limited to up to USD 10,000 of eligible wages per employee.

**Net operating loss (NOL) deduction:** The Act eliminated the 80% taxable income limitation for NOLs utilized in taxable years beginning in 2018, 2019, or 2020.

**Business interest expense deduction:** The Act increased this deduction's threshold from 30% of adjusted taxable income to 50% for taxable years 2019 and 2020.

**Tax-free student loan repayments:** The Act permits employers to provide up to USD 5,250 per employee in tax-free payment of student loan obligations or other educational assistance benefits.

**Title III—Supporting America's Health Care System in the Fight Against the Coronavirus Coverage and Pricing of Diagnostic Testing for COVID-19**

**Telehealth:** Expands coverage and payment for telehealth services and provides USD 29 million for each of fiscal years FY2021 through 2025 for Health Resources and Services Administration (HRSA) grant programs that promote telehealth technologies.

**Medicare payment provisions:** The Act eases a variety of Medicare requirements during the COVID-19 emergency.

**Medicare sequestration relief:** The Act paused the 2% across-the-board sequestration reduction requirement on Medicare provider and plan payments during the period from 1 May through 31 December 2020 but extended it through FY2030.

**Title IV—Economic Stabilization and Assistance to Severely Distressed Sectors of the United States Economy**

Title IV set aside roughly USD 500 billion to support loans, apart from SBA loans. Loans may not be forgiven, and recipients are subject to a prohibition on stock repurchases and payment of dividends when the loan is outstanding and for one year thereafter; there are also restrictions on executive compensation.

**Airline assistance:** The Act provided USD 25 billion in funds to provide payroll support to passenger airlines and related businesses. The term of the loan may be no longer than five years; eligible airlines were subject to restrictions on stock repurchases, dividends, and pay mentioned above for 12 months and could not reduce employment levels by more than 10%.

**Community bank assistance:** The Act required federal banking agencies by interim final rule to temporarily reduce the Community Bank Leverage Ratio (CBLR) for qualifying community banks to 8%.

**Relief for financial institutions:** Provided USD 454 billion to support loans, loan guarantees, and investments offered through facilities established by the Federal Reserve to provide liquidity to the financial system that supports lending to eligible businesses, states, and municipalities. Authorized the Federal Deposit Insurance Corporation to guarantee obligations of solvent insured depository institutions and depository institution holding companies until 31 December 2020. The Act temporarily authorized (until 31 December 2020) the Comptroller of the Currency to exempt any transaction from its lending limits.

**Title V—Coronavirus Relief Funds**

Title V of the CARES Act appropriated USD 150 billion in FY2020 for states, territories, Indian tribes, and local governments to respond to the COVID-19 emergency. There was also a USD 100 billion to reimburse eligible health care providers for health-care-related expenses or lost revenues attributable to COVID-19.

Source: CARES Act of 27 March 2020 (P.L. 116-136). Viewed at:  
<https://www.congress.gov/116/plaws/publ136/PLAW-116publ136.pdf>.

1.16. Some of the most significant financial provisions of the CARES Act were in Title IV, including Treasury loans to specified industries and investments in Federal Reserve programs, authorized until the end of 2020. According to Congressional Research Service (CRS) information, total assistance pledged under Title IV (almost USD 22 billion in loans to industry and USD 195 billion to Federal Reserve programs, of which only USD 41 billion were actual disbursements) were significantly less than the USD 500 billion authorized, and the Consolidated Appropriations Act of 2021 (P.L. 116-260) rescinded the unobligated funds. The CRS report advances two possible explanations for the lack of uptake: (i) financial conditions, which were unstable early in the pandemic, were normalized shortly after the CARES Act was enacted; and (ii) the terms and conditions of the Federal Reserve's programs were not intended to be as attractive as comparable sources of private credit, including required restrictions on executive compensation and on share buybacks and dividends.<sup>14</sup>

<sup>14</sup> CRS (2021), *CARES Act Title IV Financial Assistance Ends*, 8 January. Viewed at:  
<https://crsreports.congress.gov/product/pdf/IN/IN11567>.

1.17. The USD 483 billion package contained in the Paycheck Protection Program and Health Care Enhancement Act of 24 April 2020 (P.L. 116-139) responded to COVID-19-related needs by providing additional funding for small business loans, health care providers, and COVID-19 testing. The Act provided additional lending authority for the Paycheck Protection Program, under which the SBA may guarantee certain loans to small businesses during the COVID-19 pandemic, and expanded eligibility for Economic Injury Disaster Loans (EIDLs) and advances to include agricultural enterprises. Funds provided under this Act include: (i) USD 321 billion for additional forgivable SBA loans and guarantees to help retain workers; (ii) USD 62.1 billion for the SBA to provide grants and loans to assist small businesses (EIDL loans and grants); (iii) USD 75 billion for hospitals; and (iv) USD 25 billion for expanding testing.<sup>15</sup>

1.18. On 8 August 2020, an Executive Order was issued to address the expiration of certain Coronavirus relief measures provided by previous legislation, including the provision of additional extra unemployment benefits (using USD 44 billion from the Disaster Relief Fund), continuing student loan payment relief, and deferring collections of employee social security payroll taxes.<sup>16</sup>

1.19. Division M, Coronavirus Response and Relief Supplemental Appropriations Act of 2021, and Division N, Additional Coronavirus Response and Relief of the Consolidated Appropriations Act of 2021 (P.L. 116-260), enacted on 27 December 2020, contain further COVID-19 relief measures for an estimated USD 868 billion (about 4.1% of GDP).<sup>17</sup> These measures include: (i) enhanced unemployment benefits of USD 300 weekly through 14 March 2021 (USD 119 billion); (ii) one-time direct stimulus payments of USD 600 to individuals (USD 169 billion); (iii) another round of SBA PPP loans (including providing certain protections from liability for lenders that extended loans under the program) and other support to small businesses (for some USD 302 billion); (iv) resources for vaccines, testing, and tracing (USD 79 billion); (v) funding for K-12 and other education (USD 82 billion); and (vi) other payments (food assistance, transportation, broadband, and banking) (USD 117 billion). The Act extended the period during which businesses must expend loans. Other changes included establishing a grant program to support live venues, performing arts organizations, and related entities in response to the COVID-19 pandemic, and providing additional funding for the EIDL program.

1.20. In March 2021, Congress passed the ARP Act, signed by the President on 11 March 2021, to continue some of the benefits provided for in the CARES Act and grant some new ones. The ARP Act provides some USD 1.9 trillion (8.8% of 2020 GDP) in additional relief to respond to the COVID-19 pandemic, following nearly USD 4 trillion in COVID relief in 2020. The ARP Act, *inter alia*, includes provisions on aid to state and local governments, hard-hit industries and communities, and tax changes; sends direct stimulus payments of USD 1,400 to eligible individuals; extends the unemployment benefit programs; provides direct aid to state and local governments; adds resources to the vaccination program; and increases funding for school reopening. Most notably, the ARP Act provides USD 350 billion for fiscal relief under the Coronavirus State and Local Fiscal Recovery Funds, 57% of which is allocated to states and 35% to local governments; it also provides over USD 165 billion for education (Box 1.2).

<sup>15</sup> Paycheck Protection Program and Health Care Enhancement Act of 24 April 2020 (P.L. 116-139). Viewed at: <https://www.congress.gov/bill/116th-congress/house-bill/266>.

<sup>16</sup> Executive Order 13945 of 8 August 2020, Fighting the Spread of COVID-19 by Providing Assistance to Renters and Homeowner, *Federal Register* (2020), Vol. 85, No. 158, pp. 49935-49937. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-08-14/pdf/2020-18015.pdf>.

<sup>17</sup> House of Representatives, *H.R. 133 Division-By-Division Summary of COVID-19 Relief Provisions*. Viewed at: <https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/Summary%20of%20H.R.%20133%20Coronavirus%20Relief%20Provisions.pdf>; and IMF (2021), *United States: Staff Report for the 2021 Article IV Consultation*, IMF Country Report No. 21/162. Viewed at: <https://www.imf.org/en/Publications/CR/Issues/2021/07/22/United-States-2021-Article-IV-Consultation-Press-Release-Staff-Report-and-Statement-by-the-462540>; and IMF, *Policy Responses to COVID-19: United States*. Viewed at: <https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19#U>.



**Box 1.2 American Rescue Plan Act of 2021: summary****Main provisions of the ARP Act****Agriculture**

- Provides USD 4 billion for the USDA to purchase and distribute food agricultural commodities; provides for grants and loans for small or mid-sized food processors or distributors to improve food and agricultural supply chain resiliency.
- USD 500 million to establish an emergency pilot program to increase vaccine distribution to support rural healthcare facilities.
- Provides for the USDA to make payments of up to 120% of the outstanding debt of each socially disadvantaged farmer or rancher as of 1 January 2021, to pay off loans; and USD 1.01 billion in assistance for socially disadvantaged farmers and ranchers.
- Provides USD 800 million for the Commodity Credit Corporation to acquire and make available commodities.
- Provides USD 2.25 billion for nutrition assistance, and USD 880 million to invest in innovation and improve access to fruits and vegetables under the Special Supplemental Nutrition Program for Women, Infants, and Children.

**Education**

- USD 122 billion for the K-12 General Stabilization Fund; USD 2.6 billion for State Special Education Grants under the Individuals with Disabilities Education Act (IDEA); USD 800 million to help children experiencing homelessness.
- USD 40 billion through the Higher Education Emergency Relief Fund), through 30 September 2023.

**Child care**

- USD 40 billion for childcare agencies and aid to providers affected by the pandemic.

**Water and utility assistance**

- USD 4.5 billion for utility assistance, and USD 500 million for water assistance grants to states to assist low-income households.

**Health care**

- USD 47.8 billion to fund COVID-19 testing, contact tracing, and mitigation activities; USD 7.5 billion for COVID-19 vaccines; USD 6.05 billion for R&D, manufacturing, production, and purchase of vaccines, therapeutics, and ancillary medical products; USD 7.66 billion to maintain and expand the U.S. public health workforce; and some USD 15 billion in other programs.

**Defense Production Act**

- Provides USD 10 billion for medical supplies and equipment.

**Housing and emergency rental assistance**

- USD 27.4 billion provided for rental assistance, through 30 September 2025; USD 5 billion for emergency housing vouchers through 30 September 2030, for households at risk of experiencing homelessness; USD 5 billion for rental assistance.
- The Homeowner Assistance Fund provides USD 9.961 billion in funding to be distributed to states through the Treasury.

**Public transportation**

- USD 30.5 billion for Federal Transit Administration Grants.

**Disaster relief**

- Provides USD 570 million to establish the Emergency Federal Employee Leave Fund, through 30 September 2022; and USD 760 million to the Federal Emergency Management Agency.

**Cybersecurity and technology**

- USD 1.85 billion to mitigate cybersecurity risks, provide IT support to federal agencies, and upgrade their IT systems.

**Paycheck Protection Program (PPP)**

- Expands PPP eligibility, and appropriates an additional USD 7.25 billion for the PPP, which ended on 31 May 2021.

**Economic Injury Disaster Loans (EIDLs)**

- Appropriates USD 15 billion for the SBA to provide EIDLs to small eligible businesses affected by COVID-19.

**Restaurants**

- Appropriates USD 28.6 billion for the SBA to administer a grant program to restaurants through a new Restaurant Revitalization Fund. The maximum grant amount is USD 10 million per eligible entity and any affiliated businesses.

**Air Transportation Payroll Support Program Extension**

- Provides USD 14 billion to extend Payroll Support Program funding for eligible air carriers and contractors, through 30 September 2021; extends the restrictions on stock buybacks, dividends, and capital distributions through 30 September 2022, and restrictions on executive compensation to 1 April 2023.

**Relief for airports**

- USD 8 billion for airports.

**Broadband**

- USD 7.2 billion to create an Emergency Connectivity Fund to reimburse schools and libraries for Internet access; USD 10 billion for states, territories, and tribal governments for education and health monitoring projects, including remote options.

**Unemployment**

- Extends enhanced unemployment insurance until 6 September 2021; extends benefits to 53 weeks, from 24 weeks.

**Tax**

- Provides an additional USD 1,400 per qualifying individual in direct stimulus payments. Temporary enhancement of the value of the Child Tax Credit to USD 3,000 for children older than six and to USD 3,600 for children younger than six. Temporarily increases the value of the Earned Income Tax Credit, from USD 1,050 per child or dependent to USD 4,000.

**State and local assistance**

- USD 350 billion for fiscal relief under the Coronavirus State and Local Fiscal Recovery Funds, of which 57% is allocated to states and 35% to local governments. Funds are administered by the Treasury; the deadline to spend funds is 31 December 2024.

**State Small Business Credit Initiative**

- USD 10 billion for the fund, administered by the Department of the Treasury.

**Tribal, Indian and Native American Provisions**

- Provides USD 20 billion for tribal governments; funds can be used until 31 December 2024; USD 6.094 billion to the Indian Health Service; USD 900 million to the Bureau of Indian Affairs; USD 750 million until 30 September 2025, for tribal housing.

Source: ARP Act of 2021 (P.L. 117-2), 11 March 2021.

1.21. The Infrastructure Investment and Jobs Act (P.L. 117-58), enacted on 15 November 2021, contains appropriations for USD 1.2 trillion, of which some USD 550 billion is new spending. The new spending includes USD 100 billion for roads and bridges; USD 66 billion for railroads; USD 65 billion for the power grid; USD 65 billion for broadband in rural areas and in low-income communities; USD 55 billion for water infrastructure; over USD 50 billion for cybersecurity and climate change (to protect infrastructure from cybersecurity attacks and address flooding, wildfires, and droughts and other extreme weather events); USD 39 billion for public transit; USD 25 billion for airports (upgrades and expansions); USD 21 billion for the environment; USD 17 billion for ports; USD 11 billion for safety (highway, pedestrian, pipeline, and other safety areas); USD 8 billion for western water infrastructure (water treatment, storage, and reuse facilities); USD 7.5 billion for electric vehicle charging stations; and USD 7.5 billion for electric school buses.<sup>18</sup>

1.22. Despite economic growth and the resulting increase in current receipts, the federal government deficit rose from 2.8% of GDP in calendar year 2017 to 5.4% of GDP in 2019. The economic rescue packages put in place between March 2020 and March 2021 to counter the effects of COVID-19 amounted overall to some USD 5.8 billion, or 28% of GDP, and consequently led to a substantial increase of the deficit to 14.9% of GDP for FY2020 and 15.4% for calendar year 2020, and 13.9% of GDP in FY2021 and 13.0% for calendar year 2021 (Tables 1.4 and 1.5). Current expenditures increased by some 43% in 2020, while receipts declined. The increase of expenditure was more moderate in 2021 (3.3%), but expenditure levels were almost 50% higher than in 2019. Reflecting the higher deficits, public debt as a share of GDP continued to rise, to 100%, and is expected to exceed 110% of GDP in FY2022 (Table 1.4). The overall government deficit (including sub-federal entities) reached an estimated 15.3% of GDP in 2020 and 13.0% in 2021.<sup>19</sup>

**Table 1.4 Federal government revenue and expenditure, 2017-21**

(USD billion)

	2017	2018	2019	2020	2021
<b>Current receipts</b>	<b>3,525</b>	<b>3,569</b>	<b>3,714</b>	<b>3,685</b>	<b>4,233</b>
Current tax receipts	2,016	2,015	2,128	2,058	2,464
Personal current taxes	1,614	1,617	1,709	1,680	1,987
Taxes on production and imports	132	164	175	158	174
Excise taxes	92	109	96	88	86
Customs duties	39	53	78	69	87
Other	1	1	1	1	1
Taxes on corporate income	245	209	217	193	272
Taxes from the rest of the world	25	26	27	27	30
Contributions for government social insurance	1,284	1,345	1,406	1,445	1,575
From persons	1,279	1,340	1,401	1,440	1,569
From the rest of the world <sup>a</sup>	5	5	5	5	6
Income receipts on assets	140	123	110	120	138
Interest receipts	30	36	38	24	21
Dividends	104	79	64	91	112
Federal Reserve banks	81	65	55	91	111
Other	23	14	9	0	0
Rents and royalties <sup>b</sup>	6	8	8	6	6
Current transfer receipts	85	86	73	63	58
From business	48	49	38	39	34
From persons	27	28	27	21	21
From the rest of the world	10	10	7	3	3
Current surplus of government enterprises	1	-1	-3	-1	-1
<b>Current expenditures</b>	<b>4,246</b>	<b>4,497</b>	<b>4,761</b>	<b>6,795</b>	<b>7,021</b>
Consumption expenditures	983	1,039	1,097	1,161	1,205
Current transfer payments	2,727	2,853	3,008	4,338	4,812
Government social benefits	2,121	2,219	2,348	3,406	3,659
To persons	2,099	2,196	2,324	3,373	3,629

<sup>18</sup> Infrastructure Investment and Jobs Act of 15 November 2021 (P.L. 117-58). Viewed at: <https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf>.

<sup>19</sup> BEA, *National Income and Product Accounts*. Viewed at: <https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=3&isuri=1&1921=survey&1903=86>.

	2017	2018	2019	2020	2021
To the rest of the world	22	23	24	33	31
Other current transfer payments	607	634	660	932	1,152
Grants-in-aid to state and local governments	561	583	609	881	1,094
To the rest of the world	46	52	50	51	59
Interest payments	477	542	584	534	515
To persons and business	360	404	438	412	385
To the rest of the world	117	137	145	122	130
Subsidies	59	63	72	761	490
Net federal government saving	-721	-928	-1,048	-3,110	-2,789
Social insurance funds	-330	-358	-410	-977	-685
Other	-390	-570	-638	-2,133	-2,103
Addenda:					
<b>Total receipts</b>	<b>3,798</b>	<b>3,592</b>	<b>3,730</b>	<b>3,704</b>	<b>4,255</b>
Current receipts	3,525	3,569	3,714	3,685	4,233
Capital transfer receipts	273	23	16	19	23
<b>Total expenditures</b>	<b>4,339</b>	<b>4,593</b>	<b>4,877</b>	<b>6,920</b>	<b>7,197</b>
Current expenditures	4,246	4,497	4,761	6,795	7,021
Gross government investment	280	300	318	340	360
Capital transfer payments	91	82	94	92	145
Net purchases of non-produced assets	-2	-1	-3	-3	-9
Less: Consumption of fixed capital	276	285	293	304	320
<b>Net lending or net borrowing (-)</b>	<b>-541</b>	<b>-1,002</b>	<b>-1,147</b>	<b>-3,217</b>	<b>-2,942</b>
<b>Net lending or borrowing (-) (% of current GDP)</b>	<b>-2.8</b>	<b>-4.9</b>	<b>-5.4</b>	<b>-15.4</b>	<b>-13.0</b>
Public debt (USD billion)	14,665	15,750	16,801	21,017	22,287
<b>Public debt (% of current GDP)</b>	<b>76.2</b>	<b>77.6</b>	<b>79.4</b>	<b>100.3</b>	<b>99.7</b>

- a Consists primarily of contributions by residents of the U.S. territories and the Commonwealths of Puerto Rico and Northern Mariana Islands.
- b Rents and royalties are receipts from the leasing of federally owned lands and mineral deposits. These values do not include bonus payments made to secure such leases.

Source: WTO Secretariat, based on BEA. Viewed at: <http://www.bea.gov/>; Department of the Treasury; and Office of Management and Budget.

1.23. As a result of the implementation of the above-mentioned Acts, the CBO projects budget deficits to continue at high, albeit decreasing, levels after FY2021, reaching 4.7% of GDP in FY2022 and 3.1% in FY2023. Deficits are expected to continue to decline to 2.9% of GDP in 2024, but, in the medium term, even as spending provided in response to the pandemic wanes and the economy continues to improve, deficits are expected to rise again, reaching 5.5% of GDP by 2031. The projected annual average budget deficit over the FY2022-26 period is 3.6% of GDP, and 4.2% over the FY2022-31 period. As a result of rising deficits, the CBO estimates that public debt will hover around 100% of GDP during the FY2022-26 period.<sup>20</sup> The OMB projects a deficit of 7.8% of GDP in FY2022, and subsequent deficits above 5% of GDP for the FY2023-26 period (Table 1.5).

**Table 1.5 OMB budget totals and estimates, FY2020-26**

(USD billion and % of GDP)

	2020	2021	2022	2023	2024	2025	2026
<b>Budget totals in USD billion</b>							
Receipts	3,421	3,581	4,174	4,641	4,828	5,038	5,332
Outlays	6,550	7,249	6,011	6,013	6,187	6,508	6,746
Deficit	3,129	3,669	1,837	1,372	1,359	1,470	1,414
Debt held by the public	21,017	24,167	26,265	27,683	29,062	30,539	31,958
Debt held by the public net of financial assets	18,024	21,684	23,520	24,892	26,250	27,720	29,134
Gross domestic product (GDP)	21,000	22,030	23,500	24,563	25,537	26,516	27,533
<b>Budget totals as a % of GDP</b>							
Receipts	16.3	16.3	17.8	18.9	18.9	19.0	19.4
Outlays	31.2	32.9	25.6	24.5	24.2	24.5	24.5
Deficit	14.9	16.7	7.8	5.6	5.3	5.5	5.1
Debt held by the public	100.1	109.7	111.8	112.7	113.8	115.2	116.1
Debt held by the public net of financial assets	85.8	98.4	100.1	101.3	102.8	104.5	105.8

<sup>20</sup> CBO (2021), *Additional Information About the Updated Budget and Economic Outlook: 2021 to 2031*, July. Viewed at: <https://www.cbo.gov/system/files/2021-07/57263-outlook.pdf>.

	2020	2021	2022	2023	2024	2025	2026
<b>Memorandum, real net interest</b>							
Real net interest (USD billion)	134	-53	-139	-189	-186	-136	-86
Real net interest as a % of GDP	0.6	-0.2	-0.6	-0.8	-0.7	-0.5	-0.3

Note: The estimated deficit for 2021 is based on partial year actual data, generally through March.

Source: OMB, *Budget of the U.S. Government. Fiscal Year 2022*. Viewed at:

[https://www.whitehouse.gov/wp-content/uploads/2021/05/budget\\_fy22.pdf](https://www.whitehouse.gov/wp-content/uploads/2021/05/budget_fy22.pdf).

A recent study by the CBO shows that the cumulative effect on the deficit of the major programs adopted to counter the effects of the COVID-19 pandemic was USD 2,637 billion, while the cumulative effect on GDP was 58.2% of that figure, USD 1,535 billion.<sup>21</sup>

1.24. The proposed Build Back Better Act (H.R. 5376), passed by the House of Representatives on 18 November 2021 but not enacted by the Senate, put together an economic package of about USD 2.2 trillion to increase spending on education, childcare, and the climate; provide tax cuts for low and middle-income families; create jobs; reduce health care premiums; deliver health care coverage to uninsured people; expand Medicare; and invest in housing. The proposed Act is intended to reduce the deficit by increasing some taxes and closing tax loopholes.<sup>22</sup> It included provisions to impose a 15% minimum tax on the profits of large corporations (based on the agreement with 136 countries), that is, those with over USD 1 billion in profits, and a 1% surcharge on corporate stock buybacks. It also contained provisions to create a new surtax of 5% for income above USD 10 million, and an additional 3% surtax on income above USD 25 million.<sup>23</sup>

1.25. In its 2021 Article IV Consultations Report, the IMF notes that investing in power, transportation, telecommunications, and water will help remove bottlenecks and increase productivity; it is of the view, however, that spending to support domestic manufacturing, invest in advanced semiconductors, and incentivize the onshoring of supply chains could be recast as investments to encourage innovation or improve productivity. Reorienting spending in this way would do more to relieve supply constraints, and reduce the risks posed by a sustained upswing in inflation.<sup>24</sup> In the authorities' view, the plans set in the Infrastructure Investment and Jobs Act and the proposed Build Back Better Act are transformational investments to rebuild the U.S. economy. The policies would also help reverse the pandemic's impact on labor force participation. The cost of the additional federal spending is expected to be partially offset by raising taxes on corporations and high-income households and closing loopholes that allow high-income individuals to recharacterize labor income and escape tax on capital gains.

### 1.2.3 Monetary policy

1.26. The Federal Reserve is responsible for monetary policy in the United States. Legislation specifies that, in conducting monetary policy, the Federal Reserve System and the Federal Open Market Committee (FOMC) should seek "to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates".<sup>25</sup> The Federal Reserve adjusts the key tools of monetary policy – open market operations, the discount rate, and interest on reserves – to influence demand and supply conditions in the federal funds market, and keep the federal funds rate within the target range established by the FOMC and to influence longer-term interest rates. The FOMC specifies a longer-run average goal for inflation, rather than an annual target defined over a

<sup>21</sup> Of which USD 628 billion (USD 226 billion cumulative effect on GDP) corresponded to the Paycheck Protection Program and related provisions; USD 442 billion (USD 297 billion) to the Enhanced Unemployment Compensation scheme; USD 297 billion (USD 175 billion) to Recovery Rebates for Individuals; USD 150 billion (USD 132 billion) to Direct Assistance for State and Local Governments; USD 700 billion (USD 548 billion) to Other Spending Provisions; and USD 425 billion (USD 157 billion) to Other Revenue Provisions. CBO (2022), *The Effects of Recent Legislation on the Economy and the Budget*, 7 January. Presentation at the American Economic Association Annual Meeting. Viewed at: <https://www.cbo.gov/system/files/2022-01/57698-AEA.pdf>.

<sup>22</sup> The Act contains total investments of USD 1.75 trillion on, *inter alia*, child care and preschool (USD 400 million); home care (USD 150 million); child tax and earned income tax credits (USD 200 million); clean energy and climate investments (USD 555 million). Offsets total USD 1,995 billion. The White House (2021), "President Biden Announces the Build Back Better Framework", 28 October. Viewed at: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/28/president-biden-announces-the-build-back-better-framework/>.

<sup>23</sup> Congressional Record – House, Build Back Better Act (H.R. 5376), 18 November 2021, p. H6375. Viewed at: <https://www.congress.gov/117/crec/2021/11/18/167/201/CREC-2021-11-18-pt1-PgH6375-4.pdf>.

<sup>24</sup> IMF Country Report No. 21/162.

<sup>25</sup> Federal Reserve Act, Section 2A. Viewed at: <https://www.federalreserve.gov/aboutthefed/section2a.htm>.

shorter horizon. In 2020, 2021, and 2022, the FOMC reaffirmed its judgment that inflation at the rate of 2%, as measured by the annual change in the price index for personal consumption expenditures, is most consistent over the longer term with the Federal Reserve's statutory mandate. The FOMC judges that longer-term inflation expectations that are well anchored at 2% foster price stability and moderate long-term interest rates and enhance the FOMC's ability to promote maximum employment in the face of significant economic disturbances. To anchor longer-term inflation expectations at this level, the FOMC seeks to achieve inflation that averages 2% over time (as measured as the variation of the Personal Consumption Expenditures (PCE) Price Index).<sup>26</sup>

1.27. The Federal Reserve continued to conduct a monetary policy with an expansionary bias during the period under review. In August 2020, the Federal Reserve announced changes to its policy framework. The announcement that the FOMC would seek to achieve inflation that averages 2% over time implied a move to a more flexible average inflation targeting framework. Following periods when inflation was running persistently below target, as was the case in the years immediately preceding the announcement, the Federal Reserve may allow inflation moderately above that level for some time. The IMF notes that, as a result of these changes, policy is intended to be more accommodative for a longer period after a negative shock as a means to get the economy back to full employment more quickly and ensure the federal funds rate is further away from its effective lower bound.<sup>27</sup>

1.28. The Federal Reserve also undertook a number of other actions and committed to using its full range of policy tools to support the U.S. economy, promoting its maximum-employment and price-stability goals. The Federal Reserve continued to expand its holdings of Treasury securities by USD 80 billion per month and its holdings of agency mortgage-backed securities (MBS) by USD 40 billion per month, to help foster accommodative financial conditions and smooth market functioning thereby supporting the flow of credit to households and businesses.<sup>28</sup> The Federal Reserve also rolled over at auction all principal payments from its holdings of Treasury securities and principal payments received from agency MBS, and agency debts were reinvested into agency MBS. Reflecting its accommodative policy, the size of the Federal Reserve's balance sheet grew from USD 4.24 trillion in March 2020, at the beginning of the pandemic, to USD 8.88 trillion in February 2022.<sup>29</sup> In addition, the Federal Reserve expanded overnight and term repos, lowered the cost of discount window lending and the cost of swap lines with major central banks, extended the maturity of foreign exchange operations, and broadened U.S. dollar swap lines with other central banks.

1.29. Also in response to the crisis, the Federal Reserve introduced facilities to support the flow of credit, in some cases backed by the Treasury using funds appropriated under the CARES Act (Section 4.4.1). The Federal Reserve and the other two federal banking supervisors encouraged depository institutions to use their capital and liquidity buffers to lend and relaxed some accounting rules so that COVID-19-related loan modifications would not be classified as troubled debt restructurings. This was implemented together with other regulatory reporting relief and relaxation of accounting standards to allow credit institutions more room to maneuver. Furthermore, holdings of U.S. Treasury securities and deposits at the Federal Reserve Banks were temporarily excluded from the calculation of the supplementary leverage ratio for holding companies. The Community Bank Leverage Ratio was temporarily lowered to 8%.

<sup>26</sup> Federal Reserve Board (2022), *Statement on Longer-Run Goals and Monetary Policy Strategy*, Adopted Effective 24 January 2012; as Reaffirmed Effective 25 January 2022. Viewed at: [https://www.federalreserve.gov/monetarypolicy/files/FOMC\\_LongerRunGoals.pdf](https://www.federalreserve.gov/monetarypolicy/files/FOMC_LongerRunGoals.pdf).

<sup>27</sup> In its assessment, the IMF notes that the benefits of the new framework were that: (i) it would "provide more accommodation over a longer horizon in response to a negative shock"; (ii) it allowed the Federal Reserve "to not react pre-emptively based on policymakers' forecasts of inflation and, instead, to place more weight on inflation expectations and realized inflation in its policy calculus"; (iii) it adopted an "outcomes-based forward guidance around the future path of policy rates"; and (iv) "the more accommodative framework should help repair some of the damage to the income distribution" caused by the pandemic. IMF Country Report No. 21/162, p. 15.

<sup>28</sup> Federal Reserve, *Monetary Policy Report – February 2021*, Part 2. Viewed at: <https://www.federalreserve.gov/monetarypolicy/2021-02-mpr-part2.htm>.

<sup>29</sup> Federal Reserve, *Recent Balance Sheet Trends*, February 2022. Viewed at: [https://www.federalreserve.gov/monetarypolicy/bst\\_recenttrends.htm](https://www.federalreserve.gov/monetarypolicy/bst_recenttrends.htm).



**Table 1.6 Main monetary and price indicators, 2017-21**

	2017	2018	2019	2020	2021
<b>Prices (annual average, all urban consumers, seasonally adjusted, % change)</b>					
CPI, total	2.1	2.4	1.8	1.2	4.7
All less food and energy	1.8	2.1	2.2	1.7	3.6
Energy	8.0	7.4	-2.1	-8.4	20.8
Food	0.9	1.4	1.9	3.4	3.9
Medical care services	2.4	2.2	3.5	4.9	1.9
Shelter	3.3	3.3	3.4	2.5	2.7
Gasoline	13.1	13.4	-3.6	-16.0	35.5
Personal Consumption Expenditures (PCE) Price Index	1.9	1.8	1.7	1.3	5.8
<b>Monetary indicators</b>					
Monetary base (not seasonally adjusted, % of GDP) <sup>a</sup>	19.6	17.7	15.4	22.1	26.3
Monetary base (not seasonally adjusted, annual % change) <sup>a</sup>	1.3	-4.4	-9.3	39.8	31.1
Monetary base; currency in circulation (not seasonally adjusted, % of GDP) <sup>b</sup>	8.0	8.1	8.2	9.3	9.4
Monetary base; currency in circulation (not seasonally adjusted, annual % change) <sup>b</sup>	6.7	6.8	5.0	11.7	11.2
M1 (seasonally adjusted, % of GDP) <sup>c</sup>	18.1	17.9	18.0	61.2	84.3
M1 (seasonally adjusted, annual % change) <sup>c</sup>	8.5	4.4	4.5	232.8	51.5
M2 (seasonally adjusted, % of GDP) <sup>d</sup>	69.8	68.8	69.4	84.6	89.4
M2 (seasonally adjusted, annual % change) <sup>d</sup>	5.7	3.9	5.1	19.1	16.3
Currency (seasonally adjusted, % of GDP)	7.6	7.7	7.8	8.9	9.0
Currency (seasonally adjusted, annual % change)	6.9	7.0	5.2	11.3	11.7
<b>Interest rates (%)</b>					
Federal funds rate, effective	1.00	1.83	2.16	0.38	0.08
30-Day AA Financial Commercial Paper interest rate	1.04	1.93	2.16	0.46	0.08
90-Day AA Financial Commercial Paper interest rate	1.15	2.19	2.21	0.53	0.11
Market yield on U.S. Treasury securities at 1 year	1.20	2.33	2.05	0.38	0.10
Market yield on U.S. Treasury securities at 5 years	1.91	2.75	1.96	0.54	0.86
Market yield on U.S. Treasury securities at 10 years	2.33	2.91	2.14	0.89	1.44
Treasury long-term average (over 10 years)	0.78	0.97	0.73	-0.15	-0.31
<b>Exchange rate</b>					
Nominal effective exchange rate (annual % growth)	-0.2	-1.0	3.2	1.7	-4.0
Real effective exchange rate (based on CPI, annual % growth)	-0.3	-0.9	2.9	1.4	-2.1

a Monetary base equals currency in circulation plus reserve balances.

b Currency in circulation consists of Federal Reserve notes and coin outside the U.S. Treasury and Federal Reserve Banks.

c M1 consists of (i) currency outside the U.S. Treasury, Federal Reserve Banks, and the vaults of depository institutions; (ii) demand deposits at commercial banks less cash items in the process of collection and Federal Reserve float; and (iii) other liquid deposits, consisting of other checkable deposits and savings deposits (including money market deposit accounts).

d M2 consists of M1 plus (i) time deposits in amounts of less than USD 100,000 less individual retirement account (IRA) and Keogh balances at depository institutions; and (ii) balances in retail money market funds (MMFs) less IRA and Keogh balances in MMFs.

Source: WTO Secretariat, based on BLS. Viewed at: <http://www.bls.gov/>; Board of Governors of the Federal Reserve System, *Money Stock Measures*. Viewed at: <https://www.federalreserve.gov/releases/h6/current/default.htm>; and IMF eLibrary Data, International Financial Statistics. Viewed at: <https://data.imf.org/?sk=388DFA60-1D26-4ADE-B505-A05A558D9A42&slid=1479329132316>.

1.30. After slightly exceeding the longer-run 2% goal at times in 2017 and 2018, 12-month PCE inflation remained below 2% throughout 2019 and 2020. The recessionary effect of the pandemic resulted in the CPI rising just 1.2% and PCE price inflation of 1.3% in 2020, allowing the Federal Reserve space for a more accommodative policy. In 2021, the CPI rose rapidly, by 4.7%, reflecting in part a 20.8% increase in energy prices, but also supply shortages linked to the pandemic increased demand, while the PCE Price Index rose by 5.8% (Table 1.6).

1.31. Price inflation accelerated in the second half of 2021 and in early 2022, encompassing price increases in areas other than energy. The CPI increased 1.2% at a monthly rate in March 2022; over the 12 months ending March 2022, CPI inflation was 8.5%. Increases in prices of food, electricity, and shelter were the largest contributors to higher inflation. Core inflation (CPI excluding food and energy) rose 6.5% in the 12 months ending March 2022, the largest 12-month change since the period ending August 1982; over the same 12-month period, the energy index rose 32.0%, and the food index increased 8.8%.<sup>30</sup>

<sup>30</sup> Bureau of Labor Statistics (BLS), Economic News Release, *Consumer Price Index Summary – January 2022*. Viewed at: <https://www.bls.gov/news.release/cpi.nr0.htm>.

### 1.2.4 Balance of payments

1.32. The U.S. current account deficit continued increasing during the period under review, rising from USD 438.2 billion in 2018 (2.1% of GDP) to USD 616.1 billion (2.9% of GDP) in 2020 and USD 821.6 billion (3.6% of GDP) in 2021, as the gap between gross national savings and gross investment continued widening (Table 1.7). The increase in the deficit in 2020 and 2021 also reflects the disruption in trade flows due to the pandemic.

**Table 1.7 Current and capital accounts, 2017-21**

(USD billion, seasonally adjusted)

	2017	2018	2019	2020	2021
<b>Current account</b>					
Exports of goods and services and income receipts (credits)	3,548.3	3,793.6	3,812.5	3,258.6	3,793.7
Exports of goods and services	2,390.8	2,538.6	2,528.4	2,134.4	2,533.0
Goods	1,557.0	1,676.9	1,652.1	1,428.8	1,761.7
General merchandise	1,535.2	1,654.6	1,632.2	1,403.8	1,729.3
Net exports of goods under merchandising	0.2	0.3	0.5	1.0	1.0
Non-monetary gold	21.5	21.9	19.4	24.0	31.4
Services	833.8	861.7	876.3	705.6	771.2
Primary income receipts	997.0	1,106.4	1,124.9	957.9	1,090.8
Investment income	990.7	1,099.5	1,117.8	951.4	1,084.1
Direct investment income	561.3	585.3	569.1	495.7	613.9
Income on equity	534.7	559.4	545.0	477.5	598.9
Interest	26.6	25.8	24.1	18.3	15.0
U.S. parents' receipts	18.3	16.9	14.4	10.3	8.2
U.S. affiliates' receipts	8.3	9.0	9.7	7.9	6.8
Portfolio investment income	355.3	412.5	424.4	383.3	412.7
Income on equity and investment fund shares	236.3	273.5	286.7	255.8	273.3
Interest on debt securities	119.0	139.0	137.7	127.4	139.5
Other investment income	73.7	101.1	123.4	72.1	57.5
Interest	61.9	91.3	112.0	59.4	45.2
Income attributable to insurance policyholders	11.8	9.8	11.4	12.8	12.3
Reserve asset income	0.4	0.6	0.9	0.3	-0.1
Compensation of employees	6.3	6.9	7.2	6.5	6.7
Secondary income (current transfer) receipts	160.5	148.6	159.2	166.3	170.0
General government transfer receipts	34.8	37.3	35.8	30.9	34.3
Private transfer receipts	125.7	111.3	123.4	135.4	135.7
Imports of goods and services and income payments (debits)	3,910.1	4,231.9	4,284.6	3,874.7	4,615.4
Imports of goods and services	2,903.5	3,119.6	3,104.7	2,811.1	3,394.3
Goods	2,356.3	2,555.7	2,513.6	2,350.8	2,853.1
General merchandise	2,343.7	2,544.5	2,501.6	2,289.2	2,827.3
Non-monetary gold	12.7	11.2	12.0	61.7	25.7
Services	547.2	563.9	591.1	460.3	541.2
Primary income payments	737.5	847.3	893.0	769.4	915.9
Investment income	720.5	830.1	874.1	755.0	900.0
Direct investment income	209.5	235.3	232.9	179.2	304.3
Income on equity	160.5	185.0	183.3	137.9	267.4
Interest	49.0	50.3	49.5	41.3	36.9
U.S. affiliates' payments	40.6	40.4	39.2	35.4	31.8
U.S. parents' payments	8.4	9.9	10.3	5.9	5.2
Portfolio investment income	445.9	488.2	506.8	489.2	525.7
Income on equity and investment fund shares	144.6	159.3	167.8	173.0	187.7
Interest on debt securities	301.3	328.9	339.0	316.1	338.0
Other investment income	65.2	106.5	134.5	86.6	70.0
Interest	62.3	103.7	131.5	83.1	66.6
Income attributable to insurance policyholders	2.9	2.8	3.0	3.5	3.4
Compensation of employees	17.0	17.2	18.9	14.4	15.9
Secondary income (current transfer) payments	269.0	265.0	286.9	294.2	305.1
General government transfer payments	45.3	48.7	48.5	50.8	57.1
Private transfer payments	223.8	216.3	238.4	243.4	248.0
<b>Capital account</b>					
Capital transfer receipts and other credits	19.2	3.3	0.1	0.4	3.9
Capital transfer payments and other debits	6.8	7.5	6.5	5.9	6.3
<b>Financial account</b>					
Net U.S. acquisition of financial assets excluding financial derivatives	1,190.6	383.8	317.0	809.3	1,213.3
Direct investment assets	409.4	-130.0	122.2	311.7	501.3
Equity	392.5	-218.6	156.7	330.9	460.5
Debt instruments	16.9	88.6	-34.5	-19.2	40.8
Portfolio investment assets	569.4	335.3	-13.5	220.0	604.1
Equity and investment fund shares	139.9	171.3	-163.4	241.8	153.9
Debt securities	429.4	164.0	149.9	-21.8	450.3
Other investment assets	213.5	173.6	203.6	268.6	-6.1
Other equity	1.5	1.3	1.4	1.8	1.2
Currency and deposits	170.9	106.1	132.4	92.9	-75.3

	2017	2018	2019	2020	2021
Loans	35.7	64.9	68.7	182.2	66.1
Trade credit and advances	5.4	1.2	1.2	-8.3	1.9
Reserve assets	-1.7	5.0	4.7	9.0	114.0
Special drawing rights	0.1	0.2	0.2	0.1	113.7
Reserve position in the International Monetary Fund	-1.8	4.8	4.3	8.8	0.5
Other reserve assets	0.0	0.0	0.2	0.1	-0.2
Net U.S. incurrence of liabilities excluding financial derivatives	1,559.2	711.8	755.7	1,456.5	1,858.8
Direct investment liabilities	380.8	214.3	302.2	211.3	449.6
Equity	392.5	-218.6	156.7	330.9	460.5
Debt instruments	16.9	88.6	-34.5	-19.2	40.8
Portfolio investment liabilities	790.8	303.1	177.2	710.2	583.2
Equity and investment fund shares	139.9	171.3	-163.4	241.8	153.9
Debt securities	429.4	164.0	149.9	-21.8	450.3
Short term	191.7	14.3	135.6	-53.8	43.7
Long term	237.8	149.7	14.3	32.0	406.6
Other investment liabilities	387.6	194.4	276.4	535.1	825.9
Other equity	1.5	1.3	1.4	1.8	1.2
Currency and deposits	170.9	106.1	132.4	92.9	-75.3
Loans	35.7	64.9	68.7	182.2	66.1
Trade credit and advances	5.4	1.2	1.2	-8.3	1.9
Financial derivatives other than reserves, net transactions	24.0	-20.4	-41.7	-5.8	-41.7
Statistical discrepancy	4.7	94.1	-1.8	-31.4	137.0
<b>Balances</b>					
Balance on current account	-361.7	-438.2	-472.1	-616.1	-821.6
Balance on goods and services	-512.7	-581.0	-576.3	-676.7	-861.4
Balance on goods	-799.3	-878.7	-861.5	-922.0	-1,091.4
Balance on services	286.6	297.8	285.2	245.3	230.0
Balance on primary income	259.5	259.1	231.9	188.5	174.9
Balance on secondary income	-108.5	-116.4	-127.7	-127.9	-135.2
Balance on capital account	12.4	-4.3	-6.4	-5.5	-2.4
Net lending (+) or net borrowing (-) from current- and capital-account transactions	-349.3	-442.5	-478.6	-621.6	-824.1
Net lending (+) or net borrowing (-) from financial-account transactions	-344.6	-348.4	-480.4	-653.0	-687.1

Source: WTO Secretariat, based on BEA. Viewed at: <http://www.bea.gov/>.

1.33. Exports of goods and services and income receipts declined from USD 3.79 trillion in 2018 to USD 3.26 trillion in 2020, reflecting the contraction caused by the pandemic. They increased in 2021, to USD 3.79 trillion, recovering to pre-pandemic levels. Imports of goods and services and income payments also declined, but less so, from USD 4.23 trillion in 2018 to USD 3.87 trillion in 2020, and increased to USD 4.28 trillion in 2021. The balance on goods and services deteriorated from USD 581 billion (3.0% of GDP) in 2018 to USD 676.7 billion (3.1% of GDP) in 2020, and USD 861.4 billion (3.7% of GDP) in 2021. The trade deficit in goods rose from USD 878.7 billion in 2018 to USD 922 billion in 2020, and USD 1.09 trillion in 2021, and its ratio to GDP rose from 4.3% in 2018 to 4.4% in 2020 and 4.7% in 2021. The surplus in services trade contracted, from USD 297.8 billion (1.5% of GDP) in 2018 to USD 245.3 billion (1.1% of GDP) in 2020 and USD 230 billion (1.0% of GDP) in 2021. The surplus in primary income also shrank, from USD 259.1 billion (1.3% of GDP) in 2018 to USD 188.5 billion (0.9% of GDP) in 2020, and USD 174.9 billion (0.8% of GDP) in 2021.

1.34. The U.S. net international investment position, the difference between U.S. residents' foreign financial assets and liabilities, stood in 2021Q3 at a deficit of USD 16.1 trillion (70.0% of GDP), a deterioration from the USD 14.0 trillion (67.0% of GDP) recorded at end-2020. The value of U.S.-owned foreign assets was USD 34.5 trillion (some 150% of GDP), while the value of foreign-owned U.S. assets stood at USD 50.5 trillion (some 220% of GDP).<sup>31</sup>

### 1.3 Developments in Trade and Investment

#### 1.3.1 Trends and patterns in merchandise and services trade

##### 1.3.1.1 Merchandise trade

1.35. U.S. imports and exports of goods declined during the initial part of the review period, but exports declined more significantly by 14.1%, while imports declined by about half that level, by

<sup>31</sup> BEA (2021), *U.S. International Investment Position, Third Quarter 2021*. Viewed at: <https://www.bea.gov/sites/default/files/2021-12/intinv321.pdf>.



7.9%. Thereafter, in 2021, both imports and exports recovered significantly, reaching their highest level during the period. The merchandise trade deficit, at USD 946 million in 2018, increased to USD 1.18 trillion in 2021, its highest level during the period due to a larger surge in imports.<sup>32</sup>

1.36. The initial decline in trade is primarily attributable to supply and demand factors associated with the COVID-19 pandemic.<sup>33</sup> Nominal U.S. merchandise exports declined to USD 1.43 trillion in 2020, the lowest level since 2010 but then reached USD 1.75 trillion in 2021, the highest level on record, reflecting the recovery. The decline in U.S. imports in the initial part of the period was mainly due to a significantly lower value of energy imports, notably crude petroleum, which fell by 47% between 2018 and 2020, and in transportation equipment, which declined by 17%, mainly due to lower imports of passenger cars and parts. In 2021, most product categories recovered, in particular mineral products, although machinery and equipment and vehicles recovered to a lesser degree than other categories. Both imports and exports remained quite diversified in terms of products, with the top 15 imports (HS 6-digit) accounting for 25% of total imports, and the top 15 exports (HS 6-digit) accounting for 26% of total exports.

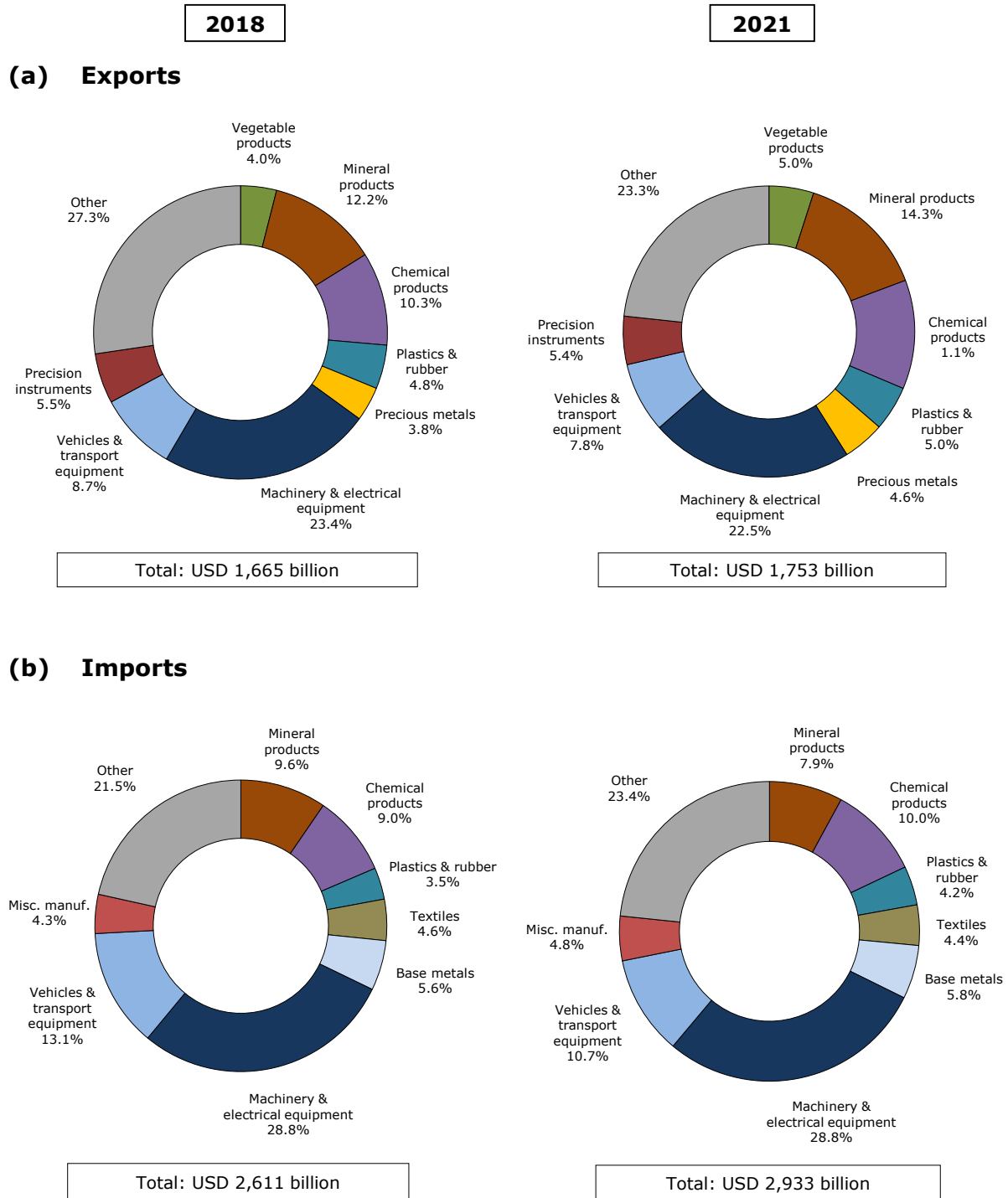
1.37. Machinery and equipment remained the leading category of products exported, followed by mineral products, and chemicals (Chart 1.1 and Table A1.1). There was a slight increase in exports of chemical and pharmaceutical products during the period. This growth was driven both by continuing responses to the pandemic and by increasing demand from worldwide economies recovering from pandemic closures. The single largest export (HS 6-digit) remained civil aircraft and parts, but the value exported declined, from USD 130.8 billion in 2018 to USD 71.6 billion in 2020, and thereafter slightly increased to USD 79.5 billion in 2021.<sup>34</sup> Machinery and equipment (28.8% of the total) and vehicles and transport equipment remained the two leading categories, followed by chemicals (Chart 1.1 and Table A1.2). There was a slight decline in the share of imports of vehicles and transport equipment, from 13.1% to 10.7% of total imports, and a slight increase of the share of chemicals, from 9% to 10% of total imports. This increase was across all sub-sectors including pharmaceuticals, while the decrease for vehicles was mainly in passenger vehicles.

1.38. There have not been any major changes in terms of the destination of exports. Canada, the European Union, and Mexico remain the three largest export markets for U.S. goods; together they accounted for 49% of 2021 exports. Exports remain relatively concentrated in these major markets. Exports to China increased, from 7.2% to 8.6% of total exports during 2018-21 (Chart 1.2 and Table A1.3). In 2020, U.S. exports to all major markets declined, with the exception of China, where exports increased by about 17% from 2019 levels, on account of increases in agricultural products, particularly soybeans, which more than tripled from 2018 levels. In 2021, there were no major shifts with respect to export destinations, except that exports to Canada and the European Union accounted for a slightly lower percentage compared to the previous year.

<sup>32</sup> There is a discrepancy with balance of payments data, as the methodological standard for the compilation of BOP statistics is the IMF's 6<sup>th</sup> edition of the Balance of Payments and International Investment Position Manual (BPM6), while international trade in goods statistics (ITGS) focus on the cross-border trade in goods.

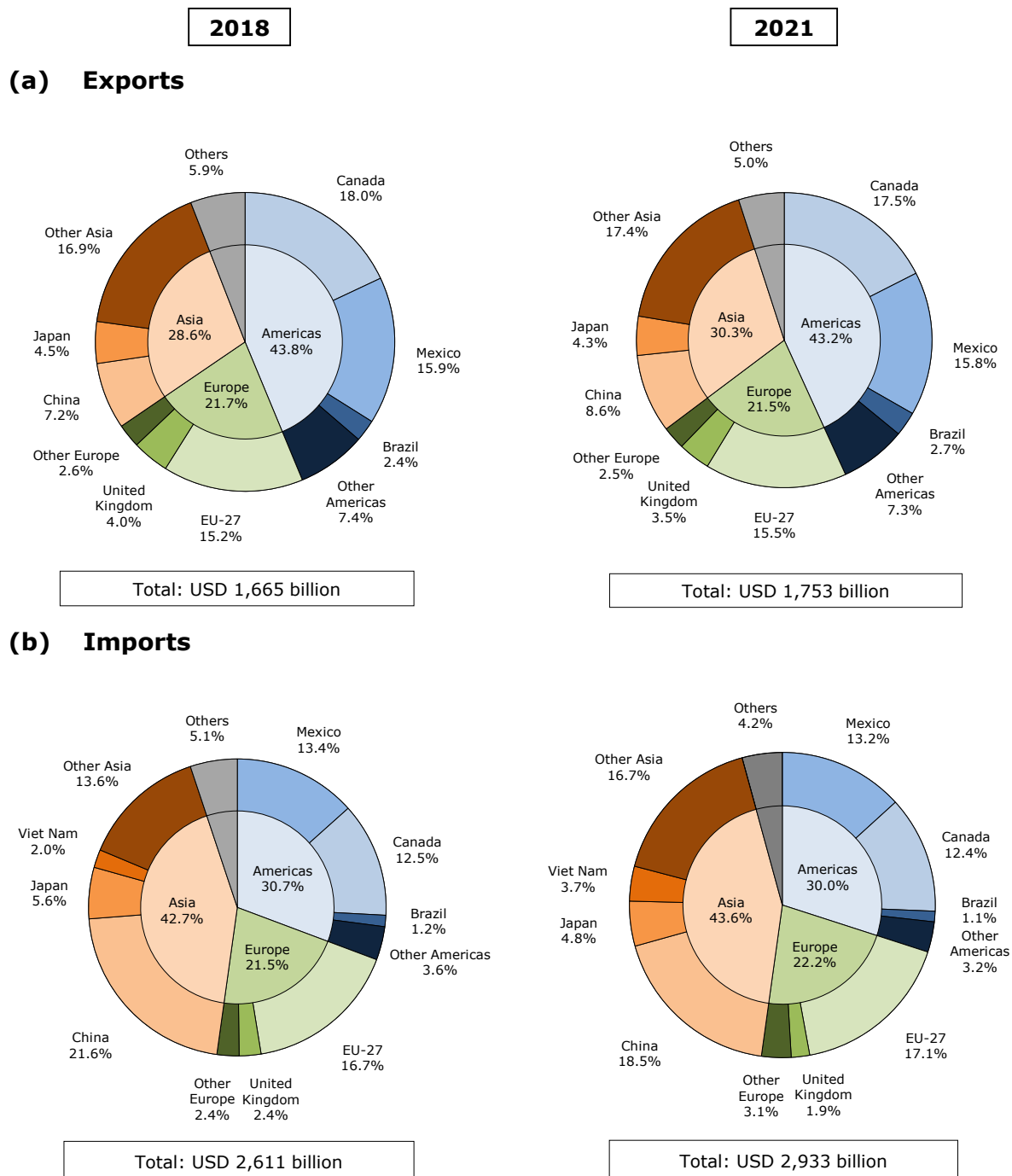
<sup>33</sup> United States International Trade Commission (USITC) (2021), *Shifts in U.S. Merchandise Trade*, 2020, Publication No. 5239, November. Viewed at: [https://www.usitc.gov/research\\_and\\_analysis/tradeshifts/2020/index.html](https://www.usitc.gov/research_and_analysis/tradeshifts/2020/index.html).

<sup>34</sup> USITC (2021), *The Year in Trade 2020*, Publication No. 5228, September. Viewed at: <https://www.usitc.gov/publications/332/pub5228.pdf>; and BEA, Table 2.1: U.S. International Trade in Goods. Viewed at: <https://apps.bea.gov/iTable/iTable.cfm?ReqID=62&step=1#reqid=62&step=9&isuri=1&6210=4>.

**Chart 1.1 Merchandise trade by main HS section, 2018 and 2021**

Source: WTO Secretariat calculations, based on UN Comtrade database.

1.39. China, the European Union, and Mexico were the main sources of U.S. imports during the period 2018-21 (Chart 1.2). Even with a decline in imports over the period and a fall in its percentage share, China remained the United States' largest single source of imports in 2021. The European Union accounted for a slightly higher share of imports in 2021 compared to 2018 (Chart 1.2 and Table A1.4). There were some significant increases in imports from mid-sized Asian economies, most notably Viet Nam, the Republic of Korea, and Chinese Taipei, particularly for electronics, semiconductors, and telecommunication products.

**Chart 1.2 Merchandise trade by main origin and destination, 2018 and 2021**

Source: WTO Secretariat calculations, based on UN Comtrade database.

### 1.3.1.2 Services trade

1.40. Despite significant declines in imports and exports of services (cross-border services trade, i.e. GATS modes 1, 2, and 4) during the period 2018-21, there was a slight recovery in 2021 and the United States upheld its leadership position as the single largest trader in services.<sup>35</sup> The United States maintained its positive trade balance in cross-border services trade, although it declined to USD 230 billion, its lowest level since 2012 (Table A1.5). Imports and exports of travel

<sup>35</sup> WTO (2021), *World Trade Statistical Review 2021*. Viewed at: [https://www.wto.org/english/res\\_e/statis\\_e/wts2021\\_e/wts21\\_toc\\_e.htm](https://www.wto.org/english/res_e/statis_e/wts2021_e/wts21_toc_e.htm).

and transportation services were particularly impacted due to the COVID-19 pandemic, and only slightly improved in 2021. The 2021 recovery in services exports was led by other business services, financial services, and charges for the use of intellectual property.<sup>36</sup>

1.41. In recent years, U.S. exports of services have been dominated by travel, business, and financial services, as well as charges for the use of intellectual property. These categories continued to be dominant during the period under review, except for travel services, which declined by 64% from 2018 to 2020 due to restrictions on non-essential travel of foreign citizens into the United States in response to the COVID-19 pandemic. On the other hand, there was a slight increase in exports of financial services, mainly financial management services, and other business services, especially professional and management consulting services (Table A1.5).

1.42. Imports of services were particularly negatively affected by the decline in travel and transport services due to the COVID-19 pandemic, which were the first- and third-ranked import categories in 2018. However, in 2020 other business services was the predominant services import category, followed by transport and insurance services (Table A1.5). Growth in business services was due to an increase in legal, accounting, business management consulting, and public relations services.

1.43. The main destinations of U.S. cross-border services exports in 2020 were the European Union (24.5%), followed by the United Kingdom (8.9%), and Canada (7.6%); the main sources of imports were the European Union (24.2%), the United Kingdom (11.4%), and Japan (6.7%).<sup>37</sup> U.S. services trade contains a significant amount of foreign affiliate sales, i.e. GATS mode 3. There remains a large and consistent trade surplus in mode 3 trade since U.S. foreign affiliate sales exceed the purchases of domestic affiliates of foreign firms. In 2019 (the latest year available), U.S. foreign affiliate sales were USD 1.77 trillion, while domestic affiliate purchases were USD 1.23 trillion, resulting in sales of U.S.-owned foreign affiliates exceeding purchases from foreign-owned affiliates in the United States by USD 534 billion. Most of the U.S. foreign affiliate trade is in distribution and electronic services, with the United Kingdom being the major source and destination.<sup>38</sup>

### 1.3.2 Trends and patterns in FDI

1.44. The United States remained the top destination of foreign direct investment in 2020 despite the global downturn in foreign investment and the significant decline in FDI inflows. In 2020, inflows were USD 151 billion, the lowest value in the past four years. The decline since 2019 has been mainly attributable to a decline in reinvested earnings by foreign affiliates associated with the economic downturn.<sup>39</sup> U.S. direct investment abroad sustained a significant drop in 2018 due to a decline in reinvested earnings attributable to the Tax Cuts and Jobs Act of 2017 (TCJA). The TCJA lowered or eliminated taxes on dividends or foreign earnings of U.S. companies' repatriated earnings. This led to a record repatriation of USD 853 billion in 2018. This level stabilized at USD 281 billion in 2020. Preliminary estimates for 2021 indicate a slight upturn, as corporate profits recover.

1.45. U.S. FDI inflows accounted for 15% of total world inflows in 2020, a decline from 22% in 2016. In terms of outflows, the United States ranked fifth in the world in 2020, with USD 93 billion, essentially unchanged from 2019 (USD 94 billion). U.S. investment inflows and outflows were both concentrated in the manufacturing sector, followed by financial services, although U.S. investment positions abroad often take the form of holding companies.

1.46. In terms of global FDI stock, the United States accounted for 26% of global inward stock and 21% of global outward stock in 2020. There were no significant changes during the review period in the ranking of major FDI partners. FDI remained concentrated. The European Union remained the top source and destination for U.S. FDI, with 45% of the total inward stock and 41% of the total outward stock in 2020 (Chart 1.3).<sup>40</sup> The other major partners for inward FDI were Japan (14%),

<sup>36</sup> BEA (2022), "U.S. International Transactions, Fourth Quarter and Year 2021". Viewed at: <https://www.bea.gov/news/2022/us-international-transactions-fourth-quarter-and-year-2021>.

<sup>37</sup> BEA, Table 2.3: U.S. Trade in Services, by Country or Affiliation and by Type of Service. Viewed at: <https://apps.bea.gov/iTable/iTable.cfm?reqid=62&step=9&isuri=1&6210=4>.

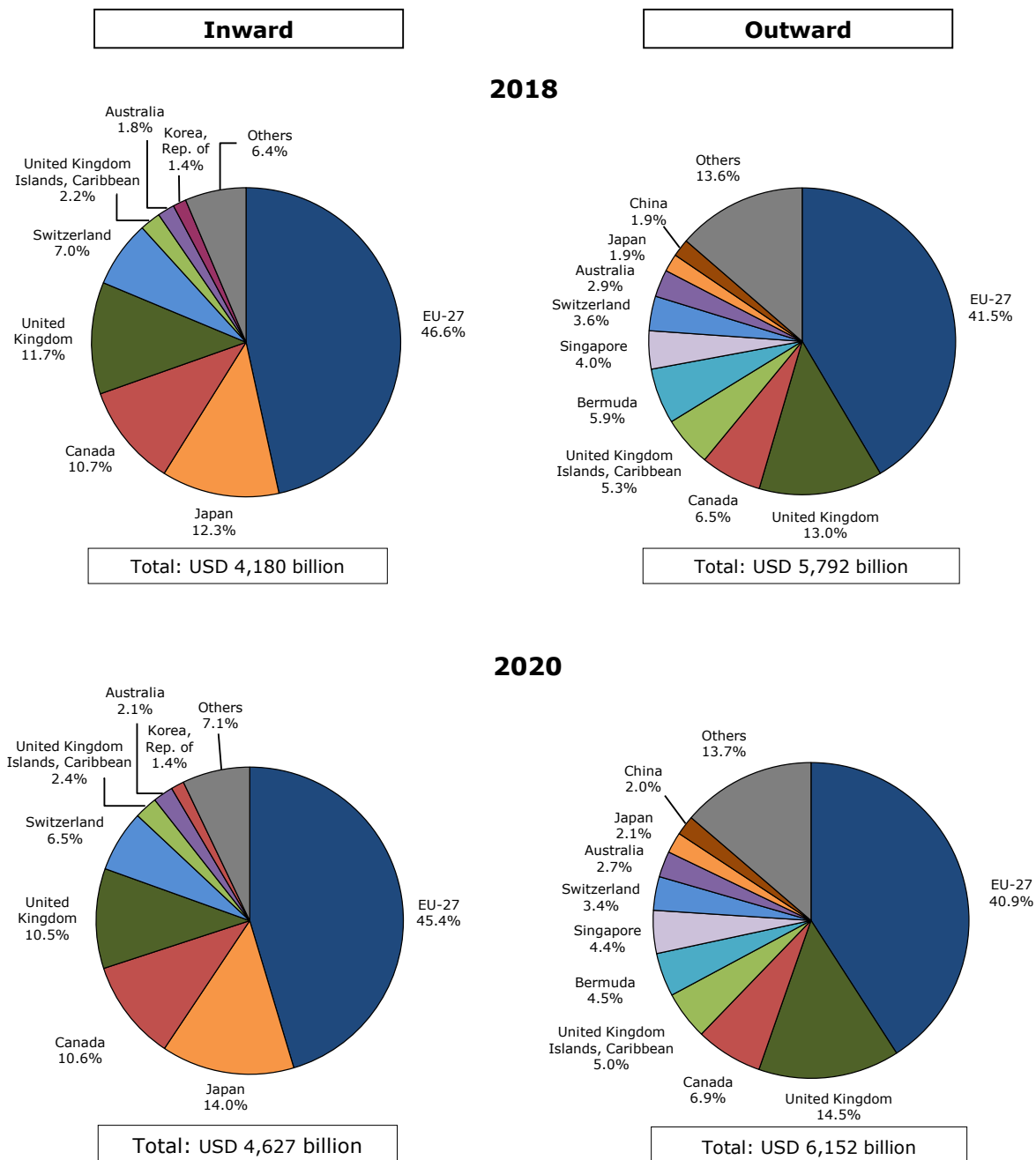
<sup>38</sup> USITC (2021), *Recent Trends in U.S. Services Trade: 2021 Annual Report*, Publication No. 5192, April. Viewed at: <https://www.usitc.gov/publications/332/pub5192.pdf>.

<sup>39</sup> UNCTAD (2021), *World Investment Report 2021*. Viewed at: [https://unctad.org/system/files/official-document/wir2021\\_en.pdf](https://unctad.org/system/files/official-document/wir2021_en.pdf).

<sup>40</sup> Within the European Union, FDI flows were most significant with the Netherlands, Luxembourg, Germany, and Ireland. BEA (2021), *Direct Investment by Country and Industry for 2020*, Vol. 101, No. 8.

Canada (10.6%), and the United Kingdom (10.5%). In terms of outward stock, the United Kingdom (14.5%) was the most important partner after the European Union, followed by Canada (6.9%).

**Chart 1.3 Direct investment position on a historical-cost basis, by selected partner, 2018 and 2020**



Source: WTO Secretariat, based on BEA. Viewed at: <http://www.bea.gov>.

## 2 TRADE AND INVESTMENT REGIMES

### 2.1 General Framework

2.1. The United States' institutional framework governing trade and trade policy did not change during the review period. The U.S. Constitution, as the highest law of the United States, sets out the powers, and in particular the balance of powers, between the three branches of government – the executive (President), legislative (Congress), and the judicial. Article I, Section 8 of the Constitution gives the U.S. Congress the authority to regulate international trade, in particular "to lay and collect taxes, duties, imposts and excises ... [and] to regulate commerce with foreign nations, and among the several states". Within Congress, the House Ways and Means Committee in the House of Representatives and the Senate Finance Committee in the Senate have the main jurisdictional responsibilities for trade matters.

2.2. The U.S. executive branch, as headed by the President, is empowered by the Constitution to enter the United States into treaties, conditioned upon the approval of a two-thirds vote in the Senate, and is also given the power to approve or veto laws. However, in terms of trade policy, the executive mainly operates through delegated authority from Congress. Since the passage of the Reciprocal Trade Agreements Act in 1934, the U.S. Congress has been able to formally delegate authority to the President to negotiate international trade agreements, a power that has been used rather consistently for the past 85 years except during lapses of the legislation. Within the executive, the United States Trade Representative (the USTR) has key responsibilities for trade matters by statute. Since its establishment in 1962, the USTR is the President's principal advisor on trade policy, chief U.S. trade negotiator, and head of the interagency trade policy coordinating process. The USTR heads the Office of the United States Trade Representative (USTR). In addition to USTR, a number of other federal agencies have certain roles in respect of trade policy.

2.3. In most cases traders can seek judicial review of trade matters related to customs, importation, exportation, and trade remedies in U.S. federal courts. Certain laws or statutes may prevent recourse to U.S. courts, such as the case of matters involving the WTO and free trade agreements (FTAs). The U.S. Court of International Trade (USCIT) is the U.S. federal court with jurisdiction over a number of trade matters, in particular issues related to customs.<sup>1</sup> USCIT has geographical jurisdiction throughout the United States. Decisions of the USCIT may be appealed to the U.S. Court of Appeals for the Federal Circuit and, if necessary, to the U.S. Supreme Court.

### 2.2 Trade Policy Formulation and Objectives

#### 2.2.1 Trade policy formulation

2.4. The U.S. Administration, through USTR, plays a key role in trade policy formation with input and coordination from other executive agencies and public stakeholders while Congress maintains legislative powers and oversight authority, and may provide advice to the Administration on trade through its Congressional Oversight Group. The USTR has primary responsibility for developing U.S. trade policy, and for coordinating its implementation. As part of its functions and responsibility, USTR outlines key annual trade policy objectives in the Trade Policy Agenda along with an Annual Report of the President's Trade Agreements Program, which it submits to Congress. USTR oversees and chairs the Trade Policy Committee (TPC), which advises USTR as it develops and coordinates U.S. Government positions on international trade and trade-related investment issues at the Cabinet level. Its subsidiary bodies, the Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC) coordinate at the Deputy Secretary/Under Secretary and senior civil service levels, respectively.

2.5. U.S. trade policy formulation also benefits from contributions from the private sector and civil society through various advisory bodies, and also from outreach of the TPSC through public hearings and requests for input through the *Federal Register*. USTR, through its Office of Intergovernmental Affairs and Public Engagement, has the main oversight and coordination of 26 advisory bodies. These bodies function pursuant to the Trade Act of 1974 and are organized on sectoral or policy themes, e.g. agriculture, industry, environment, labor, and Africa.<sup>2</sup> In 2020, USTR held 11 public hearings

<sup>1</sup> USCIT, *About the Court*. Viewed at: <https://www.cit.uscourts.gov/about-court#JURISDICTION%20OF%20THE%20COURT>.

<sup>2</sup> USTR, *Advisory Committees*. Viewed at: <https://ustr.gov/about-us/advisory-committees>.



and issued 115 *Federal Register* notices seeking public comment or input.<sup>3</sup> Regarding investment policy, the U.S. Investment Advisory Council advises the Secretary of Commerce on the development and implementation of strategies and programs to attract foreign direct investment.

2.6. The President has the authority to negotiate international agreements, including FTAs, but the Constitution gives Congress sole authority to lay tariffs and regulate foreign commerce. In this respect, when intending to conduct trade negotiations, Congress has traditionally granted the Executive negotiating authority through trade legislation known as trade promotion authority (TPA) or "fast track", as it allows a simple yes or no vote in Congress without deliberation or amendment of the contents.<sup>4</sup> TPA is a time-limited authority that Congress uses to establish trade negotiating objectives, notification, and consultation requirements, and procedures to consider implementing legislation for certain reciprocal trade agreements provided that they meet certain statutory requirements. This authority has been provided several times to coincide with major multilateral negotiations of the GATT and the WTO, and more recently for bilateral/plurilateral FTAs. TPA has also been described as a compact between Congress and the Administration, whereby there is close discussion and dialogue by the Administration and a set outline or parameters for the negotiations, which are set by Congress. However, despite the rationale behind TPA for an expedited and unedited version of an agreement passing through Congress, there have been recent cases where Congress has intervened, in particular in the recent USMCA, whereby negotiations were necessary between the Administration and Congress to amend certain provisions on labor, environment, intellectual property rights (IPRs), and enforcement.<sup>5</sup> Also, under TPA there are two separate options for Congress to deny expedited consideration of an implementing bill for inadequate consultation or progress towards achieving negotiating objectives.<sup>6</sup>

2.7. The latest TPA legislation to have been approved was the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (P.L. 114-26) (Trade Priorities Act), which remained in force until it expired in July 2021. It was enacted with a view to negotiate the Trans-Pacific Partnership (TPP)<sup>7</sup> and an FTA with the European Union and set out 21 specific negotiating objectives on a variety of subjects.<sup>8</sup> As at December 2021, the Administration had not asked Congress to renew TPA.

## 2.2.2 Trade policy objectives and direction

2.8. U.S. trade policy is currently undergoing a shift, and 2021 was a year of transition as the Administration pursues its Build Back Better agenda (Section 2.2.2.1).<sup>9</sup> In the first outline of its trade policy agenda in March 2021, the Administration highlighted the following nine main themes: (i) tackling the COVID-19 pandemic and restoring the economy; (ii) putting workers at the center of trade policy; (iii) putting the world on a sustainable environment and climate path; (iv) advancing racial equity and supporting underserved communities; (v) addressing China's economic trade practices through a comprehensive strategy; (vi) partnering with friends and allies; (vii) standing

<sup>3</sup> USTR (2021), *2021 Trade Policy Agenda and 2020 Annual Report of the President of the United States on the Trade Agreements Program*, March. Viewed at:

<https://ustr.gov/sites/default/files/files/reports/2021/2021%20Trade%20Agenda/Online%20PDF%202021%20Trade%20Policy%20Agenda%20and%202020%20Annual%20Report.pdf>.

<sup>4</sup> However, Congress determines the scope, outline, objectives, and parameters of the authority.

<sup>5</sup> The FTAs with Panama, Peru, Colombia, and the Republic of Korea also required amendments after disagreement between the Executive branch and Congress.

<sup>6</sup> Congressional Research Service (CRS), *Trade Promotion Authority (TPA)*. Updated 14 December 2020. Viewed at: <https://crsreports.congress.gov/product/pdf/IF/IF10038>.

<sup>7</sup> The United States withdrew from the TPP in January 2017.

<sup>8</sup> Trade Priorities Act. Viewed at: <https://www.congress.gov/114/plaws/publ26/PLAW-114publ26.pdf>.

<sup>9</sup> Among trade policy measures of the previous Administration that still remained in place one year after the new Administration took over, are: (i) additional tariffs on a group of goods originating in China; (ii) the impasse in the WTO DSB regarding appointment of Appellate Body judges; and (iii) Section 232 measures on aluminum and steel (although renegotiated with the European Union). Trade issues raised by Congress such as "Censorship as a Non-tariff Barrier" also remain relevant and fact-finding investigations continue on this subject. Letter dated 7 April 2021 from the Chair of the Senate Finance Committee to USITC on investigation and survey pursuant to Section 332(g) of the Tariff Act of 1930 regarding foreign censorship and its impact on trade and investment. Viewed at: [https://usitc.gov/research\\_and\\_analysis/censorship\\_revised\\_request\\_letter\\_stamped\\_edis\\_739288-1625985.pdf](https://usitc.gov/research_and_analysis/censorship_revised_request_letter_stamped_edis_739288-1625985.pdf).

up for U.S. farmers, ranchers, food manufacturers, and fishers; (viii) promoting equitable economic growth around the world; and (ix) making the rules count.<sup>10</sup>

2.9. In 2021, the Administration launched its American Rescue Plan, which was signed into law in March, with the American Rescue Plan Act of 2021 (P.L. 117-2). While the impetus of the American Rescue Plan was a massive stimulus package focused on the pandemic, it also addressed supply chain resilience, provided funding for COVID-19 vaccines, and more broadly tackled medical supply chain issues. The Administration continued to address the issue of critical supply chains through its 100-day assessment for four critical products in particular: semiconductor manufacturing and advanced packaging, large-capacity batteries, critical minerals and materials, and pharmaceuticals and active pharmaceutical ingredients.<sup>11</sup> As part of this assessment, recommendations were made on strengthening international trade rules through trade enforcement mechanisms, i.e. establishment of a trade strike force, and pursuing a Section 232 investigation on neodymium magnets, and also working with allies to decrease vulnerabilities in global supply chains. Thereafter, in response, USTR established the interagency Supply Chain Trade Task Force<sup>12</sup>, a Section 232 investigation on neodymium was launched, and discussions were held with trading partners on addressing supply chain vulnerabilities. Modifications to Buy American provisions were introduced by the Build America, Buy America Act, Subtitle A – Build America, Buy America of Title IX of Division G of the Infrastructure Investment and Jobs Act of 15 November 2021 (P.L. 117-58) (Section 3.3.6).

2.10. The United States has been involved and engaged in the negotiations taking place in the WTO, or under its auspices in a plurilateral form, i.e. fisheries subsidies, agriculture, e-commerce, and domestic regulation. In her opening speech for the 12<sup>th</sup> Ministerial Conference (MC12), the USTR stressed the United States' commitment to the WTO. Noting that the WTO rules had contributed to maintaining the flow of global trade and fostered transparency on measures taken by countries to respond to the (COVID-19) crisis, she encouraged Members to be clear-eyed about the challenges we face today and rise to meet this moment. She urged the WTO Members with the capabilities to commit at MC12 to exempt their donations to the World Food Program from any export restrictions. She encouraged Members to engage in conversations about the role of the WTO in development, the risks of widening inequality, fundamental worker rights and employment, and the role of trade to be part of the solution in addressing climate change, and to send a clear message to the world that a reform effort that is open and inclusive, that repositions the WTO to deliver on its foundational goals, and enables the organization to adapt to changing global realities, would be undertaken.<sup>13</sup>

2.11. U.S. trade policy towards China has been an important feature in recent years, not only due to their direct bilateral relationship but also because the situation between the world's two largest traders has an important impact or often spill-over effect on third countries. In 2018, following the inaugural meeting of the U.S.-China Comprehensive Economic Dialogue (CED), the U.S. Administration indicated that it would pursue a new approach to the United States' engagement with China. One manifestation of this new approach was USTR's investigation of acts, policies, and practices of China relating to technology transfer, intellectual property (IP), and innovation under Section 301 of the Trade Act of 1974, which led to the United States' imposition of tariffs on Chinese imports beginning in June 2018.<sup>14</sup> The United States and China subsequently entered into an economic and trade agreement in January 2020 that became known as the Phase One Economic and Trade Agreement (Phase One Agreement). In October 2021, USTR outlined its new approach to or strategic vision for the U.S.-China trade relationship. The main elements include discussing with

<sup>10</sup> USTR (2021), *2021 Trade Policy Agenda and 2020 Annual Report of the President of the United States on the Trade Agreements Program*, March.

<sup>11</sup> The White House (2021), *Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth*, June. Viewed at: <https://www.whitehouse.gov/wp-content/uploads/2021/06/100-day-supply-chain-review-report.pdf>.

<sup>12</sup> The White House (2021), *Fact Sheet: Biden-Harris Administration Announces Supply Chain Disruptions Task Force to Address Short-Term Supply Chain Discontinuities*, June 2021. Viewed 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/>.

<sup>13</sup> USTR (2022), *Remarks by Ambassador Katherine Tai During the Opening Session of the WTO 12th Ministerial Conference*, June. Viewed at: <https://ustr.gov/about-us/policy-offices/press-office/speeches-and-remarks/2022/june/remarks-ambassador-katherine-tai-during-opening-session-wto-12th-ministerial-conferenc>.

<sup>14</sup> USTR (2021), *2020 Report to Congress on China's WTO Compliance*, January. Viewed at: <https://ustr.gov/sites/default/files/files/reports/2020/2020USTRReportCongressChinaWTOCompliance.pdf>.



China its performance under the Phase One Agreement, beginning a targeted tariff exclusion process, raising state-centered and non-market trade practice policy concerns, using the full range of tools to address those concerns, and continuing to work with allies to define new and fair trade rules for the 21<sup>st</sup> century.<sup>15</sup>

2.12. As part of its trade policy towards Africa, the United States is beginning to consider the future of the African Growth and Opportunity Act (AGOA), which is slated to expire in 2025. The U.S. Government has numerous ongoing trade capacity-building initiatives and has stated that it is looking to deepen its trade and economic relationship through the Prosper Africa initiative, which was launched in 2019 and renewed by the current Administration. The Administration has also stated that it is seeking to use trade policy tools with African partners to promote investment, equitable and inclusive development, and sustainable trade. In addition, it is working to support the negotiation and implementation of the African Continental Free Trade Area.

### 2.2.2.1 New directions

2.13. The current Administration placed equity and inclusivity among its core policy priorities, and this is also expected to influence future U.S. trade and investment policy. A number of Presidential directives and initiatives regarding a "whole-of-government" effort to advance racial and gender equity, equality, and justice led to many concrete measures already being taken and others outlined in the President's FY2022 Budget. To inform the development of inclusive, worker-centered trade and trade policy, USTR requested that the USITC investigate the potential distributional effects of goods and services trade and trade policy on U.S. workers by skill, wage and salary level, gender, race/ethnicity, age, and income level, especially as they affect underrepresented and underserved communities. In the October 2021 letter requesting this two-part USITC investigation, USTR noted the Administration's equity initiatives and Congressional requests for U.S. trade policy to have a positive and equitable impact on underserved and marginalized communities.<sup>16</sup>

2.14. In January 2021, the Administration launched its initiative on Buy American policies with an Executive Order outlining a government-wide proposal to use government procurement as one method to strengthen American manufacturing. It provides for a number of measures including review of agency actions inconsistent with administration policy, updating the Made in America waiver process, and promoting transparency in federal procurement. Thereafter, in April 2021, the Made in America Office was established under the Office of Management and Budget to provide centralized, strategic, and holistic management of domestic sourcing activities across Federal procurement. Following on these initiatives, a new proposed Rule was announced in July 2021 that would make the most significant changes to the Buy American Act in many years. One of the key proposed changes would raise the domestic content threshold from 55% to 60% immediately, and then gradually increase it to 75% (Section 3.3.6). Procurement covered under the WTO Agreement on Government Procurement (GPA) continues to be waived from these requirements.

2.15. The United States and the European Union announced their intention to negotiate the world's first carbon-based sectoral arrangement on steel and aluminum trade by October 2023. As a first step, the two parties reached an interim agreement on aluminum and steel tariffs, and agreed to further cooperation on non-market excess capacity, trade enforcement, and customs issues).<sup>17</sup>

## 2.3 Trade Agreements and Arrangements

### 2.3.1 WTO

2.16. As an original WTO Member and largest single trading country<sup>18</sup>, the United States has always played a key role in the operation of the WTO and participates in all of its major functions,

<sup>15</sup> USTR (2021), *Remarks as Prepared for Delivery of Ambassador Katherine Tai Outlining the Biden-Harris Administration's "New Approach to the U.S.-China Trade Relationship*, October.

<sup>16</sup> The full text of the letter may be viewed at:  
[https://ustr.gov/sites/default/files/files/RL\\_ITC\\_Distributional\\_Effects.pdf](https://ustr.gov/sites/default/files/files/RL_ITC_Distributional_Effects.pdf).

<sup>17</sup> USTR (2021), *Steel & Aluminum, U.S.-EU Joint Statement*, 31 October. Viewed at:  
<https://ustr.gov/sites/default/files/files/Statements/US-EU%20Joint%20Deal%20Statement.pdf>.

<sup>18</sup> The United States ranks first in services trade and second in merchandise trade. WTO (2021), *World Trade Statistical Review 2021*. Viewed at:  
[https://www.wto.org/english/res\\_e/statistics\\_e/wts2021\\_e/wts2021\\_e.pdf](https://www.wto.org/english/res_e/statistics_e/wts2021_e/wts2021_e.pdf).

i.e. disputes, committee work, and negotiations. It is also involved in technical assistance and capacity-building measures (contributions to the Global Trust Fund, Aid-for-Trade, and Standards and Trade Development Facility (STDF)). The United States is a party to a number of plurilateral initiatives or agreements under the WTO (including the GPA, the Agreement on Trade in Civil Aircraft, the Information Technology Agreement (ITA), and the ITA Expansion) and more recently has joined a number of the Joint Statement Initiatives (domestic regulation, e-commerce, and trade and environmental stability). The United States is also a party to the Joint Ministerial Declaration on the Advancement of Gender Equality and Women's Economic Empowerment within Trade.

2.17. In terms of the regular work of the WTO, the United States regularly participates in various committees by raising trade concerns, submitting notifications and technical analysis, making proposals, and participating in discussions. Regarding negotiations, the United States has made numerous proposals in many of the ongoing negotiations, e.g. on the use of forced labor on fishing vessels in fisheries subsidies negotiations, and on transparency and notification requirements in the agricultural negotiations.

2.18. In the area of dispute settlement, the United States' participation, as measured by the number of cases it has filed as a complainant, declined significantly during the review period compared to previous periods. The United States raised 2 complaints, was a respondent in 8 cases, was involved in 2 active arbitrations, appealed 6 cases to the Appellate Body, and exercised third party rights in 29 cases (Table A2.1). In the DSB, the United States continued to raise its systemic concerns with Appellate Body overreach.

2.19. The notification record of the United States under various bodies was exemplary during the review period. The United States made notifications in the areas of, *inter alia*, agriculture, GATS, trade remedies, SPS, TBT, trade facilitation, rules of origin, subsidies, state trading, IPRs, import licensing, the enabling clause, quantitative restrictions, and government procurement (Table A2.2). The largest numbers of notifications were made on SPS, TBT, and trade remedy matters. U.S. trade policies have been reviewed 14 times at the WTO; the last one was in December 2018.

2.20. In a statement in October 2021 about the WTO, the USTR confirmed the United States' continued commitment to the WTO and recognized its importance.<sup>19</sup> Emphasis was placed on the core values of the WTO as noted in the Marrakesh Declaration, achieving meaningful outcomes at MC12, engaging in productive conversations on WTO reform, and revitalizing the WTO's negotiating function. The USTR also stated that reforming the three pillars of the WTO – monitoring, negotiations, and dispute settlement – required a commitment to transparency, and encouraged Members to work together to find acceptable solutions to increasingly difficult global issues.

### 2.3.2 Regional and preferential agreements

2.21. The United States continues to conduct the majority of its trade through MFN trade, although it has a long tradition of offering unilateral preferences to developing and least developed countries and more recently through an increasing number of bilateral or regional reciprocal FTAs, some of which were recently amended. In 2021, 49.9% of total U.S. imports entered duty-free where MFN tariffs were zero. Reciprocal trade agreements contributed to additional reductions or duty-free entry on 14.8% of imports and unilateral preferences, about 0.9%.

#### 2.3.2.1 Reciprocal agreements

2.22. The United States has 14 FTAs with 20 countries.<sup>20</sup> The main development during the review period was the conclusion and implementation of the revised agreement with Canada and Mexico, replacing the North American Free Trade Agreement (NAFTA), now known as the United States-Mexico-Canada Agreement (USMCA). It was the first time the United States has comprehensively amended or updated an existing FTA. The FTAs with the Republic of Korea and Morocco also underwent some modifications during the period. There were no changes to other agreements,

<sup>19</sup> USTR (2021), "Ambassador Katherine Tai's Remarks as Prepared for Delivery on the World Trade Organization", 14 October. Viewed at: <https://ustr.gov/about-us/policy-offices/press-office/speeches-and-remarks/2021/october/ambassador-katherine-tai-s-remarks-prepared-delivery-world-trade-organization>.

<sup>20</sup> These are with Australia, the Kingdom of Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Jordan, Republic of Korea, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, and Singapore.

although the United States continued to have ongoing dialogues with FTA partners on implementation matters, labor and environment provisions, and other matters relating to the smooth functioning of the agreements. Negotiations towards new FTAs were announced or launched in recent years with the European Union, the United Kingdom, and Kenya, but have not been completed to date (July 2022). In mid-2022, the Administration was reviewing the objectives of the negotiations with the United Kingdom begun under the prior Administration; active negotiations are paused while the review is being conducted. USTR is also reviewing with the Kenyan government the path forward for deepening the U.S.-Kenya trade and investment relationship. The current Administration is not pursuing negotiations on an FTA with the European Union.

2.23. Trade under the 14 FTAs accounted for USD 417 billion of duty-free<sup>21</sup> imports in 2021, and an additional USD 426 billion entered without duties due to MFN duty-free status, thus in total about USD 843 billion, i.e. 29% of total U.S. merchandise imports (Table 2.1). Canada and Mexico continued as the dominant main trading partners under FTAs, while the Republic of Korea was ranked a distant third, albeit with growing levels of trade over the period. The United States maintained trade surpluses with a majority of FTA partners, but significant deficits with the largest FTA partners. As a result, thus the United States had an overall trade deficit of USD 148 billion with FTA partners.

**Table 2.1 Trade under FTAs, 2021**

(USD million)

Trading partner	Imports under FTA preferences	Other duty-free imports (MFN duty-free, etc.) <sup>a</sup>	% of imports entering duty-free or at reduced FTA rates	Total imports from FTA partner(s)	Total exports to FTA partner(s)	Trade balance
<b>Australia</b>	4,270.1	7,850.3	96.6	12,468.6	26,433.5	13,964.9
<b>Bahrain, Kingdom of</b>	500.2	139.2	58.3	1,157.0	936.2	-220.8
<b>Chile</b>	9,228.5	5,598.6	98.2	15,045.5	17,340.3	2,294.8
<b>Colombia</b>	5,085.2	5,278.8	78.7	13,152.0	16,451.4	3,299.4
<b>Israel</b>	3,201.5	15,158.8	96.5	18,650.3	12,820.4	-5,829.9
<b>Jordan</b>	2,040.2	677.9	98.5	2,745.1	1,233.9	-1,511.2
<b>Korea, Rep. of</b>	42,394.3	45,464.4	92.5	94,954.5	65,771.8	-29,182.7
<b>Morocco</b>	386.3	489.8	73.9	1,270.5	2,759.9	1,489.4
<b>Oman</b>	1,039.9	510.4	84.0	1,855.4	1,399.5	-455.9
<b>Panama</b>	47.7	678.9	96.3	756.3	8,273.0	7,516.7
<b>Peru</b>	4,178.9	2,300.9	94.0	6,886.8	10,242.5	3,355.6
<b>Singapore</b>	6,661.8	21,099.5	93.9	29,433.9	35,762.6	6,328.8
<b>NAFTA/USMCA</b>	322,057.6	309,163.1	85.2	741,865.3	583,459.6	-158,405.7
Canada	123,832.1	156,863.3	78.5	357,159.8	307,000.7	-50,159.1
Mexico	198,225.5	152,299.8	91.4	384,705.5	276,458.9	-108,246.6
<b>CAFTA-DR</b>	15,932.7	11,660.2	92.4	29,936.2	38,495.7	8,559.6
Costa Rica	1,634.8	4,657.7	96.2	6,537.3	7,311.6	774.3
Dominican Rep.	3,658.1	2,379.7	95.5	6,346.9	10,444.4	4,097.5
El Salvador	1,824.2	401.4	88.5	2,517.2	4,127.5	1,610.3
Guatemala	2,485.0	1,820.1	92.2	4,666.2	7,997.1	3,330.9
Honduras	3,579.0	1,223.5	92.5	5,217.3	6,512.3	1,295.0
Nicaragua	2,751.7	1,177.8	84.8	4,651.3	2,102.9	-2,548.4

a MFN and other duty-free included other duty-free provisions such as government imports and where there was no duty reported.

Source: Compiled by the WTO Secretariat from the USITC Data Web and UN Comtrade; and information provided by the authorities.

### 2.3.2.1.1 United States-Mexico-Canada Agreement (USMCA)

2.24. The USMCA entered into force between the United States, Mexico, and Canada on 1 July 2020, replacing NAFTA. The USMCA maintains the zero tariffs between the three countries that were in place under NAFTA. The United States implemented the USMCA through the enactment of the United States-Mexico-Canada Agreement Implementation Act (P.L. 116-113), and certain subsequent amendments or technical corrections thereafter by the Consolidated Appropriations Act of 2021 (P.L. 116-260). The USMCA modernized NAFTA, updated rules of origin, and included provisions to address issues such as digital trade, competitiveness, small- and medium-sized enterprises, and good regulatory practices. The USMCA also brought labor and environmental obligations into the core of the Agreement, making the provisions fully enforceable and subject to

<sup>21</sup> Also including tariff reductions below the MFN rate.

updated dispute resolution mechanisms. The USMCA is composed of 34 chapters along with 12 side letters. The main elements of the Agreement include: (i) maintaining the same zero duties that were in NAFTA; (ii) strengthening the rules of origin criteria for the automobile sector from 62.5% to 75% North American content for most items; (iii) requiring that 70% of aluminum and steel used in autos originate in North America and that steel be melted and poured in North America; (iv) expanding access to the Canadian market for dairy, eggs, and poultry; (v) extending copyright protection from 50 years to 70 years; and (vi) making new commitments on digital trade, state-owned enterprises (SOEs), currency manipulation, and *de minimis* threshold for duty-free treatment.<sup>22</sup>

2.25. Because the USMCA carried over market access provisions under NAFTA, most U.S. tariffs on imports from Mexico and Canada already had been eliminated. Nevertheless, the USMCA was expected to increase trade with Canada and Mexico by about 5% and lead to a higher concentration of U.S. trade with those two countries.<sup>23</sup> The Agreement is expected to have a particular impact on the automotive sector due to the significant increase in the regional content necessary to confer origin, which in turn is expected to increase U.S. employment in the sector.

### 2.3.2.1.2 Amendments to the FTAs with the Republic of Korea and with Morocco

2.26. In 2017, the United States launched discussions with the Republic of Korea to amend or modify the FTA that entered into force in 2012. Since the inception of the FTA, the United States has exhibited increasing trade deficits with the Republic of Korea; the deficit rose from USD 13.2 billion in 2012 to USD 24.1 billion in 2020, thus the United States sought to amend the Agreement so as to secure changes to reduce the trade deficit.<sup>24</sup> In March 2018, an agreement was reached that entered into force on 1 January 2019. The new agreement includes amendments to the original, as well as amendments to side letters, including the following provisions: (i) extension of the agreed tariff elimination period for the United States on certain trucks (six tariff lines) from 2021, per the original agreement, to 2041, in the U.S. schedule of commitments; (ii) new transparency and due process provisions for WTO trade remedy proceedings; (iii) clarification of national treatment and other provisions on investment; (iv) new provisions for vehicle safety standards' compliance in the Korean market; (v) less stringent certification of vehicle replacement parts; (vi) clarification of methodologies for testing regarding emissions regulations; (vii) certain principles reached with respect to verification of claims of origin and establishment of a Working Group on the matter; (viii) the Republic of Korea's Health Insurance Review and Assessment Service to amend its Premium Pricing Policy for Global Innovative New Drugs; and (ix) commencement of a review process to examine rules of origin relating to certain textiles and apparel to consider amendments per a finding on commercial availability.

2.27. A 2019 USITC study to examine the economic effects of amending certain rules of origin on textiles and clothing from the Republic of Korea determined that the change in rules would have negligible effect on U.S. imports and no effect on U.S. production of those products, but acknowledged qualitative information that two of the proposed rule changes could have significant adverse effects. Due to domestic producers' objections, these two rules were not amended. The third proposed rule is in the process of being amended.<sup>25</sup>

2.28. The FTA with Morocco was amended in 2017 to accommodate changes to the rules of origin pertaining to certain apparel in Chapter 62 of the Harmonized Tariff Schedule of the United States (HTSUS). These changes were proclaimed by the President in December 2018 and entered into force

<sup>22</sup> The USMCA was notified to the WTO on 16 September 2020. WT/REG407/N/1, S/C/N/1017, 17 September 2020.

<sup>23</sup> USITC (2019), *U.S.-Mexico-Canada Trade Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors*, Publication No. 4889, April. Viewed at: <https://www.usitc.gov/publications/332/pub4889.pdf>.

<sup>24</sup> USTR (2018), *New U.S. Trade Policy and National Security Outcomes with the Republic of Korea*, March. Viewed at: <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2018/march/new-us-trade-policy-and-national>.

<sup>25</sup> The products covered by the RO proposed changes were certain cotton yarns (under HTSUS heading 5206) with viscose rayon staple fibers (under HTSUS subheadings 5504.10 or 5507.00); certain woven fabrics (under HTSUS heading 5408) with cuprammonium rayon yarns (under HTSUS subheading 5403.39); and certain apparel (under HTSUS heading 6110), accessories, and apparel parts (under HTSUS heading 6117) of cashmere yarns (under HTSUS heading 5108). USITC (2019), *U.S.-Korea FTA: Advice on Modifications to Certain Textile and Apparel Rules of Origin*, Publication No. 4917, July. Viewed at: [https://www.usitc.gov/publications/tariff\\_affairs/pub4917.pdf](https://www.usitc.gov/publications/tariff_affairs/pub4917.pdf).

on 1 April 2019.<sup>26</sup> The revised rules of origin allow more apparel to qualify as originating by allowing the use of more non-originating fabrics in the exported good. According to a study by the USITC, the probable economic effects of this change were expected to be negligible in terms of trade, i.e. resulting in a change of less than 6%.<sup>27</sup>

### 2.3.2.2 Unilateral preferences

2.29. The United States continued its practice of providing several unilateral preference programs to developing and least developed countries during the review period: the AGOA, focused on countries in Africa; the Caribbean Basin Initiative (CBI) (Caribbean Basin Economic Recovery Act (CBERA), and the Caribbean Basin Trade Partnership Act (CBTPA)), which focus on Caribbean/Central American countries; and the Generalized System of Preferences (GSP) for a large number of developing and least developed countries throughout the world. The two most significant developments during the period were: (i) the expiry of the GSP program in December 2020 – to date (January 2022), the program had still not been renewed, although several initiatives were taken in that direction (see below); and (ii) the renewal of preferences under the CBTPA until 2030.

2.30. During the review period, the use of unilateral preferences steadily declined from USD 36.5 billion in 2018 to USD 21.9 billion in 2020 but then slightly increased to USD 26.8 in 2021 (Table 2.2). This can be attributed to significant declines in the two largest programs – the AGOA and the GSP. AGOA imports declined by about two thirds, mainly on account of significantly reduced crude petroleum imports (in terms of value) from Nigeria and Angola, in large part due to lower prices. In contrast, preferential imports under the CBTPA doubled over the period, albeit from a small base. This was attributed to increases in crude petroleum imports largely from Guyana and to a lesser extent from Trinidad and Tobago, which had previously not supplied such products under the CBTPA to the U.S. market. For many countries benefitting from U.S. preferences, exports tend to be concentrated in only a few key products.

**Table 2.2 Imports under unilateral trade preferences, 2018-21**

(USD million)

	2018	2019	2020	2021
AGOA	10,816	7,353	3,248	5,971
CBI	686	239	512	776
CBTPA	344	553	727	629
HOPE Acts <sup>a</sup>	661	737	577	751
GSP	23,865	20,911	16,811	18,510
GSP for Least-Developed Beneficiary Countries (LDBCs)	142	182	92	152
Nepal Trade Preference Program	3	3	2	4
Total	36,518	29,978	21,969	26,793

a Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006 (HOPE Act), and HOPE II Act of 2008.

Source: WTO Secretariat, based on data from USITC Data Web.

2.31. The U.S. GSP Program is the United States' longest-running preference program and provides the majority of the preferential imports into the United States; however, it expired on 31 December 2020. New legislation has been proposed to reinstate the GSP, but to date (January 2022) it has not been approved. Prior to the expiry of the GSP, USTR initiated a new process where it assesses each GSP beneficiary country's compliance with the statutory criteria on a triennial basis to improve monitoring and enforcement.<sup>28</sup> For example, in 2020 there were 10 country eligibility reviews in progress to examine, *inter alia*, workers rights' issues, child labor, arbitral awards, market access, IPR protection and enforcement. The main resulting changes during this reporting period were the loss of beneficiary status for certain countries, the reduction of the scope of benefits for certain beneficiary countries by the removal of certain eligible tariff lines, and restored eligibility in certain cases (Table 2.3). There have also been certain changes regarding the

<sup>26</sup> *Federal Register* (2019), Vol. 84, No. 56, 22 March. Viewed at: <https://www.federalregister.gov/documents/2019/03/22/2019-05551/effective-date-of-modifications-to-rules-of-origin-of-the-united-states-morocco-free-trade-agreement>.

<sup>27</sup> USITC (2017), *Probable Economic Effect of Certain Modifications to the U.S.-Morocco FTA Rules of Origin*. Publication No. 4662, January. Viewed at: <https://www.usitc.gov/publications/332/pub4662.pdf>.

<sup>28</sup> USTR (2021), *2021 Trade Policy Agenda and 2020 Annual Report of the President of the United States on the Trade Agreements Program*, March.



general coverage of GSP eligible products. In 2020, fresh cut roses were added to the list of eligible products and parboiled rice was removed.

**Table 2.3 Summary of changes to GSP beneficiaries and eligibility, July 2018-February 2022**

GSP beneficiary(ies)	Date	Change	Reason	Reference
Indonesia, North Macedonia, and Thailand	01/11/2018	Redesignated 3 products (Indonesia and Thailand) and removed GSP eligibility for 2 products (Indonesia and North Macedonia)	Exceeded the competitive need limitations	Proclamation 9813 of 30 October 2018
Various beneficiaries	01/11/2018	Removed 2 products based on a petition (Türkiye) and removed eligibility for 98 products	Exceeded the competitive need limitations	Proclamation 9813 of 30 October 2018
India	05/06/2019	Removed from GSP eligibility	Market access	Proclamation 9902 of 31 May 2019
Thailand	30/12/2020	Removed certain tariff lines from GSP eligibility	Market access	Proclamation 10107 of 30 October 2020
Thailand	25/04/2020	Removed certain tariff lines from GSP eligibility	Worker rights	Proclamation 9955 of 25 October 2019
Türkiye	17/05/2019	Removed from GSP eligibility	Economic development	Proclamation 9887 of 16 May 2019
Ukraine	30/10/2019	Restored certain tariff lines to GSP eligibility	IP	Proclamation 9955 of 25 October 2019
Argentina, Brazil, Ecuador, Indonesia	01/11/2020	Removed GSP eligibility for 6 products	Exceeded the competitive need limitations	Proclamation 10107 of 30 October 2020

Source: Compiled by the WTO Secretariat from the references mentioned in the table and from USTR (2021), *2021 Trade Policy Agenda and 2020 Annual Report of the President of the United States on the Trade Agreements Program*, March. Viewed at: <https://ustr.gov/sites/default/files/files/reports/2021/2021%20Trade%20Agenda/Online%20PDF%202021%20Trade%20Policy%20Agenda%20and%202020%20Annual%20Report.pdf>.

2.32. Box 2.1 presents an overview of the Unilateral Preference Programs maintained by the United States in 2022.

### Box 2.1 Overview of Unilateral Preference Programs, 2022<sup>a</sup>

AGOA (1 October 2000-30 September 2025)	GSP and GSP for LDCs (currently expired)
<p><b>Beneficiaries:</b> Angola, Benin, Botswana, Burkina Faso, Cabo Verde, Central African Republic, Chad, Comoros, Republic of Congo, Democratic Republic of Congo, Côte d'Ivoire, Djibouti, Eswatini, Gabon, Gambia, Ghana, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tomé and Príncipe, Senegal, Sierra Leone, South Africa, Tanzania, Togo, Uganda, Zambia</p> <p><b>Beneficiaries of 3rd Country Fabric Rule for LDCs:</b> Benin, Botswana, Burkina Faso, Cabo Verde, Chad, Ghana, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Niger, Senegal, Sierra Leone, Tanzania, Uganda, Zambia</p> <p><b>Benefits:</b> 5,190 tariff lines (4,922 overlap with GSP, GSP+ provisions)</p>	<p><b>Beneficiaries:</b> Afghanistan, Albania, Algeria, Angola, Argentina, Armenia, Azerbaijan, Belize, Benin, Bhutan, the Plurinational State of Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Burkina Faso, Burundi, Cabo Verde, Cambodia, Cameroon, Central African Republic, Chad, Comoros, Congo (Brazzaville), Congo (Kinshasa), Côte d'Ivoire, Djibouti, Dominica, East Timor, Ecuador, Egypt, Eritrea, Eswatini, Ethiopia, Fiji, Gabon, Gambia, Georgia, Ghana, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, Indonesia, Iraq, Jamaica, Jordan, Kazakhstan, Kenya, Kiribati, Kosovo<sup>b</sup>, Kyrgyz Republic, Lebanon, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mauritius, Republic of Moldova, Mongolia, Montenegro, Mozambique, Myanmar, Namibia, Nepal, Niger, Nigeria, North Macedonia, Pakistan, Papua New Guinea, Paraguay, Philippines, Rwanda, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tomé and Príncipe, Senegal, Serbia, Sierra Leone, Solomon Islands, Somalia, South Africa, South Sudan, Sri Lanka, Suriname, Tanzania, Thailand, Togo, Tonga, Tunisia, Tuvalu, Uganda, Ukraine, Uzbekistan, Vanuatu, Yemen, Zambia, Zimbabwe; non-independent countries and territories: Anguilla, British Indian Ocean Territory, Christmas Island, Cocos (Keeling) Islands, Cook Islands, Falkland Islands, Heard Island and McDonald Islands, Montserrat, Niue, Norfolk Island, Pitcairn Islands, Saint Helena, Tokelau, British Virgin Islands, Wallis and Futuna, West Bank and Gaza Strip, Western Sahara; and certain associations of countries.</p> <p><b>GSP least-developed beneficiaries:</b> Afghanistan, Angola, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Congo, Djibouti, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Myanmar, Nepal, Niger, Rwanda, Samoa, Sao Tomé and Príncipe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, Zambia</p> <p><b>Benefits:</b> 2,456 tariff lines for all beneficiaries and 1,034 where at least one or more benefit</p>

<b>Additional benefits:</b> Third country fabric rule		<b>GSP LDC benefits:</b> An additional 1,481 tariff lines	
<b>WTO notifications:</b> WT/L/1117 (WT/L/970)		<b>WTO notifications:</b> WT/COMTD/N/1 + addenda	
<b>Main beneficiaries:</b>		<b>Main products:</b>	
South Africa Nigeria Kenya	Crude petroleum Passenger vehicles Men's/boy's trousers	Thailand Indonesia Brazil	Jewelry Container bags, boxes Rubber gloves
<b>Caribbean Basin Initiative (CBI) (CBERA/CBTPA)<sup>c</sup></b> (1983-30 Sept. 2030)		<b>Nepal Trade Preference Program (NTPP)</b> (15 Dec. 2016-31 Dec. 2025)	
<b>Beneficiaries CBERA:</b> Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Curaçao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, British Virgin Islands		<b>Beneficiaries:</b> Nepal	
<b>Beneficiaries CBTPA:</b> Barbados, Belize, Curaçao, Guyana, Haiti, Jamaica, Saint Lucia, Trinidad and Tobago		<b>Benefits:</b> 77 tariff lines	
<b>Benefits:</b> 5,506 tariff lines (62 with reduced rates), additional 259 tariff lines CBTPA		<b>Additional benefits:</b> n.a.	
<b>Additional benefits:</b> For Haiti on certain textile imports under quota pursuant to the HOPE I/II and HELP Acts.		<b>WTO notifications:</b> WT/L/1001, WT/L/1099, WT/COMTD/N/52	
<b>WTO notifications:</b> WT/L/1115 (WT/L/1070)		<b>Main beneficiaries:</b>	
<b>Main products:</b>		<b>Main products:</b>	
Haiti Trinidad and Tobago Guyana	Crude petroleum Methanol T-shirts	Nepal	Hats, headgear, knitted Container bags, boxes Carpets

n.a. Not applicable.

- a Data on main beneficiaries and main products are for 2020.
- b References to Kosovo shall be understood to be in the context of UN Security Council Resolution 1244 (1999).
- c Includes also special preferences under the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006 (HOPE Act), the HOPE II Act of 2008, and the Haitian Economic Lift Program Act of 2010 (HELP Act); these programs are extended until 2025.

Source: USITC (2021), *The 2021 Harmonized Tariff Schedule of the United States (HTS) Item Count*. Viewed at: [https://usitc.gov/tariff\\_affairs/documents/2021\\_hts\\_item\\_count.pdf](https://usitc.gov/tariff_affairs/documents/2021_hts_item_count.pdf). Data compiled by the Secretariat from USITC Data Web.

2.33. AGOA continues to provide significant tariff preferences on about 5,000 tariff lines and also has special rules of origin for apparel, allowing the use of third-country fabric for designated beneficiaries. While crude petroleum remains the dominant imported good under AGOA, there have been significant gains and expansion of textile imports under AGOA preferences. To help diversify exports, 16 AGOA beneficiaries have implemented AGOA utilization strategies to help identify new potential products to export under AGOA preferences. Most of the strategies are concentrated on agriculture and textiles and apparel, although others identify jewelry, mining products, handicrafts, and light manufacturing.<sup>29</sup> In November 2021, there were 39 African countries designated as eligible countries for AGOA preferences; however, during the review period, there were a number of changes in beneficiary status (Table 2.4). There were five countries that ceased to be beneficiaries, four that lost the special textile and apparel benefits and five that gained such benefits, and one that regained AGOA beneficiary status.

**Table 2.4 Summary of changes to AGOA beneficiaries, July 2018-February 2022**

AGOA beneficiary(ies)	Date	Change	Reason	Reference
Eswatini	03/07/2018	Designated as qualifying for textile and apparel benefits	Adopted an effective visa system and related procedures to prevent the unlawful transshipment of textile and apparel articles and the	Determination under AGOA by USTR on 3 July 2018

<sup>29</sup> USTR (2020), *2020 Biennial Report on the Implementation of the African Growth and Opportunity Act*, June. Viewed at: <https://ustr.gov/sites/default/files/assets/agoa/USTR-Biennial-Report-to-Congress-on-AGO-062320.pdf>.

AGOA beneficiary(ies)	Date	Change	Reason	Reference
			use of counterfeit documents in connection with the shipment of such articles	
Rwanda	31/07/2018	Suspending application of duty-free provisions on apparel	Not making continual progress in meeting the requirements described in Section 506A(a)(1) (progress towards the elimination of barriers to U.S. trade and investment regarding apparel)	Presidential Proclamation 9771 of 30 July 2018
Mauritania	01/01/2019	Termination of beneficiary status	Insufficient progress towards combating forced labor	Presidential Proclamation 9834 of 21 December 2018
Cameroon	01/01/2020	Termination of beneficiary status	Not making continual progress in meeting the requirements described in Section 506A(a)(1)	Presidential Proclamation 9974 of 26 December 2019
Central African Republic, Gambia, and Niger	01/01/2020	Termination of the special "wearing apparel" provisions	Failure to meet the transshipment provision of Section 113 regarding effective visa systems and related customs procedures	Presidential Proclamation 9974 of 26 December 2019
Guinea-Bissau and Niger	01/01/2020	Added to the list of lesser developed beneficiary sub-Saharan African countries.	Met the eligibility criteria	Presidential Proclamation 9974 of 26 December 2019
Mali	04/08/2020	Designated as qualifying for textile and apparel benefits	Adopted an effective visa system and related procedures to prevent the unlawful transshipment of textile and apparel articles and the use of counterfeit documents	Notice by USTR of 21 July 2020
Democratic Republic of the Congo	01/01/2021	Added to the list of lesser developed beneficiary sub-Saharan African countries.	Met the eligibility requirements set forth in Section 104 of AGOA and in Section 502 of the Trade Act of 1974; and satisfies the criterion under Section 112(c) of AGOA	Presidential Proclamation 10128 of 22 December 2020
Ethiopia, Guinea, and Mali	01/01/2022	Termination of beneficiary status	No continual progress in meeting the requirements described in Section 506A(a)(1)	Presidential Proclamation 10326 of 23 December 2021

Source: Compiled by the WTO Secretariat from the references in the table and USTR (2020), *2020 Biennial Report on the Implementation of the African Growth and Opportunity Act*, June. Viewed at: <https://ustr.gov/sites/default/files/assets/agoa/USTR-Biennial-Report-to-Congress-on-AGO-062320.pdf>.

2.34. The CBI includes preference programs CBERA<sup>30</sup> and CBTPA for designated Caribbean and Central American countries. The CBTPA was renewed in October 2020 for a period of 10 years with benefits being provided retroactively from 30 September 2020 when the previous provisions expired.<sup>31</sup> According to a report by the USITC, CBERA "continues to have a negligible effect on U.S. imports, producers, and consumers and a small but positive impact on beneficiary countries".<sup>32</sup> The report furthermore notes that CBERA beneficiaries tend to be small economies and small exporters, often constrained by infrastructure issues, and thus trade under CBERA has remained relatively constant with limited export diversification.

2.35. The Nepal Trade Preference Program (NTPP), as contained in the Trade Facilitation and Trade Enforcement Act of 2015, continues to provide duty-free entry to the United States for certain products imported from Nepal for a 10-year period, until 2025. There have been no changes or developments in this preference program during the review period. The United States also provides special preferences to products from the West Bank, Gaza Strip, and Qualifying Industrial Zones<sup>33</sup>, as well as and the Republic of the Marshall Islands, the Federated States of Micronesia, the

<sup>30</sup> Including the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006 (HOPE Act), the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008 (HOPE II Act), and the Haiti Economic Lift Program Act of 2010 (HELP Act). However, the benefits under these acts are extended only until 2025.

<sup>31</sup> Extension of the Caribbean Basin Economic Recovery Act (P.L. 116-164).

<sup>32</sup> USITC (2021), *Caribbean Basin Economic Recovery Act: Impact on U.S. Industries and Consumers and on Beneficiary Countries, 25<sup>th</sup> Report, 2019-20*, September, Publication No. 5231. Viewed at: <https://usitc.gov/publications/332/pub5231.pdf>.

<sup>33</sup> Applies to products with a specified amount of Israeli content and manufactured in Jordan, Egypt, or the West Bank and Gaza.



Republic of Palau, and the Commonwealth of the Northern Mariana Islands; there were no changes to these programs during the review period.

### 2.3.3 Other agreements and arrangements

2.36. The United States has concluded a number of other trade agreements in recent years, mainly with significant trade partners, such as Japan, China, and the European Union. In addition, trade and investment agreements (TIFAs) with Brazil and Ecuador were expanded to include concessions on trade facilitation and regulatory commitments (Section 2.4.1).

2.37. In December 2019 pursuant to Section 103(a)(2) of the Trade Priorities Act, a Presidential Proclamation was issued announcing modifications to certain duties as a result of an arrangement concluded between the United States and Japan, which has been referred to as the U.S.-Japan Trade Agreement (USJTA).<sup>34</sup> The USJTA, which was signed on 7 October 2019 and entered into force on 1 January 2020, reduces or eliminates tariffs on 241 tariff lines for originating goods of Japan, either upon entry into force or during an implementation period up until 2029. The tariff rate quota (TRQ) quantity for Japanese beef was eliminated and merged into the general quota allocation for all other countries (Box 2.2).<sup>35</sup> As at July 2022, this arrangement had not been notified to the WTO. A similar Presidential Proclamation was issued in December 2020 under the same provisions of the Trade Priorities Act in order to announce reductions in tariff barriers agreed with the European Union on 20 November 2020.<sup>36</sup> This agreement covers MFN duty reductions on six tariff lines that were implemented as of 1 August 2020 and a further reduction on five of them on 1 August 2021 (Box 2.2). Approximately USD 192 million of imports of these products entered from the European Union at reduced rates in 2021 compared to USD 132 million in 2020. In return, the European Union agreed to eliminate duties on an MFN basis on four tariff lines of frozen and live lobster for a five-year period, from 1 August 2020 to 31 July 2025.<sup>37</sup>

2.38. On 15 January 2020, the United States and China concluded an Economic and Trade Agreement covering a variety of trade and related matters; it entered into force on 14 February 2020.<sup>38</sup> The Agreement includes operational chapters on IP, technology transfer, trade in food and agricultural products, financial services, macroeconomic policies and exchange rate matters and transparency, expanding trade, and bilateral evaluation and dispute resolution.<sup>39</sup> Contrary to other trade agreements the United States has negotiated in the past with other parties, this agreement stands out for having few if any liberalizing measures by the United States, such as scheduled reductions in tariffs or services commitments; rather, it is mainly a compilation of specific commitments requiring China to issue new or revised measures or take other actions. A number of provisions mention or directly cite WTO rules or obligations; many of these have to do with transparency, notification, and compliance matters. The chapter on expanding trade requires China to purchase certain categories and subcategories of U.S. goods and services – manufactured goods,

<sup>34</sup> USTR (2019), *Fact Sheet on U.S.-Japan Trade Agreement*. Viewed at: <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2019/september/fact-sheet-us-japan-trade-agreement>; Presidential Proclamation 9974 of 26 December 2019. *Federal Register* (2019), Vol. 84, No. 249, 30 December. Viewed at: <https://www.federalregister.gov/documents/2019/12/30/2019-28285/to-take-certain-actions-under-the-african-growth-and-opportunity-act-and-for-other-purposes>; and Presidential Proclamation 10128 of 22 December 2020. *Federal Register* (2020), Vol. 85, No. 249, 29 December. Viewed at: <https://www.federalregister.gov/documents/2020/12/29/2020-28878/to-take-certain-actions-under-the-african-growth-and-opportunity-act-and-for-other-purposes>.

<sup>35</sup> USTR (2019), *Side Letter on Beef*, 7 October. Viewed at: [https://ustr.gov/sites/default/files/files/agreements/japan/Letter\\_Exchange\\_on\\_Beef.pdf](https://ustr.gov/sites/default/files/files/agreements/japan/Letter_Exchange_on_Beef.pdf).

<sup>36</sup> Presidential Proclamation 10128 of 22 December 2020, *To Take Certain Actions Under the African Growth and Opportunity Act and for Other Purposes*, Annex II. *Federal Register* (2020), Vol. 85, No. 249, 9 December.

<sup>37</sup> Regulation EU 2020/2131 of the European Parliament and of the Council of 16 December 2020 on the elimination of customs duties on certain goods, *Official Journal of the European Union*, 18 December 2020. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R2131&from=EN>.

<sup>38</sup> USTR (2020), *Fact Sheet: Economic and Trade Agreement Between the United States of America and the People's Republic of China*, 15 January. Viewed at: [https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/US\\_China\\_Agreement\\_Fact\\_Sheet.pdf](https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/US_China_Agreement_Fact_Sheet.pdf).

<sup>39</sup> Economic and Trade Agreement Between the Government of the United States of America and the Government of the People's Republic of China. Viewed at: [https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Economic\\_And\\_Trade\\_Agreement\\_Between\\_The\\_United\\_States\\_And\\_China\\_Text.pdf](https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Economic_And_Trade_Agreement_Between_The_United_States_And_China_Text.pdf).

agriculture, energy, and services – at specified levels above 2017 baseline amounts in 2020 and 2021. The total amount of purchases is to exceed the overall 2017 baseline amount by no less than USD 200 billion by the end of 2021. According to a 2021 USTR report to Congress on compliance, some commitments were implemented while others were not.<sup>40</sup> Data compiled by the Peterson Institute for International Economics indicates China's imports of U.S. goods fell short of what was agreed in 2020 and 2021; this was the case in all categories of goods.<sup>41</sup>

2.39. A second agreement with Japan was reached at the same time as the USJTA, covering digital trade, known as the United States-Japan Digital Trade Agreement (USJDTA).<sup>42</sup> This Agreement did not require any changes in U.S. law, thus it was treated as an Executive Agreement. It covers customs duties on digital products transmitted electronically, cross-border transfer of data, access to computer source code and algorithms, and other provisions (Box 2.2). There is also a side letter that governs interactive computer services from Japan that clarifies that certain laws of Japan are not inconsistent with Article 18 of the USJDTA.<sup>43</sup> The USJDTA entered into force on 1 January 2020.

### Box 2.2 Overview of other new agreements or arrangements

<b>United States-Japan Trade Agreement (USJTA)</b>	
Entry into force:	1 January 2020
Transition to full implementation:	1 January 2029
Main elements:	Duty elimination or reduction on 241 tariff lines; 162 will be duty-free
Products/services:	Tariff elimination/reduction on mainly machinery and equipment in HS Chapters 84 and 85 (including specifically machine tools, bicycles, musical instruments, etc.) from Japan; and modification of the Uruguay Round TRQ on beef from Japan of 200 MT by incorporating it in the total TRQ allocation for other countries or areas.
Trade benefitting from the agreement (U.S. imports):	2020: USD 2.77 million
WTO notifications:	2021: USD 3.63 million
	None
<b>Agreement between the United States of America and the European Union Regarding Tariffs on Certain Products</b>	
Entry into force:	1 August 2020
Transition to full implementation:	1 August 2021
Main elements:	MFN duty reductions on 6 tariff lines in 2020; further reductions on 5 of them in 2021
Products/services:	Cigarette lighters and parts, propellant powders, prepared or preserved fish products, lead crystal glassware, and other nonrefractory surfacing preparations for facades
Trade benefitting from the agreement (US imports):	Aug.-Dec. 2020: USD 67 million
WTO notifications:	2021: USD 192 million
	None
<b>Economic and Trade Agreement between the United States of America and the People's Republic of China</b>	
Entry into force:	14 February 2020
Main elements:	Intellectual property; technology transfer; trade in food and agricultural products; financial services; macroeconomic policies and exchange rate matters and transparency; expanding trade; and dispute resolution
Products/services:	Food and agricultural products, financial services
WTO notifications:	None

<sup>40</sup> USTR (2022), *2021 Report to Congress on China's WTO Compliance*, February. Viewed at: <https://ustr.gov/sites/default/files/enforcement/WTO/2021%20USTR%20Report%20to%20Congress%20on%20China's%20WTO%20Compliance.pdf>.

<sup>41</sup> The data provided by the Peterson Institute for International Economics show that, from January 2020 through December 2021, China's total imports of covered products from the United States were USD 235.3 billion, compared with a two-year commitment of USD 380.5 billion. China's imports of covered agricultural products from the United States were USD 61.4 billion, compared with a target of USD 80.1 billion, while for covered manufactured goods, China's imports from the United States were USD 142.8 billion, compared with a commitment level of USD 234.4 billion. Peterson Institute for International Economics (2022), *US-China Phase One Tracker: China's Purchases of US Goods. With combined goods and services purchases for 2020 through 2021*. Viewed at: <https://www.piie.com/research/piie-charts/us-china-phase-one-tracker-chinas-purchases-us-goods>.

<sup>42</sup> USTR (2019), *Fact Sheet on U.S.-Japan Trade Agreement*, September. Viewed at: <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2019/september/fact-sheet-us-japan-trade-agreement>; and Agreement Between the United States of America and Japan Concerning Digital Trade. Viewed at: [https://ustr.gov/sites/default/files/files/agreements/japan/Agreement between the United States and Japan concerning Digital Trade.pdf](https://ustr.gov/sites/default/files/files/agreements/japan/Agreement%20between%20the%20United%20States%20and%20Japan%20Concerning%20Digital%20Trade.pdf).

<sup>43</sup> U.S.-Japan Digital Trade Agreement: Side Letter on Interactive Computer Services, 7 October 2019. Viewed at: <https://ustr.gov/countries-regions/japan-korea-apec/japan/us-japan-trade-agreement-negotiations/us-japan-digital-trade-agreement-text>.

**United States-Japan Digital Trade Agreement (USJDTA)**Entry into force:  
Main elements:

1 January 2020

Commitments on not imposing customs duties on electronic transmissions between persons of the Parties; non-discriminatory treatment of digital products; cross-border data transfers; not requiring access to or transfer of computer source code or algorithms as a condition for the import, distribution, sale, or use of software or related products except pursuant to regulatory or judicial proceedings; enforceable consumer protection laws; electronic signatures; requirements relating to encryption technologies; collaboration on cybersecurity; and public access to government-generated public data.

WTO notifications:

None

Source: USTR (2019), Fact Sheet on U.S.-Japan Trade Agreement, September. Viewed at: <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2019/september/fact-sheet-us-japan-trade-agreement>; Presidential Proclamation 9974 of 26 December 2019, To Take Certain Actions Under the African Growth and Opportunity Act and for Other Purposes, Annexes II and III. *Federal Register* (2019), Vol. 84, No. 249, 30 December; Presidential Proclamation 10128 of 22 December 2020, To Take Certain Actions Under the African Growth and Opportunity Act and for Other Purposes, Annex II. *Federal Register* (2020), Vol. 85, No. 249, 29 December; USTR, *European Union*. Viewed at: <https://ustr.gov/countries-regions/europe-middle-east/europe/european-union>.

**2.4 Investment Regime**

2.40. The United States maintains an open investment regime and has benefited for decades as one of the world's single-largest recipients and suppliers of FDI. The President issued a statement on the United States' commitment to open investment on 8 June 2021. In recent years, the United States has expanded and refined its review of FDI through national security-based screening. U.S. investment policy has undergone a number of changes during the review period; due to U.S. predominance in world investment markets, U.S. policy has an important influence on world investment flows.

2.41. There have been several developments in the United States' investment regime during the review period, with a new law and rules expanding the types of foreign investment subject to examination, new reporting requirements for certain types of FDI, and the formalization and streamlining of the committee for the assessment of foreign investment in the telecommunications sector. Thus, there has been a marked move towards greater scrutiny of foreign investment transactions on national security grounds.

**2.4.1 Investment framework**

2.42. In terms of its investment framework, the United States has subscribed to trade and investment framework agreements (TIFAs)<sup>44</sup>, bilateral investment treaties (BITs), and FTAs containing investment provisions, all of which provide a stable environment conducive to encouraging foreign investment as well as securing important provisions for U.S. investors abroad (Table 2.5). Most of these frameworks did not undergo significant revision since the last Review; however, a few new TIFAs came into force, and the USMCA includes a revised chapter on investment.

2.43. TIFAs have traditionally been used by the United States to have a higher degree of engagement and dialogue with trading partners in order to promote their mutual interest on trade and investment matters. They have often served as an intermediary step before moving towards a deeper relationship in an FTA, and the vast majority are with developing countries. TIFAs create binding obligations to meet and discuss matters within their scope, but they typically do not create substantive obligations with regard to trade and investment, although there are exceptions. No changes to U.S. law have been required to implement TIFAs. In essence, most TIFAs establish a joint Council where the parties agree to meet and engage in a dialogue or consult on trade and investment matters.

2.44. During the review period, four new or revised TIFAs were negotiated by the United States: with Brazil, Ecuador, Fiji, and Paraguay. The TIFA with Fiji, completed in 2020, marked the

<sup>44</sup> The reference to TIFAs has been used throughout although some of these agreements have different names, e.g. Trade and Investment Council Agreements (TICs); however, they all have the same common objective of improving cooperation and enhancing opportunities for trade and investment.

United States' first TIFA with a small Pacific island nation. In the case of Brazil and Ecuador, existing agreements were amended, both in 2020, to include a Protocol on Trade Rules and Transparency. The Protocols agreed upon by Brazil and Ecuador are exceptional among TIFAs in that they contain obligations of the parties similar to that seen in bilateral or multilateral trade agreements. Each protocol contains three annexes: (i) Trade Facilitation and Customs Matters, which is consistent with the Agreement on Trade Facilitation (TFA), although the Annex goes beyond the TFA with regard to certain obligations; (ii) Good Regulatory Practices; and (iii) Anti-Corruption. In addition, the Protocol agreed upon by Ecuador also contains a fourth Annex: Small and Medium-Sized Enterprises. These recent protocols to the TIFAs with Brazil and Ecuador provide a transition period to one or both of the parties to implement certain articles of the agreements.<sup>45</sup>

2.45. The USMCA's Chapter 14 on investment replaced NAFTA's investment provisions in Chapter 11; both chapters are similar in scope and structure, with the most significant change involving investor-state dispute settlement (ISDS). The USMCA provides for the expiration – three years after NAFTA's termination – of each NAFTA party's consent to the submission of claims to ISDS alleging breach of relevant NAFTA obligations with respect to so-called legacy investments (i.e. investments established or acquired while NAFTA was in force and in existence on the date of the USMCA's entry into force). USMCA provisions eliminate the availability of ISDS between the United States and Canada after this three-year period, and between the United States and Mexico.<sup>46</sup> The net impact is a more limited future use of ISDS between the parties; investors seeking adjudication and not having qualifying government contracts would have to exhaust all avenues through domestic court or judicial processes before potentially reverting to ISDS.

2.46. Other USMCA changes on investment include clarification of certain concepts in the sections on MFN, national treatment, and minimum standard of treatment. There was also a strengthening of the provision on "performance requirements" so as to prohibit a Party from requiring preferences to technology of the Party or of a person of the Party or a given rate or amount of royalty under a license contract, or a given duration of the term of a license contract. The agreement also prohibits imposing or enforcing any requirement, commitment, or undertaking regarding export performance (for goods and services), domestic content, domestic purchase preference, import balancing; and transfer of technology.<sup>47</sup>

2.47. The United States maintained BITs with 39 partners as of December 2021 (Table 2.5). BITs remain part of the U.S. investment framework, but there have not been any new BITs negotiated since 2008, and most BITs are more than 20 years old. A model BIT was established in 2012 to serve as a basis for future BITs. No BITs have been concluded using this template, but certain updated provisions were included in the USMCA investment chapter, such as clarifications to rules regarding expropriation, national treatment and most-favored-nation treatment, and the minimum standard of treatment. In addition to these, the model BIT contains provisions on transfers, performance requirements, and dispute settlement. There has been a policy shift in recent years away from expanding the U.S. BIT program and the United States is not currently seeking to negotiate any new BITs.

**Table 2.5 U.S. International investment agreements, 2022**

Type	Partners
Trade and investment framework agreements (TIFAs)	Afghanistan, Algeria, Angola, Argentina, Armenia, Association of Southeast Asian Nations (ASEAN) (Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand, Viet Nam), Kingdom of Bahrain, Bangladesh, Brazil, Brunei Darussalam, Cambodia, Caribbean Community (CARICOM) (Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Ecuador, Fiji, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Lucia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago), Central Asia (Kazakhstan, Kyrgyz Republic, Tajikistan, Turkmenistan, Uzbekistan), Common Market for Eastern and Southern Africa (COMESA) (Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Eswatini, Ethiopia, Kenya, Libya, Seychelles, Madagascar, Malawi, Mauritius, Myanmar, Rwanda,

<sup>45</sup> Protocol to the Agreement on Trade and Economic Cooperation Between the Government of the United States of America and the Government of the Federative Republic of Brazil Relating to Trade Rules and Transparency. Viewed at: <https://ustr.gov/sites/default/files/files/agreements/tifa/ATEC%20US-Brazil%20Protocol.pdf>; and Protocol to the Trade and Investment Council Agreement Between the Government of the United States of America and the Government of the Republic of Ecuador Relating to Trade Rules and Transparency. Viewed at: [https://ustr.gov/sites/default/files/files/agreements/tifa/US-Ecuador\\_Protocol.pdf](https://ustr.gov/sites/default/files/files/agreements/tifa/US-Ecuador_Protocol.pdf).

<sup>46</sup> USMCA, Chapter 14, Annexes C and D.

<sup>47</sup> USMCA, Chapter 14, Articles 14.4, 14.5, and 14.10.

Type	Partners
	Sudan, Uganda, Zambia, Zimbabwe), East African Community (Burundi, Kenya, Rwanda, Tanzania, and Uganda), Economic Community of West African States (ECOWAS) (Benin, Burkina Faso, Cabo Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo), Egypt, Gulf Cooperation Council (Kingdom of Bahrain, State of Kuwait, Oman, Qatar, Kingdom of Saudi Arabia, United Arab Emirates), Georgia, Ghana, Iceland, Indonesia, Islamic Republic of Iraq, State of Kuwait, Laos, Lebanon, Liberia, Libya, Maldives, Malaysia, Mauritius, Mongolia, Mozambique, Nepal, New Zealand, Nigeria, Pakistan, Paraguay, Philippines, Oman, Qatar, Rwanda, Kingdom of Saudi Arabia, South Africa, Sri Lanka, Switzerland, Thailand, Tunisia, Türkiye, Ukraine, United Arab Emirates, West African Economic and Monetary Union (WAEMU) (Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal, and Togo), Uruguay, Viet Nam, Yemen. There is also a Trade and Investment Framework Agreement between the American Institute in Chinese Taipei and the Taipei Economic and Cultural Representative Office in the United States.
Bilateral investment treaties (BITs)	Albania, Argentina, Armenia, Azerbaijan, Kingdom of Bahrain, Bangladesh, Bulgaria, Cameroon, Congo, Croatia, Czech Republic, Democratic Republic of Congo, Egypt, Estonia, Georgia, Grenada, Honduras, Jamaica, Jordan, Kazakhstan, Kyrgyz Republic, Latvia, Lithuania, Republic of Moldova, Mongolia, Morocco, Mozambique, Panama, Poland, Romania, Rwanda, Senegal, Slovak Republic, Sri Lanka, Trinidad and Tobago, Tunisia, Türkiye, Ukraine, and Uruguay.
Free trade agreements	Australia, Kingdom of Bahrain, CAFTA-DR (El Salvador, Honduras, Nicaragua, Guatemala, Costa Rica, Dominican Republic), Chile, Colombia, Israel (limited investment provisions), Jordan, Republic of Korea, Morocco, Oman, Panama, Peru, Singapore, and USMCA (Canada and Mexico)

Source: USDOC, *Bilateral Investment Treaties: Enforcement and Compliance*. Viewed at: [https://tcc.export.gov/Trade\\_Agreements/Bilateral\\_Investment\\_Treaties/index.asp](https://tcc.export.gov/Trade_Agreements/Bilateral_Investment_Treaties/index.asp); and USTR, *Trade & Investment Framework Agreements*. Viewed at: <https://ustr.gov/trade-agreements/trade-investment-framework-agreements>.

## 2.4.2 Investment promotion

2.48. The United States maintains SelectUSA as its investment promotion agency at the federal level. SelectUSA was created in 2011, and is housed in the US Department of Commerce (USDOC)'s International Trade Administration (ITA); it is in charge of attracting into and retaining FDI in the United States. SelectUSA also heads the Federal Interagency Investment Working Group (IIWG) that brings together about 20 federal agencies that have a role in investment policy and engages in coordinating specific activities and bringing together government resources.<sup>48</sup> The Investment Advisory Council (IAC) consists of representatives from the private sector that make recommendations and advise the Secretary of Commerce on the development and implementation of strategies and programs to attract and retain FDI.

2.49. The main operations of SelectUSA include connecting businesses with federal resource networks, providing direct and personalized introductions to economic development organizations, helping businesses navigate regulations and programs, and providing data, analytics, and strategic counselling services. More recently, it has also added a reshoring service, ReSelectUSA, that helps U.S. firms return operations to the United States.

## 2.4.3 Investment screening and restrictions

### 2.4.3.1 Investment screening

#### 2.4.3.1.1 Committee on Foreign Investment in the United States (CFIUS)

2.50. CFIUS is an interagency committee of the Government that is authorized to review certain transactions involving foreign investment in the United States and certain real estate transactions by foreign persons, to determine the effect of such transactions on national security. CFIUS operates pursuant to statutes, Executive Order, and regulations administered by the Department of the Treasury.<sup>49</sup> During the review period, there was no change in the composition of CFIUS, and it is still composed of nine Cabinet members, two *ex officio* members, and several White House offices that observe and participate, as appropriate, and other relevant agencies depending on the particular transaction under review. However, CFIUS's underlying review procedures, the type of transactions examined, and the laws and regulations governing them underwent significant changes during the review period. Among other things, the United States introduced mandatory filing and review of

<sup>48</sup> SelectUSA, *The Federal Interagency Investment Working Group*. Viewed at: <https://www.selectusa.gov/iiwg>.

<sup>49</sup> CFIUS operates pursuant to Section 721 of the Defense Production Act of 1950 (50 U.S.C. 4565), as amended, and as implemented by Executive Order 11858, as amended, and the regulations in Chapter VIII of Title 31 of the Code of Federal Regulations.



certain foreign investment transactions. The role of CFIUS and U.S. screening of foreign investments in general have undergone one of the most important changes since CFIUS's legal authority was last amended in 2007 through the Foreign Investment and National Security Act (FINSAs). These changes were authorized in the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), P.L. 115-23, enacted on 13 August 2018. Certain provisions of FIRRMA became effective immediately upon enactment of the statute, while others came into effect through implementing regulations issued in January 2020 and thereafter.<sup>50</sup> Other regulations defining the term "principal place of business" as it relates to the definition of U.S. business and establishing filing fees came into force in May 2020. In September 2020, Treasury published a final rule requiring transactions to be notified to CFIUS under certain circumstances (Table 2.6).

**Table 2.6 Overview of regulations to implement the FIRRMA, 2018-22**

Federal Register publication date	Effective date	Summary	C.F.R. Reference
Federal Register, Vol. 83, No. 197, 11 October 2018	11 October 2018	Implements a pilot program covering certain critical technologies transactions during 10 Nov. 2018-12 Feb. 2020	31 C.F.R. Part 801
Federal Register, Vol. 85, No. 12, 17 January 2020	13 February 2020	Implements changes that FIRRMA made to CFIUS's jurisdiction and process, including with respect to certain non-controlling "covered investments" that afford a foreign person certain access, rights, or involvement in certain types of U.S. businesses. It also makes amendments to the definition of the term "substantial interest" and a related provision.	31 C.F.R. Part 800
Federal Register, Vol. 85, No. 12, 17 January 2020, Rules and Regulations	13 February 2020	New regulations governing transactions by foreign persons involving real estate in the United States	31 C.F.R. Part 802
Federal Register, Vol. 85, No. 83, 29 April 2020; and Federal Register, Vol. 85, No. 145, 28 July 2020	1 May 2020	Defines the term the term "principal place of business". Establishes filing fees	31 C.F.R. Parts 800 and 802
Federal Register, Vol. 85, No. 179, 15 September 2020	15 October 2020	Modifies the mandatory declaration provision for certain foreign investment transactions involving a U.S. business that produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies.	31 C.F.R. Part 800
Federal Register, Vol. 87, No. 4, 6 January 2022	4 February 2022	Amends the definitions of excepted foreign state and excepted foreign real estate foreign state	31 C.F.R. Parts 800 and 802

Source: Department of the Treasury, *CFIUS Laws and Guidance*. Viewed at: <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius/cfius-laws-and-guidance>.

2.51. A significant change introduced by FIRRMA was the expansion of CFIUS's jurisdiction to include certain non-controlling, non-passive investments, direct or indirect, by a foreign person investing in certain types of U.S. businesses. These include U.S. businesses involved in critical technologies, critical infrastructure, or sensitive personal data (referred to as "TID U.S. businesses"). With respect to notifying CFIUS of transactions, FIRRMA required that certain transactions be notified (as opposed to solely a voluntary filing system). Mandatory filing applies to certain foreign investment transactions involving "critical technologies" or significant foreign government interest in transactions involving TID U.S. businesses, as further described in the relevant regulations (31 C.F.R. 800.401). FIRRMA authorized review of certain real estate transactions by foreign persons if in or near airports or maritime ports, or in proximity to U.S. government facilities. FIRRMA also, made process changes in terms of the time period for reviews and investigations of transactions, introduced a short-form filing process with an expedited timeframe, and authorized filing fees.<sup>51</sup>

2.52. Pursuant to FIRRMA, CFIUS also introduced the concepts of "excepted foreign state", "excepted real estate foreign state", "excepted investor", and "excepted real estate investor". Qualification as an excepted foreign state requires, *inter alia*, that the Committee determines that the state has established and is effectively utilizing a robust process to assess foreign investments for national security risks and to facilitate coordination with the United States on matters relating to investment security. As of January 2022, CFIUS has identified Australia, Canada, New Zealand, and

<sup>50</sup> Department of the Treasury, *The Committee on Foreign Investment in the United States (CFIUS)*. Viewed at: <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>.

<sup>51</sup> The fees, which apply only to transactions filed as a notice rather than as a short-form declaration, are based on a tiered system and range between 0 and USD 300,000, dependent upon the transaction's value.

the United Kingdom as excepted foreign states.<sup>52</sup> To qualify as an excepted investor, a foreign investor must have certain ties to an excepted foreign state, as described in the relevant regulations.<sup>53</sup> Excepted investors and excepted real estate investors are not subject to CFIUS jurisdiction over non-controlling investments in TID U.S. businesses and are exempted from certain mandatory filing requirements for investments in U.S. businesses involving critical technologies.

2.53. During the period from 10 November 2018 to 12 February 2020, and pursuant to FIRRMA, CFIUS put in place a Pilot Program to address "ongoing risks to the national security of the United States resulting from two urgent and compelling circumstances: (1) the ability and willingness of some foreign parties to obtain equity interests in U.S. businesses in order to affect certain decisions, and (2) the rapid pace of technological change in certain U.S. industries".<sup>54</sup> The Pilot Program implemented the expanded scope of transactions subject to CFIUS jurisdiction, to include certain non-controlling investments in U.S. businesses involved in critical technologies in certain industries. Pursuant to a FIRRMA provision authorizing CFIUS to require declarations for certain transactions, declarations for transactions under the Pilot Program were mandatory. The program ended on 13 February 2020, when the regulations implementing many of the provisions in FIRRMA went into effect.<sup>55</sup> CFIUS examined 124 declarations under the Pilot Program. A new filing format, the short-form declaration, was introduced; parties may continue to use it for any transaction, offering a condensed initial review period of 30 days rather than 45 days. Under both the Pilot Program and the current regulations, CFIUS is authorized to take one of four actions with regard to a declaration: (i) complete all action with respect to a transaction (i.e. clear it to proceed); (ii) determine that CFIUS is unable to complete action with respect to the transaction on the basis of the declaration; (iii) request that the parties to the transaction file a written notice; or (iv) initiate a unilateral review of the transaction.

2.54. During 2017-19, the number of CFIUS notices filed remained generally steady, with CFIUS clearing a greater percentage of cases in the initial review period. In 2020, the number of notices filed decreased as the number of post-FIRRMA declarations increased.<sup>56</sup> China had the largest percentage of covered notices during most of the review period (15% of total notices). However, China's percentage of covered transactions declined to 9% in 2020, from 24% in 2018. Over the same period, Japan accounted for 14.8% of total notices on average. The finance, information, and services sector accounted for 43% of covered transactions in 2020, followed by manufacturing with 36%. It is rare that the President, upon the referral of CFIUS, blocks or prohibits a foreign investment. During 2017-20, there were four such presidential decisions. A new development during the period was the formal establishment of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector by Executive Order in April 2020.<sup>57</sup> This review differs from the one conducted by CFIUS as it is focused on the operation purposes of licenses; some transactions may trigger a review by the two bodies.

#### 2.4.3.2 Investment restrictions

2.55. While the United States encourages foreign investment, there remain 14 categories of long-standing requirements and restrictions in a variety of sectors that place special requirements on investors or curtail foreign ownership (Table 2.7). These impact sectors such as transport, natural

<sup>52</sup> Australia and Canada will remain excepted foreign states indefinitely absent CFIUS action; a determination regarding the investment regimes of New Zealand and the United Kingdom is required before February 2023 for those jurisdictions to remain excepted foreign states. U.S. Department of the Treasury, CFIUS Excepted Foreign States. Viewed at: <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius/cfius-excepted-foreign-states>.

<sup>53</sup> In determining which states to include in both categories of excepted foreign states, CFIUS is guided by factors such as if the country has legal authority to review foreign investment transactions regardless of the type of entity and if it has arrangements with the U.S. Government on safeguarding national security matters.

<sup>54</sup> Determination and Temporary Provisions Pertaining to a Pilot Program to Review Certain Transactions Involving Foreign Persons and Critical Technologies, *Federal Register* (2018), Vol. 83, No. 197, 11 October. Viewed at: [https://home.treasury.gov/system/files/206/FR-2018-22182\\_1786904.pdf](https://home.treasury.gov/system/files/206/FR-2018-22182_1786904.pdf).

<sup>55</sup> CFIUS (2021), *Annual Report to Congress. Report Period: CY2020*. Viewed at: <https://home.treasury.gov/system/files/206/CFIUS-Public-Annual-Report-CY-2020.pdf>.

<sup>56</sup> CFIUS (2021), *Annual Report to Congress. Report Period: CY 2020*. Viewed at: <https://home.treasury.gov/system/files/206/CFIUS-Public-Annual-Report-CY-2020.pdf>.

<sup>57</sup> Executive Order 13913 of 4 April 2020, Establishing the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector, *Federal Register* (2020), Vol. 85, No. 68, 8 April. Viewed at: <https://www.federalregister.gov/documents/2020/04/08/2020-07530/establishing-the-committee-for-the-assessment-of-foreign-participation-in-the-united-states>.



resources, and investment/financial services. According to the OECD's FDI Regulatory Restrictiveness Index, the United States ranks above the OECD average in terms of restrictiveness.<sup>58</sup> The sectors that were indicated by the OECD as having the highest barriers were the maritime and fisheries sectors, and by type of restriction were mainly in the category of equity restrictions.

**Table 2.7 Foreign investment restrictions, 2022**

Industry/subject	Provision	References
Investment and foreign trade in services	Collection of information on investments	International Investment and Trade in Services Survey Act of 1976
Investment	Exchange of information on investment and financial data	Foreign Direct Investment and International Financial Data Improvements Act of 1990
Agriculture	Foreign ownership of agricultural land must be reported to the Secretary of Agriculture	Agriculture Foreign Investment Disclosure Act of 1978
Equity investments	Equity in securities requires registration with the SEC and requirements to disclose certain information	Domestic and Foreign Investment Improved Disclosure Act of 1977
Maritime transport	-Restriction on the foreign ownership of U.S.-registered ships. Transport of government cargo tonnage to be carried by privately owned U.S.-flagged commercial vessels as well as Ex-Im Bank loan guarantee cargo to be carried on U.S.-flagged vessels if value over USD 20 million. U.S. vessels must be owned and crewed by U.S. citizens with limited exceptions. -Passenger and goods transport cabotage is limited to U.S.-flagged vessels owned by a U.S. citizen and built in the United States. Similar restrictions apply to fishing vessels for the catching and transport of fish in U.S. waters.	46 U.S.C. 10 U.S.C. 2631  46 U.S.C. 289 19 C.F.R. 4.80
Land transport	For land transport, cabotage is limited to U.S. persons using U.S.-registered and U.S.-built or duty-paid buses and trucks. Cross-border bus or truck services require authority from the Department of Transportation.	49 C.F.R. Subtitle B, Chapter III
Air transport	Restriction on foreign investment for U.S.-registered aircraft and to engage in domestic air services (cabotage)	49 U.S.C. 44101 49 U.S.C. 44102
Mining or mineral rights	U.S. citizenship or U.S. corporation requirements for the exploration, leasing, or purchase of land with mineral deposits, e.g. oil and coal, as well as similar restrictions for rights of way for oil or gas pipelines on federal lands <sup>a</sup>	30 U.S.C. 22 30 U.S.C. 24 30 U.S.C. 181 43 U.S.C. 1331
Energy	-Licenses for the construction, operation, or maintenance of facilities for the transmission and utilization of power on land and water of which the Federal Government has control, is limited to U.S. citizens and domestic corporations. <sup>a</sup> -A license from the Nuclear Regulatory Commission is required for commercial nuclear power and atomic energy; this applies to interstate commerce, manufacture, production, transfer, use, import, or export. Licensing for nuclear use in medical therapy, industrial and commercial purposes, and R&D activities also has nearly identical restrictions.	16 U.S.C. 797(e) 42 U.S.C. 2133(d)  42 U.S.C. 2011 et seq., 42 U.S.C. 2133 42 U.S.C. 2133(d) 42 U.S.C. 2134
Lands	Citizenship requirements to make a claim under the Desert Land Act and for a permit to allow grazing on public lands	43 U.S.C. 321 43 U.S.C. 315(b)
Communications	Restriction of foreign ownership and operation of mass communications media	47 U.S.C. 310(a)(b)(c)
Banking	Regulations or restrictions on bank holding companies, citizenship for directors of national banks, and limitations on foreign banking corporations and branches of foreign banks	12 U.S.C. 1841-1849
Exporting activities	Restrictions under the Export Trade Company Act	15 U.S.C. 4011-4021
Investment company regulations	Restriction on securities in interstate commerce	15 U.S.C. 80a-1 15 U.S.C. 77jj(a)(1)

a According to the authorities, this does not preclude foreign investors from obtaining mining licenses through locally incorporated firms, and thus it does not present a *de facto* barrier in practice.

Source: SelectUSA (2021), *FDI Restrictions: Limitations on Foreign Investment into the United States*. Viewed at: <https://www.trade.gov/sites/default/files/2021-05/Chapter%206%20-%20FDI%20Restrictions.pdf>.

<sup>58</sup> OECD, *FDI Regulatory Restrictiveness Index*. Viewed at: <https://stats.oecd.org/Index.aspx?datasetcode=FDIINDEX#>.

### 3 TRADE POLICIES AND PRACTICES BY MEASURE

#### 3.1 Measures Directly Affecting Imports

##### 3.1.1 Customs procedures, valuation, and requirements

##### 3.1.1.1 Customs procedures and operations

3.1. Customs procedures, facilitation, and related requirements are overseen and carried out by U.S. Customs and Border Protection (CBP), which is the United States' unified border entity operating under the U.S. Department of Homeland Security (DHS). CBP oversees trade and customs operations at 328 ports of entry throughout the country, i.e. points of entry by land, sea, and air, as well as operations in 50 foreign countries. CBP is the second-largest revenue collector for the Government and is working towards its "21st Century Customs Framework" to stay modern and adapt to a challenging new trade landscape.<sup>1</sup>

3.2. CBP has seen its revenue collection nearly double over the review period as it increased from USD 52 billion in FY2018 to USD 93.8 billion in FY2021 (the highest on record). Most of this can be attributed to the special additional duties<sup>2</sup> that were introduced during the review period (Table 3.1). CBP's workload increased over the period, in large part due to these special provisions and the related work in examining exclusions, which have also increased dramatically since 2018, i.e. from 28,556 to 100,000. Implementation of the United States-Mexico-Canada Agreement (USMCA) provisions have also been an important part of CBP work during the period. However, the number of entries processed and the value of entries have not changed significantly (Table 3.1).

3.3. During the review period, CBP was active in examining and pursuing new ways to modernize its trade systems. As part of this initiative, it launched several pilot projects using blockchain in order to test the feasibility of using it in different scenarios to facilitate the movement of legitimate trade securely.<sup>3</sup> During FY2018/19, CBP advance-tested blockchain for intellectual property rights and certain FTAs (the North American Free Trade Agreement (NAFTA) and the Dominican Republic-Central America FTA (CAFTA-DR)). Thereafter, CBP moved towards multi-tech solutions and not exclusively blockchain to track supply chains and improve transparency. As of 2022, five projects were underway with the Silicon Valley Innovation Program (SVIP) using a mix of technological solutions to track goods from origin to delivery on steel, pipeline oil, pipeline natural gas, e-commerce, and food safety. CBP has also been active in responding to specific COVID-19-pandemic-related matters. A COVID-19 Cargo Resolution Team (CCRT) was established as a coordinating group of experts to help facilitate imports and queries on pandemic-related trade matters and a dedicated webpage was set up on these matters.<sup>4</sup> Some of the activities of the CCRT included facilitating inbound shipments through ports of entry, expediting importation of critical medical supplies, and providing responses to inquiries about the importation of personal protective equipment, COVID-19 test kits, ventilators, and other medical supplies. Early in the pandemic there was also the possibility to postpone payment of estimated duties, taxes, and fees for 90 days for importers experiencing a significant hardship.<sup>5</sup> Over 2,600 importers deferred over USD 574 million during this period.<sup>6</sup>

3.4. Since raising the *de minimis* threshold on informal entries in February 2016 from USD 200 to USD 800 for duty-free entries and also due to the growth of e-commerce online purchases, the United States has seen a strong and steady rise in small shipments. These include express

<sup>1</sup> CBP, *21st Century Customs Framework*. Viewed at: [https://www.cbp.gov/sites/default/files/assets/documents/2021-Jul/21CCF%20Slick%20Sheet%20FINAL\\_Compliant.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2021-Jul/21CCF%20Slick%20Sheet%20FINAL_Compliant.pdf).

<sup>2</sup> Trade Act of 1974, Sections 201 and 301; and Trade Expansion Act of 1962, Section 232.

<sup>3</sup> CBP (2020), *CBP Trade and Travel Report, Fiscal Year 2019*, January. Viewed at: <https://www.cbp.gov/sites/default/files/assets/documents/2020-Jan/CBP%20FY2019%20Trade%20and%20Travel%20Report.pdf>.

<sup>4</sup> CBP, *COVID-19 Relief Imports*. Viewed at: <https://imports.cbp.gov/s/>.

<sup>5</sup> CBP, CSMS #43324033 - *Reminder: COVID-19 – Due Dates for Estimated Duties, Taxes, and Fees Postponed for 90 Days*. Viewed at: <https://imports.cbp.gov/s/article/CSMS-43324033-REMINDER-COVID-19-Due-Dates-for-Estimated-Duties-Taxes-and-Fees-Postponed-for-90-days>.

<sup>6</sup> CBP (2021), *CBP Trade and Travel Report, Fiscal Year 2020*, February. Viewed at: <https://www.cbp.gov/sites/default/files/assets/documents/2021-Feb/CBP-FY2020-Trade-and-Travel-Report.pdf>.

consignments and international mail shipments, which have increased nearly 700% since FY2013. As a result of this significant increase in "Section 321" imports (i.e. goods under a total value of USD 800 imported without paying any tax), CBP launched a pilot project on "E-Commerce 'Section 321' Data Pilot" in September 2019.<sup>7</sup> The pilot aims to test the collection of certain advance data related to shipments of these goods eligible under Section 321 so as to reduce CBP's information gap on these shipments and reduce high-risk shipments.

**Table 3.1 Key figures for customs operations, FY2018-21**

	FY2018	FY2019	FY2020	FY2021
Value of imports processed (USD trillion)	2.65	2.7	2.4	2.8
Entries (No., million)	35.1	35.5	32.8	36.9
Advanced electronic data on postal shipments (million)	297.8	304.3	264.0	108.3
Duties, taxes, other fees collected (USD billion)	52	80.7	78.8	93.8
Of which are duties (USD billion)	40.6	71.9	74.4	85.5
Section 201 duties	527	0.716	0.9	0.96
Section 232 aluminum duties	1.1	1.1	0.5	0.45
Section 232 steel duties	3.4	4	1.3	1.6
Section 301 China duties	8	29	35.6	44.0
Section 232 exclusion requests (No. to date)	28,556	83,000	100,000	109,400
Value of goods subject to AD/CVD (USD billion)	24.2	19	18.2	30.2
AD/CVD deposits (USD billion)	2.3	1.9	1.8	2.4

Source: CBP (2022), *CBP Trade and Travel Report*, Fiscal Year 2021, April. Viewed at: [https://www.cbp.gov/sites/default/files/assets/documents/2022-Apr/FINAL%20FY2021\\_%20Trade%20and%20Travel%20Report%20%28508%20Compliant%29%20%28April%202022%29\\_0.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2022-Apr/FINAL%20FY2021_%20Trade%20and%20Travel%20Report%20%28508%20Compliant%29%20%28April%202022%29_0.pdf); CBP (2021), *CBP Trade and Travel Report*, Fiscal Year 2020, February. Viewed at: <https://www.cbp.gov/sites/default/files/assets/documents/2021-Feb/CBP-FY2020-Trade-and-Travel-Report.pdf>; CBP (2020), *CBP Trade and Travel Report*, Fiscal Year 2019, January. Viewed at: <https://www.cbp.gov/sites/default/files/assets/documents/2020-Jan/CBP%20FY2019%20Trade%20and%20Travel%20Report.pdf>; CBP (2019), *CBP Trade and Travel Report*, Fiscal Year 2018, January. Viewed at: <https://www.cbp.gov/sites/default/files/assets/documents/2019-Jul/CBP%20FY18%20Trade%20and%20Travel%20Report-compliant.pdf>; and CBP (2018), *CBP Trade and Travel Report*, Fiscal Year 2017, 13 February. Viewed at: <https://www.cbp.gov/sites/default/files/assets/documents/2018-Feb/CBP-FY17-Trade-and-Travel-Report-Final.pdf>.

3.5. CBP and the U.S. Immigration and Customs Enforcement (ICE) cooperate with foreign customs offices through Customs Mutual Assistance Agreements (CMAA), which provide the framework for the exchange of information to assist the United States and its international partners in the enforcement against customs offences. Most CMAAs are legally binding, government-to-government international agreements; as at December 2021, there were 71 CMAAs in force, with 4 entering into force between 2018 and 2021.<sup>8</sup>

### 3.1.1.2 Import procedures and formalities

3.6. Importers need to file the entry documents in order to import goods. These include the manifest, or nowadays, eManifest, bill of lading and an electronic cargo declaration, which must be submitted to CBP through the Automated Commercial Environment (ACE). Due to the development of the single window (ACE), all customs processing is handled through this electronic system. There are three types of customs entries, according to the value of the imported good: (i) formal entries, for commercial and resale products, valued at over USD 2,500; (ii) informal entries, for those valued between USD 801-USD 2,500; and (iii) Section 321 entries, for those valued at USD 800 and below, i.e. the *de minimis* threshold for duty-free entries. In the case of formal entries, a surety bond must be provided to customs. Section 321 entries are generally simplified and released expeditiously, but they are still subject to various inspections or controls depending on the product, e.g. for food, transport, and consumer safety reasons, or if subject to quota or trade remedies. Filing a manifest, i.e. eManifest, is generally not required, but it depends on the conveyance of the goods.

3.7. CBP automated procedures also include an Electronic Certification System (eCERT) component for secure transfer of customs information from foreign governments. This is used mainly for licenses, origin certificates, and TPL quota administration where endorsement by a foreign entity is needed for certain customs processes. For example, in order to receive preferential duties, CBP

<sup>7</sup> CBP (2019), *Privacy Impact Assessment for the E-Commerce "Section 321" Data Pilot*. Viewed at: <https://www.dhs.gov/sites/default/files/publications/privacy-pia-cbp-section321-059-september2019.pdf>.

<sup>8</sup> The four new ones are with Paraguay, Tunisia, the United Kingdom, and Viet Nam.

requires the use of eCERT.<sup>9</sup> In the case of certain textiles imported under preference programs or quantity limitations, a so-called "textile visa", i.e. an export document attesting to the details of a textile shipment, must be obtained from the foreign authorized official.<sup>10</sup>

### 3.1.1.3 Policy and strategies

3.8. During the review period, CBP has been guided by its CBP Strategy 2020-2025, which sets out 12 strategic initiatives. The strategy helps prioritize CBP resources such as in investing in technology, partnerships, and its workforce.<sup>11</sup> Within this overall framework, CBP's Office of Trade (OT) has developed its Strategy 2025, which has five primary goals: efficient trade facilitation, effective risk-based enforcement, secure and sustainable e-commerce, trade operational expertise, and workforce skills and capabilities (Box 3.1). Each of these main goals has a number of specific objectives and desired outcomes such as further developing the single window application, expanding strategic partnerships, and developing e-commerce standards and best practices.

#### Box 3.1 CBP's Office of Trade "Strategy 2020-2025" Primary Goals

**Goal 1: Efficient Trade Facilitation** – Streamline administrative processes to increase efficiency, lower cost, and reduce processing times to ensure compliance with trade laws and Administration policy goals

Objectives	Desired Outcomes	Key Initiatives
<ul style="list-style-type: none"> <li>• Adopt digital and technological innovations to reduce trade compliance burden</li> <li>• Improve customer experience across trade interactions</li> <li>• Simplify trade interactions through integrated account management and billing</li> <li>• Pursue the 21st Century Customs Framework to modernize and enhance trade processes while protecting revenue and safeguarding the economy</li> </ul>	<ul style="list-style-type: none"> <li>• Decreased administrative costs</li> <li>• Increased integration with private sector digital supply chains</li> <li>• Increased transparency and data sharing</li> <li>• Increased compliance and security</li> </ul>	<ul style="list-style-type: none"> <li>• Automated Commercial Environment (ACE) "Single Window" enhancements</li> <li>• Foster the adoption of CBP IT digital enterprises and technological innovations</li> <li>• Deploy robotic process Automation</li> </ul>

**Goal 2: Effective Risk-Based Enforcement** – Support a level trade playing field through consequence delivery, risk-based analysis, and an intelligence-driven enforcement approach

Objectives	Desired Outcomes	Key Initiatives
<ul style="list-style-type: none"> <li>• Rigorously assess trade compliance risks through analytics and intelligence as a foundation for PTI<sup>a</sup> and industry sector plans</li> <li>• Build analytical and data management capabilities necessary to identify highest-risk transactions and entities</li> <li>• Deploy tailored interventions to address identified risks, and limit interventions against compliant trade activity</li> <li>• Implement risk-based bonding to reduce U.S. Government financial exposure</li> </ul>	<ul style="list-style-type: none"> <li>• Every shipment has the data needed for screening and an evaluated risk level; information aggregated for real-time account risk profiles</li> <li>• CBP has a spectrum of interventions tailored to varying risk profiles</li> <li>• Predictable trade violations are identified prior to shipment; interventions are executed beyond U.S. borders when warranted</li> <li>• CBP and commercial information is available to CBP trade personnel for best risk-based decision-making</li> </ul>	<ul style="list-style-type: none"> <li>• Consequence delivery</li> <li>• Intelligent enforcement to update targeting systems and enhanced bonding</li> <li>• Advanced Trade Analytics Platform (ATAP) development and improvement</li> <li>• Implement "federated view" to ensure CBP has an integrated awareness of activities at all levels</li> </ul>

<sup>9</sup> CBP, *eCERT General Information and Requirements*. Viewed at: <https://www.cbp.gov/trade/quota/ecert/requirements>.

<sup>10</sup> CBP, *Textile Visas*. Viewed at: <https://www.cbp.gov/trade/quota/quota-faq>.

<sup>11</sup> CBP (2019), *Strategy 2020-2025*. Viewed at: <https://www.cbp.gov/sites/default/files/assets/documents/2019-Jun/CBP-2020-2025-Strategy-Plan-Documents-FINAL-508-compressed.pdf>.

**Goal 3: Innovative and Sustainable E-Commerce** – Create new paradigm for trade facilitation and enforcement in light of unprecedented growth in e-commerce

Objectives	Desired Outcomes	Key Initiatives
<ul style="list-style-type: none"> <li>• Create new or tailor existing targeting and enforcement actions to low-value, high-volume shipments</li> <li>• Improve data sharing and data reporting requirements from non-traditional parties to effectively vet and target noncompliance</li> <li>• Build upon existing networks to enhance partnerships with domestic and international stakeholders that address small parcel shipment</li> </ul>	<ul style="list-style-type: none"> <li>• OT regularly collects advance data from new supply chain parties and analyses information to enhance enforcement efforts</li> <li>• OT applies e-commerce strategy to current trade models and integrates it into trade legislation</li> </ul>	<ul style="list-style-type: none"> <li>• Implement effective consequence delivery based on the unique provisions for low-value shipments</li> <li>• Develop e-commerce standards and best practices and educate community</li> <li>• Expand Sec. 321 Data pilot</li> <li>• Streamline IPR enforcement actions to adapt to new e-commerce risks</li> </ul>

**Goal 4: Trade Operational Expertise** – Strengthen OT's presence among national economic and trade policy makers and industry stakeholders to leverage industry practices, legal requirements, and government capabilities

Objectives	Desired Outcomes	Key Initiatives
<ul style="list-style-type: none"> <li>• Proactively engage economic and trade policy stakeholders and influencers on topics at the intersection of trade policy and operational implementation</li> <li>• Incorporate analytical insights and capabilities to provide an assessment of trade policy options</li> </ul>	<ul style="list-style-type: none"> <li>• OT is consistently involved in priority trade conversations with executive, legislative, and industry policy leaders</li> </ul>	<ul style="list-style-type: none"> <li>• Lead the shaping of global trade standards</li> <li>• Expand strategic partnerships</li> <li>• Communication, engagement, and outreach with intergovernmental partners and trade industry partners</li> </ul>

**Goal 5: Workforce Skills and Capabilities** – Prepare the trade workforce with new skills and capabilities while expanding sources of talent for new hires

Objectives	Desired Outcomes	Key Initiatives
<ul style="list-style-type: none"> <li>• Formalize progression for career paths</li> <li>• Expand expertise development and training programs</li> <li>• Foster a flexible work-life balance</li> <li>• Expand sources of talent for new hires and use all hiring authorities</li> <li>• Grow data analytics skills and capabilities to adapt to the changing trade environment</li> </ul>	<ul style="list-style-type: none"> <li>• OT critical roles are fully staffed, well trained, and developed through well-defined career paths</li> <li>• Human capital strategy established, linking needed employee capabilities with integrated recruiting and retention plan</li> <li>• OT is ranked in the top quartile of places to work in the federal government</li> <li>• Trade retention exceeds federal government average</li> </ul>	<ul style="list-style-type: none"> <li>• Strategic Staffing Pillar (recruitment, direct hire, relocation, incentives)</li> <li>• Mission support system and programs for improved recruitment and applicant processing</li> <li>• Build Trade and Cargo Academy facility; curriculum redesign, establishment of knowledge management approach</li> </ul>

- a Priority Trade Issues (PTIs) for CBP are high-risk areas that can cause significant revenue loss, harm the U.S. economy, or threaten the health and safety of the U.S. people. Current PTIs are Agriculture and Quotas, Anti-dumping and Countervailing Duty (AD/CVD), Import Safety, Intellectual Property Rights, Revenue, Textiles/Wearing Apparel, and Trade Agreements. Viewed at: <https://www.cbp.gov/trade/priority-issues>.

Source: CBP, *OT Strategy 2025*. Viewed at: [https://www.cbp.gov/sites/default/files/assets/documents/2020-Dec/Office%20of%20Trade%20Strategy%202025\\_Final\\_0.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2020-Dec/Office%20of%20Trade%20Strategy%202025_Final_0.pdf).

3.9. CBP has also developed an E-Commerce Strategy in response to the growing trade volumes of e-commerce, non-compliant shipments, and to raise consumer awareness. The Strategy responds with four main goals: facilitating international trade standards for e-commerce to support economic prosperity; driving private sector compliance through enforcement resources and incentives; enhancing and adapting all affected CBP operations to respond to emerging supply chain dynamics created by the rapid growth of e-commerce; and enhancing legal and regulatory authorities to better posture CBP and interagency partners to address emerging threats.<sup>12</sup> Through the Strategy, CBP seeks to facilitate trade and gains in efficiency, and to play a more substantial role in trade policy.

#### 3.1.1.4 Foreign Trade Zones (FTZs) and bonded warehouses

3.10. During the review period, U.S. FTZs continued to be an important part of the U.S. trade regime as foreign shipments into FTZs accounted for 10.6% of U.S. imports and they employed

<sup>12</sup> CBP (2020), *CBP E-Commerce Strategy*. Viewed at: [https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/E-Commerce%20Strategy%20Overview\\_0%20%281%29.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/E-Commerce%20Strategy%20Overview_0%20%281%29.pdf).



470,000 persons (about 3.8% of U.S. employment in manufacturing) in 2020. FTZs remain governed by the 1934 Foreign Trade Zones Act, as amended, and CBP regulations (19 C.F.R. Part 146).<sup>13</sup> There were 195 active FTZs in 2020 and every U.S. state maintained at least one zone; they remain outside the U.S. customs territory for duty and prohibited merchandise purposes only. CBP oversees FTZs through audit and inspection. Other local, state, or federal rules apply as they may pertain to, *inter alia*, environmental, safety, and labor measures. While no retail trade can occur in FTZs, they allow most other activities such as assembly, cleaning, manufacturing, mixing, processing, repackaging, repairs, salvaging, storage, testing, and destruction of goods. FTZs are generally established by a public authority, e.g. port or city, and operate pursuant to a grant from the FTZ Board (composed of the Secretaries of Commerce and of the Treasury), which governs all U.S. FTZs.

3.11. The manufacturing of certain products and product groups as well as certain activities are prohibited by the regulations or otherwise not approved in practice by the FTZ Board for various reasons. For example, production of alcohol, tobacco, firearms, steel, textiles, and sugar and blending of petroleum products are not allowed. Some of these restrictions emanate from tax avoidance or safety matters, but many reflect trade concerns such as evasion of quotas and other trade measures, or are applied on products that have traditionally been import sensitive.<sup>14</sup> Nevertheless, a wide range of activities take place in the zones, mainly production and distribution activities. The main sectors of production over the period were oil/petroleum, pharmaceuticals, and vehicle parts; the top operations being performed for export were concentrated in auto manufacturing/assembly and petroleum refining (Table 3.2). During the review period, there was significant growth in pharmaceutical production, buoyed by responses to the COVID-19 pandemic, and electric car production operations.

**Table 3.2 Overview of FTZs, 2018-20**

	2018	2019	2020
Active FTZs (No.)	195	193	195
Firms (No.)	3,300	3,300	3,400
Employment (No.)	440,000	460,000	470,000
Shipments into zones (USD billion)	794	767	625
Foreign inputs (USD billion)	297	279	254
Domestic inputs (USD billion)	497	488	371
Exports (USD billion)	113	111	94
Largest production industries (in terms of foreign inputs received)	Oil/petroleum, vehicle parts, consumer electronics	Oil/petroleum, pharmaceuticals, vehicle parts	Pharmaceuticals, oil/petroleum, vehicle parts
Top production operations (in terms of exports)	Valero Refining-Texas, LP, Mercedes-Benz U.S. International	Tesla, Inc., Valero Refining-Texas, LP, Mercedes-Benz U.S. International	Cheniere Energy Partners LP, Tesla Inc., Mercedes-Benz U.S. International

Source: Foreign Trade Zone Board (2021), *82nd Annual Report of the Foreign-Trade Zones Board to the Congress of the United States*, August. Viewed at: [https://www.trade.gov/sites/default/files/2021-08/AR-2020\\_0.pdf](https://www.trade.gov/sites/default/files/2021-08/AR-2020_0.pdf); Foreign Trade Zone Board (2020), *81st Annual Report of the Foreign-Trade Zones Board to the Congress of the United States*, November. Viewed at: <https://www.trade.gov/sites/default/files/2020-11/AR-2019.pdf>; and Foreign Trade Zone Board (2019), *80th Annual Report of the Foreign-Trade Zones Board to the Congress of the United States*, November 2019. Viewed at: <https://www.trade.gov/sites/default/files/2020-10/AR-2018.pdf>.

3.12. In comparison to those of other countries, U.S. FTZs are somewhat unique in the fact that they facilitate importation into the U.S. market rather than exportation to foreign markets. Furthermore, they operate much like an extension of the domestic industry as the majority of shipments into the zones are domestic materials, with 63% of shipments from the zones directed mainly to the U.S. market and consumers. There has been increased attention and interest in FTZs and their policy during the review period mainly due to the economic and trade costs of the Section 201, 232, and 301 tariffs implemented in 2018.

3.13. Bonded warehouses also continue to be an important part of the U.S. trade regime. In 2020, imports into FTZs and bonded warehouses amounted to USD 217.3 billion.<sup>15</sup> U.S. bonded warehouses were established pursuant to 19 U.S.C. 1555, whereas their operations are governed

<sup>13</sup> P.L. 73-397, 19 U.S.C. 81a-81u. Viewed at: <https://www.trade.gov/ftz-act>; and 19 C.F.R. Part 146. Viewed at: <https://www.ecfr.gov/current/title-19/chapter-I/part-146>.

<sup>14</sup> CBP (2011), *Foreign-Trade Zones Manual*. Viewed at: <https://www.cbp.gov/sites/default/files/documents/FTZmanual2011.pdf>.

<sup>15</sup> USITC Dataweb.

by 19 U.S.C. 19, and there were no significant changes to the regime during the review period. There are 11 different types or classes of customs bonded warehouses authorized by CBP, mostly intended for storage but some manufacturing or processing can take place depending on the type, e.g. smelting and refining metals, manufacture of cigars, and other in-bond manufacturing solely for export. Compared with FTZs, bonded warehouses are generally more restrictive: goods may be stored for a maximum of five years and there are limits to the types of processing or manufacturing allowed. However, bonded warehouses provide benefits such as not having to pay duties until the goods exit them for U.S. consumption with duties determined on the basis of the final article leaving the warehouse, and the possibility to export the goods or transfer them to another warehouse.

### 3.1.1.5 Violations and enforcement

3.14. There are various types of trade violations that are identified and enforced by CBP; the most prevalent are IPR violations such as counterfeit trademarks and pirated copyrights.<sup>16</sup> The misclassification of goods and missing or fake country of origin markings are the other most significant categories of violations.<sup>17</sup> CBP also coordinates with other government agencies on enforcement of laws on safety, consumer protection, and health matters, so as to streamline federal efforts and inspections.<sup>18</sup> In terms of IPR infringements, there was a slight decrease in the number of seizures from a 33,810 in FY2018 to 27,107 in FY2021 due to the COVID-19 pandemic. The total value of the seizures remained relatively stable, between USD 1.3-USD 1.5 billion, over the FY2018-20 period. However, it significantly increased in FY2021 to USD 3.3 billion due to a return to pre pandemic trading level and an increase in the overall number of seizures (Table 3.3). At the same time, the pandemic has also created some shifts in the type of products seized, as in FY2020 there were almost 1,000 incidents of COVID-19-related products seized such as face masks, test kits, and chloroquine tablets; most of these were via express consignment imports. Overall, IPR seizures were highly concentrated from two sources: China; and Hong Kong, China, accounting for 79% of all 2020 IPR seizures, and some 90% arrived by express consignment and international mail carriers.<sup>19</sup>

3.15. CBP undertook a number of initiatives in order to reduce IPR and other violations during the review period. Since 2015, CBP has facilitated the reporting of trade violations by establishing the e-Allegations Program, which allows for electronic submission of suspected violations to CBP. A dedicated website has been established for this reporting.<sup>20</sup> The Donations Acceptance Program (DAP) was created in FY2015 as an arrangement to work more collaboratively with industry to improve trade facilitation and enforcement activities. In terms of IPR enforcement, since the Program's inception, CBP has entered into 43 DAP partnerships that were IPR-related in order to accept tools and technology to verify and authenticate merchandise.

3.16. In FY2019/20, the U.S. administration launched a number of initiatives to counter online sales and trafficking of counterfeit and pirated goods. A report by the Department of Homeland Security (DHS) in January 2020 highlighted that the online availability of counterfeit and pirated goods continued to increase and there was a need for stronger government action.<sup>21</sup> An Executive Order of 31 January 2020 ordered the implementation by CBP of a number of the recommendations from the report including many that involve CBP operations such as excluding trade violators from obtaining an importer of record number, creation of an international mail noncompliance metric, and

<sup>16</sup> These include imported goods made through forced labor, duty evasion violations, import safety violations, shipping violations, and unauthorized import/export of defense articles.

<sup>17</sup> CBP, *Allegation Trends*. Viewed at: <https://www.cbp.gov/trade/e-allegations>.

<sup>18</sup> Through the Commercial Targeting and Analysis Center (CTAC), CBP has memoranda of understanding (MOUs) with the following federal agencies: Alcohol and Tobacco Tax and Trade Bureau (TTB), Animal Plant Health Inspection Service (APHIS), Consumer Product Safety Commission (CPSC), Environmental Protection Agency (EPA), Fish and Wildlife Service (FWS), Food and Drug Administration (FDA), Food Safety and Inspection Service (FSIS), Immigration and Customs Enforcement (ICE), National Highway Traffic Safety Administration (NHTSA), National Marine Fisheries Services (NMFS), and Pipeline and Hazardous Materials Safety Administration (PHMSA).

<sup>19</sup> CBP (2021), *Intellectual Property Rights Seizure Statistics, Fiscal Year 2020*. Viewed at: [https://www.cbp.gov/sites/default/files/assets/documents/2021-Sep/101808%20FY%202020%20IPR%20Seizure%20Statistic%20Book%2017%20Final%20spreads%20ALT%20TEXT\\_FINAL%20%28508%29%20REVISED.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2021-Sep/101808%20FY%202020%20IPR%20Seizure%20Statistic%20Book%2017%20Final%20spreads%20ALT%20TEXT_FINAL%20%28508%29%20REVISED.pdf).

<sup>20</sup> CBP, *Trade Violations Reporting*. Viewed at: <https://eallegations.cbp.gov/s/>.

<sup>21</sup> DHS (2020), *Combating Trafficking in Counterfeit and Pirated Goods, Report to the President of the United States*, 24 January. Viewed at: [https://www.dhs.gov/sites/default/files/publications/20\\_0124\\_plcy\\_counterfeit-pirated-goods-report\\_01.pdf](https://www.dhs.gov/sites/default/files/publications/20_0124_plcy_counterfeit-pirated-goods-report_01.pdf).



publication of violation information, especially of repeat offenders.<sup>22</sup> Certain rulemaking is required to implement these measures, for example to deny an importer of record number. As at March 2022, the drafting of the Notice of Proposed Rulemaking was ongoing. CBP has also been active in conducting awareness campaigns aimed at preventive measures, such as "Truth Behind Counterfeits", an educative program carried out at international airports explaining the negative impact of purchasing of counterfeit goods.<sup>23</sup> In FY2019, 14 such operations were held and in FY2020 an additional 7 were held.

**Table 3.3 CBP enforcement statistics, FY2018-21**

(No., unless otherwise indicated)

	FY2018	FY2019	FY2020	FY2021
Copyright and trademark recordation enforcements	17,500	18,735	18,757	20,758
Shipments seized for IPR violations	33,810	27,599	26,503	27,107
Value of shipments seized (USD billion)	1.4	1.5	1.3	3.3
Seizures of products posing health and safety risks	7,880	7,196	9,382	9,145
Value of health and safety seizures (USD million)	15.8	35.2	21.6	105.5
Wildlife trafficking violation seizures	..	595	346	531
Enforced labor withhold release orders (active)	30	36	44	49
EAPA, evasion of AD/CVD orders (invest. initiated)	33	36	64	48
Fraud, gross negligence, and negligence of AD/CVD requirements (USD million)	92	81	31	43
Non-intrusive inspection examinations (million)	..	6.6	6.4	7.8

.. Not available.

Source: CBP (2022), *CBP Trade and Travel Report, Fiscal Year 2021*, April. Viewed at: <https://www.cbp.gov/sites/default/files/assets/documents/2022-Apr/FINAL%20FY2021%20Trade%20and%20Travel%20Report%20%28508%20Compliant%29%20%28April%202022%29%20.pdf>; CBP (2021), *CBP Trade and Travel Report, Fiscal Year 2020*, February. Viewed at: <https://www.cbp.gov/sites/default/files/assets/documents/2021-Feb/CBP-FY2020-Trade-and-Travel-Report.pdf>; CBP (2020), *CBP Trade and Travel Report, Fiscal Year 2019*, January. Viewed at: <https://www.cbp.gov/sites/default/files/assets/documents/2020-Jan/CBP%20FY2019%20Trade%20and%20Travel%20Report.pdf>; CBP (2019), *CBP Trade and Travel Report, Fiscal Year 2018*, January. Viewed at: <https://www.cbp.gov/sites/default/files/assets/documents/2019-Jul/CBP%20FY18%20Trade%20and%20Travel%20Report-compliant.pdf>; and CBP (2018), *CBP Trade and Travel Report, Fiscal Year 2017*, 13 February. Viewed at: <https://www.cbp.gov/sites/default/files/assets/documents/2018-Feb/CBP-FY17-Trade-and-Travel-Report-Final.pdf>.

### 3.1.1.6 Trade facilitation

3.17. Trade facilitation has been an important part of U.S. trade policy and has guided CBP policies and procedures in recent years. The Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) continues to be the main legislation and has functioned to enhance a fair and competitive trade environment through private sector collaboration, trade enforcement measures, business transformation, and the modernization of processes and procedures. The TFTEA also established the public sector Commercial Customs Operations Advisory Committee (COAC), to advise CBP on all matters involving its commercial operations. The COAC has quarterly public meetings and is composed of a number of subcommittees, some of which specifically address trade facilitation matters. A number of trade facilitation measures were still being implemented during the review period and a few new initiatives were launched.

3.18. The United States has made seven notifications under the Agreement on Trade Facilitation since its inception. These include five notifications on Information on Assistance and Support for Capacity Building under Article 22 of the Agreement for the years 2015-19, and two notifications of

<sup>22</sup> *Ensuring Safe and Lawful E-Commerce for United States Consumers, Businesses, Government Supply Chains, and Intellectual Property Rights Holders*, Executive Order No. 13904, *Federal Register* (2020), Vol. 85, No. 24, 31 January, pp. 6725-6729. Viewed at: <https://www.federalregister.gov/documents/2020/02/05/2020-02439/ensuring-safe-and-lawful-e-commerce-for-united-states-consumers-businesses-government-supply-chains>.

<sup>23</sup> CBP (2020), *CBP Trade and Travel Report, Fiscal Year 2019*, January. Viewed at: <https://www.cbp.gov/sites/default/files/assets/documents/2020-Jan/CBP%20FY2019%20Trade%20and%20Travel%20Report.pdf>.

information required under Articles 1.4, 10.4, 10.6, and 12.2.<sup>24</sup> The latest notification is a revision of the earlier one related to temporary trade measures put in place to combat the COVID-19 crisis.

#### 3.1.1.6.1 Single window

3.19. The Automated Commercial Environment (ACE) continues to be CBP's electronic platform for processing imports and exports; ACE was developed further and improved during the review period. As at December 2021, ACE was still adding on new features and there were a number of future initiatives planned. ACE's automation and process simplification efforts resulted in an estimated economic benefit of approximately USD 1.4 billion for the trade community and USD 106 million for CBP in FY2020.<sup>25</sup> The work on ACE as the main platform for trade, or the single window, commenced in 2014 and the main elements were completed in 2018.<sup>26</sup> Approximately 250 government forms were automated through ACE and the procedures of more than 40 government agencies were incorporated. Thus, all import manifest, cargo release, post release, and export processes are handled by ACE. The use of ACE for all electronic manifest filings has been required since 1 May 2015. During the review period, new features were added to ACE to implement consolidated importers' deferred tax statements, the Craft Beverage Modernization Act, USMCA drawback changes, AD/CVD Flags for EAPA Evasion and Injunctions, and Real Time Automated Surety Interface (ASI). CBP announced that it would deploy Phase 1 of ACE's Portal Modernization on 22 January 2022.<sup>27</sup> This modernization effort was expected to transfer existing functionality to an upgraded platform and thereby provide easier use and better performance. Some of the enhancements included a new log-in page, global search tool, and upgraded account user interface. During 2022 a number of other enhancements or changes were scheduled.<sup>28</sup>

3.20. The import licensing regime for steel and aluminum monitoring is handled through a separate web interface at the Department of Commerce whereby importers must first apply for and receive a license number in which the reference can then be submitted through the CBP ACE interface.

#### 3.1.1.6.2 Advance rulings

3.21. The United States continues to offer advance rulings on customs matters, including classification, marking, origin, valuation, and carriers, and on the applicability of trade programs. Advance rulings, or Ruling Letters as they are called, are issued pursuant to CBP regulations in 19 C.F.R. Part 177, and can be submitted electronically through a template, with the exception for rulings on valuation and carriers which must be submitted in the form of a letter. As a matter of policy, CBP generally makes these rulings available to the public after 90 days from issuance through a searchable database known as the Customs Rulings Online Search System (CROSS).<sup>29</sup> The regulations, however, do not specify a deadline for the issuance of rulings nor the length of their duration or validity. Rulings remain valid unless modified or revoked by CBP or changed by operation of law. As at December 2021, there were 209,848 searchable rulings available in CROSS. In 2021, CBP issued 3,230 rulings of which classification rulings were the most numerous.<sup>30</sup>

<sup>24</sup> WTO documents G/TFA/N/USA/1, 13 June 2017; G/TFA/N/USA/1/Rev.1, 26 October 2020; G/TFA/N/USA/2, 12 June 2017; G/TFA/N/USA/2/Add.1, 14 June 2018; G/TFA/N/USA/3, 13 May 2019; G/TFA/N/USA/4, 8 October 2020; and, G/TFA/N/USA/5, 8 June 2021.

<sup>25</sup> CBP (2021), *CBP Trade and Travel Report, Fiscal Year 2020*, February. Viewed at: <https://www.cbp.gov/sites/default/files/assets/documents/2021-Feb/CBP-FY2020-Trade-and-Travel-Report.pdf>.

<sup>26</sup> CBP (2020), *ACElopedia*. Viewed at: [https://www.cbp.gov/sites/default/files/assets/documents/2020-Nov/ACElopedia%20Nov2020\\_0.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2020-Nov/ACElopedia%20Nov2020_0.pdf).

<sup>27</sup> CBP, *ACE Portal Modernization*. Viewed at: <https://www.cbp.gov/trade/automated/ace-portal-modernization>.

<sup>28</sup> CBP (2021), *Notional Schedule for Automated Commercial Environment (ACE) Deployments*. Viewed at: [https://www.cbp.gov/sites/default/files/assets/documents/2022-Apr/ACE%20Development%20-%20Deployment%20Schedule%202022\\_508c.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2022-Apr/ACE%20Development%20-%20Deployment%20Schedule%202022_508c.pdf).

<sup>29</sup> CROSS database. Viewed at: <https://rulings.cbp.gov/home>. Rulings are also available through *Customs Bulletin and Decisions*. See <https://www.cbp.gov/trade/rulings/bulletin-decisions>.

<sup>30</sup> There was a decline in the number of advance rulings issued during the review period: in 2018 there were 5,585, in 2019 there were 4,427, and in 2020 3,955. The authorities attribute this to a return to the baseline as there was a temporary spike in 2018 when certain trade remedies were put in place.

### 3.1.1.6.3 Trusted trader/Authorized economic operator/Advance security programs

3.22. The Customs Trade Partnership Against Terrorism (CTPAT) continued to be CBP's most important trusted trader program, with 11,000 certified partners in FY2021, accounting for 52% of all cargo imported into the United States (Table 3.4).<sup>31</sup> As CTPAT is a voluntary public-private sector partnership program, CBP works closely with the private sector to improve cargo security and secure international supply chains. The benefits of becoming a certified partner are numerous and include reduced customs examinations, shorter wait times at the border, and access to FAST lanes at the land borders. CBP also has Mutual Recognition Arrangements (MRAs) with 14 foreign partner customs administrations to collaborate and recognize validation findings of the partners and thereby facilitating the work.<sup>32</sup> These MRAs indicate that the security requirements or standards of the foreign industry partnership program, as well as its verification procedures, are the same or similar to those of the CTPAT program.

3.23. In 2019 the first major update of CTPAT occurred with changes to the program's minimum security criteria to take a more comprehensive approach to supply chain security, including new requirements or recommendations on cyber security, agricultural security, prevention of trade-based money laundering and terrorist financing, and using security technology to enhance physical security requirements. Other requirements in existing categories have been strengthened and a new recommendation was put in place for partners to have a social compliance program. As from January 2023, the CTPAT Security program will change this recommendation to a mandatory requirement. CTPAT categorized the new criteria into three focus areas: Corporate Security, Transportation Security, and People and Physical Security. Within these focus areas, there are 12 criteria categories that apply across the supply chain to each entity group eligible for CTPAT membership. As part of this process, more than 2,200 validations were completed in the same year. In March 2020, as a result of the COVID-19 pandemic, all validation work under CTPAT was postponed. CBP pursued alternatives and later in 2020 initiated the virtual validation program. In 2021, CTPAT maintained virtual validation based on a risk management approach. The program has adapted the virtual validation concept, as a way to address the travel restrictions that were imposed as a result of the COVID-19 pandemic. In 2022, dependent upon the conditions, CBP was expected to revert to in-person inspections as well as maintaining virtual inspections. The benefits of becoming a certified partner include reduced customs examinations, shorter waiting times at the border, and access to FAST lanes at the land borders and access to the AQUA lane benefits at seaports.

3.24. Another development during the review period was the phase-out of the Importer Self-Assessment (ISA) program into the newly created CTPAT Trade Compliance Program in March 2020. The Program aims to continue providing certain importers with benefits when they demonstrate enhanced compliance measures and moves CTPAT towards trade compliance, therefore not limited to only security measures. CTPAT importers who participate in the CTPAT Trade Compliance program will have additional requirements beyond the social compliance program, with additional benefits. As of March 2022, to participate, a company had to already be part of CTPAT.<sup>33</sup> However, new applications are expected after the issuance of the Federal Register notice on the Importer Self-Assessment program and the closeout of the Trusted Trader Pilot.

**Table 3.4 CTPAT key figures, FY2019-21**

	2019	2020	2021
Certified partners (No.)	11,600	11,300	11,000
Imported cargo covered by CTPAT (%)	54	52	52
Validations	2,200	1,300	1,800
CTPAT members in good standing (%)	97.3	97.3	98
Suspensions (No.)	96	135	143

<sup>31</sup> CBP (2021), *CBP Trade and Travel Report, Fiscal Year 2020*, February. Viewed at: <https://www.cbp.gov/sites/default/files/assets/documents/2020-Jan/CBP%20FY2019%20Trade%20and%20Travel%20Report.pdf>.

<sup>32</sup> As at December 2021, there were MRAs with Canada, Chinese Taipei, Dominican Republic, European Union, India, Israel, Japan, Jordan, the Republic of Korea, Mexico, New Zealand, Peru, Singapore, and the United Kingdom.

<sup>33</sup> CBP, *CTPAT Trade Compliance FAQ's*. Viewed at: <https://www.cbp.gov/border-security/ports-entry/cargo-security/ctpat/trade-compliance/FAQs>.

	2019	2020	2021
Removals (No.)	120	155	79
Authorized Economic Operator certificates from foreign MRA partners (No.)	338	433	150

Source: CBP (2021), *CBP Trade and Travel Report, Fiscal Year 2020*, February. Viewed at: <https://www.cbp.gov/sites/default/files/assets/documents/2021-Feb/CBP-FY2020-Trade-and-Travel-Report.pdf>; CBP (2020), *CBP Trade and Travel Report, Fiscal Year 2019*, January. Viewed at: <https://www.cbp.gov/sites/default/files/assets/documents/2020-Jan/CBP%20FY2019%20Trade%20and%20Travel%20Report.pdf>.

3.25. Three other programs are concerned with security or advanced clearance measures; these are the Container Security Initiative (CSI), the Importer Secure Filing (ISF 10+2) program, and the Air Cargo Advance Screening (ACAS) program. The CSI has been a long-standing program to secure containers for possible terrorist threats by a pre-screening process in the port of export. CBP identifies high-risk containers with the help of host country customs administrations and operates 61 CSI ports that pre-screen over 66% of the maritime containerized cargo entering the United States.<sup>34</sup> The ISF 10+2 program requires advance cargo information for all merchandise arriving to the United States by vessel. The ACAS program was established in 2018 to require pre-arrival air cargo data to be provided to CBP for shipments arriving in the United States by air. Based on a pilot project with the private sector that lasted for seven years, the ACAS is now obligatory and requires the submission of the shippers' name and address, consignee name and address, cargo description, total quantity and weight, and air waybill number.<sup>35</sup>

#### 3.1.1.6.4 Expedited shipments

3.26. The United States has a long-standing program and special arrangements for express consignments as codified in 19 C.F.R. 128. Through an application process and payment of a processing fee, CBP allows for express consignment operators or carriers to operate by moving cargo by special express commercial service under closely integrated administrative control and also for express consignment carrier facilities to operate in separate or shared specialized facilities at a port for the examination and release of express consignment shipments. Express consignment operators are required to submit advanced additional manifest information to CBP such as country of origin, information on the shipper and consignee, description, etc.; meet the conditions as a carrier of bonded merchandise; comply with ACE or related EDI systems; and meet the respective informal or formal entry procedures.

#### 3.1.1.7 Customs valuation

3.27. The United States' customs valuation provisions continue to be provided for in the Trade Agreements Act of 1979, which implemented the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, and related regulations (19 U.S.C. 1401a). There have been no amendments or changes to this legislation during the review period and the United States continues to value merchandise imports according to the hierarchical methods in its regulations, i.e. transaction value, transaction value of identical and similar merchandise, deductive value, computed value and other possible methods, which mirror the same in the WTO Agreement. The United States assesses customs value on an f.o.b. basis. In 1996 the United States notified its customs valuation regime to the WTO by reference to its notification under the GATT Tokyo Round Valuation Code.<sup>36</sup>

3.28. In June 2016, CBP produced a "Valuation Encyclopedia" providing guidance on interpretation or matters of judicial review that influenced CBP customs valuation decisions or procedures.<sup>37</sup> An update of the Encyclopedia is expected to be issued in 2022. CBP also has an Informed Compliance Publication on Customs Value from 2006 that provides information to the trade community on

<sup>34</sup> CBP, *CSI: Container Security Initiative*. Viewed at: <https://www.cbp.gov/border-security/ports-entry/cargo-security/csi/csi-brief>.

<sup>35</sup> CBP, Interim Final Rule on Air Cargo Advance Screening (ACAS), *Federal Register* (2018), Vol. 83, No. 113, 12 June, pp. 27380-27407. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2018-06-12/pdf/2018-12315.pdf>.

<sup>36</sup> WTO document G/VAL/N/1/USA/1, 1 April 1996.

<sup>37</sup> CBP (2016), *U.S. Customs and Border Protection Valuation Encyclopedia (1980–2015)*. Viewed at: <https://www.cbp.gov/sites/default/files/assets/documents/2016-Jul/Valuation%20Encyclopedia%20Dec%202015%20final.pdf>.

valuation.<sup>38</sup> It was also in the process of being updated as of March 2022. The United States offers advance ruling on customs valuation through its CROSS system (Section 3.1.1.1).

### 3.1.2 Rules of origin

#### 3.1.2.1 Non-preferential rules of origin

3.29. The United States' non-preferential rules of origin did not undergo amendment during the review period and continue to be based on the "wholly obtained" and "substantial transformation" principles as determined by CBP regulations, interpretations, and court decisions. The origin determination is outlined as follows: (i) for goods wholly obtained from one country, origin is determined by where the product was the growth, product, or manufacture of; or (ii) for goods of more than one country, substantial transformation determines origin by the last country in which it was substantially transformed into a new or different article with a name, character, or use distinct from that of from which it was transformed.<sup>39</sup>

#### 3.1.2.2 Preferential rules of origin

3.30. Preferential rules of origin determine origin under the United States' FTAs and unilateral preference regimes. There have not been substantial changes in these existing preferential rules of origin, except as outlined below, and they remain unique to each agreement or preference program and implemented through the General Notes of the Harmonized Tariff Schedule of the United States (HTSUS). Overall, most preferential rules of origin have a "wholly obtained" criterion and use a regional value content, change in HS classification, or specific manufacturing processes or operations to determine substantial transformation when more than one country is involved.<sup>40</sup> Many FTAs increasingly use a change in HS classification at HS 2-, 4-, or 6-digit levels to confer origin.

3.31. The main development during the review period was the amendment of the preferential rules of origin for goods from Canada and Mexico as a result of the USMCA, in particular chapter 4 – General Rules of Origin, chapter 5 – Rules of Origin Procedures, chapter 6 – Rules of Origin Specific to Textiles and Apparel, and the Uniform Regulations regarding rules of origin trilaterally agreed upon (including their related Annexes and Appendices). USMCA's Annex 4-B contains significant revisions to many of the product-specific rules of origin of the NAFTA.<sup>41</sup> Each of these has been subject to specific rulemaking by the United States, or inclusion in the HTSUS as noted, in order to implement the treaty provisions.

3.32. The agreement follows previous preferential agreements in that it establishes product-specific rules of origin as the main entity for determining origin. However, USMCA rules of origin were strengthened so that higher thresholds must be met to confer origin, in particular for certain sensitive sectors such as autos, steel, and aluminum. For example, the regional value content requirement was increased from 62.5% in the NAFTA to 75% in USMCA for many automotive products.<sup>42</sup> The use of aluminum and steel from within the region at a level of 70% of auto producers' purchases is also a criterion in the automotive section, and the origin is only conferred if the metal is melted and poured among USMCA parties. On the other hand, some USMCA rules allow more flexibility; this is the case for higher *de minimis* thresholds for certain non-originating content. In one new development, the USMCA establishes a labor value content (LVC) criterion for conferring origin in

<sup>38</sup> CBP (2006), *What Every Member of the Trade Community Should Know About: Customs Value*. Viewed at: <https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/ICP-Customs-Value-2006-Final.pdf>.

<sup>39</sup> CBP (2004), *What Every Member of the Trade Community Should Know About: U.S. Rules of Origin*. Viewed at: [https://www.cbp.gov/sites/default/files/assets/documents/2016-Apr/icp026\\_3.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2016-Apr/icp026_3.pdf).

<sup>40</sup> WTO document WT/TPR/S/275/Rev.2, 8 March 2013.

<sup>41</sup> *Federal Register*, Vol. 85, No. 127, 1 July, pp. 39690-39751, amending part 181 and adding a new part 182 containing several USMCA provisions, including the Uniform Regulations regarding rules of origin. Viewed at: <https://www.ecfr.gov/current/title-19/chapter-I/part-182> and <https://www.federalregister.gov/documents/2021/07/06/2021-14264/agreement-between-the-united-states-of-america-the-united-mexican-states-and-canada-usmca>.

<sup>42</sup> The 75% criterion is being gradually implemented and will reach this level on 1 July 2023 for light trucks and passenger vehicles. For heavy trucks, the level of 70% regional value content is expected to be reached on 1 July 2027.



the automotive sector.<sup>43</sup> Other new provisions were added on "recovered materials", "sets, kits, and composite goods", and updated measures on accumulation, transit, and transshipment.

3.33. The United States–Japan Trade Agreement (USJTA) that entered into force in 2020 also contains preferential rules of origin as part of the agreement in Annex II.<sup>44</sup> There are three main criteria for the rules of origin: (i) wholly obtained or produced entirely in one or both of the Parties; (ii) produced entirely in one or both of the Parties, exclusively from originating materials; or (iii) produced entirely in one or both of the Parties, using non-originating materials, subject to the applicable change in tariff classification as provided in the table in the Annex to the USJTA. The Annex table outlines the requirements for a change in tariff classification at the HS2-, HS4-, and HS6-digit level for the respective concessions. Many of the agricultural products require a change at the HS2-digit level, whereas a majority of the machinery and equipment goods require a change at the HS4-digit level.

3.34. In 2017, the United States implemented nomenclature changes to the HTSUS due to the 2017 HS amendments by the WCO, which not only impacted the chapters of the HTSUS, but also nomenclature references in the rules of origin of the FTA with Chile contained in General Note 26 of the HTSUS. The United States made corrections to these rules of origin to align the nomenclature.<sup>45</sup> These changes were characterized as "technical rectifications", thus they did not make any substantial modifications to the rules of origin. A similar Presidential Proclamation from July 2018 made changes to the rules of origin in the United States–Bahrain Free Trade Agreement due to changes in the HTSUS. These were also technical rectifications to align the nomenclature.<sup>46</sup> Changes to the rules of origin in the FTA with Colombia, also due to the nomenclature changes, became effective as at 1 January 2021. Furthermore, the United States and Singapore agreed on changes to their preferential rules of origin to reflect the HS 2017 changes.<sup>47</sup>

### 3.1.2.3 Country of origin marking requirements

3.35. When products are imported into the United States, most must have a mark indicating to the final consumer where the product was manufactured. U.S. country of origin marking rules are distinct and separate from origin determination for customs purposes and therefore it is possible that an article may have a different country of origin for marking purposes. Section 304(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that goods be marked permanently, legibly, and in a conspicuous place so as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. The related regulations identify products subject to marking, the methods and manner of marking and marking requirements for special articles such as containers, holders, or repacked articles. They also define the country of origin for marking purposes as the country of manufacture, production, or growth of any article of foreign origin entering the United States and any further work or material added to an article in another country must effect a substantial transformation to render such other country the "country of origin" (19 C.F.R. 134).

<sup>43</sup> The LVC rules are being phased in over a period of time up until 1 July 2023. The rules introduce such concepts as high-wage labor costs, high-wage material, high-wage technology, and high-wage technology expenditures credit. In addition, a minimum hourly wage of USD 16 is established and certain percentages of vehicle manufacture must use labor with this minimum wage.

<sup>44</sup> United States–Japan Trade Agreement (USJTA), Annex II, Tariffs and Tariff-Related Provisions of the United States. Viewed at: [https://ustr.gov/sites/default/files/files/agreements/japan/Annex\\_II\\_Tariffs\\_and\\_Tariff-Related\\_Provisions\\_of\\_the\\_United\\_States.pdf](https://ustr.gov/sites/default/files/files/agreements/japan/Annex_II_Tariffs_and_Tariff-Related_Provisions_of_the_United_States.pdf).

<sup>45</sup> Presidential Proclamation 9974 of 30 December 2019 "To Take Certain Actions Under the African Growth and Opportunity Act and for Other Purposes", Annex IV, *Federal Register* (2019), Vol. 84, No. 249, 30 December, pp. 72187–72211. Viewed at: <https://www.federalregister.gov/documents/2019/12/30/2019-28285/to-take-certain-actions-under-the-african-growth-and-opportunity-act-and-for-other-purposes>.

<sup>46</sup> Presidential Proclamation 9771 of 2 August 2018 "To Take Certain Actions Under the African Growth and Opportunity Act and for Other Purposes", Annex II, *Federal Register* (2018), Vol. 83, No. 149, 2 August, pp. 37993–38010. Viewed at: <https://www.federalregister.gov/documents/2018/08/02/2018-16725/to-take-certain-actions-under-the-african-growth-and-opportunity-act-and-for-other-purposes>.

<sup>47</sup> Presidential Proclamation 10053 of 29 June 2020 "To Take Certain Actions Under the United States–Mexico–Canada Agreement Implementation Act and for Other Purposes", *Federal Register* (2020), Vol. 85, No. 127, 1 July, pp. 39821–39828. Viewed at: <https://www.federalregister.gov/documents/2020/07/01/2020-14448/to-take-certain-actions-under-the-united-states--mexico-canada-agreement-implementation-act-and-for>.

3.36. There have been no major changes to the U.S. marking rules during the review period. An Executive Order was issued that affects, *inter alia*, the country of origin marking of products from Hong Kong, China.<sup>48</sup> Goods produced in Hong Kong, China that were entered, or withdrawn from warehouse, for consumption into the United States after 9 November 2020 were to be marked as "China" for country of origin marking purposes.<sup>49</sup>

3.37. The USMCA does not contain marking rules. However, interim regulations related to the marking rules, tariff-rate quotas (TRQs), and other USMCA provisions, published in the Federal Register on 6 July 2021 (86 FR 35566), amended Section 102.0 of Title 19 of the C.F.R. so that the rules set forth in Sections 102.1 through 102.18 and 102.20 continue to determine the country of origin for marking purposes with respect to goods imported from Canada and Mexico. The rules specified in Section 102.21 already determined the country of origin marking for textile and apparel products. This Interim Final Rule (IFR) became effective on 1 July 2021, and the relevant changes were already reflected in the U.S. marking regulations at 19 C.F.R. 134 and 19 C.F.R. 102. As at March 2022, the final rules had not yet been issued.

### 3.1.3 Tariffs

#### 3.1.3.1 Nomenclature and HTSUS changes

3.38. The United States' tariff schedule, known as the HTSUS, is the legal instrument that determines the classification and tariffs applied to imported merchandise. The HTSUS follows the World Customs Organization's (WCO) Harmonized System nomenclature for Chapters 1 to 97 at the HS 6-digit level; however, U.S. tariffs are applied at the 8-digit level with nomenclature at the 10-digit level due to the last two digits being statistical reporting suffixes. Two additional chapters, 98 and 99, contain special provisions to administer legislation, temporary modifications, the WTO agricultural special safeguard (SSG), or other special tariff treatment.<sup>50</sup> There are two rates of duty columns, "1" and "2", with "1" being subdivided into "General" that applies to countries or territories with normal trade relations with the United States<sup>51</sup> and "Special" that implements special tariff treatment programs such as reciprocal and unilateral preferences. Column "2" is for those countries without normal trade relations and as of 2021 applied only to Cuba and the Democratic People's Republic of Korea.

3.39. As a signatory to the WCO's Harmonized System Convention, the United States is expected to align its nomenclature to the convention and its amendments. In 2019, the WCO approved recommended amendments to the Harmonized System nomenclature. The so-called "HS 2022" amendments entered into force on 1 January 2022, and the Contracting Parties have committed to implement them by that date. The United States commenced its internal procedures in 2020 pursuant to Section 1205 of the Omnibus Trade and Competitiveness Act of 1988. Thus, after recommendations were made to the President and subject to consultation and layover provisions in Congress, the President proclaimed these nomenclature changes on 23 December 2021, and the changes entered into force for the United States on 27 January 2022.<sup>52</sup> The number of annual changes or revisions to the HTSUS during the review period was high compared with previous years with 10 or more updates each year (Table 3.5). Many of these changes were a result of Section 232 and Section 301 measures.

<sup>48</sup> Executive Order 13936 of 14 July 2020 "The President's Executive Order on Hong Kong Normalization", *Federal Register* (2020), Vol. 85, No. 138, 17 July, pp. 43413-43417. Viewed at: <https://www.federalregister.gov/documents/2020/07/17/2020-15646/the-presidents-executive-order-on-hong-kong-normalization>.

<sup>49</sup> CBP, *Frequently Asked Questions – Guidance on Marking of Goods of Hong Kong – Executive Order 13936*. Viewed at: <https://www.cbp.gov/trade/rulings/frequently-asked-questions-guidance-marking-goods-hong-kong-executive-order-13936>; CBP (2020), "Country of Origin Marking of Products of Hong Kong", Notice of 11 August 2020, *Federal Register* (2020), Vol. 85, No. 155, 11 August, pp. 48551-48552. Viewed at: <https://www.federalregister.gov/documents/2020/08/11/2020-17599/country-of-origin-marking-of-products-of-hong-kong>.

<sup>50</sup> Tariff treatment or quotas applied pursuant to Sections 232 or 301 (and their exclusions) are contained in Chapter 99, as well as temporary duty suspensions when not expired.

<sup>51</sup> Applies to most WTO Members and implements the MFN duties.

<sup>52</sup> The additional WCO changes of 25 June 2020 were incorporated into the overall U.S. implementation of HS2022 and also entered into force for the United States on 27 January 2022.



**Table 3.5 Overview of changes to the HTSUS, 2017-21**

Year	Revisions	Main elements of change
2017	2	Changes to GSP and AGOA
2018	13	Changes to Ch. 99, Section 232 and 301 tariffs and exclusions, safeguard measure, ITA II staged rates, AGOA and GSP changes, changes from the Miscellaneous Tariff bill of 2018, WCO changes to nomenclature
2019	17	Changes to Ch. 99, Section 232 and Section 301 tariffs and exclusions, changes to GSP and AGOA, ITA Expansion staged rates,
2020	28	Changes to Ch. 99, Section 232 and 301 tariffs and exclusions, to reduce certain tariffs per the Agreement with the European Union, modification of safeguard measure, GSP and AGOA modifications, USMCA FTA
2021	16	Changes to Ch. 99, Section 232 and 301 tariffs and exclusions, to reduce certain tariffs per the Agreement with the European Union, AGOA changes, modification of TRQs per Agreements with the European Union and United Kingdom

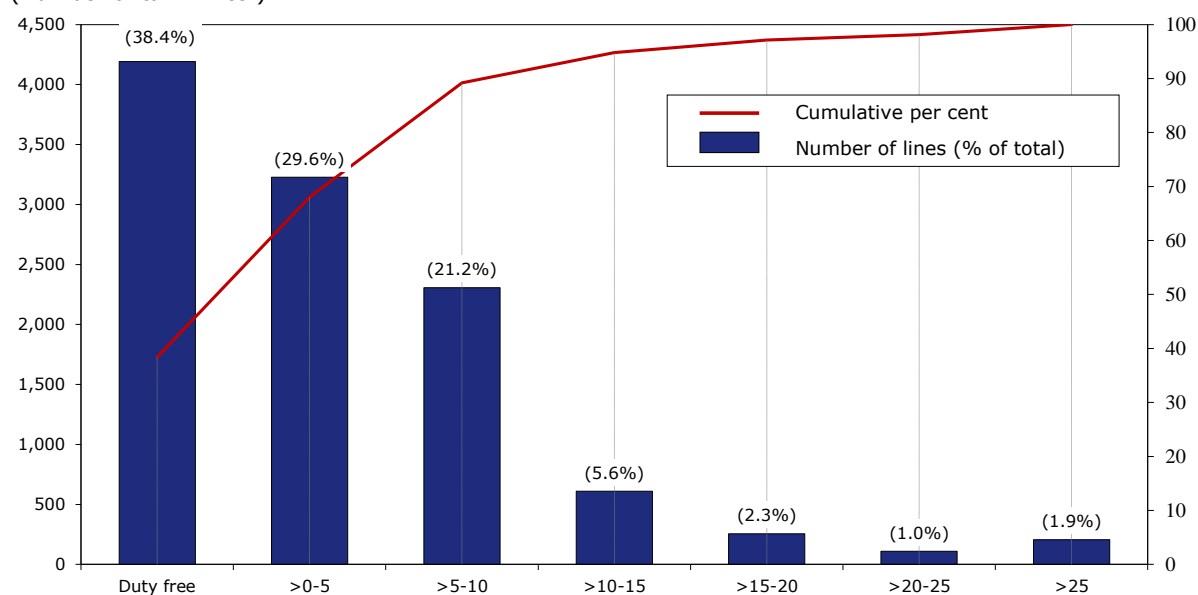
Source: USITC, Modifications to the Harmonized Tariff Schedule. Viewed at: <https://hts.usitc.gov/view/list>.

### 3.1.3.2 Applied rates

3.40. The U.S. MFN applied tariff rates did not change significantly during the review period, and essentially remain the same as the levels in 2018 (Tables 3.6 and A3.1). The simple average rate remains low at 4.8% overall. The tariff protection afforded to the agricultural sector was, however, significantly much higher, 9.2% on average, more than double that of the non-agricultural sector (4.0%). The United States maintained a significant number of duty-free tariff lines (38.4%) that increased slightly from 2018 (37.5%), and a significant percent of tariffs applied at rates greater than 0% but less than or equal to 2% (7.1%). Although tariff averages remain low, there are 6.9% of all tariff lines as peak tariffs, and 2% have very high rates of above 25% (Chart 3.1). There is a high amount of predictability in U.S. tariffs as applied tariffs are essentially at the same level as the WTO bound rates (Table 3.6).

**Chart 3.1 Frequency distribution of MFN tariff rates, 2021**

(Number of tariff lines<sup>a</sup>)



a The total number of lines is 10,905.

Source: WTO Secretariat calculations, based on data provided by the authorities.

3.41. The U.S. schedule contains 10 tariff lines over 300%, including 2 tariff lines over 400%. All but two of these are out-of-quota. With the exception of one out-of-quota dairy line, these extremely high tariffs are almost solely attributed to tobacco, in particular unprocessed, semi-processed, or refuse tobacco. Some outlying tariffs in the tobacco and dairy sectors can be attributed to *ad valorem* equivalents (AVEs) in which the calculation has led to some very high rates. Some other products with relatively high tariffs include peanuts and peanut products, footwear, and textiles and clothing. The HS sections of pulp and paper, and works of art have the lowest rates of duty, all at zero (Table A3.1). The high percentage of duty-free tariff lines reflects close U.S. involvement in

WTO initiatives and agreements such as the Information Technology Agreement (ITA) and the expansion of the ITA, the Agreement on Trade in Civil Aircraft, and zero-for-zero tariff outcomes in the Uruguay Round. Additional tariffs applied due to trade investigations, e.g. Sections 232 and 301 (Section 3.1.7), are numerous; they are contained and applied through Chapter 99 of the HTSUS and are not included in this tariff analysis.

**Table 3.6 Structure of the tariff schedules, selected years<sup>a</sup>**

(%)

	2016 <sup>b</sup>	2018 <sup>c</sup>	2021 <sup>d</sup>
Total number of tariff lines	10,516	10,878	10,905
Non- <i>ad valorem</i> tariffs (% of all tariff lines)	10.9	10.6	10.6
Lines subject to tariff quotas (% of all tariff lines)	1.9	1.9	1.9
Duty-free tariff lines (% of all tariff lines)	36.8	37.5	38.4
Dutiable lines tariff average rate (%)	7.6	7.8	7.8
Simple average tariff (%)	4.8	4.8	4.8
WTO agriculture	9.1	9.4	9.2
WTO non-agriculture (incl. petroleum)	4.0	4.0	4.0
Agriculture, hunting, forestry and fishing (ISIC 1)	6.5	5.8	5.7
Mining and quarrying (ISIC 2)	0.4	0.4	0.4
Manufacturing (ISIC 3)	4.8	4.8	4.8
Domestic tariff "peaks" (% of all tariff lines) <sup>e</sup>	6.7	6.7	6.9
International tariff "peaks" (% of all tariff lines) <sup>f</sup>	5.1	5.1	5.2
Overall standard deviation	14.0	13.6	13.2
Applied rates > 0% but ≤ 2% (% of tariff lines)	7.8	7.7	7.1
Bound tariff lines (% of all tariff lines) <sup>g</sup>	100.0	100.0	100.0

- a The tariff is provided at the 8-digit level for those in HTSUS Chapters 1-97, i.e. statutory tariffs, and do not include temporary tariffs and those invoked pursuant to other measures in HTSUS Chapters 98-99. Averages exclude in-quota rates and lines. Calculations include AVEs for non-*ad valorem* duties, which were calculated by the U.S. authorities using import price data. In seven instances of HS lines at the eight-digit level, the AVE provided for compound duties was below the *ad valorem* component.
- b As of January 2016.
- c As of February 2018.
- d As of November 2021.
- e Domestic tariff peaks are defined as those exceeding three times the overall average applied rate.
- f International tariff peaks are defined as those exceeding 15%.
- g Two lines applying to crude petroleum are not bound.

Source: WTO Secretariat calculations, based on data provided by the authorities and notifications.

### 3.1.3.3 Bound rates

3.42. There have been no changes to the United States' bound tariff rates since the last Review and, on average, they remain at 4.8%.<sup>53</sup> Tariffs in Chapters 1 to 97 in the U.S. Schedule remain fully bound except two tariff lines on crude petroleum (HTS 2709.00.10 and 2709.00.20). The United States has "other duties and charges" bound at zero, except seven tariff lines, bound at higher levels, and maintains the SSG provision on 194 HS 2017 tariff lines at the 8-digit level.

### 3.1.3.4 Duty suspensions

3.43. Temporary duty suspensions of tariffs have long been a regular feature of U.S. tariff policy and are implemented through Chapter 99, subchapter 2, of the HTSUS. Since 2016, the procedures for temporary duty suspensions through Miscellaneous Tariff Bills (MTBs) have been carried out pursuant to the American Manufacturing Competitiveness Act of 2016 (AMCA), which established an open and transparent process for consideration of duty suspensions and reductions.<sup>54</sup> The AMCA gave an expanded procedural role to the USITC, maintained a cap on the duty revenue loss at USD 500,000 for any one product, set up two MTB cycles in 2016 and 2019, and required reporting on the effects of duty suspensions/reductions on the U.S. economy. There is currently no legislation to commence future MTB cycles as the AMCA only envisioned two cycles in 2016 and 2019.

3.44. The 2016 MTB cycle was carried out pursuant to the new procedures outlined in the AMCA and resulted in the Miscellaneous Tariff Bill Act of 2018 (MTB Act of 2018) which provided for duty

<sup>53</sup> WTO document WT/Let/1418, 8 November 2018.

<sup>54</sup> American Manufacturing Competitiveness Act of 2016 (P.L. 114-159). Viewed at: [https://www.usitc.gov/documents/mtbps/comments\\_statute\\_0.pdf](https://www.usitc.gov/documents/mtbps/comments_statute_0.pdf).

reductions or suspensions on 1,655 tariff lines during the period 13 October 2018-31 December 2020.<sup>55</sup> The second MTB cycle of 2019 was launched in October 2019 by the USITC and followed the AMCA timeline and procedures with the respective reports submitted to the U.S. Congress for consideration in 2020. The U.S. industry remains keen on and increasingly active in pursuing requests for duty suspensions as exemplified by their recent petitions. In 2016 there were 2,524 petitions resulting in 1,655 duty suspensions and in 2019 there were 3,442 petitions (Table 3.7). The majority of requests (over 50%) were in the chemicals sector, with significant requests also in the machinery and equipment, and textiles, apparel, and footwear sectors.<sup>56</sup> As of March 2022, there had not been any legislation passed pursuant to the 2019 cycle. Therefore, there were no temporary duty suspensions in place as of March 2022.

**Table 3.7 Summary of duty suspension petitions and enactments, 2016 and 2019**

Product group	2016		2019	
	No.	%	No.	%
<b>Petitions</b>				
Chemicals	1,464	58.0	1,839	53.4
Machinery and equipment	457	18.1	715	20.8
Textiles, apparel, and footwear	456	18.1	581	16.9
Agriculture natural resources, and fisheries	36	1.4	307	8.9
Other	111	4.4	n.a.	n.a.
Total	2,524	100	3,442	100
<b>Enacted</b>				
Petitions enacted	1,655	100	none	n.a.
Resulting in duty elimination	n.a.	79	none	n.a.
Resulting in duty reduction	n.a.	21	none	n.a.
Duty rate ranges	n.a.	0-34.6	none	n.a.
Average duty rate reduction (percentage points)	n.a.	3.3	none	n.a.

n.a. Not applicable.

Source: USITC, *American Manufacturing Competitiveness Act of 2016: Final Report*. Viewed at: [https://www.usitc.gov/documents/mtbps/pub4712\\_introduction.pdf](https://www.usitc.gov/documents/mtbps/pub4712_introduction.pdf); USITC (2020), *American Manufacturing Competitiveness Act: 2020: Final Report*. Viewed at: <https://www.usitc.gov/publications/other/pub5097.pdf>, and USITC (2019), *American Manufacturing Competitiveness Act: Effects of Temporary Duty Suspensions and Reductions on the U.S. Economy*, USITC Investigation No. 332-565 of October 2019. Viewed at: <https://www.usitc.gov/publications/332/pub4987.pdf>.

3.45. The AMCA instructed USITC to submit to Congress a report on the effects on the U.S. economy of duty suspensions or reductions enacted pursuant to the AMCA, including a broad assessment of such economic effects on producers, purchasers, and consumers in the United States and also to solicit and append to its report recommendations with respect to those domestic industry sectors or specific domestic industries that might benefit from permanent duty suspensions or reductions, either through unilateral U.S. actions or through reciprocal tariff negotiations.<sup>57</sup> USITC was required to produce a report with recommendations and outcomes to the Congress on these aspects within one year of the MTB Act of 2018, thus in October 2019 the report was issued making the following assessments: (i) U.S. importers saved USD 179 million in forgone duties due to the duty suspensions in place during the period November 2018-May 2019; (ii) the positive economic impacts of duty relief were lessened by increased duties pursuant to Section 301 tariffs applicable to imports from China on 1,081 affected tariff lines, i.e. 65% of total tariff lines under duty suspension; (iii) product prices for importers have declined and USITC predicted a small increase in production, consumption, and gross domestic product (GDP) in the United States as a result; (iv) the effect of the MTB Act of 2018 on small and medium-sized enterprises (SMEs) appears to have had a more

<sup>55</sup> Miscellaneous Tariff Bill Act of 2018 (P.L. 115-239). Viewed at: <https://www.congress.gov/bill/115th-congress/house-bill/4318/text>.

<sup>56</sup> Some 63% of the tariff lines corresponding to enacted petition were in the chemical sector. See USITC (2019), "American Manufacturing Competitiveness Act: Effects of Temporary Duty Suspensions and Reductions on the U.S. Economy", USITC Investigation Number 332-565 of October 2019. Viewed at: <https://www.usitc.gov/publications/332/pub4987.pdf>.

<sup>57</sup> American Manufacturing Competitiveness Act of 2016 (P.L. 114-159). Viewed at: [https://www.usitc.gov/documents/mtbps/comments\\_statute\\_0.pdf](https://www.usitc.gov/documents/mtbps/comments_statute_0.pdf).

immediate and stronger impact compared to larger firms; and (v) requests were made for permanent duty suspension or reduction on about two thirds of the products (1,014 tariff lines).<sup>58</sup>

### 3.1.3.5 Tariff-rate quotas (TRQs)

3.46. The United States maintains a number of long-standing TRQs on both agricultural and non-agricultural products, the majority of which have not undergone any significant changes during the review period. Most Uruguay Round TRQ commitments are implemented through specific tariff lines in the HTSUS with the quota volumes and allocation listed in Additional U.S. Notes to the respective Chapter. As of 2021, there were 44 TRQ categories covering 203 tariff lines of agricultural products<sup>59</sup>, however, two categories (certain dairy and sugar products) have separate licensing procedures and quota allocation regulations administered by the Department of Agriculture (Section 3.1.5.2, Table A3.2, and Section 4.1). With few exceptions, the 44 TRQ categories and their volumes/country allocations have remained unchanged and are as indicated in Sections 1-A and 1-B of the United States' bound schedule. For instance, on 1 January 2022, the United States split the European Union's country allocation for certain dairy TRQs between the European Union and the United Kingdom, due to Brexit. The overall TRQ remained the same. The CBP also announces annual TRQ quantities and country allocations, if applicable, through its Customs Bulletins.<sup>60</sup>

3.47. The United States has regularly reported its utilization of agricultural TRQs to the WTO Committee on Agriculture.<sup>61</sup> The quota fill rate averaged around 50% across all categories during 2018-20 with little variation each year, i.e. 51%-55%. TRQs were not utilized or very little utilized for certain cotton categories, animal feed containing milk, chocolate, and certain U.S. cheeses. However, for cocoa powder, mandarins, and mixed condiments, the TRQs were essentially fully utilized during the period. For most TRQ categories, there was little change in fill rates over the three years except for green olives, which had a fill rate of 9% in 2018 and 100% in the following two years, and blue mold cheese, which declined from 96% in 2018-19 to 58% in 2020. There were also some yearly fluctuations in fill rates for various categories of dried milk and dried cream (Table A3.2).

3.48. Other TRQs, i.e. non-agricultural, are provided for in the same manner through specific tariff lines in the HTSUS. These long-standing TRQs provide lower in-quota duties for tuna, broom-corn brooms, and whiskbrooms. During the review period, quota utilization of the brooms was relatively low (lower than 15% in each year) whereas the tuna quota was fully utilized each year (Table 3.8). The TRQ quantity for tuna changes each year as a function of U.S. consumption from the preceding calendar year<sup>62</sup>; it is currently set at 4.8% of consumption and is announced annually in the Federal Register by the CBP based on reports by the National Marine Fisheries Service.<sup>63</sup>

<sup>58</sup> USITC (2019), *American Manufacturing Competitiveness Act: Effects of Temporary Duty Suspensions and Reductions on the U.S. Economy*, USITC Investigation No. 332-565. Viewed at: <https://www.usitc.gov/publications/332/pub4987.pdf>.

<sup>59</sup> Animal feed; beef; butter and butter substitutes; cheeses; cotton card strips; chocolate; low-fat chocolate crumb; cocoa powder; cotton; dairy; dried milk, cream, and whey; fibers of cotton; harsh or rough cotton; ice cream; infant formula; mandarins; milk and cream; condensed or evaporated milk and cream; mixed condiments and mixed seasonings; mixes and doughs; olives; peanut butter and paste; peanuts; raw cotton; sugars; and tobacco.

<sup>60</sup> CBP, *Quota Bulletins*. Viewed at: <https://www.cbp.gov/trade/quota/bulletins>.

<sup>61</sup> WTO documents G/AG/N/USA/147 and G/AG/N/USA/148, 2 March 2021; and G/AG/N/USA/153, 3 June 2021.

<sup>62</sup> However, tuna TRQ commitment levels at the WTO are bound at "...20% of the United States pack of canned tuna...". Thus, this commitment is not directly comparable to the applied situation due to the change in the text in 2003, and the TRQ quantity has in general been less, as yearly averages in the 1990s were over 30 million kg per year, and afterward between 12 million-24 million kg per year. CBP, Tuna 1604.14. Viewed at: <https://www.cbp.gov/sites/default/files/assets/documents/2017-Nov/tuna.pdf>.

<sup>63</sup> For example, the TRQ for 2021 is set at 18,345,004 kg. "Tuna Tariff-Rate Quota for Calendar Year 2021 Tuna Classifiable Under Subheading 1604.14.22, Harmonized Tariff Schedule of the United States (HTSUS)", *Federal Register* (2021), Vol. 86, No. 100, 26 May, pp. 28371-28372. Viewed at: <https://www.federalregister.gov/documents/2021/05/26/2021-11164/tuna-tariff-rate-quota-for-calendar-year-2021-tuna-classifiable-under-subheading-16041422-harmonized>.

**Table 3.8 Tariff-rate quotas and fill rates, other products, 2018-20**

Description of products	Tariff heading	Tariff quota	Fill rate 2018	Fill rate 2019	Fill rate 2020
Whiskbrooms, valued not over USD 0.96 each	9603.10.05	61,655 dozen	14.03%	11.27%	14.30%
Other brooms, wholly or in part of broom corn, valued not over USD 0.96 each	9603.10.40	121,478 dozen	7.98%	7.44%	3.43%
Tuna, in airtight containers, not in oil	1604.14.22	15,881,292 kg (2020); 14,945,117 kg (2019); 13,951,961 kg (2018)	100%	100%	100%

Notes: Tariff lines are from the 2020 U.S. Harmonized Tariff Schedule.  
All are on a calendar year basis unless otherwise indicated.

Source: CBP, Calendar Year End Commodity Status Report, 2018, 2019, and 2020. Viewed at: <https://www.cbp.gov/sites/default/files/assets/documents/2021-Feb/2020%20Calendar%20Year%20End%20Commodity%20Status%20Report.pdf>; [https://www.cbp.gov/sites/default/files/assets/documents/2019-Nov/Quota%20Status%20Report%20Year%20End%202018%20V2\\_0.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2019-Nov/Quota%20Status%20Report%20Year%20End%202018%20V2_0.pdf); and <https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/Quota-Status-Report-Year-End-2019.pdf>.

### 3.1.3.6 Preferential tariffs

3.49. The United States' 14 FTAs continue to provide significant additional tariff liberalization and duty-free coverage for most products, i.e. covering essentially all trade. While 38.4% of tariff lines are MFN duty-free, most FTAs provide preferential treatment for the remaining 61%-62% of tariff lines resulting in 98%-100% duty-free lines (Table 3.9). Tariff averages are all below 1%, although there is a significant distinction between agricultural and non-agricultural products. Non-agricultural products have essentially reached full liberalization with tariff statistically averaging zero, but for agricultural tariffs, a number of tariffs remain in place, thus averages are between zero and 3.7%. The FTAs with the Kingdom of Bahrain, Chile, Mexico, Oman, and Singapore provide for the highest level of duty-free treatment, at or close to 100%.

**Table 3.9 Summary analysis of tariffs according to FTA agreements, 2021**

	Number of preferential tariff lines	Share of preferential tariff lines (%)	Share of duty-free preferential tariff lines (%)	Total		WTO definition categories			
				Average (%)	Duty-free lines (%)	Agricultural products		Non-agricultural products (including petroleum)	
						Average (%)	Duty-free lines (%)	Average (%)	Duty-free lines (%)
<b>MFN</b>	-	-	-	4.8	38.4	9.2	22.6	4.0	41.4
Australia	6,653	61.0	60.0	0.2	98.4	1.0	90.2	0.0	100.0
Bahrain, Kingdom of	6,710	61.5	61.5	0.0	100.0	0.0	99.8	0.0	100.0
Chile	6,709	61.5	61.5	0.0	100.0	0.0	99.8	0.0	100.0
Colombia	6,710	61.5	60.3	0.3	98.7	1.7	92.0	0.0	100.0
CAFTA-DR	6,661	61.1	60.0	0.3	98.4	1.7	89.8	0.0	100.0
Israel	6,585	60.4	60.4	0.4	98.8	2.3	92.4	0.0	100.0
Jordan	6,685	61.3	61.1	0.3	99.5	1.8	96.8	0.0	100.0
Korea, Rep. of	6,714	61.6	60.7	0.1	99.1	0.5	96.2	0.1	99.7
Morocco	6,710	61.5	61.0	0.0	99.5	0.2	96.5	0.0	100.0
Oman	6,713	61.6	61.6	0.0	100.0	0.0	100.0	0.0	100.0
Panama	6,703	61.5	60.2	0.4	98.7	2.7	91.7	0.0	99.9
Peru	6,714	61.6	60.3	0.2	98.7	1.2	91.7	0.0	100.0
Singapore	6,710	61.5	61.5	0.0	100.0	0.0	99.8	0.0	100.0
<b>USMCA</b>									
Canada	6,547	60.0	59.9	0.6	98.3	3.7	89.3	0.0	100.0
Mexico	6,714	61.6	61.6	0.0	100.0	0.0	100.0	0.0	100.0

- Nil.

Note: Tariff lines with no TRQ and out-of-quota TRQ lines are considered for the average calculations, and in-quota TRQ lines are excluded from the calculations.

Source: WTO Secretariat calculations, based on data downloaded from the USITC website. Viewed at: <https://www.usitc.gov/>.

### 3.1.4 Other charges affecting imports

3.50. The main taxes on imports collected by CBP are fees for processing merchandise, i.e. the Merchandise Processing Fee (MPF) and Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) fees, as well as excise duties that are generally collected on behalf of other agencies. There are also a number of agricultural fees CBP collects on behalf of the Department of Agriculture.<sup>64</sup>

#### 3.1.4.1 Fees for processing merchandise

##### 3.1.4.1.1 Merchandise Processing Fee

3.51. The MPF continues to be applied on formal and informal imports to offset CBP commercial operations (19 C.F.R. 24.23(c)). The main fee on formal entries remained the same over the review period although the minimum and maximum thresholds on how it is applied increased five times, in January 2018, October 2018, October 2019, October 2020, and October 2021. For formal entries, the *ad valorem* fee of 0.3464% is applied on the basis of customs value, f.o.b., subject to a minimum value of USD 27.75 and a maximum cap of USD 528.40 as of October 2021.<sup>65</sup> Informal entries, i.e. by air, ship, and international mail, are subject to a set fee of USD 2.22, USD 6.66, or USD 9.99 per shipment. Many preferential imports are generally exempt from the MPF.<sup>66</sup> Following the FAST Act of 2015 (P.L. 114-94), the MPF and COBRA fees are adjusted each year by the Treasury Secretary to reflect inflation.

##### 3.1.4.1.2 COBRA fees

3.52. Since 1986, the COBRA has authorized CBP to collect user fees for various services, notably to offset the costs of inspections (P.L. 99-272). As noted above, the fees are subject to annual adjustment based on inflation, and thus have been changed recently for FY2022 (Table 3.10).

**Table 3.10 COBRA fees, FY2022**

Fee	Reference	Fee rate/cap/user fee
Commercial vessel arrival fee	19 C.F.R. 24.22(b)(1)(ii)	USD 485.11/USD 6,610.63 (cap)
Commercial truck arrival fee	19 C.F.R. 24.22(c)(2)	USD 6.10/USD 111.01 (annual prepayment fee)
Rail car arrival fee	19 C.F.R. 24.22(d)(1)	USD 9.16/USD 111.01 (annual prepayment fee)
Private aircraft/private vessel first arrival	19 C.F.R. 24.22(e)(1) and (2)	USD 30.53 (annual prepayment fee)
Commercial Vessel or Commercial Aircraft Passenger Arrival Fee	19 C.F.R. 24.22(g)(1)(i)	USD 6.11
Commercial Vessel Passenger Arrival Fee from a U.S. territory or possession	19 C.F.R. 24.22(g)(1)(ii)	USD 2.14 (per arrival)
Dutiable mail	19 C.F.R. 24.22(f)	USD 6.11
Customs broker permit user fee	19 C.F.R. 24.22(h)	USD 153.19 (annual fee)
Barges and other bulk carriers arrival fee	19 C.F.R. 24.22(b)(2)(i)	USD 122.11/USD 1,665.15 (cap)

Source: CBP, Notice on COBRA Fees to be Adjusted for Inflation in Fiscal Year 2022. *Federal Register* (2021), Vol. 86, No. 143, 29 July, pp. 40864-40866. Viewed at: <https://www.federalregister.gov/documents/2021/07/29/2021-16237/cobra-fees-to-be-adjusted-for-inflation-in-fiscal-year-2022>.

##### 3.1.4.2 Harbor Maintenance Tax

3.53. The Harbor Maintenance Tax (HMT) continues to apply to commercial cargo loaded on or unloaded from commercial vessels in designated U.S. ports in order to offset the costs of maintaining the harbors, i.e. mostly dredging activities. The HMT is not charged on air cargo. The fee remains at

<sup>64</sup> Most agricultural fees vary based on the classification of the goods; however, the APHIS Commercial Vessel User Fee is USD 825 at arrival and the APHIS Commercial Truck User Fee is USD 7.55 at arrival or USD 302 for the annual decal. CBP, *User Fee Table*. Viewed at: [https://www.cbp.gov/trade/basic-import-export/user-fee-table?\\_ga=2.175068010.999669950.1640566179-174981839.1634768055](https://www.cbp.gov/trade/basic-import-export/user-fee-table?_ga=2.175068010.999669950.1640566179-174981839.1634768055).

<sup>65</sup> CBP, *User Fee – Merchandise Processing Fees*. Viewed at: [https://help.cbp.gov/s/article/Article-334?language=en\\_US](https://help.cbp.gov/s/article/Article-334?language=en_US).

<sup>66</sup> Imports under AGOA and GSP are partially exempt; imports under qualified industrial zones, and the FTAs with Morocco and Jordan are not exempt; and all other FTA and preference program imports are exempt. CBP (2018), *MPF and Preferential Trade Programs*. Viewed at: <https://www.cbp.gov/sites/default/files/assets/documents/2018-Aug/B%20MPF%20Table%2C%20Aug%202%2C%202018.pdf>.



0.125% of the value of the goods and it is charged on imports, domestic shipments, Foreign-Trade Zone (FTZ) admissions, and passengers.<sup>67</sup> Certain limited exemptions apply, such as, for example, for bunker fuel, fish catches and aquatic animal life, and bonded cargo.<sup>68</sup> In FY2021 the amount collected in HMT was USD 1.56 billion of which the majority (88%) was on imports; slightly less was collected in FY2020, USD 1.31 billion, of which 85% was from imports.<sup>69</sup> In FY2019, the respective figures were USD 1.55 billion in collections of which 82% were from imports.<sup>70</sup>

3.54. The funds collected through the HMT are placed in the Harbor Maintenance Trust Fund (HMTF), which has maintained a growing surplus in recent years as imports have increased at a higher rate than expenditures.<sup>71</sup> During the review period, the U.S. Congress was considering expanding the eligible uses of the HMTF to better match its revenues.<sup>72</sup> Recent legislative initiatives by Congress have resulted in changes to the HMTF with provisions in the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and Water Resources Development Act of 2020 aimed at better managing the expenditures per their intended purpose. The CARES Act (P.L. 116-136) removed the discretionary funding caps by Congress up to the amount of revenue received into the HMTF during the previous fiscal year, thus allowing the prior revenues to be spent on their intended purpose the following year.<sup>73</sup> This provision entered into force on 1 January 2021. The Water Resources Development Act of 2020, as included (Division AA) in the Omnibus Consolidated Appropriations Act of 2021 (P.L. 116-260), amended this provision to further enlarge spending by the HMTF.<sup>74</sup> In the first instance, the discretionary appropriations for the Corps of Engineers are set to an amount equal to deposits into the HMT in the fiscal year that is two years prior to the fiscal year for which the appropriation is being made; plus a fixed sum set to a sliding scale of between USD 500 million in 2021 rising to USD 1.5 billion in 2030. Secondly, additional expenditures, USD 5 million, from the HMTF were authorized for additional activities at certain emerging ports, and eligible expenses were broadened for certain "donor ports" and "energy transfer ports". The practicalities of these changes mean that more funds will be distributed to projects at the largest and busiest ports.<sup>75</sup>

### 3.1.4.3 Excise taxes

3.55. The United States continued to apply a number of excise taxes on certain goods and services during the review period. Most U.S. excise taxes have been in place many years, were established for various reasons, and are collected in a number of different ways, i.e. at the manufacturer, retailer, trade, or consumer levels. For example, excise taxes on coal were established to fund black lung treatment for miners and are applied to domestically mined coal, and not to imported or exported coal.<sup>76</sup> Likewise, the tax on heavy trucks is charged at the retail level, and the annual heavy vehicle use tax is charged to registered users. However, most excise taxes are applied to both domestic producers and importers; the majority are applied on goods, but some are also applied on services. The importance of federal excise taxes for revenue purposes remained low and constituted

<sup>67</sup> Exports have been exempt from the HMT since 1998. For passengers, the value of the actual charge for transportation paid by the passenger is used as the basis for calculating the fee.

<sup>68</sup> See 19 C.F.R. 24.24(c) for the full list of exemptions.

<sup>69</sup> These figures do not include interest income. U.S. Treasury Department (2021), *Harbor Maintenance Trust Fund, Maintenance Report*, September. Viewed at: <https://www.treasurydirect.gov/ftp/dfi/tfmb/dfihm0921.pdf>; and U.S. Treasury Department (2020), *Harbor Maintenance Trust Fund, Maintenance Report*, September. Viewed at: <https://www.treasurydirect.gov/ftp/dfi/tfmb/dfihm0920.pdf>.

<sup>70</sup> U.S. Treasury Department (2019), *Harbor Maintenance Trust Fund, Maintenance Report*, September. Viewed at: <https://www.treasurydirect.gov/ftp/dfi/tfmb/dfihm0919.pdf>.

<sup>71</sup> The surplus was USD 9.3 billion at end-FY2021. U.S. Treasury Department (2021), *Harbor Maintenance Trust Fund, Maintenance Report*, September. Viewed at: <https://www.treasurydirect.gov/ftp/dfi/tfmb/dfihm0921.pdf>.

<sup>72</sup> Congressional Research Service (CRS) (2020), *Distribution of Harbor Maintenance Trust Fund Expenditures*, 10 September. Viewed at: <https://crsreports.congress.gov/product/pdf/IF/IF11645>.

<sup>73</sup> Public Law 116-136, 116<sup>th</sup> Congress, "An Act to amend the Internal Revenue Code of 1986 to repeal the excise tax on high cost employer-sponsored health coverage". Viewed at: <https://www.congress.gov/bill/116th-congress/house-bill/748/text?q=%7B%22search%22%3A%5B%22Public+Law+116-136%22%5D%7D&r=1&s=2>.

<sup>74</sup> P.L. 116-260, 116<sup>th</sup> Congress, "Consolidated Appropriations Act, 2021". Viewed at: <https://www.congress.gov/bill/116th-congress/house-bill/133/text>.

<sup>75</sup> CRS (2020), *Distribution of Harbor Maintenance Trust Fund Expenditures*, 10 September. Viewed at: <https://crsreports.congress.gov/product/pdf/IF/IF11645>.

<sup>76</sup> Joint Committee on Taxation (2015), *Present Law and Background Information on Federal Excise Taxes*, JCX-99-15, 13 July. Viewed at: <https://www.jct.gov/CMSPages/GetFile.aspx?guid=1d30837f-97df-4f40-bc7f-9a2811cb5c26>.



2.6% of FY2020 total revenues, the lowest level since 2007. In FY2020, federal excise tax collected amounted to USD 96.5 billion or 0.5% of GDP.<sup>77</sup> For excise taxes on alcohol, tobacco, and firearms, 16% of FY2020 revenues were collected from imports, and 84% on domestic products; this is up from 14% on imports in 2017.<sup>78</sup> There was a general decline in excise duty collection in 2020 on account of the COVID-19 pandemic, as some of the major tax revenue sources, i.e. air transport, were significantly reduced, and due to the lower rates enacted on alcohol products (Table 3.11).

3.56. There are two main categories of excise taxes – federal funds and trust funds – that are so named based on how the funds are used. Excise fees pursuant to trust funds are collected and placed into a fund whereby it has a dedicated use, i.e. tax on fuels to support highway development. In other cases, the tax is collected generally by the Internal Revenue Service (IRS) or the Alcohol and Tobacco Tax and Trade Bureau (TTB), and it goes into the general government budget and is not marked for any particular purpose. However, a special case exists for the excise tax on rum, which is remitted (or covered over) to the Treasuries of Puerto Rico and the U.S. Virgin Islands due to long-standing tax laws and provisions in the Caribbean Basin Economic Recovery Act (CBERA).<sup>79</sup> These funds may be used in any way and have reportedly been used to support and assist the local rum industry.<sup>80</sup> The amount remitted was fixed at USD 13.25 per proof gallon until 1 January 2022 after which it was fixed at USD 10.50 per proof gallon for rum produced in Puerto Rico and the U.S. Virgin Islands as well as all U.S. imports (26 U.S.C. 7652). The fees on imported rum are allocated to the two insular areas based on the relative share of rum they produce.<sup>81</sup>

3.57. Since the enactment of the Affordable Care Act in 2010, a number of health-related excise taxes have been in place, e.g. taxes on health insurance providers, and manufacturers and imports of branded prescription drugs. In FY2019, these health-related excise taxes accounted for about 14% of total excise collections. The excise tax on medical devices (2.3%) had been suspended a number of times, i.e. since 2015, and it was repealed permanently by legislation in December 2019.<sup>82</sup> The Craft Beverage Modernization Act (CBMA) provisions of the Tax Cuts and Jobs Act, 2017, introduced changes to reduce excise taxes on beer, wine, and distilled spirits.<sup>83</sup> The initial cuts were for the period 2018-19 but the Taxpayer Certainty and Disaster Tax Relief Act of 2020 made the reductions permanent. Depending upon the type of alcoholic beverage, foreign producers receive a certain tax benefit up to a maximum in the form of tax credits assignable to U.S. importers.

3.58. In 2021, the Consolidated Appropriations Act of 2021 (P.L. 116-260) made the earlier excise tax reductions permanent and also made certain modifications.<sup>84</sup> The changes restrict the transfer of bonded non-bulk (bottled) distilled spirits between bonded warehouses, clarifying that bottling does not qualify as processing for distilled spirits, and lowering the rates for certain meads and low alcohol wines. Beginning in January 2023, the Treasury Department will take over from CBP the administration of imports subject to the lower tax rates or credits on alcoholic beverages.<sup>85</sup> Other changes during the period include the scheduled reductions of the tax rates on highway and aviation fuels, which will be lowered to USD 0.043 per gallon after 30 September 2022, and 30 September 2023, respectively (26 U.S.C. 4081(d)). These rates were recently extended through 30 September 2028 for highway fuels the by the Infrastructure Investment and Jobs Act, 2021<sup>86</sup>,

<sup>77</sup> Joint Committee on Taxation (2021), *Overview of the Federal Tax System as in Effect for 2021*, JCX-18-21, 15 April 2021. Viewed at: <https://www.jct.gov/CMSPages/GetFile.aspx?guid=72cd3d31-f681-4bff-80e6-1dd04c009d9d>.

<sup>78</sup> TTB (2020), *Statistical Release Tax Collections, TTB S 5630-FY-2020*, 13 November. Viewed at: <https://www.ttb.gov/images/pdfs/statistics/final/final2020.pdf>.

<sup>79</sup> USTR (2019), *Thirteenth Report to Congress on the Operation of the Caribbean Basin Economic Recovery Act*, 31 December. Viewed at: [https://ustr.gov/sites/default/files/CBI\\_Report\\_2019.pdf](https://ustr.gov/sites/default/files/CBI_Report_2019.pdf).

<sup>80</sup> Implementing the Caribbean Basin Recovery Act; Distribution of Excise Taxes on Imported Rum, *Federal Register* (1986), Vol. 51, pp. 28071-28072.

<sup>81</sup> The division of cover over funds is determined by a regulatory formula at 27 C.F.R. 26.31.

<sup>82</sup> Further Consolidated Appropriations Act of 2020 (P.L. 116-94).

<sup>83</sup> Department of the Treasury (2021), *Report to Congress on Administration of Craft Beverage Modernization Act Refund Claims for Imported Alcohol*. June. Viewed at: <https://www.ttb.gov/images/pdfs/treasury-cbma-import-claims-report-june-2021.pdf>.

<sup>84</sup> P.L. 116-260, 116<sup>th</sup> Congress, An Act making consolidated appropriations for the fiscal year ending 30 September 2021, providing coronavirus emergency response and relief, and for other purposes. Viewed at: <https://www.govinfo.gov/content/pkg/BILLS-116hr133enr/pdf/BILLS-116hr133enr.pdf>.

<sup>85</sup> "Alcohol and Tobacco Tax and Trade Bureau Program Summary", FY2023. Viewed at: <https://home.treasury.gov/system/files/266/17.-TTB-FY-2023-BIB.pdf>. Congress.gov. Viewed at: <https://www.congress.gov/bill/117th-congress/house-bill/3684/text>.

<sup>86</sup> P.L. 117-58. Viewed at: <https://www.congress.gov/bill/117th-congress/house-bill/3684/text>.

although the 2023 date is still in place for aviation. The annual fee on health insurers was suspended in 2019 and permanently repealed by the Further Consolidated Appropriations Act of 2020 along with the medical device tax and the excise tax on high-cost employer-sponsored health coverage.<sup>87</sup> Another development was the re-introduction of the Superfund excise taxes on manufacturers, producers, or importers of certain chemicals and the importation of certain taxable substances on 1 July 2022.<sup>88</sup> The Infrastructure Investment and Jobs Act, 2021 put in place new Superfund excise rates that range from USD 0.44 to 9.74 per ton and are in place until 2031.<sup>89</sup> In addition to federal excise taxes, most states also have excise taxes. Table 3.11 shows excise tax rates applicable in 2022 and the revenue collected in FY2019 and FY2020, where available. In FY2021 alcohol collections were USD 8,390 million and tobacco collections were: USD 10,756 million.<sup>90</sup>

**Table 3.11 Excise taxes, 2022**

Category/Fund	Amount/rate	Revenues (USD million)	
		FY2019	FY2020
<b>Federal funds:</b>			
Alcoholic beverages	Different rates apply depending on type	7,865	8,089
Tobacco products <sup>a</sup>		11,375	11,239
Local telephone service, teletypewriter service, and prepaid telephone cards	3%	214	593
Health insurance	40%	9,950	15,523
Indoor tanning services	10%	69	46
Medical devices	2.3%	-82	-12
Firearms and ammunition	10%-11%	545	665
Foreign procurement	2%	..	..
Ozone-depleting chemicals	USD 1.435 – USD 143.50/lb	..	..
Gas Guzzler	USD 1,000-USD 7,700	..	..
Trust funds:			
Highway (fuels, tires heavy vehicles, heavy trucks and trailers)			
--gasoline motor fuel	18.3 cents/gallon <sup>a</sup>	26,703	23,730
--diesel motor fuel and kerosene	24.3 cents/gallon <sup>a</sup>	10,085	9,824
Airport and airways			
--air transport	7.5% of the fare plus USD 4.30 per domestic flight segment	12,071	5,761
--international air facilities	USD 19.70 per arrival or departure	4,271	2,040
--aviation gasoline	19.3 cents/gallon <sup>a</sup>	29	29
Black lung disability (coal)	55 cents for surface/USD 1.10 for underground mines	220	252
Inland waterway	29 cents/gallon	109	108
Oil Spill Liability	9 cents/barrel	157	427
Vaccine injury compensation	75 cent/dose	319	319
Supplemental medical insurance	40%	..	..
Patient-centered outcome research	USD 2.08	441	420

.. Not available.

a This rate does not include the additional USD 0.001 per gallon to fund the Leaking Underground Storage Tank Trust Fund.

Note: This is not a comprehensive list; a number of other excise taxes exist.

Source: Joint Committee on Taxation (2021), *Overview of the Federal Tax System as in Effect for 2021*, JCX-18-21, 15 April 2021. Viewed at: <https://www.jct.gov/CMSPages/GetFile.aspx?guid=72cd3d31-f681-4bff-80e6-1dd04c009d9d>; TTB (2020), *Statistical Release Tax Collections*, TTB S 5630-FY-2020, 13 November. Viewed at: <https://www.ttb.gov/images/pdfs/statistics/final/final2020.pdf>; IRS, Historical Table 20. Viewed at: <https://www.irs.gov/statistics/soi-tax-stats-historical-table-20>.

<sup>87</sup> Joint Committee on Taxation (2020), *Overview of the Federal Tax System as in Effect for 2020*, JCX-14-20, 1 May. Viewed at: <https://www.jct.gov/CMSPages/GetFile.aspx?guid=52ce35d7-ec12-481a-b38e-eff9d50b1112>.

<sup>88</sup> The original Superfund excise duties were applied on 42 listed chemicals in Section 4661 of the Tax Code and 50 listed taxable substances in Section 4672 of the Tax Code. In December 2021 the IRS extended the Superfund duties to an additional 101 taxable substances through IRS Notice 2021-66.

<sup>89</sup> Infrastructure Investment and Jobs Act, 2021 (P.L. 117-58), Congress.gov. Viewed at: <https://www.congress.gov/bill/117th-congress/house-bill/3684/text>.

<sup>90</sup> Alcohol and Tobacco Tax and Trade Bureau, *Annual Report. Fiscal Year 2021*. Viewed at: <https://www.ttb.gov/images/pdfs/ttbar2021.pdf>.

### 3.1.5 Import prohibitions, restrictions, and licensing

#### 3.1.5.1 Prohibitions, restrictions, and quantitative measures

3.59. CBP is responsible for enforcing laws on behalf of other agencies that restrict or otherwise prohibit importation of a number of goods, often to protect human, animal, plant life and health, or to conserve exhaustible natural resources. As at March 2022, 32 categories of goods were subject to prohibitions or restrictions, most of which had been in force for many years (Table A3.3). Many of the measures are codified in CBP statutes (19 C.F.R. Part 12 – Special classes of merchandise), contained in various trade legislation, i.e. the Tariff Act of 1930, as amended, or in legislation of other agencies, e.g. the Clean Air Act.<sup>91</sup> A few new measures were put in place or amended during the review period.

3.60. The American Innovation and Manufacturing (AIM) Act of 2020 (42 U.S.C. 7675) contains provisions for the phasedown of production and consumption of hydrofluorocarbons (HFCs) by 85% by 2036.<sup>92</sup> As of 1 January 2022, entities are required to expend allowances established by the Environmental Protection Agency (EPA) when HFCs are produced and imported, with limited exceptions. New regulations setting up the allocation and trading program have recently been issued and provide for producers and importers to receive allowances based on their historical production and import volumes; a set-aside pool is also being created for a limited set of entities.<sup>93</sup>

3.61. New rules were put in place to implement amendments to the Lacey Act requirements on the importation of certain plant and plant products in April 2020.<sup>94</sup> These provisions relaxed the import requirements by creating a *de minimis* threshold of no more than 5% of the total weight of the product provided the total weight of the plant material does not exceed 2.9 kilograms.

3.62. In April 2020, the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service imposed import restrictions on shrimp and other fish and fish products caught in the Upper Gulf of California due to unsustainable bycatch of vaquita, a species of porpoise on the brink of extinction.<sup>95</sup> The restrictions were imposed under the Marine Mammal Protection Act (MMPA), which includes provisions to reduce marine mammal bycatch associated with fisheries that supply imports to the United States. Specifically, the MMPA requires that the United States ban imports of commercial fish or fish products caught in commercial fisheries resulting in the accidental killing or serious injury (bycatch) of marine mammals in excess of U.S. standards.

3.63. In addition to measures applied multilaterally, the United States also maintains a number of quantitative restrictions or prohibitions on a bilateral or plurilateral basis.<sup>96</sup> For example, pursuant to MOUs with Colombia and El Salvador, restrictions are in place on certain categories of

<sup>91</sup> CBP (2006), *Importing into the United States, A Guide for Commercial Importers*. Viewed at: <https://www.cbp.gov/sites/default/files/documents/Importing%20into%20the%20U.S.pdf>.

<sup>92</sup> P.L. 116-260, 116<sup>th</sup> Congress, Consolidated Appropriations Act of 2021. Viewed at: <https://www.congress.gov/bill/116th-congress/house-bill/133/text>.

<sup>93</sup> Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the American Innovation and Manufacturing Act, A Rule by the EPA on 5 October 2021. Viewed at: <https://www.federalregister.gov/documents/2021/10/05/2021-21030/phasedown-of-hydrofluorocarbons-establishing-the-allowance-allocation-and-trading-program-under-the>.

<sup>94</sup> Lacey Act Implementation Plan: De Minimis Exception, A Rule by the Animal and Plant Health Inspection Service on 2 March 2020. *Federal Register* (2020), Vol. 85, No. 41, 2 March, pp. 12207-12213. Viewed at: <https://www.federalregister.gov/documents/2020/03/02/2020-04165/lacey-act-implementation-plan-de-minimis-exception>.

<sup>95</sup> NOAA (2020), *Seafood Import Restrictions*. Viewed at: <https://www.fisheries.noaa.gov/foreign/marine-mammal-protection/seafood-import-restrictions>.

<sup>96</sup> Temporary legislation has existed since 1991 providing for import quotas on upland cotton when a price mechanism is triggered in order to allow imports to enter at lower cost. During the review period, the quota has been opened on many occasions but rarely utilized. CBP, *Calendar Year End Commodity Status Report, 2018, 2019, and 2020*. Viewed at: <https://www.cbp.gov/sites/default/files/assets/documents/2021-Feb/2020%20Calendar%20Year%20End%20Commodity%20Status%20Report.pdf>; [https://www.cbp.gov/sites/default/files/assets/documents/2019-Nov/Quota%20Status%20Report%20Year%20End%202018%20V2\\_0.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2019-Nov/Quota%20Status%20Report%20Year%20End%202018%20V2_0.pdf); and <https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/Quota-Status-Report-Year-End-2019.pdf>.

archaeological, ecclesiastical, and ethnological materials from these countries in order to protect cultural heritage. These restrictions were extended during the review period.<sup>97</sup>

3.64. In October 2021, the United States and the European Union issued a joint statement announcing, *inter alia*, that they were resolved to negotiate future arrangements for trade in steel and aluminum that take account of both global non-market excess capacity and the carbon intensity of these industries (Section 2.3.3).<sup>98</sup> Thus, steel and aluminum Section 232 tariffs were replaced with a TRQ for EU imports as of 1 January 2022 with volumes based on historical trade levels. Absolute quotas on certain steel products from Argentina, Brazil, and the Republic of Korea and aluminum products from Argentina have been applied since mid-2018 pursuant to several Presidential Proclamations. These quotas are set out by product subheadings in Chapter 99 of the HTSUS.<sup>99</sup>

3.65. Preferential import measures prescribed in FTAs are sometimes implemented through quantitative measures that the United States refers to as tariff preference levels (TPLs) and administered much like TRQs. In 2020 over 100 such TPLs were in place on a variety of products for FTA partner countries.<sup>100</sup> A quota system for the duty-free importation of watches and watch movements from U.S. insular possessions also exists and is administered by the U.S. Department of Commerce. The preference programs for the African Growth and Opportunity Act (AGOA) and for Haiti, i.e. HOPE Act, HOPE Act II, and HELP Act also include quotas for certain apparel imports. The United States also used TRQs on certain imports resulting from safeguard (Section 201) investigations during the review period (Section 3.1.6).

### 3.1.5.2 Import licensing

3.66. The United States requires licenses or permits for a limited number of product categories upon importation, most of which did not undergo significant change during the review period. As of March 2022, there were 19 such licensing requirements in place on a variety of goods for various purposes; most (17) were non-automatic and two were automatic licensing requirements. Long-standing licensing requirements remained in place to implement agricultural TRQs, i.e. on dairy and sugar products; to provide protection against the import of pests and diseases for animal and plant products; to prevent tax fraud, i.e. on alcohol and tobacco products; and on a number of other products like chemicals, firearms, explosives, nuclear materials, etc. for protection and safety reasons (Table A3.4). New or revised licensing measures were put in place for monitoring reasons on certain steel and aluminum products.

3.67. The United States has continued to provide annual replies to the annual questionnaire on import licensing procedures during the period under review, and three such notifications have been received pursuant to Article 7.3.<sup>101</sup> In addition, two notifications were made pursuant to Article 5 on changes to import licensing procedures concerning the new or amended monitoring mechanisms, i.e. the Steel Import Monitoring and Analysis (SIMA) system and the Aluminum Import Monitoring and Analysis (AIM) system, which entered into force in October 2020 and June 2021, respectively.<sup>102</sup>

<sup>97</sup> Extension of Import Restrictions Imposed on Certain Archaeological and Ethnological Materials From Colombia. Rule by U.S. Customs and Border Protection. Viewed at: <https://www.federalregister.gov/documents/2021/03/12/2021-05173/extension-of-import-restrictions-imposed-on-certain-archaeological-and-ethnological-materials-from>; Extension of Import Restrictions on Archaeological Material and Imposition of Import Restrictions on Ecclesiastical Ethnological Material From El Salvador. Rule by U.S. Customs and Border Protection. Viewed at: <https://www.federalregister.gov/documents/2020/03/18/2020-05694/extension-of-import-restrictions-on-archaeological-material-and-imposition-of-import-restrictions-on>.

<sup>98</sup> USTR (2021), *Fact Sheet: U.S. – EU Arrangements on Global Steel and Aluminium Excess Capacity and Carbon Intensity*, 31 October. Viewed at: <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2021/october/fact-sheet-us-eu-arrangements-global-steel-and-aluminium-excess-capacity-and-carbon-intensity>.

<sup>99</sup> HTSUS, Ch. 99. Viewed at: <https://hts.usitc.gov/view/Chapter%2099?release=2021HTSABasicRev11>.

<sup>100</sup> CBP, *Calendar Year End Commodity Status Report, 2020*. Viewed at: <https://www.cbp.gov/sites/default/files/assets/documents/2021-Feb/2020%20Calendar%20Year%20End%20Commodity%20Status%20Report.pdf>.

<sup>101</sup> WTO documents G/LIC/N/3/USA/16, 28 January 2020; G/LIC/N/3/USA/17, 14 December 2020; and G/LIC/N/3/USA/18, 5 October 2021.

<sup>102</sup> WTO documents G/LIC/N/2/USA/4, 25 February 2021; and G/LIC/N/2/USA/5, 3 August 2021.

3.68. The AIM system was implemented by USDOC through authority under the Census Act, as amended (13 U.S.C. 301(a) and 302), and pursuant to the joint understandings with Canada and Mexico on Section 232 Duties on Steel and Aluminum in order to facilitate the monitoring of aluminum imports, including import surges, and to prevent transshipment.<sup>103</sup> The AIM system was modelled on the SIMA system, which was amended during the period, although the United States has monitored imported steel products through licenses since 2002. The main changes to the SIMA system were to: (i) require the identification of the country where the steel used in the manufacture of the imported product was melted and poured; (ii) harmonize the scope of product coverage to that covered by Section 232 tariffs; (iii) clarify how import data collected from the licenses would be aggregated and reported to the public; and (iv) formally change the threshold of low-value multiple shipment licenses from USD 250 to USD 5,000 to align with existing practice.<sup>104</sup> The SIMA system was also made permanent. These changes were prompted by the joint understandings, the need to modernize the SIMA system, and to enhance U.S. Government monitoring of steel.

### 3.1.5.3 Other restrictions on imports

3.69. The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) and the U.S. State Department administer and enforce a variety of economic and trade sanctions programs designed to protect U.S. national security interests. The programs include outright prohibitions or restrictions on transactions involving certain sanctioned jurisdictions, governments, companies, and individuals that may affect import and export activities. The number of sanctioned programs and parties changes from time to time, and OFAC may issue licenses to permit otherwise prohibited transactions. The OFAC website lists the current sanctions programs, regulations, guidance, broadly applicable licenses, and a searchable database of sanctioned party lists.<sup>105</sup>

3.70. The United States updated or created new sanction measures during the review period including the implementation of new sanctions required by recent Congressional legislation and Executive Orders. OFAC actions during the review period are publicly available at <https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions>.

## 3.1.6 Anti-dumping, countervailing and safeguard measures

### 3.1.6.1 Anti-dumping and countervailing measures

#### 3.1.6.1.1 Legal and administrative framework

##### 3.1.6.1.1.1 Main laws and regulations

3.71. The main U.S. legislation with respect to anti-dumping (AD) and countervailing duties (CVD). Is contained in Title VII of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 and the Trade Facilitation and Trade Enforcement Act of 2015. The main regulations governing AD and CVD investigations (including reviews) are included in 19 C.F.R. Parts 201, 207, and 351. The Trade Preferences Extension Act (TPEA) of 2015 (P.L. 114-27)<sup>106</sup>, and in the Trade Facilitation and

<sup>103</sup> Aluminum Import Monitoring and Analysis System, Rule by the International Trade Administration, 23 December 2020. Viewed at: <https://www.federalregister.gov/documents/2020/12/23/2020-28166/aluminum-import-monitoring-and-analysis-system>; USTR, *Joint Statement by the United States and Canada on Section 232 Duties on Steel and Aluminum*, and *Joint Statement by the United States and Mexico on Section 232 Duties on Steel and Aluminum*. Viewed at:

[https://ustr.gov/sites/default/files/Joint\\_Statement\\_by\\_the\\_United\\_States\\_and\\_Canada.pdf](https://ustr.gov/sites/default/files/Joint_Statement_by_the_United_States_and_Canada.pdf) and [https://ustr.gov/sites/default/files/Joint\\_Statement\\_by\\_the\\_United\\_States\\_and\\_Mexico.pdf](https://ustr.gov/sites/default/files/Joint_Statement_by_the_United_States_and_Mexico.pdf).

<sup>104</sup> Steel Import Monitoring and Analysis System, Rule by the International Trade Administration, 11 September 2020. Viewed at: <https://www.federalregister.gov/documents/2020/09/11/2020-19753/steel-import-monitoring-and-analysis-system>.

<sup>105</sup> OFAC, U.S. Department of the Treasury Sanctions Programs and Country Information. Viewed at: <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information>; U.S. Department of the Treasury, OFAC, Sanctions List Search. Viewed at: <https://sanctionssearch.ofac.treas.gov/>.

<sup>106</sup> Title V of the TPEA, known as the American Trade Enforcement Effectiveness Act, introduced, among others, amendments to the provisions addressing information that may be used as facts otherwise available in an AD or CVD proceeding, as well as certain aspects pertaining to determinations of "material injury" or "threat of material injury". It also modified the definition of "ordinary course of trade" and the provisions governing the treatment of a "particular market situation (PMS)" in AD proceedings.



Trade Enforcement Act of 2015 (P.L. 114-125) introduced further amendments to trade enforcement legislation. In particular, Title IV of the Act, known also as the Enforce and Protect Act of 2015 (EAPA), contains provisions to prevent the evasion of the payment of duties. To this end, the EAPA created a new framework for CBP to investigate allegations of evasion of AD/CVD orders, under Section 517 (Procedures for Investigating Claims of Evasion of AD and CVD orders) and established the Trade Remedy Law Enforcement Directorate (TRLED) within CBP, to carry out the investigations.

3.72. During the period under review, the United States Department of Commerce (USDOC) introduced important changes to its Trade Enforcement Regulations to strengthen and make more efficient the administration and enforcement of AD/CVD laws, and to better address circumvention and evasion of trade remedies. On 20 September 2021, USDOC issued Final Regulations to Improve Administration and Enforcement of Anti-dumping and Countervailing Duty Laws.<sup>107</sup> The new regulations, which were notified to the WTO on adoption, establish new procedures for scope, circumvention and covered merchandise inquiries, and make a number of substantive and technical revisions with respect to other areas, such as new shipper reviews.<sup>108</sup>

#### 3.1.6.1.1.2 Administrative procedures

3.73. USDOC's International Trade Administration (ITA) and the United States International Trade Commission (USITC) are jointly responsible for conducting AD and CVD investigations and five-year (sunset) reviews under Title VII of the Tariff Act of 1930. USITC determines material injury, or threat thereof, or material retardation of an industry by reason of dumped or subsidized imports.<sup>109</sup> USDOC, through ITA's Enforcement and Compliance Unit (E&C), is in charge of determining the existence and amount of dumping and subsidy in AD and CVD investigations. CBP is responsible for enforcing AD/CVD laws and orders on imported goods, for collecting AD/CVD cash deposits, administering AD/CVD entries, assessing and collecting final AD/CVD, and enforcing AD/CVD on imports that evade AD/CVD orders.<sup>110</sup> The Trade Remedy Law Enforcement Directorate (TRLED) within the Office of Trade at CBP, is responsible for directing enforcement and compliance assessment activities concerning evasion, and for protecting the collection of AD and CVD duties. TRLED develops policies for the assessment of risk of importers, to better determine the application of single entry and continuous bonds for entries of covered merchandise.

3.74. USDOC is charged with establishing and interpreting the scope of AD/CVD orders to ensure that all imports causing injury are addressed and, additionally, may take into account potential circumvention and duty evasion concerns. Upon issuance of an AD or CVD order, USDOC is required to provide a description of the class or kind of merchandise subject to the order at issue, referred to as the scope of the AD/CVD order. CBP is both empowered and obligated to determine in the first instance whether imported goods are subject to existing AD/CVD orders. This determination is final and conclusive unless an interested party seeks a scope ruling from USDOC, which retains discretion to define the scope of the order to ensure that all imports causing injury are included and may also take into account potential circumvention and duty evasion concerns in its determination.

3.75. AD and CVD investigations may be initiated at the request of petitioners, or may be self-initiated by USDOC, although this has seldom been the case.<sup>111</sup> USDOC must determine that a petition is filed by an interested party and on behalf of the industry, for which it must meet two criteria: (i) the domestic producers or workers who support the petition account for at least 25% of the total production of the domestic like product; and (ii) the domestic producers or workers who support the petition account for more than 50% of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. The

<sup>107</sup> Regulations to Improve Administration and Enforcement of Anti-dumping and Countervailing Duty Laws 52300. *Federal Register* (2021), Vol. 86, No. 179, 20 September. The proposed rule was published in 85 FR 49472 (13 August 2020) (Proposed Rule).

<sup>108</sup> WTO document G/ADP/N/1/USA/1/Suppl.31, G/SCM/N/1/USA/1/Suppl.32, 1 October 2021.

<sup>109</sup> USITC, *About Import Injury Investigations*. Viewed at: [https://www.usitc.gov/trade\\_remedy.htm](https://www.usitc.gov/trade_remedy.htm).

<sup>110</sup> USDOC, *U.S. Anti-dumping and Countervailing Duties*. Viewed at: <https://www.trade.gov/us-antidumping-and-countervailing-duties>. CBP is charged with applying and enforcing AD/ CVD orders; it is responsible for fixing the amount of duty owed on imported goods and is both empowered and obligated to determine in the first instance whether goods are subject to existing AD/CVD orders. Pursuant to 19 U.S.C. 1514(b), this determination is final and conclusive unless an interested party seeks a scope ruling from USDOC (19 U.S.C. 1516a).

<sup>111</sup> USDOC self-initiated AD and CVD investigations of imports of common alloy aluminum sheet from China in 2017. Prior to that case, there had been three self-initiations by USDOC since 1980.



petition must provide information on value and volume of domestic production of the like product, and a statement indicating if the petitioner has filed for other forms of import relief for the same merchandise.<sup>112</sup>

3.76. A determination on whether or not to initiate an investigation is generally made within 20 days from the date of filing of the petition. USITC has 45 days from the filing of the petition or self-initiation by USDOC or, if the time has been extended, 25 days after USDOC informs it of the initiation of the investigation, to make a preliminary determination of reasonable indication of material injury, threat thereof, or material retardation of the establishment of a domestic industry. If USITC's injury determination is negative, the investigation is terminated; if it is affirmative, the investigation continues. After a determination of injury has been made by USITC, USDOC has 115 days (160 days after petition) to issue a preliminary AD determination, or 40 days (85 days after petition) to issue a preliminary CVD determination.<sup>113</sup> The investigation continues whether USDOC's preliminary determination is affirmative or negative, even if no margin of dumping or subsidization is found, or the margin found is below the *de minimis* threshold.<sup>114</sup> USDOC has an additional 75 days to determine the final margin of dumping. In case of an affirmative determination by USITC and a preliminary affirmative determination by USDOC, preliminary AD or CVD measures may be applied for a period no longer than four months, which may be extended to six months. They generally consist of a cash deposit equivalent to the preliminary estimated margin of dumping or subsidy rate.

3.77. Critical circumstances may be alleged in a petition or by amendment at any time up to 21 days before the date of USDOC's final determination, or at any time in the case of a self-initiated investigation. A petitioner alleging critical circumstances should provide information that indicates: (i) that a surge in imports prior to the suspension of liquidation of entries of the subject merchandise will undermine the effectiveness of the relief; and (ii) there have been massive imports over a relatively short period. In an AD investigation, the petitioner must demonstrate that either there is a history of dumping, or the importer(s) knew or should have known that the exporter was selling at less-than-fair-value and that there would be material injury by reason of such sales. CVD petitions should identify any countervailable subsidy that is inconsistent with the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement). If the petitioner submits an allegation of critical circumstances 20 days or more before the scheduled date of the final determination, USDOC will make a preliminary finding. Where USDOC makes a preliminary determination of critical circumstances, preliminary measures may be applied retroactively to imports entered up to 90 days before the determination was published in the Federal Register. USDOC's final determination of critical circumstances in AD investigations is based on a history of dumping and material injury, knowledge of dumping, which is presumed to exist when there is a margin of dumping of 25% or more for export price sales, and a margin of 15% or more for constructed export price sales, together with massive imports over a short period of time.<sup>115</sup>

3.78. If USDOC makes a negative final determination of dumping or subsidization, the investigation is terminated, provisional measures are lifted, and all cash deposits are returned, with interest. If USDOC makes an affirmative final determination and finds a margin of dumping or a subsidy rate above the *de minimis* level, the investigation goes back to USITC, which has 45 days to issue a final determination of injury. If USITC's final determination is affirmative, USDOC issues an order imposing AD or CVD duties. If USITC's final determination is negative, the investigation is terminated, no order is issued, provisional measures are lifted, and all cash deposits are returned, with interest. The imposition of an order in the case of an affirmative determination, or of the

<sup>112</sup> USITC (2015), *Anti-dumping and Countervailing Duty Handbook*, 14<sup>th</sup> ed., June. Viewed at: [https://www.usitc.gov/trade\\_remedy/documents/handbook.pdf](https://www.usitc.gov/trade_remedy/documents/handbook.pdf).

<sup>113</sup> USDOC has the authority to postpone its preliminary determination by up to 50 days in AD cases and by up to 65 days in CVD cases if the investigation is extraordinarily complicated, or at the request of the petitioner if made not later than 25 days before the scheduled date of the determination. See Commerce regulations 351.205(b) and (e) (19 C.F.R. 351.205(b) and (e)). USITC (2015), *Anti-dumping and Countervailing Duty Handbook*, 14<sup>th</sup> ed., June. Viewed at: [https://www.usitc.gov/trade\\_remedy/documents/handbook.pdf](https://www.usitc.gov/trade_remedy/documents/handbook.pdf).

<sup>114</sup> The *de minimis* threshold is 2% for AD investigations (0.5% for reviews) and, in the case of countervailable subsidies, 1% for developed countries, and 2% for developing countries.

<sup>115</sup> The existence of massive imports is usually determined by examining: (i) the volume and value of imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. Imports are considered massive generally when, during three months, they have increased by at least 15% over the imports during the immediately preceding period.

termination of the application of provisional measures in case of a negative determination, takes place within the 287<sup>th</sup> day (212<sup>th</sup> for CVDs) and is published in the Federal Register. Affirmative determinations are subject to sunset reviews after five years (see below).

3.79. After issuing an AD/CVD order, USDOC directs CBP to suspend liquidation and collect cash deposits, or estimated amounts of duties, on appropriate entries subject to the scope of the order corresponding to the margins of dumping established under an AD order and the CVD rates established under a CVD order. On a yearly basis, interested parties may request that USDOC conduct an administrative review to determine the appropriate margin of dumping or CVD rate for entries subject to the order during the previous review year. Pursuant to its administrative review procedures, USDOC instructs CBP to lift the suspension of liquidation and assess AD/CVDs at the appropriate amount.

3.80. In 2020, the United States notified to the WTO a Temporary Rule Modifying AD/CVD Service Requirements due to COVID-19.<sup>116</sup> In the initial notification, in March 2020, the United States indicated that USDOC was temporarily modifying certain requirements for serving documents containing business proprietary information in AD/CVD cases to facilitate the effectuation of service through electronic means (19 C.F.R. Part 351). More specifically, USDOC implemented temporary modifications to its service regulations to enable non-U.S. Government personnel responsible for serving documents in the ITA's E&C AD/CVD cases to work remotely. The temporary modifications were implemented to facilitate the continued administration of AD/CVD proceedings.<sup>117</sup> Initially, the temporary modification was applied until 19 May 2020.<sup>118</sup> On 18 May 2020, E&C published a notification extending the temporary modifications through 17 July 2020.<sup>119</sup> In July, USDOC extended the duration of these temporary modifications indefinitely, as it did not establish a termination date and indicated that the modifications would remain in place until further notice.<sup>120</sup>

#### **3.1.6.1.1.3 New Regulations on Administration and Enforcement of AD and CVD Laws**

3.81. On 20 September 2021, USDOC introduced important changes to its Trade Enforcement Regulations and issued Final Regulations to Improve Administration and Enforcement of Anti-dumping and Countervailing Duty Laws.<sup>121</sup> The regulations, which were notified to the WTO on adoption, establish new procedures for three types of proceedings (scope, circumvention, and covered merchandise inquiries), and make a variety of other substantive and technical revisions with respect to other areas, such as new shipper reviews.<sup>122</sup> The stated purpose of the modifications and additions to USDOC's regulations is to strengthen the administration and enforcement of AD/CVD laws, make such administration and enforcement more efficient, and create new enforcement tools for USDOC to address circumvention and evasion of trade remedies. According to the Final Rule, these modifications allow USDOC to address the injurious effects of unfairly traded imports and promote the Administration's objective to enforce and administer the AD/CVD laws rigorously.

3.82. Specifically, through the new regulations USDOC: (i) modified the time for submission of comments pertaining to industry support in AD and CVD proceedings; (ii) modified its regulation regarding new shipper reviews; (iii) modified its regulation concerning scope matters in AD and CVD proceedings; (iv) promulgated a new regulation concerning circumvention of AD and CVD orders; (v) promulgated a new regulation concerning covered merchandise referrals received from CBP; (vi) promulgated a new regulation pertaining to USDOC requests for certifications from interested parties to establish whether merchandise is subject to an AD or CVD order; (vii) modified its

<sup>116</sup> WTO document G/ADP/N/1/USA/1/Suppl.30, G/SCM/N/1/USA/1/Suppl.29, 16 July 2020.

<sup>117</sup> Service requirements in E&C's regulations are often effectuated by hand delivery or by U.S. mail delivery of hard copy documents. Based on these circumstances, E&C announced that it would temporarily deem service of submissions containing business proprietary information (BPI) to be effectuated when the BPI submissions are filed by parties in USDOC's electronic system ACCESS, with certain exceptions.

<sup>118</sup> Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19, 85 FR 17006 (26 March 2020) (Temporary Final Rule).

<sup>119</sup> Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period, 85 FR 29615 (18 May 2020)

<sup>120</sup> *Federal Register* (2020), Vol. 85, No. 133, 10 July, pp. 41363-41364.

<sup>121</sup> Regulations to Improve Administration and Enforcement of Anti-dumping and Countervailing Duty Laws, *Federal Register* (2021), Vol. 86, No. 179, 20 September, p. 52300-52384. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-09-20/pdf/2021-17861.pdf>. The proposed rule was published in 85 FR 49472 (13 August 2020) (Proposed Rule).

<sup>122</sup> WTO document G/ADP/N/1/USA/1/Suppl.31, G/SCM/N/1/USA/1/Suppl.32, 1 October 2021.

regulation regarding importer reimbursement certifications filed with CBP; and (viii) modified its regulations regarding service lists, entries of appearance, and importer filing requirements for access to business proprietary information in AD and CVD proceedings.<sup>123</sup> All amendments were effective by 4 November 2021 (some were effective as of 20 October 2021). The main points included in the Final Regulations are presented on Table 3.12.

**Table 3.12 Final Regulations to Improve Administration and Enforcement of Anti-dumping and Countervailing Duty Laws, 2021**

Background/Previous practice	Change introduced by the Final Regulations, 2021
<b>Initiation comment period for industry support</b> Comments on industry support could be filed up to and including the scheduled date of the determination of investigation initiation.	Modification to Section 351.203 to provide for the establishment of a deadline by which parties may file comments on industry support. The deadline established for comments is no later than five business days before the scheduled date of initiation and rebuttal comments no later than two calendar days thereafter. These changes apply to petitions for investigations filed on or after 20 October 2021.
<b>New shipper reviews</b> Section 351.214 provides a procedure by which "new shippers" (exporters or producers that did not export to the United States during the period of investigation) may obtain their own individual dumping margin or countervailable subsidy rate on an expedited basis. New shippers could obtain a new shipper review without submitting information pertaining to whether the sales at issue constitute bona fide sales.	Revision of Section 351.214 to ensure that the sales to be reviewed are bona fide sales, and to conform the regulation with EAPA. The new rules: a) clarify the circumstances under which USDOC will grant a new shipper review; b) establish a requirement for additional information to demonstrate the existence of a bona fide sale; c) establish factors to consider in determining bona fide sales for purposes of the AD and CVD laws; and d) eliminate the option of the importer posting an AD/CVD-specific bond or security in lieu of an AD/CVD cash deposit for each entry of the subject merchandise. These changes apply to new shipper reviews in which the request for review is filed on or after 20 October 2021.
<b>Scope</b> When issuing an AD or CVD order, USDOC provides a general description of the merchandise covered (scope of the order). Previous regulations allowed for parties to request scope rulings from USDOC, which issued these based on the information contained in the scope ruling request or, if further inquiry was needed, initiated a formal scope inquiry and then issued a scope ruling. USDOC may also self-initiate a formal scope inquiry. USDOC has established methodologies to determine a product's country of origin, and the scope of an order. USDOC regulations also establish various procedures and standards for conducting a scope inquiry and issuing a scope ruling, as well as ordering the suspension of liquidation of entries of products subject to a scope inquiry.	Adoption of procedural and substantive changes to Section 351.225 concerning scope inquiries to expedite deadlines, and revise notice and service requirements. The procedural changes include: eliminating "informal inquiry" proceedings; publishing notices of self-initiation; adopting a standardized scope ruling application; publishing a monthly list of received applications; updating electronic service list procedures; modifying and standardizing filing timelines, among others. USDOC now has 30 days to accept or reject a scope ruling application; applications that are not rejected are deemed accepted and a scope inquiry will be initiated. Scope inquiries must be completed within 120 days, or, if extended, within 300 days. The regulations also seek to ensure that AD/CVD duties are appropriately applied to products determined to be subject to the scope of the order regardless of when a scope ruling is requested. In this respect, the Final Rule extends scope rulings to all unliquidated entries of subject merchandise, excluded from such rulings before, with some exceptions. The new regulations also allow USDOC to address scope matters in other proceedings, including circumvention inquiries, covered merchandise inquiries, and administrative reviews; or to align scope deadlines with other segments of the proceeding. The new regulations separate the conduct of circumvention inquiries into a different set of regulations. These changes apply to scope inquiries initiated on or after 4 November 2021.
<b>Circumvention</b> The AD and CVD statute identifies four types of merchandise originating from a country with an existing AD and CVD order that may be found circumventing the order(s): (i) merchandise completed or assembled in the United States after importation; (ii) merchandise completed or assembled in a third country before exportation to the United States; (iii) merchandise that has undergone minor alterations; and (iv) merchandise developed after the order was established. If USDOC reaches an affirmative final determination, such merchandise will be covered by the scope of the order(s). In previous practice, circumvention inquiries were generally governed by USDOC's scope regulations on a case-by-case basis.	Introduction of a new Section 351.226 concerning circumvention inquiries and the issuance of circumvention determinations and codify USDOC's existing practice. USDOC may now conduct a circumvention inquiry at the request of an interested party or self-initiate it. USDOC must determine within 30 days (45 days if extended) whether to initiate a circumvention request, and issue its final determination within 300 days, or, if extended, within 365 days. USDOC now may: address a scope matter or covered merchandise referral within a circumvention inquiry; defer a circumvention inquiry to first consider a scope matter; or align its deadlines with other segments of the proceeding. The regulations clarify USDOC's authority to apply circumvention determinations on a country-wide basis to both products which are similar and to products which are the same as those subject to inquiry, and to impose a certification requirement. The regulations codify USDOC's "commercial availability" test applied in later-developed merchandise inquiries. The regulations modify previous regulations to adopt a case-specific analysis to determine whether to extend the suspension of liquidation to entries that pre-date the initiation of the inquiry. These changes apply to circumvention inquiries for which a circumvention request is filed, as well as any circumvention inquiry self-initiated by USDOC, on or after 4 November 2021.
<b>Covered merchandise referrals</b> Under the EAPA CBP may make a "covered merchandise referral" to USDOC for scope purposes". Prior to the new rules, there were no regulations for USDOC's receipt of a covered merchandise referral from CBP; practice was on a case-by-case basis.	Introduction of a new Section 351.227 concerning "covered merchandise referrals" from CBP to USDOC to determine if the product at issue is covered by the scope of the order(s). These changes apply to covered merchandise inquiries for which a sufficient covered merchandise referral is received on or after 4 November 2021.

<sup>123</sup> Federal Register (2021), Vol. 86, No. 179, 20 September, pp. 52300-52384. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-09-20/pdf/2021-17861.pdf>.

Background/Previous practice	Change introduced by the Final Regulations, 2021
<b>Certifications</b> USDOC may require certifications by importers, exporters, and other interested parties as to whether merchandise is subject to an AD/CVD order. In previous practice, there were no regulations governing USDOC's certification practice.	Introduction of a new Section 351.228 to codify and enhance USDOC's authority to require certifications by importers, exporters, and other interested parties as to whether merchandise is subject to an AD/CVD order. They provide procedures for complying with certification requirements and consequences of failure to satisfy them. The changes are applicable as of 20 October 2021.
<b>Importer reimbursement certification</b> Importers must certify whether they have entered into an agreement for the payment or reimbursement of AD and CVD duties with the exporter. USDOC's previous regulation set forth specific requirements for the reimbursement certification.	Modification of Section 351.402 regarding importer certifications for the payment or reimbursement of AD/CVD duties. The revised regulation no longer requires a specific format for the certification and allows for either electronic or paper filing in accordance with CBP's procedures. These changes are applicable on or after 20 October 2021.

Source: Final Regulations to Improve Administration and Enforcement of Anti-dumping and Countervailing Duty Laws. *Federal Register* (2021), Vol. 86, No. 179, 20 September, pp. 52300-52384. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-09-20/pdf/2021-17861.pdf>; and International Trade Administration, *Anti-dumping and Countervailing Duty FAQs*. Viewed at: <https://www.trade.gov/anti-dumping-and-countervailing-duty-frequently-asked-questions>.

3.83. The new regulations introduce new rules for scope, circumvention, and covered merchandise inquiries. They establish timelines for the initiation of the proceeding and the issuance of a final determination and provide that USDOC may initiate scope and circumvention inquiries either based on a request from an interested party or by self-initiation instead of performing either a formal or informal scope inquiry. The previous regulations contained no separate rules on circumvention inquiries, nor did they explicitly indicate that USDOC had authority to self-initiate circumvention inquiries, nor did they have a section on covered merchandise inquiries.

3.84. Regarding new shipper reviews, the modifications clarify the circumstances under which USDOC will grant a new shipper review and establish specific factors to be considered in determining whether the sales at issue constitute bona fide sales for purposes of the AD and CVD laws.<sup>124</sup> The new regulation requires that new shipper applicants provide evidence to support the assertion that the sale or sales subject to a new shipper review are bona fide sales for purposes of determining AD margins. This is a new requirement that did not exist under the previous regulations.<sup>125</sup> With these amendments, the regulations are now consistent with Section 433 of the EAPA, which removed the ability for importers to post AD-/CVD-specific bonds or security in lieu of AD/CVD cash deposits and added a provision that the individual dumping margin or countervailing duty rate determined for a new shipper must be based on bona fide sales in the United States. In this respect, the new rules codify the factors that USDOC has been using to determine whether a sale is bona fide.

3.85. The new rules introduce the possibility of retroactive application of AD/CVD duties in scope and covered merchandise inquiries. It is now considered that "a scope ruling that a product is covered by the scope of an order is a determination that the product has always been covered by the scope of that order" (19 C.F.R. 351.225(a)). In the previous regulations, the date of initiation of a scope inquiry was a cut-off date, before which no unsuspended entries were subject to duties even if they involved merchandise subsequently determined to be within the scope of an AD/CVD order. In the new rule, for both scope and covered merchandise inquiries, at the time of an affirmative preliminary or final scope ruling, USDOC normally will direct CBP to begin the suspension of liquidation of unliquidated entries not yet suspended, which entered before the date of initiation of the scope inquiry, and collect applicable cash deposits. The new circumvention rules also state that USDOC may apply duties retroactively if the Secretary of Commerce determines that it is appropriate to do so. For all three types of inquiries, USDOC will consider retroactive application on a case-by-case basis and may consider arguments and evidence from parties as appropriate.

3.86. The new regulations provide USDOC with authority to require importers and other interested parties to certify whether a particular product is subject to an AD/CVD order. If a party fails to provide the certification upon request, or the certification is false, USDOC may order CBP to collect AD/CVD duties from the importer at the applicable rate.

<sup>124</sup> New shipper reviews allow foreign producers/exporters to obtain a company-specific AD/CVD rate if they did not produce/export the relevant merchandise to the United States during the time period covered by the original AD/CVD investigation and are not affiliated with any such producer/exporter.

<sup>125</sup> *Federal Register* (2021), Vol. 86, No. 179, 20 September, p. 52301.

#### 3.1.6.1.1.4 Suspension agreements

3.87. U.S. law allows USDOC to enter an agreement to suspend an AD and/or CVD investigation under certain circumstances and when certain statutory and policy criteria are met. The suspension is based on an agreement by the relevant parties to the case to cease exports, or to eliminate the injurious effect. These agreements are generally voluntary limits on exports or price undertakings; or involve the elimination of subsidies or dumping by the foreign producers/exporters or government, as relevant. Suspension agreements are monitored by USDOC to ensure compliance. For AD investigations, exporters may agree to accept price undertakings or to cease exports. AD suspension agreements reached with non-market economies (NMEs) may combine price undertakings and additional elements. In CVD investigations, a suspension agreement may be reached if the government alleged to be providing the subsidy agrees to eliminate the subsidy, to completely offset the net subsidy, or to cease or limit exports to the United States. Suspension agreements with a WTO Member considered a market economy may involve only price undertakings in the case of AD investigations. Agreements with respect to CVD investigations may involve quantitative restrictions. Notwithstanding the suspension agreement, a written request to the Secretary of Commerce may be filed for the continuation of the investigation. If USDOC and USITC make affirmative final determinations in an investigation that has been continued, the suspension agreement will remain in effect. If either USDOC or USITC makes a negative final determination, the agreement will cease to have force or effect.

3.88. As of the end of 2021, there were seven suspension agreements in place: Fresh Tomatoes from Mexico; Sugar from Mexico (one AD and one CVD); Uranium from the Russian Federation; Certain Cut-to-Length Carbon Steel Plate from Ukraine; Lemon Juice from Argentina; and Certain Cut-to-Length Carbon Steel Plate from the Russian Federation. Six relate to the suspension of AD investigations; Sugar from Mexico also relates to the suspension of a CVD investigation. Suspension agreements are subject to sunset reviews and may also be subject to administrative reviews. During the period under review, five suspension agreements (Fresh Tomatoes from Mexico; Sugar from Mexico (AD/CVD); Certain Cut-to-Length Carbon Steel Plate from Ukraine; and Certain Cut-to-Length Carbon Steel Plate from the Russian Federation) were subject to sunset reviews. In the first case, a new suspension agreement was signed; in the other four, the suspension agreement was continued. The provisions of the agreements with Mexico on sugar were renegotiated in 2019 and introduced in 2020.<sup>126</sup> The amendment to the AD agreement includes revisions of the definitions of refined sugar; increases to the minimum selling prices; and the inclusion, as part of the (quarterly) certification that sales took place at the reference price, of a listing of the total quantity of Other Sugar and Refined Sugar that was exported during each quarter. The CVD agreement contains the same amendments to the definitions of refined sugar plus amendments relative to export limits.<sup>127</sup>

#### 3.1.6.1.1.5 Administrative reviews

3.89. An administrative review of an AD or CVD order is a process that determines the amount of duties that need to be paid on the entries of a particular product subject to an order entered, or withdrawn from warehouse, for consumption, during a given period. An administrative review also establishes a new cash deposit rate for estimated AD/CVDs collected for future entries made by each of the companies for which the review is initiated. Cash deposit rates calculated in administrative reviews apply to entries of subject merchandise entered, or withdrawn from warehouse, for consumption, on or after the date the final results of review are published in the Federal Register.<sup>128</sup>

3.90. Administrative reviews of orders and suspension agreements in effect may be requested each year by interested parties during the anniversary month of the publication of the order

<sup>126</sup> Sugar from Mexico: Amendment to the Agreement Suspending the Anti-dumping Investigation Countervailing Duty Investigation. *Federal Register* (2020), Vol. 85, No. 14, 22 January, pp. 3620-3623. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-01-22/pdf/2020-00970.pdf>; and Sugar From Mexico: Amendment to the Agreement Suspending the Countervailing Duty Investigation. *Ibid.*, pp. 3613-3616. Viewed at: <https://www.federalregister.gov/documents/2020/01/22/2020-00972/sugar-from-mexico-amendment-to-the-agreement-suspending-the-countervailing-duty-investigation>.

<sup>127</sup> The amended CVD agreement modifies USDOC's calculation of the (sugar) Export Limit for each Subsequent Export Limit Period after the new initial export period going from 1 October 2019 to 30 September 2020. Following the amendment, the Export Limit will be 50% of the Target Quantity of U.S. Needs.

<sup>128</sup> ITA, *Anti-dumping and Countervailing Duty FAQs*. Viewed at: <https://www.trade.gov/antidumping-and-countervailing-duty-frequently-asked-questions>.



(19 C.F.R. 351.213). The list of orders and suspension agreements eligible for review is published monthly in the Federal Register. An interested party must specify the individual producer or exporter covered by the order for which they are requesting a review, and the basis for the request. For suspension agreements, USDOC reviews the status of, and compliance with, the agreement. In reviews of AD/CVD orders, the USDOC examines a particular company's entries, exports, or sales made 12 months immediately preceding the anniversary month in which the review was requested. The review determines the actual weighted-average amount of dumping or subsidy and AD/CVD assessments for that period, and the future cash deposit rate. Requests for duty absorption rulings may also be made in an administrative review.

3.91. The results of the reviews are normally issued within 12 months from the date of initiation. Once the review is completed, USDOC sends cash deposit and liquidation instructions to CBP. Currently, CBP is notified of the assessment 35 days after publication of the final results in the Federal Register, as the previous requirement of a 15-day notification period when no statutory injunction was requested was eliminated in January 2021.<sup>129</sup> Only the decisions from the final results of an administrative review impact the collection of cash deposits or assessment of duties.

#### **3.1.6.1.1.6 Sunset reviews**

3.92. Section 751(c) of the Tariff Act of 1930, as amended by the URAA, provides for conducting five-year sunset reviews of AD and CVD orders or suspended investigations. USDOC and USITC must initiate sunset reviews no later than 30 days before the fifth anniversary of publication in the Federal Register of an AD or CVD order or suspension agreement. Initiations of the reviews are automatic. USDOC policy is to provide a one-month advance notification of sunset reviews in the Federal Register. USITC institutes its five-year review and sets its schedule in a published Federal Register notice effective the same day as USDOC's initiation of the five-year review. Approximately 95 days after publication in the Federal Register of its notice of institution of the five-year review, USITC decides whether to conduct a full or expedited five-year review.

3.93. USDOC makes its final determination within 240 days after the date on which a review is initiated, except in cases of no responses and waivers. If no interested party responds to the notice of initiation of the review, USDOC issues a final determination, within 90 days after the initiation of a review, revoking the order or terminating the suspended investigation to which such notice relates. In the case of a waiver, the order is usually continued.<sup>130</sup> If USDOC's final determination is affirmative, the USITC will typically complete the review within 360 days of initiation. However, both USDOC and the USITC may extend the period of time for making their respective determinations by not more than 90 days, if the review is extraordinarily complicated. If USDOC extends the time for making a final determination, but USITC does not, the injury determination shall be made not later than 120 days after the date on which USDOC's final determination is published. In cases where interested party responses to a notice of initiation are inadequate, USDOC can make a final expedited determination (dumping) within 120 days after initiation, and USITC (injury) after 150 days, without further investigation, and based on the facts available.

3.94. In its determination of whether revocation of an order would likely lead to continuation or recurrence of dumping, USDOC considers the rates established in the investigation and/or reviews conducted during the sunset review period, as well as the volume of imports for the periods before and after issuance of the order. USITC determines whether revocation of the AD or CVD order or termination of the suspended investigation would be likely to lead to continuation or recurrence of material injury to the U.S. industry. If USITC's determination is affirmative, the order or suspension agreement will remain in place. If USITC's determination is negative, the order will be revoked, or the suspension will be terminated. Sunset reviews are order-specific (country- and product-specific), but several reviews may be grouped in an investigation; suspended investigations/suspension

<sup>129</sup> *Federal Register* (2021), Vol. 86, No. 10, 15 January, p. 3995. Viewed at: <https://www.federalregister.gov/documents/2021/01/15/2021-00884/notice-of-discontinuation-of-policy-to-issue-liquidation-instructions-after-15-days-in-applicable>.

<sup>130</sup> An interested party may elect not to participate in a review conducted by USDOC and to participate only in the review conducted by the USITC (waiver of participation). In a review in which an interested party waives its participation, USDOC will conclude that revocation of the order or termination of the investigation would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy with respect to that interested party. Section 751(c)(4) of the Tariff Act of 1930, as amended.



agreements are also subject to sunset review. There are no sunset reviews for AD orders on products from non-WTO Members.

#### 3.1.6.1.1.7 Circumvention rulings

3.95. Section 781 of the Tariff Act contains provisions related to the prevention of circumvention of AD and CVD orders by having a small portion of the merchandise completed or assembled in the United States. This includes merchandise sold in the United States of the same class or kind as any other merchandise that is the subject of an AD and/or CVD order, completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order or finding applies, for which the process of assembly or completion in the United States is minor or insignificant, while the value of the (imported) parts or components is a significant portion of the total value of the merchandise.<sup>131</sup> If this is the case, USDOC, after taking into account any advice provided by USITC, may include within the scope of such order or finding the imported parts or components used in the completion or assembly of the merchandise in the United States at any time such order or finding is in effect.<sup>132</sup> Similar provisions apply for when the minor processing takes place in a third country, other than the United States. The Final Regulations to Improve Administration and Enforcement of Anti-dumping and Countervailing Duty Laws separated circumvention inquiries from rules governing scope inquiries. They introduced of a new Section 351.226 concerning circumvention inquiries and the issuance of circumvention determinations and codified USDOC's existing practice.

3.96. In determining whether the process of assembly or completion is minor or insignificant, USDOC takes into account: (i) the level of investment in the foreign country; (ii) the level of R&D in the foreign country; (iii) the nature of the production process in the foreign country; (iv) the extent of production facilities in the foreign country; and (v) whether the value of the processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States. To determine whether to include merchandise assembled or completed, or parts or components in other foreign countries in an AD or CVD order, USDOC takes into account such factors as: (i) the pattern of trade, including sourcing patterns; (ii) whether the manufacturer or exporter of the merchandise (or part or component) is affiliated with the person who uses it to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States; and (iii) whether imports into the foreign country of the merchandise (or part or component) have increased after the initiation of the investigation which resulted in the issuance of such order or finding.<sup>133</sup>

3.97. Circumvention inquiries may also take place in the case of minor alterations of merchandise, whether or not included in the same tariff classification of the merchandise subject to an order. Inquiries may also arise to determine if merchandise developed after an AD or CVD investigation is initiated is within the scope of an order issued as a result of such investigation. USDOC must take into account advice provided by USITC before making a later-development merchandise determination. USDOC may not exclude a later-developed merchandise from an AD or CVD order merely because the merchandise is classified under a different tariff classification or performs additional functions. USDOC has, to the extent practicable, 300 days from the date of the initiation of an AD or CVD circumvention inquiry to make its determination.

3.98. The 27 anti-circumvention determinations made by USDOC between 1 January 2018 and 31 January 2022 are presented in Table 3.13; they have been grouped by AD/CVD order. Several are linked to investigations regarding steel products; others deal with chemical, wood, and paper

<sup>131</sup> In determining whether the process of assembly or completion is minor or insignificant, USDOC shall take into account the level of investment in the United States, the level of R&D in the United States, the nature of the production process in the United States, the extent of production facilities in the United States, and whether the value of the processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States.

<sup>132</sup> USITC advice is required in investigations with respect to: (i) merchandise completed or assembled in the United States (other than minor completion or assembly); (ii) merchandise completed or assembled in other foreign countries; or (iii) any later-developed merchandise that incorporates a significant technological advance or significant alteration of an earlier product, with respect to an AD or CVD order or finding where USITC has made an affirmative injury determination.

<sup>133</sup> To formulate its advice with respect to merchandise completed or assembled in the United States from parts or components produced in a foreign country, USITC shall consider whether the inclusion of such parts or components taken as a whole would be inconsistent with its prior affirmative determination.

products. Most of the cases are the result of a petition by the industry, but a few of them were self-initiated by USDOC. In most determinations made by USDOC during the period, circumvention of the order(s) was found, and the imports from the investigated supplier(s), or imports from the country as a whole, were made subject to the order(s). Some AD/CVD orders were the subject of more than one investigation during the period analyzed.

**Table 3.13 Anti-circumvention determinations made 1 January 2018-31 January 2022**

Case	Determination
A-351-842: Uncoated Paper from Brazil	Imports of subject paper rolls that are converted into uncoated paper sheets circumvent the AD and CVD orders; 14 December 2021
A-560-828 and C-560-829: Uncoated Paper from Indonesia	Imports of subject paper rolls that are converted into uncoated paper sheets circumvent the AD and CVD orders; 14 December 2021
A-570-022 and C-570-023: Uncoated Paper from China	Imports of subject paper rolls that are converted into uncoated paper sheets circumvent the AD and CVD orders China; 14 December 2021
A-570-943: Oil Country Tubular Goods (OCTG) from China (Self-initiated)	Imports of welded oil country tubular goods (OCTG) completed in Brunei or the Philippines using inputs manufactured in China circumvent the AD and CVD orders on OCTG from China; 26 November 2021
A-570-026 and C-570-027: Certain Corrosion Resistant Steel Products (CORE) from China (Self-initiated)	CORE completed in Malaysia from hot-rolled steel or cold-rolled steel substrate manufactured in China and exported to the United States circumvent the AD and CVD orders on CORE from China; 1 June 2021. CORE produced in South Africa do not circumvent the orders; 1 June 2021. CORE completed in Costa Rica and the UAE from hot-rolled steel or cold-rolled steel substrate manufactured in China, and subsequently exported to the United States circumvents the AD and CVD orders on CORE from China; 6 July 2020. CORE produced in Guatemala does not circumvent the orders; 6 July 2020. Imports of CORE, produced in Viet Nam using carbon hot-rolled steel or cold-rolled steel flat products manufactured in China, circumvent the orders; 23 May 2018.
A-583-856: Certain Corrosion Resistant Steel Products (CORE) from Chinese Taipei (Self-initiated)	CORE completed in Malaysia from hot-rolled steel or cold-rolled steel substrate manufactured in Chinese Taipei and subsequently exported to the United States circumvents the AD order on CORE from Chinese Taipei; 1 June 2021
A-570-028: Hydrofluorocarbon (HFC) Blends from China	Imports of certain HFC blends containing HFC components from India and China blended in India prior to importation into the United States are circumvent the AD order on HFC blends from China; 1 October 2020. Unpatented R-421A produced in China circumvents the order; 4 June 2020. Imports of unfinished blends of HFC components R-32 and R-125 from China circumvent the AD order on HFC blends from China; 18 March 2020.
A-201-844: Steel Concrete Reinforcing Bar (Rebar) from Mexico	Imports of otherwise straight rebar bent on one or both ends from Mexico produced and/or exported by Deacero S.A.P.I. de C.V. circumvent the AD order; 29 May 2020.
A-570-900: Diamond Sawblades and Parts thereof from China	Diamond sawblades made with Chinese cores and segments in Canada by Protech Diamond Tools Inc. and exported from Canada to the United States are within the scope of the order; 20 February 2020. Diamond sawblades made with Chinese cores and segments in Thailand and exported to the United States are within the scope of the AD duty order; diamond sawblades made with Chinese cores and Thai segments; or Thai cores and Chinese segments, in Thailand and exported to the United States are outside its scope; 10 July 2019.
A-570-890: Wooden Bedroom Furniture from China	A desk/console table with drawers, a TV cabinet with minibar, a trunk storage unit, and a bed bench base are not covered by the scope of the AD order. However, certain TV credenzas/dressers and a console/custom dresser are covered by the scope of the order; 31 December 2019.
A-580-881 and C-580-882: Certain Cold-Rolled Steel (CRS) Flat Products from Korea	Imports of certain CRS flat products, produced in Viet Nam using carbon hot-rolled steel (HRS) manufactured in the Republic of Korea, circumvent the AD and CVD orders; 26 December 2019.
A-583-856: Corrosion-Resistant Steel Products from Chinese Taipei	CORE produced in Viet Nam from HRS and/or CRS substrate produced in Chinese Taipei and subsequently exported to the United States from Viet Nam circumvent the AD duty order; 26 December 2019.
A-580-878 and C-580-879: Certain CORE Products from Korea	Importers and exporters of CORE produced in Viet Nam using HRS manufactured in Viet Nam or third countries; or CRS manufactured in Viet Nam using HRS produced in Viet Nam or third countries; and/or CRS manufactured in third countries, must certify that the HRS or CRS processed into CORE in Viet Nam did not originate in the Republic of Korea, or their merchandise may be subject to AD and CVD duties; 16 December 2019.
A-570-051 and C-570-052: Hardwood Plywood from China	Certain plywood products with a Toxic Substances Control Act (TSCA) or California Air Resources Board (CARB) label and made with a resin, exported from China, circumvent the AD and CV duty orders; 22 November 2019.
A-570-967 and C-570-968: Aluminum Extrusions from China	Aluminum extrusions exported from Viet Nam, produced from aluminum previously extruded in China, circumvent the orders; 12 August 2019.
A-201-830: Carbon and Certain Alloy Steel Wire Rod from Mexico Requestor: Nucor Corporation. Wire	Wire rod produced and/or exported by Deacero S.A.P.I. de C.V. with an actual diameter less than 4.75 millimeters, altered in form or appearance in minor respects from in-scope merchandise is subject to the AD duty order; 13 March 2019.
A-570-928: Uncovered Innersprings from China	Innersprings assembled or completed in Macao, China by companies part of the Macao Commercial Group and exported to the United States, circumvent the AD order; 21 December 2018.
A-570-814: Carbon Steel Butt-Weld Pipe Fittings from China	Fire-protection weld outlets from China are subject to the order, as they meet the description of merchandise covered by the scope; 11 December 2018.

Case	Determination
A-570-029 and C-570-030: Certain Cold-Rolled Steel (CRS) Flat Products from China	USDOC determined that CRS produced in Viet Nam from HRS substrate manufactured in China circumvent the orders and fall within their scope; 23 May 2018. USDOC determined that CRS produced in Viet Nam from HRS substrate manufactured in China circumvent the AD and CVD orders; 17 August 2018.

Source: *Federal Register*, Notices of Scope Rulings (several). Viewed at: <https://www.federalregister.gov/documents/>; and USDOC Access Database. Viewed at: <https://access.trade.gov/>.

### 3.1.6.1.1.8 Scope rulings

3.99. 19 C.F.R. 351.225 allows a domestic interested party to allege that changes to an imported product or the place where the imported product is assembled constitutes circumvention. When such issues arise, USDOC issues "scope rulings" that clarify the scope of an order or suspended investigation with respect to particular products.

3.100. Scope investigations may be self-initiated if USDOC determines from available information that an inquiry is warranted to determine whether a product is included within the scope of an AD or CVD order or a suspended investigation, or any interested party may apply for a ruling. The application must contain a detailed description of the product, and its current HTSUS Classification number; a statement of the interested party's position as to whether the product is within the scope of an order, and any factual information supporting it. Within 45 days of the date of receipt of an application, USDOC will issue a final ruling as to whether the product is included within the order or will initiate a scope inquiry if it cannot determine whether a product is included within the scope of an order based solely upon the application and the descriptions of the merchandise.<sup>134</sup> USDOC issues a final ruling normally within 120 days of the initiation of the inquiry. USDOC may conduct the scope inquiry in conjunction with an administrative review, a new shipper review, or an expedited AD review. USDOC will notify USITC in writing of the proposed inclusion of products in an order prior to issuing a final ruling. USDOC may include within the scope of an AD or CVD order: (i) imported parts or components used in the completion or assembly of the merchandise in the United States at any time such order is in effect; (ii) imported merchandise completed or assembled in a foreign country other than the country to which the order applies; (iii) articles altered in form or appearance in minor respect; and (iv) later-developed merchandise.

3.101. If a preliminary scope ruling that a product is included within the scope of an order is issued, USDOC will instruct CBP to suspend liquidation and to require a cash deposit of estimated duties for each unliquidated entry of the product entered, or withdrawn from warehouse, for consumption, on or after the date of initiation of the scope inquiry. If USDOC issues a final scope ruling, that the product in question is included within the scope of the order, the suspension of liquidation will continue. If USDOC's final scope ruling is to the effect that the product in question is not included within the scope of the order, any suspension of liquidation on the subject product will be ended and CBP will refund any cash deposits relating to this product. If a product subject to inquiry is already subject to suspension of liquidation, the suspension will be continued, pending a preliminary or a final scope ruling, at the cash deposit rate that would apply if the product were included within the scope of the order. On a quarterly basis, USDOC publishes in the *Federal Register* a list of scope rulings (Notice of Scope Rulings) issued within the last three months.

3.102. Between 1 January 2018 and 31 January 2022, USDOC made 169 final scope rulings. Several of the cases involved both AD and CVD orders; all the cases involved at least one AD order. In some cases, the same order was the subject of more than one investigation/ruling. About half of the rulings were linked to steel, iron, and aluminum products. Other scope rulings dealt with wood products, chemicals, photovoltaic products, canvas, ceramics, agricultural goods, and machinery.

### 3.1.6.1.1.9 Determination of evasion of AD/CVD orders

3.103. Title IV of TFTEA, Prevention of Evasion of Anti-dumping and Countervailing Duty Orders, known as EAPA, allows CBP to investigate whether a company or other entity has evaded AD/CVD duties. Section 421 of EAPA amended the Tariff Act of 1930 by creating a new framework for CBP to

<sup>134</sup> Interested parties have 20 days to provide comments and supporting information relating to the inquiry, and 10 days to provide any rebuttal to such comments. If USDOC finds that a scope inquiry presents an issue of significant difficulty, it may issue a preliminary scope ruling, based upon the available information.

investigate allegations of evasion of AD/CVD orders, under newly created Section 517 (Procedures for Investigating Claims of Evasion of Anti-dumping and Countervailing Duty Orders). CBP implemented EAPA through regulation in August 2016. EAPA was notified to the WTO in 2016.<sup>135</sup>

3.104. EAPA requires CBP to initiate an investigation within 15 business days of the receipt of a properly filed allegation from an interested party (EAPA allegation) or referral from another federal agency that reasonably suggests that merchandise covered by an AD/CVD order has entered the customs territory of the United States through evasion (Table 3.14). EAPA allegations may be filed via the EAPA option on the e-Allegations web portal or through other means.<sup>136</sup> On 1 April 2021, CBP updated the process to submit EAPA allegations. Users may now submit EAPA allegations through the EAPA Portal.<sup>137</sup> EAPA allegations are specific to AD/CVD evasion.<sup>138</sup> An EAPA allegation may be filed by interested parties, or by other U.S. government agencies, and must provide a statutory description of covered merchandise and the applicable AD/CVD order(s). CBP cannot file or initiate its own EAPA allegations. Allegers must provide reasonably available information that suggests evasion of an AD/CVD order; allegers who do not feel that the information they have meets EAPA requirements may file an E-Allegation.<sup>139</sup> TRLED within CBP is in charge of investigating an allegation, from initiation until the determination as to evasion. CBP may apply an adverse inference (lack of response as evidence of wrongdoing) if the importer, foreign producer, or exporter of the merchandise under investigation, or the interested party making the allegation, fail to cooperate in the investigation to the best of their ability.<sup>140</sup>

**Table 3.14 Timeline for an EAPA investigation**

Day	Event
0 days <sup>a</sup>	Initiation of the investigation <sup>b</sup>
No later than 90 calendar days	Determination of reasonable suspicion of evasion and issuance of interim measures
5 business days after interim measures are taken	Notice of decision to initiate an investigation and whether interim measures were taken
200 calendar days	Deadline to voluntarily submit factual information <sup>c</sup>
230 calendar days	Deadline to submit written arguments
15 calendar days after a written argument was filed	Deadline to submit responses to the written argument
No later than 300 calendar days	Determination as to evasion or notice of extension of time
No later than 360 calendar days	Determination as to evasion if the investigation is extraordinarily complicated
5 business days after determination	Notice of CBP's determination as to evasion

- a CBP may submit a referral to USDOC if it cannot determine whether the entered merchandise described in the allegation is properly within the scope of an AD or CVD order. The time required for a referral and determination by USDOC will not be counted towards CBP's deadlines.
- b If CBP consolidates allegations into a single investigation, the date on which CBP receives the first of such allegations will start the time period for the deadline to initiate the investigation.
- c Parties to the investigation have 10 calendar days to provide rebuttal information.

Source: CBP, *Timeline for an EAPA Investigation and Administrative Review*. Viewed at: <https://www.cbp.gov/trade/trade-enforcement/tftea/enforce-and-protect-act-eapa/timeline>.

<sup>135</sup> WTO document G/ADP/N/1/USA/1/Suppl.23, G/SCM/N/1/USA/1/Suppl.23, 1 April 2016.

<sup>136</sup> Investigations under EAPA are not the only statutory authority by which CBP can investigate allegations by the public or requests by other federal agencies with respect to the evasion of AD/CVD orders. The public has the option to make more general allegations of evasion through CBP's e-Allegations system, an official online portal for the public to report violations of the trade laws (see below). Apart from its own functionality, e-Allegations also has an option for filing allegations of evasion under EAPA. CBP, e-Allegations portal. Viewed at: <https://eallegations.cbp.gov/Home/Index>.

<sup>137</sup> CBP, *Enforce and Protect Act (EAPA)*. Viewed at: <https://www.cbp.gov/trade/trade-enforcement/tftea/eapa>.

<sup>138</sup> CBP, *New to EAPA*. Viewed at: <https://www.cbp.gov/trade/trade-enforcement/tftea/eapa/new-to-eapa>.

<sup>139</sup> There is a difference between an EAPA allegation and an e-Allegation. An e-Allegation is more general, since it can pertain to any trade violation and may be filed by any member of the public; allegers can remain anonymous. However, they must provide an adequate and specific description of the merchandise involved, as well as evidence to help CBP in its review of the merits of the allegation. CBP cannot share specific information about the allegation and its status. In an e-Allegation investigation, CBP does not have the authority to apply an adverse inference. CBP, *New to EAPA*. Viewed at: <https://www.cbp.gov/trade/trade-enforcement/tftea/eapa/new-to-eapa>.

<sup>140</sup> CBP, *Enforce and Protect Act of 2015: Overview of the Investigation Process*. Viewed at: [https://www.cbp.gov/sites/default/files/assets/documents/2017-Apr/EAPA%20Investigation%20Process%20Overview\\_FINAL%20%28002%29.PDF](https://www.cbp.gov/sites/default/files/assets/documents/2017-Apr/EAPA%20Investigation%20Process%20Overview_FINAL%20%28002%29.PDF).

3.105. EAPA provides for a mechanism to ensure that duties can be collected on entries of covered merchandise made during the pendency of an investigation. CBP must determine within 90 calendar days of initiation of an EAPA investigation whether there exists reasonable suspicion that covered merchandise subject to an allegation was entered through evasion. If CBP determines that such reasonable suspicion exists, it applies interim measures. CBP will proceed to suspend the liquidation of unliquidated entries of the covered merchandise entered after the date of initiation<sup>141</sup>, and extend the period for liquidating the unliquidated entries that entered before the initiation of the investigation. CBP may also take any additional measures necessary to protect the ability to collect appropriate duties, which may include requiring posting a cash deposit or reliquidating entries. EAPA requires CBP to determine, not later than 300 calendar days (or 360 calendar days in extraordinarily complicated cases) after the date of initiation of an EAPA investigation, whether there is substantial evidence that merchandise covered by an AD/CVD order was entered into the customs territory of the United States through evasion (Table 3.14). No later than five business days after making a determination, CBP must communicate the determination to the interested party who made an allegation that initiated the evasion investigation. CBP posts its decisions as to interim measures and final determination of evasion on its website.<sup>142</sup>

3.106. If CBP makes an affirmative determination of evasion, it will: (i) suspend (or continue to suspend if a preliminary measure was applied) the liquidation of unliquidated entries of the covered merchandise subject to the determination; (ii) extend the period for liquidating the unliquidated entries of covered merchandise that entered before the initiation of the investigation; (iii) when necessary, notify USDOC of the determination and request that it determine the appropriate duty rates for such covered merchandise; (iv) require importers of covered merchandise to post cash deposits and assess duties on the covered merchandise; and/or (v) take such additional enforcement measures as CBP deems appropriate, including (but not limited to) modifying CBP's procedures for identifying future evasion, reliquidating entries, and referring the matter to ICE for a possible civil or criminal investigation. Additionally, if a violation of the Customs Act is identified as part of an affirmative determination, CBP may impose penalties under Section 1592 of the Tariff Act of 1930 or use any of its other enforcement authorities. In September 2021, the United States introduced final regulations for the application of the EAPA and notified them to the WTO.<sup>143</sup> As provided for in If CBP determines during an EAPA investigation that the merchandise being investigated poses a health or safety risk, it will notify the appropriate federal agencies of that risk.<sup>144</sup>

3.107. EAPA calls for cooperation with foreign countries on preventing evasion of trade remedy laws, by seeking to negotiate and enter into bilateral agreements with their customs authorities or other appropriate authorities. These agreements should allow for the provision of production, trade, and transit documents and other information necessary to determine whether exports from the exporting country are subject to the importing country's trade remedy laws; they should also allow verification in the exporting country, including through a site visit.

3.108. A party to an EAPA investigation that has received an adverse determination from CBP may file a request for an administrative review no later than 30 business days after the initial determination as to evasion. The administrative review period starts on the date when CBP accepts the last properly filed request and electronically transmits the case number to all parties to the investigation. CBP must complete the review and issue a final administrative determination not later than 60 business days after the request for a review of an initial determination is filed (Table 3.15).

<sup>141</sup> Liquidation of an entry is the final calculation of money owed to CBP based on the current duty rates and the value of the imported goods. At the time of entry, the importer pays these estimated duties. During liquidation, CBP examines if this estimated amount is correct based on the HTSUS codes. If liquidation is stopped, a cash deposit must be placed instead (prior to the adoption of the 2021 Final Rules, the deposit could also take the form of a bond).

<sup>142</sup> CBP, *Enforce and Protect Act (EAPA)*. Viewed at: <https://www.cbp.gov/trade/trade-enforcement/tftea/enforce-and-protect-act-eapa>.

<sup>143</sup> Regulations to Improve Administration and Enforcement of Anti-dumping and Countervailing Duty Laws, *Federal Register* (2021), Vol. 86, No. 179, 20 September, p. 52300; and WTO document G/ADP/N/1/USA/1/Suppl.31 and G/SCM/N/1/USA/1/Suppl.32, 1 October 2021.

<sup>144</sup> Section 517(b)(6) of the Tariff Act of 1930, as amended by the EAPA (19 U.S.C. 1517(b)(6)).



**Table 3.15 Timetable for administrative review under the EAPA**

Day	Event
0 days	Initiation of the administrative review and transmission of the case tracking number
10 business days	Deadline to submit written responses to the request(s) for review
60 business days	Completion of the administrative review

Source: CBP, *Timeline for an EAPA Investigation and Administrative Review*. Viewed at: <https://www.cbp.gov/trade/trade-enforcement/tftea/enforce-and-protect-act-eapa/timeline>.

3.109. Section 517(g) of the Tariff Act of 1930, as amended by the EAPA (19 U.S.C. 1517(g)), provides that judicial review of the final administrative determination and the original determination as to evasion is available to the party alleging evasion or the party found to have entered merchandise subject to the investigation through evasion. A request for a judicial review must be made not later than 30 business days after completion of the final administrative determination. The request for judicial review must be made to the U.S. Court of International Trade (CIT).

### 3.1.6.1.2 Anti-dumping measures

3.110. Between 2018 and 2021, the number of AD investigation initiations totaled 178, compared to 133 in the period between 2015 and 2017, covered by the previous review. The number of initiations decreased slightly from 34 in 2018 to 33 in 2019, but increased substantially, to 89, in 2020. Between 1995 and 2020, the United States initiated 817 AD investigations.<sup>145</sup> There were 11 new AD investigations initiations in the first half of 2021.<sup>146</sup> Thirteen new AD investigations were initiated by ITA between 1 July and 31 December 2021.<sup>147</sup>

3.111. There was an increase in the number of AD measures in force during the period under review. In accordance with information from the USITC, 489 AD measures were in place as of 31 December 2021 (Table 3.16).<sup>148</sup> This included 483 AD orders and 6 AD suspension agreements, compared with 321 definitive AD measures in force as of 31 December 2017. The latest notification made to the WTO (as of late-March 2022), with measures up to 30 June 2021, lists 454 measures.<sup>149</sup> The AD measures in place as of end-2021 were applied to imports from 58 trading partners. The trading partners subject to the largest number of AD orders as of 31 December 2021 were China (148); the Republic of Korea (34); India (32); and Chinese Taipei (30). Of the 489 AD orders in place as of 31 December 2021, 233 (48.0% of the total) were applied on iron and steel products, 21 (4.3%) on miscellaneous manufactured products, 68 (14.0%) on chemicals and pharmaceuticals, 51 (10.5%) on metals and minerals, 39 (8.0%) on agricultural products, 24 (5.0%) on plastics and rubber, 11 on transportation (2.3%), 20 (3.4%) on textiles and apparel, 15 (3.1%) on machinery and equipment, and 2 (0.4%) on energy products.<sup>150</sup>

3.112. Of the 489 AD measures in place (including suspension agreements) as of 31 December 2021, 245 had been renewed after a sunset review, i.e. they had been in place for

<sup>145</sup> WTO, *Anti-Dumping Initiations by Reporting Member 01/01/1995-30/06/2021*. Viewed at: [https://www.wto.org/english/tratop\\_e/adp\\_e/AD\\_InitiationsByRepMem.pdf](https://www.wto.org/english/tratop_e/adp_e/AD_InitiationsByRepMem.pdf).

<sup>146</sup> WTO document G/ADP/N/357/USA, 13 October 2021. The investigations initiated were: Pentafluoroethane (R-125) from China, 2 February 2021 with a corresponding CVD investigation; Granular PTFE Resin from India and the Russian Federation (2 investigations), 17 February 2021; Mobile Access Equipment and Subassemblies Thereof from China, 19 March 2021, with a corresponding CVD investigation; Certain Walk-Behind Snow Throwers and Parts Thereof from China, 20 April 2021, with a corresponding CVD investigation; Organic Soybean Meal from India, 21 April 2021, with a corresponding CVD investigation; and Raw Honey from Argentina, Brazil, India, Ukraine, and Viet Nam (5 investigations), 12 May 2021.

<sup>147</sup> Acrylonitrile-butadiene Rubber from France, Mexico, and the Republic of Korea (3 investigations), 21 July 2021; Urea Ammonium Nitrate Solutions from the Russian Federation and Trinidad and Tobago (2 investigations) with corresponding CVD investigations (2), 21 July 2021; Freight Rail Coupler Systems and Certain Components Thereof from China, 20 October 2021; Oil Country Tubular Goods (OCTG) from Argentina, Mexico, and the Russian Federation (3 investigations), with parallel CVD investigations of OCTG from the Russian Federation and the Republic of Korea (2), 27 October 2021; Certain Superabsorbent Polymers from the Republic of Korea, 22 November 2021; and Emulsion Styrene-Butadiene Rubber from the Czech Republic, Italy, and the Russian Federation, 6 December 2021 (3 investigations). ITA, Recent Case Announcements. Viewed at: <https://www.trade.gov/ec-adc-vd-case-announcements>.

<sup>148</sup> USITC, *Anti-dumping and Countervailing Duty Orders in Place as of April 01, 2022*. Viewed at: [https://www.usitc.gov/sites/default/files/trade\\_remedy/documents/orders.xls](https://www.usitc.gov/sites/default/files/trade_remedy/documents/orders.xls).

<sup>149</sup> WTO document G/ADP/N/357/USA, 13 October 2021.

<sup>150</sup> USITC, *Anti-dumping and Countervailing Duty Orders in Place as of April 01, 2022*. Viewed at: [https://www.usitc.gov/sites/default/files/trade\\_remedy/documents/orders.xls](https://www.usitc.gov/sites/default/files/trade_remedy/documents/orders.xls).



over 5 years. The average duration of an AD measure in place at the end of 2021 was some 10.4 years, compared to 11 years in 2017. This is partly explained by the relatively large number of orders put in place since 2017. At the end of 2021, 96 AD measures had been in place for at least 20 years, and 193 AD measures had been in place for at least 10 years. The longest-lasting AD measure in place dates from 1978 and is applied on pre-stressed concrete steel wire strand from Japan. Duties applied during the period under review varied significantly. The level of AD definitive duties applied during 1 January 2018-31 December 2021 ranged from 0.00% to 541.75%; provisional duties applied over the same period also range from 0.00% to 541.75%.

**Table 3.16 Anti-dumping measures in force, by trading partner (including suspension agreements), 2018-2021 (31 December)**

Trading partner/region	2018	2019	2020	2021
Argentina	2	2	2	3
Armenia	-	-	-	1
Australia	2	2	2	2
Austria	1	1	2	2
Bahrain, Kingdom of	-	2	-	1
Belarus	2	-	2	2
Belgium	3	3	4	4
Bosnia and Herzegovina	-	-	-	1
Brazil	10	10	10	12
Cambodia	-	-	-	1
Canada	4	5	5	5
Chile	1	1	1	1
China	120	132	135	148
Colombia	1	1	1	2
Croatia	-	-	-	1
Czech Republic	-	-	-	1
Egypt	-	-	-	2
France	6	3	3	4
Germany	6	7	6	9
Greece	1	1	1	1
Iceland	-	-	-	1
India	24	26	30	32
Indonesia	10	10	11	15
Iran, Islamic Rep. of	1	1	1	1
Italy	10	10	10	12
Japan	18	19	19	21
Kazakhstan	1	1	1	1
Korea, Rep. of	27	27	31	34
Latvia	1	1	1	1
Malaysia	4	4	4	9
Mexico	12	13	13	14
Moldova, Rep. of	2	2	2	2
Netherlands	1	1	1	2
Oman	3	3	4	6
Pakistan	1	1	1	1
Philippines	1	1	1	1
Poland	2	2	2	2
Portugal	1	1	1	1
Romania	1	1	1	2
Russian Federation	5	5	5	7
Saudi Arabia, Kingdom of	-	-	-	1
Serbia	-	-	-	2
Singapore	-	1	1	1
Slovenia	-	-	-	1
South Africa	5	5	6	8
Spain	4	5	5	10
Sweden	1	1	1	1
Switzerland	1	1	1	1
Chinese Taipei	26	26	27	30
Thailand	8	12	12	15
Trinidad and Tobago	1	1	1	1
Tunisia	-	-	-	1
Türkiye	10	11	12	16
Ukraine	6	6	6	8
United Arab Emirates	4	4	4	5

	2018	2019	2020	2021
United Kingdom	3	3	3	3
Venezuela, Bolivarian Rep. of	1	1	1	1
Viet Nam	10	11	12	16
<b>Total</b>	<b>364</b>	<b>371</b>	<b>405</b>	<b>489</b>

- Nil.

Source: WTO documents G/ADP/N/357/USA, 13 October 2021; G/ADP/N/350/USA, 15 April 2021; G/ADP/N/335/USA, 25 June 2020; and G/ADP/N/222/USA, 19 March 2019; and USITC, *Anti-dumping and Countervailing Duty Orders in Place as of April 01, 2022*. Viewed at: [http://www.usitc.gov/trade\\_remedy/documents/orders.xls](http://www.usitc.gov/trade_remedy/documents/orders.xls).

3.113. As noted above, at the end of 2021, six AD suspension agreements were in place, with Argentina (1), Mexico (2), Russian Federation (2), and Ukraine (1), relating to lemon juice, fresh tomatoes, sugar, carbon steel plate, uranium, and oil country tubular goods, respectively. Five of the agreements involve price undertakings, and one involves export limits. Between 1 January 2018 and 31 December 2021, 30 AD investigations were terminated due to a negative determination, and one investigation was withdrawn (Table 3.17). Of the negative determinations in AD investigations, 22 were USITC negative (no injury or threat thereof) and 7 ITA negative (no dumping). Negative determinations on AD investigations involved imports from 18 trading partners.

**Table 3.17 Anti-dumping investigations terminated by negative determinations, 2018-21**

Product	Trading partner	Determination	Date
<b>Anti-dumping investigations</b>			
Steel Propane Cylinders	Chinese Taipei	Withdrawn	26/06/2018
Silicon Metal	Australia	ITC negative	16/04/2018
Silicon Metal	Brazil	ITC negative	16/04/2018
Silicon Metal	Norway	ITC negative	16/04/2018
Polyethylene Terephthalate (PET) Resin	Brazil	ITC negative	13/11/2018
Polyethylene Terephthalate (PET) Resin	Indonesia	ITC negative	13/11/2018
Polyethylene Terephthalate (PET) Resin	Korea, Rep. of	ITC negative	13/11/2018
Polyethylene Terephthalate (PET) Resin	Pakistan	ITC negative	13/11/2018
Polyethylene Terephthalate (PET) Resin	Chinese Taipei	ITC negative	13/11/2018
Polytetrafluoroethylene	China	ITC negative	04/12/2018
Polytetrafluoroethylene	India	ITC negative	04/12/2018
Rubber Bands	Sri Lanka	ITC negative	19/03/2018
Sodium Gluconate	France	ITC negative	22/01/2018
Steel Propane Cylinders	Chinese Taipei	ITC negative	27/06/2018
Acetone	Saudi Arabia, Kingdom of	ITC negative	11/04/2019
Certain Collated Steel Staples	Chinese Taipei	ITA negative	22/07/2019
Certain Collated Steel Staples	Korea, Rep. of	ITA negative	22/07/2019
Polyethylene Terephthalate (PET) Sheet	Mexico	ITA negative	13/09/2019
Magnesium	Israel	ITC negative	13/01/2020
Dried Tart Cherries	Türkiye	ITC negative	27/01/2020
Fabricated Structural Steel	Canada	ITC negative	20/03/2020
Fabricated Structural Steel	China	ITC negative	20/03/2020
Fabricated Structural Steel	Mexico	ITC negative	20/03/2020
Sodium Sulfate Anhydrous	Canada	ITC negative	19/05/2020
Glass Containers	China	ITC negative	05/11/2020
Fluid End Blocks	India	ITA negative	21/12/2020
Wood Moldings and Millwork Products	Brazil	ITC negative	05/01/2021
4th Tier Cigarettes	Korea, Rep. of	ITC negative	29/01/2021
Common Alloy Aluminum Sheet	Greece	ITA negative	08/03/2021
Common Alloy Aluminum Sheet	Korea, Rep. of	ITA negative	08/03/2021
Passenger Vehicle and Light Truck Tires	Viet Nam	ITA negative	19/07/2021

Source: USITC, *Anti-dumping and Countervailing Duty Orders in Place as of April 01, 2022*. Viewed at: [https://www.usitc.gov/sites/default/files/trade\\_remedy/documents/orders.xls](https://www.usitc.gov/sites/default/files/trade_remedy/documents/orders.xls).

3.114. According to CBP data, at the end of FY2021, 633 AD/CVD orders were in effect (compared to 539 orders at the end of FY2020), USD 18.2 billion of imported goods were subject to AD/CVD, and CBP collected USD 1.8 billion in AD/CVD cash deposits and levied monetary penalties totaling over USD 31 million on importers for fraud, gross negligence, and negligence of AD/CVD requirements. CBP's collection of AD/CVD cash deposits increased by 32% since the last Review (FY2016).<sup>151</sup> Considering a total level of imports of USD 2.4 trillion for FY2020, revenue collected on

<sup>151</sup> CBP (2021), *Trade and Travel Report Fiscal Year 2020*, February. Viewed at: <https://www.cbp.gov/document/annual-report/cbp-trade-and-travel-fiscal-year-2020-report#wcm-survey-target-id>; and DHS (2017), *Fact Sheet: Establishing Enhanced Collection and Enforcement of Anti-dumping and Countervailing Duties and Violations of Trade and Customs Laws*. Viewed at:

imported goods subject to AD/CVD represented 0.08% of the value of imports.<sup>152</sup> CBP entry summary reviews during FY2020 resulted in recovery of over USD 94.2 million in AD/CVD duties owed. Also in FY2020, CBP's audit services identified more than USD 203 million in AD/CVD discrepancies, and collected USD 7.2 million. In the same FY, CBP and ICE seized shipments with a domestic value of more than USD 1.1 million for AD/CVD violations, and CBP's auditors identified over USD 1.8 billion of additional duties owed to the U.S. Government.<sup>153</sup> In FY2020, CBP received 103 e-Allegations regarding the evasion of AD/CVD orders.

3.115. There were 316 sunset review initiations of AD and CVD orders and suspension agreements during the period from 1 January 2018 to 31 December 2021; 250 were reviews of AD duties orders. Of the 186 orders for which the review had been concluded as of that date (among the 316 investigations initiated during the period), 173 were continued for five more years, 9 were revoked, and 4 suspension agreements were renewed. During the 2018-21 period, there were 14 revocations (11 AD orders), counting revocations from reviews started prior to 2018. The revocations during that period included iron and steel products, tires, washers, chemicals, plastic tape, and uranium (Table 3.18).

**Table 3.18 Anti-dumping orders revoked 2018-21**

Order date	Type	Revocation date	Product	Trading partner
15/02/2013	A	15/02/2018	Large residential washers	Korea, Rep. of
12/09/2001	A	12/06/2018	Ammonium nitrate	Ukraine
04/09/2008	A	04/02/2019	New pneumatic off-the-road tires	China
13/02/2002	A	15/03/2019	Low enriched uranium	France
15/09/1997	A	16/05/2019	Crawfish tail meat	China
24/06/2014	A	24/06/2019	Prestressed concrete steel rail tie wire	Mexico
12/11/2019	A	09/06/2020	Refillable stainless steel kegs	Germany
29/05/2009	A	15/06/2020	Citric acid and certain citrate	Canada
22/03/1984	A	02/11/2020	Chloropicrin	China
21/10/1977	A	14/04/2021	Pressure sensitive plastic tape	Italy
12/02/1986	A	11/08/2021	Porcelain-on-steel cooking ware	China

Source: USITC, *Anti-dumping and Countervailing Duty Orders in Place as of April 01, 2022*. Viewed at: [https://www.usitc.gov/sites/default/files/trade\\_remedy\\_documents/orders.xls](https://www.usitc.gov/sites/default/files/trade_remedy_documents/orders.xls).

### 3.1.6.1.3 Countervailing measures

3.116. Between 2018 and 2021, there were 81 CVD investigation initiations, up from 63 between 2015 and 2017, with 23 in 2018, 17 in 2019, 30 in 2020, and 11 in 2021. There were six initiations in the first six months of 2021, and five from 1 July to 31 December 2021.<sup>154</sup> Overall, as of 31 December 2021, there were 169 CVD orders in place and one suspension agreement with Mexico regarding sugar. The CVD orders involved 23 trading partners, where China was the trading partner subject to the largest number of orders (83), almost half of the total, followed by India (27).<sup>155</sup> This compares with 106 CVD orders as at 17 July 2018, on 17 trading partners, as reported in the last Review, and with 160 orders from 21 trading partners as at 30 June 2021, as notified to the WTO.<sup>156</sup> Between 1 January 2018 and 31 December 2021, 81 CVD orders were issued and 3 orders revoked.

3.117. Of the 170 CVD measures in place on 31 December 2021 (including a suspension agreement), 78 (45.9% of the total) were on iron and steel products, 20 (11.8%) on chemicals and pharmaceuticals, 16 (9.4%) on agricultural products, 13 (7.6%) on plastics and rubber, 12 (7.1%) on metals and minerals, 9 (5.3%) on miscellaneous manufactured products, 8 (4.7%) on machinery

<https://www.dhs.gov/news/2017/03/31/fact-sheet-enhanced-collection-and-enforcement-antidumping-and-countervailing-duties>.

<sup>152</sup> CBP (2021), Trade Statistics. Viewed at: <https://www.cbp.gov/newsroom/stats/tradeU>, 25 October.

<sup>153</sup> CBP (2021), *Trade and Travel Report Fiscal Year 2020*, February. Viewed at: <https://www.cbp.gov/document/annual-report/cbp-trade-and-travel-fiscal-year-2020-report#wcm-survey-target-id>.

<sup>154</sup> ITA information. Viewed at: <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

<sup>155</sup> The trading partners subject to CVD measures as at 31 December 2021 were: Argentina (1); the Kingdom of Bahrain (1); Brazil (4); Canada (2); China (83); Chinese Taipei (1); Germany (1); India (27); Indonesia (5); the Islamic Republic of Iran (2); Italy (4); Kazakhstan (1); the Republic of Korea (8); Malaysia (1); Mexico (2); Morocco (1); Oman (1); Russian Federation (2); South Africa (1); Spain (1); Thailand (1); Türkiye (13); and Viet Nam (6). USITC (2022). Viewed at: [https://www.usitc.gov/sites/default/files/trade\\_remedy\\_documents/orders.xls](https://www.usitc.gov/sites/default/files/trade_remedy_documents/orders.xls).

<sup>156</sup> WTO document G/SCM/N/379/USA, 8 October 2021.

and equipment, 7 (4.1%) on transportation equipment, and 7 (4.1%) on textiles and apparel.<sup>157</sup> There were 41 sunset reviews of CVD orders concluded during the period from 1 January 2018 to 29 October 2021. As a result of the reviews, 37 orders were continued, a suspension agreement was renewed, and three orders were revoked.

#### 3.1.6.1.4 EAPA investigations

3.118. EAPA came into effect in August 2016, and until October 2021, TRLED initiated 56 investigations eligible for public disclosure from allegations of evasion of duties. In most these initiated investigations (48), interim measures, similar in scope to final measures, were applied.<sup>158</sup> As noted above, an affirmative final determination generally implies: (i) suspending liquidation of unliquidated entries already suspended under the investigation (as interim measure); (ii) adjusting and changing the rate of Entry Type 03 entries subject to the investigation and suspend liquidation<sup>159</sup>; (iii) rejecting any entry summaries and requiring a re-file for those entries that are within the entry summary reject period; (iv) requiring "live" entry for all imports meeting the evasion criteria, requiring the importer to submit proper documentation and all duties prior to release of the merchandise; and (v) requiring single transaction bonds, as appropriate, and evaluating the sufficiency of the importer's continuous bonds. None of these actions precludes CBP or other agencies from pursuing additional enforcement actions or penalties.

3.119. As of February 2022, CBP, through TRLED, had made a final determination in 51 cases, 1 of them involving 8 investigations (Table 3.19). CBP made 45 affirmative determinations of evasion and 5 negative determinations; one case was referred to USDOC because CBP could not make a determination, and USDOC made an affirmative determination of evasion. The products for which evasion was found were, to a large extent, steel products, but also aluminum products, plywood, furniture, glycine, hydrofluorocarbon blends, paper, hangers, garlic, pencils, xanthan gum, and polyethylene retail carrier bags.

**Table 3.19 EAPA investigations (eligible for public disclosure), 2016-February 2022**

AD/CVD order evaded/date of initiation	Final determination of evasion/date
A-570-918 on Steel Wire Garment Hangers from China (circumvention through Thailand)/11 October 2016	Affirmative, 14 August 2017
A-570-9001 on Diamond Sawblades from China/22 March 2017	Affirmative, 17 September 2019
A-570-890 on Wooden Bedroom Furniture from China/9 May 2017	Affirmative, 18 May 2020
A-570-918 on Wire Garment Hangers from China (8 consolidated investigations)/12 May 2017	Affirmative, 15 March 2018
A-570-9001 on Diamond Sawblades from China/18 July 2017	Affirmative, 20 July 2018
A-552-817 on Oil Country Tubular Goods from Viet Nam/18 July 2017	Affirmative, 21 May 2018
A-570-8361 on Glycine from China/28 August 2017	Affirmative, 2 July 2018
A-570-028 on Hydrofluorocarbon Blends from China/ 5 September 2017	CBP referred to USDOC: affirmative, 4 June 2020
A-570-967 and C-570-968 on Aluminum Extrusions from China/ 5 February 2018	Affirmative, 11 December 2018
A-570-976 and C-570-968 on Aluminum Extrusions from China/ 9 February 2018	Affirmative, 20 March 2019
A-570-827 on Certain Cased Pencils from China/27 March 2018	Affirmative, 6 May 2019
A-570-836 on Glycine from China (transshipment through Thailand)/16 October 2018	Negative, 25 September 2019
A-570-064 and C-570-065 on Stainless Steel Flanges from China (transshipment through the Philippines) (2 cases)/30 August and 13 September 2018	Affirmative, 9 October 2019
A-570-967 and C-570-968 on Aluminum Extrusions from China (mislabeling of imports of affected goods)/10 August 2018	Affirmative, 18 September 2019
A-570-814 on Carbon Steel Butt-Weld (CSBW) Pipe Fittings from China (transshipment through Cambodia and/or misclassification of merchandise)/13 February 2019	Affirmative, 22 January 2020
A-570-831 on Fresh Garlic from China (lower AD duty rate than the applicable cash deposit rate) /8 April 2019	Affirmative, 10 February 2020
A-570-985 on Xanthan Gum from China (transshipment through India) /7 May 2019	Affirmative, 9 March 2020

<sup>157</sup> USITC, *Anti-dumping and Countervailing Duty Orders in Place as of April 01, 2022*. Viewed at: [https://www.usitc.gov/sites/default/files/trade\\_remedy\\_documents/orders.xls](https://www.usitc.gov/sites/default/files/trade_remedy_documents/orders.xls).

<sup>158</sup> EAPA allows implementing interim measures within 90 days of beginning an investigation. Interim measures allow CBP to require the importer(s) to pay cash deposits for AD/CVD duties on any future imports until conclusion of the investigation and to pause the final processing of payment to CBP for entries up to one year prior to the initiation of the investigation so that CBP can determine if additional duties are owed. CBP, *Enforce and Protect Act (EAPA)*. Viewed at: <https://www.cbp.gov/trade/trade-enforcement/tftea/eapa>.

<sup>159</sup> The Automated Commercial Environment (ACE), the platform that enables the United States' Single Window, is the system of record by which electronic trade transactions are conducted and recorded by CBP. Transactions must be filed by way of ACE with specified entry types. Entry Type 03 is used for consumption goods subject to anti-dumping/countervailing duty. CBP, *ACE Transaction Details*. Viewed at: <https://www.cbp.gov/trade/automated/ace-transaction-details>.

AD/CVD order evaded/date of initiation	Final determination of evasion/date
A-570-985 on Xanthan Gum from China (transshipment through Malaysia)/7 May 2019	Affirmative, 9 March 2020
A-570-051 and C-570-052 on Certain hardwood plywood products from China (transshipment through Viet Nam)/9 July 2019	Affirmative, 11 May 2020
A-570-8361 and C-570-0812 on Glycine from China (transshipment through India)/17 July 2019	Affirmative, 19 May 2020
A-570-051 and C-570-052 on Certain Hardwood Plywood Products (transshipment through Cambodia)/26 June 2019	Affirmative, 29 June 2020
A-570-928 on Uncovered Innerspring Units from China/ 20 September 2019	Affirmative, 23 July 2020
A-549-502 on Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand / 8 November 2019	Affirmative, 11 September 2020
A-570-918 on Steel Wire Garment Hangers from China/ 21 November 2019	Affirmative, 23 September 2020
A-533-840 on Certain Frozen Warmwater Shrimp from India/9 October 2019	Affirmative, 13 October 2020
A-552-806 and C-552-805 on Polyethylene Retail Carrier Bags from Viet Nam / 19 December 2019	Affirmative, 21 October 2020
A-552-812, C-552-813 on Steel Wire Garment Hangers from Viet Nam/25 October 2019	Affirmative, 26 October 2020
A-570-967 and C-570-968 on Aluminum Extrusions from China/ 31 Oct. 2019	Affirmative, 4 November 2020
A-570-814 on Certain carbon steel butt-weld pipe fittings from China/ 6 November 2019	Affirmative, 5 November 2020
A-570-954 and C-570-955 on Certain Magnesite Carbon Brick (MCB) from China/ 30 January 2020	Affirmative, 3 December 2020
A-570-836 and C-570-081 on Glycine from China/18 December 2019	Negative, 21 December 2020
A-570-967 and C-570-968 on Aluminum Extrusions from China (transshipment through the Dominican Republic)/27 January 2020	Affirmative, 28 January 2021
A-570-079 and C-570-080 on Cast Iron Soil Pipe (Soil Pipe) from China/7 April 2020	Affirmative, 8 February 2021
A-570-062 and C-570-063 on Cast Iron Soil Pipe Fittings from China/ 7 April 2020	Affirmative, 8 February 2021
A-570-904 on Activated Carbon from the China/20 February 2020	Negative, 23 February 2021
A-570-947, C-570-948 on Steel Grating from China/30 June 2020	Affirmative, 21 June 2021
A-570-073 and C-570-0741 on Common Alloy Aluminum Sheet from China/30 June 2020	Negative, 2 July 2021
A-570-106 and C-570-107 on Wooden Cabinets and Vanities (WCV) and Component Parts Thereof from China (transshipment through Cambodia)/17 September 2020	Negative, 21 July 2021
A-570-900 on Diamond Sawblades from China (transshipment through Thailand)/25 July 2018	Affirmative, 10 August 2021
A-570-920 and C-570-921 on Lightweight Thermal Paper (LWTP) from China/20 October 2020	Affirmative, 23 August 2021
A-570-918 on Steel Wire Garment Hangers from China (transshipment through Thailand)/14 September 2020	Affirmative, 16 September 2021
A-570-106 and C-570-107 on WCV from China/ 13 November 2020	Affirmative, 16 September 2021
A-570-084 and C-570-085 on Quartz Surface Products from China/23 November 2020	Affirmative, 24 November 2021
A-570-084 and C-570-085 on Quartz Surface Products from China/23 November 2020 (second case)/1 February 2021	Affirmative, 6 December 2021
A-570-900 on Diamond Sawblades and Parts Thereof from China/11 Sept. 2019	Affirmative, 15 December 2021
A-570-985 on Xanthan Gum from China (transshipment through India)/19 February 2020	Affirmative, 23 December 2021
A-570-106 and C-570-107 on WCV from China (transshipment through Viet Nam)/26 March 2021	Affirmative, 27 January 2022
A-570-051 and C-570-052 on Hardwood Plywood from China, 15 August 2018	Affirmative, 28 January 2022
A-570-106 and C-570-107 on WCV from China (transshipment through Viet Nam)/26 January 2021	Affirmative, 31 January 2022
A-570-084 and C-570-085 on Quartz Surface Products (QSP) from China (transshipment through Viet Nam)/3 March 2021	Affirmative, 25 January 2022
A-570-967 and C-570-968 on Aluminum Extrusions from China (transshipment through the Dominican Republic)/2 February 2021	Affirmative, 4 February 2022
A-570-106 and C-570-107 on WCV from China (transshipment through Malaysia)/21 April 2021	Affirmative, 23 February 2022

Source: WTO Secretariat based on CBP, *Enforce and Protect Act (EAPA)*. Viewed at: <https://www.cbp.gov/trade/trade-enforcement/tftea/enforce-and-protect-act-eapa>.

### 3.1.6.2 Safeguards

#### 3.1.6.2.1 Main laws and regulations

3.120. Sections 201-204 of the Trade Act of 1974, as amended (collectively, Section 201), provide the legal framework through which the President may provide import relief under safeguard action. Under Section 201, USITC conducts an investigation upon receipt of a petition from a trade association, firm, certified or recognized union, or group of workers that is representative of a domestic industry; upon receipt of a request from the President or the USTR; upon receipt of a resolution of the House Committee on Ways and Means or Senate Committee on Finance; or upon



its own motion.<sup>160</sup> A petitioner may submit to USITC an adjustment plan detailing steps to facilitate adjustment to import competition.<sup>161</sup> USITC is required to undertake an investigation to determine whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like, or directly competitive with, the imported article. If USITC makes an affirmative determination, or is equally divided in its determination, it must recommend to the President action to address the serious injury, or threat thereof, to the domestic industry. USITC is authorized to recommend: (i) an increase in, or the imposition of an import duty; (ii) a tariff rate quota on the article; (iii) a modification or imposition of a quantitative restriction; (iv) one or more adjustment measures, including providing trade adjustment assistance; or (v) any combination of the previous actions. The President makes the final decision whether to provide relief and the amount of relief.

3.121. USITC generally must make its injury determination within 120 days (150 days in more complicated cases) of receipt of the petition, and must transmit its report to the President, together with any relief recommendations, within 180 days after that date. If the period of the measure (or an extension of the measure) exceeds three years, USITC must submit a report on the results of its monitoring to the President and Congress at the mid-point of the initial period or extension. Section 201 also provides a procedure under which the President, or the industry concerned, may request USITC, between six and nine months before the measure is to terminate, to investigate to determine whether the measure continues to be necessary to prevent or remedy serious injury. USITC must submit a report on its extension investigation and determination to the President. USITC must also submit a report to the President and Congress on the effectiveness of the safeguard measure in facilitating the positive adjustment of the domestic industry to import competition no later than 180 days after termination of the action.

3.122. The most recent major amendments made to regulations pertaining to safeguards date from 2015, as notified by the United States to the WTO, and relate to provisions of USITC's Rules of Practice and Procedure concerning safeguard actions.<sup>162</sup> In March 2020, to address concerns related to COVID-19, USITC decided to temporarily waive certain of its rules that require the filing of paper copies, CD-ROMs, and other physical media, and amending certain of its rules that allow only for paper filing of certain documents in import injury investigations.<sup>163</sup> In this respect, USITC approved the temporary amendment of Rule 206.2 and Rule 207.10(a) to permit parties to file import injury petitions, exhibits, attachments, and appendices electronically. The temporary change was effective 19 March 2020, and until further notice.<sup>164</sup>

### 3.1.6.2.2 Safeguard investigations 2018-21

3.123. Between 2018 and 2021, one new safeguard investigation was conducted by the United States under Section 201; measures corresponding to two investigations started in 2017 were in place. The new investigation was notified to the WTO. USITC made a negative serious injury determination in that investigation, and no safeguard measure was imposed.<sup>165</sup> The President extended the safeguard measure in each of the two investigations started in 2017 (see below).

#### 3.1.6.2.2.1 Crystalline silicon photovoltaic cells

3.124. A safeguard investigation regarding certain crystalline silicon photovoltaic (CSPV) cells and modules (collectively, CSPV products) was initiated by the USITC in May 2017.<sup>166</sup> On 23 January 2018, the President signed a proclamation imposing a safeguard measure on imports of

<sup>160</sup> USITC, *Understanding Safeguard Investigations*. Viewed at: [https://www.usitc.gov/press\\_room/us\\_safeguard.htm](https://www.usitc.gov/press_room/us_safeguard.htm).

<sup>161</sup> USITC (2014), *Summary of Statutory Provisions Related to Import Relief*, USITC Publication 4468, August. Viewed at: [https://www.usitc.gov/oig/documents/pub4468\\_2014.pdf](https://www.usitc.gov/oig/documents/pub4468_2014.pdf).

<sup>162</sup> WTO document G/SG/N/1/USA/1/Suppl.1, 20 July 2015.

<sup>163</sup> Notified to the WTO in WTO document G/SG/N/1/USA/1/Suppl.2, 8 October 2020.

<sup>164</sup> *Federal Register* (2020), Vol. 85, No. 54, 19 March, pp. 15797-15798.

<sup>165</sup> WTO document G/SG/N/9/USA/5, 6 April 2021.

<sup>166</sup> These comprise CSPV cells assembled into modules or panels (HTSUS 8541/40/6020), CSPV cells not assembled into modules (8541/40/6030), inverters or batteries with CSPV cells attached (8501.61.00 and 8507.20.80, respectively), and DC generators (8501.31.80).



CSPV products.<sup>167</sup> The measure was notified to the WTO, and went into effect for four years, beginning on 7 February 2018.<sup>168</sup> The measure took the form of: (i) a duty-free tariff rate quota on imports of solar cells not partially or fully assembled into other products, with unchanging within-quota quantities; and (ii) an increase in duties from 0% to 30% on imports of out-of-quota CSPV cells and of modules, with annual reductions in the rates of duty in the second, third, and fourth years (up to 15%). In September 2018, the United States notified to the WTO its decision to exclude some products from the measure.<sup>169</sup> In June 2019, the United States notified its decision to exclude other particular products from the safeguard measure.<sup>170</sup> In October 2019, the United States notified its decision to withdraw the exclusion of bifacial solar panels from the safeguard measure.<sup>171</sup> In February 2020, USITC submitted a mid-term report on developments in the domestic industry.<sup>172</sup> In March 2020, USITC issued an additional report regarding the probable economic effect on the domestic CSPV cell and module manufacturing industry of modifying the safeguard measure to increase the level of the TRQ on CSPV cells.<sup>173</sup>

3.125. Following USITC's mid-term monitoring report, the President determined in a proclamation in October 2020 to revoke the exclusion previously granted for bifacial panels, and to adjust the duty rate of the safeguard tariff for the fourth year of the measure from 15% to 18% (Table 3.20).<sup>174</sup> This proclamation was subsequently invalidated by the U.S. CIT on 16 November 2021.<sup>175</sup> As a result of the court's decision is bifacial products became excluded from the measure, and the applicable duty rate in the fourth year went back to 15% instead of 18%. On 14 January 2022, the Government filed a notice of appeal to the U.S. Court of Appeals for the Federal Circuit.

**Table 3.20 Safeguard measures applied on imports of CSPV cells, 2018-26**

HTSUS subheading	Applied rate before the increase	Year 1 7 February 2018- 6 February 2019	Year 2 7 February 2019- 6 February 2020	Year 3 7 February 2020- 6 February 2021	Year 4 7 February 2021- 6 February 2022
9903.45.21 (in-quota CSPV cells)	0%	0%	0%	0%	0%
9903.45.22 (out-of-quota CSPV cells)	0%	30%	25%	20%	18%/15%
9903.45.25 (modules)	0%	30%	25%	20%	18%/15%
9903.45.21 (in-quota CSPV cells)	0%	0%	0%	0%	0%
9903.45.22 (out-of-quota CSPV cells)	0%	14.75%	14.5%	14.25%	14.0%
9903.45.25 (modules)	0%	14.75%	14.5%	14.25%	14.0%

Source: Presidential Proclamation 10101 of 10 October 2020, *Federal Register* (2020), Vol. 85, No. 201, 16 October, p. 65639; and Proclamation 10339 of 4 February 2022, *Federal Register* (2022), Vol. 87, No. 27, 9 February, p. 7359.

<sup>167</sup> Proclamation 9693 of 23 January 2018, To Facilitate Positive Adjustment to Competition from Imports of Certain Crystalline Silicon Photovoltaic Cells (Whether or Not Partially or Fully Assembled into Other Products) and for Other Purposes, *Federal Register* (2018), Vol. 83, No. 17, 25 January, pp. 3541-3551. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2018-01-25/pdf/2018-01592.pdf>.

<sup>168</sup> WTO document G/SG/N/8/USA/9/Suppl.4, 26 January 2018.

<sup>169</sup> WTO document G/SG/N/10/USA/7/Suppl.1, 24 September 2018.

<sup>170</sup> WTO document G/SG/N/10/USA/7/Suppl.4, 14 June 2019.

<sup>171</sup> WTO document G/SG/N/10/USA/7/Suppl.6, 9 October 2019.

<sup>172</sup> WTO document G/SG/N/10/USA/7/Suppl.9, 20 February 2020. The report can be found in: USITC (2020), *Crystalline Silicon Photovoltaic Cells, Whether or Not Partially or Fully Assembled Into Other Products: Monitoring Developments in the Domestic Industry*, Investigation No. TA-201-075 (Monitoring), Publication 5021, February. Viewed at: <https://usitc.gov/publications/other/pub5021.pdf>.

<sup>173</sup> USITC (2020), *Crystalline Silicon Photovoltaic Cells, Whether or Not Partially or Fully Assembled Into Other Products: Advice on the Probable Economic Effect of Certain Modifications to the Safeguard Measure*, Investigation No. TA-201-075 (Modification), Publication 5032, March. Viewed at: <https://usitc.gov/publications/other/pub5032.pdf>.

<sup>174</sup> Presidential Proclamation 10101 of 10 October 2020, To Further Facilitate Positive Adjustment to Competition from Imports of Certain Crystalline Silicon Photovoltaic Cells (Whether or Not Partially or Fully Assembled Into Other Products). *Federal Register* (2020), Vol. 85, No. 201, 6 October, pp. 65639. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-10-16/pdf/FR-2020-10-16.pdf>.

<sup>175</sup> *Solar Energy Industries Association et al. v. United States* (2021). Viewed at: <https://www.cit.uscourts.gov/sites/cit/files/21-154.pdf>.

3.126. In August 2021, at the petition of the domestic industry, USITC initiated a proceeding to determine whether the measure on CSPV products continues to be necessary.<sup>176</sup> In December 2021, USITC transmitted its report to the President regarding extension relief.<sup>177</sup> On 4 February 2022, the President issued a proclamation extending the safeguard measure on CSPV products. The extension, to be in effect for four years, became effective on 7 February 2022, and took the form of: (i) continuation of the TRQ on imports of solar cells not partially or fully assembled into other products, with in-quota quantities increasing from 2.5 to 5 GW per year; (ii) a duty rate of 14.75% *ad valorem* on imports of out-of-quota CSPV cells and of modules, with annual reductions in the rates of duty in the sixth, seventh, and eighth years (up to 1%); and (iii) the exclusion of bifacial panels from the extension of the measure.<sup>178</sup> The extension was notified to the WTO (Table 3.20).<sup>179</sup>

3.127. On 14 August 2018, China requested consultations with the United States concerning the definitive safeguard measure imposed by the United States on imports of certain CSPV products. The DSB established a panel on 15 August 2019. On 2 September 2021, the Panel Report was circulated to Members. The Panel found that China had not established that the safeguard measure on CSPV products failed to comply with the requirement in Article XIX:1(a) of the GATT 1994 that imports increased "as a result of unforeseen developments and of the effect of the obligations incurred"<sup>180</sup>, and had not established that the United States acted inconsistently with the Agreement on Safeguards by failing to demonstrate the required "causal link" between the increased imports and the serious injury found to exist. The Panel made no recommendation to the DSB pursuant to Article 19.1 of the DSU.<sup>181</sup> On 16 September 2021, China notified the DSB of its decision to appeal certain issues of law and legal interpretations in the report.

### 3.1.6.2.2.2 Large residential washers

3.128. A safeguard investigation on imports of large residential washers (LRWs) and certain parts thereof was initiated on 5 June 2017.<sup>182</sup> On 23 January 2018, the President signed a proclamation imposing a safeguard measure to imports of LRWs and certain parts. The measure was notified to the WTO.<sup>183</sup> The products covered are: (i) washers (HTSUS subheadings 8450.11.00 and 8450.20.00); (ii) all cabinets, or portions thereof, designed for use in washers (HTSUS subheading 8450.90.60); (iii) all assembled tubs designed for use in washers that incorporate, at a minimum, a tub and a seal (HTSUS subheading 8450.90.20); and (iv) any combination of the foregoing parts or subassemblies (HTSUS subheadings 8450.90.20 or 8450.90.60).<sup>184</sup> The safeguard measure was approved for three years and one day. It entered into force on 7 February 2018, and took the form of: (i) a TRQ, with unchanging within-quota quantities, annual reductions in the rates of duty for goods entered within the TRQ in the second and third years, and annual reductions in the rates of duty applicable to goods entered in excess of the TRQ in the second and third years; and (ii) a TRQ on imports of covered washer parts, with increasing within-quota quantities and annual reductions in the rates of duty applicable to goods entered in excess of the TRQ in the second and third years (Table 3.21). Imports from Canada and certain developing countries were excluded. In February 2019, USITC initiated an investigation to monitor developments in the domestic

<sup>176</sup> WTO document G/SG/N/6/USA/11/Suppl.2, 10 August 2021.

<sup>177</sup> USITC (2021), *Crystalline Silicon Photovoltaic Cells, Whether or Not Partially or Fully Assembled Into Other Products: Advice on the Probable Economic Effect of Certain Modifications to the Safeguard Measure*, Investigation No. TA-201-075 (Extension), Publication 5066, December. Viewed at: <https://usitc.gov/publications/other/pub5066.pdf>.

<sup>178</sup> Proclamation 10339 of 4 February 2022, To Continue Facilitating Positive Adjustment to Competition from Imports of Certain Crystalline Silicon Photovoltaic Cells (Whether or Not Partially or Fully Assembled into Other Products), *Federal Register* (2022), Vol. 87, No. 27, 9 February, pp. 7357-7362. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-02-09/pdf/2022-02906.pdf>.

<sup>179</sup> WTO documents G/SG/N/10/USA/7/Suppl.13, 8 February 2022; and G/SG/N/10/USA/7/Suppl.13/Corr.1, 10 February 2022.

<sup>180</sup> WTO document WT/DS562/R, 2 September 2021.

<sup>181</sup> WTO, *DS562: United States – Safeguard Measure on Imports of Crystalline Silicon Photovoltaic Products*. Viewed at: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds562\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds562_e.htm).

<sup>182</sup> WTO document G/SG/N/6/USA/12, 12 June 2017.

<sup>183</sup> WTO document G/SG/N/8/USA/10/Suppl.3, 26 January 2018.

<sup>184</sup> Proclamation 9694 of 23 January 2018, To Facilitate Positive Adjustment to Competition from Imports of Large Residential Washers. *Federal Register* (2018), Vol. 83, No. 17, 25 January, pp. 3553-3562. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2018-01-25/pdf/2018-01604.pdf>.

industry.<sup>185</sup> On 7 August 2019, USITC released its report.<sup>186</sup> The review did not result in the measure being withdrawn nor the pace of liberalization increased.<sup>187</sup> The measure was subsequently modified by amending the TRQs applicable to imports of washers under HTS subheadings 8450.11.00 and 8450.20.00, by allocating the within-quota quantities in the third year of relief on a quarterly basis, rather than annual basis, beginning on 7 February 2020.<sup>188</sup>

3.129. In August 2020, USITC instituted an investigation on the request of a domestic producer of LRWs to determine whether safeguard action continued to be necessary. USITC made an affirmative determination and issued its report in December 2020 and recommended that the President extend the relief action for two additional years through 7 February 2023.<sup>189</sup> USITC recommended that the President decrease the in-quota tariff rate to 15% in the fourth year and 14% in the fifth year and the above-quota tariff rate to 35% in the fourth year and 30% in the fifth year. USITC also recommended that the volume of imports of LRWs subject to the in-quota tariff rate remain at 1.2 million units per year, administered on a quarterly basis. USITC also recommended to continue to progressively increase the additional tariff-free quota of covered parts to 110,000 units in the fourth year and to 130,000 units in the fifth year.<sup>190</sup> The President accepted the USITC's recommendations and issued Proclamation 10133 on 14 January 2021.<sup>191</sup> The measures for 2021-23 are presented in Table 3.21.<sup>192</sup>

**Table 3.21 Safeguard measures applied on large residential washers, 2018-23**

HTSUS sub-heading	Applied rate before the increase	Year 1 7 Feb. 2018 6 Feb. 2019	Year 2 7 Feb. 2019 6 Feb. 2020	Year 3 7 Feb. 2020 6 Feb. 2021	Year 4 7 Feb. 2021 6 Feb. 2022	Year 5 7 Feb. 2022 6 Feb. 2023
9903.45.01 (in-quota LRWs) (TRQ 1.2 million units)	1.4% (8450.11.00) 1% (8450.20.00)	1.4% + 20% (8450.11.00) 1% + 20% (8450.20.00)	1.4% + 18% (8450.11.00) 1% + 18% (8450.20.00)	1.4% + 16% (8450.11.00) 1% + 16% (8450.20.00)	1.4% + 15% (8450.11.00) 1% + 15% (8450.20.00)	1.4% + 14% (8450.11.00) 1% + 14% (8450.20.00)
9903.45.02 (out-of-quota LRWs)	1.4% (8450.11.00) 1% (8450.20.00)	1.4% + 50% (8450.11.00) 1% + 50% (8450.20.00)	1.4% + 45% (8450.11.00) 1% + 45% (8450.20.00)	1.4% + 40% (8450.11.00) 1% + 40% (8450.20.00)	1.4% + 35% (8450.11.00) 1% + 35% (8450.20.00)	1.4% + 30% (8450.11.00) 1% + 30% (8450.20.00)
9903.45.05 (in-quota parts of LRWs)	2.6%	2.6% for 50,000 units (TRQ)	2.6% for 70,000 units (TRQ)	2.6% for 90,000 units (TRQ)	2.6% for 110,000 units (TRQ)	2.6% for 130,000 units (TRQ)
9903.45.06 (out-of-quota parts of LRWs)	2.6%	2.6% + 50%	2.6% + 45%	2.6% + 40%	2.6% + 35%	2.6% + 30%

Source: WTO documents G/SG/N/8/USA/10 Supp.3, 26 January 2018; G/SG/N/10/USA/8/Suppl.6, 15 December 2020; G/SG/N/10/USA/8/Suppl.7, 22 January 2021; and G/SG/N/8/USA/10 Supp.3, 26 January 2018; Presidential Proclamation 9694 of 23 January 2018, and Presidential Proclamation 10133 of 14 January 2021.

<sup>185</sup> WTO document G/SG/N/10/USA/8/Suppl.1, 26 February 2019.

<sup>186</sup> WTO document G/SG/N/10/USA/8/Suppl.4, 9 August 2019; USITC (2019), *Large Residential Washers: Monitoring Developments in the Domestic Industry Investigation* No. TA-204-013. Publication 4941, August.

<sup>187</sup> WTO document G/SG/N/10/USA/8/Suppl.5, 22 October 2020.

<sup>188</sup> Proclamation 9979 of 23 January 2020, To Further Facilitate Positive Adjustment to Competition From Imports of Large Residential Washers. *Federal Register* (2020), Vol. 85, No. 18, 28 January, pp. 5125-5127. Viewed at: <https://www.federalregister.gov/documents/2020/01/28/2020-01650/to-further-facilitate-positive-adjustment-to-competition-from-imports-of-large-residential-washers>.

<sup>189</sup> USITC (2020), *Large Residential Washers: Extension of Action*, Investigation No. TA-201-076 (Extension), Publication 5144, December. Viewed at: <https://usitc.gov/publications/safeguards/pub5144.pdf>.

<sup>190</sup> USITC (2020), *Large Residential Washers: Extension of Action*, Investigation No. TA-201-076 (Extension), Publication 5144, December. Viewed at: <https://www.usitc.gov/publications/safeguards/pub5144.pdf>.

<sup>191</sup> Proclamation 10133 of 14 January 2021, To Continue Facilitating Positive Adjustment to Competition From Imports of Large Residential Washers. *Federal Register* (2021), Vol. 86, No. 12, 21 January, pp. 6541-6546. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-01-21/pdf/2021-01466.pdf>. Notified to the WTO in WTO document G/SG/N/10/USA/8/Suppl.7, 22 January 2021.

<sup>192</sup> WTO document G/SG/N/10/USA/8/Suppl.7, 22 January 2021.

3.130. On 14 May 2018, the Republic of Korea requested consultations with the United States concerning the definitive safeguard measure imposed by the United States on imports of LRWs and certain parts thereof. The DSB established a panel on 26 September 2018. On 8 February 2022, the Panel Report was circulated to Members. The Panel found that the United States had acted inconsistently with Article XIX:1(a) of the GATT 1994 and Article 3.1 of the Agreement on Safeguards because USITC's report in the underlying safeguard investigation did not contain a reasoned and adequate explanation of "unforeseen developments" and the "obligations incurred" by the United States, within the meaning of Article XIX:1(a) of the GATT 1994. The Panel also found that the Republic of Korea had not established under Article 5.1 of the Agreement on Safeguards that the safeguard measure exceeded what was necessary to remedy the serious injury. The Panel recommended that the United States bring its measure into conformity with its obligations under Article XIX:1(a) of the GATT 1994 and the Agreement on Safeguards.<sup>193</sup>

### 3.1.6.2.2.3 Fresh, chilled, or frozen blueberries

3.131. USITC initiated an investigation on fresh, chilled, or frozen blueberries (blueberries) on 6 October 2020, with the initiation effective for purposes of U.S. law on 29 September 2020. The investigation was initiated pursuant to a request filed by the USTR, which did not allege critical circumstances. On 11 February 2021, USITC issued its determination that blueberries were not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat of serious injury, to the domestic industry producing an article like or directly competitive with the imported article.<sup>194</sup> Because USITC found that the domestic industry was not seriously injured or threatened with serious injury, it did not make any findings as to whether imports would be a substantial cause of such injury or threat thereof.<sup>195</sup> USITC transmitted its report to the President on 29 March 2021 and the investigation was concluded.<sup>196</sup>

### 3.1.7 Other measures affecting imports

3.132. Apart from Title VII of the Tariff Act of 1930 and Sections 201-204 of the Trade Act of 1974, U.S. laws contain provisions to adjust the imports of an article so that such imports do not threaten to impair the national security of the United States, step up enforcement of its trade laws, and seek the elimination of foreign barriers to its products and services. Some of the trade enforcement tools available that have an impact on imports and have been utilized during the review period include investigations under Section 232 of the Trade Expansion Act of 1962 and Section 301 of the Trade Act of 1974.

#### 3.1.7.1 Section 232 investigations

##### 3.1.7.1.1 Legal and administrative framework

3.133. Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862) grants the Secretary of Commerce the authority to conduct investigations to determine the effects of imports of any article on the national security of the United States. Section 232 investigations may be initiated on request from an interested party, or from the head of any department or agency, or may be self-initiated by the Secretary of Commerce who must notify the Secretary of Defense that an investigation has been initiated.<sup>197</sup> USDOC may hold public hearings or afford interested parties an opportunity to present information and advice relevant to the investigation. Requests for a Section 232 investigation must be submitted in writing and must contain, among other things: (i) a description of the domestic industry affected, including information regarding companies and their plants, locations, capacity and current output of the industry; (ii) statistics on imports and domestic production, showing quantities and values; (iii) the nature, sources, and degree of the competition created by imports of

<sup>193</sup> WTO, DS546: *United States – Safeguard Measure on Imports of Large Residential Washers*. Viewed at: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds546\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds546_e.htm).

<sup>194</sup> *Federal Register* (2021), Vol. 86, No. 62, 2 April, pp. 17401-17402. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-04-02/pdf/2021-06756.pdf>.

<sup>195</sup> USITC (2021), *Fresh, Chilled, or Frozen Blueberries*, Investigation No. TA-201-77, Publication 5164. Viewed at: <https://www.usitc.gov/publications/safeguards/pub5164.pdf>.

<sup>196</sup> WTO document G/SG/N/9/USA/5, 6 April 2021.

<sup>197</sup> Bureau of Industry and Security Office of Technology Evaluation (BIS) (2007), *Section 232 Investigations Program Guide: The Effect of Imports on the National Security, Investigations Conducted under the Trade Expansion Act of 1962, as Amended*, June. Viewed at: <https://www.bis.doc.gov/index.php/documents/section-232-investigations/86-section-232-booklet/file>.

the article; and (iv) the effect that imports of the article may have upon the restoration of domestic production capacity in the event of national emergency. Requests must also contain information about the extent to which the economy, employment, investment, specialized skills, and productive capacity is, or will be, adversely affected, as well as regarding the revenues of federal, state, or local governments that are, or may be, adversely affected, and with respect to national security supporting uses of the article, including data on applicable contracts or subcontracts.

3.134. When conducting a 232 investigation and determining the effect of imports on national security, USDOC must take into account: (i) the domestic production needed for projected national defense requirements<sup>198</sup>; (ii) the domestic industry's capacity to meet those requirements; (iii) existing and anticipated availabilities of the human resources, products, raw materials, and other supplies and services essential to the national defense; (iv) the growth requirements of such industries and such supplies and services including the investment, exploration, and development necessary to ensure such growth; (v) the importation of goods in terms of their quantities, availabilities character, and use as those affect such industries and the capacity of the United States to meet national security requirements; and (vi) the relation of U.S. economic welfare to U.S. national security.<sup>199</sup> USDOC's report with its findings and recommendations must be submitted to the President no later than 270 days after the date on which the investigation was initiated. The President has 90 days to determine whether action must be taken to adjust the imports of the article and its derivatives so that such imports will not threaten to impair the national security. No later than 30 days after the date on which the President makes a determination, the President must submit to Congress a written statement of the reasons for it.<sup>200</sup>

3.135. USDOC has conducted 21 Section 232 investigations since 1980; of these, 14 were concluded before or in 2001. In 2018, two investigations were initiated on steel and aluminum. During the period under review, five new Section 232 investigations were initiated and completed: on automobiles and auto parts (February 2019); uranium (April 2019); titanium sponge (November 2019); lamination for stacked cores (October 2020); and vanadium (February 2021). The President has taken action to adjust imports in response to the Secretary's findings in two recent instances, imposing additional duties on aluminum and steel products in 2018.

#### 3.1.7.1.2 Steel investigation

3.136. The investigation under Section 232 of the Trade Expansion Act of 1962, to determine the effect of imported steel on national security, was initiated on 19 April 2017 and notified to the Department of Defense (DOD) the same day. In January 2018, the Secretary of Commerce submitted to the President a USDOC report with the main findings resulting from the investigation. Based on these findings, the USDOC report concluded that the quantities and circumstances of steel imports threatened to impair national security, and recommended to the President to consider action through either global or targeted tariffs, or a global quota.<sup>201</sup> The tariffs and quotas would be in addition to any duties already in place.

<sup>198</sup> BIS (2007), *Section 232 Investigations Program Guide: The Effect of Imports on the National Security, Investigations Conducted under the Trade Expansion Act of 1962, as Amended*, June. Viewed at: <https://www.bis.doc.gov/index.php/documents/section-232-investigations/86-section-232-booklet/file>.

<sup>199</sup> USDOC must take into consideration the impact of foreign competition on the economic welfare of individual domestic industries and on unemployment, as well as any serious effects resulting from the displacement of any domestic products by excessive imports, including a decrease in government revenues, or loss of skills or investment. USDOC, *Section 232 Investigation on the Effect of Imports of Steel on U.S. National Security*. Viewed at: <https://www.commerce.gov/page/section-232-investigation-effect-imports-steel-us-national-security#factsheet232>.

<sup>200</sup> BIS (2007), *Section 232 Investigations Program Guide: The Effect of Imports on the National Security, Investigations Conducted under the Trade Expansion Act of 1962, as Amended*. Viewed at: <https://www.bis.doc.gov/index.php/forms-documents/section-232-investigations/86-section-232-booklet>.

<sup>201</sup> USDOC proposed: (i) a global tariff of at least 24% on all steel imports from all countries, or a tariff of at least 53% on all steel imports from 12 countries (Brazil, China, Costa Rica, Egypt, India, Malaysia, Republic of Korea, Russian Federation, South Africa, Thailand, Türkiye, and Viet Nam), with a quota by product on steel imports from all other countries equal to 100% of their 2017 exports to the United States; or (ii) a quota on all steel products from all countries equal to 63% of each country's 2017 exports to the United States. BIS (2018), *The Effect of Imports of Steel on the National Security: An Investigation Conducted under Section 232 of the Trade Expansion Act of 1962, as Amended*, 11 January. Viewed at: [https://www.commerce.gov/sites/commerce.gov/files/the\\_effect\\_of\\_imports\\_of\\_steel\\_on\\_the\\_national\\_security\\_-\\_with\\_redactions\\_-\\_20180111.pdf](https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_steel_on_the_national_security_-_with_redactions_-_20180111.pdf).



3.137. The President proclaimed adjustments to steel imports by imposing, as from 23 March 2018, an additional 25% *ad valorem* tariff on steel articles included in HTSUS six-digit subheadings 7206.10 through 7216.50, 7216.99 through 7301.10, 7302.10, 7302.40 through 7302.90, and 7304.10<sup>202</sup> through 7306.90<sup>203</sup>, imported from all countries.<sup>204</sup> Imports from Argentina, Australia, Brazil, Canada, Mexico, the Republic of Korea, and the member States of the European Union were exempted from the measure until 1 May 2018.<sup>205</sup> On 30 April 2018, an agreement with the Republic of Korea was reached on alternative means to address the threatened impairment to U.S. national security posed by steel article imports. The measures agreed included annual aggregate limits of steel product imports from the Republic of Korea for the different HTSUS subheadings covered to apply for the period starting with calendar year 2018 and for subsequent years.<sup>206</sup> In light of the measures, steel article imports from the Republic of Korea were excluded from the tariffs. On 31 May 2018, the United States announced agreements with Argentina, Australia, and Brazil on alternative means to address the threatened impairment to U.S. national security posed by steel article imports from these countries. The measures agreed included annual aggregate limits of steel product imports from Argentina and Brazil for the period starting with calendar year 2018 and for subsequent years.<sup>207</sup> The status of quotas may be viewed in the CBP website.<sup>208</sup> Canada, Mexico, and the European Union were exempted from the measure until 1 June 2018.<sup>209</sup>

3.138. The additional tariffs were applied to Canada, Mexico, and the European Union as from 1 June 2018. In 2018, the European Union, Canada, Mexico, China, India, the Russian Federation, Türkiye, Norway, and Switzerland requested WTO DSB consultations with the United States regarding the U.S. duties on certain imported steel and aluminum products and requested the establishment of a panel. Subsequently, the DSB established a panel for each of the nine disputes.<sup>210</sup> In 2019, the disputes with Canada and Mexico were terminated after the parties notified that they had reached a mutually agreed solution. In 2021, the dispute with the European Union was terminated. For the remaining disputes, on 4 February 2021, the Chair of the Panel informed the DSB that due to delays caused by the COVID-19 pandemic, the Panel expected to issue its final report no earlier than the second half of 2021.

3.139. On 16 July 2018, the United States requested consultations with Canada, China, the European Union, Mexico, and Türkiye regarding additional duties imposed by these Members in

<sup>202</sup> Amended to HTSUS 731011 by Presidential Proclamation 9711, Adjusting Imports of Steel into the United States, of 22 March 2018. *Federal Register* (2018), Vol. 83, No. 60, 8 March. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2018-03-28/pdf/FR-2018-03-28.pdf>

<sup>203</sup> The current MFN tariff rate for all products affected by the measure is 0%.

<sup>204</sup> Proclamation 9705 of 8 March 2018, Adjusting Imports of Steel Into the United States. *Federal Register* (2018), Vol. 83, No. 51, 15 March, pp. 11625-11630. Viewed at: <https://www.federalregister.gov/documents/2018/03/15/2018-05478/adjusting-imports-of-steel-into-the-united-states>.

<sup>205</sup> Proclamation 9711 of 22 March 2018, Adjusting Imports of Steel Into the United States. *Federal Register* (2018), Vol. 83, No. 60, 28 March, pp. 13361-13365. Viewed at: <https://www.federalregister.gov/documents/2018/03/28/2018-06425/adjusting-imports-of-steel-into-the-united-states>.

<sup>206</sup> Also, quarterly imports in an aggregate quantity under any of the subheadings covered by the agreement cannot exceed 30% of the total quota or 500 tons, whichever is greater. Proclamation 9740 of 30 April 2018, Adjusting Imports of Steel Into the United States. *Federal Register* (2018), Vol. 83, No. 88, 7 May, pp. 20683-20705. Viewed at: <https://www.federalregister.gov/documents/2018/05/07/2018-09841/adjusting-imports-of-steel-into-the-united-states>.

<sup>207</sup> Proclamation 9759 of 31 May 2018, Adjusting Imports of Steel Into the United States. *Federal Register* (2018), Vol. 83, No. 108, 5 June, pp. 25857-25877. Viewed at: <https://www.federalregister.gov/documents/2018/06/05/2018-12140/adjusting-imports-of-steel-into-the-united-states>. These are absolute quotas: once the quota is filled, imports cannot take place under any condition. For Argentina and Brazil, quotas of 500,000 kg and 30% of the total aggregate quantity provided for a calendar year for each country, as set forth on CBP's internet site, were fixed.

<sup>208</sup> CBP, *Commodity Status Reports*. Viewed at: <https://www.cbp.gov/trade/quota/tariff-rate-quotas>.

<sup>209</sup> Proclamation 9740 of 30 April 2018, Adjusting Imports of Steel Into the United States. *Federal Register* (2018), Vol. 83, No. 88, 7 May, pp. 20683-20705. Viewed at: <https://www.federalregister.gov/documents/2018/05/07/2018-09841/adjusting-imports-of-steel-into-the-united-states>.

<sup>210</sup> WTO documents WT/DS544/8, WT/DS548/14, WT/DS550/11, and WT/DS551/11, 19 October 2018; WT/DS545/7, 16 August 2018; WT/DS547/8, 9 November 2018; and WT/DS552/12, 10 September 2019.



response to the additional duties imposed by the United States on steel and aluminum products.<sup>211</sup> On 27 August 2018, the United States requested consultations with the Russian Federation on the same grounds.<sup>212</sup> On 18 October 2018, the United States requested additional consultations with Türkiye.<sup>213</sup> On 3 July 2019, the United States requested similar consultations with India.<sup>214</sup> The United States stated that it did not consider the additional duties justified, as, in its view, Section 232 measures were taken pursuant to Article XXI of the GATT 1994 and were not measures taken pursuant to Article XIX of the GATT 1994 or the Agreement on Safeguards.<sup>215</sup> Panels were established in each dispute. In 2019, the disputes with Canada and Mexico were terminated after the parties notified that they had reached a mutually agreed solution. In 2021, the dispute with the European Union was terminated. On 9 December 2021, the DSB was informed that due to the complexity of the dispute and the delays caused by the global COVID-19 pandemic, the remaining panels expected to issue its final report to the parties no earlier than the first half of 2022.<sup>216</sup>

3.140. In January 2020, the European Union and the United States notified the DSB that they have mutually agreed pursuant to Article 25.2 of the Understanding on Rules and Procedures Governing the DSU to resort to arbitration. The parties also requested that upon the composition of the arbitrator, the arbitration be immediately and indefinitely suspended, and the dispute before the panel in *United States – Certain Measures on Steel and Aluminum Products* (DS548) be immediately terminated through withdrawal of the complaint.<sup>217</sup>

3.141. On 31 October 2021, the United States and the European Union issued a joint statement with respect to the steel and aluminum tariffs. In the statement, both parties express their joint desire to address non-market excess capacity so as to preserve their critical steel and aluminum industries, and agree to ongoing cooperation, and promote arrangements to address global non-market excess capacity as well as the carbon intensity of the industries. They also agreed to terminate their DSB disputes.<sup>218</sup> As noted in Box 3.2, as part of the arrangement, the United States and the European Union intend to negotiate for the first time, a global arrangement to address carbon intensity and global overcapacity. As a result of the arrangement, the United States will allow historically based volumes of EU steel and aluminum products to enter the United States without Section 232 duties and the European Union will suspend related tariffs on U.S. products. To implement the arrangement, the United States and the European Union will create a technical working group charged with developing a common methodology and share relevant data for assessing the embedded emissions of traded steel and aluminum. The global arrangement will be open to any interested country that shares the commitment to achieving the goals of restoring market orientation and reducing trade in carbon intensive steel and aluminum products.<sup>219</sup>

### Box 3.2 U.S.-EU joint statement on steel and aluminum, 31 October 2021

On 31 October 2021, the United States and the European Union issued a joint statement with respect to the steel and aluminum tariffs with the main following points:

#### 1) Ongoing cooperation

##### a. Trade remedy/customs cooperation:

- To help address excess capacity, both sides agree to expand coordination involving trade remedies and customs matters.
- The United States will share public information and best practices with EU officials and/or member State officials on topics including how detection of fraud/evasion and circumvention of duties is approached and possible self-initiation.
- Officials could also coordinate industry engagement with relevant sectors.
- Customs cooperation is concerned may take the form of mutual administrative assistance in accordance with the U.S.-EU Agreement on customs cooperation and mutual assistance in customs matters.

<sup>211</sup> WTO documents WT/DS557/1, WT/DS558/1, WT/DS559/1, WT/DS560/1 and WT/DS561/1, 19 July 2018.

<sup>212</sup> WTO document WT/DS566/1, 27 August 2018.

<sup>213</sup> WTO document, WT/DS561/1/Add.1, 18 October 2018.

<sup>214</sup> WTO document WT/DS585/1, 4 July 2019.

<sup>215</sup> WTO document WT/DS548/13, 6 July 2018.

<sup>216</sup> WTO, *Index of Disputes Issues*. Viewed at:

[https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_subjects\\_index\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dispu_subjects_index_e.htm).

<sup>217</sup> WTO document WT/DS548/19, 21 January 2022.

<sup>218</sup> USTR, *Steel & Aluminum, U.S.-EU Joint Statement, 31 October 2021*. Viewed at: <https://ustr.gov/sites/default/files/files/Statements/US-EU%20Joint%20Deal%20Statement.pdf>.

<sup>219</sup> European Commission (2021), "Joint EU-US Statement on a Global Arrangement on Sustainable Steel and Aluminium", 31 October. Viewed at:

[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_5724](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_5724); and USTR (2021), "Joint US-EU Statement on Trade in Steel and Aluminum" 31 October. Viewed at: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/october/joint-us-eu-statement-trade-steel-and-aluminum>.

**b. Monitoring:**

- The United States and the European Union will monitor steel and aluminum trade between them.

**c. Cooperation on non-market excess capacity:**

- The United States and the European Union agree to regularly meet to consult with a view to developing additional actions to contribute to adjustments and solutions and address non-market excess capacity in the global steel and aluminum sectors.

**d. Review:**

- The United States and the European Union agree to review the operation of this arrangement, and ongoing cooperation, on an annual basis, including in light of changes in the global steel and aluminum markets, U.S. demand, and imports.

**2). Global steel and aluminum arrangements to restore market-oriented conditions and address carbon intensity**

- The United States and the European Union are resolved to negotiate future arrangements for trade in steel and aluminum to reduce market excess capacity as well as the carbon intensity of the industries.
- The United States and the European Union will invite like-minded economies to participate in the arrangements and contribute to achieving the goals of restoring market-oriented conditions and supporting the reduction of carbon intensity of steel and aluminum across modes of production.
- The United States and the European Union will seek to conclude the negotiations on the arrangements within two years.
- To encourage similar efforts by other steel producing economies, the United States and the European Union will consult with respect to bringing these matters into relevant international fora for discussion.
- Compatible with international obligations and the multilateral rules, each participant in the arrangements would undertake the following actions:
  - (i) restrict market access for non-participants that do not meet conditions of market orientation and that contribute to non-market excess capacity, through application of appropriate measures including trade defense instruments;
  - (ii) restrict market access for non-participants that do not meet standards for low carbon intensity;
  - (iii) ensure that domestic policies support the objectives of the arrangements and support lowering carbon intensity across all modes of production;
  - (iv) refrain from non-market practices that contribute to carbon intensive, non-market-oriented capacity;
  - (v) consult on government investment in decarbonization; and
  - (vi) screen inward investments from non-market-oriented actors in accordance with their respective domestic legal frameworks.
- To enhance their cooperation and facilitate negotiations on a global sustainable steel and aluminum arrangements, the United States and the European Union agree to form a technical working group that will, *inter alia*, confer on methodologies for calculating steel and aluminum carbon intensity and share data.

**3. WTO disputes**

- The United States and the European Union agree to suspend by 5 November 2021, pursuant to Article 12.12 of the DSU, the WTO disputes they have initiated against each other regarding the U.S. Section 232 measures (DS548) and the European Union's additional duties (DS559).
- Regarding the matters that are before these panels, the United States and the European Union mutually agree to resort to arbitration pursuant to Article 25 of the DSU, so as to fully preserve the work of the parties and the panels and procedural steps in these disputes.
- The United States and the European Union will agree by 17 December 2021 on the procedures to be followed in an arbitration of those matters. Upon agreement on these procedures, the United States and the European Union will terminate their respective disputes before the panels, and the arbitrations will be suspended, without temporal limit.
- A complaining party may request to resume the arbitration at any time after a 30-day consultation period and no sooner than 31 October 2022. Before resuming an arbitration, a complaining party will first seek to consult at the ministerial level with the other party with a view to reaching an alternative solution.
- The United States and the European Union also intend not to initiate any new WTO dispute relating to these matters for so long as each party considers this arrangement to be operating satisfactorily.

Source: USTR, *Steel & Aluminum, U.S.-EU Joint Statement, 31 October 2021*. Viewed at: <https://ustr.gov/sites/default/files/files/Statements/US-EU%20Joint%20Deal%20Statement.pdf>.

3.142. In November 2021, the United States announced the start of consultations with Japan to address global steel and aluminum excess capacity and take effective measures to ensure the long-term viability of the steel and aluminum industries. In accordance with the announcement, the United States and Japan will seek to resolve bilateral concerns in this area, including the application of Section 232 measures, trade flows, and the sufficiency of actions that address steel and aluminum excess capacity with the aim of taking mutually beneficial and effective actions to restore market-oriented conditions and preserve their critical industries.<sup>220</sup> On 7 February 2022, the United States and Japan issued a joint statement.<sup>221</sup> In the statement, both parties express their joint desire to address non-market excess capacity so as to preserve their critical steel and aluminum industries, and agree to ongoing cooperation. As a result of the arrangement, the United States will allow historically based volumes of Japanese steel products to enter the United States without Section 232 duties.

<sup>220</sup> USTR (2021), "U.S. Statement on Working With Japan to Address Global Steel and Aluminum Excess Capacity", 12 November. Viewed at: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/november/us-statement-working-japan-address-global-steel-and-aluminum-excess-capacity>.

<sup>221</sup> Department of Commerce (2022), *U.S.-Japan Joint Statement*, 7 February. Viewed at: <https://www.commerce.gov/sites/default/files/2022-02/US-Japan-Joint-Statement.pdf>.

### 3.1.7.1.3 Aluminum investigation

3.143. A Section 232 investigation to determine the effect of imported aluminum on national security was initiated on 26 April 2017.<sup>222</sup> USDOC issued its report in January 2018, finding that aluminum is being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States.<sup>223</sup> The Secretary of Commerce recommended to the President three alternative remedies for dealing with excessive imports of aluminum: a global tariff, a mix of selective tariffs and quotas, or a quota on all imports. The tariffs and quotas would be in addition to any duties already in place. The President opted for imposing, through Proclamation 9704, as from 23 March 2018, an additional 10% *ad valorem* tariff on certain aluminum articles imported from all countries except Canada and Mexico.<sup>224</sup> On 22 March 2018, the President exempted Argentina, Australia, Brazil, the Republic of Korea, and the member States of the European Union from the measure until 1 May 2018.<sup>225</sup> On 30 April 2018, the President extended the exemption for Canada, Mexico, and member States of the European Union until 1 June 2018, and extended the exemption for Argentina, Australia, and Brazil without a deadline in light of the agreements in principle on satisfactory alternative means.<sup>226</sup> On 31 May 2018, the President announced agreements with Australia and Argentina on alternative means to address the threatened impairment to U.S. national security posed by aluminum articles imported from these countries.<sup>227</sup> The measures agreed included annual aggregate limits of aluminum product imports from Argentina for the period starting with calendar year 2018 and for subsequent years. In light of the agreements, the President exempted Argentina and Australia from the measure on a long-term basis.

3.144. The additional tariffs were applied to Canada, Mexico, and the European Union as from 1 June 2018. In 2018, the European Union, Canada, Mexico, China, India, the Russian Federation, Türkiye, Norway, and Switzerland requested DSB consultations with the United States regarding the U.S. duties on certain imported steel and aluminum products and requested the establishment of a panel (see above steel section for information about the WTO disputes concerning the U.S. duties, as well as additional duties imposed by other Members in response to the U.S. duties). On 31 October 2021, the United States and the European Union issued a joint statement with respect to the steel and aluminum tariffs that terminated their DSB disputes (see above, steel).<sup>228</sup>

3.145. Section 232 duties must be paid on imports under preferences. Imports of any steel or aluminum article subject to Section 232 duties admitted into U.S. FTZs on or after 23 March 2018

<sup>222</sup> The investigation covered: unwrought aluminum (HTSUS 7601), aluminum bars, rods and profiles (7604); aluminum wire (7605); aluminum plates, sheets, and strip, of a thickness exceeding 0.2 mm (7606); aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm (7607); aluminum tubes and pipes (7608); aluminum tube and pipe fittings (7609); other articles of aluminum: castings (7616.99.51.60); and forgings (7616.99.51.70). BIS (2018), *The Effect of Imports of Aluminum on the National Security. An Investigation Conducted under Section 232 of the Trade Expansion Act of 1962, as Amended*, 17 January. Viewed at: [https://www.commerce.gov/sites/commerce.gov/files/the\\_effect\\_of\\_imports\\_of\\_aluminium\\_on\\_the\\_national\\_security\\_-\\_with\\_redactions\\_-\\_20180117.pdf](https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_aluminium_on_the_national_security_-_with_redactions_-_20180117.pdf).

<sup>223</sup> BIS (2018), *The Effect of Imports of Aluminum on the National Security: An Investigation Conducted under Section 232 of the Trade Expansion Act of 1962, as Amended*, 17 January. Viewed at: [https://www.commerce.gov/sites/commerce.gov/files/the\\_effect\\_of\\_imports\\_of\\_aluminium\\_on\\_the\\_national\\_security\\_-\\_with\\_redactions\\_-\\_20180117.pdf](https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_aluminium_on_the_national_security_-_with_redactions_-_20180117.pdf).

<sup>224</sup> Proclamation 9704 of 8 March 2018, Adjusting Imports of Aluminum Into the United States. *Federal Register* (2018), Vol. 83, No. 51, 15 March, pp. 11619-11624. Viewed at: <https://www.federalregister.gov/documents/2018/03/15/2018-05477/adjusting-imports-of-aluminum-into-the-united-states>.

<sup>225</sup> Proclamation 9710 of 22 March 2018, Adjusting Imports of Aluminum Into the United States. *Federal Register* (2018), Vol. 83, No. 60, 28 March, pp. 13355-13359. Viewed at: <https://www.federalregister.gov/documents/2018/03/28/2018-06420/adjusting-imports-of-aluminum-into-the-united-states>.

<sup>226</sup> Proclamation 9739 of 30 April 2018, Adjusting Imports of Aluminum Into the United States. *Federal Register* (2018), Vol. 83, No. 88, 7 May, pp. 20677-20682. Viewed at: <https://www.federalregister.gov/documents/2018/05/07/2018-09840/adjusting-imports-of-aluminum-into-the-united-states>.

<sup>227</sup> Annex to Proclamation 9758 Adjusting Imports of Aluminum Into the United States of 31 May 2018. *Federal Register* (2018), Vol. 83, No. 108, 5 June, pp. 25849-25855. Viewed at: <https://www.federalregister.gov/documents/2018/06/05/2018-12137/adjusting-imports-of-aluminum-into-the-united-states>.

<sup>228</sup> Steel & Aluminum, U.S.-EU Joint Statement, 31 October 2021. Viewed at: <https://ustr.gov/sites/default/files/files/Statements/US-EU%20Joint%20Deal%20Statement.pdf>.

enter with a "privileged foreign status"<sup>229</sup>, except those articles eligible for admission under "domestic status"<sup>230</sup>, and will be subject, upon entry for consumption, to any *ad valorem* rates of duty related to the classification under the applicable HTSUS subheading.

#### 3.1.7.1.4 Investigation into auto imports

3.146. On 23 May 2018, USDOC initiated a Section 232 investigation into auto imports to determine whether imports of automobiles, including SUVs, vans, and light trucks, and automotive parts into the United States threatened to impair the national security as defined in Section 232. USDOC took into account the increase of the share of imports of passenger vehicles sold in the United States from 32% to 48% in the previous 20 years; the 22% decline in employment in motor vehicle production between 1990 and 2017; the low share of R&D represented by U.S. vehicle manufacturers in the United States (20% of the total); and the fact that U.S. auto part manufacturers account for only 7% of that industry in the United States. The investigation also analyzed whether the decline of U.S. automobile and automotive parts production threatens to weaken the U.S. internal economy, including by potentially reducing R&D and jobs for skilled workers in cutting-edge technologies.

3.147. In its report issued in February 2019, the Secretary of Commerce found that the impact of excessive imports on the domestic automobile and automobile parts industry and the displacement of production in the United States was causing a weakening of the U.S. internal economy that could impair the national security as set forth in Section 232. USDOC found that significant import penetration over the past three decades had severely weakened the U.S. automotive industry, as U.S.-owned production of automobiles and automobile parts had been reduced by imports and the domestic manufacturing base had weakened. Overall, the share of global R&D investments in the automotive sector attributable to the United States had significantly declined and was a fraction of the share conducted by foreign competitors. A further decline in domestic production volumes would further weaken U.S. contribution to automotive R&D and impede the industry's ability to invest in the development of technologies needed to maintain a leading edge in U.S. military capabilities. The Secretary of Commerce concluded that current quantities and circumstances of imports of automobiles and certain automobile parts were weakening the U.S. internal economy and threatening to impair national security as set forth in Section 232 and recommended negotiating an agreement or imposing tariffs of up to 35%.<sup>231</sup> The President agreed with the Secretary's finding and directed the USTR to pursue negotiation of agreements to address the threatened national security impairment.

#### 3.1.7.1.5 Investigation into uranium imports

3.148. On 18 July 2018, USDOC announced the initiation of a Section 232 investigation into whether the quantity and circumstances of uranium ore and product imports into the United States threatened to impair national security. The investigation covered the entire uranium sector, from the mining industry through enrichment, defense, and industrial consumption. The report of the investigation was issued in April 2019. Some of its findings include: (i) domestic uranium production is essential to U.S. national security; (ii) the current level of imports adversely affects the economic welfare of the U.S. uranium industry; and (iii) the displacement of U.S. uranium by excessive quantities of imports has the effect of weakening the U.S. internal economy.<sup>232</sup> Based on these findings, the report concluded that the present quantities and circumstance of uranium imports were weakening the U.S. internal economy and threatened to impair the national security as defined in Section 232. The Secretary of Commerce recommended that the President take immediate action so as to increase the price to USD 55 per pound through a phased-in reduction of uranium imports

<sup>229</sup> In 19 C.F.R. 146.41, merchandise having a privileged foreign status is defined as foreign merchandise that has not been manipulated or manufactured so as to effect a change in tariff classification.

<sup>230</sup> Domestic status may be granted to merchandise: (i) which is the growth, product, or manufacture of the United States on which all internal revenue taxes, if applicable, have been paid; (ii) previously imported and on which duty and tax has been paid; or (iii) previously entered free of duty and tax (19 C.F.R. 146.43).

<sup>231</sup> USDOC (2019), *The Effect of Imports of Automobiles and Automobile Parts on the National Security. An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, as Amended*, 17 February 2019. Viewed at: <https://www.bis.doc.gov/index.php/documents/section-232-investigations/2774-redacted-autos-232-final-and-appendix-a-july-2021/file>.

<sup>232</sup> USDOC, Bureau of Industry and Security, Office of Technology Evaluation (2019), *The Effect of Imports of Uranium on the National Security: An Investigation Conducted under Section 232 of the Trade Expansion Act of 1962, as amended*. Viewed at: <https://www.bis.doc.gov/index.php/documents/section-232-investigations/2791-uranium-section-232-report-and-appendices-april-2019-redacted/file>.

over a five-year period, and that either a targeted or global quota be used to adjust the level of imports for a duration sufficient to allow the necessary time needed to stabilize and revitalize the U.S. uranium industry (two to five years, and several additional years to add new capacity). The report was publicly released in 2021.<sup>233</sup>

3.149. In July 2019, the President issued a memorandum stating that, at that time, he did not concur with the Secretary of Commerce's finding that uranium imports threatened to impair the national security of the United States as defined under Section 232. A United States Nuclear Fuel Working Group would be established to examine the current state of domestic nuclear fuel production and develop recommendations for reviving and expanding domestic nuclear fuel production.<sup>234</sup> The Working Group issued its report in April 2020. The report contains a strategy that vies to restore U.S. comparative nuclear advantages.<sup>235</sup>

### 3.1.7.2 Section 301 of the Trade Act of 1974

#### 3.1.7.2.1 Section 301 regulatory framework, procedures and determinations

3.150. Section 301(a) of the Trade Act of 1974 requires the U.S. Trade Representative (the USTR) to take action in cases where, as a result of an investigation, it is determined that a foreign government is engaging in (i) trade agreement violations; (ii) or acts, policies, or practices that are inconsistent with U.S. international legal rights and that burden or restrict U.S. commerce.<sup>236</sup> Section 301(b) of the Trade Act of 1974 authorizes the USTR to take action in cases where, as a result of an investigation, it is determined that a foreign government is engaging in acts, policies, or practices that are unreasonable or discriminatory, and that burden or restrict U.S. commerce.<sup>237</sup> Under Section 301(b), unreasonable practices include the denial of: (i) fair opportunities for the establishment of enterprises; (ii) adequate and effective intellectual property rights (IPRs) protection; (iii) fair and equitable market access opportunities for U.S. persons that rely on IPR protection; (iv) fair and equitable market opportunities, including a foreign government's toleration of anti-competitive activities that restrict access of U.S. goods or services to a foreign market; and (v) worker rights. Unreasonable practices may also include export targeting.

3.151. Under Section 301, interested persons may file a petition with the USTR requesting USTR to investigate a foreign government act, policy, or practice that may be burdening or restricting U.S. commerce and take appropriate action. The USTR may also self-initiate an investigation.<sup>238</sup> The Trade Facilitation and Trade Enforcement Act of 2015 (P.L. 114–125) amended Section 306 of the Trade Act of 1974 by adding a new section which permits the USTR to reinstate a Section 301 action following: (i) a request from the petitioner or any representative of the domestic industry that would benefit from the reinstatement of the action; (ii) consultations under Section 306(d) of the Trade Act; and (iii) a review under Section 307(c) of the Trade Act.

3.152. The Office of the U.S. Trade Representative (USTR) conducts Section 301 investigations. It may be assisted in by a Section 301 Committee, a subordinate body of the Trade Policy Staff Committee (TPSC). The Section 301 Committee reviews complaints received pursuant to

<sup>233</sup> *Federal Register* (2021), Vol. 86, No. 145, 2 August. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-08-02/pdf/2021-16113.pdf>.

<sup>234</sup> Memorandum on the Effect of Uranium Imports on the National Security and Establishment of the United States Nuclear Fuel Working Group, 12 July 2019. Viewed at: <https://www.govinfo.gov/content/pkg/DCPD-201900470/pdf/DCPD-201900470.pdf>.

<sup>235</sup> U.S. Department of Energy (2020), *Restoring America's Competitive Nuclear Energy Advantage: A Strategy to Assure U.S. National Security*, April. Viewed at: <https://www.energy.gov/sites/prod/files/2020/04/f74/Restoring%20America%27s%20Competitive%20Nuclear%20Advantage-Blue%20version%5B1%5D.pdf>.

<sup>236</sup> The law provides for exceptions, including where the WTO DSB has adopted a report dealing with a dispute regarding the matter covered in the investigation concerned that finds no violation or denial of U.S. rights.

<sup>237</sup> Under Section 301, the term "discriminatory" includes any act, policy, and practice that denies national or MFN treatment to U.S. goods, services, or investment, while an "unreasonable" act, policy, or practice is one that "while not necessarily in violation of, or inconsistent with, the international legal rights of the United States is otherwise unfair and inequitable".

<sup>238</sup> Section 301 provides two means by which the USTR may initiate an investigation in the absence of a petition: (i) self-determination; and (ii) within 30 days after identifying a trading partner as a "Special 301" "Priority Foreign Country". Congressional Review Service (CRS) (2020), *Section 301 of the Trade Act of 1974: Origin, Evolution, and Use*, updated 14 December. Viewed at: <https://sgp.fas.org/crs/misc/R46604.pdf>.



Section 301, holds public hearings upon request by a complainant or an interested party, reports to the TPSC the results of reviews and hearings conducted with respect to complaints received pursuant to Section 301, and makes recommendations to the TPSC for review by that Committee.<sup>239</sup>

3.153. If the USTR receives a petition to initiate an investigation, USTR must determine, within 45 days, whether to initiate it. Once the investigation is initiated, the USTR must seek consultations with the foreign government whose acts, policies, or practices are under investigation. If the USTR determines that the investigation involves a trade agreement and a mutually acceptable resolution is not reached before the close of the consultation period specified in the trade agreement, or the 150<sup>th</sup> day after the day on which consultation was commenced, whichever is earlier, the USTR must request formal dispute settlement proceedings under the governing trade agreement (WTO or other relevant trade agreement to which the United States is a party). If a dispute is not resolved before the close of the minimum dispute settlement period provided for in the agreement, the USTR is required to submit a report to Congress, within 15 days after the close of such period, setting forth the reasons why the dispute was not resolved, the status of the case, and the prospects for resolution. Where the investigation involves an alleged violation of a multilateral trade agreement or of a regional economic agreement with dispute settlement provisions, USTR must follow the consultation and dispute settlement provisions set out in that agreement.

3.154. Under Section 301 proceedings, USTR must make determinations in investigations involving a trade agreement with dispute settlement provisions within 18 months after initiation, or 30 days after the conclusion of dispute settlement procedures, whichever comes first. If the investigation does not involve a trade agreement with a dispute settlement mechanism, USTR must make determinations within 12 months after its initiation. Certain investigations concerning IPRs must lead to a determination within six months of initiation of the investigation, or nine months if the investigation involves complicated issues.

3.155. The USTR must take action if, as a result of the investigation, the acts, policies, or practices are determined to violate a trade agreement or to be unjustifiable. If they are determined to be unreasonable or discriminatory and to burden or restrict U.S. commerce, action is discretionary: the USTR must determine whether action is appropriate and, if so, what action to take.<sup>240</sup> Actions that may be taken under Section 301 include to: (i) suspend trade agreement concessions; (ii) impose duties or other import restrictions; (iii) impose fees or restrictions on services; (iv) enter into agreements with the subject country to eliminate the offending practice or to provide compensatory benefits for the United States; and/or (v) restrict service sector authorizations.

3.156. Section 307 allows for the modification of a tariff action under certain circumstances and such modifications may include a tariff exclusion process that enables interested parties to petition for an exemption from the Section 301 tariff increases for specific imports classified within a HTSUS subheading. USTR has granted exclusions where, for example, a requester has demonstrated the lack of availability of the product from other sources; there have been failed attempts by the importer to source the product from the United States or third countries; or in cases of severe economic harm to the importer or other U.S. interests caused by the imposition of Section 301 tariffs on a product. There is no timetable for providing responses to filed requests. The measure adopted by the USTR may be directed at any economic sector, without regard to whether the good or sector was involved in the act, policy, or practice subject to the determination. The action may be taken on either a non-discriminatory basis or solely against the foreign country involved but, in this case actions taken must be limited to a value equivalent to the burden or restriction imposed on U.S. commerce by the foreign country. Actions must generally be implemented within 30 days of a determination but may be delayed by not more than 180 days at the petitioner's request, or if substantial progress is being

<sup>239</sup> CRS (2020), *Section 301 of the Trade Act of 1974: Origin, Evolution, and Use*, updated 14 December. Viewed at: <https://sgp.fas.org/crs/misc/R46604.pdf>.

<sup>240</sup> The USTR does not have to take action, however, if: (i) the WTO DSB has adopted a formal dispute settlement report that concludes that the trade policy or practice in question does not violate or is not inconsistent with WTO Agreements; (ii) USTR determines that the foreign country subject to investigation is taking satisfactory measures to grant U.S. rights under a trade agreement; (iii) the foreign country subject to investigation enters into a binding agreement that commits it to stop the practice or phase out the policy, find a solution that eliminates the burden on U.S. commerce, or provide compensatory trade benefits to the United States; or (iv) the USTR determines that taking action would either have an adverse impact on the U.S. economy or cause serious harm to U.S. national security.



made in negotiations with the foreign country, or if a delay is deemed necessary or convenient to obtain a satisfactory solution to the issue.

3.157. Under Section 306 of the Trade Act of 1974, USTR must monitor the implementation of each measure taken and agreement entered resulting from a Section 301 investigation or from a dispute settlement proceeding under a trade agreement or under the WTO. If, as result of monitoring, USTR considers that the foreign country is not satisfactorily implementing a measure or agreement, it must make a determination for further action.<sup>241</sup> Section 306 of the Trade Act of 1974 requires the USTR to periodically revise the list of products subject to retaliation when the targeted foreign government does not implement a recommendation made pursuant to a dispute settlement proceeding under the WTO. This periodic revision is known as "carousel" retaliation. The USTR has 120 days after the date in which an action is first taken (and every 180 days thereafter) to review the list of products and revise it, in whole or in part. A revision is not required if the USTR determines that compliance is imminent or agrees with the affected U.S. industry that revising the list is not necessary.<sup>242</sup>

3.158. The USTR is required to submit, on a biannual basis, a report to the House of Representatives and Senate describing petitions filed or investigations initiated under Section 301, the determinations made, and actions taken. The USTR may modify or terminate any Section 301 action, subject to the specific direction of the President and criteria set forth in legislation. The USTR is required to publish notice of the modification or termination in the Federal Register and submit a written report to Congress on the reasons for doing so.

### 3.1.7.2.2 Section 301 cases

#### 3.1.7.2.2.1 China technology transfer regime

3.159. On 18 August 2017, USTR initiated a Section 301 investigation into the Government of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. In March 2018, USTR issued a report that concluded that the acts, policies, and practices of the Chinese Government related to technology transfer, IP, and innovation were unreasonable or discriminatory, and burdened or restricted U.S. commerce, resulting in harm to the U.S. economy of at least USD 50 billion a year.<sup>243</sup> As a result of the report's findings, in a Memorandum signed on 22 March 2018, the President directed the USTR to take a range of actions responding to China's acts, policies, and practices, including preparing a list of proposed additional tariffs.<sup>244</sup> The President also directed USTR to present a complaint with respect to China's technology licensing practices before the WTO DSB. On 23 March 2018, the United States requested consultations with China concerning certain measures pertaining to the protection of IPRs.<sup>245</sup> On 15 June 2018, USTR issued a list of products covering 1,102 separate U.S. tariff lines valued at some USD 50 billion in 2018 trade values.<sup>246</sup> The additional duties were imposed in two tranches: in July 2018, the additional 25% duty was imposed on the first tranche, or List 1, which covered 818 tariff subheadings with an approximate annual trade value of USD 34 billion. In August 2018, an additional 25% duty was imposed on the second tranche, or List 2, which covered 279 tariff subheadings with an annual trade value of USD 16 billion. The lists included products from industrial sectors that contribute to, or benefit from, the "Made in China 2025" industrial policy. CBP was instructed to begin to collect the

<sup>241</sup> The USTR is not required to take action if it is found that the foreign country is taking satisfactory measures to grant U.S. rights under a trade agreement or has agreed to eliminate or phase out the act, policy, or practice or to provide any other satisfactory solution for the United States or, if this is not possible, to provide the United States with compensatory trade benefits.

<sup>242</sup> CRS (2020), *Section 301 of the Trade Act of 1974: Origin, Evolution, and Use*, updated 14 December. Viewed at: <https://sfp.fas.org/crs/misc/R46604.pdf>.

<sup>243</sup> USTR (2018), *Findings of the Investigation into China's Acts, Policies, and Practices related to Technology Transfer, Intellectual Property, and Innovation under Section 301 of the Trade Act of 1974*, 22 March 2018. Viewed at: <https://ustr.gov/sites/default/files/Section%20301%20FINAL.PDF>.

<sup>244</sup> USTR (2018), *Section 301 Fact Sheet*. Viewed at: <https://ustr.gov/sites/default/files/USTR%20301%20Fact%20Sheet.pdf>.

<sup>245</sup> WTO document WT/DS542/4, 6 April 2018.

<sup>246</sup> The full list of products was published in *Federal Register* (2018), Vol. 83, No. 137, 17 July, Notices. Viewed at: [https://ustr.gov/sites/default/files/enforcement/301Investigations/2018-0026%20China%20FRN%207-10-2018\\_0.pdf](https://ustr.gov/sites/default/files/enforcement/301Investigations/2018-0026%20China%20FRN%207-10-2018_0.pdf).

additional duties on 6 July 2018.<sup>247</sup> USTR received and reviewed approximately 11,000 and 2,900 exclusion requests pertaining to Lists 1 and 2, respectively, approving approximately 3,700 and 1,100 of them.<sup>248</sup>

3.160. On 15 June 2018, China announced it would take countermeasures for USD 50 billion in the form of additional 25% tariffs. On 6 July 2018, China responded to the initial action by imposing increased duties on goods of the United States. On 18 June 2018, the President directed the USTR to identify USD 200 billion worth of Chinese goods for additional tariffs at a rate of 10%.<sup>249</sup> On 6 July 2018, the USTR proposed taking further action in the form of an additional 10% *ad valorem* duty on products of China covered in 6,031 tariff subheadings.<sup>250</sup> In September 2018, the USTR approved List 3, which imposed additional duties on products of China classified under 5,733 tariff subheadings (from the 6,031 proposed) with an annual trade value of approximately USD 200 billion. The rate of the additional duty on these List 3 products was increased from 10% to 25% in May 2019. USTR again established an exclusion process for products of China covered under List 3, receiving approximately 30,300 exclusion requests, of which USTR approved approximately 1,500. In August 2019, the USTR determined a new action, devising a List 4 comprising 3,805 tariff subheadings with an approximate annual trade value of USD 300 billion to be subject to additional 10% *ad valorem* duties. The tariff subheadings were separated into two lists with different effective dates: 1 September 2019 for List 4A, and 15 December 2019 for List 4B. Subsequently, the USTR determined to increase the rate of the additional duties from 10% to 15%.

3.161. On 15 January 2020, the Economic and Trade Agreement Between the Government of the United States of America and the Government of the People's Republic of China (Phase One Agreement) was signed.<sup>251</sup> The Agreement entered into force on 14 February 2020. The Phase One Agreement requires changes to China's economic and trade regime, including with respect to certain issues covered in the Section 301 investigation. Chapter 1 of the Agreement, Intellectual Property, calls for various improvements in IP protection and enforcement. Chapter 2 of the Agreement, Technology Transfer, affirms the importance of ensuring that the transfer of technology occurs on voluntary, market-based terms.<sup>252</sup> As a result of the Agreement, the USTR determined to suspend indefinitely the imposition of the 15% additional duties on products of China covered by List 4B, and to reduce the rate of additional duties on products of China covered by List 4A, from 15% to 7.5% effective 14 February 2020. USTR established an exclusion process for products of China covered under List 4A, received approximately 8,800 requests and approved 575 of them. In response to the COVID-19 pandemic, the USTR extended 137 exclusions covered under List 1, 59 exclusions on List 2, 266 exclusions on List 3, and 87 exclusions on List 4. On 22 December 2020, the USTR determined to further extend certain product exclusions on medical-care products and to make further modifications to remove Section 301 duties from additional medical-care products to address the

<sup>247</sup> USTR (2018), *USTR Issues Tariffs on Chinese Products in Response to Unfair Trade Practices*, USTR Press Release, 15 June. Viewed at: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/june/ustr-issues-tariffs-chinese-products>.

<sup>248</sup> USTR (2021), *2021 Trade Policy Agenda and 2020 Annual Report of the President of the United States on the Trade Agreements Program*. Viewed at: <https://ustr.gov/sites/default/files/files/reports/2021/2021%20Trade%20Agenda/Online%20PDF%202021%20Trade%20Policy%20Agenda%20and%202020%20Annual%20Report.pdf>.

<sup>249</sup> *Statement from the President Regarding Trade with China*, 18 June 2018. Originally viewed at: <https://www.whitehouse.gov/briefings-statements/statement-president-regarding-trade-china-2/>.

<sup>250</sup> The full list of products was published in *Federal Register* (2018), Vol. 83, No. 137, 17 July, Notices. Viewed at: [https://ustr.gov/sites/default/files/enforcement/301Investigations/2018-0026%20China%20FRN%207-10-2018\\_0.pdf](https://ustr.gov/sites/default/files/enforcement/301Investigations/2018-0026%20China%20FRN%207-10-2018_0.pdf).

<sup>251</sup> *Economic and Trade Agreement Between the Government of the United States of America and the Government of the People's Republic of China*. Viewed at: [https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Economic And Trade Agreement Between The United States And China Text.pdf](https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Economic%20And%20Trade%20Agreement%20Between%20The%20United%20States%20And%20China%20Text.pdf).

<sup>252</sup> The Parties agreed to: (i) allow natural or legal persons of a Party to have effective access to and be able to operate openly and freely in the jurisdiction of the other Party without any force or pressure to transfer their technology to persons of the other Party; (ii) any transfer or licensing of technology between persons of a Party and those of the other Party must be based on market terms that are voluntary and reflect mutual agreement; (iii) a Party shall not support or direct the outbound foreign direct investment activities of its persons aimed at acquiring foreign technology with respect to sectors and industries targeted by its industrial plans that create distortion; and (iv) neither Party shall require or pressure persons of the other Party to transfer technology to its persons in relation to acquisitions, joint ventures, or other investment transactions.

COVID-19 pandemic. On 5 October 2021, USTR announced the start of a review to possibly reinstate 549 previously extended exclusions (86 FR 56345).<sup>253</sup>

### 3.1.7.2.2.2 EU beef trade

3.162. Following a request from representatives of the beef industry, USTR initiated on 9 December 2016, a proceeding under Section 306(c) of the Trade Act of 1974 on beef from the European Union.<sup>254</sup> The primary concern of the U.S. industry was that non-U.S. exporters had been filling a substantial part of the 45,000 metric-tons (MT) TRQ for high-quality beef (HQB) products established by the 2009 U.S.- EU Beef MOU, which denied the benefits to the United States expected under the MOU. A list of products under consideration for the imposition of increased duties in accordance with the WTO DSB authorization in the 1999 EU-Beef dispute (DS26: *European Communities – Measures Concerning Meat and Meat Products (Hormones)* (EC-Hormones)) was published in the Federal Register.<sup>255</sup>

3.163. The United States subsequently entered into negotiations with the European Union to address U.S. concerns with the operation of the HQB TRQ. The negotiations concluded on 2 August 2019 when the European Union and United States signed *the* Agreement on the Allocation to the United States of a Share in the Tariff Rate Quota for High Quality Beef Referred to in the Revised MOU Regarding the Importation of Beef from Animals Not Treated with Certain Growth-promoting Hormones and Increased Duties Applied by the United States to Certain Products of the European Union. The Agreement went into effect on 1 January 2020. Pursuant to this agreement, the European Union allocated to the United States 35,000 MT of the 45,000 MT HQB TRQ established under the 2009 U.S.-EU Beef MOU. In light of the agreement, the USTR decided to conclude the proceeding under Section 306(c) of the Trade Act with a determination not to reinstate action, effective 1 January 2020. This determination was made in consultation with the U.S. beef industry, and in accordance with the advice of the interagency Section 301 committee.<sup>256</sup> Despite the agreement, the United States continues to have an authorization to suspend concessions in connection with the *EC – Hormones* dispute.<sup>257</sup>

### 3.1.7.2.2.3 EU civil aircraft

3.164. On 12 April 2019, the USTR announced the initiation of an investigation to enforce U.S. rights in the WTO dispute against the European Union and certain EU member States addressed to subsidies on large civil aircraft.<sup>258</sup> On 2 October 2019, the WTO Arbitrator issued a Decision that concluded that the appropriate level of countermeasures in response to the aid provided by the European Union or certain member States to their large civil aircraft domestic industry was approximately USD 7.5 billion annually.<sup>259</sup>

3.165. Effective 18 October 2019, the USTR determined to impose additional duties on products of certain EU member States, with an annual trade value of approximately USD 7.5 billion. The products affected by the tariff surcharges included, *inter alia*, new airplanes and aircraft; a number

<sup>253</sup> USTR, *Reinstatement of Certain Exclusions Previously Extended*. Viewed at: <https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-china-technology-transfer/china-section-301-tariff-actions-and-exclusion-process/reinstatement-certain-exclusions-previously-extended>.

<sup>254</sup> Section 306(c) of the Trade Act of 1974 allows the USTR to reinstate a previously terminated Section 301 action in order to exercise a WTO authorization to suspend trade concessions, by filing a written request for reinstatement of action. USTR, *Section 301 – EU Beef*. Viewed at: <https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-eu-beef>.

<sup>255</sup> *Federal Register* (2016), Vol. 81, No. 249, 28 December, pp. 95561-95562. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2016-12-28/pdf/2016-31410.pdf>.

<sup>256</sup> *Federal Register* (2019), Vol. 84, No. 240, 13 December, pp. 68286-68287. Viewed at: [https://ustr.gov/sites/default/files/Determination Not to Reinstate Action in Connection with the EU%E2%80%99s Measures Concerning Meat and Meat Products.pdf](https://ustr.gov/sites/default/files/Determination%20Not%20to%20Reinstate%20Action%20in%20Connection%20with%20the%20EU%E2%80%99s%20Measures%20Concerning%20Meat%20and%20Meat%20Products.pdf).

<sup>257</sup> The original DSB case dates from 1996. In 1999, it reached the arbitration phase. The arbitrators determined that the level of nullification or impairment suffered by the United States in the matter *European Communities – Measures Concerning Meat and Meat Products (Hormones)* (EC – Hormones) was USD 116.8 million per year and stated that a suspension of tariff concessions and related obligations under GATT 1994 covering trade for up to that maximum amount would be consistent with Article 22.4 of the DSU. WTO document WT/DS26/ARB, 12 July 1999.

<sup>258</sup> *Federal Register* (2019), Vol. 84, No. 71, 12 April, pp. 15028-15036. Viewed at: [https://ustr.gov/sites/default/files/enforcement/301Investigations/Preliminary\\_Product\\_List.pdf](https://ustr.gov/sites/default/files/enforcement/301Investigations/Preliminary_Product_List.pdf).

<sup>259</sup> WTO document WT/DS316/ARB, 2 October 2019.

of milk products; butter; cheese; oranges, mandarins; lemons; cherries; peaches; some juices; olives; coffee; some biscuits; clams; mussels; other molluscs; frozen meat, olive oil; printed books; and some tools. Some of the surcharges applied to all EU member States, and others only to targeted countries.<sup>260</sup> The additional duties were applicable with respect to products that are entered for consumption, or withdrawn from warehouse for consumption, on or after 18 October 2019. In order to implement the determination, Subchapter III of Chapter 99 of the HTSUS was modified and new HTSUS subheadings were added. Products provided for in new HTSUS subheadings 9903.89.05<sup>261</sup> and 9903.89.07<sup>262</sup> were to be subject to an additional *ad valorem* duty of 10%; products in new HTSUS subheadings 9903.89.10, 9903.89.13, 9903.89.16, 9903.89.19, 9903.89.22, 9903.89.25, 9903.89.28, 9903.89.31, 9903.89.34, 9903.89.37, 9903.89.40, 9903.89.43, 9903.89.46, and 9903.89.50 would be subject to an additional *ad valorem* duty of 25%.

3.166. The list of products subject to the additional tariffs was modified effective 5 March 2020, and a new subheading 9903.89.52 was inserted applying to all products of France or Germany classified in subheading 8214.90.60.<sup>263</sup> In June 2020, USTR initiated a review of the measure.<sup>264</sup> As a result of the review, effective 1 September 2020, some changes were introduced: subheading 9903.89.52 was deleted and a subheading 9903.89.55 was introduced to apply to all products of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, or the United Kingdom classified in subheading 0406.90.99. Some new products (subheadings 2007.99.05, 2007.99.10, 2007.99.15, 2007.99.20, 2007.99.25, 2007.99.35, 2007.99.60) were also made subject to the 25% surcharge.<sup>265</sup> In January 2021, new modifications were introduced to, *inter alia*, remove subheading 9903.89.55 and replace it with subheading 9903.89.63, and created a new subheading 9903.89.57 for some spirits from France and Germany (11 subheadings of heading 2204).<sup>266</sup> In March 2021, the USTR announced the decision to modify the action by suspending the additional duties on products of the United Kingdom and of the European Union for four months.<sup>267</sup>

3.167. In June 2021, the United States reached understandings on cooperative frameworks with the European Union and the United Kingdom regarding the disputes involving large civil aircraft (LCA). The EU-U.S. Understanding on a Cooperative Framework for Large Civil Aircraft calls for moving to a more collaborative and consultative relationship, to promote a level playing field, address shared challenges, overcome long-standing differences, and avoid future litigation. The

<sup>260</sup> The list of subheadings and products by country affected may be found in Annex A and Annex B to the Notice of Determination and Action Pursuant to Section 301: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute in *Federal Register* (2019), Vol. 84, No. 196, 9 October, pp. 54245-54264. Viewed at: [https://ustr.gov/sites/default/files/enforcement/301Investigations/Notice of Determination and Action Pursuant to Section 301-Large Civil Aircraft Dispute.pdf](https://ustr.gov/sites/default/files/enforcement/301Investigations/Notice%20of%20Determination%20and%20Action%20Pursuant%20to%20Section%20301-Large%20Civil%20Aircraft%20Dispute.pdf).

<sup>261</sup> New airplanes and aircraft, subject to a 10% tariff surcharge.

<sup>262</sup> Technical Adjustments to Section 301 Action: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute. *Federal Register* (2019), Vol. 84, No. 202, 18 October, pp. 55998-56009. Viewed at: [https://ustr.gov/sites/default/files/enforcement/301Investigations/84\\_FR\\_55998.pdf](https://ustr.gov/sites/default/files/enforcement/301Investigations/84_FR_55998.pdf).

<sup>263</sup> USTR, Notice of Modification of Section 301 Action: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute. *Federal Register* (2020), Vol. 85, No. 35, 21 February, pp. 10204-10211. Viewed at: [https://ustr.gov/sites/default/files/enforcement/301Investigations/Notice of Modification of Section 301 Action Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute.pdf](https://ustr.gov/sites/default/files/enforcement/301Investigations/Notice%20of%20Modification%20of%20Section%20301%20Action%20Enforcement%20of%20U.S.%20WTO%20Rights%20in%20Large%20Civil%20Aircraft%20Dispute.pdf).

<sup>264</sup> USTR, Review of Action: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute. *Federal Register* (2020), Vol. 85, No. 124, 26 June, pp. 38488-38530. Viewed at: [https://ustr.gov/sites/default/files/enforcement/301Investigations/Review of Action Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute June 23 2020.pdf](https://ustr.gov/sites/default/files/enforcement/301Investigations/Review%20of%20Action%20Enforcement%20of%20U.S.%20WTO%20Rights%20in%20Large%20Civil%20Aircraft%20Dispute%20June%2023%202020.pdf).

<sup>265</sup> USTR, Notice of Modification of Section 301 Action: Enforcement of U.S. World Trade Organization (WTO) Rights in Large Civil Aircraft Dispute. *Federal Register* (2020), Vol. 85, No. 160, 18 August, pp. 50866-50874. Viewed at: <https://ustr.gov/sites/default/files/enforcement/301Investigations/Press/Releases/85FR50866.pdf>.

<sup>266</sup> USTR, Notice of Revision of Section 301 Action: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute. *Federal Register* (2021), Vol. 86, No. 3, 6 January, pp. 674-691. Viewed at: [https://ustr.gov/sites/default/files/enforcement/301Investigations/LCARevisionNotice\\_January\\_2021.pdf](https://ustr.gov/sites/default/files/enforcement/301Investigations/LCARevisionNotice_January_2021.pdf).

<sup>267</sup> USTR, Notice of Modification of Section 301 Action: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute. *Federal Register* (2021), Vol. 86, No. 46, 11 March, pp. 13961-13962. Viewed at: [https://ustr.gov/sites/default/files/enforcement/301Investigations/UK Notice of Modification Action Enforcement LCA Dispute.pdf](https://ustr.gov/sites/default/files/enforcement/301Investigations/UK_Note%20of%20Modification%20Action%20Enforcement%20LCA%20Dispute.pdf), and USTR, Notice of Modification of Section 301 Action: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute. *Federal Register* (2021), Vol. 86, No. 49, 16 March, pp. 14513-14514. Viewed at: [https://ustr.gov/sites/default/files/enforcement/301Investigations/Notice of Modification Action Enforcement LCA Dispute March 2021.pdf](https://ustr.gov/sites/default/files/enforcement/301Investigations/Notice%20of%20Modification%20Action%20Enforcement%20LCA%20Dispute%20March%202021.pdf).



parties agreed to: (i) the establishment of a Working Group on large civil aircraft, that will meet on request or at least every six months; (ii) the Working Group will seek to analyze and overcome any disagreements that may arise between the sides; (iii) each side intends to provide any financing to its LCA producer for the production or development of large civil aircraft on market terms; (iv) each side intends to provide any funding for R&D for large civil aircraft to its LCA producer through an open and transparent process and intends to make the results of fully government-funded R&D widely available, to the extent permitted by law, while engaging not to provide R&D funding or other support that is specific to its LCA producer in a way that would cause negative effects to the other side; (v) the two sides will continue discussions to further operationalize the agreement; (vi) each side intends to collaborate on jointly analyzing and addressing non-market practices of third parties that may harm their respective LCA industries, and will implement the understanding on cooperation on non-market economies annexed to the main Understanding through the Working Group; (vii) both sides endeavor to suspend application of its countermeasures for a period of five years, in the expectation that the other side will contribute to establishing a level playing field and to addressing shared challenges from non-market economies; and (viii) the two sides will continue to confer on addressing outstanding support measures.<sup>268</sup>

3.168. Following the understandings reached with the European Union and the United Kingdom, the USTR determined to suspend for a period of five years the action being taken in the Section 301 investigation involving the enforcement of U.S. WTO rights in the LCA dispute, beginning 4 July 2021, with respect to tariffs on goods of the United Kingdom, and 11 July 2021, with respect to tariffs on goods of EU member States.<sup>269</sup> Pursuant to Section 306 of the Trade Act, and in advance of the end of the five-year suspension period, the USTR will review implementation by the European Union and United Kingdom of the framework understandings.

#### 3.1.7.2.2.4 France's Digital Services Tax (DST)

3.169. On 10 July 2019, USTR initiated the investigation of France's DST pursuant to Section 302(b)(1)(A) of the Trade Act of 1974, as amended.<sup>270</sup> On 6 December 2019, USTR announced its determination that France's DST was unreasonable or discriminatory and burdened or restricted U.S. commerce. On 10 July 2020, the USTR determined to take action in the form of additional duties of 25% on products of France specified in 21 HTSUS subheadings, with an estimated trade value for calendar year 2019 of approximately USD 1.3 billion. The determination pointed out that France's 3% DST covered transactions of U.S. companies with estimated revenues of approximately USD 15 billion in 2020, with expected collections of some USD 450 million in taxes for activities during 2020, and over USD 500 million for activities during 2021. The additional duties would result in the collection of tariffs on goods of France at comparable, though somewhat lower, amounts. Pursuant to Section 305(a) of the Trade Act, the USTR determined to suspend the additional duties for up to 180 days (up to 6 January 2021) to allow additional time for bilateral and multilateral discussions that could lead to a satisfactory resolution of this matter.<sup>271</sup>

3.170. In January 2021, the USTR decided to suspend indefinitely the application of the duties, since Section 301 investigations of DSTs adopted or under consideration by Austria, Brazil, the Czech Republic, the European Union, India, Indonesia, Italy, Spain, Türkiye, and the United Kingdom involving similar DST measures, had been initiated and were ongoing.<sup>272</sup> In

<sup>268</sup> USTR (2021), *Understanding on a Cooperative Framework for Large Civil Aircraft*, June. Viewed at: <https://ustr.gov/sites/default/files/files/FINAL%20Understanding%20on%20Principles%20relating%20to%20LARGE%20Civil%20Aircraft.pdf>.

<sup>269</sup> USTR, Suspension of Action: Enforcement of U.S. WTO Rights in the Large Civil Aircraft Dispute. *Federal Register* (2021), Vol. 86, No. 129, 9 July, pp. 36313-36315. Viewed at: <https://ustr.gov/sites/default/files/enforcement/301Investigations/FRNLCA5yrSuspension.pdf>.

<sup>270</sup> See *Federal Register* (2019), Vol. 84, No. 136, 16 July, p. 34042.

<sup>271</sup> *Federal Register* (2020), Vol. 85, No. 137, 16 July, pp. 43292-43297. Viewed at: [https://ustr.gov/sites/default/files/enforcement/301Investigations/France\\_Digital\\_Services\\_Tax\\_Notice\\_July\\_2020.pdf](https://ustr.gov/sites/default/files/enforcement/301Investigations/France_Digital_Services_Tax_Notice_July_2020.pdf)

<sup>272</sup> *Federal Register* (2021), Vol. 86, No. 7, 12 January, pp. 2479-2480. Viewed at: [https://ustr.gov/sites/default/files/enforcement/301Investigations/Notice\\_of\\_Modification\\_France\\_DST\\_January\\_2021.pdf](https://ustr.gov/sites/default/files/enforcement/301Investigations/Notice_of_Modification_France_DST_January_2021.pdf).

October 2021, the USTR agreed to withdraw the Section 301 action as a result of the agreement between the United States and Austria, France, Italy, Spain, and the United Kingdom.<sup>273</sup>

### 3.1.7.2.2.5 DSTs in 10 economies

3.171. In June 2020, the USTR initiated Section 301 Investigations of DSTs adopted or under consideration by Austria, Brazil, the Czech Republic, the European Union, India, Indonesia, Italy, Spain, Türkiye, and the United Kingdom.<sup>274</sup> USTR considered that available evidence suggested the DSTs were expected to target large, U.S.-based tech companies.

3.172. In January 2021, USTR issued the reports of the different investigations, and notices of determination for Austria, India, Italy, Spain, Türkiye, and the United Kingdom. On 31 March 2021, USTR announced the termination of Section 301 DST-related Investigations of Brazil, the Czech Republic, the European Union, and Indonesia with no measures adopted. On the same date, proposed actions with respect to the investigations of Austria's DST, as well as India's, Italy's, Spain's, Türkiye's, and the United Kingdom's were issued. Notices of Action in the Section 301 Investigations of those six countries were issued on 7 June 2021. The action consisted in the application of 25% tariff surcharge on imports of a number of products, which varied according to the country; the amount affected was calculated to correspond to the annual amount of the tax on U.S. digital service providers (Table 3.22). The implementation of the surcharges was delayed until 29 November 2021 to leave time for negotiations.<sup>275</sup>

**Table 3.22 Proposed measures to counter the effect DST application, following Section 301 investigations**

Trading partner/coverage
<b>Austria</b> 23 tariff subheadings, with an estimated trade value in 2019 of USD 65 million. The estimated value of the DST payable by U.S.-based company groups to Austria is USD 45 million per year.
<b>France</b> 21 tariff subheadings, mostly make-up, soap, and handbags, with an estimated trade value for 2019 of USD 1.3 billion. France's 3% DST covers transactions of U.S. companies with estimated revenues of USD 15 billion in 2020, with expected collections of USD 450 million in taxes from U.S. companies in 2020, and over USD 500 million in 2021.
<b>India</b> 26 tariff subheadings, with an estimated trade value for 2019 of USD 119 million. The estimated value of the DST payable by U.S.-based company groups to India is USD 55 million per year.
<b>Italy</b> A total of 44 tariff subheadings, with an estimated trade value for calendar year 2019 of approximately USD 386 million. Estimates indicate that the value of the DST payable by U.S.-based company groups to Italy will be up to USD 140 million per year.
<b>Spain</b> 27 tariff subheadings, with an estimated trade value for 2019 of USD 324 million. The estimated value of the DST payable by U.S.-based company groups to Spain is some USD 155 million per year.
<b>Türkiye</b> 32 tariff subheadings, with an estimated trade value for 2019 of USD 310 million. The estimated value of the DST payable by U.S.-based company groups to Türkiye is USD 160 million per year.
<b>United Kingdom</b> 67 tariff subheadings, with an estimated trade value for 2019 of approximately USD 887 million. Estimates indicate that the value of the DST payable by U.S.-based company groups to the United Kingdom is USD 325 million per year. The level of trade covered by the action takes into account estimates of the tariffs to be collected on goods of the United Kingdom and of taxes to be assessed by the United Kingdom.

Note: The application of the measures (25% tariff surcharge) was suspended.

Source: *Federal Register* (201), Vol. 86, No. 107, 7 June, p. 30352.

3.173. The signature of the Joint Statement by the United States, Austria, France, Italy, Spain, and the United Kingdom, Regarding a Compromise on a Transitional Approach to Existing Unilateral Measures During the Interim Period Before Pillar 1 Is in Effect, on 21 October 2021, led to a

<sup>273</sup> U.S. Department of the Treasury (2021), "Joint Statement from the United States, Austria, France, Italy, Spain, and the United Kingdom, Regarding a Compromise on a Transitional Approach to Existing Unilateral Measures During the Interim Period Before Pillar 1 Is in Effect", 21 October. Viewed at: <https://home.treasury.gov/news/press-releases/jy0419>.

<sup>274</sup> *Federal Register* (2020), Vol. 85, No. 109, 5 June, pp. 34709-34711. Viewed at: [https://ustr.gov/sites/default/files/enforcement/301Investigations/DST\\_Initiation\\_Notice\\_June\\_2020.pdf](https://ustr.gov/sites/default/files/enforcement/301Investigations/DST_Initiation_Notice_June_2020.pdf).

<sup>275</sup> The documents for the different investigations, including *Federal Register* Notices and the transcripts of virtual hearings, may be viewed at: <https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-digital-services-taxes>.



suspension of the measures.<sup>276</sup> The Joint Statement followed the agreement reached between 136 countries regarding digital taxation under the auspices of the OECD. On 8 October 2021, the United States, Austria, France, Italy, Spain, and the United Kingdom joined other members of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (IF) in reaching political agreement on the Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy.<sup>277</sup> The Two-Pillar Solution is expected to ensure that multinational enterprises (MNEs) are subject to a minimum tax rate of 15%, and is expected to eliminate double taxation. A Detailed Implementation Plan was agreed, with deadlines to complete work on the rules and instruments needed to bring the Two-Pillar Solution into effect by 2023.<sup>278</sup> The Implementation of Pillar 1 will lead to a Multilateral Convention (MLC), resulting in the allocation of tax to the jurisdiction where it is generated, and the removal of all DSTs and other relevant similar measures on all companies. Under the Joint Statement, no newly enacted DSTs or other similar measures will be imposed on any company from 8 October 2021 and until the earlier of 31 December 2023 or the coming into force of the MLC.<sup>279</sup> In line with the IF, Austria, France, Italy, Spain, and the United Kingdom agreed that as part of Pillar 1, they will withdraw all unilateral measures on all companies and refrain from imposing new ones. The Joint Statement contains a transitional approach to existing unilateral measures while implementing Pillar 1, the Unilateral Measures Compromise, under which Austria, France, Italy, Spain, and the United Kingdom are not required to withdraw their unilateral measures until Pillar 1 is in place. As part of the Unilateral Measures Compromise, the United States agreed to terminate proposed trade actions and commit not to impose further trade actions against Austria, France, Italy, Spain, and the United Kingdom with respect to their existing DST until the end of the Interim Period.<sup>280</sup>

3.174. The United States also completed similar agreements with India and with Türkiye, the other two countries subject to the June 2021 determination on trade actions. As a result, these duties also were not put into effect.

#### 3.1.7.2.2.6 Viet Nam currency

3.175. On 2 October 2020, the USTR initiated an investigation of Viet Nam's acts, policies, and practices related to the valuation of its currency pursuant to Section 302(b)(1)(A) of the Trade Act of 1974. In the notice of initiation, USTR explained that the State Bank of Viet Nam (SBV)'s active intervention in the exchange market had contributed to the Vietnamese dong's undervaluation in 2019.<sup>281</sup> Consultations were held in December 2020 and a determination was published in the

<sup>276</sup> U.S. Department of the Treasury (2021), "Joint Statement from the United States, Austria, France, Italy, Spain, and the United Kingdom, Regarding a Compromise on a Transitional Approach to Existing Unilateral Measures During the Interim Period Before Pillar 1 Is in Effect", 21 October. Viewed at: <https://home.treasury.gov/news/press-releases/jy0419>.

<sup>277</sup> OECD (2021), *Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy*, October. Viewed at: <https://www.oecd.org/tax/beps/brochure-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf>.

<sup>278</sup> Pillar 1 includes the removal and standstill of DST and other similar measures. It aims to ensure a fairer distribution of profits and taxing rights among countries with respect to the largest MNEs; 25% of the residual profit (profit in excess of 10% of revenue) of MNEs with global turnover above EUR 20 billion and profitability above 10% will be allocated to market jurisdictions where the revenue is generated (Amount A). Pillar 2 consists of: (i) two domestic rules, jointly called the Global Anti-Base Erosion Rules (GloBE) rules; and (ii) a Subject to Tax Rule (STTR) that allows source jurisdictions to impose limited source taxation on certain related party payments subject to tax below a minimum rate. The goal of Pillar 2 is to put a floor on tax competition through the introduction of a global minimum corporate tax of 15% on a jurisdictional basis. The GloBE rules will apply to MNEs that meet the EUR 750 million threshold, and include: (i) an Income Inclusion Rule (IIR), which imposes a minimum tax rate; and (ii) an Undertaxed Payment Rule (UTPR), which requires an equivalent adjustment if the low tax income of a country is not subject to tax under an IIR. The STTR aims to prevent companies from avoiding tax on their profit by making deductible payments that benefit from reduced withholding tax rates under tax treaties. The minimum rate for the STTR will be 9%.

<sup>279</sup> OECD (2021), *Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy*, October. Viewed at: <https://www.oecd.org/tax/beps/brochure-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf>.

<sup>280</sup> U.S. Department of the Treasury, "Joint Statement from the United States, Austria, France, Italy, Spain, and the United Kingdom, Regarding a Compromise on a Transitional Approach to Existing Unilateral Measures During the Interim Period Before Pillar 1 Is in Effect", 21 October. Viewed at: <https://home.treasury.gov/news/press-releases/jy0419>.

<sup>281</sup> USTR, Initiation of Section 301 Investigation: Viet Nam's Acts, Policies, and Practices Related to Currency Valuation. *Federal Register* (2020), Vol. 85, No. 196, 8 October, pp. 63637-63638. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-10-08/pdf/2020-22271.pdf>.

Federal Register on 22 January 2021.<sup>282</sup> The determination was based on a report prepared by USTR in consultation with the Department of the Treasury.<sup>283</sup> The USTR determined that Viet Nam's acts, policies, and practices related to currency valuation, including excessive foreign exchange market interventions and other related actions, taken in their totality, were unreasonable and burdened or restricted U.S. commerce, and thus were actionable under Section 301(b).

3.176. The Treasury and the SBV issued a joint statement on 19 July 2021 announcing that they had reached an agreement. Viet Nam agreed to avoid manipulating its exchange rate and refrain from any competitive devaluation of the Vietnamese dong. Viet Nam stated that the SBV was making ongoing efforts to further modernize and make more transparent its monetary policy and exchange rate framework and would continue to improve exchange rate flexibility over time and would provide information to the Treasury on the SBV's activities in the foreign exchange market. The USTR found that the Treasury-SBV agreement provided a satisfactory resolution of the matter subject to investigation and determined to take no action in this investigation, and stated that, in coordination with Treasury, USTR will monitor Viet Nam's implementation of its commitments under the agreement and associated measures.<sup>284</sup>

### 3.1.7.2.2.7 Viet Nam timber

3.177. On 2 October 2020, the USTR initiated a Section 301 investigation to examine whether Viet Nam's acts, policies, and practices related to the import and use of illegal timber are unreasonable or discriminatory and burden or restrict U.S. commerce. In its initiation notice, the USTR indicated that the investigation would initially focus on the following issues: (i) Vietnamese imports of illegal timber may be inconsistent with Viet Nam's domestic laws, the laws of exporting countries, or international rules; for species listed under the CITES imported from Cambodia or the Democratic Republic of the Congo, Vietnamese authorities are not requiring the permits or certificates that should be needed to enter or re-export from Viet Nam; (ii) Viet Nam at least tacitly may support the import and use of illegal timber; and (iii) other acts, policies, and practices of Viet Nam relating to the import and use of illegal timber.<sup>285</sup>

3.178. On 1 October 2021, the United States and Viet Nam signed an agreement to resolve the Section 301 timber investigation.<sup>286</sup> The Agreement contains multiple commitments by Viet Nam on issues related to illegal timber.<sup>287</sup> Viet Nam agreed to request, within three months of entry into force of the Agreement, that timber processing, importing, transporting, exporting, and reselling enterprises, and associations and their members, commit to not participate in auctions of confiscated timber. Viet Nam agreed to eliminate, within nine months of entry into force of the Agreement, any financial incentives to import, process, or export timber that is not plantation-grown in Viet Nam or that is a product of illegal logging or timber trade. Also, Viet Nam agreed, within 18 months of entry into force of the Agreement, to revise its laws to prohibit any person engaged in, or who has engaged in, the processing, importing, transporting, exporting, or reselling of timber or timber products from

<sup>282</sup> USTR, Notice of Determination Pursuant to Section 301: Viet Nam's Acts, Policies, and Practices Related to Currency Valuation. *Federal Register* (2021), Vol. 86, No. 13, 22 January, pp. 6732-6733. Viewed at: <https://ustr.gov/sites/default/files/files/Press/Releases/VietnamCurrencyFRN.pdf>.

<sup>283</sup> USTR (2021), *Section 301 Investigation: Report on Vietnam's Acts, Policies, and Practices Related to Currency Valuation*, 15 January. Viewed at: [https://ustr.gov/sites/default/files/enforcement/301Investigations/Vietnam\\_Currency\\_301\\_Actionability\\_Report\\_Jan\\_15\\_21.pdf](https://ustr.gov/sites/default/files/enforcement/301Investigations/Vietnam_Currency_301_Actionability_Report_Jan_15_21.pdf).

<sup>284</sup> USTR, Determination on Action and Ongoing Monitoring: Viet Nam's Acts, Policies, and Practices Related to Currency Valuation. *Federal Register* (2021), Vol. 86, No. 142, 28 July, pp. 40675-40676. Viewed at: [https://ustr.gov/sites/default/files/files/Press/Releases/Vietnam\\_Currency\\_301\\_Notice\\_FRN.pdf](https://ustr.gov/sites/default/files/files/Press/Releases/Vietnam_Currency_301_Notice_FRN.pdf).

<sup>285</sup> USTR, Initiation of Section 301 Investigation: Viet Nam's Acts, Policies, and Practices Related to the Import and Use of Illegal Timber. *Federal Register* (2020), Vol. 85, No. 196, 8 October, pp. 63639-63640. Viewed at: [https://ustr.gov/sites/default/files/enforcement/301Investigations/Vietnam\\_Timber\\_Initiation\\_Notice\\_October\\_2020.pdf](https://ustr.gov/sites/default/files/enforcement/301Investigations/Vietnam_Timber_Initiation_Notice_October_2020.pdf).

<sup>286</sup> USTR (2021), *Agreement between the Government of the Socialist Republic of Viet Nam and the Government of the United States of America on Illegal Logging and Timber Trade*, 1 October. Viewed at: [https://ustr.gov/sites/default/files/files/Vietnam\\_Timber/VN\\_Timber\\_Agreement\\_Text\\_\(9-30-21\).pdf](https://ustr.gov/sites/default/files/files/Vietnam_Timber/VN_Timber_Agreement_Text_(9-30-21).pdf).

<sup>287</sup> USTR (2021), "USTR Announces Agreement Between the United States and Viet Nam to Resolve Timber Section 301 Investigation", 1 October. Viewed at: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/october/ustr-announces-agreement-between-united-states-and-vietnam-resolve-timber-section-301-investigation>.

participating in any auctions of confiscated timber.<sup>288</sup> The USTR found that the Agreement satisfactorily resolved the matter, and determined that the investigated acts, policies, and practices were not actionable in light of the Agreement and that no action was appropriate at this time.<sup>289</sup>

## 3.2 Measures Directly Affecting Exports

### 3.2.1 Customs procedures and requirements

3.179. CBP is responsible for ensuring that goods leaving the United States do so in conformity with all applicable laws, regulations, and rules governing exports. It may act on behalf of other government agencies in the enforcement of rules. All relevant export information is filed prior to the departure of cargo in the Automated Export System (AES) or AESDirect, a portal within the single-window Automated Commercial Environment (ACE). Penalties may apply for the filing of incorrect export data, e.g. regarding the place and estimated date of shipment.<sup>290</sup> Paper submissions are no longer accepted. Foreign entities may not register for the filing of electronic information through ACE; they must choose and authorize a U.S. agent to file information on their behalf.

3.180. The filing of data for shipments valued at less than USD 2,500 is not necessary unless a license or license exemption is required for the export.<sup>291</sup> It is the duty of the exporter to determine whether an export license is required due to the nature of the product, its destination, or possible end uses. Applications for license or license exemption, if needed, are submitted electronically to the Bureau of Industry and Security (BIS) at USDOC for dual-use and less sensitive military items. The application is reviewed by the BIS, who forwards it to other relevant agencies (i.e. Departments of State, Defense, and Energy) for review and recommendations.

### 3.2.2 Taxes, charges, and levies

3.181. The Constitution (Article I, Section 9) bans the application of export taxes, although it allows fees to be charged for specific services rendered (Article I, Section 10). Charges may thus be applied, for example, for inspection and certification of agricultural exports.

### 3.2.3 Export prohibitions, restrictions, and licensing

3.182. Export controls are guided by national security and the pursuit of foreign policy objectives. The United States currently restricts exports of certain goods, including defense articles, dual-use (commercial and military) goods, and nuclear materials and technology, or to deter the proliferation of nuclear, chemical, and biological weapons or the missile technology used to deliver them. In many instances, the United States cooperates with other countries to control exports of such goods and technologies. The Wassenaar Arrangement, the Missile Technology Control Regime, the Treaty on the Non-Proliferation of Nuclear Weapons and the Exporters Committee (Zangger Committee), the Australia Group, and the Nuclear Suppliers Group constitute the main elements of this system. Export controls also apply to countries subject to economic sanctions by the United States.

3.183. The Export Control Reform Act of 2018 (P.L. 115-232) (ECRA) is the principal implementing statute for export controls on dual-use and less sensitive military items; it is administered by the BIS. The BIS also enforces U.S. anti-boycott legislation. Export controls on nuclear materials, facilities and equipment for civilian purposes are administered by the U.S. Nuclear Regulatory Commission in accordance with the Atomic Energy Act of 1954 (P.L. 83-703).<sup>292</sup> The Arms Export Control Act of 1976 (P.L. 94-329) provides the President with the statutory authority to control

<sup>288</sup> USTR, *Agreement Between the Government of the Socialist Republic of Viet Nam and the Government of the United States of America on Illegal Logging and Timber Trade*. Viewed at: [https://ustr.gov/sites/default/files/files/Vietnam%20Timber/VN%20Timber%20Agreement%20Text%20\(9-30-21\).pdf](https://ustr.gov/sites/default/files/files/Vietnam%20Timber/VN%20Timber%20Agreement%20Text%20(9-30-21).pdf).

<sup>289</sup> USTR, *Determinations and Ongoing Monitoring: Investigation Concerning Viet Nam's Acts, Policies and Practices Related to Illegal Timber*. *Federal Register* (2021), Vol. 86, No. 191, 6 October, pp. 55681-55682. Viewed at: <https://ustr.gov/sites/default/files/files/Notices/2021-21809.pdf>.

<sup>290</sup> The CBP allows the actual date of export to deviate by up to four days past the date indicated in the electronic submission. The submission will need to be updated if longer delays are expected.

<sup>291</sup> Exports of items that would otherwise require a license may be authorized if the exporter certifies that the terms, provisions, and conditions of the transaction meet license exception eligibility criteria.

<sup>292</sup> The BIS licenses "outside the core" civilian power plant equipment, and the Department of Energy authorizes the export of nuclear technology.

exports of defense articles and services. Short supply controls may be maintained under the International Emergency Economic Powers Act (IEEPA) or other regulatory authority. Economic sanctions or embargoes may be imposed by the President pursuant to the IEEPA or by specific acts of Congress. Export controls are administered and enforced by the Office of Foreign Assets Control and the State Department (Table 3.23).

**Table 3.23 Items subject to export controls, including licensing**

Product category	Responsible agencies	Legal reference
Dual-use items, certain munitions and military items, and items controlled for short supply	USDOC, BIS	ECRA, EAA, IEEPA
Defense services and defense articles	Department of State, Directorate of Defense Trade Controls	22 C.F.R. Parts 120-130
International transfers of defense-related goods, services and technologies	Defense Technology Security Administration	
Controlled substances and listed chemicals used in the production of controlled substances	Drug Enforcement Administration, Office of Diversion Control, Import-Export Unit (chemicals and controlled substances) Food and Drug Administration, Import/Export (drugs and biologics) Food and Drug Administration, International Affairs (investigational drugs permitted)	21 C.F.R. Parts 1311-1313 21 U.S.C. 301 et seq. 21 C.F.R. 312.1106
Fish and wildlife controls; endangered species	Department of the Interior, U.S. Fish and Wildlife Service	50 C.F.R. 17.21, 17.22, 17.31, 17.32
Foreign assets and transaction controls	Department of Treasury, Office of Foreign Assets Control, Licensing	31 C.F.R. Parts 500-590
Medical devices	Food and Drug Administration, Office of Compliance	21 U.S.C. et seq.
Natural gas and electric power	Department of Energy, Office of Fuels Programs	10 C.F.R. 205.300-205.379, 590
Nuclear materials and equipment	Nuclear Regulatory Commission, Office of International Programs	10 C.F.R. Part 110
Nuclear technology; technical data for nuclear weapons, and special nuclear materials	Department of Energy, Office of Nonproliferation and Arms Control	10 C.F.R. Part 810
Ocean freight forwarders	Federal Maritime Commission, Office of Freight Forwarders	46 C.F.R. Part 510
Patent filing data sent abroad	Department of Commerce, Patent and Trademark Office, Licensing and Review	35 U.S.C. 184 et seq. 37 C.F.R. Part 5
U.S. flagged or U.S. manufactured vessels over 1,000 gross tons	U.S. Maritime Administration, Division of Vessel Transfer and Disposal	46 C.F.R. Part 221
Hazardous waste	Environmental Protection Agency, Office of Resource Conservation and Recovery	40 C.F.R. Part 262, subpart E; 263.20; 263.22(d)
Certain petroleum products produced or derived from the Naval Petroleum Reserves	USDOC, BIS	15 C.F.R. Part 754
Unprocessed western red cedar	USDOC, BIS	15 C.F.R. Part 754
Horses exported by sea intended for slaughter	USDOC, BIS	15 C.F.R. Part 754
Export transactions involving individuals on the list of Specially Designated Nationals and Blocked Persons	Department of the Treasury, Office of Foreign Assets Control	Not available

Source: WTO Secretariat, based on information contained in Supplement No. 3 to Part 730 of the Export Administration Regulations and from the BIS; and information provided by the authorities.  
Viewed at: <https://www.bis.doc.gov/index.php/about-bis/resource-links>.

3.184. The BIS administers the laws, regulations, and policies governing exports and re-exports of goods, services, software, and technologies that fall under the jurisdiction of the Export Administration Regulations (EAR). It coordinates with other domestic agencies or those of foreign governments regarding export control, non-proliferation of weapons of mass destruction, and strategic trade issues. The Export Administration (EA) of the BIS reviews license applications for exports, re-exports, or transfers, including transfers of technology covered by the EAR to foreign nationals in the United States. License denials may be appealed. Foreign availability, i.e. that an item may be available from a non-U.S. source in sufficient quantity and comparable quality to render a U.S. restriction ineffective, may be an argument favoring the reversal of a denial.

3.185. All items subject to the EAR have either been given an Export Control Classification Number (ECCN) or been designated EAR99. Controlled dual-use and certain munitions goods are listed on the Commerce Control List (CCL) together with their ECCNs, and any item not on the CCL (i.e. EAR99) may be exported or re-exported without a license unless the destination is an embargoed or sanctioned country, a party of concern, or in support of a prohibited end-use. Antiterrorism controls prohibit exports of nearly all items on the CCL to four countries (Democratic People's Republic of Korea, Cuba, the Islamic Republic of Iran, and Syria). Regarding parties of

concern, the BIS maintains a Denied Persons List, an Unverified List, and an Entity List.<sup>293</sup> Exports, re-exports, and in-country transfers may be authorized under License Exception Strategic Trade Authorization (STA) to destinations considered low risk for non-authorized or impermissible uses (43 countries as of April 2022).

3.186. The Directorate of Defense Trade Controls (DDTC) at the U.S. Department of State regulates exports and temporary imports of defense articles and defense services per the International Traffic in Arms Regulations (ITAR). The defense articles and defense services regulated by DDTC are described in the U.S. Munitions List (USML) and may require a license prior to export or temporary import into the United States. The ITAR provides many exemptions that may enable exporters and temporary importers to conduct a transfer without obtaining a license from DDTC. Such exemptions enable transfers to Australia, Japan, NATO countries, Sweden, and others. Exports of defense articles and defense services described in the USML are subject to a policy of denial for eight countries. An additional 16 countries are subject to a policy of denial with certain exceptions. Such policies of denial can result from United Nations Security Council sanctions or unilateral sanctions. Persons engaged in the United States in the business of manufacturing, exporting, temporarily importing defense articles, or furnishing defense services described in the USML must register with the DDTC and pay an annual fee.

3.187. Reforms to reduce the complexity of export controls were launched by Presidential initiative in 2009. Many of the initial aims, including the establishment of a single control list for dual-use goods and munitions (i.e. merging the CCL and the USML), a single licensing agency, and a single export control enforcement agency have not been realized. However, a single electronic platform facilitates the submission and processing of licenses, and an Export Enforcement Coordination Center has been operational since 2012. The dual-use and munitions lists have been rationalized with the transfer of less sensitive items from the USML to the CCL. Revisions of 18 of the 21 categories in the USML were completed in 2016. The migration of remaining items (Category I, II, and III items) was completed in January 2020.<sup>294</sup>

3.188. According to BIS data analyzed by the Congressional Research Service, about 83% of U.S. exports (by value) were subject to the EAR in 2019, including 13.7% covered by the CCL and thus requiring export licenses to certain destinations. However, as exports to many destinations are exempt, and many transactions are eligible for license exemption, no more than 0.4% of U.S. exports (by value) involved the procurement of a license. The BIS reviewed nearly 33,000 license applications in that year and denied approximately 1.1% of them. The low level of denied applications may be partly explained by detailed information available to exporters about end uses and end users likely to be denied, thus discouraging the submission of non-conforming applications.<sup>295</sup>

3.189. The ECRA mandates an interagency process, led by the Department of Commerce, to identify emerging and foundational technologies and subsequently to establish a licensing policy to control their export. Work is ongoing. The BIS introduced additional controls on the exportation of certain technologies, including software, during the period under review. The ECRA also requires a review of the licensing procedures for exports, re-exports, and in-country transfers connected with countries that are subject to a comprehensive U.S. arms embargo.

3.190. The export control regime was subject to numerous modifications in the period under review. These reflect, for example, changes in the international export controls of the United States and its partners regarding munitions, dual-use goods and technologies, and missile technology; national security concerns; frequent changes in the Entity List and Unverified List of the BIS; the creation of a Military End User (MEU) List; and modifications of sanctions and embargoes towards specific countries or entities (Table A3.5). Notably, new controls affect the export of U.S. origin items to China (or Hong Kong, China) and to Chinese-owned companies, such as Huawei and its affiliates.

<sup>293</sup> The lists identify persons and entities denied export privileges and with whom dealings are prohibited (Denied Persons List), end users the BIS has been unable to verify in prior transactions (Unverified List), and parties whose presence in a transaction may trigger a supplementary license requirement (Entity List).

<sup>294</sup> *Federal Register* (2020), Vol. 85, No. 15, 23 January, p. 4136.

<sup>295</sup> CRS, *The U.S. Export Control System and the Export Control Reform Act of 2018*, R46814, updated 7 June. Viewed at: [https://www.everycrsreport.com/files/2021-06-07\\_R46814\\_4ada880cd0a8b2b2822d942b4114828c13908820.pdf](https://www.everycrsreport.com/files/2021-06-07_R46814_4ada880cd0a8b2b2822d942b4114828c13908820.pdf).



Economic sanctions were revised and tightened (e.g. the Russian Federation, the Bolivarian Republic of Venezuela, Cuba, and Cambodia), or reintroduced (Myanmar).

3.191. In April 2020, the Federal Emergency Management Agency (FEMA) issued a temporary rule affecting exports of certain scarce critical health and medical resources.<sup>296</sup> Due to the rapid spread of COVID-19, explicit FEMA approval was required for the export of five types of medical resources, including personal protective equipment (i.e. respirators, masks, and gloves). The product coverage was modified in August 2020, when certain respirators were eliminated from the list, and in December 2020, when syringes and hypodermic needles were added.<sup>297</sup> The temporary measures remained in place until 30 June 2021, when they lapsed. The temporary export restrictions were notified to the WTO.<sup>298</sup>

### 3.2.4 Export support and promotion

3.192. Located within the International Trade Administration of the Department of Commerce, the United States & Foreign Commercial Service (US&FCS) is the trade and investment promotion arm of the United States. Its mission is to promote exports of goods and services from the United States, particularly by SMEs; to advance and protect U.S. business interests abroad; and to attract and retain investment in the U.S. economy.

3.193. Assistance to boost exports of SMEs is provided, *inter alia*, (for a fee) in the form of online and customized market research, matchmaking services to introduce U.S. exporters to qualified buyers and distributors, due diligence on foreign parties, in-country promotion of products and services, and support to participation in selected trade fairs at home or overseas. Individual counselling and advocacy, as well as training (e.g. on required documentation and export controls), are also provided without a fee. The US&FCS operates a network of international trade specialists through offices at 106 domestic Export Assistance Centers, as well as staff at U.S. Embassies and Consulates in 117 cities in more than 75 overseas markets.

3.194. A dedicated website ([www.trade.gov/export-solutions](http://www.trade.gov/export-solutions)) has been set up to provide training for established and prospective exporters on specific subjects and tools such as learning how to export, finding buyers and partners, researching foreign markets, resolving export problems and trade barriers, navigating shipping and logistics, protecting intellectual property, negotiating an export sale, providing tariff information, supplying country commercial guides, understanding internationally recognized rules (Incoterms), and classifying products using the Harmonized System. U.S. restrictions on certain exports, re-exports, and transfers may be identified using a Consolidated Screening List search engine. The ongoing pandemic has accentuated the focus on virtual export promotion services. The US&FCS charges fees for the use of its services, some of which may also be accessed by non-U.S. enterprises.

3.195. The Export Enhancement Act of 1992 created the Trade Promotion Coordinating Committee (TPCC), an interagency committee chaired by the Secretary of Commerce, to provide a unifying framework for export promotion and export-financing activities and the planning of such programs. It brings together 20 federal agencies with export-related programs. In principle, the TPCC is required to publish an annual National Export Strategy document. However, the last such report was issued in December 2016. The TPCC also coordinates with state trade promotion agencies to enhance overall effectiveness of export promotion strategies, develop best practices, and better assist small businesses.

3.196. The President's Export Council (PEC) is an advisory body created in 1973 to advise the President on U.S. export expansion. The PEC reports to the President through the Secretary of Commerce. It has not met since 2016. Although the current Administration renewed the PEC, which

<sup>296</sup> FEMA, *Prioritization and Allocation of Certain Scarce or Threatened Health and Medical Resources for Domestic Use*, *Federal Register* (2020), Vol. 85, No. 70, 10 April, p. 20195. Exemptions were notified on 21 April 2020 (*Federal Register* (2020), Vol. 85, No. 77, 21 April, p. 22021).

<sup>297</sup> *Federal Register* (2020), Vol. 85, No. 154, 10 August, p. 48113; and *Federal Register* (2020), Vol. 85, No. 251, 31 December, p. 86835.

<sup>298</sup> WTO documents G/MA/QR/N/USA/4/Add.1, 14 May 2020; G/MA/QR/N/USA/4/Add.2, 1 September 2020; G/MA/QR/N/USA/5, 6 October 2020; G/MA/QR/N/USA/5/Add.1, 1 February 2021; and G/MA/QR/N/USA/5/Add.2, 16 September 2021.



now has an active charter for the 2021-23 term, it has not yet released its plans for the PEC going forward.

3.197. The U.S. Trade and Development Agency (USTDA) was created in 1992 as an independent agency to advance economic development and U.S. commercial interests in developing and middle-income countries. The agency funds grant-based project preparation and partnership building activities that develop sustainable infrastructure and foster economic growth in partner countries. USTDA places particular emphasis on vital economic sectors where U.S. companies are competitive, including clean energy, information and communications technology, transportation, healthcare infrastructure, and agri-business. In FY2021, USTDA identified more than USD 2.3 billion in U.S. exports to emerging economies as a result of programming that facilitated quality infrastructure development.<sup>299</sup>

#### **3.2.4.1 Drawback regime**

3.198. The duty drawback procedures laid out in Section 906 of the TFTEA (P.L. 114-125) were deployed in ACE on 24 February 2018. Drawback claims could still be filed manually at four CBP drawback offices until 23 February 2019. The data elements provided by the claimant in ACE are verified and validated, and an automated message confirms that a claim has been accepted. An automated message will also be generated if one or more data elements are rejected by the CBP. Rejected claims may be corrected and resubmitted within the prescribed amendment period.

3.199. While the electronic filing of drawback claims is now mandatory, the TFTEA "Modernized Drawback" also implies standardized and extended timelines for the filing of drawback claims, enhanced record retention requirements, a simplified merchandise substitution standard, and broader legal liability for false claims. Certificates of Delivery are no longer required to demonstrate the transfer of merchandise from the importer to the manufacturer or claimant. The final rule implementing "Modernized Drawback" was published in the Federal Register in December 2018.<sup>300</sup>

3.200. The deadline for filing of duty drawback is five years from the date of importation of the designated merchandise, or three years from the date of exportation for certain claims filed pursuant 19 U.S.C. 1313(d). The drawback normally amounts to 99% of customs duties, certain excise taxes, and fees such as the merchandise processing fee and the harbor maintenance tax collected at importation. Section 232 duties are not eligible for drawback.

### **3.2.5 Export finance, insurance, and guarantees**

#### **3.2.5.1 Export-Import Bank (EXIM)**

3.201. EXIM, a wholly owned government corporation, is the official export credit agency of the United States. An independent agency of the Federal Government, EXIM assists exporters unable to access export financing from private sources with direct loans, loan guarantees, export credit insurance, and working capital loan guarantees. Private sector lenders and insurance brokers usually act as partners in EXIM transactions. EXIM ensures, as necessary, that its financial products are provided on competitive terms relative to the export credit agencies of other countries. Although EXIM acts independently of the Government in its daily business, EXIM's existence is periodically reauthorized by Congress, which also caps its lending authority. Moreover, its Board members are appointed by the President of the United States, with the advice and consent of the Senate.

3.202. While EXIM assumes credit and country risks that private actors are unable or unwilling to undertake, all of its transactions carry a statutory requirement to demonstrate a reasonable assurance of repayment (12 U.S.C. 635(b)(1)(B)). Risks are monitored closely, and EXIM's default rate has been consistently below the statutory threshold. Support to export transactions involving Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, and Syria is legally

<sup>299</sup> USTDA (2021), "USTDA Generates Record Results for U.S. Exporters", 4 October. Viewed at: <https://ustda.gov/ustda-generates-record-results-for-u-s-exporters/>.

<sup>300</sup> *Federal Register* (2018), Vol. 83, No. 242, 18 December, p. 64942. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2018-12-18/pdf/2018-26793.pdf>.

prohibited, and EXIM's Country Limitation Schedule includes a number of other countries where it avoids or restricts its exposure to commercial and/or political risks.<sup>301</sup>

3.203. At the end of September 2021, EXIM's exposures totaled USD 41,343.6 million towards 163 countries. Individual countries with the highest exposures were Mozambique, the Kingdom of Saudi Arabia, Mexico, Türkiye, and China. Aircraft (38%), oil and gas (26%), and manufacturing (19%) constituted the major part of the global sectoral exposure. EXIM derives income from commitment fees, exposure fees and interest, and an annual appropriation that covers administrative costs. It is considered a self-financing agency. Beyond the build-up of prudent reserves, EXIM hands over excess revenues to the Treasury. Some USD 9 billion (net) has been returned in this manner since 1992. The most profitable business for EXIM has traditionally been long-term project finance. However, domestic political differences have recently impeded EXIM's engagement in such projects for sustained periods. In December 2015, legislation came into effect that reauthorized EXIM until 30 September 2019 with a lending authority capped at USD 135 billion, of which no less than 30% is targeted towards small business lending. Even so, while EXIM staff were authorized to approve small loans and certain medium-term loans, all medium- and long-term authorizations exceeding USD 10 million were being held up, as the five-member Board of Directors lacked a quorum to take such decisions.<sup>302</sup>

3.204. The impasse was finally resolved in May 2019, when the Senate confirmed the President's nominations for Chairperson and two Members of the Board of Directors.<sup>303</sup> Furthermore, legislation extending EXIM's authority until 31 December 2026, the longest reauthorization period in its 85-year history, was signed into law in December 2019.<sup>304</sup> Removing the legal and operational uncertainties and impediments, EXIM resumed the financing of large projects. It approved a direct loan to finance an integrated liquefied natural gas project in Mozambique in September 2019. The transaction (up to USD 5 billion) is its largest ever (Table 3.24). Nevertheless, the current level of total exposures is more than USD 90 billion below the statutory limit, maintained at USD 135 billion.

**Table 3.24 EXIM authorizations, FY2017-21**

	2017		2018		2019		2020		2021	
	No.	USD mil.	No.	USD mil.	No.	USD mil.	No.	USD mil.	No.	USD mil.
Loans	12	5.6	0	0	2	5,008.8	1	9.5	1	69.8
Long-term	0	0	0	0	1	5,000.0	0	0	1	69.8
Medium-term	0	0	0	0	1	8.8	1	9.5	0	0
Working capital	12	5.6	0	0	0	0	0	0	0	0
Guarantees	221	961.1	197	879.0	205	927.7	194	2,879.8	205	
Long-term	1	2.6	0	0	0	0	10	1,201.4	15	2,116.1
Medium-term	25	119.5	32	193.9	37	239.8	53	221.1	66	176.8
Working capital	195	839.0	165	685.1	168	687.9	131	1,457.3	124	4,601.5
Credit Insurance	2,228	2,464.3	2,192	2,444.2	2,141	2,277.7	1,878	2,505.9	1,868	2,273.2
Short-term	2,186	2,414.3	2,117	2,346.4	2,065	2,191.7	1,848	2,450.2	1,848	2,232.2
Medium-term	42	50.0	75	97.8	76	86.0	30	55.7	20	41.0

Source: EXIM, *Annual Reports*, 2017, 2018, 2019, 2020, and 2021. Viewed at: <https://www.exim.gov/news/reports/annual-reports>.

3.205. EXIM operates under Congressional mandates in accordance with its Charter. There are currently four such mandates addressing small businesses, Sub-Saharan Africa, environmentally beneficial goods and services, and China and transformational exports. Reauthorizing EXIM, Congress also mandated the establishment of an Advisory Committee to advise the Bank on policies and programs generally as well as a Sub-Saharan Advisory Committee specifically for policies and programs relating to that region.

3.206. The Small Business Mandate states that a minimum of 30% of EXIM's aggregate loan, guarantee, and insurance authority should be made available to finance exports of small

<sup>301</sup> The Country Limitation Schedule effective since 14 October 2021 lists 23 countries for which EXIM assumes no political or commercial risks, and other countries where long- and mid-term exposures are limited. Viewed at: <https://www.exim.gov/sites/default/files/tools/countrylimitationschedule/clsoct2021.pdf>.

<sup>302</sup> EXIM staff have been authorized to approve transactions up to USD 25 million since May 2019. In addition, a temporary Board with voting authority may now be formed in situations where there is an insufficient number of confirmed EXIM Board members.

<sup>303</sup> The Secretary of Commerce and the USTR continued to serve *ex officio* as non-voting Board members.

<sup>304</sup> The Further Consolidated Appropriations Act, 2020 (P.L. 116-94), Division I, Title IV.

U.S. businesses.<sup>305</sup> Almost 89% of EXIM's authorizations were for small businesses in FY2019 and FY2020, and nearly USD 1.6 billion of the USD 2.5 billion total authorized in export credit insurance policies was for small businesses in FY2020. These figures include USD 335.4 million approved for minority- and women-owned businesses. In FY2021, EXIM utilized 28.2% of its aggregate loan, guarantee, and insurance authorizations (USD 1,627.7 million) to assist small businesses.

3.207. The Sub-Saharan Mandate encourages EXIM to expand its financial commitments in the region consistent with the credit standards otherwise required by law. According to EXIM, its support has become increasingly critical for U.S. enterprises bidding on large infrastructure and other projects in Sub-Saharan Africa. Discussions indicate a range of export opportunities, e.g. in mining, refining, agriculture, telecommunications, electricity, aviation, petrochemicals, and potable water.

3.208. In 1992, Congress required EXIM to adopt procedures and guidelines to assess the environmental impact of projects it is financing. EXIM authorized USD 107.5 million in FY2019, USD 92.6 million in FY2020, and USD 71.9 million in FY2021 to assist U.S. exports of environmentally beneficial goods and services. Included in its portfolio are exports of renewable-energy equipment, wastewater-treatment projects, air-pollution technologies, and waste-management services. Most of these supported exports are associated with small enterprises.

3.209. The law reauthorizing EXIM directs the agency to establish a Program on China and Transformational Exports and reserves 20% of its total financing authority (i.e. USD 27 billion) to this end. The purpose is to support U.S. leadership, innovation, employment, and technological standards in 10 transformational industries: (i) artificial intelligence; (ii) biotechnology; (iii) biomedical sciences; (iv) wireless communications equipment (including 5G); (v) quantum computing; (vi) renewable energy, energy efficiency, and energy storage; (vii) semiconductor and semiconductor-machinery; (viii) emerging financial technologies; (ix) water treatment and sanitation; and (x) high-performance computing. The proposed transaction must have minimum 51% U.S. content to qualify for EXIM financing, at which point up to 85% of the value of eligible goods and services in the U.S. contract may be supported.<sup>306</sup> EXIM formed a Subcommittee on Strategic Competition with China in September 2020. In FY2021, USD 141.3 million was authorized in direct support of this program.

3.210. EXIM announced new principles and standards governing the use of its Tied Aid Credit Fund (TACF) in October 2020.<sup>307</sup> The new Reed-McIntosh Procedures were developed jointly with the Department of the Treasury. Henceforth, the TACF may be used, also pre-emptively, to counter potential tied aid offers of other governments. EXIM's Board of Directors decides whether to make use of the TACF on a case-by-case basis.

3.211. The legislation reauthorizing EXIM in 2019 maintained a provision introduced in 2015 that, *inter alia*, instructed the United States to initiate and pursue negotiations with other major exporting countries, including members of the OECD, to reduce substantially and possibly eliminate subsidized export-financing programs and other forms of export subsidies. The Department of the Treasury updates Congress annually on progress achieved in implementing these instructions.

### 3.2.5.2 Small Business Administration (SBA) export loan programs

3.212. The Office of International Trade of the SBA administers three broad export-financing programs for small businesses (Table 3.25). Loans up to USD 500,000 may be provided under the Export Express Loan Program for a wide range of export development activities, e.g. for early-stage exporters participating in trade fairs overseas or entering new markets. A delegated authority program, Export Express, guarantees 90% of loans up to USD 350,000 each; the guarantee ratio is 75% for amounts between USD 350,000 and USD 500,000.

<sup>305</sup> The Congressional mandate on small business authorizations (at first 10%) was introduced in 1985. The minimum percentage was increased from 25% to 30% effective 1 January 2021.

<sup>306</sup> Under certain circumstances, EXIM Bank may approve financing even if the 51% threshold is not met. Content of Chinese origin in a proposed offering is presumptively ineligible for EXIM Bank support.

<sup>307</sup> The procedures are available at: [https://www.exim.gov/sites/default/files/newsreleases/tied\\_aid\\_procedures\\_10-29-20.pdf](https://www.exim.gov/sites/default/files/newsreleases/tied_aid_procedures_10-29-20.pdf).

**Table 3.25 Approved applications and loan amounts under SBA export loan programs, FY2017-20**

Program title	2017		2018		2019		2020	
	No.	USD mil.	No.	USD mil.	No.	USD mil.	No.	USD mil.
Export Express	53	15.0	59	15.5	53	14.7	37	11.2
Export Working Capital	166	337.0	162	320.0	147	275.0	138	272.0
International Trade Loan	192	308.0	256	400.0	222	369.0	163	309.0

Source: SBA, *FY Congressional Justification and FY Annual Performance Report*, various issues. Viewed at: [https://www.sba.gov/sites/default/files/aboutsbaarticle/SBA\\_FY\\_19\\_508-Final-FINAL.PDF](https://www.sba.gov/sites/default/files/aboutsbaarticle/SBA_FY_19_508-Final-FINAL.PDF); [https://www.sba.gov/sites/default/files/2019-04/SBA%20FY%202020%20Congressional%20Justification\\_final%20508%20%204%2023%202019.pdf](https://www.sba.gov/sites/default/files/2019-04/SBA%20FY%202020%20Congressional%20Justification_final%20508%20%204%2023%202019.pdf); [https://www.sba.gov/sites/default/files/2020-02/FY%202021%20CJ-508\\_FINAL.pdf](https://www.sba.gov/sites/default/files/2020-02/FY%202021%20CJ-508_FINAL.pdf); and [https://www.sba.gov/sites/default/files/2021-06/FY2022\\_SBA\\_Congressional\\_Justification-508\\_0.pdf](https://www.sba.gov/sites/default/files/2021-06/FY2022_SBA_Congressional_Justification-508_0.pdf).

3.213. The Export Working Capital Program provides liquidity from purchase orders to final payment up to USD 5 million with up to a 90% guarantee. The same conditions apply to the International Trade Loan Program. These loans are designed to assist exporters in getting loans for financing expenditures related to exporting such as day-to-day operations, advance orders with suppliers, and refinancing for existing debts related to international buyers given that many U.S. banks view loans to small business exports as risky. Small business export development is also encouraged through competitive awards to U.S. states and territories under the State Trade Expansion Program (STEP). The SBA awarded 29 grants under the STEP program in FY2021. This is in addition to the 48 grants under the STEP program in FY2020. These two grant cycles (FY2020 and FY2021) will end on 29 September 2022. The 41 grants from FY2019 and 48 grants from FY2018 ended on 29 September 2021.<sup>308</sup> The SBA is not a bank as such. The financing terms are accordingly negotiated between qualified borrowers and private sector commercial lenders approved by the SBA. Loan applicants must provide business plans and written information that supports the likelihood of repayment through increased export sales. Loans are offered on market terms. The fees charged by the SBA are initially paid by the lender and vary according to a loan's maturity and the guaranteed amount. According to the SBA, its international trade finance programs were negatively affected by the COVID-19 pandemic. Borrowers reported delays in the transportation of goods, port restrictions, and payment difficulties of foreign customers.

### 3.2.5.3 The U.S. International Development Finance Corporation (DFC)

3.214. The Better Utilization of Investments Leading to Development (BUILD) Act (22 U.S.C. 9601ff.) (P.L. 115-254), enacted on 5 October 2018, created the DFC by consolidating and expanding development financing functions until then primarily undertaken by the Overseas Private Investment Corporation (OPIC) and the Development Credit Authority housed in the U.S. Agency for International Development (USAID). The stated purpose of the DFC is to mobilize and facilitate the participation of private sector capital and skills in the economic development of less developed countries (prioritizing low-income and lower-middle-income economies) and countries in transition from non-market to market economies, to complement the development assistance objectives, and advance the foreign policy interests of the United States (22 U.S.C. 9612(b)). The DFC facilitates such market-based private sector development and inclusive economic growth in less developed countries through the provision of credit, capital, and other financial support to, *inter alia*, provide countries a robust alternative to state-directed investments by authoritarian governments and United States strategic competitors, using best practices with respect to transparency and environment and social safeguards, and which take into account the debt sustainability of partner countries.<sup>309</sup>

3.215. The DFC is the successor agency of OPIC by statute. Although many OPIC authorities and policies are continued by the DFC, the new agency is characterized also by a higher exposure cap (USD 60 billion, as opposed to USD 29 billion for OPIC)(22 U.S.C. 9633), the ability to make limited, minority-interest equity investments (22 U.S.C. 9621(c)(1)), provide grants for technical assistance

<sup>308</sup> SBA (2021), *Congressional Budget Justification and Annual Performance Report*. Viewed at: <https://www.sba.gov/document/report-congressional-budget-justification-annual-performance-report>.

<sup>309</sup> 22 U.S.C. 9611(6). This stated purpose reflects concerns raised about China's Belt and Road Initiative and its growing economic influence in developing countries around the time that the BUILD Act was passed. See CRS (2019), *Build Act: Frequently Asked Questions About the New U.S. International Development Finance Corporation*, R45461, updated 15 January.

(22 U.S.C. 9621(e)), and more specific oversight and risk management functions (22 U.S.C. 9614). Currently, under the BUILD Act, the DFC is authorized to approve new project commitments under its programs for a seven-year period (22 U.S.C. 9624(a)). By contrast, OPIC's program operations had been authorized annually through appropriations legislation, especially towards the end of its history.<sup>310</sup> Like OPIC, the DFC is expected to be financially self-sustaining.

3.216. The DFC has its own Inspector General reviewing, investigating, and inspecting its operations and activities.<sup>311</sup> The BUILD Act requires the DFC Board to establish a "transparent and independent accountability mechanism" to evaluate and report annually about DFC's statutory compliance with environmental, social, labor, human rights, and transparency standards (22 U.S.C. 9614). The DFC is required to consult with USTR, at least annually, regarding recipient countries' compliance with international trade obligations, and give preferential consideration to countries that are in compliance, or are making substantial progress in reaching compliance, with these obligations.<sup>312</sup> The DFC draws on previous USAID authorities to provide technical assistance and funds for feasibility studies, including planning, development, management, and procurement in connection with bilateral and multilateral development projects eligible for support (22 U.S.C. 9621(e)(1)). The BUILD Act directs the DFC to insist on cost-sharing by those receiving funds for investment promotion to the maximum extent practicable (22 U.S.C. 9621(e)(2)). The Act authorizes the DFC to support projects as a minority investor, subject to certain limitations.<sup>313</sup> Such equity stakes are to be liquidated as soon as commercially feasible, while also taking into consideration the national security interests of the United States.<sup>314</sup>

3.217. The DFC was authorized through the BUILD Act's enactment as of 5 October 2018, but it initiated operations as of 20 December 2019. In FY2020, the DFC's first year of operation, its committed investments totaled USD 4.67 billion, including USD 15 million made available for direct equity and USD 5 million for technical assistance activities. The DFC expects its own commitments from FY2020 to mobilize an additional USD 6.8 billion in private capital. Two thirds of the projects approved in FY2020 were in low-income and lower-middle-income countries (as defined by the World Bank) or in fragile states. In 2020, the DFC launched a rapid response liquidity facility (USD 4 billion) as part of its support to portfolio projects affected by the pandemic. The DFC also prioritized investments in healthcare and establishment of resilient health systems. Beyond the short term, the DFC launched its global development strategy called Roadmap for Impact. The Roadmap is the agency's five-year strategy that aims to catalyze USD 75 billion to maximize development impact while creating strategic and sustainable growth.<sup>315</sup> To reach this amount, the Roadmap foresees that the DFC's commitment of USD 25 billion should mobilize an additional USD 50 billion by 2025 for investments in key sectors such as energy, healthcare, financial inclusion, food security and agriculture, and WASH (water, sanitation, and hygiene).

3.218. Women's economic empowerment, a strategic DFC priority, channeled USD 2.5 billion (and catalyzed more than USD 4 billion in capital) to projects that are owned or led by women, or offer products or services that benefit women, in FY2020. Some USD 7 billion has been catalyzed towards gender-smart investments under the 2X Women's Initiative since its inception in 2017.<sup>316</sup>

#### 3.2.5.4 Private Export Funding Corporation (PEFCO)

3.219. PEFCO complements export financing by commercial banks and other lenders.<sup>317</sup> EXIM guarantees the interest on PEFCO's secured notes under a long-term Guarantee and Credit

<sup>310</sup> OPIC and USAID legacy programs are extended through 2025 with the creation of the DFC.

<sup>311</sup> Section 1414, Division F, Title I, of P.L. 115-254, *codified at* 5 U.S.C. App., Inspector General Act of 1978, §8G(a)(2), lists the DFC as a "designated Federal entity" that is required by the act to establish and maintain an Office of Inspector General.

<sup>312</sup> 22 U.S.C. 9671(c). The initial consultation between USTR and DFC's Chief Development Officer took place on 23 August 2021.

<sup>313</sup> 22 U.S.C. 9621(c)(1). The limitations are listed mainly under Sections 9621(c)(3) and 9621(c)(4).

<sup>314</sup> 22 U.S.C. 9621(c)(5).

<sup>315</sup> DFC, *Roadmap for Impact*. Viewed at: <https://www.dfc.gov/roadmap-for-impact>.

<sup>316</sup> The 2X Challenge, which has committed to mobilize USD 3 billion to empower women economically across the developing world, is a cooperative effort between agencies of the United States, the United Kingdom, Canada, France, Italy, Japan, and Germany.

<sup>317</sup> At present, PEFCO has 33 shareholders: 26 commercial banks, 6 industrial companies, and 1 financial services company.



Agreement.<sup>318</sup> All PEFCO-funded loans are guaranteed by EXIM or in some cases by other U.S. government institutions, e.g. the DFC. Under its long-term loan programs, PEFCO acts as a direct lender as well as a secondary market purchaser of export loans originated by other lenders. Its medium-term facilities (guaranteed note, discount, or guaranteed lease) are only available to other lenders, and only for the portions of loans covered by EXIM (or other U.S. government institution) guarantees.

3.220. At the end of FY2021, PEFCO's loan portfolio totaled USD 3.29 billion, and export loans of the aviation industry represented approximately three quarters of that amount. By country, the largest exposures concerned China (USD 680 million), Mexico (USD 653 million), and Kenya (USD 490 million). PEFCO's performance was hampered by EXIM's inability to approve large, long-term transactions between 2015 and 2019, and it reported annual net operational losses of around USD 8 million to USD 21 million in FY2019, FY2020, and FY2021.<sup>319</sup>

### 3.3 Measures Affecting Production and Trade

#### 3.3.1 Incentives

3.221. Federal government agencies and departments may provide grants, loans, scholarships, insurance, property, counselling, or other assistance. The official website at which interested parties register to do business with the Federal Government ([www.sam.gov](http://www.sam.gov)) presents information on federal assistance available to States and Territories, local administrations, private profit and non-profit organizations, and individuals. Users may employ an online tool to search the federal assistance information database maintained by the General Services Administration for up-to-date information on available programs at: <https://sam.gov/content/assistance-listings>. Alternatively, an annual publication serves as a government-wide compendium of federal programs, projects, services, and activities that provide financial (and non-financial) benefits or assistance to the public.<sup>320</sup>

3.222. State, territorial, and local governments also provide incentives, notably for business start-ups and expansions. Tax credits, grants, loans or loan participation, and tax exemptions are the most common types of support, but assistance may be provided in a variety of forms. The Council for Community and Economic Research (C2ER) has developed a database of all state programs, accessible through SelectUSA. In early 2022, the C2ER database contained information about nearly 2,400 such programs.<sup>321</sup>

3.223. Among the programs administered by the Economic Development Administration (EDA) of the USDOC, cost-shared technical assistance may be provided under the Trade Adjustment Assistance for Firms (TAAF) program to U.S. enterprises that have lost sales and employment due to imports of like or directly competitive products. The support is normally delivered by private consultants hired through a nationwide network of 11 Trade Adjustment Assistance Centers (TAAC) funded by the EDA. No funds are provided directly to firms. The TAAC helps firms free of charge in completing and submitting the petition for assistance, while minimum 25% of the costs for preparing the business recovery plan ("adjustment proposal"), which must be approved by the EDA for a firm to be a certified participant in the TAAF, is borne by the enterprise. Finally, the TAAC may support a firm for up to five years, to implement the approved business recovery plan, which may total up to USD 150,000, while a minimum of 50% of the costs to implement the business recovery plan is borne by the enterprise. The EDA awards grants to each of the 11 TAACs, and the value of each grant ranges from USD 1 million to USD 1.6 million. The budget funding for TAAF amounted to USD 13 million in FY2020 and USD 13.5 million in FY2021. U.S. Department of Labor's Trade Adjustment Assistance for Workers (TAAW) provides assistance to workers who have been adversely affected by foreign trade, including training, employment and case management services, income support, wage supplements for older workers, and other benefits. In FY2021, the TAAW program

<sup>318</sup> The initial 25-year partnership with EXIM was concluded in 1971, and renewed until the end of 2020 in 1994. The expiry date for the present Guarantee and Credit Agreement is 31 December 2045.

<sup>319</sup> PEFCO, *Annual Report 2020*. Viewed at: <https://pefco.com/wp-content/uploads/2021/01/PEFCO-AR2020.pdf>.

<sup>320</sup> Formerly entitled the Catalog of Federal Domestic Assistance, the most recent 2021 Annual Publication of Assistance Listings is a document of more than 1,900 pages. Printed copies of this publication are no longer provided free of charge but may be downloaded as PDFs. Viewed at: <https://sam.gov/content/assistance-listings>.

<sup>321</sup> The search engine is at: <http://www.stateincentives.org/>.

provided USD 441 million to state governments to serve workers affected by trade and certified an estimated 107,454 new workers as being eligible for benefits and services.

3.224. In response to the COVID-19 pandemic and its disruption of economic activity, Congress appropriated considerable funds through emergency legislation, notably the March 2020 Coronavirus Aid, Relief, and Economic Security (CARES) Act, an economic stimulus package that provides approximately USD 2.8 trillion<sup>322</sup>; the December 2020 Consolidated Appropriations Act of 2021; and the American Rescue Plan Act of 2021 (ARP Act). The Department of the Treasury administers relief programs assisting U.S. industries, including airlines and certain transportation service providers.<sup>323</sup>

3.225. The CARES Act, and subsequent legislation, channeled nearly USD 1 trillion through the SBA to protect jobs and avert bankruptcies.<sup>324</sup> The SBA guaranteed some 11.4 million loans, provided through approximately 5,242 lenders, for a total USD 792.7 billion under the Paycheck Protection Program (PPP) through 5 September 2021. The PPP loans allowed small businesses, sole proprietors, self-employed individuals, independent contractors, tribal business concerns, veterans' organizations, and eligible non-profit organizations to cover eligible payroll and non-payroll costs. During the same period, the SBA fully forgave more than 7 million loans worth more than USD 553 billion. During FY2021, the SBA approved 250,000 new COVID Economic Injury Disaster Loans (EIDL) for over USD 30 billion. Previously, by mid-July 2020, the SBA had also exceeded its appropriation of USD 20 billion for loan advances, having supported nearly 5.8 million EIDL Advances. In 2021, the SBA also funded 547,576 applications for EIDL Advances totaling USD 4.7 billion by 23 December 2021. The SBA provided USD 3.5 billion in debt relief to ease the financial strain on small businesses in FY2021.<sup>325</sup> In addition, grants worth USD 240 million were provided to SBA's Small Business Development Centers and Women's Business Centers for entrepreneurial development programs to help businesses retool their operations and recover.

3.226. As for its regular activities, the SBA provided approximately 61,500 businesses with access to loans totaling nearly USD 45 billion. As usual, the loans were made available through partner financial institutions with the SBA providing loan guarantees and making available counselling, and other forms of assistance. Its microloan intermediaries further approved over 4,500 microloans in FY2021. The SBA also continued to provide oversight in federal contracting to ensure that the government-wide statutory goal for contract dollars to small businesses (minimum 23%) is met, including the specific targets for small-disadvantaged businesses and women-owned small businesses, service-disabled veteran-owned small businesses, and small businesses in Historically Underutilized Business Zone locations.

3.227. The United States notifies subsidy programs to the WTO Committee on Subsidies and Countervailing Measures on a regular basis. The notifications are provided as a matter of transparency without prejudice to the legal status of the programs under the Agreement on Subsidies and Countervailing Measures. The most recent notification, circulated in July 2021, covers FY2019 and FY2020. The notification includes nearly 750 programs maintained at the sub-federal level. The estimated expenditures on federal non-agricultural programs are summarized in Table 3.26.

**Table 3.26 Federal subsidy programs (non-agriculture), FY2018-20**

(USD million)

Programs	Type of subsidy	Expenditure		
		FY2018	FY2019	FY2020
<b>Energy and fuels</b>				
Advanced Research Projects	Annual Congressional appropriations	46.3	359.8	332.5
Cybersecurity for Energy Delivery Systems	Co-financing	26.1	2.6	19.4
Resilient Distribution Systems	Co-financing	0.0	7.2	0
Nuclear Energy: Small Modular Reactor Licensing	Co-financing	0.0	0	0.7
Technical Support				

<sup>322</sup> US Datalab, *The Federal Response to COVID-19*. Viewed at: <https://datalab.usaspending.gov/federal-covid-funding/>

<sup>323</sup> Department of the Treasury, *Airline and National Security Relief Programs*. Viewed at: <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-american-industry/airline-and-national-security-relief-programs>.

<sup>324</sup> SBA, *FY 2022 Congressional Justification, FY 2020 Annual Performance Report*. Viewed at: [https://www.sba.gov/sites/default/files/2021-06/FY2022\\_SBA\\_Congressional\\_Justification-508\\_0.pdf](https://www.sba.gov/sites/default/files/2021-06/FY2022_SBA_Congressional_Justification-508_0.pdf).

<sup>325</sup> Debt relief was provided to borrowers under the SBA's most common loan program (7(a) loans); long-term, fixed rate financing to Certified Development Companies (504 loans); and Microloan borrowers.

Programs	Type of subsidy	Expenditure		
		FY2018	FY2019	FY2020
Nuclear Energy: Supercritical Transformational Electric Power	Co-financing	0.0	Ended	Ended
Nuclear Energy: Fuel Cycle R&D	Co-financing	22.4	80.7	84.9
Nuclear Energy: Enabling Technologies	Co-financing	18.9	53.9	93.9
Nuclear Energy: Reactor Concepts R&D and Demonstration – Advanced Reactor Technologies	Co-financing	78.9	14.4	7.0
Renewable Energy Resources	Co-financing	69.6	45.5	81.6
Energy Conservation Programs – Transportation Sector	Co-financing	241.2	190.6	288.6
Energy Conservation Programs – Building Technologies Office	Co-financing	1.0	0.7	0.6
Energy Conservation – Advanced Manufacturing	Co-financing	67.7	25.7	43.5
Fossil Energy R&D	Cost-shared contracts	571.2	127.4	43.1
Innovative Technology Loan Guarantee Program	Loan guarantees	30.9	45.0	29.0
Advanced Technology Vehicles Manufacturing Loan Program (ATVM)	Direct loans	5.0	5.0	5.0
Tribal Energy Loan Guarantee Program	Partial loan guarantees	(a)	1.0	1.0
<b>Other energy and fuels</b>				
Expensing of Exploration and Development (E&D) Costs for Oil, Gas and other Fuels	Income tax concession	970.0	930.0	40.0
Excess of Percentage over Cost Depletion for Oil, Gas and Other Fuels	Income tax concession	350.0	670.0	590.0
Capital Gains Treatment of Royalties on Coal	Income tax concession	160.0	150.0	100.0
Second Generation Biofuel Credit	Income tax concession	Unknown	Unknown	Unknown
Biodiesel and Renewable Diesel Credit	Income and excise tax concession, and direct payments	3,430.0	2,130.0	5,120.0
Alternative Fuel Mixture Credit	Excise tax concession	710.0	500.0	550.0
Credits for Investment in Advanced Coal Facilities and Advanced Gasification Facilities	Income tax concession	90.0	20.0	30.0
Advanced Energy Property Credit	Income tax concession	0	10.0	10.0
Two-year Amortization of Geological and Geophysical Expenditures	Income tax concession	230.0	230.0	80.0
Energy Production Credit	Income tax concession	3,150.0	4,230.0	5,020.0
Energy Investment Credit	Income tax concession	3,180.0	3,710.0	6,070.0
Energy Grant in lieu of the Energy Production Credit or the Energy Investment Credit	Direct payment	48.0	0	0
Credit for Holding New Clean Renewable Energy Bonds	Income tax concession	110.0	120.0	100.0
Credit for Holding Qualified Energy Conservation Bonds	Income tax concession	70.0	70.0	60.0
Carbon Oxide Sequestration Credit	Income tax concession	200.0	70.0	14.0
Enhanced Oil Recovery Credit	Income tax concession	390.0	510.0	470.0
Accelerated Depreciation for Renewable Energy Property	Income tax concession	1,900.0	(a)	(a)
Deduction for Tertiary Injectants	Income tax concession	10.0	10.0	10.0
<b>Fisheries</b>				
Columbia River Fishery Development Program	Operating grants	16.2	16.3	17.3
Fisheries Finance Program	Collateralized loans	(b)	(b)	(b)
Saltonstall-Kennedy Grant Program: Fisheries R&D	Competitive grants	10.0	10.0	10.0
Capital Construction Fund	Deferring tax on federal fishing income	2.4	2.5	(c)
Bycatch Reduction Engineering Program	Competitive grants	2.3	2.3	2.3
Vessel Monitoring System Reimbursement Program	Grant	2.6	0.3	0.7
Fishery Disaster Assistance Program [appropriations]	Grant	220.0	165.0	
<b>Lumber and timber</b>				
Capital Gains Treatment of Certain Timber Income	Income tax concession	160.0	150.0	130.0
Expensing of Multi-period Timber Growing Costs	Income tax concession	220.0	40.0	50.0
Expensing and Seven-Year Amortization for Reforestation Expenditures	Income tax concession	50.0	40.0	50.0
<b>Medical</b>				
Office of Nuclear Physics, Isotope Development and Production for Research and Applications Program	Annual Congressional appropriations	29.7	44.3	50.3
Orphan Drug Tax Credit	Income tax concession	1,960.0	1,550.0	1,720.0
<b>Non-fuel minerals, metals</b>				
Excess of percentage over Cost Depletion for Non-fuel Minerals	Income tax concession	330.0	120.0	110.0
Expensing of Exploration and Development Costs for Non-fuel Minerals	Income tax concession	50.0	170.0	10.0
<b>Shipyards</b>				
Assistance to Small Shipyards Grant Program	Grants	20.0	20.0	20.0

Programs	Type of subsidy	Expenditure		
		FY2018	FY2019	FY2020
<b>Regional programs</b>				
Empowerment Zones	Income tax concession	110.0	60.0	160.0
New Markets Tax Credit	Income tax concession	1,410.0	1,320.0	1,280.0
Opportunity Zones	Income tax concession	0	2,720.0	3,770.0

Note: (a) Not included; (b) The amount of the loans and the general terms of the loans are provided but the subsidy benefit, if any, is not estimated; and (c) Pending.

Source: WTO documents G/SCM/N/343/USA, 16 July 2019; and G/SCM/N/372/USA, 14 July 2021.

### 3.3.2 Standards and other technical requirements

3.228. In the United States, the private sector leads the development of voluntary consensus standards (VCS), which are based on needs or concerns identified by industry, government, and consumers.<sup>326</sup> The American National Standards Institute (ANSI), a private non-profit organization, has a central role in coordinating the private sector in this demand-driven system, but does not develop standards. This responsibility is entrusted to the hundreds of standards developing organizations (SDOs) located within the United States. The United States considers any VCS developed in accordance with the Committee Decision on International Standards<sup>327</sup> to be an international standard under the WTO TBT Agreement regardless of the specific SDO or its location. The ANSI Essential Requirements: Due Process Requirements for American National Standards (Essential Requirements) serve as guidelines to develop VCSs and include principles for openness, balance, lack of dominance, due process, consensus, and the right to appeal. The procedural requirements outlined in the Essential Requirements align closely with the criteria for VCS outlined in the Office of Management and Budget (OMB) Circular A-119 (discussed below) and also with the principles outlined in the Committee Decision on International Standards. Moreover, ANSI was also in charge of the process of reviewing and updating the U.S. Standards Strategy, whose fifth update was completed in December 2020 with the participation of all stakeholders.

3.229. The National Institute of Standards and Technology (NIST), within USDOC, aims to promote U.S. innovation and industrial competitiveness by advancing measurement science, standards, and technology. The Standards Coordination Office (SCO) at NIST serves as the WTO TBT Enquiry Point and is the notification authority of the United States under the WTO TBT Agreement.<sup>328</sup> The SCO manages and operates Notify U.S., a free, web-based email registration service, disseminating notifications of other WTO Members to domestic stakeholders and providing them with an opportunity to review and comment on foreign regulations. Comments and queries on notified proposed U.S. measures are forwarded by the TBT Enquiry Point to the relevant U.S. regulatory agency upon receipt. Under the National Technology Transfer and Advancement Act (NTTAA), NIST coordinates government conformity assessment activities with the private sector to reduce unnecessary duplication and complexity.<sup>329</sup> NIST maintains a reference collection of technical regulations, specifications, test methods, codes, and recommended practices, and produces the U.S. Standard Reference Data (SRD).<sup>330</sup>

3.230. SDOs that adhere to the Essential Requirements may be accredited by ANSI to develop American National Standards (ANS) related to products, processes, services, systems, or personnel. In March 2022, there were 237 ANSI-accredited standard developers (ASDs)<sup>331</sup>; 18 organizations became ASDs during the review period. By the same date, ANSI listed more than 13,600 standards

<sup>326</sup> Consensus implies a general agreement without necessarily requiring a unanimous decision. Any party with a direct and material interest in a specific standard can participate in its development by expressing its position, having it considered, and having a right to appeal.

<sup>327</sup> WTO TBT Committee's Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2 and 5 of and Annex 3 to the Agreement.

<sup>328</sup> The SCO acts as the USA Notification Contact Point for the recently negotiated United States-Mexico-Canada Agreement (USMCA).

<sup>329</sup> NIST updated its Guidance on Federal Conformity Assessment Activities (15 C.F.R. Part 287) outlining agencies' responsibilities for using conformity assessment in an efficient and cost-effective manner for the agency and its stakeholders. Viewed at: <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-II/subchapter-J/part-287>.

<sup>330</sup> NIST, Standard Reference Data. Viewed at: <https://www.nist.gov/srd>.

<sup>331</sup> A complete list of ASDs is available at: <https://www.ansi.org/american-national-standards/info-for-standards-developers/accredited-standards-developers>.

developed by ASDs<sup>332</sup>, of which 1,075 new standards were issued between July 2018 and March 2022. In addition to the thousands of VCS developed by SDOs, consortia standards also help to fill the need for standards used by industry, especially in technology areas where a more rapid development pace is needed to meet market needs.

3.231. In the United States, technical regulations can be established at the federal or sub-federal level, and rely heavily on VCS developed by the private sector making them mandatory by reference; technical regulations cover mostly products but can also concern processes or services. While Congress can establish product regulations legislatively, it usually delegates enabling legislation to regulatory agencies, generally pursuant to broad guidance as to the factors to be considered and policy goals to be achieved. The majority of rulemaking involves three steps: issuance of a notice of proposed rulemaking soliciting public comment, agency consideration of all relevant information, and the issuance of a final rule after consideration of the relevant information. Executive Order (E.O.) 13563 requires the use of the Internet for the consultation procedure and the publication of rules to the extent possible and establishes a 60-day period for consultations. Any interested person can submit petitions for reconsideration after final rules have been issued. All final rules may be judicially reviewed. All regulations issued by agencies as final rules are subject to Congressional review under the Congressional Review Act (CRA).

3.232. Title IV of the Trade Agreements Act (TAA) of 1979 (P.L. 96-39), as amended, provides the legal basis on which the WTO TBT Agreement and the SPS Agreement are implemented. In addition to enabling legislation, various other requirements govern the development and issuance of technical regulations by the Federal Government, including other statutes and Presidential E.O.s that impose procedural requirements intended to ensure reasoned and fair decision-making, as well as Circulars from the OMB. Consequently, the legal framework for the preparation of technical regulations and adoption of standards is also prescribed by the Administrative Procedure Act (APA) (P.L. 79-404), the National Technology Transfer and Advancement Act (NTTAA) (P.L. 104-113), U.S. Office of Management and Budget Circular A-119, and E.O.s 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review)<sup>333</sup>, 13609 (Promoting International Regulatory Cooperation), and 13610 (Identifying and Reducing Regulatory Burdens). E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs) and E.O. 13777 (Enforcing the Regulatory Reform Agenda) were revoked by E.O. 13992 (Revocation of Certain Executive Orders Concerning Federal Regulation), issued on 20 January 2021.

3.233. OMB's Office of Information and Regulatory Affairs (OIRA) is responsible for regulatory oversight and leads interagency review of significant regulation pursuant to E.O. 12866.<sup>334</sup> The agency or agencies responsible for developing technical regulations depend on the product in question. Agencies may adopt technical regulations only after thoroughly analyzing their potential impact, typically by means of an assessment and comparison of either the benefits and costs or the cost-effectiveness of alternative regulatory approaches. OIRA keeps an updated repository of ongoing reviews and those completed since 1981. Final rules are published in the Federal Register and codified in the Code of Federal Regulations; a unified agenda for regulatory and deregulatory actions is also available on OIRA's website.<sup>335</sup> A memorandum, issued on 20 January 2021, initiated consultations to improve and modernize the regulatory review.<sup>336</sup>

3.234. E.O. 13609 aims at promoting international regulatory cooperation between the United States and its foreign trading partners to avoid unnecessary impediments for U.S. businesses

<sup>332</sup> Six ASDs sponsored more than 500 standards each, and they account for more than half (54.9%) of the total inventory of standards under ANSI. Complete lists of issued and proposed ANS are available at: <https://www.ansi.org/american-national-standards/info-for-standards-developers/ans-complete-lists>.

<sup>333</sup> E.O. 13579, July 2011, clarifies that E.O. 13563 also applies to independent regulatory agencies.

<sup>334</sup> Economically "significant regulatory actions" are those likely to result in a rule that may: (i) have an annual effect on the economy of USD 100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (ii) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (iii) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (iv) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866. Viewed at: <http://www.archives.gov/federal-register/executive-orders/pdf/12866.pdf>.

<sup>335</sup> OMB, *Fall 2021 Unified Agenda of Regulatory and Deregulatory Actions*. Viewed at: <https://www.reginfo.gov/public/do/eAgendaMain>.

<sup>336</sup> The White House, *Modernizing Regulatory Review*. Viewed at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/modernizing-regulatory-review/>.



to export and compete internationally. While USTR has statutory authority in the area of trade policy, the Interagency Regulatory Working Group serves, where appropriate, as a forum to discuss international regulatory cooperation activities in which the United States is engaged such as in the Asia-Pacific Economic Cooperation (APEC), the U.S.-Canada Regulatory Cooperation Council, the OECD Regulatory Policy Committee, and other bilateral and regional engagements.

3.235. The TAA restricts government agencies from engaging in any standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States and ensures that imported goods are treated no less favorably than like domestic products in the application of standards-related activities. The NTTAA directs federal agencies and departments to use VCS, both domestic and international, in lieu of government-developed requirements in regulations, to meet their objectives and reaffirms principles already expressed in Circular A-119. The NTTAA further directs the agencies to participate in the development of such standards to ensure that VCSs reflect government needs and to reduce government reliance on government-unique standards. To keep track of the use of government-unique standards used in technical regulations, the NIST publishes an annual report based on developments provided by 22 agencies for the fiscal year 2019.<sup>337</sup> Circular A-119 also encourages federal agencies, in line with their missions, to participate in SDOs.

3.236. Agencies are not required to rely only on VCSs available free of cost for their rules; however, a principle of "reasonable availability" of the information is applied.<sup>338</sup> Federal agencies are also required, when developing technical regulations, to take into account international standards and, if appropriate, base their regulations on those international standards. Title IV of the TAA of 1979 as amended (19 U.S.C. 2531) provides that the reasons for which it may not be appropriate to base a U.S. technical regulation on an international standard include, but are not limited to, the protection of human health or safety, animal or plant life or health, or the environment.

3.237. The Internet of Things (IoT) Cybersecurity Improvement Act of 2020, P.L. 116-207, enacted in December 2020, required NIST and the OMB to take steps to increase the cybersecurity of IoT devices. NIST subsequently developed a series of guidelines, through an open comment and review process, for the use and management of IoT devices by federal agencies.<sup>339</sup>

3.238. In March 2020, the FDA issued a final rule for new health warnings on cigarette packages and advertisements to increase public awareness of lesser-known, but serious negative health consequences of cigarette smoking.<sup>340</sup>

3.239. Since the beginning of the pandemic, numerous Emergency Use Authorizations (EUAs) were issued by the FDA under Section 564 of the Federal Food, Drug, and Cosmetic Act (21 USC, Chapter 9), covering more than 400 test and sample collection devices, 119 ventilators and accessories, 11 COVID-19 treatments, and 3 vaccines. In 2021, more than 600 drug development programs were in the planning stages, a new guidance for conducting clinical trials was issued to facilitate the response to COVID-19, and in addition, the FDA dealt with some numerous reports of fraudulent products related to COVID-19.

3.240. The U.S. conformity assessment system utilizes a variety of mechanisms depending on the product and assessed risk. Standards and technical regulations that rely on supplier's self-declaration are also supported, to a large extent, through product-liability laws. It is generally the responsibility of the supplier (producer or importer) to ensure compliance with existing technical regulations or with standards when such compliance is required by the purchaser. In the case of imports, it is primarily the responsibility of importers representing foreign manufacturers to meet

<sup>337</sup> NIST (2020), *23<sup>rd</sup> Annual Report on Federal Agency Use of Voluntary Consensus Standards and Conformity Assessment Activities*, 20 November 2020. Viewed at: <https://nvlpubs.nist.gov/nistpubs/ir/2020/NIST.IR.8329.pdf>. A total of 80 government-unique standards were being used in lieu of VCS as of fiscal year 2019.

<sup>338</sup> *Federal Register* (2014), Vol. 79, No. 216, 7 November, p. 66267. Standards incorporated by the U.S. Government in rulemakings may be offered at no cost in read-only format or presented for online reading in ANSI Incorporated by Reference Portal. Viewed at: <https://ibr.ansi.org/Default.aspx>.

<sup>339</sup> NIST, *IoT Device Cybersecurity Guidance for the Federal Government: Establishing IoT Device Cybersecurity Requirements*. Viewed at: <https://www.nist.gov/itl/applied-cybersecurity/nist-cybersecurity-iot-program/sp-800-213-series>.

<sup>340</sup> *Federal Register* (2020), Vol. 85, No. 53, 18 March, p. 15638, Viewed at: <https://www.federalregister.gov/d/2020-05223>. This regulation was challenged by manufacturers and pending this litigation, the effective date for this rule was postponed to 13 July 2022.

technical regulations and to ensure that permits, if required, have been obtained in advance of the goods arriving in the United States. For some products, a declaration or proof of conformity or compliance must be submitted by the manufacturer or the importer upon or prior to importation.

3.241. When assessment of conformity to a technical regulation is required, it may be done by the Federal Government, state or local governments, or an independent testing authority where the Government gives official recognition through accreditation or similar measures. CBP, in cooperation with other agencies responsible for regulated products, such as the Consumer Product Safety Commission (CPSC), is responsible for enforcing technical regulations at the border, and taking enforcement actions when such regulations are violated, including refusing admission. The CPSC has jurisdiction over many types of consumer products. However, some types of consumer products are covered by other federal agencies. For example, automobiles, trucks, and motorcycles are within the jurisdiction of the Department of Transportation (DOT); food, drugs, and cosmetics are covered by the Food and Drug Administration (FDA); pesticides and fungicides are monitored by the Environmental Protection Agency (EPA); boats by the U.S. Coast Guard; and chemicals by the U.S. Chemical Safety and Hazard Investigation Board (CSB).<sup>341</sup> Assessment of conformity with SPS requirements, especially for plants and animal products, is generally carried out by APHIS and Food Safety and Inspection Service (FSIS) inspectors located at the borders. The CPSC also controls labelling requirements, such as those of the Federal Hazardous Substances Act (FHSA), which requires precautionary labelling on the immediate container of hazardous household products.

3.242. Accreditation procedures of conformity assessment bodies (CABs) vary depending on each standard or technical regulation following a risk-based approach. U.S. requirements generally follow the standards issued by the Committee on Conformity Assessment at the International Organization for Standardization (ISO CASCO).

3.243. Between July 2018 and March 2022, the United States submitted 1,290 TBT notifications concerning proposed and final measures to the WTO. More than 300 notifications were submitted the last two years: 370 in 2020 and 393 in 2021. TBT notifications per year were only higher in 2016.<sup>342</sup> During the review period, the notifications covered both federal- and state-level regulations; 113 notifications covered the latter. More than half (53.4%) of all notifications were amendments to previous notifications, while 36.3% of all notifications were regular ones; only 20 urgent notifications were submitted since July 2018, accounting for 1.6% of all notifications.

3.244. Overall, 980 notifications (76.0%) relate to technical regulations (out of which 110 at the state level) and 255 notifications (19.8%) relate to conformity assessment procedures (out of which 28 at the state level). An increasing number of notifications, 18.4% of all notifications during the period under review, simultaneously refer to technical regulations and conformity assessment procedures. Moreover, an increasing proportion of notifications (19.1% over the review period, or 246 notifications) does not specify its relationship with a specific article of the TBT Agreement.<sup>343</sup> Based on standardization fields reported in the notifications following the International Classification of Standards (ICS), at least two ICS fields are mentioned in 70.9% of up from 51.9% in the previous review period.<sup>344</sup> At the same time, regulations aimed at attaining several objectives also increased, from 15.6% to 48.8%. The most frequent objectives are the protection of the environment (49.3%), the protection of human health or safety (38.4%), the prevention of deceptive practices and consumer protection (26.0%), and consumer information and labelling (16.3%).

3.245. During the review period, 12 specific trade concerns (STCs) relating to measures maintained by the United States were raised in the TBT Committee; 1 STC raised before the review period was reiterated since July 2018. The United States actively participates in the TBT Committee and has raised or supported 82 new STCs against its trade partners. There is a dispute against U.S. measures

<sup>341</sup> CPSC, *Products Under the Jurisdiction of Other Federal Agencies and Federal Links*. Viewed at: <https://www.cpsc.gov/Regulations-Laws--Standards/Products-Outside-CPSCs-Jurisdiction>.

<sup>342</sup> WTO ePing SPS and TBT Platform. Viewed at: <https://epingalert.org/>.

<sup>343</sup> The authorities indicate their use of the "Other (not defined)" option in notifications when the reason for notifying the addendum does not match any of the other criteria listed in WTO document G/TBT/35/Rev.1, 21 November 2019. Furthermore, 40 notifications since July 2016 do not specify a relationship with any article of the TBT Agreement.

<sup>344</sup> The authorities indicated that this is in line with recommendations of the TBT Committee (WTO documents G/TBT/41, 19 November 2018 and G/TBT/46, 17 November 2021), for enhanced transparency and improved use of HS and ICS codes in notifications.

concerning the origin marking requirement applicable to goods produced in Hong Kong, China.<sup>345</sup> The United States is participating as a third party in two disputes with reference to the TBT Agreement.<sup>346</sup>

3.246. ANSI represents the United States at ISO and, through its U.S. National Committee, it coordinates the U.S. engagement in the International Electrotechnical Commission (IEC). The Department of State, the Department of Commerce, and the Federal Communications Commission are the U.S. representatives at the International Telecommunication Union (ITU). Moreover, the United States is a member of the International Maritime Organization (IMO), and the International Civil Aviation Organization (ICAO), participating in the respective standards development activities of these organizations. The United States also participates in other regional organizations and fora related to standards.<sup>347</sup> In addition, most of the bilateral FTAs that the United States has concluded incorporate provisions reaffirming the adherence to obligations under the TBT Agreement, as well as decisions and recommendations adopted by the TBT Committee (e.g. Chapter 11 of the USMCA).

3.247. The United States has concluded mutual recognition agreements (MRAs) covering different sectors with numerous foreign partners, including two MRAs with the United Kingdom in 2021. MRA implementation varies for each partner, even within a common or regional arrangement, regarding the recognition level of CABs<sup>348</sup> and the product coverage. In the area of telecommunications equipment, MRAs are implemented with some APEC members (Australia; Canada; Chinese Taipei; Hong Kong, China; the Republic of Korea; Malaysia; New Zealand; Singapore; and Viet Nam), the European Union, some EFTA States (Norway, Iceland, and Liechtenstein), and other trading partners (Israel, Japan, Mexico, and the United Kingdom). MRA signatories designate their accredited CABs to the Federal Communication Commission (FCC) while the NIST, through its Telecom MRA Program Office, serves as the designated authority for U.S. CABs.<sup>349</sup> The MRA with the EFTA States also covers recreational craft, while the MRA with the European Union extends to electrical safety, recreational craft, medical devices, and pharmaceutical Good Manufacturing Practices (GMPs). The coverage of this latter sector in the U.S.-EU MRA was amended in 2017. Pharmaceutical GMPs are also part of the recent MRA with the United Kingdom. The United States has also signed separate MRAs with the European Union, EFTA, and the United Kingdom for marine safety equipment.

### 3.3.3 Sanitary and phytosanitary requirements

3.248. The United States has numerous laws and regulations pertaining to food safety, animal health, and plant health. Major, and long-standing, pieces of SPS legislation include the Federal Food, Drug and Cosmetic Act (FFDCA), the Federal Meat Inspection Act, the Poultry Products Inspection Act, the Egg Products Inspection Act, the Plant Protection Act, the Animal Health Protection Act, and the Federal Insecticide, Fungicide, and the Rodenticide Act.<sup>350</sup> Since the promulgation of the FDA Food Safety Modernization Act (FSMA) in 2011, the United States has not made a comparable large-scale update to its SPS legislation. However, some changes took place during the review period in relation with implementing regulations which accompany this overall regulatory framework (see below).

3.249. According to the product and the type of risk inherent to products, responsibilities for the development, implementation, and enforcement of SPS measures are split among federal agencies.<sup>351</sup> In general, SPS measures are subject to the same administrative rulemaking procedures

<sup>345</sup> A panel was established in April 2021. Further information available at: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds597\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds597_e.htm).

<sup>346</sup> DS593: *European Union – Certain Measures concerning Palm Oil and Oil Palm Crop-based Biofuels*, and DS600: *European Union and Certain Member States – Certain Measures concerning Palm Oil and Oil Palm Crop-based Biofuels*.

<sup>347</sup> These include the Pacific Area Standards Congress (PASC), the Pan American Standards Commission (COPANT), the Council for Harmonization of Electrotechnical Standards of the Nations in the Americas (CANENA), and APEC's Sub-Committee on Standards and Conformance (SCSC).

<sup>348</sup> Two broad levels of mutual recognition consist of: (i) the recognition of testing laboratories and their testing results; and (ii) the recognition of certification bodies and acceptance of certifications.

<sup>349</sup> NIST, *Mutual Recognition Agreements for Conformity Assessment of Telecommunications Equipment*. Viewed at: <https://www.nist.gov/mutual-recognition-agreements-mras>.

<sup>350</sup> These Acts are codified in 21 U.S.C. 301 et seq.; 21 U.S.C. 601 et seq.; 21 U.S.C. 451 et seq.; 21 U.S.C. 1031 et seq.; 7 U.S.C. 7701 et seq.; 7 U.S.C. 8301 et seq.; and 7 U.S.C. 136 et seq., respectively.

<sup>351</sup> State-level authorities may develop their own measures, subject to federal laws and regulations. WTO document WT/TPR/S/235/Rev.1, 29 October 2010, pp. 40-46.

as technical regulations (see above). FDA is responsible for the regulation of a broad range of products, including food (except food products regulated by the Department of Agriculture); food additives; dietary supplements; human and veterinary drugs; medical devices; human biologics; tobacco; and cosmetics, including imported goods.<sup>352</sup> FSIS within the Department of Agriculture (USDA) is responsible for ensuring a safe, wholesome, and correctly labelled and packaged commercial supply of meat, poultry, Siluriformes fish and fish products (catfish), and some egg products in the United States, including imported goods.<sup>353</sup> The Animal and Plant Health Inspection Service (APHIS) at USDA protects the health of U.S. agriculture and natural resources against invasive pests and diseases, and regulates genetically engineered crops while promoting exports of U.S. plant and animal products.<sup>354</sup> In cases where requirements by APHIS and FSIS simultaneously apply to imported goods, APHIS evaluates the animal and plant health risks while FSIS ensures the enforcement of food safety requirements. The responsibilities of EPA include, *inter alia*, the registration of pesticides, including herbicides and fungicides, and the establishment of tolerances (maximum residue limits (MRLs)) for pesticides in food.<sup>355</sup>

3.250. Other agencies involved in SPS issues include the Agricultural Marketing Service, the Agricultural Research Service, and the National Institute of Food and Agriculture in the Department of Agriculture, the Centers for Disease Control and Prevention in the Department of Health and Human Services, the National Oceanic and Atmospheric Administration in the Department of Commerce, CBP in the Department of Homeland Security, and the Alcohol and Tobacco Tax and Trade Bureau in the Department of the Treasury.

3.251. Agencies have jurisdiction over imported products at the time of entry and after the products have entered the country. When a food does not meet FDA food safety requirements, such as when the food contains organisms of public health significance, foreign objects, or a major food allergen, firms may recall products<sup>356</sup>; on average, some 1,000 recalls of FDA-regulated products have been conducted every year since 2018. Of these recalls, 248 were related to imported human food and animal feed.<sup>357</sup> Since July 2018, the FDA has reported nearly 45,000 import refusals at the border.<sup>358</sup> In case of a refusal, the owner or consignee is entitled to an informal hearing regarding the admissibility of the product and can submit a plan to bring the product into compliance. A non-compliant product must be re-exported or destroyed within 90 days of FDA's notice of intent to refuse the goods. Similarly, whenever a health hazard situation with a reasonable probability that the use of the product will cause serious, adverse health consequences or death arises, FSIS recommends the voluntary recall of the product.<sup>359</sup> From January 2018 to January 2022, there were 330 recalls, and 38 recalls involved imported meat, poultry, or egg products. Compared to the period 2015-19, there were fewer recalls in 2020 and 2021; factors including societal disruptions and consumer behavior during the pandemic, explain this decrease.

3.252. Regarding the enforcement of APHIS regulations, CBP plays a key role at U.S. ports of entry and its staff inspects shipments of imported agricultural products to certify that the required animal or plant health import permits and SPS documentation accompany each shipment. In 2020, CBP

<sup>352</sup> Import requirements by type of product under the responsibility of the FDA is available at: <https://www.fda.gov/international-programs/imports-and-exports>.

<sup>353</sup> Requirement for the importation of FSIS-regulated products is available at: <https://www.fsis.usda.gov/inspection/import-export/import-guidance>.

<sup>354</sup> Import requirements for animal products and live animals as well as temporary restrictions are listed at: <https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information>. Plant import requirements and related information are available at: <https://www.aphis.usda.gov/aphis/ourfocus/planthealth/import-information>.

<sup>355</sup> Import requirements for pesticides and tolerances established by EPA are available at: <https://www.epa.gov/compliance/importing-and-exporting-pesticides-and-devices#import>.

<sup>356</sup> FDA requires a recall only when the goods present a health hazard and the voluntary recall has not been implemented. Only a handful of mandatory recalls were conducted during the period under review. A list of FDA-regulated products subject to a recall since 2017 is available at: <https://www.fda.gov/safety/recalls-market-withdrawals-safety-alerts>. Additional data related to recalls are available at: <https://datadashboard.fda.gov/ora/cd/recalls.htm>.

<sup>357</sup> FDA, *FDA-TRACK: Imported Food Safety Measures*. Viewed at: <https://www.fda.gov/about-fda/fda-track-agency-wide-program-performance/imported-food-safety-measures>.

<sup>358</sup> Half of these refusals are related to merchandise originating in five large trading partners: China, India, Mexico, Canada, and the Republic of Korea. Viewed at: <https://www.accessdata.fda.gov/scripts/ImportRefusals/index.cfm>.

<sup>359</sup> A list of recalls and public health alerts since 2010 for FSIS-regulated products is available at: <https://www.fsis.usda.gov/recalls>.



reported the daily discovery of 250 pests and 3,091 materials (plant, meat, animal by-product, or soil) for quarantine at U.S. ports of entry.<sup>360</sup> To meet increased requirements, the Protecting America's Food and Agriculture Act of 2019, P.L. 116-122, authorized CBP to recruit 240 additional agriculture specialists above the current level (2,600 specialists in March 2020); these specialists conduct the SPS-related inspections on imports at the 328 ports of entry covered by CBP.

3.253. EPA establishes tolerances for each crop's use of pesticides and notifies its Notices of Filings (NOF) in the Federal Register.<sup>361</sup> The tolerances for meat, poultry, and certain egg products are enforced by USDA, while FDA enforces them for other foods. The application fees for the registration of pesticides rose by 5% in 2020 and will increase by an additional 5% in 2022 as instructed by the Pesticide Registration Improvement Extension Act of 2018.

3.254. Equivalence determinations of an exporting country's regulatory food safety inspection system for products regulated by FSIS are a prerequisite for trade with the United States. The only FDA-regulated food products requiring an assessment as a precondition to import into the United States are Grade A dairy products and raw bivalve molluscan shellfish. On 24 September 2020, FDA announced its first-ever equivalence determination, which recognizes the control systems of Spain and the Netherlands on raw bivalve molluscan shellfish as equivalent to the U.S. National Shellfish Sanitation Program.<sup>362</sup> Imports from Spanish and Dutch establishments listed by FDA on the Interstate Certified Shellfish Shippers List are now allowed. FSIS has also determined equivalent certified and approved producers in 34 countries and the product scope of these equivalences varies from country to country. Following a regulatory change in 2019, a single list of eligible foreign countries to import FSIS-regulated goods is kept on the FSIS website.<sup>363</sup> During the review period, FSIS notified the adoption of seven equivalence determinations on poultry products, Siluriformes fish and fish products, and egg products. FDA has also concluded Systems Recognition Arrangements with food safety agencies in three trading partners. The authorities indicate that these arrangements do not constitute trade-facilitating measures and that they are not the same as equivalence determinations.<sup>364</sup>

3.255. The FSMA requires that U.S. importers develop a Foreign Supplier Verification Programs (FSVP) for each type of human and animal food product and each foreign supplier they import to confirm that the imported good complies with FDA requirements, has the same level of public health protection as in the United States, including preventive controls, produce safety regulations, and controls against adulteration or misbranding. On 10 May 2021, FDA launched the FSVP Importer Portal for FSVP Records Submission as a means for importers to upload FSVP records electronically to FDA.<sup>365</sup> More specifically, the FSVP rule requires importers to perform risk-based foreign supplier verification activities to verify that: (i) the food is produced in a manner that provides the same level of public health protection concerning hazard analysis and risk-based preventive controls, or standards for the safe production and harvesting of certain fruits and vegetables than U.S.-produced food; (ii) the food is not adulterated; and (iii) the human food is not misbranded (concerning food allergen labelling). Moreover, U.S. importers may request to participate in the Voluntary Qualified Importer Program (VQIP), an expedited review and entry program for food. Four U.S. importers are approved to participate in VQIP for fiscal year 2022 (1 October 2021-30 September 2022).<sup>366</sup>

<sup>360</sup> CBP, *Stats*. Viewed at: <https://www.cbp.gov/newsroom/stats/typical-day-fy2020>.

<sup>361</sup> An NOF issued by EPA may refer to several types of actions (new tolerances, changes, and corrections) and may cover more than one tolerance per NOF. Tolerances for pesticide chemicals are updated once a year in 40 C.F.R. Part 180 and daily in the electronic Code of Federal Regulations (e-CFR). The Pesticide Registration Improvement Extension Act of 2018 (P.L. 116-8), issued in March 2019, reaffirmed the authority of the EPA to collect fees and maintain the pesticides registration until FY2023.

<sup>362</sup> *Federal Register* (2020), Vol. 85, No. 186, 24 September, p. 60172. Viewed at: <https://www.federalregister.gov/d/2020-20755>.

<sup>363</sup> *Federal Register* (2019), Vol. 84, No. 229, 27 November, p. 65265. Viewed at: <https://www.federalregister.gov/d/2019-25750>.

<sup>364</sup> A System Recognition Arrangement establishes a regulatory partnership in which the competent authorities detail how they will rely on each other's facility inspections and investigations of foodborne illness.

<sup>365</sup> FDA, *FSMA Final Rule on Foreign Supplier Verification Programs (FSVP) for Importers of Food for Humans and Animals*. Viewed at: <https://www.fda.gov/food/food-safety-modernization-act-fsma/fsma-final-rule-foreign-supplier-verification-programs-fsvp-importers-food-humans-and-animals>.

<sup>366</sup> FDA, *Voluntary Qualified Importer Program (VQIP) Public List of Approved VQIP Importers*. Viewed at: <https://www.fda.gov/food/importing-food-products-united-states/voluntary-qualified-importer-program-vqip-public-list-approved-vqip-importers>.



3.256. On 1 August 2018, new U.S. standards for barley under the U.S. Grain Standards Act entered into force.<sup>367</sup> In June 2019, APHIS issued a final rule clarifying and further detailing the criteria to be used when assessing risks related to plant pests for the importation, interstate movement, and release of biological control organisms.<sup>368</sup> On 18 May 2020, APHIS made public the first comprehensive revision of regulations on genetically engineered organisms since 1987 to facilitate the development of genetically engineered organisms that are unlikely to pose plant pest risks.<sup>369</sup> On 17 September 2020, the regulations governing the importation of cattle and bison in regards to bovine tuberculosis and brucellosis were amended.<sup>370</sup> In December 2020, FDA issued a final regulation for accreditation of laboratories that perform food testing. When fully implemented, laboratory analysis of food for import purposes or when subject to food testing orders will be required to be performed by accredited laboratories.<sup>371</sup> In April 2021, label requirements for allergens in food products were extended to sesame (P.L. 117-11).

3.257. In line with the 2018 Agriculture Improvement Act, P.L. 115-334 (also known as the 2018 Farm Bill), APHIS maintains a list of animal and plant diseases and pests of concern posing a significant risk to U.S. food and agriculture resources and developed emergency response plans for these diseases and pests.<sup>372</sup> This list is in addition to other disease, pest, or health statuses lists kept by APHIS's Plant Protection and Quarantine (PPQ) and Veterinary Services (VS) for specific purposes, such as the U.S. Regulated Plant Pest List, the National List of Reportable Animal Diseases, or lists of APHIS-recognized animal health statuses of regions.

3.258. In July 2020, FDA outlined the steps to create a more digital, traceable, and safer human and animal food system over the next decade. Through tech-enabled technology, smarter tools, and approaches for prevention and outbreak response, and an adaptation to new emerging business models and retail modernization, FDA seeks to keep promoting a food safety culture. Other agencies have also embraced the modernization of their systems, policies, and approaches in their respective strategic plans.<sup>373</sup>

3.259. In March 2020, APHIS launched the Veterinary Services Permitting Assistant (VSPA), a search tool designed to guide applicants in determining their import requirements for animal products.<sup>374</sup> Since September 2021, VSPA covers requirements on live animals and it is expected that in the future, all permits will be processed only through APHIS eFile, a more comprehensive platform replacing the previous APHIS ePermit platform. Since 2018, APHIS has contributed to and supported the development and launch of the International Plant Protection Convention (IPPC) global ePhyto system and started exchanging electronic phytosanitary certificates. Currently, 30 trading partners send ePhyto certificates to APHIS while 59 trading partners receive ePhyto certificates issued by APHIS.<sup>375</sup> To facilitate clearance of imported plants and plant products during the COVID-19 emergency, APHIS and CBP have accepted digital phytosanitary certificates including since March 2020.<sup>376</sup> This measure was extended until through 31 March 2022.

<sup>367</sup> *Federal Register* (2017), Vol. 82, No. 84, 3 May, p. 20541. Viewed at: <https://www.federalregister.gov/d/2017-08942>. Note that the U.S. Grains Standards Act was reauthorized until the FY2025 in December 2020 (P.L. 116-216).

<sup>368</sup> *Federal Register* (2019), Vol. 84, No. 122, 25 June, p. 29938. Viewed at: <https://www.federalregister.gov/d/2019-13246>.

<sup>369</sup> *Federal Register* (2020), Vol. 85, No. 96, 18 May, p. 29790. Viewed at: <https://www.federalregister.gov/d/2020-10638>.

<sup>370</sup> Australia, Canada, Mexico, and New Zealand can currently export bovine animals. *Federal Register* (2020), Vol. 85, No. 181, 17 September. Viewed at: <https://www.federalregister.gov/d/2020-20552>.

<sup>371</sup> *Federal Register* (2020), Vol. 86, No. 230, 3 December, p. 68728. Viewed at: <https://www.federalregister.gov/d/2021-25716>.

<sup>372</sup> The current number of pests on the list is 59, but that the list can grow as necessary. APHIS, *Animal and Plant Diseases and Pests of Concern*. Viewed at: <https://www.aphis.usda.gov/aphis/resources/farmbill/fb-pests/farmbill-pest-list>.

<sup>373</sup> For instance, FSIS, *FSIS Strategic Plan 2017-2021*. Viewed at: <https://www.fsis.usda.gov/about-fsis/strategic-planning>; and APHIS, *APHIS Strategic Plan FY 2019-2023*. Viewed at: [https://www.aphis.usda.gov/about\\_aphis/downloads/aphis-strategic-plan.pdf](https://www.aphis.usda.gov/about_aphis/downloads/aphis-strategic-plan.pdf).

<sup>374</sup> APHIS. Viewed at: <https://efile.aphis.usda.gov/s/vs-permitting-assistant>.

<sup>375</sup> The U.S. exchanges ePhyto certificates with the following trading partners: [https://www.aphis.usda.gov/aphis/ourfocus/planthealth/sa\\_export/ephyto-participating-countries](https://www.aphis.usda.gov/aphis/ourfocus/planthealth/sa_export/ephyto-participating-countries).

<sup>376</sup> USDA (2020), *APHIS Plant Protection and Quarantine Provides an Update on Import and Export Activities for Plants and Plant Products*. Viewed at: <https://www.aphis.usda.gov/aphis/newsroom/stakeholder-info/stakeholder-messages/plant-health-news/import-export-activities-plants-plant-products-update>.

3.260. In September 2020, FDA launched a renewed Food Safety Partnership with its Mexican counterparts, i.e. the National Service of Agro-Alimentary Health, Safety and Quality (SENASICA) and the Federal Commission for Protection against Sanitary Risk (COFEPRIS), which builds upon a pre-existing partnership on fresh produce safety established in 2014 and extends the scope of covered products to all human foods.<sup>377</sup> In this framework, authorities aim at enabling core elements of tech-enabled traceability and increasing data sharing to improve cross-border responses to outbreaks of foodborne illnesses.

3.261. The Multilateral Affairs Division at USDA's Foreign Agricultural Service serves as the national enquiry point and notification authority under the WTO SPS Agreement.<sup>378</sup> The U.S. Codex Office, housed in USDA's Trade and Foreign Agricultural Affairs, coordinates the U.S. representation at the Codex Alimentarius Commission<sup>379</sup>, while APHIS is the contact point for the World Organisation for Animal Health (OIE) and the International Plant Protection Convention (IPPC).

3.262. During the period July 2018-March 2022, the United States submitted 365 SPS notifications to the WTO (including 6 corrigenda to earlier notifications) and 65 emergency notifications (including 50 addenda to earlier notifications). The main objective or rationale for notifications remain food safety (80.0%) and plant protection (14.5%).<sup>380</sup> One of every seven notifications (14%) indicates a related international standard or guideline<sup>381</sup>; however, harmonization with international standards is not always reported, as was the case for example of 2021 EPA regulations related to the Codex Alimentarius Commission.<sup>382</sup>

3.263. During the period under review, three new specific trade concerns (STCs) were raised in the WTO SPS Committee relating to measures maintained by the United States.<sup>383</sup> In addition, three previously raised concerns continued to be discussed in the SPS Committee; one of them raised by the European Union concerning beef exports was reported as partially resolved.<sup>384</sup> During the same period, the United States used the SPS Committee to raise or support 20 new STCs regarding measures maintained by other Members. In February 2018, the SPS Agreement was cited in a request for consultation concerning U.S. measures on pangasius seafood products.<sup>385</sup> The United States takes part as a third party of two dispute settlement proceedings with reference to the SPS Agreement initiated during the review period.<sup>386</sup>

### 3.3.4 Competition policy

3.264. The core of U.S. competition (antitrust) policy framework remains defined by the Sherman Act (1890), which outlaws monopolization and restraints of trade; the Clayton Act (1914) prohibiting mergers and acquisitions reducing competition; the Robinson Patman Act (1936) prohibiting certain

<sup>377</sup> FDA. Viewed at: <https://www.fda.gov/food/international-cooperation-food-safety/fda-senasica-cofepris-food-safety-partnership>.

<sup>378</sup> WTO ePing SPS and TBT Platform, *Enquiry Points/Notification Authorities*. Viewed at: <https://epingalert.org/en/EnquiryPoint/sps-enna>.

<sup>379</sup> Federal agencies representing the United States in committees include USDA, FDA, EPA, and USDOC.

<sup>380</sup> Animal health, zoonoses, and territory protection account for 5.8%, 2.7%, and 1.6% of the notified measures, respectively; 16 notifications indicate more than a single objective or rationale.

<sup>381</sup> In further detail, the following standards or guidelines were reported during the review period: the Codex Alimentarius Commission (9.0%), World Organisation for Animal Health (1.4%), and International Plant Protection Convention (3.8%).

<sup>382</sup> For instance, the tolerance for difenoconazole in/on pome fruit differs from the Codex MRL. Difenoconazole; Pesticide Tolerances. A Rule by the Environmental Protection Agency. *Federal Register* (2021), Vol. 86, No. 105, 3 June. Viewed at: <https://www.federalregister.gov/d/2021-11636>.

<sup>383</sup> In June 2020, the European Union raised a concern about the recognition of the pest free status in the European Union for Asian and Citrus longhorn beetles. In November 2020, the European Union raised an STC related to the delay in the publication of a final rule on importation of sheep, goats, and certain other ruminants. In March 2022, Brazil raised a concern related to delays in the opening of the U.S. citrus market.

<sup>384</sup> The concerns relate to the acceptance of the OIE standards for Bovine Spongiform Encephalopathy (raised by the European Union), U.S. import restrictions on apples and pears (by the European Union), and the U.S. Seafood Import Monitoring Program (raised by China and supported by Chile, Ecuador, the Philippines, and the Russian Federation). Further information is available at:

<https://epingalert.org/en/TradeConcerns/details?imsId=193&domainId=SPS>;  
<https://epingalert.org/en/TradeConcerns/details?imsId=415&domainId=SPS>; and  
<https://epingalert.org/en/TradeConcerns/details?imsId=439&domainId=SPS>.

<sup>385</sup> DS540: *United States – Certain Measures Concerning Pangasius Seafood Products from Viet Nam*.

<sup>386</sup> DS589: *China – Measures Concerning the Importation of Canola Seed from Canada*; and DS599: *Panama – Measures concerning the Importation of Certain Products from Costa Rica*.

discriminatory practices; the Celler-Kefauver Act (1950) expanding the Clayton Act to include asset acquisitions and to acquisitions involving firms other than direct competitors<sup>387</sup>; and the Federal Trade Commission Act (1914) prohibiting unfair competition methods, and unfair or deceptive practices. The Clayton Act provides the legal basis for private antitrust litigants to bring stand-alone actions and addresses specific practices not previously defined, such as interlocking directorates.<sup>388</sup> In addition to federal laws, most states have antitrust laws, often modelled after the federal laws. In general, changes in the competition policy framework are implemented through legislation, judicial decisions, and administrative proceedings providing for interpretation of the statutes.

3.265. Regarding international trade, the Wilson Tariff Act prohibits any arrangements by importers whose aim is to restrain trade or to increase the price of imported goods. The Webb-Pomerene Export Trade Act allows businesses to form export trade associations to engage in the collective exports of goods provided there are no anti-competitive effects, or injury to competitors, within the United States. The Export Trading Company Act creates a procedure whereby persons engaged in export may obtain, under certain circumstances, an export certificate of review providing, *inter alia*, for limited antitrust immunity. The Foreign Trade Antitrust Improvements Act provides that the Sherman Act and the FTC Act apply to conduct involving non-import foreign trade with a direct, substantial, and reasonably foreseeable effect on trade or commerce activities of a person in the United States.

3.266. Recent legislative developments include the permanent extension of the Antitrust Criminal Penalty Enhancement and Reform Act (ACPERA) of 2004, P.L. 108-237,<sup>389</sup> and the enactment of the Criminal Antitrust Anti-Retaliation Act (CAARA, P.L. 116-257). The ACPERA provides incentives for corporations, such as limitations on civil liability, to self-report their involvement in criminal antitrust conspiracies and to cooperate with investigations. The Antitrust Criminal Penalty Enhancement and Reform Permanent Extension Act, Title III of Division D of the Continuing Appropriations Act of 2021 and Other Extensions Act of 1 October 2020 (P.L. 116-159), repealed the sunset provisions of the ACPERA and made the scope of the Act permanent.<sup>390</sup> Enacted in December 2020, the CAARA enhances the protections for employees denouncing criminal antitrust violations ("whistle-blowers") or assisting the Federal Government in any investigation or proceeding related to a criminal antitrust violation. Notably, punitive or retaliatory actions by employers against employees are prohibited. Whistle-blowers are excluded from protection under CAARA if they were involved in planning and initiation of antitrust violations, and the law does not provide for any monetary award.

3.267. The Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DOJ) enforce federal antitrust laws.<sup>391</sup> The Antitrust Division of the DOJ enforces the Sherman Act, and FTC enforces the Federal Trade Commission Act and the Robinson Patman Act. Both agencies are involved in the enforcement of the Clayton Act and the Celler-Kefauver Act, and transactions are typically reviewed by only one agency decided on the basis of the agency's expertise in the industry or sector involved in each transaction. The two agencies are also involved in the formulation and implementation of U.S. international trade and investment policy, including trade agreements, as they concern competition policy. Government acts and institutions, including those involved in commercial activity, are exempted from federal antitrust legislation when authorized by state policy. Limited immunity also applies to specific aspects of agriculture, fisheries, newspapers, insurance, shipping, and transport.<sup>392</sup>

<sup>387</sup> The Hart-Scott-Rodino Antitrust Improvements Act (1976) amended the Clayton Act by requiring detailed filing of transactions in larger mergers and acquisitions (pre-merger notifications). In 2021, the threshold for transactions for proposed mergers and acquisitions requiring to be reported was fixed at USD 92 million. FTC (2021), "FTC Announces Annual Update of Size of Transaction Thresholds for Premerger Notification Files and Interlocking Directorates", 5 February. Viewed at: <https://www.ftc.gov/news-events/press-releases/2021/02/ftc-announces-annual-update-size-transaction-thresholds-premerger>.

<sup>388</sup> Besides these three core laws, the FTC alone has enforcement responsibilities under 23 laws related to competition. Viewed at: [https://www.ftc.gov/enforcement/statutes?title=&field\\_mission\\_tid%5B%5D=2974](https://www.ftc.gov/enforcement/statutes?title=&field_mission_tid%5B%5D=2974).

<sup>389</sup> Subsequently amended to extend its application. The permanent extension is part of the Continuing Appropriations Act of 2021 and Other Extensions Act (P.L. 116-159) which became law on 1 October 2020.

<sup>390</sup> Continuing Appropriations Act of 2021 and Other Extensions Act (P.L. 116-159). Viewed at: <https://www.congress.gov/116/plaws/publ159/PLAW-116publ159.pdf>.

<sup>391</sup> State attorneys general also contribute to the enforcement of antitrust regulations.

<sup>392</sup> Legislation in this regard includes the Capper-Volstead Act, the Charitable Donation Antitrust Immunity Act, the Defense Production Act, the McCarran-Ferguson Act, the Newspaper Preservation Act, the Shipping Act, and the Sports Broadcasting Act. Under certain conditions, the Department of Transportation

3.268. Price fixing, bid rigging, and market allocation between competitors are unlawful under the Sherman Act. Considered *per se* as illegal, horizontal violations by both corporations and individuals are prosecuted through criminal or civil prosecution by the Antitrust Division or challenged by FTC in civil proceedings under the FTC Act. Regarding vertical arrangements and other conducts related to competition, a "rule of reason" standard is ordinarily applied to examine both the positive and negative effects of any agreement before determining whether it violates antitrust laws. Criminal prosecutions are typically limited to intentional and clear violations, such as fixing prices or rigging bids, and only DOJ can obtain criminal sanctions. Criminal penalties may reach up to USD 100 million per offence for corporations, and USD 1 million for an individual, along with up to 10 years in prison. In November 2021, FTC issued a statement committing itself to expand its criminal referral program to stop and deter corporate crime.<sup>393</sup> As the Clayton and FTC Acts do not carry criminal penalties, most antitrust legislation enforcement actions follow civil proceedings.

3.269. E.O. 14036 of 9 July 2021<sup>394</sup> adopted a "whole-of-government" approach to fostering competition in U.S. markets. It provided directives focusing competition policy enforcement efforts on labor markets, agricultural markets, healthcare markets, and the technology sector (including mergers by dominant Internet platforms) and called for enforcement agencies to vigorously enforce the antitrust laws. In addition, E.O. 14036 also established the White House Competition Council to monitor progress on competition initiatives in the Order; however, this Council is not directly involved in enforcement actions.

3.270. In June 2020, a joint FTC/DOJ Guidelines on Vertical Mergers were issued.<sup>395</sup> FTC withdrew its approval of the guidelines in September 2021, and in response to E.O. 14036, the U.S. antitrust agencies announced in January 2022 a project to revise both the Vertical Merger Guidelines and the 2010 Horizontal Merger Guidelines so as to better detect and prevent anti-competitive transactions. Recent changes in the implementation of procedures include changes in the form for pre-merger notification filings introduced in 2018 and 2019<sup>396</sup>, and the temporary implementation of an e-filing system for pre-merger notifications since March 2020.<sup>397</sup> In July 2021, FTC issued a final rule amending its rules of practice, which implies a modernization of its procedures for rulemaking to define unfair or deceptive acts or practices under the FTC Act.<sup>398</sup>

3.271. Pre-merger notification filings pursuant to the Hart-Scott-Rodino (HSR) Antitrust Improvements Act of 1976, P.L. 94-435<sup>399</sup> may be investigated at the request of consumers or businesses. Every year, close to 2,000 pre-merger notifications are screened by both agencies (Table 3.27) leading to the initiation of approximately 50 investigations. In FY2021, the agencies received 3,527 pre-merger filings and initiated 67 investigations. Additionally, both agencies conduct additional investigations related to the enforcement of the antitrust laws according to their enforcement responsibilities.

3.272. Both agencies challenged several mergers and acquisitions during the review period. FTC and DOJ blocked the merger of Peabody Energy Corporation and Arch Coal Incorporated (coal production); the acquisition of Billie Incorporated by Procter & Gamble (cosmetics and personal care); the acquisition of Plaid Inc. by Visa Inc. (online debit business); the merger between Aon plc and Willis Towers Watson (insurance brokers); and acquisitions of hospital services in New Jersey

---

may approve marketing alliances between domestic and foreign airlines (See further details in Table 3.16 of WTO document WT/TPR/S/307/Rev.1, 13 March 2015).

<sup>393</sup> FTC, *Commission Statement Regarding Criminal Referral and Partnership Process*, Commission File No. P094207, 18 November 2021. Viewed at: [https://www.ftc.gov/system/files/documents/public\\_statements/1598439/commission\\_statement\\_regarding\\_criminal\\_referrals\\_and\\_partnership\\_process\\_updated\\_p094207.pdf](https://www.ftc.gov/system/files/documents/public_statements/1598439/commission_statement_regarding_criminal_referrals_and_partnership_process_updated_p094207.pdf).

<sup>394</sup> E.O. on Promoting Competition in the American Economy, *Federal Register* (2021), Vol. 86, No. 132, 14 July, p. 36987. Viewed at: <https://www.federalregister.gov/d/2021-15069>.

<sup>395</sup> FTC, *Competition Guidance*. Viewed at: <https://www.ftc.gov/tips-advice/competition-guidance>.

<sup>396</sup> *Federal Register* (2018), Vol. 83, No. 136, 16 July, p. 32768; and *Federal Register* (2019), Vol. 84, No. 124, 27 June, p. 30595.

<sup>397</sup> FTC, *Premerger Notification Office Implements Temporary e-Filing System*. Viewed at: <https://www.ftc.gov/news-events/press-releases/2020/03/premerger-notification-office-implements-temporary-e-filing>.

<sup>398</sup> Revisions to Rules of Practices, *Federal Register* (2021), Vol. 86, No. 138, 22 July, p. 38542. Viewed at: <https://www.federalregister.gov/d/2021-15313>.

<sup>399</sup> Violations to the notification requirements as well as other antitrust requirements carry civil penalties whose maxima are adjusted every year by the FTC (Adjustments to Civil Penalty Amounts). *Federal Register* (2022), Vol. 87, No. 6, 10 January, p. 1070. Viewed at: <https://www.federalregister.gov/d/2022-00213>.

and in the Memphis, Tennessee metropolitan region. Settled agreements, where negotiated divestitures and other conditions apply, were achieved in the acquisition of GE Biopharma by the Danaher Corporation, in the merger of Eldorado Resorts, Inc. and Caesars Entertainment Corporation, which created the largest U.S. gaming company, the purchase of Craft Brew Alliance, Inc. by Anheuser-Busch InBev SA/NV, the merger of CVS Corporation and Aetna (the largest health care merger in U.S. history), the merger of T-Mobile and Sprint, and the acquisition of Morton Salt by Stone Canyon Industries Holdings, as well as on acquisitions and mergers between hospital services providers and medical devices producers.

3.273. In the period between FY2018 and FY2021, DOJ initiated 187 Sherman Act 1 (restraint of trade investigations), 10 Sherman Act 2 (monopolistic practices), 271 Clayton Act investigations, and 228 HSR investigations, out of a total of 9,364 pre-merger notifications received (2.4% of the total). During FY2021, when 3,527 transactions were reported under the HSR Act (Table 3.27), a substantial increase compared to the FY2020, the Antitrust Division challenged 11 merger transactions.<sup>400</sup> The mergers challenged by DOJ in FY2020 were in a variety of industries, including healthcare, defense, financial services, food, commercial vehicle manufacturing, and education. The DOJ resolved horizontal and vertical concerns raised by the merger of United Technologies Corporation and Raytheon Company by requiring the parties to divest three separate business units, while competitive concerns raised by the proposed acquisition by Communications and Power Industries LLC's of General Dynamics SATCOM Technologies Inc. were resolved by divestment. Another prominent case was the divestiture in a banking merger between BB&T Corporation and SunTrust Banks Inc. that would have substantially lessened competition in seven markets for retail banking and/or small business banking. The banks agreed to divest 28 branches in 3 different states with approximately USD 2.3 billion in deposits.<sup>401</sup>

**Table 3.27 DOJ actions against anti-competitive practices, FY2018-21**

	FY2018	FY2019	FY2020	FY2021
<b>Hart-Scott-Rodino (HSR) pre-merger notifications</b>				
Received	2,111	2,089	1,637	3,527
HSR investigations initiated	51	64	46	67
Number of cases filed	8	11	7	11
<b>Total investigations initiated, by primary type of conduct<sup>a</sup></b>				
Sherman 1 – Restraint of Trade <sup>b</sup>	44	52	49	42
Sherman 2 – Monopoly	0	6	2	2
Clayton 7 – Mergers	65	72	59	75
Others <sup>c</sup>	5	4	11	9
<b>Antitrust Division Cases – Civil cases</b>				
Filed	10	19	10	15
Terminated	10	19	10	13
<b>Antitrust Division Cases – Criminal cases</b>				
Filed	18	26	20	25
Terminated	..	..	..	..
<b>Antitrust Division Cases – Courts of Appeals</b>				
Filed	10	0	2	1
Terminated	9	5	6	1
<b>Antitrust Division Cases – Supreme Court</b>				
Filed	0	1	0	0
Terminated	0	0	1	0
<b>Criminal Fines and Penalties Imposed</b>				
Total individual fines (USD million)	10.8	2.1	1.1	0.5
Number of individuals fined	53	22	13	6
Total corporate fines (USD million)	189	255	633	151
Number of corporations fined	9	10	12	8
Total fines imposed (USD million)	199	257	634	151

<sup>400</sup> Of the HSR transactions reported in FY2020, 1.7% had a value of between USD 50 million and USD 100 million; 15.8% were of between USD 100 million and USD 150 million; 17.0% were between USD 150 million and USD 200 million; 12.0% were between USD 200 million and USD 300 million; 13.3% were between USD 300 million and USD 500 million; 25.3% were between USD 500 million and USD 1 billion; and 14.8% had a value of over USD 1 billion. FTC, Bureau of Competition, and Department of Justice, Antitrust Division (2021), *Hart-Scott-Rodino Annual Report Fiscal Year 2020, Section 7A of the Clayton Act, Hart-Scott-Rodino Antitrust Improvements Act of 1976 (Forty-Third Annual Report)*. Viewed at: [https://www.ftc.gov/system/files/documents/reports/hart-scott-rodino-annual-report-fiscal-year-2020/fy2020\\_-\\_hsr\\_annual\\_report\\_-\\_final.pdf](https://www.ftc.gov/system/files/documents/reports/hart-scott-rodino-annual-report-fiscal-year-2020/fy2020_-_hsr_annual_report_-_final.pdf).

<sup>401</sup> FTC, Bureau of Competition, and Department of Justice, Antitrust Division (2021), *Hart-Scott-Rodino Annual Report Fiscal Year 2020, Section 7A of the Clayton Act, Hart-Scott-Rodino Antitrust Improvements Act of 1976 (Forty-Third Annual Report)*. Viewed at: [https://www.ftc.gov/system/files/documents/reports/hart-scott-rodino-annual-report-fiscal-year-2020/fy2020\\_-\\_hsr\\_annual\\_report\\_-\\_final.pdf](https://www.ftc.gov/system/files/documents/reports/hart-scott-rodino-annual-report-fiscal-year-2020/fy2020_-_hsr_annual_report_-_final.pdf).



	FY2018	FY2019	FY2020	FY2021
<b>Incarceration</b>				
Number of individuals sentenced	59	25	14	6
Number of individuals sentenced to incarceration time	21	22	7	0
Average number of days of incarceration	285	179	448	0

.. Not available.

a Primary type of conduct under investigation at the outset of the investigation.

b This category reflects both civil and criminal investigations.

c This category includes investigations of potential violations of, among other statutes, Sections 3, 7A, or 8 of the Clayton Act, and Title 18 of the Robinson-Patman Act.

Source: DOJ, *Antitrust Division Workload Statistics, FY2010-2019*. Viewed at: <https://www.justice.gov/atr/file/788426/download>; and information provided by the DOJ.

3.274. Regarding criminal cases filed by DOJ, fines imposed on individuals did not exceed, on average, USD 200,000 per person in recent years; total corporate fines amounted to USD 1.25 billion over the review period (Table 3.28). The highest fine in the FY2018-21 period was USD 205 million. Following the adoption of the Antitrust Guidance for Human Resource Professionals in 2016, DOJ brought its first criminal indictments for wage-fixing and no-poach arrangements in 2021. Since 2016, the Antitrust Division has sustained a solid record of winning criminal cases at the Courts of Appeals (18 out of 21 cases), and the U.S. Supreme Court has declined to hear further appeals (3 out of 3). By July 2021, DOJ reported the highest number of active trials since 1993 (17 trials against 9 companies and 31 individuals). The merger and non-merger enforcement activities by DOJ in FY2020 and FY2019 resulted in estimated savings to U.S. consumers of USD 0.7 billion and USD 3.9 billion, respectively.<sup>402</sup>

3.275. During the review period, DOJ launched initiatives aimed at enhancing actions and activities against anti-competitive practices. In November 2019, the Procurement Collusion Strike Force (PCSF) was created to investigate and prosecute antitrust and other crimes that undermine competition in government procurement, grant, and program funding. PCSF has prosecuted collusion in security services contracts to U.S. and NATO military installations. The Judgment Termination Initiative, announced in May 2018, seeks to terminate antitrust judgments that no longer protect competition through a review and a consultation procedure with the public.

**Table 3.28 Sherman Act violations yielding a corporate fine of USD 10 million or more in FY2018-21**

FY	Defendant	Product	Fine (USD million)	Country
2018	BNP Paribas USA, Inc.	Foreign currency exchange	90.0	United States
2018	Nichicon Corporation	Capacitors	54.6	Japan
2018	Hoegh Autoliners AS	Ocean shipping roll on, roll off cargo – deep-sea freight transportation	21.0	Norway
2018	Maruyasu Industries Co., Ltd	Automobile parts – steel tubes	12.0	Japan
2019	Starkist Co.	Packaged seafood	100.0	United States
2019	Nippon Chemi-Con Corporation	Capacitors	60.0	Japan
2019	GS Caltex Corporation	Defense fuel supply	35.0	Korea, Republic of
2019	SK Energy Co., Ltd	Defense fuel supply	34.0	Korea, Republic of
2019	NHK Spring Co., Ltd	Suspension assemblies	28.5	Japan
2020	Taro Pharmaceuticals USA, Inc.	Generics	205.7	United States
2020	Sandoz, Inc.	Generics	195.0	United States
2020	Florida Cancer Specialists & Research Institute, LLC	Oncology treatment	100.0	United States
2020	Hyundai Oilbank Co.	Fuel supply	46.2	Korea, Republic of
2020	S-Oil Corporation	Fuel supply	30.6	Korea, Republic of
2020	Apotex Corp.	Generics	24.0	United States
2021	Pilgrim's Pride Corporation	Broiler chicken products	107.9	United States
2021	Argos USA LLC, aka Argos Ready Mix LLC	Ready mix concrete	20.0	United States
2021	G4S Secure Solutions NV	Security services	15.0	Belgium

Source: DOJ, *Sherman Act Violations Resulting in Criminal Fines & Penalties \$10 Million or More*. Viewed at: <https://www.justice.gov/atr/sherman-act-violations-yielding-corporate-fine-10-million-or-more>.

3.276. FTC may seek to stop an entire transaction by filing for a preliminary injunction in federal court pending an administrative trial on the merits. Final decisions by these instances can be

<sup>402</sup> DOJ, Antitrust Division, *Congressional Submission FY 2022 Performance Budget*. Viewed at: <https://www.justice.gov/jmd/page/file/1398291/download>.

appealed to U.S. Courts of Appeals and, ultimately, to the U.S. Supreme Court. Between FY2018 and FY2021, FTC analyzed 89 merger enforcement challenges. During FY2021, FTC brought 18 merger enforcement challenges, of which 5 resulted in a final consent order requiring divestitures, another six were subject to federal injunction, and another 7 were abandoned or restructured as a result of antitrust concerns raised during the investigation (Table 3.29). According to FTC, these actions halted unlawful mergers in numerous sectors of the economy, including consumer goods and services, pharmaceuticals, healthcare, high tech and industrial goods, and energy.<sup>403</sup>

**Table 3.29 FTC actions against anti-competitive practices, FY2018-21**

(Number)

	FY2018	FY2019	FY2020	FY2021
HSR pre-merger notifications received	2,111	2,089	1,637	3,527
Merger investigations	22	21	28	18
Consents	12	10	10	5
Federal injunctions	3	2	5	6
Administrative complaints	2	0	2	0
Abandoned/restructured	5	9	11	7
Horizontal agreements settled by FTC	0	0	0	0
Clayton Act Section 7A actions	0	3	0	1
Civil penalty actions: order violations	1	0	1	0
Non-merger enforcement actions	3	2	2	4
Consents	0	0	1	2
Federal Injunctions	0	2	1	2
Admin. Complaints	1	0	0	0
Order violations	0	0	0	0

Source: FTC, *Competition Enforcement Database*. Viewed at: <https://www.ftc.gov/competition-enforcement-database>; and information provided by FTC.

3.277. With respect to non-merger enforcement, on 9 December 2020, FTC sued Facebook for maintaining its personal social networking monopoly by systematically acquiring and imposing anti-competitive conditions on software developers.<sup>404</sup> During the review period, FTC also issued complaints charging companies (Qualcomm Incorporated and Broadcom Incorporated) in the semiconductor industry for their use of anti-competitive tactics. FTC's merger and non-merger enforcement activities in FY2021, FY2020, and FY2019 resulted in estimated savings to U.S. consumers of USD 2.4 billion, USD 2.1 billion, and USD 6.2 billion, respectively.<sup>405</sup> Despite strong enforcement action, DOJ and FTC together are parties in only a small share (less than 5%) of the approximately 600 civil cases initiated every year on antitrust matters in U.S. federal courts.<sup>406</sup> On average, DOJ has filed 15 civil cases per year since 2016, while FTC made less than 10 filings per year over the same period.

3.278. Competition policy in international trade agreements benefits from the engagement of U.S. antitrust agencies. For instance, the USMCA, which entered into force on 1 July 2020, has a competition chapter ensuring the most extensive procedural fairness provisions in all U.S. trade agreements. These provisions cover transparency and non-discrimination while aiming to provide detailed minimum procedural fairness. U.S. antitrust agencies have subscribed agreements on competition matters with 18 trading partners.<sup>407</sup> In September 2020, U.S. antitrust agencies signed

<sup>403</sup> FTC, Bureau of Competition, and Department of Justice, Antitrust Division (2021), *Hart-Scott-Rodino Annual Report Fiscal Year 2020, Section 7A of the Clayton Act, Hart-Scott-Rodino Antitrust Improvements Act of 1976 (Forty-Third Annual Report)*. Viewed at: [https://www.ftc.gov/system/files/documents/reports/hart-scott-rodino-annual-report-fiscal-year-2020/fy2020\\_hsr\\_annual\\_report\\_final.pdf](https://www.ftc.gov/system/files/documents/reports/hart-scott-rodino-annual-report-fiscal-year-2020/fy2020_hsr_annual_report_final.pdf).

<sup>404</sup> FTC, *FTC v. Facebook, Inc.* Viewed at: <https://www.ftc.gov/enforcement/cases-proceedings/191-0134/facebook-inc-ftc-v>. In 2019, the FTC imposed a USD 5 billion penalty against Facebook, the largest ever imposed on any company, for violating consumers' privacy.

<sup>405</sup> FTC, *Agency Financial Reports for Fiscal Year 2021, 2020, and 2019*. Viewed at: [https://www.ftc.gov/system/files/documents/reports/agency-financial-report-fy2021/ftc\\_fy2021\\_agency\\_financial\\_final.pdf](https://www.ftc.gov/system/files/documents/reports/agency-financial-report-fy2021/ftc_fy2021_agency_financial_final.pdf).

<sup>406</sup> United States Courts, Table C-2A. Viewed at: <https://www.uscourts.gov/data-table-numbers/c-2a>.

<sup>407</sup> U.S. antitrust agencies have subscribed Cooperation agreements with agencies from: Australia (June 1982), Brazil (October 1999), Canada (August 1995), Chile (March 2011), Colombia (September 2014), Germany (June 1976), the European Commission (September 1991), Israel (March 1999), Japan (October 1999), Mexico (July 2000), and Peru (May 2016). They have also subscribed a Memorandum of understanding with agencies from: China (July 2011), India (September 2012), Republic of Korea (September 2015), and Russian Federation (November 2009). Finally, they have entered into a Mutual assistance framework with agencies from: Australia (April 1999); and Australia, Canada, New Zealand, and the United Kingdom (September 2020). The following U.S. Trade agreements contain competition chapters:

the Multilateral Mutual Assistance and Cooperation (MMAC) Framework for Competition Authorities<sup>408</sup> with counterparts of Australia, Canada, New Zealand, and the United Kingdom. The Framework provides the basis for bilateral agreements on investigative assistance, including sharing confidential information and cross-border evidence gathering. It includes a memorandum of understanding designed to reinforce and improve existing case coordination and collaboration tools among the agencies, and a model agreement. In collaboration with G7 counterparts, U.S. representatives released a Common Understanding of G7 Competition Authorities on Competition and the Digital Economy (Common Understanding) in July 2019.

3.279. U.S. antitrust agencies have also actively participated in international bodies, such as the International Competition Network (ICN), the Competition Committee of the OECD, UNCTAD, and the Competition Policy and Law Group of APEC. DOJ successfully launched the ICN-sponsored Framework on Competition Agency Procedures (CAP) in May 2019, which aims to promote due process, and fair and effective procedures, in investigations by competition authorities. Over 70 competition agencies have already signed on to the CAP.

### 3.3.5 State trading, state-owned enterprises, and privatization

3.280. Governmental ownership or control over enterprises that engage in commercial activities are exceptions to the rule in the United States. The Federal Government does not have a general incorporation statute, and each entity is thus chartered through an act of Congress with a clear and transparent mandate to perform a public purpose and in many cases not to compete with private enterprises. Many present-day government corporations were originally created in the 1930s and 1940s (Table 3.30). Their legal personality is separate from the Federal Government, but they may receive federal appropriations to complement their own sources of revenue.<sup>409</sup> At the sub-federal level, states, municipalities, and tribal governments have the power to charter corporations that they own, control, fund, or regulate. For example, 45 states and 3 territories organize lotteries, and some widely offered games are *de facto* run as national lotteries.

**Table 3.30 Government corporations and independent establishments, 2022**

Government corporation	Legal reference	Area of operation
Commodity Credit Corporation	15 U.S.C. 714	Commodity credit financing
Community Development Financial Institutions Fund	12 U.S.C. 4701	Banking
Corporation for National and Community Service	42 U.S.C. 12651	National and community services
EXIM Bank	12 U.S.C. 635	Export financing
Federal Crop Insurance Corporation	7 U.S.C. 1501	Agricultural insurance
Federal Deposit Insurance Corporation	12 U.S.C. 1811	Bank resolution and deposit insurance
Federal Financing Bank	12 U.S.C. 2281	Financing
Federal Home Loan Banks	12 U.S.C. Ch. 11	Banking
Federal Prison Industries (UNICOR)	18 U.S.C. 4121	Prison services
Financing Corporation <sup>a</sup>	12 U.S.C. 1441	Financing
Government National Mortgage Association	12 U.S.C. 1717	Mortgages
International Clean Energy Foundation	42 U.S.C. 17352	Foreign assistance for greenhouse gas reduction
Millennium Challenge Corporation	22 U.S.C. 7703	Foreign assistance
National Credit Union Administration Central Liquidity Facility	12 U.S.C. 1795b	Credit unions
National Railroad Passenger Corporation (AMTRAK)	49 U.S.C. 24301	Passenger rail services
U.S. International Development Finance Corporation	22 U.S.C. 103	International investment and financing
Pension Benefit Guaranty Corporation	29 U.S.C. 1301	Pensions
Presidio Trust of San Francisco	16 U.S.C. 460bb	Parks and recreation
Resolution Funding Corporation	12 U.S.C. 1441(b)	Financing of the former Resolution Trust Corporation
Great Lakes St. Lawrence Seaway Development Corporation	33 U.S.C. 981	Marine transport

Australia (January 2005); Chile (January 2004); Colombia (May 2012); Republic of Korea (March 2012); United States–Mexico–Canada Agreement (USMCA) (July 2020); Peru (February 2009); and Singapore (January 2004).

<sup>408</sup> DOJ (2020), "Assistant Attorney General Makan Delrahim Signs Antitrust Cooperation Framework with Australia, Canada, New Zealand, and United Kingdom", 2 September. Viewed at: <https://www.justice.gov/opa/pr/assistant-attorney-general-makan-delrahim-signs-antitrust-cooperation-framework-australia>.

<sup>409</sup> 5 U.S.C. 103 defines a government corporation as a corporation owned or controlled by the Government of the United States. The Government Corporation Control Act (31 U.S.C. 9101-10) distinguishes between mixed-ownership government corporations and wholly owned government corporations.

Government corporation	Legal reference	Area of operation
Tennessee Valley Authority	16 U.S.C. 831	Navigation, flood control, electricity, manufacturing
U.S. Postal Service <sup>b</sup>	39 U.S.C. 101	Mail services

a No longer writing new business; current outstanding obligations expired in 2019.

b An independent establishment of the federal executive branch.

Source: Kosar, K. (2011), *Federal Government Corporations: An Overview*, CRS, RL30365, 8 June. Viewed at: <http://www.fas.org/spp/crs/misc/RL30365.pdf>; Government Corporation Control Act, 31 U.S.C. 9101; 16 U.S.C. 698v-11, Section (c)(4); and information provided by the authorities.

**Table 3.31 Government-sponsored enterprises**

(USD million)

GSE	Area of operation	Total assets (USD million) (end-September 2021)
Federal National Mortgage Association (Fannie Mae) <sup>a</sup>	Residential and multi-family mortgages	4,209,209
Federal Home Loan Mortgage Corporation (Freddie Mac) <sup>a</sup>	Residential and multi-family mortgages	2,937,984
Federal Agricultural Mortgage Corporation (Farmer Mac)	Creates a secondary market for agricultural, rural housing, and rural utility loans	24,744
Federal Home Loan Bank System	Provides funding to member banks so they can provide community development credit	712,089
Farm Credit System <sup>b</sup>	Guarantees payments as to principal and interest on securities issued by member banks	410,589

a In conservatorship since 6 September 2008; the Department of the Treasury entered into Senior Preferred Stock Purchase Agreements (PSPAs) to make investments in senior preferred stock.

b The Farm Credit System banks are AgFirst Farm Credit Bank, AgriBank, CoBank, and Farm Credit Bank of Texas.

Source: Financial statements and related information. Viewed at: <https://www.fanniemae.com/media/41811/display>; [http://www.freddie.com/investors/financials/pdf/2021er-3q21\\_release.pdf](http://www.freddie.com/investors/financials/pdf/2021er-3q21_release.pdf); [https://www.farmermac.com/wp-content/uploads/2021-Q3-Press-Release\\_Final.pdf](https://www.farmermac.com/wp-content/uploads/2021-Q3-Press-Release_Final.pdf); <https://fhlbanks.com/earnings/q3-2021-earnings/>; and [https://www.farmcreditfunding.com/fccb\\_live/investorResources/informationStatements.html](https://www.farmcreditfunding.com/fccb_live/investorResources/informationStatements.html).

3.281. In the financial sector, five government-sponsored enterprises (GSEs) were established and chartered by the Federal Government for public policy purposes (Table 3.31).

3.282. The Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) provide assistance to the secondary market for residential mortgages. The Federal Home Loan Banks provide loans ("advances") and other credit products and services to nearly 7,000 commercial banks, savings associations, insurance companies, and credit unions. The Farm Credit System provides privately financed credit to agricultural and rural communities. The Federal Agricultural Mortgage Corporation (Farmer Mac) is also an institution of the Farm Credit System. As private companies, GSEs are not included in the Federal Budget, and their debt is not fully backed by the Federal Government.

3.283. The United States notifies the WTO on a regular basis of entities that it considers state-trading enterprises according to Article XVII:4(a) and paragraph 1 of the Understanding on the Interpretation of Article XVII, i.e. the Commodity Credit Corporation (CCC), the Isotope Production and Distribution Program Fund, certain Power Marketing Administrations, and the Strategic Petroleum Reserve. The most recent notification (June 2020) provided statistical information about the trading activities of these enterprises during 2017, 2018, and 2019, except for the CCC.<sup>410</sup> The CCC is not engaged in import activity, and although the CCC is authorized to export commodities from its inventories, it has not done so since 1995.

### 3.3.6 Government procurement

#### 3.3.6.1 Institutional framework and general policies

3.284. Government procurement at the federal and state levels is decentralized. At the federal level, procurement is carried out through the procurement systems of the various executive agencies.

<sup>410</sup> WTO document G/STR/N/18/USA, 15 June 2020.

Despite being decentralized, federal procurement follows general guidelines and is overseen and coordinated by the OMB through the Office of Federal Procurement Policy (OFPP). In accordance with E.O. 12866 of 30 September 1993, coordinated review of agency rulemaking is necessary to ensure that regulations are consistent with applicable law. Within OMB, the Office of Information and Regulatory Affairs (OIRA) is the repository of expertise concerning regulatory issues, including methodologies and procedures that affect more than one agency, and the President's regulatory policies. OMB provides guidance to agencies and assists the President, the Vice President, and other policy advisors to the President in regulatory planning and reviews individual regulations.<sup>411</sup> The OFPP, headed by an Administrator, provides overall direction for government-wide procurement policies and plays a central role in shaping the policies and practices used by federal agencies to acquire goods and services; it also reviews proposed regulations for compliance with policy guidance.<sup>412</sup> The OFPP Administrator may prescribe government-wide procurement policies and may issue policy letters stating principles that must be followed by the agencies; implementation takes place through the Federal Acquisition Regulation (FAR).<sup>413</sup> The OFPP also prescribes policies through the OFPP Memoranda. In 2021, the Made in America Office was created within OMB, and memoranda were issued with respect to "Made in America" waivers and deviation.<sup>414</sup>

3.285. In accordance with the OFPP Act, the Federal Acquisition Regulatory Council (FAR Council) assists in the direction and coordination of Government-wide procurement policy and regulatory activities in the Federal Government. The FAR Council membership consists of the OFPP Administrator, the Secretary of Defense, the Administrator of National Aeronautics and Space (NASA), and the Administrator of General Services. The Council manages, coordinates, controls, and monitors the maintenance and issuance of changes in the FAR. The OFPP Administrator, in consultation with the FAR Council, must ensure that procurement regulations promulgated by executive agencies, are consistent with the FAR.<sup>415</sup>

3.286. The general policy with respect to federal government procurement is contained in the FAR, which includes all regulations pertinent to U.S. participation in the WTO Agreement on Government Procurement (GPA), the USMCA, and other international agreements where government procurement is covered. For legal purposes, the phrase "Made in America Laws" refers to all statutes, regulations, rules, and E.O.s relating to federal financial assistance awards or federal procurement, including those that refer to "Buy America" or "Buy American", that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured goods offered in the United States. Made in America Laws include laws requiring domestic preference for maritime transport, including the Merchant Marine Act of 1920 (P.L. 66-261), also known as the Jones Act.

3.287. Regulatory changes to procurement were introduced by E.O. 14005 of 25 January 2021, which put in place the new Made in America initiative and established the Made in America Office (MIAO) within the OMB (Box 3.3).<sup>416</sup> The E.O. also established a requirement for agencies to submit applicable waivers to the MIAO for review and directed the creation of a new website for public transparency. This review of waivers does not affect the existing waivers already granted under the Trade Agreements Act for GPA parties and certain trade agreements. The OMB subsequently issued guidance on how to implement the Made in America E.O. Regulatory actions related to this E.O. are

<sup>411</sup> Executive Order 12866 of September 30 1993, *Federal Register* (1993), Vol. 58, No. 190, 4 October. Viewed at: <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>.

<sup>412</sup> OFPP. Viewed at: <https://www.whitehouse.gov/omb/management/office-federal-procurement-policy/>.

<sup>413</sup> Government Publishing Office (GPO). Viewed at: <https://www.gpo.gov/fdsys/pkg/USCODE-2011-title41/pdf/USCODE-2011-title41-subtitleI-divisnB-chap11-subchapI-sec1101.pdf>.

<sup>414</sup> The memoranda issued included: *Improving the Transparency of Made in America (MIA) Waivers* (26 October 2021); *FAR Council Memo on Executive Order 14005 MIA Deviation* (15 November 2021); *FAR Council Guidance on Agency Issuance of Deviations to Implement Executive Order 14042* (30 September 2021); *Reducing Procurement Administrative Lead Time Using Modern Business Practices* (15 January 2020); *Increasing the Participation of Americans with Disabilities in Federal Contracting*; *"Myth-Busting #4" Strengthening Engagement with Industry Partners through Innovative Business Practices* (2 May 2019). Viewed at: <https://www.whitehouse.gov/omb/management/office-federal-procurement-policy/#memoranda>.

<sup>415</sup> Acquisition.gov information. Viewed at: <https://www.acquisition.gov/far-council>.

<sup>416</sup> E.O. 14005 of 25 January 2021. *Federal Register*, Vol. 86, No. 17, 28 January 2021, Presidential Documents 7475. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-01-28/pdf/2021-02038.pdf>.



publicly available on the Acquisition.gov website. The new policy aims at increasing procurement from domestic sources and reducing the number of waivers by making them subject to review.

### Box 3.3 E.O. 14005 of 25 January 2021

On 25 January 2021, the President issued E.O. 14005, Ensuring the Future Is Made in All of America by All of America's Workers.

The Executive Order defines the Administration's policy as follows:

- It is the policy of the U.S. Government to maximize the use of goods, products, and materials produced in, and services offered in, the United States should, and consistent with applicable law, use terms and conditions of Federal financial assistance awards and Federal procurements.

- The U.S. Government should, whenever possible, procure goods, products, materials, and services from sources that will help U.S. businesses compete in strategic industries.

- To promote an accountable and transparent procurement policy, each agency should vest waiver issuance authority in senior agency leadership, where appropriate and consistent with applicable law.

To apply the policy, the Executive Order:

- establishes within OMB the Made in America Office to centralize the Made in America Waiver Process;

- mandates a review of agency action inconsistent with the Administration Policy;

- calls for agencies to provide the Made in America Director with a description of proposed waivers and a justification for the use of goods, products, or materials that have not been mined, produced, or manufactured in the United States, before granting a waiver;

- establishes that the Made in America Director must notify the head of the agency in writing 15 business days of the result of the review of a waiver request;

- requires that before granting a waiver in the public interest, the agency shall assess whether a significant portion of the cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured goods or the use of injuriously subsidized steel, iron, or manufactured goods;

- creates the Made in America website, with information on all proposed and granted waivers;

- encourages agencies to identify U.S. companies, including SMEs, able to produce goods, products, and materials in the United States that meet Federal procurement needs;

- calls for amending the provisions in the FAR, Title 48, C.F.R., to promote enforcement of the Buy American Act, by:

- (i) replacing the "component test" used to identify domestic end products and domestic construction materials with a test under which domestic content is measured by the value that is added to the product through U.S.-based production or U.S. job-supporting economic activity;

- (ii) increasing the threshold for domestic content requirements for end products and construction materials; and

- (iii) increasing the price preferences for domestic end products and domestic construction materials.

- requires updates to the List of Nonavailable Articles by the FAR Council;

- requires the FAR Council to review existing constraints on the extension of the requirements in Made in America Laws to information technology and to develop recommendations for lifting them;

- requires the head of each agency to submit an initial report on use of Made in America Laws and, thereafter, a Bi-Annual Report on Made in America Laws, including on compliance with the laws and waivers;

- requires the GSA to submit to the Made in America Director recommendations for ensuring that products offered to the general public on federal property are procured in accordance with the policy;

- revokes E.O. 13788 of 18 April 2017 (Buy American and Hire American); Section 5 of E.O. 13858 of 31 January 2019 (Strengthening Buy-American Preferences for Infrastructure Projects); and E.O. 13975 of 14 January 2021 (Encouraging Buy American Policies for the United States Postal Service); and supersedes E.O. 10582 of 17 December 1954 (Prescribing Uniform Procedures for Certain Determinations Under the Buy-America Act), and E.O. 13881 of 15 July 2019 (Maximizing Use of American-Made Goods, Products, and Materials), to the extent that they are inconsistent with E.O. 14005.

Source: Executive Order 14005 of 25 January 2021, *Federal Register* (2021), Vol. 86, No. 17, 28 January. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-01-28/pdf/2021-02038.pdf>.

3.288. To implement the new policy and encourage domestic sourcing for procurement not covered by the GPA or other agreements, the OMB issued Memorandum M-21-26, Increasing Opportunities for Domestic Sourcing and Reducing the Need for Waivers from Made in America Laws, in June 2021. The Memorandum outlined initial management steps to help agencies prepare for and support a centralized strategic waiver review process by OMB's MIAO, as required by E.O. 14005. Memorandum M-21-26 identified information that agencies must report to establish non-availability of domestically sourced products, including a description of the market research and outreach conducted. It also directed Senior Accountable Officials (SAOs) for Domestic Sourcing to take action to ensure any non-availability waivers under consideration reflect this information and are justified.

3.289. In October 2021, the OMB issued a Memorandum providing specific guidance on the use of a digital waiver portal to submit proposed Made in America waivers to MIAO. In accordance with the new guidelines, proposed waivers will be posted to MadeinAmerica.gov prior to agencies making awards, beginning with waivers for procurement non-availability; later phases will cover additional

types of waivers.<sup>417</sup> The website seeks to establish a domestic supplier base, reducing the need for waivers. Starting 1 January 2022, all agencies covered by E.O. 14005 must submit proposed waivers via the site SAM.gov. Agencies must not make an award until they have received confirmation that MIAO has completed its review of the proposed waiver, has waived the requirement for a review, or an exception applies; they must ensure that the proposed waiver is necessary, and secure approval at a level not lower than the head of the contracting activity if the waiver is for an acquisition above USD 25,000. Since its establishment until the beginning of February 2022, 25 requests for non-availability Made in America waivers have been presented, and 20 determinations have been made. In all cases the waiver was granted as the requests were found to be consistent with policy. The length of the waiver varied between instant delivery and more than five years.<sup>418</sup>

3.290. The Cost Accounting Standards Board (CAS Board) has the exclusive authority to make, promulgate, and amend standards and interpretations designed to achieve uniformity and consistency in the cost accounting practices governing contracts with the U.S. Government. CAS Board regulations are codified at 48 C.F.R., Chapter 99; its standards are mandatory for use by all executive agencies and by contractors and subcontractors in all covered contract and subcontract procurements with the U.S. Government. Covered contracts and subcontracts are those in excess of USD 2 million, provided that, at the time of award, the contractor or subcontractor is performing a CAS-covered contract or subcontract valued at USD 7.5 million or greater.<sup>419</sup>

3.291. The General Services Administration (GSA) develops government-wide regulations to encourage federal agencies to use cost-effective management practices and works with them in their procurement processes. The GSA's acquisition policy supports and promotes the achievement of federal business goals and strategies; it aims at reducing federal overhead costs. The GSA's Office of Acquisition Policy (OAP) conducts various aspects of acquisition management; its mission is to strengthen federal acquisition policy and operations, and to lead change in acquisition policy through its role on the FAR Council as well as through guidance.<sup>420</sup> Hosted by OAP, the Federal Acquisition Institute (FAI) is charged with promoting the development of a federal acquisition workforce.<sup>421</sup>

3.292. The GSA maintains a General Services Administration Acquisition Manual (GSAM) that provides procurement guidelines for goods and services.<sup>422</sup> The GSAM incorporates the General Services Administration Acquisition Regulation (GSAR) as well as internal agency acquisition policy. The GSA also manages the GSA Schedules, also known as Multiple Award Schedules (MAS) or Federal Supply Schedules. The GSA Schedule is a long-term government-wide contract with commercial firms providing federal, state, and local government buyers with access to products and services at volume discount pricing. Traditionally, GSA Schedules were organized by specific supply and service types, and each Schedule was then divided into more specific supply and service subcategories called Special Item Numbers (SIN).<sup>423</sup> In FY2020, the 24 existing Schedules were consolidated into a single Schedule, broken down into 12 large categories. GSA's new single Schedule includes both national and foreign suppliers from parties to the GPA or other international agreements. Interested suppliers can apply for inclusion on the Schedule at any time. Schedule policy and procedures are guided by the FAR and the GSAM.<sup>424</sup>

<sup>417</sup> OMB (2021), Memorandum on "Improving the Transparency of Made in America Waivers", 26 October. Viewed at: <https://www.whitehouse.gov/wp-content/uploads/2021/10/Guidance-Memo-Improving-the-Transparency-of-Made-in-America-Waivers.pdf>.

<sup>418</sup> Made in America, Nonavailability Waivers. Viewed at: <https://www.madeinamerica.gov/waivers/>

<sup>419</sup> As a result of changes made by Section 811 the National Defense Authorization Act for FY2018, the original USD 750,000 threshold was raised to USD 2 million for contracts awarded after 30 June 2018. OMB, *Office of Federal Procurement Policy Guides*. Viewed at: <https://www.whitehouse.gov/omb/management/office-federal-procurement-policy/#guides>.

<sup>420</sup> GSA, *Office of Acquisition Policy*. Viewed at: <https://www.gsa.gov/policy-regulations/policy/acquisition-policy/office-of-acquisition-policy>.

<sup>421</sup> GSA, *Federal Acquisition Institute*. Viewed at: <https://www.gsa.gov/policy-regulations/policy/acquisition-policy/office-of-acquisition-policy/federal-acquisition-institute>.

<sup>422</sup> GSA, *General Services Acquisition Manual (GSAM)*. Viewed at: <https://www.acquisition.gov/browsegsam>.

<sup>423</sup> The available categories of supplies and services are facilities and construction; human capital; industrial products and services; information technology; medical; office management; professional services; security and protection; and travel, transportation, and logistics. The full list of GSA schedules may be found at: <http://www.gsaelibrary.gsa.gov/ElibMain/scheduleList.do>.

<sup>424</sup> GSA, *About GSA Schedule*. Viewed at: <https://www.gsa.gov/buying-selling/purchasing-programs/gsa-schedule/about-gsa-schedule>.

3.293. The list of GSA Schedule contractors is available publicly on the GSA Advantage! website.<sup>425</sup> Only authorized users may purchase directly from the Schedule. Contracting through the Schedule allows a number of flexibilities.<sup>426</sup> GSA Schedule users may simplify the acquisition process by making use of Blanket Purchase Agreements (BPAs), which are agreements established by a government buyer with a Schedule contractor to fill repetitive needs for supplies or services (FAR 8.405-3). Schedule contractors may also benefit from Contractor Team Arrangements (CTAs)<sup>427</sup>, which allow providing a single solution for a wide range of requirements. They can also engage in Order Level Materials (OLMs)<sup>428</sup> to complete a Schedule order with products that do not fall under the Schedule, as the OLM rule gives buyers the authority to acquire OLMs when buying from the Schedule. Contracts under the GSA Schedule are awarded at fixed ceiling prices for supplies, while services are priced at either hourly rates or at fixed prices for specific tasks. The GSA Schedule Contracting Officer determines this pricing before awarding the contract.<sup>429</sup>

3.294. Several federal agencies, such as NASA and the Department of Health and Human Services, have been designated by OFPP to manage government-wide acquisition contracts that leverage federal buying of common goods and services. DOD has its own procurement regulations. DOD's Defense Pricing and Contracting (DPC) is responsible for all pricing, contracting, and procurement policy matters. DPC executes policy through the update of the Defense Federal Acquisition Regulation Supplement (DFARS) and of Procedures, Guidance, and Information (PGI).<sup>430</sup> The Defense Acquisition Regulations System (DARS) develops and maintains DOD acquisition regulations. The DPC utilizes the DARS office to create and maintain the FAR and the DFARS.<sup>431</sup>

### 3.3.6.2 Legal and regulatory framework

3.295. The United States is a party to the WTO GPA. Annex 1 of Appendix I to the GPA lists central government agencies covered by the GPA, while Annexes 2 and 3 list the 37 states and other entities applying the GPA.<sup>432</sup> The Protocol amending the Agreement on Government Procurement entered into force for the United States on 6 April 2014. The USTR revises GPA thresholds in U.S. dollars every two years; threshold values as expressed in Special Drawing Rights (SDR) are the same under the revised and the 1994 Agreements. The United States notified to the WTO its basic procurement legislation and GPA-implementing legislation in 1998.<sup>433</sup> The GPA is implemented at the federal level primarily through the Trade Agreements Act (TAA) of 1979, as amended. At the state level, the GPA is implemented through laws and regulations in each of the 37 states participating in it. In November 2020, the United States notified the parties to the GPA proposed modifications to Appendix I of the United States under the 1994 GPA.<sup>434</sup> The modification consisted in the insertion of a paragraph excluding from the coverage of the GPA, for all federal agencies, procurement of any goods that are deemed necessary to respond to chemical, biological, radiological, and nuclear (CBRN) threats and public health emergencies, including emerging infectious diseases such as COVID-19. The list of these goods may be found on the FDA website.<sup>435</sup> The modifications were

<sup>425</sup> GSA, *GSA Multiple Award Schedule*. Viewed at: <http://www.gsa.gov/schedules>.

<sup>426</sup> GSA, *Schedule Flexibilities*. Viewed at: <https://www.gsa.gov/buying-selling/purchasing-programs/gsa-schedule/schedule-features/schedule-flexibilities>.

<sup>427</sup> In a GSA Schedule Contractor Team Arrangement (CTA), two or more GSA Schedule contractors team together to provide a total solution to meet a customer's needs. Schedule CTAs allow teams to compete for orders for which they may not qualify independently. The GSA encourages the use of CTAs to meet buyer's requirements. GSA, *Contractor Team Arrangements*. Viewed at: <https://www.gsa.gov/buying-selling/purchasing-programs/gsa-multiple-award-schedule/schedule-features/contractor-team-arrangements>.

<sup>428</sup> OLMs allow for supplies and/or services to be acquired in direct support of an individual task or delivery order placed against a Schedule contract or BPA. OLM pricing is not established at the Schedule contract or BPA level, but at the order level.

<sup>429</sup> GSA, *Schedule Pricing*. Viewed at: <https://www.gsa.gov/buying-selling/purchasing-programs/gsa-schedule/schedule-features/schedule-pricing>.

<sup>430</sup> DOD, *Defense Federal Acquisition Regulation Supplement (DFARS) and Procedures, Guidance, and Information (PGI)*. Viewed at: <https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>.

<sup>431</sup> DOD, *About Defense Acquisition Regulations System*. Viewed at: <https://www.acq.osd.mil/dpap/dars/about.html>.

<sup>432</sup> WTO document GPA/113, 2 April 2012.

<sup>433</sup> WTO document GPA/23, 15 July 1998.

<sup>434</sup> Proposed Modifications to Appendix I of the United States under the 1994 Agreement on Government Procurement. Communication from the United States Pursuant to Article XXIV:6(A) of the 1994 GPA. WTO documents GPA/MOD/USA/17 and GPA/MOD/USA/18, 27 November 2020.

<sup>435</sup> FDA, *Executive Order 13944 List of Essential Medicines, Medical Countermeasures, and Critical Inputs*. Viewed at: <https://www.fda.gov/about-fda/reports/executive-order-13944-list-essential-medicines-medical-countermeasures-and-critical-inputs>.

made to implement E.O. 13944 on Ensuring Essential Medicines, Medical Countermeasures, and Critical Inputs Are Made in the United States, issued on 6 August 2020. Several GPA parties requested more information with respect to the modifications. On 16 April 2021, the United States notified the withdrawal of the notifications in WTO documents GPA/MOD/USA/17 and GPA/MOD/USA/18, effective immediately.<sup>436</sup>

3.296. The Buy American Act of 1933 (BAA) and the Trade Agreements Act of 1979 (TAA) remain the main U.S. laws regarding government procurement. Other laws containing legislation on procurement include the Federal Property and Administrative Services Act of 1949 (FPASA), the Competition in Contracting Act of 1984 (CICA), the Federal Acquisition Streamlining Act of 1994 (FASA), the Clinger-Cohen Act of 1996, the Small Business Act of 1985, and the Services Acquisition Reform Act. The BAA requires the Federal Government to purchase domestic goods, while the TAA provides authority for the President to waive purchasing requirements, such as those contained in the BAA, designate eligible countries, and bar procurement from non-designated countries. Federal agencies may waive domestic procurement requirements in U.S. law under certain conditions, which have been recently tightened. Buy American restrictions do not apply to acquisitions subject to certain trade agreements, including the GPA (FAR Subpart 25.4). For the acquisitions covered under these agreements, end products and construction materials receive non-discriminatory treatment when evaluated alongside domestic offers. In 2021, the GPA applied to acquisitions starting at USD 182,000 for goods and services contracts, and at USD 7,008,000 for construction services contracts. Exceptions to the applicability of trade agreements are described in FAR Subpart 25.4. The percentages for the domestic content test and the price preference were increased in the FAR on 19 January 2021.

3.297. Federal government agencies' acquisitions of supplies and services with appropriated funds are regulated by the FAR, Chapter 1 of 48 C.F.R. DOD, GSA, and NASA jointly issue the FAR for use by executive agencies in acquiring goods and services; they are also responsible for any amendments or updates to it. The FAR regulates the procurement process in detail and contains the general guidelines, but the system allows executive agencies and their sub-agencies to develop their own specific internal guidelines. The FAR is updated regularly through Federal Acquisition Circulars (FACs) to reflect changes in procurement procedures, the effect of trade agreements, and other changes. Proposed regulations are published in the Federal Register, and are open to public comments. The heads of major purchasing entities, i.e. the Secretary of Defense, the Administrator of General Services, and the Administrator of NASA, have the authority to issue regulations in the context of the FAR, following approval by the OMB. Rules and regulations with respect to government procurement are also contained in agency supplements to the FAR.

3.298. E.O. 13881 of 15 July 2019, Maximizing Use of American-Made Goods, Products, and Materials, instructed the FAR Council to issue Proposed Rules within 180 days to amend the FAR Rules to promote the principles underlying the Buy American Act by reviewing foreign origin thresholds and preferences offered.<sup>437</sup> In January 2021, the FAR published a Final Rule to implement E.O. 13881, which modified FAR clauses implementing the BAA by increasing the domestic content requirements, and the margin of price preference for domestic products.<sup>438</sup> In accordance with the Final Rule, foreign iron and steel for iron and steel products must be less than 5% of the cost of all components in the product. For everything else, the domestic content requirement increased from 50% to more than 55% of the cost of all components. The Final Rule increased the price preference for domestic end products and construction material contained in the BAA from 6% to 20% for large businesses, and from 12% to 30% for small businesses.<sup>439</sup> The E.O. did not change the price preference for end products for DOD procurement, which is 50% for both large and small businesses.

3.299. On 25 January 2021, the President signed E.O. 14005, which defined a new procurement policy (Box 3.3). Section 8 of E.O. 14005 requires the FAR Council to amend the FAR to: (i) replace the component test used to identify domestic end products and domestic construction materials with

<sup>436</sup> WTO documents GPA/MOD/USA/17/Add.1 and GPA/MOD/USA/18/Add.1, 16 April 2021.

<sup>437</sup> Executive Order 13881 of 15 July 2019, Maximizing Use of American-Made Goods, Products, and Materials. *Federal Register* (2019), Vol. 84, No. 138, 18 July. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-07-18/pdf/2019-15449.pdf>.

<sup>438</sup> *Federal Register* (2021), Vol. 86, No. 11, 19 January, p. 6181. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-01-19/pdf/2021-00710.pdf>.

<sup>439</sup> Domestic end product means, for an end product that does not consist wholly or predominantly of iron or steel or a combination of both: (i) an unmanufactured end product mined or produced in the United States; (ii) an end product manufactured in the United States, meeting the new content criteria.



a test under which domestic content is measured by the value that is added to the product through U.S.-based production or U.S. job-supporting economic activity; (ii) increase the threshold for the domestic content requirement; and (iii) increase the price preferences for domestic end products and domestic construction materials. In response, the FAR Council issued a Proposed Rule in March 2022.<sup>440</sup> In July 2022, a Final Rule was issued, which entered into force on 22 October 2022.<sup>441</sup> The Final Rule increases the domestic content threshold initially from 55% to 60%, then to 65% in calendar year 2024 and to 75% in calendar year 2029. The initial increase to 60% will occur several months from publication of the final rule, to allow industry time to plan for the new threshold and to provide workforce training on the new fallback threshold.<sup>442</sup> The rule also has a fallback clause that allows, until one year after the increase of the domestic content threshold to 75%, for the use of the 55% domestic content threshold in instances where an agency has determined that there are no end products or construction materials that meet the new domestic content threshold or such products are of unreasonable cost after application of the price preference. The fallback threshold requires offerors to indicate which of their foreign end products exceed 55% domestic content and only applies to construction material that does not consist wholly or predominantly of iron or steel or a combination of both and that are not commercially available off-the-shelf (COTS) items, as well as to end products that do not consist wholly or predominantly of iron or steel or a combination of both and that are not COTS items.

3.300. The Final Rule provide for a framework through which higher price preferences will be applied to end products and construction material deemed to be critical or made up of critical components. The definitions for critical component and/or critical item are added to the FAR: critical component is defined as a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain; critical item means a domestic construction material or domestic end product that is deemed critical to the U.S. supply chain. The list of critical items and components will be added to newly designated FAR 25.105. The products that will receive a price preference will be determined in a separate rule. Once the list is established in the FAR, it will be published in the Federal Register for public comment no less frequently than once every four years to reflect changes. For end products that are critical items or contain critical components, the reasonableness of the cost of the domestic offer is determined by adding to the price of the low offer, inclusive of duty, 20% plus the additional preference factor identified for the critical item or end product containing critical components, if the lowest domestic offer is from a large business concern, or 30% plus the additional preference factor if the lowest domestic offer is from a small business concern.<sup>443</sup> The Final Rule did not replace the component test in FAR Part 25. Instead, the FAR Council decided to seek additional information regarding the current component test and requested public comment. Currently, under FAR Part 25, the determination of whether a manufactured end product or construction material qualifies as domestic is made using a two-part test: (i) the end product or construction material must be manufactured in the United States; and (ii) a certain percentage of all component parts (determined by cost of the components) must also

<sup>440</sup> DOD, GSA, and NASA, Ensuring the Future Is Made in All of America by All of America's Workers (86 FR 7475, 28 January 2021). *Federal Register* (2021), Vol. 86, No. 144, 30 July, p. 40981. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-07-30/pdf/2021-15881.pdf>.

<sup>441</sup> *Federal Register* (2022), Vol. 87, No. 44, 7 March. Rules and Regulations. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-03-07/pdf/2022-04173.pdf>.

<sup>442</sup> A supplier awarded a contract to be implemented in a period that spans the schedule of domestic content threshold increases will be required to comply with each increased threshold for the items in the year of delivery. However, if this is not be feasible for a particular contract, the application of an alternate domestic content test in defining "domestic end product" or "domestic construction material" after consultation with MIAO may be approved, allowing the supplier to comply with the domestic content threshold that applies at the time of contract award, for the entire period of performance for that contract.

<sup>443</sup> The price of the domestic offer is reasonable if it does not exceed the evaluated price of the low offer after addition of the appropriate evaluation factor. For end products that do not consist wholly or predominantly of iron or steel or a combination of both, if an unreasonable cost determination is made for the domestic offer or there is no domestic offer received, and the low offer is for a foreign end product that does not exceed 55% domestic content, the contracting officer shall treat the lowest offer of a foreign end product that is manufactured in the United States and exceeds 55% domestic content as a domestic offer, and determine the reasonableness of the cost of this offer by applying the evaluation factors to the low offer. These procedures will no longer apply after 1 January 2030.



be mined, produced, or manufactured in the United States; this requirement was known as the "component test" until early 2021, when it was redesignated as the "domestic content test".<sup>444</sup>

3.301. The publication of notices of proposed procurement in the SAM.gov website is required for federal government agency contracts above the Simplified Acquisition Threshold (SAT) (currently USD 250,000), with some exceptions. These notices must be published at least 15 days before a request for bids, and prospective suppliers have at least 30 days from that date to submit bids. Shorter timeframes and simplified procedures may be established for procurement valued at or below the SAT. For procurement falling within the scope of the GPA or an FTA, a period of not less than 40 days must generally be granted. States covered by the GPA are required to publish invitations to tender in their own publications and must conform to GPA deadlines.

3.302. The Competition in Contracting Act (CICA) of 1984 (41 U.S.C. 253) requires that, bar legal exceptions, an executive agency in conducting a procurement for property or services use competitive procedures in accordance with the requirements of 41 U.S.C. and the FAR. All procurements with an estimated value exceeding the SAT must be advertised for at least 15 days on SAM.gov before issuance of a solicitation (FAR 5.203(a)). The CICA also requires minimum response times (30 to 45 days) for receipt of bids or proposals from the date of issuance of a solicitation. Under the CICA, agencies are required to review any procurement that limits competition. The CICA does not apply to orders placed under single-award requirement contracts or definite-quantity contracts, among others<sup>445</sup>, nor to contracts awarded using simplified acquisition procedures. Sole-source procurement is not allowed unless the written authorization of the agency head is obtained, and specific statutory or regulatory authority exists for sole source. Deviations from the requirement for full and open competition must be documented in writing and authorized. Awards must be generally made on the basis of price, although there are some exceptions. The CICA provides for simplified procedures for small purchases.

3.303. Implementing the requirements of the CICA, the FAR specifies that the procedures available for use to fulfil the requirement for full and open competition are: (i) sealed bids, (ii) competitive proposals; (iii) a combination of competitive procedures, such as two-step sealed bidding; or (iv) other competitive procedures. In accordance with FAR 6.102(d)(3), use of the GSA Schedule is considered a "competitive procedure" under the CICA. The two most commonly used types of competitive bidding procedures are sealed bidding and contracting by negotiation. Sealed bidding requires that the final decision by agencies be based only on price and the price-related factors included in the invitation. Two-step sealed bidding may be used when more information from suppliers is needed before the sealed bidding process is initiated. Contracting by negotiation is used when sealed bidding is not applicable, for instance, when the evaluation factors other than price and price-related factors is required. Exclusions to the CICA principles apply for set-asides for small business concerns, and other special procurement programs (see below). Set-asides may also be used for local firms during a major disaster or emergency.

3.304. The Federal Acquisition Streamlining Act of 1994 (FASA) (P.L. 103-355) provides for a streamlining of the acquisition process, including simplified acquisition procedures and a simplified acquisition threshold, the SAT. The Act also exempts purchases valued below the micro-purchase threshold from BAA requirements and allows them to be made without obtaining competitive quotations if the contracting officer determines that the purchase price is reasonable.<sup>446</sup> The FAR Part 13.000 prescribes policies and procedures for the acquisition of supplies and services, including construction, R&D, and commercial items, the aggregate amount of which does not exceed the SAT. The SAT in 2021 was USD 250,000 in most cases but can vary depending on the acquisition. For acquisitions of supplies or services for supporting a contingency operation or facilitating defense

<sup>444</sup> As previously noted, for an end product that does not consist wholly or predominantly of iron or steel or a combination of both, the cost of domestic components must currently exceed 55% of the cost of all components, to be increased when the Final Rules come into effect to 60%, 65% (2024 through 2028), and 75% for items delivered starting in 2029. The test is waived for acquisitions of commercially available off-the-shelf (COTS) items; the test is not waived for iron and steel COTS items, except for COTS fasteners.

<sup>445</sup> Under Subpart 6.3 of the FAR, contracting without full and open competition is permitted when: (i) only one responsible source satisfies agency requirements; (ii) unusual and compelling urgency; (iii) industrial mobilization; engineering, developmental, or research capability; or expert services; (iv) international agreement; (v) authorized or required by statute; (vi) national security; and (vii) public interest.

<sup>446</sup> The threshold adjustment process is governed by 41 U.S.C. 1908, which requires mandatory review and adjustment of certain statutory acquisition-related thresholds for inflation using the CPI.

against or recovery from nuclear, biological, chemical, or radiological attack, the SAT is USD 800,000 for contracts awarded and performed, or purchases made, inside the United States; USD 500,000 for contracts awarded and performed, or purchases made, outside the United States; and USD 1.5 million for contracts awarded and performed, or purchases made, outside the United States. FAR Subpart 13.5 provides special authority for acquisitions of commercial items exceeding the SAT but not exceeding USD 7.5 million (USD 15 million for certain acquisitions).

3.305. The SAT policy requires that agencies use simplified acquisition procedures to the maximum extent practicable for all purchases of supplies or services not exceeding the SAT. This policy does not apply if an agency can meet its requirement using required sources of supply; or in case of existing indefinite delivery/indefinite quantity contracts or other established contracts. The SAT policy mandates that acquisitions of supplies or services that have an anticipated dollar value above the micro-purchase threshold, but at or below the SAT, be set aside for small business concerns. In 2021, the micro-purchase threshold was USD 10,000, except for contracts for contingency operations or facilitating defense against or recovery from nuclear, biological, chemical, or radiological attack inside the United States (USD 20,000) or outside them (USD 35,000).<sup>447</sup> Micro-purchase awards may be made under the different set-aside programs. Contracting officers making purchases in the simplified manner must consider all quotations or offers timely received.

3.306. There are three main simplified acquisition methods: (i) the government-wide commercial purchase card, authorized for use in making and/or paying for purchases of supplies, services, or construction, when they are micro-purchases and the contractor agrees to accept payment by the card; (ii) purchase orders, generally issued on a fixed-price basis for acquisition of commercial items; and (iii) unpriced purchase orders, for which the price is not established at the time of their issuance; they may be used only for orders for repairs to equipment when it is impractical to obtain pricing in advance; when the material is available from only one source for which cost cannot readily be established; or for supplies or services for which prices are competitive, but not exactly known.

3.307. Recourse to GSA Schedule Blanket Purchase Agreements (BPA) is available to all federal agencies. A buyer must generally receive quotes from at least three sources and seek price reductions before establishing a GSA Schedule BPA. Agencies must prepare a Determination of Best Procurement Approach for Schedule BPA orders that exceed USD 550,000. No single-award BPA with an estimated value exceeding USD 112 million may be awarded, unless the BPA provides for only firm-fixed price orders, which are integrally related, and can only be performed by one source at a reasonable price. A single-award BPA must not exceed one year in duration but may have up to four one-year options. Multiple-Award BPAs should not exceed five years in length but may do so to meet program requirements (FAR 8.405-3(d)(1)).

3.308. Procurement at the sub-federal level is governed by state or other sub-federal government laws and procurement regulations. Where procurement is funded with federal money, states must comply with certain federal statutory requirements. Local governments have their own procurement agencies, as well as their own procurement policies. The Cooperative Purchasing Program allows state, local, and tribal governments to purchase IT, security, and law enforcement products and services offered through specific Schedule contracts. The program allows eligible entities to purchase from approved industry partners, at any time, for any reason, using any funds available.<sup>448</sup>

### 3.3.6.3 Transparency

3.309. The USAspending.gov website, created following the requirements of the Federal Funding Accountability and Transparency Act of 2006 (FFATA), provides information on total federal government spending, principally in relation to federal contracts, grants, loans, and other financial assistance awards of more than USD 25,000. The Digital Accountability and Transparency Act of 9 May 2014 (DATA Act) (P.L. 113-101) expanded the scope of the FFATA by requiring the disclosure

<sup>447</sup> Thresholds have been modified four times since 2004, the last one in October 2020. DOD, GSA, and NASA, Federal Acquisition Regulation: Inflation Adjustment of Acquisition-Related Thresholds. *Federal Register* (2020), Vol. 85, No. 192, 2 October. Viewed at: <https://www.federalregister.gov/documents/2020/10/02/2020-21690/federal-acquisition-regulation-inflation-adjustment-of-acquisition-related-thresholds>.

<sup>448</sup> The legal basis is P.L. 107-347 and P.L. 110-248. GSA, *Cooperative Purchasing*. Viewed at: <https://www.gsa.gov/acquisition/purchasing-programs/gsa-schedules/schedule-buyers/state-and-local-governments/cooperative-purchasing>.

of direct agency expenditures and linking federal contract, loan, and grant spending information to federal agency programs, and improving the quality of data submitted to USAspending.gov.

3.310. Federal agencies submit contract, grant, loan, direct payment, and other award data at least twice a month, to be published on USAspending.gov. Data are uploaded quarterly. However, since June 2020, agencies with COVID-19 relief funding must submit their account data to the Treasury DATA Act Broker monthly. Beginning in FY2022, the remaining agencies must report monthly. Data are also pulled or derived from other government systems, such as GSA's Federal Procurement Data System Next Generation (FPDS-NG), and the Financial Assistance Broker Submission system (FABS). Entities receiving awards directly from federal agencies submit data on their subawards to the FFATA Sub-award Reporting System (FSRS).<sup>449</sup> Procurement data from FPDS is generally made available on USAspending.gov within five days after a contract award or modification; contracting officers must report action to the FPDS within three business days, except DOD and the U.S. Army Corps of Engineers (USACE), for which reporting is delayed 90 days; and for procurement under unusual and compelling urgency, for which a report must be submitted within 30 days of the contract award. Assistance awards are reported to the Treasury DATA Act Broker within two weeks of issuance or modification, except loan awards, reported within 30 days. Subawards are reported by prime award recipients to FSRS by the end of the following month. To ensure data accuracy, OMB issues the Federal Government Procurement Data Quality Summary with data submitted to FPDS.

### 3.3.6.4 U.S. government procurement market

3.311. In FY2021, total federal spending was USD 10.1 trillion, up from USD 9.1 trillion in FY2020, USD 6.6 trillion in FY2019, and USD 6.3 trillion in FY2018. The much higher outlays in FY2020 and FY2021 reflect, to a large extent, the cost of the COVID-19 pandemic for the Government. Of the USD 10.1 trillion spending in FY2021, USD 2.4 trillion (23.4%) was by the Department of Health and Human Services; USD 2.2 trillion by the Department of the Treasury (21.8%); USD 1.2 trillion (12.4%) by the Social Security Administration; USD 1.1 trillion (11.4%) by the DOD; USD 648.6 billion (6.5%) by the Department of Labor; USD 457.2 billion (4.5%) by the Department of Education; USD 338.4 billion (3.5%) by the SBA; and the rest by other agencies (Table 3.32). The pandemic resulted in large outlays to agencies that were not traditionally among the main recipients, such as the SBA.<sup>450</sup>

**Table 3.32 Government spending by main agency, FY2018-21**

(USD and % of the total)

Agency	FY2018	FY2019	FY2020	FY2021
<b>Total</b>	<b>6.3 trillion</b>	<b>6.6 trillion</b>	<b>9.1 trillion</b>	<b>10.1 trillion</b>
Department of Health and Human Services	26.6%	27.3%	24.1%	23.4%
Department of the Treasury	16.5%	16.2%	17.2%	21.8%
Social Security Administration	17.4%	17.5%	13.3%	12.4%
Department of Defense	17.3%	17.39%	12.4%	11.4%
Department of Labor	0.8%	0.8%	6.6%	6.5%
Department of Education	1.5%	1.81%	3.2%	4.5%
Small Business Administration	0.04%	0.02%	6.5%	3.5%
Department of Agriculture	2.9%	3.1%	2.7%	2.6%
Department of Veteran Affairs	3.2%	3.3%	2.7%	2.6%
Office of Personnel Management	3.2%	3.2%	2.3%	2.2%
Department of Transportation	1.5%	1.5%	1.8%	1.6%
Department of Homeland Security	1.7%	1.4%	1.6%	1.4%
Other agencies	6.6%	8.3%	6.9%	6.5%
Unreported data	0.7%	0.5%	0.7%	1.3%

Source: USAspending.gov. Viewed at: <https://www.usaspending.gov/explorer/agency>.

3.312. In October 2021, the United States notified fully reported statistics for FY2015 and partially reported statistics for FY2019 under Article XIV:4 of the revised GPA. The partially reported FY2019 statistics will be updated in 2025 to reflect the full value of open procurement. For federal procurement, the notified values are broken down in open and limited procedures for covered goods, services, and construction services; the partial total notified reached USD 62.385 billion for covered goods and services above or equal to the GPA threshold and USD 18.321 billion for covered construction services.<sup>451</sup> For subcentral entities, namely the 37 states implementing the GPA, the

<sup>449</sup> USAspending.gov, *About*. Viewed at: <https://www.usaspending.gov/#/about>.

<sup>450</sup> Until early December 2021, the Federal Government had spent USD 3.46 trillion in response to COVID-19. Information can be viewed at: <https://www.usaspending.gov/>.

<sup>451</sup> WTO document GPA/STAT(19)/USA/1, 5 October 2021.

estimated total state procurement was USD 681,015.60 million; for the other entities covered in Annex 3, the total estimated procurement amounted to USD 18,805 million.

### 3.3.6.5 Market access conditions for trading partners

3.313. U.S. government procurement policy is based on reciprocity with respect to market access; it is governed by specific trade agreements, including the GPA. Domestic purchasing requirements are maintained for procurement not covered by the GPA, the WTO plurilateral Agreement on Trade in Civil Aircraft, or preferential trade agreements. The Trade Agreements Act of 1979 generally prohibits federal agencies from purchasing goods and services from countries not party to the GPA or other trade agreements that cover government procurement (non-designated countries). Under E.O. 12260, the USTR is required to set the U.S. dollar thresholds for the WTO GPA and other FTAs. U.S. obligations under these agreements apply to covered procurement valued at or above the specified USD thresholds. Thresholds are adjusted every two years (Table 3.33).<sup>452</sup>

**Table 3.33 U.S. thresholds in Appendix I to the GPA, in SDR and in USD, 2020-21 and 2022-23**

Level of government	Goods and services			Construction		
	SDR	USD 2020-21	USD 2022-23	SDR	USD 2020-21	USD 2022-23
Annex 1 – Central Government	130,000	182,000	183,000	5,000,000	7,008,000	7,032,000
Annex 2 – Subcentral Government	355,000	498,000	499,000	5,000,000	7,008,000	7,032,000
Annex 3 – Other entities				5,000,000	7,008,000	7,032,000
List A	-	250,000	250,000			
List B	400,000	561,000	563,000			

- Nil.

Source: WTO documents GPA/THR/USA/2, 8 January 2020; and GPA/THR/USA/3, 3 December 2021.

3.314. In December 2021, the United States notified thresholds in Appendix I of the GPA 2012 as expressed in national currencies for 2022-23.<sup>453</sup> The threshold for Central Government Entities is USD 183,000 (SDR 130,000) for goods and services, and USD 7,032,000 (SDR 5 million) for construction services. For Subcentral Government Entities, the values are USD 499,000 (SDR 355,000) for goods and services; and USD 7,032,000 for construction services. The threshold levels provided above apply to the 1 January 2022 to 31 December 2023 period.

3.315. The Trade Agreements Act of 1979 waives the application of the BAA in the case of a trade agreement that covers procurement. The waiver is granted to the end products of designated countries, which include the parties to the GPA, bilateral agreements that cover government procurement, CBERA beneficiaries, and LDCs. CBERA and LDCs face GPA thresholds. For the other trading partners beneficiaries of a preferential agreement, the thresholds are as shown in Table 3.34. Eligible products are granted non-discriminatory treatment. Exceptions to the BAA may also be granted if the domestic preference is inconsistent with the public interest, in case of U.S. non-availability of a supply or material, or for reasonableness of cost. Non-availability may be determined following FAR 25.104; the list is open to comments every five years.<sup>454</sup>

**Table 3.34 Procurement thresholds for trade agreements, 2020-21 and 2022-23**

(USD)

Trade agreement	Procurement of goods and services		Procurement of construction services	
	2020-21	2022-23	2020-21	2022-23
U.S.-Australia FTA				
Annex 1 – Central Government	83,099	92,319	7,008,000	7,032,000
Annex 2 – Subcentral Government	498,000	499,000	7,008,000	7,032,000
Annex 3 – Other entities List A	415,495	461,594	7,008,000	7,032,000
Annex 3 – Other entities List B	561,000	563,000	7,008,000	7,032,000
U.S.-Bahrain FTA				
Central Government Entities	182,000	183,000	10,802,884	12,001,460
List B entities	561,000	563,000	13,296,478	14,771,718

<sup>452</sup> WTO document GPA/THR/USA/2, 8 January 2020; USTR, *Thresholds*. Viewed at: <https://ustr.gov/issue-areas/government-procurement/thresholds>.

<sup>453</sup> WTO document GPA/THR/USA/3, 3 December 2021.

<sup>454</sup> FAR Subpart 25.104, Non-available articles. The list of non-available products may be viewed at: <https://www.acquisition.gov/far/25.104#:~:text=Books%2C%20trade%2C%20text%2C%20technical,domestic%20editions%20are%20not%20available>.

Trade agreement	Procurement of goods and services		Procurement of construction services	
U.S.-Chile FTA				
Central Government	83,099	92,319	7,008,000	7,032,000
Subcentral Government	498,000	499,000	7,008,000	7,032,000
Other entities List A	415,495	461,594	7,008,000	7,032,000
Other entities List B	561,000	563,000	7,008,000	7,032,000
U.S.-Colombia FTA				
Central Government	83,099	92,319	7,008,000	7,032,000
Subcentral Government	498,000	499,000	7,008,000	7,032,000
Other entities List B	561,000	563,000	7,008,000	7,032,000
Dominican Republic-Central America-U.S. FTA				
Central Government	83,099	92,319	7,008,000	7,032,000
Subcentral Government	498,000	499,000	7,008,000	7,032,000
Other entities List B	561,000	563,000	7,008,000	7,032,000
U.S.-Israel FTA (goods)	50,000	-	n.a.	
U.S.-Korea FTA	182,000	183,000	7,008,000	7,032,000
U.S.-Morocco FTA				
Central Government	182,000	183,000	7,008,000	7,032,000
Subcentral Government	498,000	499,000	7,008,000	7,032,000
Other entities List B	561,000	563,000	7,008,000	7,032,000
USMCA				
Central Government	83,099	92,319	10,802,884	12,001,460
Other entities List A	415,495	461,594	7,008,000	7,032,000
U.S.-Oman FTA				
Central Government Entities	182,000	183,000	10,802,884	12,001,460
List B entities	561,000	563,000	13,296,478	14,771,718
U.S.-Panama FTA				
Central Government	182,000	183,000	7,008,000	7,032,000
Subcentral Government	498,000	499,000	7,008,000	7,032,000
Other entities List B	561,000	563,000	7,008,000	7,032,000
U.S.-Peru FTA				
Central Government	182,000	183,000	7,008,000	7,032,000
Subcentral Government	498,000	499,000	7,008,000	7,032,000
Other entities List B	561,000	563,000	7,008,000	7,032,000
U.S.-Singapore FTA				
Central Government	83,099	92,319	7,008,000	7,032,000
Subcentral Government	498,000	499,000	7,008,000	7,032,000
Other entities List B	561,000	563,000	7,008,000	7,032,000

- Nil.

n.a. Not applicable.

Source: *Federal Register* (2019), Vol. 84, No. 246, 23 December. Viewed at: [https://ustr.gov/sites/default/files/2020-2021\\_Thresholds\\_FR\\_Notice.pdf](https://ustr.gov/sites/default/files/2020-2021_Thresholds_FR_Notice.pdf); and *Federal Register* (2021), Vol. 86, No. 225, 26 November. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-11-26/pdf/2021-25821.pdf>.

3.316. As noted above, E.O. 14005 of 25 January 2021 resulted in some changes in the FAR in this respect, mainly geared at reducing the number of waivers. MIAO, created within OMB, is in charge of receiving and reviewing proposed waivers. The provisions of the BAA are also waived for civil aircraft and related articles that meet the substantial transformation test of the Act and originate in parties to the Agreement on Trade in Civil Aircraft. Under the Balance-of-Payments Program, DOD may apply provisions similar to those required under the BAA, to contracts over the SAT for end products for use outside the United States. DOD waives the restrictions of the BAA/Balance-of-Payments Program for eligible goods (those covered by the United States under the WTO GPA or an FTA). For other goods, DOD waives the restrictions for equipment produced in a "qualifying country" (with which there is a reciprocal procurement agreement or MOU).

3.317. In general terms, imported goods brought into the United States by government agencies are subject to the tariff rate corresponding to its HTSUS classification. However, the FAR provides that imported supplies for use by government agencies may be exempted from customs duties in certain cases. Agencies must use these exemptions when the anticipated savings to appropriated funds are estimated to outweigh the administrative costs associated with processing required documentation. Subchapter VIII of Chapter 98 of the HTSUS (19 U.S.C. 1202) lists supplies for which exemptions from duty may be obtained when imported into the customs territory of the United States under a government contract. Some goods may be imported free of duty by any agency (etchings, video tapes, etc.), while others are duty-free if imported for use by a specific agency (CBP, Department of State, Department of Agriculture, Department of Energy, military departments, NASA, Commodity Credit Corporation). For certain of these supplies, the contracting agency must certify that they are for the purpose stated in the HTSUS. Supplies (excluding



equipment) for government-operated vessels or aircraft may be imported free of duties; they are also free from internal revenue tax.<sup>455</sup>

3.318. In addition to any tariff if applicable, under Title III of P.L. 111-347, a federal excise tax of 2% is applied to government purchases of goods and services from foreign persons, entered on or after 2 January 2011 (FAR Section 52.229-12). Payments for purchases under the simplified acquisition procedures that do not exceed the SAT are exempted from the tax, as are emergency acquisitions and certain foreign humanitarian assistance contracts. Final regulations implementing the Title were issued in August 2016.<sup>456</sup> The Government will withhold a full 2% of each payment unless the foreign contractor claims an exemption; this clause applies only to foreign persons.

### 3.3.6.6 Set-asides and preferences

3.319. U.S. procurement policy makes use of set-aside programs to foster the participation of small businesses, veteran-owned small businesses, small-disadvantaged businesses (SDBs), HUBZone businesses, and women-owned small businesses in the procurement process.<sup>457</sup> Under the Small Business Act (P.L. 85-536), as amended, most recently through P.L. 117-6, enacted on 30 March 2021, government purchases within certain thresholds, are to be automatically and exclusively set aside for small businesses, while others are subject to set-aside requirements provided there are at least two or more (Rule of Two) small business concerns that are competitive in terms of market prices, quality, and delivery.<sup>458</sup> If market research determines that there are fewer than two small business offerors, recourse to sole-source contract may be made, or otherwise the contract may be subject to full and open competition. The relevant set-aside programs are referenced in the U.S. schedules under the GPA.<sup>459</sup>

3.320. The SBA is in charge of overseeing and encouraging federal government procurement with small businesses whenever possible. Contracting officials are encouraged to use small business set-aside and sole-source contracts to help their agencies meet their small business contracting goals.<sup>460</sup> Under the Small Business Act (P.L. 85-536), as amended, government purchases with an anticipated value above the micro-purchase threshold of USD 10,000, and up to the SAT of USD 250,000, are to be automatically and exclusively set aside for small businesses, provided there are at least two or more (Rule of Two) small business concerns that are competitive in terms of market prices, quality, and delivery. Preference is given to socio-economic programs (see below). Non-construction contracts with a value of USD 700,000 or more, if not set aside for small business, must have a subcontracting plan that includes small businesses, if awarded to a non-small business. The same applies for construction contracts with a value of USD 1.5 million or more.

3.321. To qualify for set-aside or sole-source supply contracts, a small business must manufacture the product itself, or abide by the non-manufacturer rule. This rule applies to all small business set-aside contracts; it does not apply to small business set-aside contracts between the micro-purchase and simplified acquisition thresholds.<sup>461</sup> The non-manufacturer rule requires that, if a small business receives a set-aside award but does not manufacture the products it sells to the Government, it must supply the products of another small business that are manufactured in the United States.<sup>462</sup> SBA waivers to the non-manufacturer rule can be granted if it is not possible to use a small business' product. The waiver may be a class waiver, when no small business

<sup>455</sup> FAR Subpart 25.9. Viewed at: [https://www.acquisition.gov/far/html/Subpart%2025\\_9.html](https://www.acquisition.gov/far/html/Subpart%2025_9.html).

<sup>456</sup> *Federal Register* (2016), Vol. 81, No. 160, 18 August, p. 55133. Viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-08-18/pdf/2016-19452.pdf>.

<sup>457</sup> SBA, Types of Contracts. Viewed at: <https://www.sba.gov/contracting/government-contracting-programs/what-small-business-set-aside>.

<sup>458</sup> Federal Regulations provides for the Rule of Two in 48 C.F.R. 19.502-2 and 13 C.F.R. 125.1.

<sup>459</sup> WTO. Viewed at: [https://www.wto.org/english/tratop\\_e/gproc\\_e/rev\\_usa7e.doc](https://www.wto.org/english/tratop_e/gproc_e/rev_usa7e.doc).

<sup>460</sup> SBA, *Set-Aside Procurement*. Viewed at: <https://www.sba.gov/partners/contracting-officials/small-business-procurement/set-aside-procurement>.

<sup>461</sup> See FAR Part 2.101 for full definitions of micro-purchase threshold and simplified acquisition threshold. The values of these thresholds vary depending on the type of work procured.

<sup>462</sup> The non-manufacturer rule is contained in 13 C.F.R. 121.406. Under SBA rules, a business may qualify as a non-manufacturer if it does not exceed the 500-employee alternative size standard for nonmanufacturers; is primarily engaged in the retail or wholesale trade and normally sells the type of products being supplied; takes ownership or possession of the item(s) with its personnel, equipment, or facilities in a manner consistent with industry practice; and supplies the end products of a small business manufacturer or processor made in the United States, or obtains a waiver of such requirement.

manufacturer has submitted, performed, or been awarded an offer on a solicitation for a class of products within the previous two years, or a procurement specific waiver.

3.322. The SBA is responsible for defining the specific size standards for each industry, to determine which businesses qualify as small. For the most part, size standards are the average annual receipts or the average annual employment of a firm.<sup>463</sup> Both the SBA's regulations and the FAR require agencies to consider SBA socio-economic programs first for set-aside and sole-source contracts worth USD 150,000 or more. There is no order of preference among the programs. SBA socio-economic programs – the Women-Owned Small Business Federal Contracting Program (WOSB), the 8(a) Business Development Program; the HUBZone Program; and the Service-Disabled Veteran-Owned Small Businesses (SDVOSB Program)<sup>464</sup> – seek to promote the ability of small businesses to compete for federal procurement contracts. The programs are subject to the conditions presented in Table 3.35.

**Table 3.35 Socio-economic procurement small business procurement programs**

Program	Requirements/conditions
Small business	
8(a) Business Development Program	To be certified as a small disadvantaged business (SDB), a business must be at least 51% owned and controlled by socially and economically disadvantaged individuals; owned by someone whose personal net worth is USD 750,000 or less, and have an average adjusted gross income for three years of USD 350,000 or less and assets of USD 6 million or less.
WOSB (P.L. 106-554)	To be eligible to participate in procurement for the WOSB Program, a business must: (i) be a small business; (ii) be at least 51% owned and controlled by women who are U.S. citizens; and (iii) have women manage day-to-day operations and make long-term decisions.
EDWOSB	To qualify as an EDWOSB, the business must meet all the requirements of the WOSB Contracting Program, and be owned and controlled by one or more women, each with a personal net worth less than USD 750,000, adjusted gross income averaged over the previous three years of USD 350,000 or less, and with personal assets of USD 6 million or less.
SDVOSB	To be able to qualify for the SDVOSB Program, a business must be small within the size standard corresponding to the NAICS code assigned to the contract; be at least 51% owned and controlled by one or more service-disabled veterans; and have one or more service-disabled veterans manage day-to-day operations and make long-term decisions.
Certified HUBZone small business	For eligibility the business must be: (i) a small business by SBA standards and must have obtained the corresponding certification; (ii) at least 51% owned and controlled by U.S. citizens, or a Community Development Corporation, an agricultural cooperative, or a Native American tribe; (iii) at least 35% of its employees must reside in a HUBZone; and (iv) its principal office must be located within a HUBZone.

Source: WTO based on SBA information.

3.323. The WOSB Program is geared to help increase women's participation in federal government procurements to 5% of the total. It consists of set-asides for WOSBs in procurement contracts and granting sole-source contracts under specific circumstances.<sup>465</sup> Some contracts are restricted further to Economically Disadvantaged Women-Owned Small Businesses (EDWOSBs). The program's regulations were modified in 2020, to make SBA certification as a WOSB or EDWOSB a requirement; previously, self-certification was sufficient.<sup>466</sup> The 8(a) Business Development Program is directed to SDBs. The 8(a) certification qualifies a business as eligible to compete for the program's sole-source and competitive set-aside contracts. Participation in this program by an SDB is limited to nine years.<sup>467</sup> The SDVOSBC Program allows federal contracting officers, if certain criteria are met, to restrict competition in a procurement to SDVOSBCs and award a sole-source or set-aside contract.<sup>468</sup> In the case of the HUBZone Program, the Government limits competition for certain contracts to businesses in historically underutilized business zones. It also gives HUBZone-certified

<sup>463</sup> SBA, *Table of Small Business Size Standards Matched to North American Industry Classification System Codes*. Viewed at: [https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards\\_Effective%20Aug%2019%2C%202019\\_Rev.pdf](https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019_Rev.pdf).

<sup>464</sup> SBA, *Types of Contracts*. Viewed at: <https://www.sba.gov/contracting/government-contracting-programs/what-small-business-set-aside>.

<sup>465</sup> SBA, *Women-Owned Small Business Federal Contracting Program*. Viewed at: <https://www.sba.gov/federal-contracting/contracting-assistance-programs/women-owned-small-business-federal-contracting-program>.

<sup>466</sup> Women-Owned Small Business and Economically Disadvantaged Women-Owned Small Business Certification. A Rule by the Small Business Administration on 05/11/2020. *Federal Register* (2020), Vol. 85, No. 91, 11 May. Viewed at: <https://www.federalregister.gov/documents/2020/05/11/2020-09022/women-owned-small-business-and-economically-disadvantaged-women-owned-small-business-certification>.

<sup>467</sup> Pursuant to 13 C.F.R. 124.2(b), if an 8(a) small business concern participated in the program between 13 March 2020 and 9 September 2020, program participation may be extended by 1 year to 10 years.

<sup>468</sup> SBA, *Veteran Assistance Programs*. Viewed at: <https://www.sba.gov/federal-contracting/contracting-assistance-programs/veteran-assistance-programs>.

businesses a 10% price evaluation preference in full and open contract competitions, as well as subcontracting opportunities.

3.324. Set-aside contracts are subject to certain rules and limitations. The non-manufacturer rule, mentioned above, by which a small non-manufacturer business prime contractor must generally supply the product of a small business, applies to supply contracts. The limitations on subcontracting apply to small business set-aside and sole-source contracts for services or construction when the award amount exceeds the simplified acquisition thresholds and for all other set-aside or sole-source contracts under the 8(a), HUBZone, SDVOSB, or WOSB programs. In these cases, under set-aside award conditions, small businesses are required to limit the amounts they spend on subcontractors that are not considered similarly situated as the prime contractor.

3.325. A government-wide procurement goal stipulates that at least 23% of all federal government contracting dollars should be awarded to small businesses. As part of this general goal, there are targeted sub-goals for the following small business categories: WOSB: 6%; SDB: 11%; SDVOSBC: 3%; and HUBZone: 3%. These sub-goals are not in addition to the 23% but are counted as part of the overall goals. Goals previously set were met overall in FY2017 to FY2020; for SDBs and SDVOSBCs, the goal was amply exceeded, but for the women-owned and HUBZone programs, they have generally not been met (Table 3.36). The goals for subcontracting were also achieved. The goal for small business sub-contracting is 29.43%; the results achieved were 33.27% in FY2019 and 32.46% in FY2020, for a total of USD 82.8 billion.<sup>469</sup>

**Table 3.36 Government-wide small business procurement goals and results, FY2017-20**

Goal category	Goal %	Actual % FY2017	Actual % FY2018	Actual % FY2019	Actual % FY2020	Value of procurement (USD billion)
Small business	23	23.80	25.05	26.50	26.02	145.7
8(a) Business Development Program and other Small Disadvantaged Business	5	9.10	9.65	10.29	10.54	59.0
WOSB	5	4.70	4.75	5.19	4.85	27.1
SDVOSBC	3	4.10	4.27	4.49	4.28	23.9
Certified HUBZone small business	3	1.70	2.05	2.28	2.44	13.6

Source: SBA, *Government-Wide Performance: FY2020 Small Business Procurement Scorecard*. Viewed at: <https://www.sba.gov/sites/default/files/2021-07/GW-508.pdf>.

3.326. The AbilityOne Program, administered by the U.S. AbilityOne Commission, an independent federal agency, employs people who are blind or have significant disabilities in the manufacture and delivery of products and services to the Federal Government. The Program employs some 42,000 people and operates nationwide with some 500 non-profit agencies representing 40 government agencies. The Program supplied USD 3.9 billion in products and services to the Federal Government in FY2020, of which USD 2.3 billion in products and services annually to DOD, the largest customer of the AbilityOne Program.<sup>470</sup> Procurement under the Program has been particularly important during the COVID-19 pandemic.<sup>471</sup>

### 3.3.6.7 Enforcement

3.327. Federal statutes such as the Competition in Contracting Act of 1984 and the Federal Courts Improvement Act of 1982 govern bid protests before and after awards. They may be taken to the Government Accountability Office (GAO) or the U.S. Court of Federal Claims (COFC). GAO provides a forum for the resolution of disputes concerning the awards of federal contracts. GAO's Procurement Law Division adjudicates these bid protests.<sup>472</sup> GAO has a web-based electronic bid protest filing system for all new protests (excluding those that include classified material) that are filed on or after

<sup>469</sup> SBA, *Government-Wide Performance: FY2020 Small Business Procurement Scorecard*. Viewed at: <https://www.sba.gov/sites/default/files/2021-07/GW-508.pdf>.

<sup>470</sup> U.S. AbilityOne Commission, *AbilityOne Program Factsheet*. Viewed at: [https://www.abilityone.gov/media\\_room/documents/2021\\_AbilityOne\\_Fact\\_Sheet\\_v20210902.pdf](https://www.abilityone.gov/media_room/documents/2021_AbilityOne_Fact_Sheet_v20210902.pdf).

<sup>471</sup> OMB, Office of Federal Procurement Policy (2020), Memorandum on "Increasing the Participation of Americans with Disabilities in Federal Contracting", 30 October. Viewed at: <https://www.whitehouse.gov/wp-content/uploads/2020/10/Increasing-the-Participation-of-Americans-with-Disabilities-in-Federal-Contracting.pdf>.

<sup>472</sup> GAO, *Bid Protests*. Viewed at: <https://www.gao.gov/legal/bid-protests>.

1 May 2018. A party dissatisfied with a decision by GAO may file a new protest with COFC, whose decisions may be appealed to the U.S. Court of Appeals for the Federal Circuit.

### 3.3.7 Intellectual property rights

#### 3.3.7.1 Overview

3.328. The United States is a top producer and exporter of goods and services that embody intellectual property (IP). It is estimated that IP is present in some 60% of U.S. goods exports and that IP-intensive industries account for over one third of U.S. GDP.<sup>473</sup> USDOC has designated 81 industries, out of a total of 313 (25.9% of the total), as IP-intensive, which collectively accounted for some 40% of GDP. According to a 2018 study, the United States accounts for 31% of global commercial knowledge and technology intensive services and is the largest global producer of high-technology manufactures (also 31%).<sup>474</sup> During the period under review, the United States has continued to post its traditional balance-of-payments surplus in IP-related payments, as measured by the category "charges for the use of IP". In 2020, net receipts were USD 70.8 billion, with receipts totaling USD 113.8 billion and payments reaching USD 43.0 billion.<sup>475</sup> In the first three quarters of 2021, receipts totaled USD 91.0 billion, and payments were USD 34.7 billion, resulting in a USD 56.3 billion surplus.

3.329. As measured by BEA, IP products are R&D; software; and entertainment, literary, and artistic originals. They are measured as fixed investments because they are used repeatedly in production processes and provide long-lasting service to the businesses, non-profit institutions, and government agencies that invest in them.<sup>476</sup> According to this measure, private fixed investment in IP products reached USD 1.079 trillion in 2020, or some 5.4% of total GDP. R&D represented the largest share of total private investment in IP products, with some 49.9% of the total in 2020; within this category, the contribution of manufacturing R&D is the largest, with 27.5% of the total. Investment in software represented 42% of the total in 2020, while investment in entertainment, literary, and artistic originals, accounted for some 8.1% of the total (Table 3.37).<sup>477</sup>

**Table 3.37 Private fixed investment in IP products by type, 2017-20**

(USD billion)

	2017	2018	2019	2020
<b>Private fixed investment in IP products</b>	<b>875.0</b>	<b>956.7</b>	<b>1,034.8</b>	<b>1,078.5</b>
<b>Software</b>	<b>365.7</b>	<b>401.3</b>	<b>427.7</b>	<b>453.4</b>
Prepackaged <sup>a</sup>	152.8	172.3	188.5	212.5
Custom	148.6	162.3	167.1	165.5
Own account	64.3	66.7	72.1	75.4
<b>Research and development<sup>b</sup></b>	<b>423.5</b>	<b>465.6</b>	<b>514.4</b>	<b>537.7</b>
Business	398.5	439	488.4	511
Manufacturing	254.5	270.6	289.1	295.7
Pharmaceutical and medicine manufacturing	70.7	80.7	96.2	105.7
Chemicals, excluding pharmaceutical and medicine	10.5	10.7	10.9	10.3
Semiconductor and other electronic component	33.4	34.1	37.8	39.4
Other computer and electronic product manufacturing	45.5	46.8	45.4	47.3
Motor vehicles, bodies and trailers, and parts	24.7	26.3	25.6	23.6
Aerospace products and parts manufacturing	14.8	13.6	10.4	9.0
Other manufacturing	55.0	58.2	62.7	60.5
Nonmanufacturing	144.0	168.4	199.3	215.3
Scientific R&D development services	9.7	10.4	11.7	10.8
All other nonmanufacturing	134.3	158	187.6	204.5
Software publishers	38.7	36.7	35.8	37.6
Financial and real estate services	8.5	8.8	10.8	11.8
Computer systems design and related services	12.6	16.2	21.3	21.7
Other nonmanufacturing	74.4	96.4	119.7	133.3
Non-profit institutions serving households	25	26.6	26.1	26.7

<sup>473</sup> Economic and Statistics Administration (ESA) and U.S. Patent and Trademark Office (USPTO) (2016), *Intellectual Property and the U.S. Economy: 2016 Update*. Viewed at: <https://www.uspto.gov/sites/default/files/documents/IPandtheUSEconomySept2016.pdf>.

<sup>474</sup> National Science Foundation, *Science and Engineering Indicators 2018*. Viewed at: <https://www.nsf.gov/statistics/2018/nsb20181/report/sections/industry-technology-and-the-global-marketplace/highlights>.

<sup>475</sup> BEA, *International Data*. Viewed at: <http://www.bea.gov/iTable/iTable.cfm?ReqID=62&step=1#reqid=62&step=6&isuri=1&6210=1&6200=2>.

<sup>476</sup> BEA, *Intellectual Property*. Viewed at: <https://www.bea.gov/data/special-topics/intellectual-property>.

<sup>477</sup> BEA, *National Data*. Viewed at: [https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=3&isuri=1&nipa\\_table\\_list=331&categories=survey](https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=3&isuri=1&nipa_table_list=331&categories=survey).

	2017	2018	2019	2020
Universities and colleges <sup>c</sup>	5.7	6	6.1	6.4
Other non-profit institutions	19.3	20.7	19.9	20.3
<b>Entertainment, literary, and artistic originals</b>	<b>85.8</b>	<b>89.8</b>	<b>92.7</b>	<b>87.4</b>
Theatrical movies	17.5	18.2	18.7	17.9
Long-lived television programs	47.9	50.5	52.1	49.2
Books	9.8	9.7	9.5	9
Music	7.1	7.6	8.3	7.9
Other	3.6	3.8	4	3.4

a Excludes software embedded, or bundled, in computers and other equipment.

b Includes R&D expenditures for software.

c Includes R&D investment by private universities and colleges.

Source: BEA, *National Data*. Viewed at:

[https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=3&isuri=1&nipa\\_table\\_list=331&categories=survey](https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=3&isuri=1&nipa_table_list=331&categories=survey).

3.330. A major feature in recent years has been the increase in the number of patents linked to artificial intelligence (AI). A recent report by the United States Patent Office (USPTO) shows that AI is increasingly important for invention, diffusing broadly across technologies, inventor-patentees, organizations, and geography. The report shows that, between 2002 and 2018, annual AI patent applications increased by more than 100%, rising from 30,000 to more than 60,000 annually, while the share of all patent applications that contain AI grew from 9% to nearly 16%. Also, patents containing AI appeared in about 42% of all technology subclasses used by USPTO in 2018 and the percentage of inventor-patentees who are active in AI was approximately 25%. There had also been an important growth in the percentage of organizations patenting in AI.<sup>478</sup>

3.331. The adequate and effective protection and enforcement of IP rights (IPRs) remains a trade policy priority for the U.S. Administration, as reflected in the 2021 Special 301 Report.<sup>479</sup> A stated priority of the current Administration is to craft trade policy in service of U.S. workers, including those in innovation-driven export industries. The Administration seeks, by identifying opportunities and challenges facing U.S. innovative and creative industries in foreign markets, to promote job creation, economic development, and other benefits that effective IP protection and enforcement support. In addition, given the importance of innovation and IP in developing the advances necessary for fighting the ongoing COVID-19 crisis, the Administration is committed to trade policies that ensure preparedness for the next one. Fighting piracy and counterfeiting and promoting market access for U.S. IP in sectors ranging from high technology to basic industries are also policy goals.<sup>480</sup>

### 3.3.7.2 General regulatory framework

3.332. The United States is a member of the World Intellectual Property Organization (WIPO) and participates in international conventions and treaties related to IPRs, including 19 instruments administered by WIPO.<sup>481</sup> On 17 December 2005, the United States accepted the Protocol Amending the TRIPS Agreement adopted by the General Council on 6 December 2005 (WTO document WT/L/641). During the review period, the United States continued to systematically notify to the WTO its laws and regulations on trade-related aspects of IPRs, including amendments to legislation or regulations. The most recent updates were made in 2020. Recent amendments to legislation notified to the WTO include: (i) the legislation on undisclosed information of all 50 states plus the District of Columbia and Puerto Rico<sup>482</sup>; (ii) the implementation of the Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018 (SUCCESS Act) with respect to certain aspects of patent law (see below), which entered into force on 31 October 2018<sup>483</sup>; (iii) the implementation of the Orrin G. Hatch–Bob Goodlatte Music Modernization Act, or Music Modernization Act (MMA), signed into law on 11 October 2018, aimed at modernizing copyright-related issues for music and audio recordings due to new forms of technology like digital

<sup>478</sup> USPTO (2020), *Inventing AI: Tracing the Diffusion of Artificial Intelligence with U.S. Patents*, No. 5. Viewed at: <https://www.uspto.gov/sites/default/files/documents/OCE-DH-AI.pdf>.

<sup>479</sup> USTR, *Special 301*. Viewed at: <https://ustr.gov/issue-areas/intellectual-property/Special-301>.

<sup>480</sup> USTR (2021), *2021 Special 301 Report*. Viewed at: [https://ustr.gov/sites/default/files/files/reports/2021/2021%20Special%20301%20Report%20\(final\).pdf](https://ustr.gov/sites/default/files/files/reports/2021/2021%20Special%20301%20Report%20(final).pdf).

<sup>481</sup> The full list may be found on WIPO's website, at: <http://www.wipo.org>. As at December 2021, the United States had not yet submitted its instrument of ratification of the Beijing on Audiovisual Performances, which entered into force on 28 January 2020.

<sup>482</sup> WTO document IP/N/1/USA/U/56, IP/N/1/USA/60, 1 June 2018.

<sup>483</sup> WTO document IP/N/1/USA/61, IP/N/1/USA/P/15, 13 February 2019.



streaming<sup>484</sup>; (iv) the implementation of the Marrakesh Treaty Implementation Act, signed into law on 10 October 2018, which modifies the copyright exceptions for blind or print disabled persons in 17 U.S.C. 121, adds a new section 17 U.S.C. 121A regarding cross-border exchange of works made accessible to blind or print disabled persons, and implements the U.S. ratification of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled<sup>485</sup>; and (v) the modifications introduced by the Agriculture Improvement Act of 2018 (P.L. 115-334) to the U.S. Plant Variety Protection Act to add asexually propagated plants, previously not available under the Act<sup>486</sup>; the regulations implementing the rule were also revised and the final rule was published on 6 January 2020.<sup>487</sup> A snapshot of IPR protection in the United States as of end-2021 is provided in Table A3.6.

3.333. Led by USTR, the United States makes use of several mechanisms and channels at the bilateral, plurilateral, or multilateral levels for addressing IP protection and enforcement issues with its trading partners. In this respect, the United States seeks to secure binding IPR-related commitments as part of bilateral and plurilateral FTAs, bilateral agreements and MOUs, bilateral investment treaties, and trade and investment framework agreements. The United States has also actively pursued enhanced standards of IP protection through its engagement with countries seeking accession to the WTO. Other instruments used by the United States for IPR protection and enforcement include the annual "Special 301" review and report (see below) and IP dialogues with trading partners; multilateral engagement on IP issues through the WTO, WIPO, APEC, and other organizations; implementation of trade policy in support of U.S. innovations; and providing interagency trade policy leadership.<sup>488</sup>

3.334. USDOC also plays an important role on IP policy issues. The Under Secretary of Commerce for Intellectual Property and Director of USPTO, among other duties, advises the President, through the Secretary of Commerce, on national and certain international IP policy issues; advises federal departments and agencies on matters of IP policy in the United States and IP protection in other countries; provides guidance with respect to proposals by agencies to assist foreign governments and international intergovernmental organizations on matters of IP protection; and conducts programs, studies, or exchanges of items or services regarding domestic and international IP law and the effectiveness of IP protection domestically and throughout the world.<sup>489</sup>

3.335. USPTO's Office of Policy and International Affairs (OPIA) leads the agency's efforts to formulate and execute U.S. domestic and international policy regarding protection and enforcement of IPRs, nationally and internationally, and advocating improved and more effective means of obtaining and enforcing the IPRs of U.S. nationals. In particular, OPIA has technical and trade expertise in domestic and international patent and patent-related IPRs, represents the U.S. Government at WIPO, the five IP offices (IP5)<sup>490</sup>, the Industrial Design Forum (ID5)<sup>491</sup>, and the International Union for the Protection of New Varieties of Plants (UPOV). OPIA deals with patent and patent-related policy encompassing a number of areas that are critical to responding to the many patent-related domestic and international issues that face U.S. rights holders, including domestic patent and patent-related policy issues as they relate to international obligations, foreign law, and practice, as well as the development of U.S. practice and jurisprudence; treaty negotiation and monitoring the enforcement of patent-related international treaty provisions; U.S. implementation of and adherence with international treaty obligations relating to patents, industrial designs, plant and plant varieties, and trade secret and regulatory data protection; technical assistance and training on patent-related matters for both U.S. and foreign officials.<sup>492</sup> OPIA coordinates its work with USPTO's Patent Operations, including the Office of International Patent Cooperation, in implementing projects to improve the efficiency and quality of patent examination such as USPTO's Global IP

<sup>484</sup> WTO document IP/N/1/USA/62, IP/N/1/USA/C/7, 13 February 2019.

<sup>485</sup> WTO document IP/N/1/USA/63, IP/N/1/USA/C/8, 13 February 2019.

<sup>486</sup> WTO document IP/N/1/USA/64, IP/N/1/USA/P/16, 25 September 2020.

<sup>487</sup> WTO document IP/N/1/USA/65, IP/N/1/USA/P/17, 25 September 2020.

<sup>488</sup> USTR, *Intellectual Property*. Viewed at: <https://ustr.gov/issue-areas/intellectual-property>.

<sup>489</sup> 35 USC Sections 2(b)(8)-(13); and 35 USC Section 3.

<sup>490</sup> The five patent offices are the USPTO, the European Patent Office (EPO), the Japan Patent Office (JPO), the Korean Intellectual Property Office (KIPO), and the National Intellectual Property Administration (CNIPA formerly SIPO) in China.

<sup>491</sup> The ID5 is an industrial design framework comprising the CNIPA, the European Union Intellectual Property Office (EUIPO), the JPO, the KIPO and the USPTO.

<sup>492</sup> USPTO, *Patent Policy*. Viewed at: <https://www.uspto.gov/ip-policy/patent-policy>.

Academy, the Patent Prosecution Highway work sharing framework, the Cooperative Patent Classification system, and the Global Dossier Initiative.

3.336. The United States Copyright Office assists Congress in developing and administering U.S. copyright laws and policy and in engaging on international copyright matters. The Copyright Office also provides information about copyrights to the public, including by answering questions, developing education programs, producing instructional materials, and maintaining a Public Information Office. The Copyright Office's Office of Policy and International Affairs (PIA) works on a wide variety of copyright matters with the executive branch agencies to deliver critical domestic and international policy analysis and advice. The Copyright Office's Office of General Counsel (OGC) provides counsel to the courts when significant copyright questions arise in litigation.

### 3.3.7.3 Patents

3.337. The main legislation with respect to patents is the Patent Law of the United States, as incorporated in 35 U.S.C. The Leahy-Smith America Invents Act (AIA) of 2011<sup>493</sup> allowed transitioning the U.S. patent legislation to a first-to-file system and harmonized U.S. law with international practice. The AIA provided an enhanced grace period for inventors to safeguard patent rights against disclosures made by inventors one year or less before the effective filing date and modified the definition of prior art to include non-printed disclosures, among other changes.<sup>494</sup>

3.338. Patents may be granted for a process, machine, manufacture, or composition of matter, or improvements thereof. The term of protection is 20 years from the filing date in the United States or, in special cases, from the date an earlier related application was filed, subject to the payment of maintenance fees. The right conferred by the patent grant is "the right to exclude others from making, using, offering for sale, or selling" the invention in the United States or "importing" the invention into the United States. Patents of invention are granted to eligible subject matter, and the inventions are novel and non-obvious over the prior art. In accordance with 35 U.S.C. 101, "whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor". The novelty requirement specifies that a person is entitled to a patent unless the claimed invention was patented, described in a printed publication, in public use, on sale, or otherwise available to the public before the effective filing date of the claimed invention; or it was described in a patent issued, or in an application for patent published, in which the patent or application names another inventor and was effectively filed before the effective filing date of the claimed invention. Disclosures of the invention or the subject matter made one year or less before the effective filing date of the claimed invention are not considered to be prior art to the claimed invention.

3.339. USPTO, at USDOC, is the federal agency for granting U.S. patents and registering trademarks. USPTO administers the patent laws as they relate to the granting of patents for inventions and performs other duties relating to patents. USPTO advises the President, the Secretary of Commerce, and U.S. government agencies on IP policy, protection, and enforcement, and it promotes the stronger and more effective IP protection around the world. USPTO works with USTR and other agencies to secure strong IP provisions in free trade and other international agreements. It also provides training, education, and capacity-building programs designed to foster respect for IP and encourage the development of strong IP enforcement regimes by U.S. trading partners. USPTO is responsible for examining applications and granting patents on inventions; it publishes and disseminates patent information, records assignments of patents, maintains search databases of U.S. and foreign patents, and keeps a search room for public use in examining issued patents and records. USPTO has no jurisdiction over infringement and enforcement of patents (35 U.S.C. 281).

3.340. USPTO publishes issued patents, publishes most patent applications 18 months from the earliest effective application filing date, and makes various other publications concerning patents. USPTO also records assignments of patents (35 U.S.C. 261). U.S. law provides for the possibility of submitting a provisional application for a patent (35 U.S.C. 111(b)). The purpose of allowing provisional patent applications is to provide a lower-cost first patent filing in the United States, and to give U.S. applicants parity with foreign applicants. A provisional application provides the means to establish an early effective filing date in a patent application. The applicant would then have up

<sup>493</sup> P.L. 112-29. Viewed at: <http://www.gpo.gov/fdsys/pkg/PLAW-112publ29/content-detail.html>.

<sup>494</sup> USPTO, *Global Impacts of the AIA*. Viewed at: <http://www.uspto.gov/patent/laws-and-regulations/america-invents-act-aia/global-impacts-aia>.

to 12 months to file a non-provisional application for patent. A provisional application is not examined on its merits. Applications for patents are examined by USPTO when the filing process is complete, and all required parts are received. The 12-month pendency for a provisional application is not counted towards the 20-year term of a patent granted on a subsequently filed non-provisional application. Provisional applications may not be filed for design inventions.

3.341. The American Inventors Protection Act (AIPA) of 1999 requires that most plant and utility patent applications filed on or after 29 November 2000 be published. A patent applicant may request that the application not be published, but only if the invention has not been, and will not be, the subject of an application filed in a foreign country that requires publication 18 months after filing (or earlier claimed priority date) or under the Patent Cooperation Treaty.<sup>495</sup>

3.342. The Patent and Trademark Law Amendments Act of 1980 (Bayh-Dole Act) (P.L. 96-517) and the Stevenson-Wydler Technology Innovation Act of 1980 (P.L. 96-480), as well as implementing regulations, define a framework for facilitating innovation through IP and R&D funding. The Bayh-Dole Act authorizes USDOC to create standard patent rights clauses to be included in federal funding agreements with non-profits, including universities, and small businesses. The authority to promulgate implementing regulations for Bayh-Dole was delegated to NIST. The Bayh-Dole Act and its regulations require any person, non-profit organization, small business firm, or large business to disclose each "subject invention" (performed under a funding agreement), within a reasonable time after the invention becomes known to the contractor; they mandate contractors to notify the federal funding agency whether or not they elect to retain the title to a subject invention within two years of disclosure, and file an initial patent application on a subject invention to which the contractor elects to retain title within one year after election or before the end of any statutory period for obtaining patent protection. The patent application must include a statement that the invention was made with government support under the grant or contract awarded by the federal agency, and that the Government has certain rights in the invention. A contractor is obligated to submit periodic reports on the utilization of a subject invention; and to agree not to grant the exclusive right to use or sell any subject inventions in the United States unless any products embodying it or produced by using it are manufactured substantially in the United States, subject to waiver. Recipients of federal funding and federal laboratories are also expected to give small businesses preference over other applicants for licenses and must grant or reserve a license to the Federal Government to use the invention on or on behalf of the United States. Bayh-Dole and its regulations also specify certain conditions applicable to licenses granted by federal agencies in any federally owned invention.

3.343. NIST rule changes with respect to the Bayh-Dole Act went into effect on 14 May 2018 to reduce regulatory burdens on recipients of federal R&D funding. NIST issued updates to sections of the C.F.R. that implement the 1980 Bayh-Dole Act (37 C.F.R. Parts 401 and 404).<sup>496</sup> The changes clarify certain definitions, reduce compliance burdens, address co-inventions between funding recipients and federal agencies, and simplify the electronic reporting process. They also provide for automatic extensions of the requirement to file non-provisional patent applications and permit a business, university or other collaborator to rely on its Cooperative Research and Development Agreement (CRADA) with a federal laboratory to support an application for a license to a federal invention developed under that CRADA.<sup>497</sup> In January 2021, NIST issued a notice of a proposed rulemaking to further streamline and reduce regulatory burdens, improve compliance, enhance a contractor's ability to commercialize subject inventions, and increase the return on investment of federal funding.<sup>498</sup> The Stevenson-Wydler Technology Innovation Act of 1980 (P.L. 96-480(21)), as amended through Title II-Research, Development, Test, and Evaluation, of the National Defense Authorization Act for Fiscal Year 2020 (P.L. 116-92), enacted 20 December 2019, requires federal laboratories to actively participate in and budget for, technology transfer activities, understood as passing information from federal agencies to the public to encourage the practical and commercial application of R&D. The law requires laboratories to set apart a percentage of the laboratory budget

<sup>495</sup> USPTO, *Patent Basics*. Viewed at: <https://www.uspto.gov/patents-getting-started/general-information-concerning-patents#heading-1>.

<sup>496</sup> 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Co-operative Agreements", applies to all federal agencies, and all subject inventions under Bayh-Dole, even if the Federal Government is not the sole source of funding.

<sup>497</sup> NIST, *2018 Bayh-Dole Updates*. Viewed at: <https://www.nist.gov/tpo/bayh-dole/2018-bayh-dole-updates>.

<sup>498</sup> NIST, Rights to Federally Funded Inventions and Licensing of Government Owned Inventions. A Proposed Rule by the National Institute of Standards and Technology. *Federal Register* (2021), Vol. 86, No. 1, 4 January. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-01-04/pdf/2020-27581.pdf>.

specifically for technology transfer activities. P.L. 116-92 introduced amendments regarding regional public or non-profit innovation initiatives, in order to promote innovation-driven industry, strengthen its competitiveness through new product innovation and new technology adoption, accelerate the pace of commercialization of innovative research, and stimulate and enhance the overall innovation capacity and long-term resilience of a region. To this end, NIST's Technology Partnerships Office (TPO) works with stakeholders on prioritizing technology transfer issues and improving the process to enhance innovation, and technology commercialization.<sup>499</sup>

3.344. The Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018 (SUCCESS Act)<sup>500</sup> directs the Director of USPTO, in consultation with the Administrator of the SBA, to provide recommendations to promote the participation of women, minorities, and veterans in entrepreneurship activities and the patent system. In its report pursuant to the requirements of the SUCCESS Act, USPTO submitted a number of legislative recommendations for increasing the participation of women, minorities, and veterans as inventor-patentees and entrepreneurs.<sup>501</sup>

3.345. Patent validity may be challenged by filing a petition before the Patent Trial and Appeal Board (PTAB), an administrative court of USPTO. The petitioner may request to cancel as unpatentable one or more claims of a patent. PTAB conducts trials, including *inter partes*, post-grant, and covered business method patent reviews and derivation proceedings; hears appeals from adverse examiner decisions in patent applications and re-examination proceedings; and renders decisions in interferences. There are two main options for challenging validity before PTAB: Post-Grant Review (PGR)<sup>502</sup>, limited to within nine months of issuance; or Inter Partes Review, which may be solicited at any time after nine months of issuance or reissue of a patent, or the conclusion of a PGR proceeding.<sup>503</sup> Until 16 September 2020, trial types included also the Covered Business Method (CBM). PTAB also conducts derivation proceedings to determine whether an inventor named in an earlier application derived the claimed invention from an inventor named in the petitioner's application, and the earlier application claiming such invention was filed without authorization.<sup>504</sup>

3.346. In FY2021, there were 1,401 AIA petitions, of which 1,308 were Inter Partes Reviews and 93 were PGRs. Of these 65% related to Electrical/Computer Technology; 23% to Mechanical & Business Method; 6% to Chemical; 7% to Bio/Pharma; and less than 1% to Design. Some 59% of petitions were instituted in FY2021; 32% of petitions were settled.<sup>505</sup>

3.347. USPTO's Strategic Plan for FY2018/22 contains the main elements with respect to current and future IP policy.<sup>506</sup> The Plan maintains the three goals set for the 2014-18 period: optimizing patent quality and timeliness; optimizing trademark quality and timeliness; and providing domestic and global leadership to improve IP policy, protection, and enforcement. It identifies a role for USPTO in the strengthening of IP protection, both in the United States and abroad. USPTO's Strategic Plan aims to continue to improve the quality of issued patents and registered trademarks, and shorten

<sup>499</sup> NIST, Technology Partnerships Office. Viewed at: <https://www.nist.gov/tpo>.

<sup>500</sup> P.L. 115-273 of 31 October 2018. Viewed at: <https://www.congress.gov/115/plaws/publ273/PLAW-115publ273.pdf>. It was notified to the WTO in WTO document IP/N/1/USA/P/5, 13 February 2019.

<sup>501</sup> USPTO (2019), *Report to Congress Pursuant to P.L. 115-273, the SUCCESS Act*, October. Viewed at: <https://www.uspto.gov/sites/default/files/documents/USPTOSuccessAct.pdf>.

<sup>502</sup> PGR is a trial proceeding to review the patentability of one or more claims in a patent on any ground that could be raised. The procedure for conducting a PGR generally applies to patents issuing from applications subject to first-inventor-to-file provisions of the AIA.

<sup>503</sup> Inter Partes Review is a trial proceeding conducted to review the patentability of one or more claims in a patent only on a ground of novelty or non-obvious subject matter, and only on the basis of prior art consisting of patents or printed publications. As for the PGR, a final determination will be issued within a year (extendable by six months). USPTO, *Inter Partes Review*. Viewed at: <https://www.uspto.gov/patents/ptab/trials/inter-partes-review>.

<sup>504</sup> Derivation proceeding petitions may be filed by an applicant subject to the first-inventor-to-file provisions only within one year of the first publication of a claim to an invention that is the same or substantially the same as the earlier application's claim to the invention. The petition must be supported by substantial evidence that the claimed invention was derived from an inventor named in the petitioner's application. The procedure for derivation took effect on 16 March 2013. USPTO, *Derivation Proceeding*. Viewed at: <https://www.uspto.gov/patents/ptab/trials/derivation-proceeding>.

<sup>505</sup> USPTO (2021), *PTAB Trial Statistics FY21 End of Year Outcome Roundup IPR, PGR, CBM. Patent Trial and Appeal Board. Fiscal Year 2021*. Viewed at: [https://www.uspto.gov/sites/default/files/documents/ptab\\_aia\\_fy2021\\_roundup.pdf](https://www.uspto.gov/sites/default/files/documents/ptab_aia_fy2021_roundup.pdf).

<sup>506</sup> USPTO (2018), *Strategic Plan 2018-2022*. Viewed at: [https://www.uspto.gov/sites/default/files/documents/USPTO\\_2018-2022\\_Strategic\\_Plan.pdf](https://www.uspto.gov/sites/default/files/documents/USPTO_2018-2022_Strategic_Plan.pdf).

the time it takes to get a patent. To enhance patent quality, USPTO has introduced a new patent search system that provides examiners with increased access to prior art. It has also implemented a number of AI updates that more closely align the time allotted for the examination of patent applications with the technology described in the application and its specific attributes.<sup>507</sup>

3.348. USPTO received 650,654 patent applications in FY2021, down from 653,311 in FY2020 and 666,843 in FY2019, mainly due to the negative effects on economic activity of COVID-19. During the review period, USPTO continued to make progress towards addressing some of the concerns identified in previous years, with respect to the pendency period for patent applications and the need to improve the quality of patent applications. In this respect, Goal I within its Strategic Performance Framework aims to reduce the average time from filing until an examiner's initial determination on patentability to 10 months, and average total pendency to 20 months. Following these guidelines, and despite the difficulties arising from the effects of available staff due to COVID-19, the pendency time continued to fall during the period under review. In FY2020 and FY2021, total pendency time was on average 23.3 months, faster than in FY2018 and FY2019, when it was 23.8 months, and compared to 24.2 months in FY2017. The result achieved in FY2020 and FY2021 more than met the goal set in the Strategic Performance Framework for FY2020, which was a pendency time of 23.7 months.<sup>508</sup> Also in FY2020, average first action pendency was 14.8 months, below the 15-month goal set in the Framework.<sup>509</sup> However, it increased to 16.9 months in FY2021, partly as a result of the disruption caused by the pandemic. During the review period, the number of patents issued by USPTO continued to increase. In FY2021, USPTO issued a total of 338,335 utility patents, down from 360,784 in FY2020, but up from 336,846 in FY2019. The number of industrial design patents also rose, from 31,830 in FY2019 to 36,313 in FY2020, but declined to 33,914 in FY2021. The number of plant patents rose to 1,350 in FY2020 but declined to 1,256 in FY2021. The number of patent reissues also increased in FY2020 but fell in 2021 (Table 3.38).

**Table 3.38 Patent applications, grants, and pendencies, FY2017-21**

	FY2017	FY2018	FY2019	FY2020	FY2021
<b>Patent applications filed, total</b>	<b>650,350</b>	<b>647,572</b>	<b>666,843</b>	<b>653,311</b>	<b>650,654</b>
Utility	604,298	599,174	619,017	603,669	593,294
Reissue	1,049	989	1,096	1,153	1,140
Plant	1,071	1,049	1,159	1,050	964
Design	43,932	46,360	45,571	46,105	54,201
<b>Provisional applications filed</b>	<b>166,885</b>	<b>168,427</b>	<b>169,514</b>	<b>174,464</b>	<b>158,346</b>
<b>First actions</b>					
Design	40,415	41,587	40,098	42,219	40,263
Utility, Plant, and Reissue	611,280	597,509	582,917	578,768	520,233
Patent Cooperation Treaty (PCT)/Chapter	20,353	20,932	21,559	21,903	20,323
<b>Patent application disposals, total</b>	<b>676,002</b>	<b>680,467</b>	<b>682,134</b>	<b>657,948</b>	<b>623,467</b>
<b>Allowed patent applications, total</b>	<b>373,093</b>	<b>368,877</b>	<b>406,678</b>	<b>405,884</b>	<b>385,433</b>
Design	32,705	34,078	35,450	36,350	35,516
Utility, Plant, and Reissue	340,388	334,799	371,228	369,534	349,917
<b>Abandoned, total</b>	<b>302,452</b>	<b>282,374</b>	<b>275,470</b>	<b>251,029</b>	<b>237,209</b>
Design	5,894	6,197	6,529	5,807	5,886
Utility, Plant, and Reissue	296,558	276,177	268,941	245,222	231,323
<b>Patents issued</b>	<b>347,372</b>	<b>339,512</b>	<b>370,423</b>	<b>399,055</b>	<b>374,066</b>
Utility	315,367	306,912	336,846	360,784	338,335
Reissue	392	500	554	608	501
Plant	1,246	1,251	1,193	1,350	1,256
Design	30,367	30,849	31,830	36,313	33,914
Pendency Time of Average Patent Application	24.2	23.8	23.8	23.3	23.3
PCT International Applications Received by the USPTO as Receiving Office	56,840	55,849	55,692	56,982	56,602
Patents Renewed under P.L. 102-2049	424,574	490,132	479,839	590,199	447,297
Patents Expired under P.L. 102-2049	99,047	118,709	129,466	133,240	145,807

Source: USPTO, *FY2021 Performance and Accountability Report*. Viewed at: <https://www.uspto.gov/sites/default/files/documents/USPTOFY21PAR.pdf>.

<sup>507</sup> USPTO (2022), *FY2021 Performance and Accountability Report*. Viewed at: <https://www.uspto.gov/sites/default/files/documents/USPTOFY21PAR.pdf>.

<sup>508</sup> USPTO (2022), *FY2021 Performance and Accountability Report*. Performance Highlights. Viewed at: <https://www.uspto.gov/sites/default/files/documents/USPTOFY21PAR.pdf>.

<sup>509</sup> First action pendency measures the time from when an application is filed until it receives an initial determination of patentability by the patent examiner. Total pendency measures the time from filing until an application is either issued as a patent or abandoned.



3.349. The share of patents of foreign origin issued by the USPTO increased somewhat during the period under review, from 52.3% of the total in FY2018 to 53.1% in FY2021.<sup>510</sup> Among foreign countries, the largest share was held by Japan (26.7% of patents issued to foreign residents), followed by the Republic of Korea (11.0%), Germany (8.8%), and China (5.5%) (Table 3.39).

**Table 3.39 Patents issued by the United States to residents of foreign countries and territories, FY2017-21**

(Number)

Residence	FY2017	FY2018	FY2019	FY2020	FY2021
<b>Total</b>	<b>180,287</b>	<b>177,550</b>	<b>193,373</b>	<b>180,275</b>	<b>198,730</b>
Australia	1,964	1,966	2,136	2,298	1,888
Austria	1,615	1,528	1,618	1,650	1,416
Belgium	1,358	1,408	1,447	1,537	1,315
Canada	7,539	7,225	7,790	8,179	7,260
China	14,154	16,315	20,836	26,176	10,993
Denmark	1,249	1,270	1,320	1,425	1,221
Finland	1,730	1,601	1,545	1,641	1,605
France	7,365	6,991	7,532	7,981	6,907
Germany	17,994	17,434	18,758	19,799	17,569
India	4,207	4,248	5,075	5,888	3,685
Israel	4,304	4,168	4,630	5,011	3,820
Italy	3,209	3,247	3,718	3,913	3,158
Japan	51,741	50,012	53,172	55,899	53,044
Korea, Republic of	22,689	22,054	22,427	24,218	21,867
Netherlands	3,132	3,215	3,340	3,552	2,941
Sweden	3,327	3,164	3,321	3,495	3,044
Switzerland	3,024	2,893	3,197	3,394	2,905
Chinese Taipei	12,535	11,424	11,857	13,390	12,735
United Kingdom	7,636	7,549	8,494	8,834	7,289
Other	12,350	9,500	19,723	30,420	34,068

Note: Includes utility, design, plant, and reissue patents.

Source: USPTO, *FY 2021 Performance and Accountability Report*. Viewed at: <https://www.uspto.gov/sites/default/files/documents/USPTOFY21PAR.pdf>.

3.350. The share of utility patents granted to small and micro businesses increased during the period under review: from 2.33% of the total in FY2017 to 2.48% in FY2021 for micro entities, and from 19.54% to 20.76% for small entities (Table 3.40).

**Table 3.40 Percentage of utility patents issued to micro, small, and large entities, FY2017-21**

(%)

Residence	FY2017	FY2018	FY2019	FY2020	FY2021
<b>All origins</b>					
Micro entity	2.33	2.48	2.49	2.50	2.48
Small entity	19.54	19.86	19.94	19.98	20.76
Large entity	78.13	77.66	77.57	77.52	76.75
<b>U.S. origin</b>					
Micro entity	4.06	4.34	4.22	4.20	4.23
Small entity	25.68	25.91	25.82	25.92	27.02
Large entity	70.26	69.75	69.97	69.88	68.75
<b>Foreign origin</b>					
Micro entity	0.77	0.84	0.94	1.01	1.01
Small entity	14.02	14.49	14.67	14.74	14.74
Large entity	85.21	84.67	84.39	84.25	83.57

Source: USPTO, *FY 2021 Performance and Accountability Report*. Viewed at: <https://www.uspto.gov/sites/default/files/documents/USPTOFY21PAR.pdf>.

3.351. Apart from PGRs and Inter Partes Reviews, PTAB also oversees appeals during the course of patent examination (*ex parte* appeals), and implements the patent dispute resolution portions of the AIA that were noted above. In FY2021 5,550 *ex parte* appeal cases were filed, down from 6,772 in FY2020; PTAB decided 7,872 *ex parte* appeals in FY2020 and 7,340 in FY2021. At the end of FY2021, there were 5,692 appeal cases pending, compared to 11,021 at the end of FY2018.<sup>511</sup> During the

<sup>510</sup> USPTO, *U.S. Patent Statistics Chart: Calendar Years 1963-2020*. Viewed at: [http://www.uspto.gov/web/offices/ac/ido/oeip/taf/us\\_stat.htm](http://www.uspto.gov/web/offices/ac/ido/oeip/taf/us_stat.htm).

<sup>511</sup> USPTO (2021), *Appeal and Interference Statistics: Patent Trial and Appeal Board*, 30 September. Viewed at: [https://www.uspto.gov/sites/default/files/documents/appeal\\_and\\_interference\\_statistics\\_september2021](https://www.uspto.gov/sites/default/files/documents/appeal_and_interference_statistics_september2021).

review period there was a reduction in the time of pendency for PTAB trials. PTAB pendency of decided appeals declined from 29.8 months in FY2015 to 13.4 months in FY2020, and 12.7 months in FY2021; this was better than the target of 14.2 months for FY2021.<sup>512</sup>

### 3.3.7.4 Industrial designs

3.352. Industrial designs understood as any new, original, and ornamental design for an article of manufacture, are usually protected by design patents. The Patent Law Treaties Implementation Act of 2012 introduced modifications to the Patent Law and established the legal basis to implement the Geneva Act of The Hague Agreement Concerning the International Registration of Industrial Designs (Hague Agreement), which entered into force with respect to the United States on 13 May 2015. This also enabled the United States to join the WIPO-administered system. Since the Patent Law Treaties Implementation Act of 2012 came into force, U.S. applicants can file international design applications through USPTO as an office of indirect filing, and applicants filing international design applications can designate the United States for design protection. The term of protection for applications filed on or after 13 May 2015 is 15 years from the date of grant; applications filed before 13 May 2015 have a term of protection of 14 years from the date of grant.

3.353. During the period under review, the number of patents granted for industrial designs continued to follow an upward trend, although it declined in FY2021 as activity was disrupted by the pandemic. USPTO issued 33,914 design patents in FY2021, up from 30,849 granted in FY2018, but below the 36,313 patents issued in FY2020.<sup>513</sup>

3.354. USPTO has traditionally considered that design patents provide protection for designs embodied in or applied to an article of manufacture (or portion thereof) and not for the article itself; applicants have been required to show the design as applied to or embodied in an article of manufacture. To be eligible for protection, USPTO currently requires that a design for a computer-generated icon be: (i) embodied in a computer screen, monitor, other display panel, or portion thereof; (ii) more than a mere picture on a screen; and (iii) integral to the operation of the computer displaying the design. However, recent technological advances have allowed the development of designs that are not applied to or embodied in a physical product but can perform a utilitarian function, rather than just serving as merely a displayed picture. New designs in the digital economy in the forms of projections, holograms, and virtual and augmented reality (PHVAR) present new challenges for industrial design protection systems as they do not require a physical display screen or other tangible article to be viewable. To deal with this issue, on 21 December 2020, USPTO published a Federal Register Notice seeking public input on whether USPTO's interpretation of the "article of manufacture" requirement in 35 U.S.C. 171 should be revised to protect digital designs that encompass new and emerging technologies.<sup>514</sup>

### 3.3.7.5 Trademarks

3.355. The Trademarks organization within USPTO registers marks, including trademarks, service marks, certification marks, collective marks, and collective membership marks, that meet the requirements of the Trademark Act of 1946, as amended. It also provides notice to the public and businesses of the trademark rights claimed in pending applications and existing registrations. The main function of the Trademarks organization is examining applications and reviewing maintenance filings for trademark registration. Trademark legislation is mainly contained in the Lanham Act of 1946 (Trademark Act), as amended (15 U.S.C. 1051 et seq.), most recently by the Trademarks Modernization Act of 2020 (see below). The Rules of Practice in Trademark Cases, (37 C.F.R. Part 2) (U.S. Trademark Rules), most recently modified in December 2021, the Trademark Manual of Examining Procedure (TMEP) (July 2021 edition), and state laws, contain the main regulations and policies. A trademark is always connected to specific goods or services sold to customers.

<sup>512</sup> USPTO (2022), *FY2021 Performance and Accountability Report*. Viewed at: <https://www.uspto.gov/sites/default/files/documents/USPTOFY21PAR.pdf>.

<sup>513</sup> USPTO (2022), *FY 2021 Performance and Accountability Report*. Viewed at: <https://www.uspto.gov/sites/default/files/documents/USPTOFY21PAR.pdf>.

<sup>514</sup> USPTO, *The Article of Manufacture Requirement. Request for information. Federal Register*, Vol. 85, No. 245, 21 December 2020, Notice. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-12-21/pdf/2020-28110.pdf>.

3.356. Trademark protection arises from federal registration with USPTO, from the actual use of the mark in commerce, and from federal unfair competition laws. Federal registration of a mark is not required to establish rights in a trademark. Common law rights arise from actual use of a mark and may allow the common law user to successfully challenge a registration or application. However, federal registration on the Principal Register grants the holder additional rights, such as the legal presumption of ownership, validity, and the entitlement to use the mark in connection with the goods or services identified in the registration. A state registration is also possible, but it only provides rights within the borders of that particular state, and common law rights exist only for the specific area where the mark is used. Federal registration also ensures that a Public Notice of claim of ownership of the mark is published and listed in USPTO's online databases. Federally registered marks may be recorded with CBP to prevent importation of infringing goods. Other advantages of federal registration include the ability to bring an action concerning the mark in federal court; and the possibility of using the U.S. registration as a basis to obtain registration in foreign countries.<sup>515</sup> Trademark protection has a renewable term of 10 years, for as long as the mark is in use or sufficient showing of excusable non-use. The protection granted to a mark may be cancelled if an affidavit of use or excusable non-use is not provided between the fifth and sixth year of use, the ninth and tenth year of use, and each 10-year period thereafter.<sup>516</sup>

3.357. The filing of an application for federal trademark registration can be based on: use of the mark in the ordinary course of U.S. trade; a bona fide intention to use the mark in the ordinary course of U.S. trade; a country of origin registration through the Paris Convention; or an international registration through the Madrid Protocol. USPTO reviews trademark applications and determines whether the applied-for mark meets the requirements for federal registration but does not make any determination of the right to use a mark, which must be decided by a court. USPTO does not conduct trademark searches for the public, nor will it comment on the validity of registered marks. USPTO does not answer questions prior to filing on whether a particular mark or type of mark is eligible for trademark registration or offer legal advice or opinions about common law trademark rights, state registrations, or trademark infringement claims.<sup>517</sup>

3.358. The first to use the mark in commerce can prevent registration of a mark with a later filing date or later use in commerce. For applications filed by U.S. applicants, the trademark must be used in U.S. commerce before federal registration is issued. Applications filed by foreign applicants under the Paris Convention or the Madrid Protocol do not require use of the mark in U.S. commerce before registration but must include a declaration of bona fide intention to use the mark in commerce and use is required to maintain the registration. Use of a mark in promotion or advertising before the product or service is actually provided under the mark does not qualify as use in commerce. Pursuant to the Madrid Protocol, a trademark owner with an application filed with, or a registration issued by, USPTO and who is a national of, has domicile in, or has an industrial or commercial establishment in the United States may also file an international application with USPTO. Holders of international registrations based on U.S. applications or registrations may request extensions of protection in other Madrid Protocol members. Notices of marks approved for registration are published in the USPTO's Official Gazette. A trademark registration can be cancelled at any time if the registered mark has been abandoned.<sup>518</sup> Registration with USPTO provides protection for the mark only in the United States and its territories.

<sup>515</sup> USPTO (2020), *Protecting Your Trademark: Enhancing Your Rights Through Federal Registration*, September. Viewed at: <https://www.uspto.gov/sites/default/files/documents/Basic-Facts-Booklet.pdf>.

<sup>516</sup> The TTAB or a federal court determines abandonment of a registered mark. Non-use for three consecutive years is *prima facie* evidence of abandonment. The expungement proceeding may be utilized between 3 and 10 years following the date of registration. However, under Section 2.91(b)(1) of the Trademark Modernization Act (see below), until 27 December 2023, an expungement proceeding may be instituted for a registration that is at least 3 years old, regardless of the 10-year limit. In the case of non-use where use of the trademark failed to commence by a certain relevant date, this would fall under a re-examination proceeding. The same sequence concerning determinations and appeals for expungements applies to re-examinations. A petition for re-examination must be filed within the first five years post-registration.

<sup>517</sup> USPTO (2020), *Protecting Your Trademark: Enhancing Your Rights Through Federal Registration*, September. Viewed at: <https://www.uspto.gov/sites/default/files/documents/Basic-Facts-Booklet.pdf>.

<sup>518</sup> A Declaration of use and/or excusable non-use (Section 8 declaration) must be submitted to prove use. USPTO, *Definitions for Maintaining a Trademark Registration*. Viewed at: <https://www.uspto.gov/trademarks/maintain/forms-file/definitions-maintaining-trademark#Section%208>. Examples of excusable non-use include trade embargo or other circumstance beyond owner's control; the sale of a business; retooling of a plant or equipment; or illness, fire, and other catastrophes.

3.359. The Trademark Modernization Act of 2020 modified a number of aspects of trademark law, including providing for third-party submission of evidence during examination, flexible response periods, *ex parte* expungement and re-examination, new grounds for cancellation, rebuttable presumption of irreparable harm, decluttering initiatives, and amendments to confirm authority of the Under Secretary of Commerce for Intellectual Property and Director of USPTO. The main points of the Act are summarized in Box 3.4. The expungement, re-examination, and new grounds for cancellation provisions of the Act entered into effect on 18 December 2021, when a final rule issued by USPTO became effective (see below).

#### Box 3.4 The Trademark Modernization Act of 2020

The Trademark Modernization Act of 2020 (TM Act of 2020), Subtitle B—Trademarks, of Title II, Intellectual Property of Division Q—Financial Services Provisions and Intellectual Property of the Consolidated Appropriations Act, 2021, introduced a number of amendments to the Trademark Act of 1946. Some of the main provisions amended included:

- Providing for Third-Party Submission of Evidence During Examination: Section 1 of the Trademark Act of 1946 (15 U.S.C. 1051) was amended by adding that a third party may submit for consideration for inclusion in the record of an application evidence relevant to a ground for refusal of registration. The determination by the Director of USPTO to include or not evidence in the record of an application is final and non-reviewable. The changes, which take effect one year after the date of enactment of the Act (on 21 December 2021).
- Providing for Flexible Response Periods: Section 12(b) of the Trademark Act of 1946 (15 U.S.C. 1062(b)) was amended to provide for more flexible response periods after a trademark applicant is notified by USPTO of the reasons why their mark is found not entitled to registration. After notification, the applicant shall have a period of 6 months to reply or amend the application.
- *Ex Parte* Expungement: The Trademark Act of 1946 was amended by adding a new Section 16A *Ex Parte* Expungement (15 U.S.C. 1066a) allowing any person to file a petition to expunge a registration of a mark on the basis it has never been used in commerce on or in connection with some or all of the goods or services recited in the registration. If the petition meets all the requirements, USPTO institutes an *ex parte* expungement proceeding for each good or service for which it determines that a prima facie case has been set forth. Any determination by the USPTO whether or not to institute a proceeding is final and non-reviewable.  
The registrant may offer evidence showing that any non-use is due to special circumstances that excuse it.  
In case of a finding of non-use in commerce, USPTO may cancel the registration for each good or service for which it is determined that a mark has never been used.  
A petition for *ex parte* expungement of a registration may be filed at any time following the expiration of 3 years after the date of registration and before the expiration of 10 years following the date of registration.
- New Grounds for Cancellation. The Act provided for expungement as a new ground in which a registered mark may be cancelled. Section 14 of the Trademark Act of 1946 (15 U.S.C. 1064) was amended by inserting a new paragraph (6): "At any time after the 3-year period following the date of registration, if the registered mark has never been used in commerce on or in connection with some or all of the goods or services recited in the registration."
- *Ex Parte* Reexamination. A new Section 16B (15 U.S.C. 1066b) was added to the Trademark Act, stating that any person may file a petition to re-examine a registration of a mark on the basis that it was not in use in commerce on or in connection with some or all of the goods or services recited in the registration on or before the date when a mark was initially filed. The requirements are the same as for an *ex parte* expungement. A petition for *ex parte* re-examination may be filed at any time not later than five years after the date of registration of a mark.
- Appeal to Trademark Trial and Appeal Board (TTAB). Section 20 of the Trademark Act of 1946 (15 U.S.C. 1070) was amended to allow appeals to the TTAB of any final decision by an examiner in an *ex parte* expungement proceeding or *ex parte* re-examination proceeding.
- Appeal to Courts. Section 21(a)(1) of the Trademark Act of 1946 (15 U.S.C. 1071(a)(1)) was amended to include the new provisions on *ex parte* expungement and re-examination.
- Rebuttable Presumption of Irreparable Harm. The Act introduced specific language referring to presumption of damage to the plaintiff by non-use of the mark by the registrant. Section 34(a) of the Trademark Act of 1946 (15 U.S.C. 1116(a)) was amended.
- Report on Decluttering Initiatives. The Act calls USPTO to conduct a study during the period beginning 12 months and ending 30 months after the date of enactment of the Act (21 December 2020) to address inaccurate and false claims of use in trademark applications and registrations.
- Amendments to Confirm Authority of the Director (of USPTO). Section 18 of the Trademark Act of 1946 (15 U.S.C. 1068) was amended by granting the Director the authority to reconsider, and modify or set aside, a decision of the Trademark Trial and Appeal Board.

Source: WTO Secretariat, based on the TM Act of 2020.

3.360. Following the dispositions of the Trademark Modernization Act of 2020, USPTO proposed in May 2021 to amend the rules of practice in trademark cases to implement its provisions.<sup>519</sup> USPTO issued a Final Rule in November 2021 (Regulations implementing the Trademark Modernization Act

<sup>519</sup> *Federal Register* (2021), Vol. 86, No. 94, 18 May. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-05-18/pdf/2021-10116.pdf>.

of 2020), which entered into effect on 18 December 2021.<sup>520</sup> The Final Rule introduced new procedures for *ex parte* proceedings to cancel unused registered trademarks from the Federal Trademark Register, as an alternative to a contested *inter partes* cancellation proceeding at the Trademark Trial and Appeal Board (TTAB). Under the new *ex parte* expungement proceeding, any party may request cancellation of some or all of the goods or services in a registration because the registrant never used the trademark in commerce with those goods or services. This proceeding must be requested between 3 and 10 years after the registration date; however, until 27 December 2023, a proceeding may be requested by a third party or instituted *ex officio* for any registration that is at least 3 years old, regardless of the 10-year limit.

3.361. With respect to the re-examination proceeding, any party may also request cancellation of some or all of the goods or services in a use-based registration on the basis that the trademark was not in use in commerce on or before a particular relevant date. This new procedure must be requested within the first five years after the registration date. The Final Rule has resulted in a new ground of expungement for TTAB cancellation proceedings. Now parties may request the cancellation of a registered trademark through TTAB on the new grounds that a registered trademark has never been used in commerce at any time after the first three years from the registration date and is added to the existing grounds for cancellation of non-use and abandonment. The Final Rule also implemented the Act's shorter response period for USPTO actions: applicants or registrants must now respond within three months to USPTO actions; a single three-month extension may be requested for a fee of USD 125. The Final Rule went into effect on 18 December 2021, except for the implementation of the shorter response period for office actions that will go into effect on 1 December 2022. Petitions requesting institution of proceedings for re-examination or expungement are accepted as of 27 December 2021.<sup>521</sup>

3.362. USPTO's TTAB deals with *inter partes* disputes regarding trademark registrability through an opposition or cancellation proceeding, or, since December 2021, expungement and re-examination procedures through *ex parte* proceedings. Disputes may also be taken to court. Opposition to issuance of a registration for a mark may be filed up to 30 days after publication in the USPTO's Official Gazette; this period may be extended for up to six months. In cases of conflict between two marks, the USPTO determines the likelihood of confusion as a result of the use of the marks at issue by both parties. The TTAB's amended Rules of Practice in Trademark Cases became effective in January 2017; since then, the USPTO has issued several orders that clarify and interpret certain aspects of the rules. The Trademark Trial and Appeal Board Manual of Procedure (TBMP) (June 2021 edition) describes current practice and procedure under the applicable authority and incorporates amendments to Board procedures, the U.S. Trademark Rules of Practice, Trademark Act and relevant Federal Rules of Civil Procedure and Evidence, and updates in case law, where applicable.<sup>522</sup>

3.363. Trademark application filings continued to increase during the period under review, and applications for registration totaled 943,928 in FY2021. There were also 83,716 applications for renewal of registration. Trademark registrations totaled 434,810 in FY2021, of which 337,814 were new registrations, and 65,063 were renewals of existing trademarks (Table 3.41). The average pendency time for processing a new trademark application FY2021 was 11.2 months, compared to a goal of 12 months. Trademark average first action pendency was 6.3 months, against a goal of 2.5-4.5 months. The trademark renewal rate was 22.8% in FY2021, below the 26.3% rate posted in FY2020. Earned revenue for trademark filings rose from USD 178.3 million in FY2020 to USD 204.2 million in FY2021.<sup>523</sup>

**Table 3.41 Trademarks registered, renewed, and published, FY2015-21**

Fiscal year	Certificates of registration issued	Renewed	Registrations (incl. classes)
2015	208,660	58,284	282,091
2016	227,407	62,604	309,188
2017	242,709	84,727	327,314

<sup>520</sup> USPTO, Changes to Implement Provisions of the Trademark Modernization Act of 2020. Final rule. *Federal Register* (2021), Vol. 86, No. 219, 17 November. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-11-17/pdf/2021-24926.pdf>.

<sup>521</sup> USPTO, *USPTO implements the Trademark Modernization Act*. Viewed at: <https://www.uspto.gov/trademarks/laws/2020-modernization-act>.

<sup>522</sup> USPTO (2021), *Trademark Trial and Appeal Board Manual of Procedure (TBMP)*, June. Viewed at: [https://www.uspto.gov/sites/default/files/documents/tbmp-Master\\_June2021.pdf](https://www.uspto.gov/sites/default/files/documents/tbmp-Master_June2021.pdf)

<sup>523</sup> USPTO (2022), *FY 2021 Performance and Accountability Report*. Viewed at: <https://www.uspto.gov/sites/default/files/documents/USPTOFY21PAR.pdf>.



Fiscal year	Certificates of registration issued	Renewed	Registrations (incl. classes)
2018	273,808	90,192	367,382
2019	297,774	72,270	396,836
2020	295,728	71,575	400,298
2021	337,814	65,063	434,810

Source: USPTO, *FY 2021 Performance and Accountability Report*. Viewed at: <https://www.uspto.gov/sites/default/files/documents/USPTOFY21PAR.pdf>.

3.364. There were 156,689 trademarks registered to residents of foreign countries in FY2021, more than 50% higher than in FY2020 (Table 3.42), and accounting for 36% of all trademark registrations in FY2021. This was due to the large increase of registrations from residents of China, who accounted for 48.9% of registrations in FY2020, and 70.6% in FY2021, compared to 13.2% in FY2017, followed by residents from Canada, the United Kingdom, Germany, Japan, and the Republic of Korea.

**Table 3.42 Trademarks issued by the United States to residents of foreign countries and territories, FY2017-21**

Residence	FY2017	FY2018	FY2019	FY2020	FY2021
<b>Total</b>	<b>180,487</b>	<b>192,906</b>	<b>216,770</b>	<b>237,403</b>	<b>156,689</b>
Australia	2,016	2,388	2,733	2,971	2,623
Austria	467	454	494	485	425
Belgium	398	567	522	481	415
British Virgin Islands	426	280	325	230	184
Canada	4,739	4,827	5,131	5,610	5,004
China	23,893	38,399	47,319	48,766	110,563
Denmark	442	523	491	482	438
France	2,455	2,697	2,563	2,639	2,082
Germany	3,978	4,312	4,352	4,379	3,778
Hong Kong, China	1,504	1,859	2,110	2,005	2,320
India	386	480	584	668	557
Ireland	346	444	495	444	414
Israel	574	879	1,019	1,027	862
Italy	1,928	2,309	2,363	2,320	1,972
Japan	2,763	2,929	3,203	3,372	3,092
Korea, Republic of	2,316	2,289	2,629	3,072	3,068
Luxembourg	388	369	340	275	210
Mexico	982	1,020	1,106	1,051	938
New Zealand	353	434	472	505	510
Netherlands	951	1,207	1,207	1,163	1,061
Russian Federation	215	322	356	435	419
Singapore	431	524	524	611	681
Spain	1,086	1,140	1,124	1,207	1,095
Sweden	749	845	921	885	789
Switzerland	1,775	1,961	2,012	2,222	1,869
Chinese Taipei	921	1,002	1,094	1,129	969
Türkiye	350	360	508	498	492
United Kingdom	4,552	5,020	4,969	5,045	4,623
Other	114,851	107,724	120,211	137,720	5,236

Source: USPTO, *FY 2021 Performance and Accountability Report*. Viewed at: <https://www.uspto.gov/sites/default/files/documents/USPTOFY21PAR.pdf>.

3.365. The USPTO continues to encourage electronic filing through the Trademark Electronic Application System (TEAS). The number of trademark applications processed completely electronically increased to 89% in FY2021, exceeding the 88% goal for that FY.<sup>524</sup>

### 3.3.7.6 Geographical indications

3.366. The United States provides protection to foreign and domestic geographical indications (GIs) through its trademark system for all classes of goods and services where a given quality, reputation, or other characteristic is essentially attributable to their geographic origin. Protection to GIs is usually granted in the form of certification marks and collective marks indicating regional origin.<sup>525</sup> GIs are considered a subset of trademarks, as in the U.S. view, they serve the same source-identifying functions as trademarks but are specific to geographic source identification and are guarantees of quality, and valuable business interests. The U.S. GI system uses administrative trademark

<sup>524</sup> USPTO (2022), *FY 2021 Performance and Accountability Report*. Viewed at: <https://www.uspto.gov/sites/default/files/documents/USPTOFY21PAR.pdf>.

<sup>525</sup> USPTO, *Geographical Indication Protection in the United States*. Viewed at: [http://www.uspto.gov/sites/default/files/web/offices/dcom/olia/globalip/pdf/gi\\_system.pdf](http://www.uspto.gov/sites/default/files/web/offices/dcom/olia/globalip/pdf/gi_system.pdf).

structures. USPTO's Trademark organization processes applications for GIs. USPTO examines applications for GIs as trademarks, or certification or collective marks indicating regional origin. Applications for GIs at USPTO are published so that interested parties have an opportunity to oppose registration.

3.367. The Trademark Act provides that geographic names or signs can be registered as certification marks, understood as any words, names, symbols, or devices used by a party or parties other than the owner of the mark to certify the origin and specific standards required of the third parties in order to place the certification mark of regional origin on their goods/services. The Trademark Act differentiates certification marks with indications of regional origin from trademarks by two characteristics: (i) a certification mark is not used by its owner; and (ii) a certification mark does not indicate the commercial source nor distinguish the goods or services of one person from those of another person, which implies that any entity that meets the certifying standards, is entitled to use the certification mark. A certification mark may only be used by entities other than the owner of the mark, with authorization from the owner of the mark, who controls its use by others by taking steps to ensure that the mark is applied only to goods/services originating in the referenced geographic area and complying with the standards imposed by the certifier.

3.368. Geographic names or signs may also be registered as collective marks or as trademarks. Although registration is preferable because of notice to the public and other benefits, GIs may also be protected through common law without being registered by USPTO if they are in use in the United States and if they are a valid common law regional certification or collective mark (not a generic term). Collective trademarks or collective service marks indicating regional origin, adopted by a "collective" (an association, union, cooperative, etc.), are for use only by its members who comply with the requirement of the collective for using the mark to identify their goods or services and distinguish them from those of non-members. When GIs are registered as a collective mark indicating regional origin, the geographic term must be disclaimed, unless a showing of acquired distinctiveness can be made. If GIs are registered as trademarks, the geographic term must not be deceptive; the applicant must either show acquired distinctiveness in the geographic term or disclaim the exclusive right to use the geographic term. Under U.S. trademark law, geographic terms or signs are not registrable as trademarks unless, through substantially exclusive use, consumers associate the product with a specific geographic source.<sup>526</sup>

3.369. Protection is not granted to geographic terms or signs that are generic for goods or services, that is, signs that do not originate from one geographic source so that consumers view them as designating a category of the goods/services of the same type, rather than as a specific geographic origin. In addition to refusing protection for generic terms, the Trademark Act also provided for refusal of marks that are confusingly similar to a registered mark. The owner of a prior mark has the exclusive right to prevent its use by unauthorized parties when such use would likely cause consumer confusion, mistake, or deception as to the source of the goods/services. A prior right holder has priority and exclusivity over any later users of the same or similar sign on the same, similar, related, or in some cases unrelated goods/services. Supplementary protection is provided under the Federal Alcohol Administration Act and its implementing regulations for wine and distilled spirits of both domestic and foreign origin.

3.370. The enforcement of GIs is primarily the responsibility of mark owners because these are private rights. Mark owners are responsible for raising issues of infringement, for enjoining use of the GI due to an authorized user's failure to comply with certification standards, and for monitoring USPTO's trademark register. The GI owner may assert grounds to oppose an application to register, or to cancel a registered mark, if that party believes that it will be damaged by the registration or continued existence of the registration. According to a recent report by WIPO, there were 606 GIs in force in the United States as at late 2020.<sup>527</sup>

### 3.3.7.7 Trade secret protection

3.371. Trade secrets are protected at both state and federal levels. The main federal legislation with respect to the protection of trade secrets in the United States is contained in the Economic

<sup>526</sup> USPTO, *Geographical Indication Protection in the United States*. Viewed at: [http://www.uspto.gov/sites/default/files/web/offices/dcom/olia/globalip/pdf/gi\\_system.pdf](http://www.uspto.gov/sites/default/files/web/offices/dcom/olia/globalip/pdf/gi_system.pdf).

<sup>527</sup> WIPO (2021), *World Intellectual Property Indicators 2021*. Viewed at: [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_941\\_2021.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_941_2021.pdf).

Espionage Act (EEA) of 1996 (P.L. 104-294) (as amended by the Theft of Trade Secrets Clarification Act of 2012), and the Defend Trade Secrets Act (DTSA) of 2016 (P.L. 114-153). Since the passage of the DTSA in 2016, U.S. federal trade secret protection legislation focuses both on criminal acts and on civil enforcement of trade secret protection, which was previously addressed only through state law. The provisions of the EEA do not apply to lawful activity by government entities. The Theft of Trade Secrets Clarification Act of 2012 expanded the scope of the EEA to apply to products or services used, or intended for use, in interstate or foreign commerce.

3.372. The EEA criminalizes economic espionage, and trade secret theft *per se*. Economic espionage refers to the theft of a trade secret intending or knowing that the offence will benefit any foreign government, foreign instrumentality, or foreign agent. The theft of trade secrets refers to theft related to a product or service used in or intended for use in interstate or foreign commerce, to the economic benefit of anyone other than the owner and intending or knowing that the offence will injure any owner of that trade secret. These crimes are prosecuted by the Department of Justice and are punishable by imprisonment and/or fines. Under the EEA, economic espionage for a foreign power, and the theft or misappropriation of a trade secret, are federal crimes. For economic espionage, the EEA provides for a fine up to USD 5 million and a prison term up to 15 years, or both, for individuals. For organizations, the fine is up to the greater of USD 10 million or three times the value of the stolen trade secret. In the case of theft of trade secrets, penalties for violation are a fine or imprisonment for up to 10 years, or both, for individuals. Organizations may be fined up to USD 5 million. The provisions of the EEA have extraterritorial jurisdiction in cases where the offender is a U.S. citizen or permanent resident, or if the offender is an organization organized under the laws of the United States or any U.S. state, or if the offence was committed in the United States.

3.373. The DTSA allows a trade secret owner to apply for, and a court to grant, a seizure order to prevent dissemination of the trade secret if the court makes specific findings, including that an immediate and irreparable injury will occur if seizure is not ordered. The court must take custody of the seized materials and hold a seizure hearing within seven days.<sup>528</sup> The DTSA leaves the choice to parties between bringing complaints in state or federal courts. State laws differ somewhat, but there is similarity among them because almost all states have adopted the Uniform Trade Secrets Act (UTSA), with modifications.<sup>529</sup>

3.374. Section 1637 of the National Defense Authorization Act (NDAA) of 2015 (50 U.S.C. 1708), Actions to Address Economic or Industrial Espionage in Cyberspace, directed the President to submit annually through 2020, a report on foreign economic and industrial espionage in cyberspace during the 12-month period preceding the submission of the report, that identifies foreign countries that engage in economic or industrial espionage in cyberspace with respect to trade secrets or proprietary information owned by U.S. persons, as well as categories of technologies or proprietary information developed by U.S. persons that are targeted for economic or industrial espionage in cyberspace. The NDAA also authorizes the President to prohibit all transactions in property of any (foreign) person who the President determines knowingly engages in economic or industrial espionage in cyberspace. The latest report prepared under the NDAA is the 2018 Foreign Economic Espionage in Cyberspace Report, which identified a number of "Targeted Technologies", including: energy/alternative energy; biotechnology; defense technology; environmental protection; high-end manufacturing; and information and communications technology.<sup>530</sup>

### 3.3.7.8 Copyright

3.375. The Federal Government has jurisdiction over copyright protection, as spelled out in the Constitution. U.S. copyright law is contained in Chapters 1-8, 10-12, 14, and 15 of Title 17 of the United States Code. The Copyright Act of 1976 (P.L. 94-553), as amended, which took effect on 1 January 1978, provides the basic framework for the current copyright law. The Act pre-empts any state law that provides equivalent rights in copyrightable subject matter. The Copyright Act provides

<sup>528</sup> DTSA. Viewed at: <https://www.congress.gov/bill/114th-congress/senate-bill/1890?q=%7B%22search%22%3A%5B%22trade+secret%22%5D%7D&resultIndex=1>.

<sup>529</sup> The UTSA, passed in 1979 and amended in 1985, is a model civil trade secrets law drafted by the National Conference of Commissioners on Uniform State Laws, with the goal of making the state laws governing trade secrets uniform. The UTSA has been adopted by 48 states (the exceptions are New York and North Carolina, whose legislation is similar to the UTSA), the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

<sup>530</sup> National Counterintelligence and Security Center, *Foreign Economic Espionage in Cyberspace, 2018*. Viewed at: <https://www.dni.gov/files/NCSC/documents/news/20180724-economic-espionage-pub.pdf>.

for protection of authors' economic and moral rights in the artistic, literary, and scientific domains, including attribution and integrity rights for authors of works of visual art. Other federal and state laws address additional parts of the protection for the attribution and integrity of other works and authors. To benefit from copyright protection, a work must be an original creation. Registration is not required for protection. The term of protection is life of author plus 70 years for works created on or after 1 January 1978. Anonymous and pseudonymous works and works made for hire are protected for 95 years after publication or 120 years after creation, whichever is shorter.

3.376. The United States is a party to the Berne Convention for the Protection of Literary and Artistic Works (1989), the WIPO Copyright Treaty (2002), the WIPO Performances and Phonograms Treaty (2002) (WPPT), the Brussels Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite (1985), the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (1974), and the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (2019). The United States is not a party to the Rome Convention (17 U.S.C. Section 106).<sup>531</sup> The United States is also a party to the Geneva Phonograms Convention.

3.377. U.S. copyright legislation does not include the concept of neighboring rights separate from copyright; these rights receive protection under copyright, via contract law, including collective bargaining rights, and under the telecommunications law. Sound recordings are considered works of authorship under the Copyright Act but with a more limited scope of rights than other categories of works. Federal law provides protection against unauthorized recordings of live musical performances (17 U.S.C. 1101). The Audio Home Recording Act of 1992 requires that manufacturers and importers of digital audio recorders and digital recording media pay fees that are distributed to recording artists and copyright owners on a national treatment basis. The Copyright Royalty and Distribution Reform Act of 2004 and the Copyright Royalty Judges Program Technical Corrections Act of 2006 replaced Copyright Arbitration Royalty Panels with Copyright Royalty Judges (CRJs), who serve on the Copyright Royalty Board, part of the Library of Congress. U.S. copyright law protects the copyrighted content contained within broadcast signals. Computer programs and compilations of data that are original works are protected as literary works. Owners of copyrighted works enjoy an exclusive right to create derivative works based on the copyrighted works.

3.378. The Copyright Act provides for several types of statutory licenses, consistent with the Berne Convention. Licenses may be obtained for certain types of uses of certain types of copyrighted products if certain requirements are satisfied, for example for secondary transmissions by cable and satellite, the use of certain works in connection with non-commercial broadcasting, the public performance of a sound recording by means of a digital audio transmission, and the making and distributing of phonorecords of nondramatic musical works. In the absence of a voluntary agreement, rates and terms of royalty payments for the Copyright Act's statutory licenses are determined or adjusted by the CRJs. Since its enactment in 1976, the Copyright Act has been amended on several occasions. During the period under review, amendments included those required to implement the Marrakesh Treaty (Table 3.43).

**Table 3.43 Main amendments to the Copyright Act since 2018**

Act	Coverage
Marrakesh Treaty Implementation Act (P.L. 115-261), 10 September 2018. Enacted 10 October 2018.	Amended Section 121 and added Section 121A of 17 U.S.C. to implement the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled. The Act makes limitations and exceptions to federal copyright infringement that allow published works to be reproduced and distributed in accessible formats for individuals with print disabilities applicable only to activities in the United States; and modifies certain terms and definitions to conform with the Marrakesh Treaty. It also allows published works in accessible formats to be exported and imported for individuals with print disabilities, subject to certain conditions.
Orrin G. Hatch–Bob Goodlatte Music Modernization Act (P.L. 115-264), enacted 11 October 2018.	Amended Sections 114, 115, 301, 801, 803, and 804 of 17 U.S.C., added Chapter 14 to Title 17, and amended Section 137 of Title 28. This Act updates copyright law primarily by overhauling the compulsory licensing system for digital music services making and distributing sound recordings. It also provides for federal protection to sound recordings fixed before 15 February 1972, which were previously only covered by certain state laws. It facilitates distributing royalties collected under statutory license to publicly perform a sound recording by means of a digital audio transmission to producers, mixers, and sound engineers.

<sup>531</sup> U.S. Copyright Office, Circular 38A, *International Copyright Relations of the United States*, October 2021. Viewed at: <https://www.copyright.gov/circs/circ38a.pdf>.

Act	Coverage
National Defense Authorization Act for Fiscal Year 2020 (P.L. 116-92), enacted 20 December 2019.	Amended 17 U.S.C. Section 105, adding an exception to the general rule regarding copyright protection for works of the U.S. Government so that, subject to certain conditions, literary works produced by civilian faculty members for publication by a scholarly press or journal at certain U.S. government-run academic institutions are protected by copyright. The copyright to these works is owned by the author(s), though the Secretary of Defense may direct the author to provide the Federal Government with an irrevocable, royalty-free, worldwide non-exclusive license to reproduce, distribute, perform, or display the work for purposes of the U.S. Government.
Satellite Television Community Protection and Promotion Act of 2019, Title XI of the Further Consolidated Appropriations Act of 2020 (P.L. 116-94), enacted 20 December 2019.	Amended Sections 119 and 501 of 17 U.S.C. Permanently reauthorizes a provision that allows satellite television providers to retransmit distant television signals to "unserved households" (a term that includes commercial truckers and recreational vehicle users) under a statutory license. To take advantage of the statutory license, a satellite provider must provide retransmissions of local television stations in all designated market areas (DMAs).
Library of Congress Technical Corrections Act of 2019, Title XIV of the Further Consolidated Appropriations Act of 2020 (P.L. 116-94), enacted 20 December 2019.	Amended sections 701 (general responsibilities and organization of the Copyright Office), 802 (Copyright Royalty Judgeships; staff), and 803 (Proceedings of Copyright Royalty Judges) of Title 17, United States Code, among other amendments not directly related to copyright.
Coronavirus Aid, Relief, and Economic Security Act, (P.L. 116-136), enacted 27 March 2020.	Added Section 710 (Emergency relief authority) to 17 U.S.C. Allows for emergency action if, on or before 31 December 2021, the Register of Copyrights determines that a national emergency declared by the President under the National Emergencies Act generally disrupts or suspends the ordinary functioning of the copyright system.
Consolidated Appropriations Act of 2021 (P.L. 116-260), enacted 27 December 2020.	Added section 2319C to Title 18, United States Code, regarding criminal penalties for illicit digital transmission.
Copyright Alternative in Small-Claims Enforcement Act of 2020, Division Q, Title II, Subtitle A of the Consolidated Appropriations Act of 2021 (P.L. 116-260), enacted 27 December 2020.	Establishes a Copyright Claims Board (CCB) within the Copyright Office, which was instructed to start the CCB's operations at the latest 18 months after enactment of the Act. The CCB is a voluntary, alternative forum to federal court for parties to seek resolution of copyright disputes with small claims, which have been defined as claims involving copyright infringement when no party is seeking more than USD 30,000 in total relief.

Source: WIPO; Government Publishing Office (GPO). Viewed at: <https://www.gpo.gov/>; and U.S. Copyright Office, Preface to Circular 92. Viewed at: <https://www.copyright.gov/title17/preface.pdf>.

3.379. Some of the main changes to copyright law during the period under review were introduced by the Orrin G. Hatch–Bob Goodlatte Music Modernization Act (MMA) (P.L. 115-264), 132 Stat. 3676, enacted 11 October 2018. The MMA updated U.S. copyright law primarily with respect to three music-specific issues, each included in a different Title of the MMA Act. The Act updated copyright law primarily by overhauling the Section 115 compulsory licensing system for digital music services that transmit sound recordings of nondramatic musical works. It also provided for federal protection to sound recordings fixed before 15 February 1972, which were previously only subject to certain state laws. The MMA also facilitated distribution to producers, mixers, and sound engineers of royalties collected under the Section 114 statutory license to publicly perform a sound recording by means of a digital audio transmission.

3.380. Title I of the MMA, the Musical Works Modernization Act, made significant changes to the compulsory "mechanical" license for making and distributing phonorecords of nondramatic musical works. It did so by switching from a song-by-song licensing system to a blanket licensing regime with respect to making digital phonorecord deliveries of musical works (e.g. digital downloads and streams). The MMA established a new blanket license that, as of 1 January 2021, is available to digital music providers to make digital phonorecord deliveries of eligible musical works. A musical work is eligible for compulsory licensing in two cases: after phonorecords of the musical work have been publicly distributed in the United States under the authority of the musical work copyright owner; or where a digital music provider obtains the requisite authority from a sound recording copyright owner who in turn has appropriate authority from the musical work copyright owner. The new blanket license covers all musical works available for compulsory licensing and includes the making and distribution of server, intermediate, archival, and incidental musical work reproductions that are reasonably necessary. As was the case previously, digital music providers and musical work copyright owners may enter into privately negotiated voluntary licenses in lieu of using the compulsory license. Generally speaking, on 1 January 2021, a new blanket license automatically replaced any compulsory licenses that a digital music service provider had previously obtained, while pre-existing voluntary licenses remained in effect.

3.381. The MMA establishes a mechanical licensing collective (MLC) to administer the blanket license, collect and pay royalties under that license, and maintain a database of information relating to musical works, their owners, and the sound recordings in which they are embodied; the MLC will



be publicly available. The MLC may engage in certain enforcement activities and participate in proceedings before the CRJs to establish the administrative assessment fee paid by digital music providers to maintain and operate the MLC. The MLC must keep a searchable database with information including the title of the recording, the copyright owners and the ownership percentages of each. The MMA directs the Register of Copyrights to designate an entity as the MLC and allows the Register to designate a digital licensee coordinator (DLC) to represent licensees in various capacities with respect to the blanket license, including in assessment proceedings before the CRJs. Both entities were designated by the Register in July 2019 and will be subject to a redesignation process every five years.

3.382. Digital music service providers must submit a notice of license to the MLC that specifies the particular relevant activities in which the provider seeks to engage. If not rejected by the MLC within 30 days of receipt, the blanket license is effective as of the date on which the notice of license was sent by the digital music provider to the MLC; the MLC can only reject a notice of license if the provider has had a blanket license terminated in the past three years, or if the provider or notice fails to meet statutory or regulatory requirements (in which case the provider has an opportunity to cure any deficiency). If a digital music provider makes and distributes recordings without a license, it shall be barred from getting a blanket license for three years.

3.383. The MLC must collect and distribute royalties based on usage reports provided by the digital service providers. For recordings where a musical work copyright owner cannot be identified, the collective will place the collected royalties in an interest-bearing account for at least three years, after which the royalties and accrued interest become eligible to be distributed to the known copyright holders in the database based on the relative market shares.<sup>532</sup> The licensees must make monthly royalty payments to the MLC and submit reports about their usage of musical works covered by the blanket license. The CRJs hold proceedings to set the rates and terms for the Section 115 blanket license. Under the MMA, the rate standard has changed from a set of policy factors to one that represents what would have been negotiated in the marketplace between a willing buyer and a willing seller. The MLC and DLC are barred from participating directly in the rate setting proceeding but may gather and provide applicable information for use in the proceeding.

3.384. Title II of the MMA, the Classics Protection and Access Act, provides federal protection for sound recordings fixed before 15 February 1972, which were previously only subject to certain state laws. In accordance with the Act, sound recordings first published before 1923 were protected through 2021, while recordings first published between 1923 and 1946 are protected through the end of the year that is 100 years from the year of first publication; recordings first published between 1947 and 1956 are protected through the end of the year that is 110 years from the year of first publication; and all remaining recordings first fixed before 15 February are protected until 15 February 2067. Title III of the MMA, the Allocation for Music Producers Act or the AMP Act, facilitates distributing royalties collected under statutory license. The Act codifies a pre-existing industry practice wherein the non-profit collective designated by the CRJs to collect and distribute royalties under the license (Sound Exchange) can distribute those royalties directly to such parties under a letter of direction, rather than such royalties flowing first through other payees.<sup>533</sup>

3.385. The U.S. Copyright Office, a part of the Library of Congress, administers U.S. copyright laws and provides advice and assistance to Congress, the courts, and federal agencies on copyright law and policy (17 U.S.C. 701(b)). The Office is headed by the Register of Copyrights, who is the principal advisor to Congress on national and international copyright matters, testifying upon request and providing ongoing leadership and impartial expertise on copyright law and policy. The duties of the Office and the Register of Copyrights are prescribed in, and governed by, the Copyright Act and the related chapters of Title 17 of the U.S. Code (17 U.S.C. 701-702). The Office: (i) examines and registers copyright claims and administers deposit requirements; (ii) records transfers, assignments, licenses and other transactions; and (iii) administers regulations, practices, and programs that explain the provisions of the law. The Copyright Office also administers provisions of law related to statutory licensing, helping manage and distribute royalties as required by law. Registration is not

<sup>532</sup> U.S. Copyright Office, *What You Need to Know about the Orrin G. Hatch–Bob Goodlatte Music Modernization Act*. Viewed at: <https://www.copyright.gov/music-modernization/mma-title-1-overview.pdf>.

<sup>533</sup> U.S. Copyright Office (2018), *Amendments to the Copyright Act as a result of the Orrin G. Hatch–Bob Goodlatte Music Modernization Act*. Viewed at: <https://www.copyright.gov/music-modernization/amendments.pdf>.

required for protection, but it establishes a public record of the copyright claim and has additional benefits, including the availability of statutory damages.<sup>534</sup>

3.386. Congress has delegated authority to the Copyright Office to develop regulations concerning several areas of copyright law, such as music licensing and circumvention of technological measures protecting copyrighted material. The Copyright Office also publishes the *Compendium of U.S. Copyright Office Practices*, now in its third edition (2014), revised most recently on 28 January 2021.<sup>535</sup> The Copyright Office works on copyright matters with the courts and executive branch agencies, such as DOJ, the Department of State, USTR, and USDOC (including USPTO). The Copyright Office is currently in the process of implementing the Orrin G. Hatch–Bob Goodlatte Music Modernization Act, which it considers one of the most significant legislative reforms to U.S. copyright law in two decades.<sup>536</sup> To that end, rules and regulations have been issued (Table 3.44).

**Table 3.44 Rules made by the Copyright Office to implement the Music Modernization Act, as of January 2022**

Title	Last action
<b>Title I – Musical Works Modernization Act Related Rulemakings</b>	
Protection of Confidential Information by the Mechanical Licensing Collective (MLC) and Digital Licensee Coordinator (DLC)	11 February 2021– Interim Rule
Transition Period Cumulative Reporting and Transfer of Royalties to the Mechanical Licensing Collective	11 January 2021 – Final Rule
The Public Musical Works Database and Transparency of the Mechanical Licensing Collective	31 December 2020 – Interim Rule
Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment	5 March 2021 and 28 December 2020– Supplemental Interim Rules; 17 September 2020 – Interim Rule
Reporting and Distribution of Royalties to Copyright Owners by the Mechanical Licensing Collective	17 September 2020 – Interim Rule
Designation of Mechanical Licensing Collective and Digital Licensee Coordinator	8 July 2019 – Final Rule
Technical Amendments to Section 115 Compulsory License Regulations	22 March 2019 – Final Rule
<b>Title II – Classics Protection and Access Act Related Rulemakings</b>	
Final Rule Regarding the Noncommercial Use Exception to Unauthorized Uses of Pre-1972 Sound Recordings	9 April 2019 – Final Rule
Rules Regarding Schedules of Pre-1972 Sound Recordings and Notices of Contact Information by Transmitting Entities	22 March 2019 – Final Rule

Source: U.S. Copyright Office, *Music Modernization Act (MMA) Rulemakings and Ex Parte Communications*. Viewed at: <https://www.copyright.gov/music-modernization/related-rulemakings.html>.

3.387. Section 211 of Subtitle A of Title II of Division Q of the Consolidated Appropriations Act of 2021 (P.L. 116-260), enacted on 27 December 2020 amended the law regarding criminal penalties for copyright infringement, making certain acts of unauthorized streaming a felony. More specifically, the new provisions increase penalties for persons who willfully, and for purposes of commercial advantage or private financial gain, offer or provide to the public a digital transmission service that is primarily designed or provided for the purpose of publicly performing copyrighted works without the authority of the copyright owner or the law. The penalties for the violation of the provisions include, in addition to any penalties provided for under Title 17: (i) a fine, imprisonment of not more than 3 years, or both; (ii) a fine, imprisonment of not more than 5 years, or both, if the offence was committed in connection with one or more works being prepared for commercial public performance, and the person knew or should have known that the work was being prepared for commercial public performance; and (iii) a fine, imprisonment of not more than 10 years, or both, if the offence is a second or subsequent offence.

3.388. Amendments to copyright law were also introduced by Section 212 of Subtitle A of Title II of Division Q of the Consolidated Appropriations Act, also known as the Copyright Alternative in Small-Claims Enforcement Act of 2020 or the CASE Act of 2020. The CASE Act seeks to reduce the

<sup>534</sup> U.S. Copyright Office (2021), Circular 1: Copyright Basics. Viewed at: <https://www.copyright.gov/circs/circ01.pdf>. Such benefits include the following. Registration establishes *prima facie* evidence of the validity of the copyright. When registration is made prior to infringement, or within three months after publication of a work, the copyright owner is eligible for statutory damages, attorneys' fees, and costs. Before an infringement suit may be filed in court, registration (or refusal) is necessary for works of U.S. origin (this is not required for works of foreign origin).

<sup>535</sup> U.S. Copyright Office (2021), *Compendium of U.S. Copyright Office Practices*, Third ed., January. Viewed at: <https://www.copyright.gov/comp3/docs/compendium.pdf>.

<sup>536</sup> U.S. Copyright Office, *Overview*. Viewed at: <https://www.copyright.gov/about/>.

cost of litigating copyright claims of a lower economic value (copyright small claims), and establishes the Copyright Claims Board (CCB) within the Copyright Office. CCB is a voluntary, alternative forum to federal court to seek resolution of copyright disputes with a low economic value. Copyright small claims are limited to those under USD 30,000 in monetary relief. For works timely registered with the Copyright Office, the maximum statutory damage award is USD 15,000 per work, which is still subject to the USD 30,000 per proceeding limitation, while eligible statutory damages for copyrighted works that were not timely registered are half those amounts. CCB also has a "smaller claims" track that limits total damages to USD 5,000.<sup>537</sup> CCB may not issue injunctions but can order a party to cease infringement if the parties agree and can also award monetary relief. CCB's determinations may not be used in court or other CCB proceedings as a precedent. The CCB was expected to be operational during 2022; Congress directed CCB to begin operations by 27 December 2021, with a possible extension of not more than 180 days, that is, until 25 June 2022.

3.389. The Copyright Office has issued notices with Proposed and Final Rules for the implementation of the CASE Act. A Proposed Rule regarding expedited registration for works subject to a claim before the CCB was issued in April 2021 and became final in August 2021, with effect 17 September 2021.<sup>538</sup> The Final Rule amended U.S. Copyright Office's regulations to establish a new expedited registration option under the CASE Act of 2020 and to provide a technical update to the Office's Freedom of Information Act regulations. A Proposed Rule regarding small claims procedures for libraries and archives to pre-emptively opt out of CCB proceedings on a blanket basis and a rule related to class actions was issued in September 2021.<sup>539</sup> A Proposed Rule for regulations for Initiation of Proceedings and Related Procedures was issued in September 2021.<sup>540</sup> In December 2021, the U.S. Copyright Office issued a notice of proposed rulemaking to establish procedures governing active proceedings before the CCB and certain post-determination procedures.<sup>541</sup>

3.390. In FY2020, the Copyright Office registered 443,911 claims for registration and recorded 7,098 documents containing titles of 233,694 works. The Office continues to administer statutory licenses that govern certain uses of copyright-protected materials, and to collect, manage, and disperse royalty fees paid. In FY2020, the Office collected more than USD 237 million in royalty fees and USD 1.6 million in filing fees and distributed more than USD 265 million in fiduciary assets to copyright owners whose works were used under these licenses. As of 30 September 2020, the Office managed over USD 1.4 billion in statutory license fiduciary assets.<sup>542</sup>

3.391. U.S. copyright law has anti-circumvention rules contained in the Digital Millennium Copyright Act (DMCA). However, the DMCA allows possible temporary exemptions to its prohibition against circumvention of technological measures that control access to, or unauthorized use of, copyrighted works. 17 U.S.C. 1201 requires that the Librarian of Congress, upon the recommendation of the Register of Copyrights, determine in a public rulemaking every three years whether to adopt any proposed exemptions to the prohibition on circumventing technological access controls. Petitioners

<sup>537</sup> The CASE Act precludes the CCB dealing with claims or counterclaims that have been finally adjudicated by a court of competent jurisdiction or that are pending before a court, unless that court has granted a stay to permit that claim or counterclaim to proceed before the CCB.

<sup>538</sup> U.S. Copyright Office, 37 C.F.R. Parts 201, 203 and 221 (Docket No. 2021-2) Copyright Alternative in Small-Claims Enforcement ("CASE") Act Regulations: Expedited Registration and FOIA. Final rule. *Federal Register* (2021), Vol. 86, No. 157, 18 August. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-08-18/pdf/2021-17696.pdf>.

<sup>539</sup> Copyright Office, 37 C.F.R. Part 223 (Docket No. 2021-4) Small Claims Procedures for Library and Archives Opt-Outs and Class Actions. Notice of proposed rulemaking. *Federal Register* (2021), Vol. 86, No. 168, 2 September. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-09-02/pdf/2021-18567.pdf>.

<sup>540</sup> Copyright Office, 37 C.F.R. Parts 201, 220, 222, 223, and 224 (Docket No. 2021-6) Copyright Claims Board: Initiation of Proceedings and Related Procedures. Notice of proposed rulemaking. *Federal Register* (2021), Vol. 86, No. 186, 29 September. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-09-29/pdf/2021-20303.pdf>.

<sup>541</sup> Copyright Office, 37 C.F.R. Parts 201, 220, 222, 225, 226, 227, 228, 229, 230, 231, 232, and 233 (Docket No. 2021-8) Copyright Claims Board: Active Proceedings and Evidence. Notice of proposed rulemaking. *Federal Register* (2021), Vol. 86, No. 233, 8 December. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-12-08/pdf/2021-26058.pdf>.

<sup>542</sup> U.S. Copyright Office (2021), *Fiscal 2020 Annual Report*. Viewed at: <https://www.copyright.gov/reports/annual/2020/ar2020.pdf>. The Fiscal 2021 Annual Report will be released in early 2022.

submit evidence and arguments for the Copyright Office to consider. The Librarian reviews the recommendation before issuing any exemptions.<sup>543</sup>

3.392. The U.S. Copyright Office concluded its eighth triennial rulemaking proceeding under 17 U.S.C. 1201.<sup>544</sup> A final rule establishing temporary exemptions to the anti-circumvention provisions was issued in October 2021.<sup>545</sup> Under this rule, circumvention to access motion pictures is permitted, with certain restrictions, for purposes of criticism or comment, lawful preservation, educational uses, educational accessibility for persons with disabilities, and text and data mining for scholarly research and teaching. Similarly, circumvention to access literary works is permitted for purposes of text and data mining for scholarly research and teaching and to access compilations of data generated by medical devices. The rule permits circumvention to access electronic literary and musical works fixed in the form of text or notation to make those works accessible for persons who are visually impaired. For computer programs, circumvention is allowed to enable unlocking.

### 3.3.7.9 Enforcement

#### 3.3.7.9.1 Main provisions, institutions, and actions

3.393. Provisions with respect to enforcement of IPRs are contained in all main IP laws. Additionally, the Stop Counterfeiting in Manufactured Goods Act of 2006 (P.L. 109-181) prohibits the trafficking in counterfeit goods and services, including labels or similar packaging of any type intended to be used on, or in connection with, the goods or services for which the genuine mark is registered. There are several agencies involved in the enforcement of IPRs and enforcement policy development of IPRs, including USDOC, in particular USPTO, DOJ, Treasury, Homeland Security, State, Agriculture, Health and Human Services, the Copyright Office, and the Office of the U.S. Intellectual Property Enforcement Coordinator (IPEC). IPEC is a component in the Executive Office of the President, that engages with stakeholders and international partners to address IP issues, impacting infringement, market access, competition, digital trade, cybersecurity, and rule of law concerns around the world. IPEC also works to expand coordination within the Government on IP enforcement, and chairs two interagency committees. In November 2020, in coordination with other U.S. government agencies involved with the enforcement of IPRs, IPEC issued the fourth Joint Strategic Plan on IP Enforcement under Section 303 of the PRO IP Act (15 U.S.C. 8113) for 2020-23. The Plan is composed of four parts: (i) engagement with U.S. trading partners; (ii) effective use of all U.S. legal authorities, including trade tools; (iii) expanded law enforcement action and cooperation; and (iv) engagement and partnership with the private sector and other stakeholders.<sup>546</sup> Additionally, under Section 304 of the PRO IP Act (15 U.S.C. 8114), IPEC issues an annual report focusing on the IP enforcement activities of the Federal Government. IPEC issued its annual report for FY2020 in January 2021.<sup>547</sup>

3.394. DOJ enforces IPRs through both criminal and civil actions. It investigates and prosecutes a wide range of IP crimes, including those involving copyright piracy, trademark counterfeiting, and trade secret theft. Primary investigative and prosecutorial responsibility within DOJ rests with the Federal Bureau of Investigation (FBI), the United States Attorneys' Offices, the Computer Crime and Intellectual Property Section (CCIPS) in the Criminal Division, the Counterintelligence and Export Control Section (CES) in the National Security Division, and the Consumer Protection Branch of the Civil Division with regard to offences arising under the Food, Drug, and Cosmetic Act. DOJ also coordinates and supports the Computer Hacking and Intellectual Property Network, which consists of prosecutors who are specially trained in the investigation and prosecution of IP and computer crimes. DOJ's Civil Division also deals with IPR enforcement: the IP Section brings affirmative cases

<sup>543</sup> U.S. Copyright Office, *Section 1201 of Title 17: The Triennial Rulemaking Process*. Viewed at: [https://www.copyright.gov/1201/1201\\_rulemaking\\_slides.pdf](https://www.copyright.gov/1201/1201_rulemaking_slides.pdf).

<sup>544</sup> *Federal Register* (2021), Vol. 86, No. 206, 28 October. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-10-28/pdf/2021-23311.pdf>.

<sup>545</sup> See generally U.S. Copyright Office, *Rulemaking Proceedings Under Section 1201 of Title 17*. Viewed at: <https://www.copyright.gov/1201/>.

<sup>546</sup> IPEC (2020), *United States Joint Strategic Plan on Intellectual Property (2020-2023)*. Viewed at: <https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/11/IPEC-Joint-Strategic-Plan.pdf>.

<sup>547</sup> IPEC (2021), *Annual Intellectual Property Report to Congress, January 2021*. Viewed at: <https://trumpwhitehouse.archives.gov/wp-content/uploads/2021/01/IPEC-Annual-Intellectual-Property-Report-January-2021.pdf>.

when U.S. IP is infringed<sup>548</sup>; the National Courts Section initiates civil actions to recover various penalties or customs duties arising from negligent or fraudulent import transactions, and defends CBP enforcement of USITC's exclusion orders under Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337); and the Consumer Protection Branch conducts civil and criminal litigation under the Food, Drug, and Cosmetic Act. The PRO IP Act of 2008 (15 U.S.C. 8114) required the Attorney General to produce an annual report detailing actions DOJ has taken to implement Title IV of the Act<sup>549</sup>; the most recent report was published for FY2020.<sup>550</sup>

3.395. The ICE-Homeland Security Investigations (HSI)-led National Intellectual Property Rights Coordination Center (IPR Center), plays a major role in the Government's response to global IP theft and enforcement of trade laws.<sup>551</sup> The IPR Center is responsible for investigating transnational crime and threats and leads the Government's response to investigating and preventing IPR violations, digital piracy, illicit trade, and customs fraud. The Center has a three-pronged approach to combat IP theft: (i) investigation; (ii) interdiction; and (iii) outreach and training. In FY2020, the IPR Center/HSI initiated 449 IP investigations, arrested 203 individuals, obtained 125 indictments, and received 98 convictions and 2,084 seizures worth USD 299.4 million related to IP. Also in FY2020, the IPR Center vetted 33,184 investigative leads.<sup>552</sup>

3.396. CBP focuses its trade enforcement efforts on seven Priority Trade Issues (PTIs) that represent high-risk areas that can cause significant revenue loss, harm the U.S. economy, or threaten the health and safety of the U.S. population. IPR protection is one of those seven PTIs. CBP made 26,503 seizures of counterfeit goods with an estimated manufacturer's suggested retail price (MSRP) of over USD 1.3 billion in FY2020, compared to some 27,599 seizures in FY2019.<sup>553</sup> In FY2020, by value, the main seizures were in: watches/jewelry (USD 435.25 million, or 33% of the total); handbags/wallets (USD 282.70 million, or 22%); consumer electronics USD 162.23 million, 12%); wearing apparel/accessories (USD 157.23 million, 12%); consumer products (USD 85.47 million, 7%); footwear (USD 63.15 million, 5%); pharmaceuticals (USD 20.41 million, 2%); labels/tags (USD 19.82 million, 2%); batteries (USD 14.43 million, 1%); and other commodities USD 68.45 million, 5%).

3.397. The National Defense Authorization Act for Fiscal Year 2020, Section 1281, created a continuously updated list of individuals and organizations that have a history of IP theft, technology transfer violations, and cyberespionage or pose a serious risk of improper technology transfer. The list includes individuals and organizations that operate under the direction of a foreign military or intelligence agency.

3.398. In FY2020, 70 national level IPR Trade Special Operations (TSOs) and 111 local IPR-TSOs were conducted; they targeted high-risk shipments across the United States and resulted in 219 seizures of IPR-infringing goods which, if genuine, would have an estimated MSRP of USD 1.7 million, more than double the value in FY2019. As of 30 September 2020, CBP was enforcing 18,757 active recorded copyrights and trademarks. In FY2020, CBP's Office of Trade (OT) received and responded to 455 inquiries concerning IPR enforcement, a 20% increase from FY2019. CBP's enforcement of these orders resulted in 137 exclusion order administrative actions. In response to the increase in e-commerce, CBP has created an enforcement and facilitation framework for e-commerce through the administration of Section 321 Data Pilot and Entry Type 86 Test.

<sup>548</sup> The Intellectual Property (IP) Section of the Commercial Litigation Branch represents the United States in matters where a patent, copyright, trademark, or trade secret is at issue. Many of the cases the Section handles involve complex technologies. DOJ, Intellectual Property Section. Viewed at: <https://www.justice.gov/civil/intellectual-property-section>.

<sup>549</sup> DOJ, *PRO IP Act Reports*. Viewed at: <https://www.justice.gov/iprf/pro-ip-act-reports>.

<sup>550</sup> DOJ, *PRO IP Act Annual Report FY 2020*. Viewed at: <https://www.justice.gov/criminal-ccips/page/file/1460726/download>.

<sup>551</sup> IPR Center, *About the Center*. Viewed at: <https://www.iprcenter.gov/about>.

<sup>552</sup> IPEC (2021), *Annual Intellectual Property Report to Congress*, January. Viewed at: <https://www.iprcenter.gov/file-repository/ipec-2020-annual-intellectual-property-report-1.pdf/view>; and <https://trumpwhitehouse.archives.gov/wp-content/uploads/2021/01/IPEC-Annual-Intellectual-Property-Report-January-2021.pdf>.

<sup>553</sup> CBP (2021), *Intellectual Property Rights Seizure Statistics: Fiscal Year 2020*. Viewed at: [https://www.cbp.gov/sites/default/files/assets/documents/2021-Sep/101808%20FY%202020%20IPR%20Seizure%20Statistic%20Book%2017%20Final%20spreads%20ALT%20TEXT\\_FINAL%20%28508%29%20REVISED.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2021-Sep/101808%20FY%202020%20IPR%20Seizure%20Statistic%20Book%2017%20Final%20spreads%20ALT%20TEXT_FINAL%20%28508%29%20REVISED.pdf).



Initiated in 2019, the voluntary Section 321 Data Pilot allows CBP to accept shipment-level information from online marketplaces and match it with information from traditional carriers.<sup>554</sup>

### 3.3.7.9.2 Special 301

3.399. Under Section 182 of the Trade Act of 1974 (Trade Act, 19 U.S.C. 2242), as amended, also known as "Special 301" provisions, USTR conducts an annual review of the state of IPR protection and enforcement in U.S. trading partners around the world, which is published as the Special 301 Report. In the Special 301 Annual Review, a trading partner may be identified as a "Priority Foreign Country" (PFC) if it has the most onerous or egregious acts, policies, or practices that deny adequate and effective IPRs, or deny fair and equitable market access to U.S. persons that rely on IP protection, whose acts, policies, or practices have the greatest adverse impact (actual or potential) on the relevant U.S. products, and is not "entering into good faith negotiations or making significant progress in bilateral or multilateral negotiations". Trading partners may also be identified on a Priority Watch List or Watch List, if they meet some, but not all, of the criteria for designation as a PFC. For certain countries identified in USTR's Priority Watch List, the USTR is required to develop an action plan with benchmarks to assist the foreign country to achieve adequate and effective IPR protection and fair and equitable market access for U.S. persons that rely upon IPR protection.

3.400. As PFC is a statutory category, if a trading partner has been identified as such, the USTR is required to initiate a Section 301 investigation within 30 days of when the country was identified, unless the USTR determines that the initiation of such an investigation would be detrimental to U.S. economic interests, or where the act, policy, or practice identified as the basis for the PFC identification is the subject of any other investigation or action under Section 301. The USTR must make a determination of actionability and decide what action to take, if any, within six months of the initiation of the investigation, or nine months under certain specific conditions. This period may be extended to nine months if the issues involved are complex; the foreign country is making substantial progress in drafting or implementing legislation or administrative measures to provide adequate and effective IPR protection; or it is undertaking enforcement measures to this end.

3.401. In its 2021 Special 301 Report, USTR identified a range of concerns, including: (i) the deterioration in the effectiveness of IP protection and enforcement, and overall market access for persons relying on IP in a number of trading partner markets; (ii) challenges with border and criminal enforcement against copyright piracy and the sale of counterfeit trademarked products, including in the online environment; (iii) high levels of online and broadcast piracy, including through illicit streaming devices; (iv) inadequacies in trade secret protection and enforcement; (v) indigenous innovation and forced technology transfer policies that may unfairly disadvantage U.S. right holders in markets abroad; (vi) additional market access barriers, including non-transparent, discriminatory or otherwise trade-restrictive, measures that appear to impede access to healthcare and copyright-protected content; and (vii) other ongoing, systemic issues regarding IP protection and enforcement, as well as market access, in many trading partners around the world. The 2021 Special 301 report identified 32 trading partners as failing to provide adequate and effective IP protection, and fair and equitable market access to persons that rely on such protection.<sup>555</sup> No trading partner was identified as a PFC as a result of the review. Nine trading partners were placed on the Priority Watch List<sup>556</sup>, and 23 on the Watch List.<sup>557</sup> In addition to identifying 32 countries on the Priority Watch List and the Watch List, the report also mentioned areas of concern in several countries.<sup>558</sup>

<sup>554</sup> CBP (2021), *Intellectual Property Rights Seizure Statistics: Fiscal Year 2020*. Viewed at: [https://www.cbp.gov/sites/default/files/assets/documents/2021-Sep/101808%20FY%202020%20IPR%20Seizure%20Statistic%20Book%2017%20Final%20spreads%20ALT%20TEXT\\_FINAL%20%28508%29%20REVISED.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2021-Sep/101808%20FY%202020%20IPR%20Seizure%20Statistic%20Book%2017%20Final%20spreads%20ALT%20TEXT_FINAL%20%28508%29%20REVISED.pdf).

<sup>555</sup> USTR, *2021 Special 301 Report*. Viewed at: [https://ustr.gov/sites/default/files/files/reports/2021/2021%20Special%20301%20Report%20\(final\).pdf](https://ustr.gov/sites/default/files/files/reports/2021/2021%20Special%20301%20Report%20(final).pdf).

<sup>556</sup> Argentina, Chile, China, India, Indonesia, the Russian Federation, the Kingdom of Saudi Arabia, Ukraine, and the Bolivarian Republic of Venezuela.

<sup>557</sup> Algeria, Barbados, the Plurinational State of Bolivia, Brazil, Canada, Colombia, the Dominican Republic, Ecuador, Egypt, Guatemala, the State of Kuwait, Lebanon, Mexico, Pakistan, Paraguay, Peru, Romania, Thailand, Trinidad and Tobago, Türkiye, Turkmenistan, Uzbekistan, and Viet Nam.

<sup>558</sup> USTR (2021), *2021 Special 301 Report*. Viewed at: [https://ustr.gov/sites/default/files/files/reports/2021/2021%20Special%20301%20Report%20\(final\).pdf](https://ustr.gov/sites/default/files/files/reports/2021/2021%20Special%20301%20Report%20(final).pdf).

3.402. USTR also conducts out-of-cycle Notorious Markets reviews. The Review of Notorious Markets for Counterfeiting and Piracy, also known as the Notorious Markets List, identifies selected markets, including those on the Internet, that reportedly engage in and facilitate copyright piracy and trademark counterfeiting. The List is non-exhaustive, and may include previously identified markets where owners, operators, and governments have failed to address concerns. The List does not make findings of legal violations, nor does it reflect the U.S. Government's analysis of the general IP protection and enforcement climate in the countries connected with the listed markets.<sup>559</sup> The 2020 Notorious Markets List included for the first time a section addressing the role of Internet platforms in facilitating the importation of counterfeit and pirated goods into the United States. The List highlighted 39 online markets, and 34 physical markets in 17 trading partners, reported to be engaging in and facilitating substantial copyright piracy and trademark counterfeiting.<sup>560</sup>

### 3.3.7.9.3 Section 337 investigations

3.403. Unfair import (Section 337) investigations are conducted by USITC as mandated by Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). They most often involve claims regarding IPRs, including allegations of utility and design patent and trademark infringement by imported goods. Other forms of unfair competition involving imported products, such as infringement of registered copyrights, mask works or boat hull designs, misappropriation of trade secrets or trade dress, passing off, and false advertising, may also be asserted. Antitrust claims relating to imported goods may also be asserted. The primary remedy available in Section 337 investigations is an exclusion order that directs CBP to stop infringing imports from entering the United States. In addition, USITC may issue cease and desist orders against named importers and other persons engaged in unfair acts that violate Section 337. Expedited relief in the form of temporary exclusion orders and temporary cease and desist orders is also available in certain circumstances.

3.404. Section 337 investigations, which are conducted pursuant to 19 U.S.C. 1337 and the Administrative Procedure Act, include trial proceedings before administrative law judges and review by the Commission. Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) declares unlawful "unfair methods of competition and unfair acts in the importation and sale" of articles subject to satisfaction of a domestic industry test. For some unfair acts, depending on the type of unfair method of competition or act at issue, a showing of injury or threat of injury must also be made. USITC determines, upon receipt of a complaint alleging a violation of Section 337, whether the complaint satisfies the requirements of its rules, and if an investigation should be instituted. USITC is required, within 45 days after an investigation is instituted, to establish a target date for issuing its final determination.<sup>561</sup> If, at the completion of the investigation, USITC determines that Section 337 has been violated, it may issue exclusion orders barring the articles from entry into the United States and/or directing the violating parties to cease and desist from certain actions. USITC orders are effective when issued, although imports are often allowed to continue subject to a bonding requirement; they become final 60 days after issuance unless disapproved for policy reasons by the USTR within that 60-day period.

3.405. USITC-issued exclusion orders direct CBP either to bar entry into the United States of infringing goods from whatever source (general exclusion orders) or to bar entry to imports from specifically identified entities (limited exclusion orders). USITC may issue a general exclusion order applicable to imports from all countries if either a general exclusion order is necessary to prevent circumvention of an exclusion order limited to products of named persons, or there is a pattern of violation of Section 337 and it is difficult to identify the source of infringing products. Instead of, or in addition to, exclusion orders, USITC may issue cease and desist orders against named importers and other persons engaged in unfair acts that violate Section 337. Also, USITC must consider the effects of a remedial order on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and

<sup>559</sup> USTR (2021), *2020 Review of Notorious Markets for Counterfeiting and Piracy*. Viewed at: [https://ustr.gov/sites/default/files/files/Press/Releases/2020%20Review%20of%20Notorious%20Markets%20for%20Counterfeiting%20and%20Piracy%20\(final\).pdf](https://ustr.gov/sites/default/files/files/Press/Releases/2020%20Review%20of%20Notorious%20Markets%20for%20Counterfeiting%20and%20Piracy%20(final).pdf).

<sup>560</sup> Argentina, Brazil, Cambodia, China, Ecuador, India, Indonesia, Malaysia, Mexico, Paraguay, Peru, Philippines, the Russian Federation, Türkiye, Ukraine, the United Arab Emirates, and Viet Nam.

<sup>561</sup> USITC, *About Section 337*. Viewed at: [https://usitc.gov/intellectual\\_property/about\\_section\\_337.htm](https://usitc.gov/intellectual_property/about_section_337.htm).

U.S. consumers. It may refuse to issue an exclusion or cease and desist order after taking into account statutory public interest factors.<sup>562</sup>

3.406. In FY2018, FY2019, FY2020, and FY2021, 266 new Section 337 complaints were received by USITC, and 252 investigations were completed.<sup>563</sup> There were 135 active investigations during FY2021. The majority of the cases dealt with patent infringement; some cases dealt with copyright, trade secrets and trademarks, a combination of those IPRs, or some other unfair act, such as false advertising. Investigations covered products from some 40 trading partners and from the United States. In the same period, USITC issued 61 exclusion orders, of which 38 were limited exclusion orders, and 23 were general exclusions, together with 130 cease and desist orders.<sup>564</sup> The rest of the investigations ended in a settlement, or consent order, or the complaint was withdrawn (62% of the total in FY2021). As of 31 December 2021, 129 active exclusion orders were in effect affecting imports of a range of products, including automotive/manufacturing/transportation products, chemical compositions, computer and telecommunications products, consumer electronics products, integrated circuits, LCDs/TVs, lighting products, memory chips and related products, pharmaceuticals and medical devices, printing products, and other consumer items. The average length of all investigations in FY2021 was 11.8 months, but the average length of investigations completed on the merits was 18.2 months.<sup>565</sup> As noted above, CBP is in charge of the enforcement of Section 337 exclusion orders issued by USITC. DOJ is responsible for defending CBP actions linked to these orders in the case of a dispute.<sup>566</sup>

---

<sup>562</sup> USITC (2014), *Summary of Statutory Provisions Related to Import Relief, Investigations of Unfair Practices in Import Trade, Including Infringement of Patents, Trademarks, Copyrights, Mask Works, or Boat Hull Designs*. USITC Publication 4468. Viewed at: [https://www.usitc.gov/oig/documents/pub4468\\_2014.pdf](https://www.usitc.gov/oig/documents/pub4468_2014.pdf).

<sup>563</sup> USITC, *Section 337 Statistics: Number of New, Completed, and Active Investigations by Fiscal Year (Updated Quarterly)*. Viewed at: [https://www.usitc.gov/intellectual\\_property/337\\_statistics\\_number\\_new\\_completed\\_and\\_active.htm](https://www.usitc.gov/intellectual_property/337_statistics_number_new_completed_and_active.htm).

<sup>564</sup> USITC, *Remedial Orders Issued (GEOs, LEOs, and CDOs) by Fiscal Year*. Viewed at: [https://www.usitc.gov/intellectual\\_property/337\\_statistics\\_remedial\\_orders\\_issued\\_leo\\_v\\_geo.htm](https://www.usitc.gov/intellectual_property/337_statistics_remedial_orders_issued_leo_v_geo.htm).

<sup>565</sup> USITC, *Section 337 Statistics: Average Length of Investigation*. Viewed at: [https://www.usitc.gov/intellectual\\_property/337\\_statistics\\_average\\_length\\_investigations.htm](https://www.usitc.gov/intellectual_property/337_statistics_average_length_investigations.htm).

<sup>566</sup> At the end of FY2020, CBP was administering 127 active exclusion orders issued by USITC following investigations of unfair import practices in the importation of articles into the United States in violation of 19 U.S.C. 1337, the majority of which are based on allegations of patent infringement.

## 4 TRADE POLICIES BY SECTOR

### 4.1 Agriculture, Forestry, and Fisheries

#### 4.1.1 Main features

4.1. The Census of Agriculture is conducted every five years. It provides a detailed picture of U.S. farms and ranches. The last Census (2017) was published in April 2019.<sup>1</sup> At the time of the Census, the United States had 2.04 million farms, a decline of 3.2% since 2012. At 441 acres, the average size of a farm was larger than in the two previous reports, although exactly the same size as in the 2002 Census. Almost 86% of all U.S. farms were owned by families or individuals, followed by agricultural partnerships (6.3%). Since 2007, such types of farms have been declining, while the number of farming corporations is increasing (to 5.7% of all farms in 2017).

4.2. Abundant arable and pasture land and diverse climatic conditions support production of a wide range of commodities. Most farms are multiproduct operations. The direct contribution of primary agriculture to U.S. GDP is no more than 0.6%, and on-farm employment accounted for approximately 2.6 million jobs in 2020. However, as farms rely on inputs from other industries, and their production feeds into other parts of the economy (processing and manufacturing, transportation, wholesale and retail trade, restaurants and bars, etc.), the U.S. Department of Agriculture's Economic Research Service (USDA ERS) estimates that agriculture, food, and related industries made up 5.2% of GDP in 2020, and that 19.7 million full- and part-time jobs were related to agricultural and food sectors. On average, food accounted for 11.9% of household expenditures in 2020, third after housing (35%) and transportation (16%).

4.3. U.S. farms generated a combined value of agricultural production of USD 373.5 billion in 2020 (Table 4.1). The production value was higher for crops than for livestock in 2019 and 2020. Maize, soybeans, and hay (including alfalfa) are the principal crops, while livestock is dominated by cattle (beef and dairy), poultry and eggs, and hogs.

**Table 4.1 Value of production, 2016-20**

(USD billion and %)

	2016	2017	2018	2019	2020	% of total <sup>a</sup>
<b>Total</b>	<b>355.5</b>	<b>369.3</b>	<b>365.4</b>	<b>356.0</b>	<b>373.5</b>	
Maize for grain	51.3	49.6	52.1	48.9	61.0	16.3
Soybeans	40.7	41.3	37.6	30.5	46.1	12.3
Hay	15.5	16.1	17.3	18.0	17.3	4.6
Wheat	9.2	8.3	9.7	8.9	9.3	2.5
Cotton	5.8	7.2	6.4	5.9	4.7	1.3
Milk	34.7	38.1	35.4	40.7	40.7	10.9
Cattle and calves	48.6	50.4	49.1	48.2	45.8	12.3
Poultry and eggs	38.8	42.7	46.2	40.0	35.5	9.5
Hogs	17.4	19.2	18.8	21.2	18.1	4.8
Crops total	185.9	187.9	184.7	173.2	205.3	55.0

a Percentage of total for the year 2020.

Source: USDA National Agricultural Statistics Service. Viewed at: <https://quickstats.nass.usda.gov/>; USDA National Agricultural Statistics Service, *Poultry – Production and Value*, different bulletins. Viewed at: [https://www.nass.usda.gov/Publications/Todays\\_Reports/reports/plva0422.pdf](https://www.nass.usda.gov/Publications/Todays_Reports/reports/plva0422.pdf) (most recent) and OECD Stats, Agriculture Policy Indicators, 2022 Monitoring and Evaluation: Reference Tables.

4.4. The United States is the world's largest producer of soybeans, maize, beef, and chicken and turkey, and a major producer of pig meat and cotton (Table 4.2). Although the agricultural producers benefit from a large domestic market to absorb their output, the U.S. farm sector is also characterized by significant export orientation for certain commodities. Overall, about one fifth of U.S. agricultural production goes to foreign markets, with particularly high export shares for cotton (more than 75%), and wheat and soybeans (about 50%).<sup>2</sup>

<sup>1</sup> The full report may be downloaded from: <https://www.nass.usda.gov/Publications/AgCensus/2017/index.php>.

<sup>2</sup> Congressional Research Service (CRS) (2021), *U.S. Agricultural Export Programs: Background and Issues*, R46760, April. Viewed at: <https://crsreports.congress.gov/product/pdf/R/R46760>.

**Table 4.2 U.S. and world production and trade of selected commodities, FY2017/18-2021/22**

('000 tons, unless otherwise indicated)

Marketing year		2017/18	2018/19	2019/20	2020/21	2021/22
<b>Maize</b>						
Production	United States	371,096	364,262	345,962	358,447	383,943
	% of world	34.3	32.3	30.9	31.9	31.8
Exports	United States	61,906	52,538	45,132	69,920	61,598
	% of world	41.3	28.8	26.2	39.0	30.2
<b>Wheat</b>						
Production	United States	47,380	51,306	52,581	49,751	44,790
	% of world	6.2	7.0	6.9	6.4	5.8
Exports	United States	24,658	25,503	26,372	26,985	22,453
	% of world	13.3	14.5	13.6	13.3	11.0
<b>Cotton ('000 480 lb bales)</b>						
Production	United States	20,923	18,367	19,913	14,608	17,624
	% of world	16.9	15.5	16.5	13.1	14.6
Exports	United States	16,281	14,833	15,512	16,371	15,000
	% of world	39.1	35.7	37.7	33.6	32.2
<b>Soybean, oilseed</b>						
Production	United States	120,065	120,515	96,667	114,749	120,707
	% of world	35.0	33.4	28.4	31.3	32.4
Exports	United States	58,071	47,721	45,701	61,655	55,792
	% of world	37.9	32.0	27.7	37.4	32.7
Calendar year		2017	2018	2019	2020	2021
<b>Beef and veal</b>						
Production	United States	11,943	12,256	12,385	12,389	12,736
	% of world	21.2	21.2	21.1	21.5	22.1
Exports	United States	1,297	1,433	1,373	1,339	1,567
	% of world	12.9	13.5	12.1	11.9	13.5
<b>Poultry meat</b>						
Production	United States	18,938	19,361	19,941	20,255	20,378
	% of world	20.8	20.9	20.5	20.4	20.4
Exports	United States	3,137	3,244	3,259	3,376	3,367
	% of world	25.8	26.1	25.0	25.8	25.7

Source: USDA Foreign Agricultural Service (FAS), Production, Supply and Distribution database. Viewed at: <https://apps.fas.usda.gov/psdonline/app/index.html#/app/advQuery>.

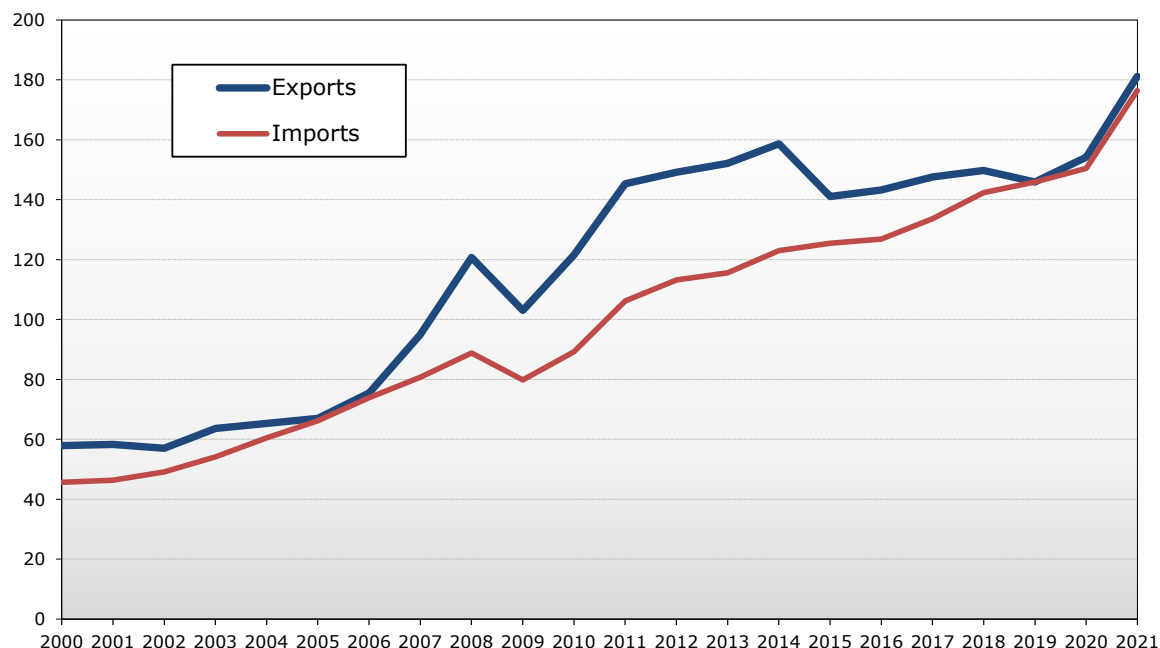
4.5. The United States is the world's largest agricultural exporter. In seven of its states, agriculture accounts for more than 30% of their total export value, and the share exceeds 10% in a further 14 states. Canada and Mexico are key traditional markets and, although exports rise more slowly towards mature industrialized economies, Europe and Japan remain important trading partners. However, the most significant increases in food and commodity exports have been to China and other fast-growing economies in East and Southeast Asia.

4.6. As the United States is a major exporter of bulk commodities, its trade surplus in agricultural products widened between 2006 and 2014 on the back of strong commodity prices, and then narrowed as these prices weakened (Chart 4.1). Agricultural imports have been growing consistently and with less volatility, as they are dominated by high-value food items (such as alcoholic beverages, specialty cheeses, and meat products) and domestic demand for seasonal fruit and vegetables, unroasted coffee, spices, cut flowers, and other tropical products (Table 4.3). However, U.S. exports of processed goods are on the rise. In 2020, consumer-oriented food products (e.g. meats, dairy products, fruit, vegetables, and packaged foods) accounted for almost 50% of the export value (though only 11% of the volume). Such goods dominate sales of U.S. agricultural products to developed-country markets (more than 80%) while, for example, China and North African countries primarily purchase bulk commodities from the United States.



**Chart 4.1 Exports and imports of agricultural products, 2000-21**

(USD billion)



Source: WTO Secretariat calculations, based on UN Comtrade database.

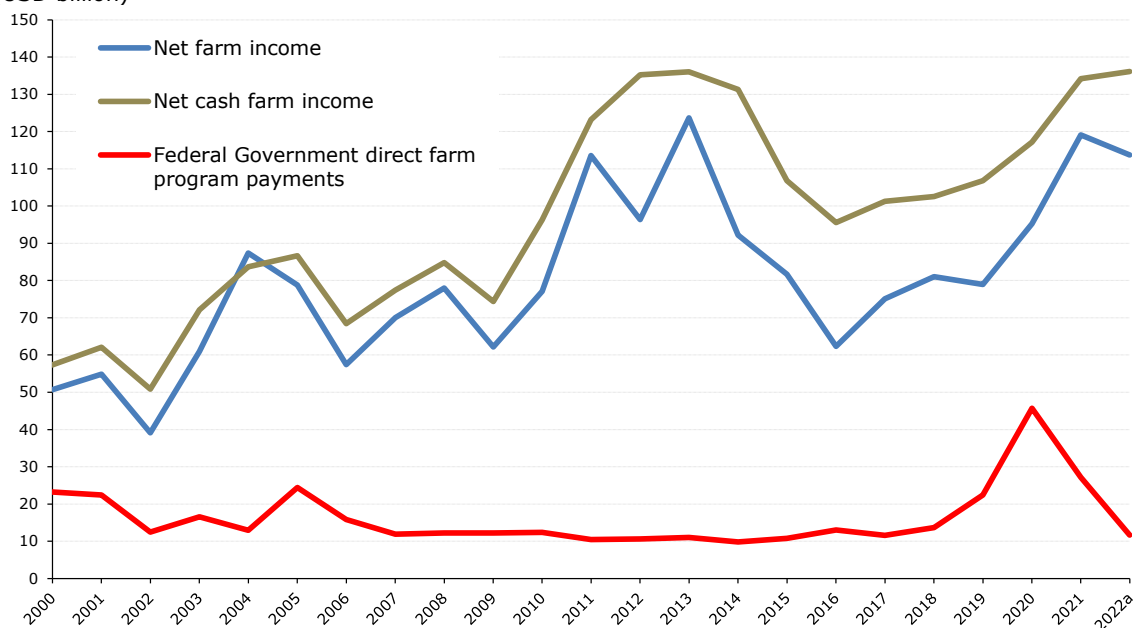
4.7. As in other countries, U.S. farmers may experience revenue stress due to natural disasters, market disruptions, and other events. Most current U.S. farm support programs are designed to help mitigate risk and provide a safety net when prices or revenue fall, or when producers experience crop or livestock losses. Support does not cover all losses, and agricultural producers bear some of the risk and costs. The USDA estimates net cash income and net farm income as one way to measure the financial position of U.S. farmers.<sup>3</sup> The decline in farm income from its peak in 2013 reached its lowest point in 2016, when prices were at their lowest for livestock and livestock products and only slightly recovered for crops. Since 2018, U.S. agricultural producers have faced extraordinary disruptions due to trade tensions, followed by the COVID-19 pandemic. However, some of the reduction in income has been offset by significant increases in federal government payments. According to the USDA ERS, net farm income rose by 20% from 2019 to 2020, and by 25% from 2020 to 2021, although in the latter case, higher cash receipts from strong agricultural markets offset lower government payments. At USD 119.1 billion, projected net farm income was close to the peak in 2013 (USD 123.7 billion), which is the highest on record so far (Chart 4.2). However, the forecast for 2022 is a 5% decline to USD 113.7 billion, as higher cash receipts do not fully offset lower government payments and higher input costs.<sup>4</sup>

<sup>3</sup> Whereas net cash income measures the net cash flow over the calendar year, net farm income is a broader indicator that includes the value of home consumption, inventory changes, capital replacement, and implicit rent and dwelling expenses.

<sup>4</sup> USDA ERS, *2022 Farm Sector Income Forecast*. Viewed at: <https://www.ers.usda.gov/topics/farm-economy/farm-sector-income-finances/farm-sector-income-forecast/>.

**Chart 4.2 Farm sector income, 2000-22**

(USD billion)



a Forecast values.

Source: USDA ERS, *Farm Income and Wealth Statistics*. Viewed at: <https://www.ers.usda.gov/data-products/farm-income-and-wealth-statistics/>.

#### 4.1.1.1 Major support programs

##### 4.1.1.1.1 General legal framework

4.8. Agricultural policy is primarily governed by omnibus legislative packages (Farm Bills) that terminate, continue, or amend prior policies and establish new policies and programs over a five-year cycle. The Agriculture Improvement Act of 2018 (P.L. 115-334), also known as the 2018 Farm Act, was signed into law on 20 December 2018. It extended most of the existing support programs, with modifications in some instances. Notably, the Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) revenue support programs were reauthorized, with minor changes, and a new option for producers to choose between the two programs annually. The crop insurance program is continued, with some expansion in livestock insurance options. The Dairy Margin Coverage (DMC) program superseded the earlier Margin Protection Program for Dairy Producers, and offered new options for dairy farmers, especially smaller scale producers, to purchase coverage for a specified level of a nationally determined milk-to-feed margin. The sugar program continued with an increase in non-recourse loan rates. The Supplemental Nutrition Assistance Program (SNAP) was amended and reauthorized through FY2023, and funding for the Emergency Food Assistance Program (TEFAP) was increased. The principal environmental land retirement program – the Conservation Reserve Program (CRP) – was continued with an increase in the maximum acreage and tighter limits on how per acre rental rates are set. The Environmental Quality Incentives Program (EQIP), the Agricultural Conservation Easement Program (ACEP), and the Regional Conservation Partnerships Program (RCPP) were reauthorized with increased funding. The Conservation Stewardship Program (CSP) was also reauthorized, but with reduced funding. Overall, mandatory conservation spending increased by 2%.

4.9. New features in the 2018 Farm Act include additional programs for specialty crops, organic farmers, local and regional markets, and beginning, military veteran, and minority farmers. The Act also addresses a range of issues of importance to rural communities, including the expansion of broadband access, opioid abuse and rural health, and business and infrastructure development. Title IX (Energy) extends eight programs and one initiative through FY2023, and creates a grant program focusing on carbon sequestration and biogas systems. The Congressional Budget Office (CBO) projected that outlays at enactment of the 2018 Farm Bill would be USD 428 billion over its five-year life cycle, of which over 75% was projected outlays for nutrition programs.

4.10. The USDA assists producers in reducing GHG emissions, enhancing carbon sequestration, and adapting to a changing climate. It released an Action Plan for Climate Adaptation and Resilience, a framework to prepare farmers, ranchers, and land managers for current and anticipated impacts of climate change, in October 2021. The USDA operates a network of Regional Climate Hubs that links its research and program agencies. Their aim is to facilitate climate-informed decision-making and direct stakeholders towards resources needed to implement such decisions.

#### **4.1.1.1.2 Price Loss Coverage (PLC)**

4.11. The PLC program provides payments on 85% of historical base acres multiplied by historical yields for each historically produced covered commodity on a farm when the national price (defined in legislation) is less than the statutory effective reference price for the commodity. There is no requirement to produce the covered commodity, or any other commodity, to be eligible for payments. Covered commodities include maize, soybeans, wheat, other feed grains, other oilseeds, peanuts, pulses, rice, and seed cotton. Payments are made no earlier than 1 October after the end of the applicable marketing year for the covered commodity.

4.12. USDA Farm Service Agency data indicates that PLC payments to nearly 1.4 million farms totaled USD 4.95 billion for the 2019 crop year, and USD 2.07 billion in the 2020 crop year to 800,000 farms.<sup>5</sup> Over the two years combined, the highest PLC payments were paid on base acres with historical production of wheat (USD 2,529 million), seed cotton (USD 1,439 million), maize (USD 1,099 million), peanuts (USD 779 million), and long grain rice (USD 626 million).

#### **4.1.1.1.3 Agriculture Risk Coverage (ARC)**

4.13. The revenue guarantee of the ARC, an income support program tied to benchmark guarantees, may be determined at the farm level (individual ARC or ARC-IC) or on a commodity-by-commodity basis at the county level (ARC-CO). Covered commodities are the same as for the PLC program and include wheat, feed grains, soybeans, peanuts, other oilseeds, rice, seed cotton, and pulses.

4.14. Payments under ARC-CO are tied to historical base acres and no production is required. Payments are provided when county-level revenue is less than the guarantee, set at 86% of the benchmark revenue for the covered commodity. The benchmark corresponds to the five-year (Olympic) average national market price multiplied by the five-year (Olympic) average county yield. ARC-CO payments, when triggered, are made on 85% of the base acres of the covered commodity. Enrolment in ARC-IC automatically covers all base acres on the farm, and payments are triggered when the farm's total revenue from the covered commodities falls short of the farm's revenue guarantee, which is 86% of the benchmark revenue. The benchmark is calculated as the weighted five-year average revenue of all covered commodities planted on the farm, and payments, when triggered, are made on 65% of the farm's total base acres.

4.15. The 2014 Farm Act, which introduced the PLC and ARC programs, did not allow farmers to switch between the programs after the initial election had been made. However, producers could opt to elect ARC-CO for some of their base acres and PLC for other base acres. The 2018 Farm Act allows farmers to change their program elections annually as from the 2021 crop year. The Act also changes the primary source for county average yield data used for ARC-CO from the National Agricultural Statistics Services to the USDA Risk Management Agency to minimize disparities in payments observed in certain neighboring counties. Moreover, some large counties may be subdivided to reflect significant yield deviations within them.

4.16. According to the USDA FSA, ARC payments for the 2019 crop year totaled USD 1.26 billion to some 648,000 farms and were primarily ARC-CO payments (USD 952 million). In the 2020 crop year, ARC payments declined to USD 87 million, with ARC-CO payments accounting for 70% of the total. The largest ARC payments over the two years were made on base acres of soybeans (USD 718 million), maize (USD 505 million), and wheat (USD 89 million).

---

<sup>5</sup> USDA FSA, 2019 Program Year Specific Data. Viewed at: [https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/arc-plc/2019/pdf/2019\\_arc\\_plc\\_payments.pdf](https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/arc-plc/2019/pdf/2019_arc_plc_payments.pdf); and 2020 Program Year Specific Data. Viewed at: [https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/arc-plc/2020/pdf/2020\\_arc\\_plc\\_payments.pdf](https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/arc-plc/2020/pdf/2020_arc_plc_payments.pdf).

#### 4.1.1.1.4 Marketing assistance loans

4.17. Marketing assistance loans provide interim financing on harvested commodities that enables producers to delay sales when market conditions are unfavorable, typically around harvest time, until better opportunities emerge. The farmer is expected to repay the loan at the end of the term (usually nine months), but it may also be redeemed earlier. The interim financing is provided by the USDA Commodity Credit Corporation (CCC) to eligible producers of 28 commodities.

4.18. Marketing assistance loans for covered commodities are non-recourse; the commodity is pledged as loan collateral and producers have the option of forfeiting the pledged collateral to the CCC in lieu of repayment of the outstanding loan. Repayment provisions, which allow a producer to repay the loan at less than the loan rate and earn a marketing loan gain (MLG), help minimize potential forfeiture of loan collateral to the CCC. Producers may also elect to receive a loan deficiency payment (LDP) in lieu of securing a marketing assistance loan. An LDP is the difference the producer would have received if a loan was repaid at the lower market price. Gross income limitations apply, all conservation and wetland protection requirements must be complied with, and producers must report all crop acreage planted to be eligible for LDP or marketing loans.<sup>6</sup> MLGs and LDPs occurring in crop years 2019-23 are not subject to payment limitations.<sup>7</sup>

4.19. The 2018 Farm Act extended most provisions applicable to marketing assistance loans under the 2014 Farm Act, including the statutory loan rates for non-recourse marketing assistance loans through crop year 2023. However, the loan rates were either unchanged or increased by amounts ranging from 7.7% to 43.9% above the earlier statutory loan rates, but generally remain below market prices (Table 4.3). MLGs and LDPs totaled USD 223 million in 2019, paid on cotton, wool, and pulses, and USD 12 million in 2020, paid on cotton and wool.

**Table 4.3 Commodity Loan Rates, 2018 and 2021**

Covered commodities	Marketing loan program Commodity loan rates, 2014 Farm Act (as amended)	National average loan rates, 2021	Percentage change
Wheat (bu.)	2.94	3.38	15.0
Maize (bu.)	1.95	2.20	12.8
Grain sorghum (bu.)	1.95	2.20	12.8
Barley (bu.)	1.95	2.50	28.2
Oats (bu.)	1.39	2.00	43.9
Rice long-grain (cwt)	6.50	7.00	7.7
Rice medium-grain (cwt)	6.50	7.00	7.7
Peanuts (ton)	355	355	0
Soybeans (bu.)	5.00	6.20	24.0
Other oilseeds (cwt) <sup>a</sup>	0.1009	0.1009	0
Dry peas (cwt)	5.40	6.15	13.9
Lentils (cwt)	11.28	13.00	15.2
Small chickpeas (cwt)	7.43	10.00	34.6
Large chickpeas (cwt)	11.28	14.00	24.1
Graded wool (lb)	1.15	1.15	0
Non-graded wool (lb)	0.40	0.40	0
Mohair (lb)	4.20	4.20	0
Honey (lb)	0.69	0.69	0
Sugar beet, refined (lb)	0.2409	25.38	5.4
Sugar cane, raw (lb)	0.1875	19.75	5.3

<sup>6</sup> Producers or legal entities whose average annual gross income exceeds USD 900,000 are eligible for marketing assistance loans, subject to certain conditions, but they are not eligible for MLG or LDP payments. USDA (2020), *Marketing Assistance Loans and Loan Deficiency Payments*, September. Viewed at: [https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/mal\\_ldp\\_fact\\_sheet.pdf](https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/mal_ldp_fact_sheet.pdf).

<sup>7</sup> MLGs and LDPs have tended to be negligible in recent years. However, the United States notified to the WTO Committee on Agriculture MLGs (including certificate exchange gains) and LDPs of USD 215 million for cotton in the 2019/20 marketing year. WTO document G/AG/N/USA/157, 30 September 2021, Supporting Table DS:6.

Covered commodities	Marketing loan program Commodity loan rates, 2014 Farm Act (as amended)	National average loan rates, 2021	Percentage change
Extra-long staple cotton (lb)	0.7977	0.95	19.1
Seed cotton (lb)	0.25 <sup>b</sup>	0.25 <sup>b</sup>	0.0
Upland cotton	0.52		

- a "Other oilseeds" include canola, crambe, flaxseed, mustard seed, rapeseed, safflower seed, sesame seed and sunflower (oil and non-oil types).
- b Seed cotton is not a covered commodity under the marketing assistance loan program. The loan rate has been set only for the purpose of determining the effective prices for seed cotton under the Price Loss Coverage program.

Source: USDA FSA, The Agricultural Act of 2014, as amended. Viewed at: <https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/Price-Support/pdf/Cotton-2021-rates/2021%20National%20Average%20Loan%20Rates.pdf>, and <https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/Price-Support/pdf/2019/2019%20Crop%20Year%20Sugar%20Loan%20Rates.pdf>, and WTO Secretariat calculations.

#### 4.1.1.1.5 Crop insurance

4.20. Policies under the Federal Crop Insurance Program (FCIP) insure against losses in yield, crop revenue, margin, whole-farm revenue, and other types of losses. The USDA Risk Management Agency administers the FCIP, including the establishment of premium rates and other provisions. The insurance policies are contracts between farmers and Approved Insurance Providers (AIP), sold by private insurance agents, and the Federal Crop Insurance Corporation (FCIC) provides reinsurance to the AIPs. A policy is renewed automatically every year, unless cancelled by the farmer within a prescribed deadline.

4.21. Insurance policies under the FCIP cover nearly 130 crops, including specialty crops, under approximately 20 types of insurance policies. The four major crops – maize, soybeans, wheat, and cotton – dominate in terms of area enrolled and as a result of claims paid. Crops on 461.6 million acres (net of acres covered by more than one policy type) were insured in 2021. Revenue protection is the most frequently purchased policy type. Farmers may purchase policies at coverage levels from minimum "catastrophic" yield loss coverage, under which 100% of the insurance premium is subsidized but indemnities are paid only on losses above 50%, through various additional ("buy-up") coverage. The most commonly purchased policies allow farmers to buy up to 85% coverage level, i.e. always less than the full value of their crops.

4.22. The premiums that farmers pay for buy-up coverage are also subsidized, and the Federal Crop Insurance Act (FCIC Act) stipulates the percentage of premium subsidy. The AIPs and the FCIC share the underwriting risk. In general, the AIPs retain 80% to 85% of the insurance premiums and the risks associated with that share, and the FCIC provides stop-loss reinsurance to the AIPs for the risk associated with their retained premiums under the Standard Reinsurance Agreement and the Livestock Price Reinsurance Agreement. These agreements also reimburse the AIPs for their administrative and operating expenses related to the policies. Over time, the total premiums paid by farmers and the Government must exceed claim payments to maintain the viability and actuarial soundness of the insurance programs. The FCIP is required to achieve a loss ratio of 1.0, which implies that FCIP sets premiums at an actuarially sound rate, with the premium subsidies representing the difference between the full premium and the share contributed through producer-paid premiums.

4.23. On average, about 62% to 63% of insurance premiums were paid by the Federal Government in crop years 2018, 2019, and 2020, although subsidy levels vary across policy types and risk levels. Subsidy levels have remained relatively consistent in recent years at approximately USD 6.2 billion per year.<sup>8</sup> Wider use of index insurance policies, coupled with rising commodity prices, appears to have led to a sharp increase in premiums (from USD 10 billion in 2020 to USD 13.6 billion in 2021) and a corresponding increase in premium subsidies (from USD 6.2 billion to USD 8.5 billion) in 2021.

4.24. The 2018 Farm Act continued existing programs with limited changes in products and policies, including some expanded coverage of existing products, clarity on conservation practices such as

<sup>8</sup> FCIC, *Summary of Business Report for 2019 through 2022*, as of 2 May 2022. Viewed at: [https://www3.rma.usda.gov/apps/sob/current\\_week/sobrpt2019-2022.pdf](https://www3.rma.usda.gov/apps/sob/current_week/sobrpt2019-2022.pdf).



cover crops and good farming practices, and new offerings.<sup>9</sup> Hemp was added to the list of eligible crops for subsidized insurance, and for policies covering post-harvest losses. According to the CBO, the projected five-year outlays for crop insurance showed a slight decline (0.1%) relative to baseline levels, notably due to the increase in the administrative fee for catastrophic level coverage, which was raised from USD 300 to USD 655 for each crop insured in each county.<sup>10</sup>

4.25. In 2020, the USDA Risk Management Agency introduced the Hurricane Insurance Protection – Wind Index (HIP-WI) endorsement. Sustained hurricane-force winds, as determined by the National Oceanic and Atmospheric Administration (NOAA), are the only cause of loss for HIP-WI. Producers must have an underlying insurance policy; the endorsement covers a part of a producer's deductible in their underlying policy. HIP-WI is available in coastal areas in the South and East of the United States, as well as in Hawaii, and covers some 70 commodities.

#### 4.1.1.1.6 Dairy sector

4.26. The 2018 Farm Act authorized the Dairy Margin Coverage (DMC) program, replacing the Margin Protection Program for Dairy (MPP). Like the MPP, the DMC program is a voluntary risk management program providing payments to participating dairy producers on enrolled average historical production when the national milk-to-feed cost margin, i.e. the difference between the monthly U.S. all-milk price and the monthly national average feed cost (calculated according to a statutory formula), falls below the margin coverage level they have selected. Catastrophic coverage, defined as a nationally determined margin of less than USD 4 per hundredweight (cwt), is provided at no cost other than the annual USD 100 administrative fee paid by all participants.<sup>11</sup> Enrolled dairy operations choose their Tier 1 margin coverage within the USD 4 to USD 9.50 range for production history up to 5 million pounds and pay the premium corresponding to the selected level of coverage (Table 4.4). In addition, they must decide the quantity of historical production to be covered (5% to 95%, in 5% increments). Tier 2 protection is available to larger scale operations with a covered production history exceeding 5 million pounds provided they have selected a margin of USD 8.50 or above in Tier 1.

**Table 4.4 DMC schedule of premiums**

(USD)

Coverage level (margin) per cwt	Tier 1 – premium Covered production history ≤ 5 million lbs	Tier 2 – premium Covered production history > 5 million lbs
4.00	None	None
4.50	0.0025	0.0025
5.00	0.005	0.005
5.50	0.030	0.100
6.00	0.050	0.310
6.50	0.070	0.650
7.00	0.080	1.107
7.50	0.090	1.413
8.00	0.100	1.813
8.50	0.105	n.a.
9.00	0.110	n.a.
9.50	0.150	n.a.

n.a. Not applicable.

Source: USDA FSA (2019), *Dairy Margin Coverage Program: Fact Sheet*, June. Viewed at: [https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/2019/dairy\\_margin\\_coverage\\_program-june\\_2019\\_fact\\_sheet.pdf](https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/2019/dairy_margin_coverage_program-june_2019_fact_sheet.pdf).

4.27. The DMC program is authorized through 2023 (calendar year), and a dairy operation enrolling in it remains enrolled throughout the period. Producers retain the flexibility to modify margin and

<sup>9</sup> The Supplemental Coverage Option (SCO) and the Stacked Income Protection Plan (STAX), a cotton-specific supplemental crop insurance program, are both reauthorized.

<sup>10</sup> CRS (2019), *The 2018 Farm Bill (P.L. 115-334): Summary and Side-by-Side Comparison*, R45525, 22 February. Viewed at: <https://crsreports.congress.gov/product/pdf/R/R45525>.

<sup>11</sup> The administrative fee may be waived for dairy operations with limited resources, beginners, socially disadvantaged, and veteran farmers and ranchers.

historical production coverage levels each year. However, dairy operators that fixed their coverage level and coverage percentage for the entire five-year period receive a 25% discount on the premium rates.

4.28. The production history is determined according to the highest milk production in 2011, 2012, and 2013 for most dairy farms. Other options are used for newer dairy operations. The production history, as determined, may only be adjusted once (by the USDA) to reflect any increase in the national average milk production. Small and mid-size dairy operations already enrolled in the DMC program were offered Supplemental DMC for 2021 provided they had increased milk production over time prior to 2020, and subject to the following conditions: (i) a DMC production history of less than 5 million pounds; (ii) 2019 milk sales exceeding the established DMC production history; and (iii) an approved supplemental production for the dairy operation.

4.29. Relative to the MPP, the DMC program expanded the margin coverage to include USD 8.50 to USD 9.50 in Tier 1, and most premiums were lowered. The margin coverage range for Tier 2 was not increased and most premium rates were increased. Margins under the DMC program are calculated on a monthly basis, carrying over a change made in the last year of the MPP. Under the MPP, the premiums collected from dairy operations were higher than the indemnities paid in 2015, 2016, and 2017. In FY2018, net payments to dairy operations amounted to USD 190 million.<sup>12</sup> Net expenditures, including MPP premium refunds authorized in the 2018 Farm Act for producers whose MPP premiums exceeded payments, rose to USD 348.8 million in FY2019. DMC program payments were triggered in seven months of FY2019, but fell to USD 208.5 million in FY2020, when payments were triggered in only five months, and the bulk of premium refunds were completed. Higher feed costs triggered payments in all months during the 2021 program year, except December, with estimated DMC indemnities totaling nearly USD 1.2 billion.<sup>13</sup>

4.30. Eligible program participants in DMC may also participate in the Livestock Gross Margin for Dairy Producers Program (LGM-Dairy) and in the Dairy Revenue Protection (DRP) program administered by the Risk Management Agency. Dairy farmers may use LGM-Dairy insurance policies to protect against the loss of gross margin (market value of milk minus feed costs) on milk produced from dairy cows and sold for commercial or private sale primarily for final human consumption.<sup>14</sup> The prices used in LGM-Dairy are derived from simple average daily settlement prices for future contracts for maize, soybean meal, and milk at the Chicago Mercantile Exchange, and not what a producer may obtain at the local market. There is no minimum or maximum quantity that may be insured by dairy farmers in the 48 contiguous states. The insurance premium is subsidized, and the premium subsidy ranges from 18% to 50% depending on the deductible chosen by the farmer.<sup>15</sup> The premium and the indemnity, provided the actual gross margin is lower than selected the margin guarantee, is paid at the end of the 11-month insurance period.

4.31. DRP policies, available in all counties in all 50 states, insure against unexpected declines in the quarterly revenue from milk sales relative to a guaranteed coverage level. The expected revenue is derived from futures prices for milk and dairy commodities and the proportion of milk production to be covered. The covered milk production is indexed to the state or region where the dairy operator is located. DRP policies allow 80% to 95% coverage levels (in 5% increments) for the quarterly expected revenue. Dairy operators must also choose between two pricing options, i.e. either the Class Pricing Option (a combination of Class III and IV milk prices) or the Component Pricing Option (based on component milk prices for butterfat, proteins, and other solids). The premium subsidy depends on the chosen coverage level, and declines from 55% for 80% coverage, to 49% for 85% coverage, or 44% for 90% or 95% coverage.

4.32. The Agricultural Marketing Agreement Act of 1937, as amended, authorizes the Secretary of Agriculture to issue federal milk marketing orders (FMMOs) under certain conditions. These marketing orders establish minimum uniform prices that handlers (processors) are required to pay for fluid milk purchased from producers. The FMMO regulates the processors of fluid milk, while the

<sup>12</sup> WTO document G/SCM/N/343/USA, 16 July 2019.

<sup>13</sup> FSA. Viewed at: <https://www.fsa.usda.gov/programs-and-services/dairy-margin-coverage-program/program-enrollment-information/index>.

<sup>14</sup> Participation in LGM-Dairy is comparable to purchasing both a call option to limit higher feed costs and a put option to set a floor on milk prices.

<sup>15</sup> The deductible is selected in USD 0.10 increments between zero and USD 2 per cwt, and the higher the deductible, the higher the premium subsidy.

manufacturing handlers (Classes II, III, and IV) typically participate when it is economically beneficial.<sup>16</sup> Milk handled by dairy cooperatives is classified and pooled, but cooperatives are not required to pay their members the minimum price. The Secretary appoints market administrators responsible for carrying out the terms of each specific marketing order. Their expenses are financed through assessments on the regulated handlers and producer levies. There are currently 11 federally sanctioned milk marketing orders in operation, covering approximately 75% of total U.S. milk production.<sup>17</sup> Areas not covered by an FMMO are unregulated or subject to state regulation.

4.33. The 2018 Farm Act reauthorized the Dairy Indemnity Program, which compensates dairy producers when a regulatory agency directs them to remove raw milk from the market because it has been contaminated by pesticides or other residues, as well as the Dairy Promotion and Research Program (also known as the Dairy Checkoff Program). The latter program is funded by a levy of USD 0.15 per cwt on domestically produced milk and an assessment of USD 0.01327 per kg of milk solids in imported dairy products.<sup>18</sup>

4.34. The 2018 Farm Act repealed the Dairy Product Donation Program (DPDP) that had allowed the Commodity Credit Corporation (CCC) to purchase dairy products when milk margins were depressed, and subsequently donate them to public and private non-profit organizations that provide nutrition assistance to low-income households. Instead, the Act established the Milk Donation Reimbursement Program (MDRP) to facilitate the donation of fluid milk products and avoid food waste, and Congress authorized program expenditures of USD 9 million in FY2019 and USD 5 million for each FY thereafter. As the COVID-19 pandemic disrupted dairy supply chains, and dairy products were included in food donations under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (P.L. 116-136), Section 762 of the Consolidated Appropriations Act of 2021 (P.L. 116-260) called for the establishment of a Dairy Donation Program (DDP), in addition to the MDRP and other purchase programs of the USDA. Congress allocated USD 400 million, until expended, to establish the DDP. The interim final rule implementing the DDP (until 1 September 2023) was published in the Federal Register on 1 September 2021.<sup>19</sup>

#### 4.1.1.1.7 Sugar

4.35. The United States is one of the world's largest sugar producers, producing somewhat more beet (55%-60%) than cane sugar. Sugar beet is grown in four regions (covering 11 states), and mostly in rotation with other crops, while sugarcane farming takes place in Florida, Louisiana, and Texas. Although the number of sugar beet and sugarcane farms has been declining, production has generally been on the rise due to a combination of several factors – improved crop varieties, new technologies, expanded acreage, and substantial investments in new processing equipment. As a result of domestic policies, U.S. sugar prices have consistently remained above world future contract prices. The CCC extends non-recourse marketing loans to the sugar processors who, in turn, pay the growers of sugar beet and sugarcane at a rate proportional to the loan. The 2018 Farm Act fixes the loan rates for refined beet sugar (USD 0.2538 per lb) and for raw sugar (USD 0.1975 per lb) for crop years 2019 through 2023 (Table 4.3). At the end of the loan term (nine months at most), or any time before, borrowers may sell the sugar and repay the loans in full or, if prices are very low, forfeit the sugar collateral to the CCC and thus redeem the loan. However, as a result of domestic policies, the probability of loan forfeitures is generally low. Other mechanisms, such as the Feedstock Flexibility Program (FFP), may also be used to divert surpluses of sugar for human consumption. FFP participants convert sugar into ethanol.

<sup>16</sup> The FMMO system classifies milk by its end-use within four broad categories: fluid milk (Class I); milk for soft products (Class II) such as ice cream, cottage cheese, and yogurt; milk for hard cheese products (Class III); and milk for butter and powdered dry milk (Class IV). Market data for dairy commodities and handler prices determined by milk end-uses are then combined to establish monthly uniform prices that dairy farmers share through pooling. The price that dairy farmers receive for their milk is thus de-linked from the specific usage of that milk. Farmers may conclude voluntary forward contracts with manufacturing handlers under the Dairy Forward Pricing Program

<sup>17</sup> A map of the FMMO areas in the United States is available at: <https://www.ams.usda.gov/sites/default/files/media/Federal%20Milk%20Marketing%20Orders%20Map.pdf>.

<sup>18</sup> The import assessment corresponds to a rate of USD 0.075 per cwt of U.S. milk equivalent. Importers and farmers may receive a credit against the levy if they contribute to quality programs conducting dairy promotion, research, or nutrition education authorized by federal or state law.

<sup>19</sup> Agricultural Marketing Service, Establishment of a Dairy Donation Program, *Federal Register* (2021), Vol. 86, No. 167, 1 September, pp. 48887-48900.

4.36. Processors of sugar sold for human consumption receive marketing allotments, and the overall allotment quantity (OAQ) equals at least 85% of the estimated domestic demand for the marketing year. Excess domestically produced sugar may not be sold on the market for human consumption and remains in storage at the owner's expense. If a processor is unable to market its allocation, the allotment may be reassigned to other processors within the same state and, if this does not eliminate the deficit, the remaining allotment may be allocated to processors in other states.<sup>20</sup> There is no provision for cane sugar OAQ deficits to be reassigned to beet sugar processors or vice versa. If, after reassignment, a deficit still persists, it may be allocated to the CCC for sale from its inventories and, should this be insufficient, the deficit may be assigned to imports.

4.37. Imports of raw cane sugar, refined sugar, and sugar-containing products are regulated under multilateral (WTO) and bilateral tariff rate quotas. Relatively high MFN tariffs normally discourage above-quota imports. The annual WTO TRQ minimum of 1,117,195 metric tons raw value (MTRV) of raw cane sugar is allocated among 40 countries, based on patterns observed when trade was relatively unrestricted (1975-81), with the Dominican Republic, Brazil, the Philippines, and Australia taking the largest shares. A TRQ for specialty sugar is reserved within the annual WTO TRQ of 22,000 MTRV of refined sugar, of which certain quantities are allocated to Canada (10,300 MTRV) and Mexico (2,954 MTRV). The TRQ for sugar-containing products of 64,709 MTRV is mostly allocated to Canada. The overall TRQ quantities are determined by the USDA for each fiscal year, and USTR allocates the volumes.<sup>21</sup>

4.38. Bilaterally, the Dominican Republic-Central American Free Trade Agreement (CAFTA-DR) and certain other free trade agreements (FTAs) (Colombia, Panama, Peru, Chile, and Morocco) provide additional TRQs for sugar, syrup goods, and sugar-containing products provided the countries can demonstrate a trade surplus in these goods based on the most recent data available. The United States-Mexico-Canada Agreement (USMCA) provides Canada annual TRQs of 9,600 metric tons of refined beet sugar and 9,600 metric tons of sugar-containing products. Sugar imports from Mexico are restricted under agreements that suspend U.S. anti-dumping and countervailing duties in return for annual export limits, with a proportional limit for refined sugar, and minimum reference prices for refined sugar and raw sugar. Moreover, all imported sugar must be accompanied by export licenses issued by Mexico.

4.39. Three inter-related programs facilitate the use of domestic refining capacity and enable U.S. sugar refiners and manufacturers of sugar-containing products to compete in world markets. Under the Refined Sugar Re-Export Program, a licensed refiner may import sugar at world market prices for refining as long as an equivalent quantity of refined sugar is exported or transferred to a participant in the Sugar-Containing Products Re-Export Program (SCP). The SCP licensee is, in turn, obliged to export a like amount of sugar as has been received from a licensed refiner. In addition, manufacturers of polyhydric alcohols may purchase sugar at world market prices from licensed refiners for use in manufacturing of products not for human consumption under the Polyhydric Alcohol Program.

#### **4.1.1.1.8 Other Farm Act and disaster programs**

4.40. The Supplemental Nutrition Assistance Program (SNAP) has been offering assistance to eligible, low-income individuals and families since 1969. At the time of enactment, about 76% of the projected outlays over the five-year life cycle of the 2018 Farm Act (FY2019/23) were anticipated SNAP expenditures of some USD 65 billion per year. However, the economic disruptions and unemployment attributable to the COVID-19 pandemic pushed SNAP expenditures to record levels in 2020 and 2021. The average number of participants in SNAP grew by 16% from 2019 to 2021 to reach 41.5 million. This figure is nevertheless below the level of enrolment after the financial crisis of 2008-09, when participation in SNAP peaked at an average of 47.6 million persons in 2013. The spike in SNAP expenditures was mainly caused by a rise in benefits, including to households that normally receive less than the authorized maximum. The average benefit was roughly stable, ranging from USD 125 to USD 135 per person per month, from 2009 to 2019. As monthly benefits

<sup>20</sup> For raw cane sugar, the deficit will first be allocated to other processors in the same state, then to processors in the two other cane-producing states, and finally, if necessary, to processors in other states.

<sup>21</sup> The United States notified its WTO TRQs for FY2020 in WTO document G/AG/N/USA/149, 2 March 2021.

increased to an average USD 155 per person in 2020 and USD 216 in 2021, total SNAP expenditures climbed from USD 60 billion in 2019 to USD 79 billion in 2020, and to USD 112.6 billion in 2021.<sup>22</sup>

4.41. The USDA FSA administers various programs that address conservation issues such as the protection of drinking water, preservation of wildlife habitats, reduced soil erosion, preservation and restoration of forests and wetlands, and assistance to farmers facing damage from natural disasters. The 2018 Farm Act reauthorized the principal land retirement program, i.e. the Conservation Reserve Program (CRP). The program offers an annual rent to farmers who remove environmentally sensitive land from agricultural production and plant species that improve environmental quality. Although benefits per participant were reduced, the CRP was allowed to expand from a maximum of 24 million acres in FY2019 to 27 million acres in FY2023. CRP contracts normally run for 10 to 15 years, although longer contracts (30 years) may be available in certain cases. The CRP was also made more flexible for grazing and commercial uses, as well as for the transitioning of CRP land for new and limited resource producers. Other conservation programs include the ACEP; the Conservation Reserve Enhancement Program, an offshoot of CRP; the Emergency Conservation Program; the Farmable Wetlands Program; the Grassland Reserve Program; and the Source Water Protection Program.

4.42. Working lands programs, which assist farmers in improving land management practices, are administered by the USDA Natural Resources Conservation Service, and cover a wide variety of issues. The two main working lands programs – the Environmental Quality Incentives Program (EQIP) and the Conservation Stewardship Program (CSP) – were reauthorized through the 2018 Farm Act, with funding increased for EQIP but reduced for CSP.

4.43. The Noninsured Crop Disaster Assistance Program (NAP) compensates enrolled agricultural producers for natural disaster damage to crops where crop insurance is not available. The 2018 Farm Act amended NAP to allow NAP eligibility for crops that may be covered by crop insurance, but only under whole-farm or weather index policies. The payment calculation was modified to consider the producer's share of the crop, service fees were raised, and payment limits (per producer) were introduced for catastrophic (USD 125,000) and buy-up (USD 300,000) coverage.

4.44. The 2017 Wildfires and Hurricanes Indemnity Program (WHIP), authorized under the Bipartisan Budget Act, provided compensation to agricultural producers for necessary expenses related to crop, tree, vine, and bush losses caused by a series of hurricanes and wildfires in 2017. Payments were based on individual losses, and could reach 95% of the losses for farmers with crop insurance, and 65% for non-insured farmers, retroactively from 1 January 2017. All producers receiving a WHIP payment were required to take out crop insurance or NAP coverage for the following two crop years. The Additional Supplemental Appropriations for Disaster Relief Act of 2019 (P.L. 116-29) expanded the eligibility for WHIP compensation for additional weather-related losses. As of 10 July 2020, USD 152 million had been paid to uninsured producers for eligible during 2017 (calendar year) for crops intended to be harvested in 2017 and 2018 (crop years).<sup>23</sup>

4.45. P.L. 116-29 and the Further Consolidated Appropriations Act of 2020 (P.L. 116-94) also introduced the Wildfires and Hurricanes Indemnity Program Plus (WHIP+), which became effective on 13 September 2019. WHIP+ compensated agricultural producers for individual losses caused by extreme weather conditions in 2018 and 2019. From 23 March 2020, producers could sign up for losses due to excessive moisture or extreme drought, which were loss categories authorized under P.L. 116-94. Uninsured producers had received USD 84 million in compensation for losses under WHIP+ by 28 September 2020.<sup>24</sup> As with WHIP, recipients were required to sign up for crop insurance or NAP coverage for the following two crop years.

#### **4.1.1.1.9 Ad hoc assistance for loss of traditional export markets**

4.46. In 2018, the United States began to impose a series of adjustments on imports of steel and aluminum as well as on a broad range of products from China. Claiming that the United States had taken measures that were inconsistent with its WTO commitments, seven trading partners responded with retaliatory tariffs on imports from the United States, including agricultural and food

<sup>22</sup> USDA Food and Nutrition Service, SNAP web tables. Viewed at: <https://fns-prod.azureedge.us/sites/default/files/resource-files/34SNAPmonthly-4.pdf>.

<sup>23</sup> WTO document G/AG/N/USA/134/Rev.1, 6 August 2020.

<sup>24</sup> WTO document G/AG/N/USA/143, 7 October 2020.



products. The European Union and Türkiye initiated their retaliatory measures in June 2018, followed by China, Mexico, Canada, and the Russian Federation in July 2018. Türkiye modified its retaliatory tariffs in October 2018. In addition, India imposed retaliatory tariffs from June 2019, notably affecting U.S. sales to India of almonds, walnuts, fresh apples, lentils, and chickpeas. In January 2021, the United Kingdom carried over EU retaliatory tariffs upon its departure from the EU trading regime.

4.47. Canada and Mexico removed their retaliatory tariffs in May 2019 as the USMCA was being finalized. After the signing of the Phase One Agreement between the United States and China in early 2020, China announced that it would be granting exemptions to its retaliatory tariffs on a range of U.S. goods. The United States and the European Union reached an agreement in October 2021 that included the lifting of retaliatory tariffs by the European Union. Overall, trade tensions appear to have abated, but some retaliatory measures by other WTO Members are still maintained.

4.48. The trade mitigation package announced in July 2018 to assist farmers experiencing difficulties as a result of foreign retaliatory action had three main elements: a Market Facilitation Program (MFP) providing payments to eligible producers to offset some of the increased costs resulting from delayed marketing; a Food Purchase and Distribution Program (FPDP) to purchase and distribute commodities domestically through nutrition assistance programs; and an Agricultural Trade Promotion Program (ATP) to develop alternative foreign markets. Further details, including estimated initial payments by commodity, were released in September 2018.<sup>25</sup>

4.49. The MFP provided direct payments to eligible producers using CCC Charter Act authorities. In 2018, commodity-specific payment rates, paid on actual production, were established for almonds, fresh sweet cherries, maize, cotton, milk, hogs, soybeans, sorghum, and wheat, based on the level of estimated trade lost due to retaliation. Milk payments were made on production during a specified historical period, while hog payments were made on the number of hogs in a specific time period. The MFP covered additional specialty and non-specialty crops in 2019.<sup>26</sup> Payments for non-specialty crops were based on a single-county payment rate (USD 15 to USD 150 per acre) multiplied by a farm's aggregate plantings of MFP-eligible crops, irrespective of which of those crops were planted in 2019.<sup>27</sup> However, the total payment for eligible plantings could not exceed the total 2018 plantings on each farm. A single rate was applicable for all eligible tree nuts, i.e. almonds, hazelnuts, macadamia nuts, pecans, pistachios, and walnuts. Payments under the MFP amounted to USD 8.6 billion in 2018, USD 14.5 billion in 2019, and USD 3.8 billion in 2020 (calendar year). Payments in February 2020, which represented 25% of the authorized payment total, were the last tranche of MFP payments. Forecast outlays in calendar year 2021 (USD 42.1 million) refer to minimal residual payments to cover errors, omissions, and appeals.<sup>28</sup>

4.50. Since 1 October 2018, the USDA Agricultural Marketing Service has used the FPDP to purchase food – principally meat, dairy, fruit, vegetables, tree nuts, and processed foods – for distribution through USDA nutrition assistance programs such as food banks and food pantries participating in the Emergency Food Assistance Program (TEFAP) and child nutrition programs. Purchases have been made at current market prices through a competitive bids process, and the eligibility of the recipients has been determined by household income in relation to federal poverty guidelines. The purchased food must also conform with nutrition goals and guidelines. Estimated outlays under the FPDP were USD 1.144 billion in FY2019 and USD 1.203 billion in FY2020.<sup>29</sup>

4.51. Administered by the USDA Foreign Agricultural Service (FAS) under the CCC Charter Act, the ATP provided cost-shared assistance to eligible U.S. organizations in all agricultural, fish, and

<sup>25</sup> USDA (2018), "USDA Launches Trade Mitigation Programs", Release No. 0172.18, 4 September. Viewed at: <https://www.usda.gov/media/press-releases/2018/09/04/usda-launches-trade-mitigation-programs>.

<sup>26</sup> Covered non-specialty crops were alfalfa hay, barley, canola, maize, crambe, dried beans, dry peas, extra-long staple cotton, flaxseed, lentils, rice (long- and medium-grain), millet, mustard seed, oats, peanuts, rapeseed, rye safflower, sesame seed, chickpeas (small and large), sorghum, soybeans, sunflower seed, temperate japonica rice, triticale, upland cotton, and wheat.

<sup>27</sup> The county payment rate was calculated based on the commodity rates, which were based on the estimated impact of the foreign trade retaliation, multiplied by historical county acreage and yields for all crops, with the total divided by total eligible acres to get the per-county payment.

<sup>28</sup> USDA Office of Inspector General (2021), *Commodity Credit Corporation's Financial Statements for Fiscal Years 2021 and 2020*, Audit Report 06403-0004-11, November.

<sup>29</sup> WTO document G/AG/N/USA/157, 30 September 2021.

forestry sectors in 2019. Support was mainly provided through partnerships with national and regional non-profit organizations for activities such as advertising, public relations, point-of-sale demonstrations, market research, and technical assistance. Overall, the ATP allocated USD 300 million to 59 organizations in 2019. The individual allocations ranged from USD 30,000 to USD 34.6 million.<sup>30</sup> This funding was in addition to long-standing cost-shared market development programs such as the Market Access Program, under which approximately USD 175 million is allocated in each fiscal year for overseas marketing and promotion, and the Foreign Market Development Program, which provides around USD 27 million each year to eligible organizations.

4.52. The USDA ERS estimates that direct U.S. agricultural export losses as a result of trade retaliation amounted to more than USD 27 billion by the end of 2019.<sup>31</sup> Most of these losses were accounted for by China (USD 25.7 billion), whose retaliatory tariffs affected nearly all agricultural and food products imported from the United States. More limited trade impacts occurred in the European Union (USD 600 million), Mexico (USD 500 million), Canada, Türkiye, and India (about USD 100 million in each market). By commodity, soybeans were by far the hardest hit commodity, accounting for 71% of the annualized export losses, followed by sorghum (6.5%), pork (4.9%), and fruit (4.7%). Some of the less prominent specialty crops, such as sweet cherries, were also severely affected due to their perishability, export orientation, and difficulties in finding alternative markets. Geographically, soybean-producing states in the Midwest (notably Iowa, Illinois, and Kansas) were the most affected, but losses were also significant in California (fruit, tree nuts, and dairy) and Texas (sorghum and cotton).

#### 4.1.1.1.10 COVID-19 measures

4.53. The USDA initially received funding through the CARES Act and the Families First Coronavirus Response Act for measures to mitigate or prevent effects of the COVID-19 pandemic. Supplementary appropriations of nearly USD 87 billion were made available in FY2021 through the Consolidated Appropriations Act of 2021 and the American Rescue Plan Act of 2021 (P.L. 117-2) (ARP Act). Total outlays in FY2021 were nearly USD 78.5 billion, with total commitments of USD 81 billion and a further USD 30.5 billion remaining to be obligated. Expenditures under SNAP accounted for nearly USD 50 billion of the total COVID outlays in FY2021.

4.54. Specifically, the CARES Act provided the USDA with additional funding of USD 9.5 billion in support of agricultural producers and USD 14 billion in enhanced borrowing authority for the CCC (available after June 2020). The Coronavirus Food Assistance Program (CFAP) announced in April 2020 had two major components: (i) USD 16 billion in direct support to farmers and ranchers affected by price declines and supply chain disruptions; and (ii) USD 3 billion provided to purchase dairy, meat, and fresh produce to donate to people in need. Eligible producers were persons and legal entities of specified agricultural commodities who faced market disruptions and marketing costs due to the COVID-19 pandemic. Moreover, to be eligible for payments, the producer had to have either average gross income of less than USD 900,000 in the tax years 2016, 2017, and 2018 or derive at least 75% of their adjusted gross income from farming, ranching, or forestry.<sup>32</sup> Eligible commodities included livestock, dairy, wool, certain non-specialty crops (malting barley, canola, maize, upland cotton, millet, oats, soybeans, sorghum, sunflowers, durum wheat, and hard red spring wheat), and specialty crops (various fruit and vegetables, nuts, beans, and mushrooms). Commodities that had not seen a price decline of 5% or more were ineligible for support under CFAP 1.<sup>33</sup> Payments under CFAP 1 were capped at USD 250,000 per person or legal entity, or USD 250,000 per shareholder in a corporate entity, at most USD 750,000 per corporate entity. The FSA accepted applications for participation in CFAP 1 from 26 May to 11 September 2020.

<sup>30</sup> USDA FAS, *ATP Funding Allocations*. Viewed at: <https://www.fas.usda.gov/programs/agricultural-trade-promotion-program-atp/atp-funding-allocations>.

<sup>31</sup> USDA ERS (2022), *The Economic Impacts of Retaliatory Tariffs on U.S. Agriculture*, ERR-304, January. Viewed at: <https://www.ers.usda.gov/webdocs/publications/102980/err-304.pdf?v=1416.6>. The House Committee on Appropriations directed the ERS to assess the impact of foreign tariffs on U.S. agricultural products in P.L. 116-260.

<sup>32</sup> Recipients would also have to comply with provisions of the "Highly Erodible Land and Wetland Conservation" regulations and not have a controlled substance violation. Recipients that were foreign persons, needed to provide land, capital, and a substantial amount of active personal labor to the farming operation.

<sup>33</sup> Excluded commodities included sheep over two years old, eggs, soft and hard red winter wheat, white wheat, rice, flax, rye, peanuts, feed barley, extra-long staple cotton, alfalfa, forage crops, hemp, and tobacco.

4.55. Additionally, the USDA Agricultural Marketing Service established the Farmers to Families Food Box Program to purchase eligible products (dairy, meat, and fresh fruit and vegetables), packaged in boxes, for donation to those in need. According to USDA information, more than 173 million boxes with a purchase value of about USD 6 billion had been distributed under the Program by end-May 2021.<sup>34</sup>

4.56. As additional funding became available from the CCC, the CFAP 2 was launched in the summer of 2020. The eligibility criteria for participating producers were largely the same as those under CFAP 1, while the selection of eligible commodities was split in three categories: (i) price trigger commodities (price declines of 5% or more); (ii) flat rate crops (crops not meeting the 5% price decline trigger or with insufficient data to calculate the price change); and (iii) sales commodities.<sup>35</sup> Hay, except alfalfa, and crops intended for grazing, as well as some other specified commodities, were ineligible for CFAP 2. Tobacco, which had been excluded from CFAP 1, became eligible under CFAP 2, and financed with funds remaining under the CARES Act. In all, CFAP covered more than 300 eligible commodities (including aquaculture).

4.57. The CFAP 2 payment limitation per recipient was the same, but separate from, the limit under CFAP 1. Applications for participation in CFAP 2 could be filed between 21 September and 11 December 2020. CFAP 2 was reopened in 2021, providing additional payments for eligible cattle and row-crop producers. The sign-up period began on 5 April and closed on 12 October 2021. An update to CFAP, announced by the USDA on 24 August 2021, included additional eligible commodities and more flexible payment calculations for sales-based commodities and eligible livestock and poultry contract producers.<sup>36</sup> In total, CFAP (1 and 2) made payments of USD 23.5 billion in 2020, and forecasted expenditures in 2021 were USD 9.3 billion.<sup>37</sup> The CCC-funded payments (about USD 12 billion) were mostly paid in FY2021.

4.58. Flexibilities introduced in response to the COVID-19 pandemic included broadened use of the Disaster Set-Aside loan provision, normally used in the wake of natural disasters, by the USDA FSA. Borrowers under the Farm Storage Facility Loan program were given a one-time option to defer the annual instalment payment. The repayment period for Marketing Assistance Loans was extended from the customary 9 months to 12 months. Producers' access to foreign farm hands was eased as H-2A visa requirements were temporarily changed for foreign workers already in the United States, allowing more flexibility in switching between employers, and possible extension of their stay. In addition to the relief payments provided under CFAP, farmers were eligible for forgivable loans, subject to the same terms and conditions as other small businesses, under the PPP administered by the SBA (Section 1.2.2).

#### 4.1.1.2 Trade measures

##### 4.1.1.2.1 Imports

4.59. U.S. agricultural import duties are generally low in comparison with those of most other countries. In addition, the import duties, if any, are applied on a customs value that excludes transportation and landed costs. The simple average tariff on agricultural goods (WTO definition) was 9.2% in 2021, only marginally higher than in 2016 (9.1%) or in 2014 (9.0%). With no change in the underlying tariff policy, variations still occur in the applied *ad valorem* equivalents of specific and compound duties when the calculated duty changes due to fluctuating import prices for the goods subjected to such duties. On average, the highest MFN tariffs apply to dairy products (27%), and beverages, spirits, and tobacco (22.7%). For other agricultural product categories, their simple average tariffs are close to, or well below, the sector average (Table A3.1).

<sup>34</sup> USDA Agricultural Marketing Service, *USDA Farmers to Families Food Box*. Viewed at: <https://www.ams.usda.gov/selling-food-to-usda/farmers-to-families-food-box>.

<sup>35</sup> A USDA FSA fact sheet dated 1 October 2020 describes CFAP 2 in some detail. Viewed at: <https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/cfap2-general-factsheet.pdf>. The most recent factsheet is dated 13 September 2021 and available at: <https://www.farmers.gov/sites/default/files/documents/cfap2-factsheet-09132021.pdf>.

<sup>36</sup> USDA, *[Archived] Coronavirus Food Assistance Program*. Viewed at: <https://www.farmers.gov/archived/cfap2>.

<sup>37</sup> USDA Office of Inspector General (2021), *Commodity Credit Corporation's Financial Statements for Fiscal Years 2021 and 2020*, Audit Report 06403-0004-11, November.

4.60. The United States has WTO tariff quota commitments that cover 45 product categories representing 178 agricultural tariff lines at present. The main TRQs concern cheese and other dairy products, sugar and sugar-containing products, beef, sheep meat, tobacco, and cotton. Quota fill rates, which are reported to the WTO Committee on Agriculture, may vary little overall though with significant year-to-year changes for some individual product categories (Section 3.1.3.5 and Table A3.2). Certain dairy products and sugar have separate licensing procedures and quota allocation mechanisms. As explained above, the sugar TRQs are allocated to exporting countries, rather than to importers, based on historical supply data. A market allocation mechanism applies to domestic sugar, and the import regime may thus be adjusted to take account of changes in U.S. market conditions.

4.61. The United States has reserved the right to apply the Special Agricultural Safeguard (SSG) on certain imports from other WTO Members. The SSGs may be based on price or volume, but the United States has rarely opted for volume-based SSGs. The last volume-based action was applied in 2015 (on butter), and this type of SSG had previously not been used since 2003. Price-based SSGs are triggered automatically when the declared price for an item is below a pre-established price range and, applied at the level of every single shipment, some SSGs may affect very small quantities of trade. The 194 tariff lines on which the United States has reserved the right to use SSGs mainly concern milk and dairy products, sugar and sugar-containing products, and cotton. In 2020, price-based SSGs were taken on 33 tariff lines, down from 36 tariff lines in 2019, 37 tariff lines in 2018, 41 tariff lines in 2017, and 55 tariff lines in 2016.<sup>38</sup>

#### **4.1.1.2.2 Exports**

4.62. The 2018 Farm Act consolidated four existing USDA export promotion programs – the Market Access Program (MAP), the Foreign Market Development Program (FMDP), the E. (Kika) de la Garza Emerging Markets Program (EMP), and the Technical Assistance for Specialty Crops (TASC) – under the umbrella Agricultural Trade Promotion and Facilitation Program (ATPFP) with an annual budget authorization of USD 255 million through FY2023. The budget authorization includes funding for MAP of USD 200 million (per year), USD 34.5 million for the FMDP, and a maximum USD 8 million and USD 9 million for the two other programs, respectively. MAP provides cost-shared assistance to agricultural, non-profit trade associations and cooperatives, regional trade groups, and state agencies for marketing and promotional activities overseas. Large U.S. companies have not been able to access MAP funds since FY1998. MAP focuses on promotion of U.S. agricultural commodities, and the contribution to the costs required from the beneficiaries is higher for brand-name goods (at least 50%) than for generic promotions (minimum 10%). The FMDP mainly promotes bulk commodities such as grains, oilseeds, and cotton. The EMP contributes to the costs of technical assistance (e.g. feasibility studies, market research, sector assessments, orientation visits, specialized training, and business workshops) that promotes U.S. agricultural exports to emerging markets. TASC is available for projects that address SPS measures or technical barriers in foreign markets that constrain U.S. exports of specialty crops.

4.63. The 2018 Farm Act created a Priority Trade Fund to support any ATPFP program (i.e. MAP, FMDP, EMP, and TASC) that is oversubscribed (USD 3.5 million per year through FY2023). Any unused ATPFP funds that remain unallocated at the end of the fiscal year following their initial apportionment are made available for distribution through the priority trade fund. In addition to the export promotion programs administered by the USDA, the CCC Charter funds the Quality Samples Program (QSP) through the CCC's borrowing authority. The QSP focuses on potential industrial users, and assists agricultural trade organizations in providing samples of food and fiber products for test runs by overseas manufacturers.

4.64. The United States has two schemes that provide export credit guarantee programs, allowing the exporter or private financial sector in the United States to extend dollar-denominated financing at prevailing market interest rates. The GSM-102 credit guarantee program and the Facility Guarantee Program (FGP) were both reauthorized under the 2018 Farm Act. GSM-102 guarantees credit (terms up to 18 months) to approved foreign financial institutions for the purchase of U.S. food and farm products. The CCC selects commodities and products according to market potential and applicable legislative and regulatory requirements. The CCC also qualifies the exporters for participation and approves the financial institutions involved. The GSM-102 program fees cover the

<sup>38</sup> WTO documents G/AG/N/USA/152, 31 May 2021; G/AG/N/USA/140, 141, and 142, 20 August 2020; and G/AG/N/USA/130, 15 May 2020.

program's long-term operating costs and losses. The FGP provides payment guarantees on the sale of goods and U.S. services that will enhance the sale of U.S. agricultural goods in markets where demand may be constrained by impediments in handling, marketing, storage, or distribution. The FGP covers credit terms up to 10 years. The CCC is required by statute to make available a total of USD 5.5 billion annually, to both the GSM-102 program and the FGP. For FY2022, the USDA FAS announced the availability of USD 500 million for 85 eligible countries under the FGP.<sup>39</sup>

4.65. Recently signed trade agreements include provisions to improve market access for U.S. agricultural producers. The Phase One Agreement with China lifts or modifies import restrictions on several U.S. agricultural products and targets purchasing from the United States. Japan has committed to reduce tariffs on U.S. canola oil, wheat, beef, pork, feed grains, and oil seeds within agreed phase-in periods (5 to 15 years). The USMCA expands market access for some commodities relative to the North American Free Trade Agreement (NAFTA) and provides for new rules governing agricultural biotechnology and SPS measures. The United States has organic equivalence arrangements with Canada, Chinese Taipei, the European Union, Japan, the Republic of Korea, and Switzerland. The arrangement with Japan was recently amended to include livestock products.

#### 4.1.1.2.3 Food aid

4.66. The United States provides international food assistance through three main programs. USAID's Bureau for Humanitarian Assistance (BHA), as authorized under Title II of the Food for Peace Act, distributes food aid. The USDA FAS administers Food for Progress (agricultural development) and the McGovern-Dole International Food for Education and Child Nutrition Program. Title II of the Food for Peace Act, which is the largest program, receives annual appropriations of about USD 1.5 billion. The 2018 Farm Act eliminated a requirement to monetize at least 15% of Title II commodities in the local recipient market.

4.67. Most U.S. food aid is provided in-kind, and U.S. laws stipulate a number of conditions for in-kind food aid. Title II of the Food for Peace Act funds food assistance to meet emergency needs as well as development activities, i.e. non-emergencies, to address the root causes of food insecurity. The 2018 Farm Act raised the minimum level of Title II funds for non-emergency assistance from USD 350 million to USD 365 million per year, while maintaining annual non-emergency assistance capped at 30% of Title II funds.<sup>40</sup> Title II resources are predominantly U.S. commodities purchased on the commercial market; they should preferably (minimum 50%) be shipped on U.S.-flagged vessels. The 2018 Farm Act amended the McGovern-Dole program to allow up to 10% (of the value) of the food to be distributed to be procured locally or regionally.

#### 4.1.1.3 Levels of support

4.68. The OECD notes that the support the United States provides to its agricultural producers is consistently below the OECD average.<sup>41</sup> Its Producer Support Estimate (PSE) for the United States declined from 19.5% of gross farm receipts in 2000-02 to 12% in 2018-20, or USD 44.9 billion on average over the three years (Table 4.5). Agricultural reform has also been characterized by a significant shift towards forms of support that are less distortive of production and trade. At 32%, the share of the potentially most trade-distorting transfers has declined and is below the OECD average. Producer prices mostly align with border prices with the notable exceptions of milk, sugar, and (to some extent) sheep meat, due to market price support and border measures, including tariff rate quotas.

<sup>39</sup> USDA FAS (2021), *FY 2022 FGP Allocations and Destinations*, 6 October. Viewed at: <https://www.fas.usda.gov/programs/facility-guarantee-program/fy-2016-fgp-allocations>.

<sup>40</sup> The Food for Peace (FFP) programs, Title II, the Bill Emerson Humanitarian Trust, Farmer-to-Farmer, Food for Progress, and the McGovern-Dole International Food for Education and Child Nutrition Program, provide in-kind aid and, in the case of Farmer-to-Farmer, technical assistance. Congress most recently reauthorized these programs through FY2023 in the Agriculture Improvement Act of 2018 (P.L. 115-334).

<sup>41</sup> OECD, *Agricultural Policy Monitoring and Evaluation 2021*, United States. Viewed at: <https://www.oecd-ilibrary.org/sites/5463a4b6-en/index.html?itemId=/content/component/5463a4b6-en>.



**Table 4.5 Total PSE and single commodity transfer values for selected commodities, 2016-20**

(USD million and % of gross farm receipts for respective products)

	2016	2017	2018	2019	2020
<b>Producer support estimate</b>					
USD million	34,888	32,442	42,196	51,718	40,787
PSE as % gross farm receipts	9.1	8.2	10.5	14.4	11.0
<b>Single commodity transfers (SCT)</b>					
Wheat					
USD million	905	568	888	707	686
SCT as % gross farm receipts	9.2	6.5	8.4	7.4	7.0
Maize					
USD million	2,215	2,167	2,128	2,367	4,667
SCT as % gross farm receipts	4.2	4.2	3.9	4.7	7.1
Soybeans					
USD million	1,168	1,621	8,793	1,190	2,036
SCT as % gross farm receipts	2.8	3.8	19.0	3.8	4.2
Cotton					
USD million	835	670	1,556	1,190	933
SCT as % gross farm receipts	12.6	8.6	19.6	16.9	14.8
Milk					
USD million	6,895	7,531	8,235	7,584	2,245
SCT as % gross farm receipts	19.9	19.8	23.1	18.4	5.2
Beef and veal					
USD million	1	1	0	242	4,715
SCT as % gross farm receipts	0.0	0.0	0.0	0.5	8.8
Refined sugar					
USD million	907	1,179	1,345	1,294	1,327
SCT as % gross farm receipts	38.0	46.9	56.7	54.9	40.7

Source: OECD Stats.

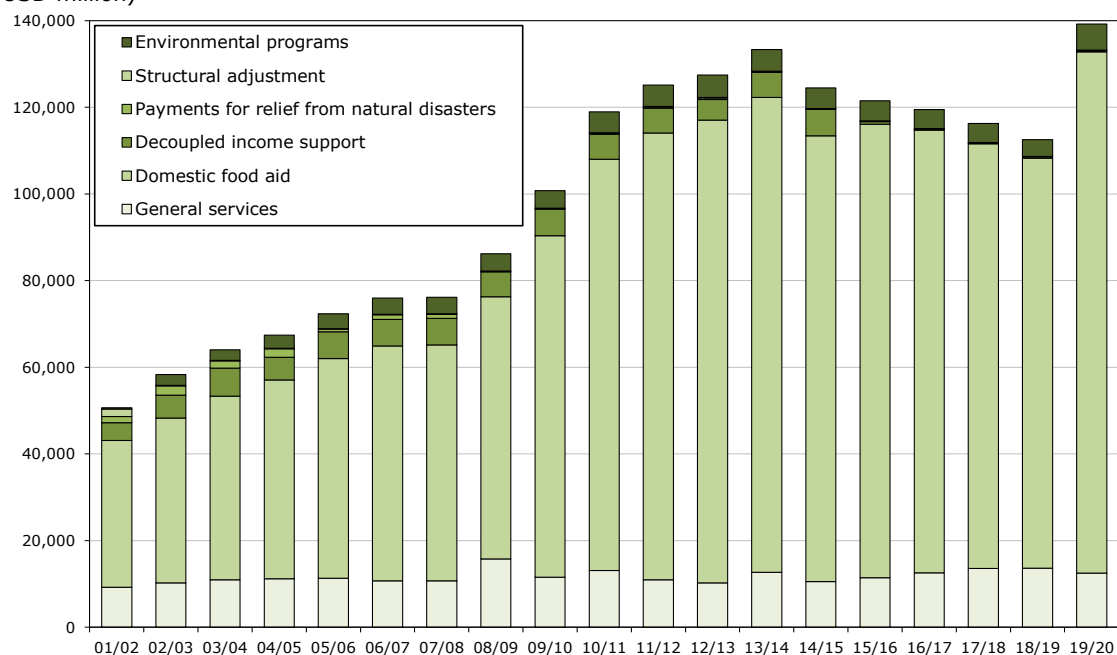
4.69. The OECD considers the U.S. emphasis on insurance and risk management to be a useful tool to assist producers in times of need. However, a move towards whole-farm revenue coverage, and less resort to commodity-specific insurance, would better exploit differences in yield and price fluctuations across products, and remove distortions in their production. Risk management instruments should also be evaluated to ensure that the public budget does not needlessly carry risks that should be borne by farmers. Voluntary conservation programs appear to be effective in addressing soil erosion and water pollution but could be better leveraged to improve natural hazard risks management *ex ante* and more resilient recovery in the aftermath of disasters. It will also be important for the United States to ensure that the recent resort to *ad hoc* support against market shocks and natural disasters does not become entrenched. Finally, the resolution of current trade uncertainties would ease farmers' pursuit of market opportunities.

4.70. At the WTO, the United States notifies information and data related to its agricultural and food assistance programs on a regular basis to the Committee on Agriculture and the Committee on Subsidies and Countervailing Measures. During the review period, the Committee on Agriculture received notifications for marketing years 2016, 2017-18, 2018-19, and 2019-20.<sup>42</sup> Green Box programs, i.e. support that has minimal or no distortive effects on trade, constitute the main part of the reported assistance. The United States notified Green Box support totaling USD 139.2 billion in marketing year 2019/20, an increase of USD 23 billion compared with the previous year, primarily due to increased spending on domestic nutrition assistance in response to the COVID-19 pandemic (Chart 4.3). Although expenditures on environmental programs are much smaller relative to food assistance, the funding of such programs (in particular the CRP and EQIP) is gradually increasing.

<sup>42</sup> WTO documents G/AG/N/USA/123, 31 October 2018; G/AG/N/USA/135, 24 July 2020 and its Rev.1, 8 April 2021; G/AG/N/USA/150, 8 April 2021 and Corr.1, 28 October 2021; and G/AG/N/USA/157, 30 September 2021.

**Chart 4.3 Green Box support in the United States, 2001/02–2019/20**

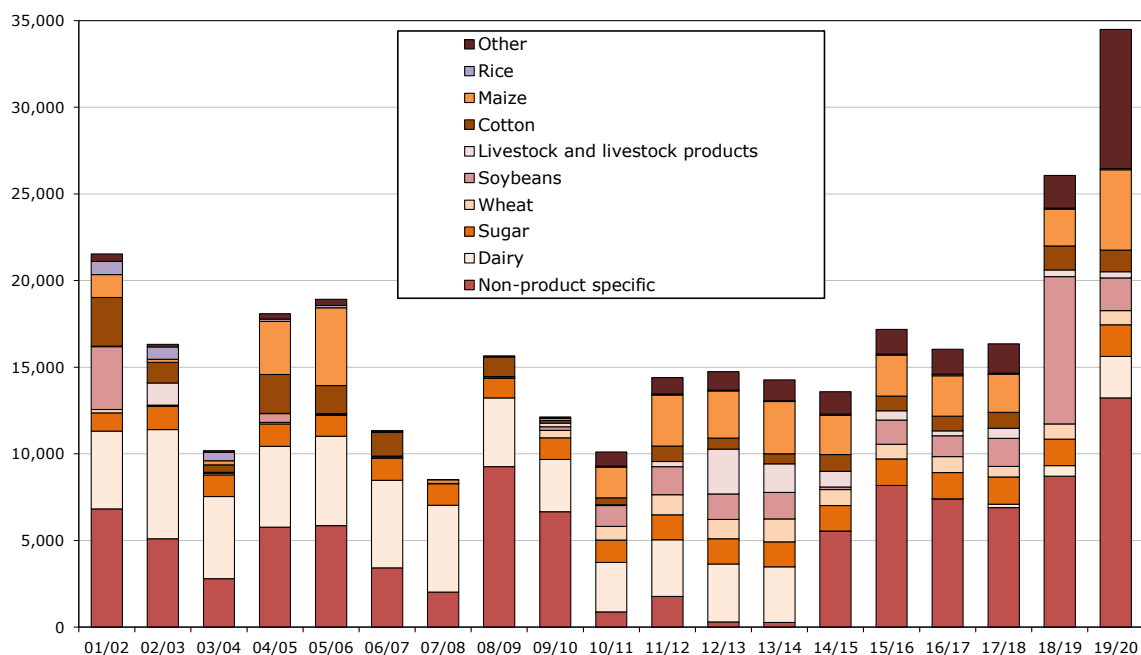
(USD million)



Source: WTO notifications.

**Chart 4.4 Amber Box support in the United States, 2001/02–2019/20**

(USD million)



Source: WTO notifications.

4.71. The United States does not grant agricultural export subsidies (Red Box) and does not report payments under production limitation programs (Blue Box).<sup>43</sup> As for subsidies that are capped in the

<sup>43</sup> Pursuant to the Nairobi Ministerial Decision on Export Competition, the United States removed its export subsidy entitlements in Part IV of Schedule XX in 2018. The modification was certified in November 2018 (WTO document WT/Let/1418, 8 November 2018).

WTO framework (Amber Box), they have been consistently below, or even well below, USD 20 billion per year until recently (Chart 4.4).

4.72. The U.S. commitment level on Current Total Aggregate Measurement of Support (AMS) – USD 19.1 billion, which excludes *de minimis* product-specific and non-product-specific support – was therefore significantly higher than the Current Total AMS reported for the 2016 (USD 3.8 billion) and 2017/18 (USD 4 billion) marketing years. This changed markedly in 2018/19, when MFP payments pushed product-specific support for key commodities (notably maize and soybeans) above the *de minimis* level, resulting in a Current Total AMS of USD 13.1 billion in that marketing year. Although the reported product-specific MFP payments were significantly lower in 2019/20, the pandemic relief measures under the CFAP, in particular, resulted in a current total AMS of USD 18.25 billion in 2019/20, just USD 856 million below the U.S. commitment level.<sup>44</sup>

#### 4.1.2 Forestry

4.73. The United States accounts for about 7.5% of the world's forests.<sup>45</sup> Forestry, fisheries, and related activities contributed USD 59.2 billion or 0.14% of total U.S. GDP in 2021.<sup>46</sup> Furthermore, the forest product manufacturing sector, e.g. paper, packaging, and wood products, accounts for about 4% of the U.S. manufacturing GDP and provides employment to 950,000 persons.<sup>47</sup> Employment in the forestry and logging sector proper was 34,180 in 2020.<sup>48</sup> Although its share of GDP is small, the sector makes a more significant contribution to trade, with wood and wood products accounting for 3.2% of U.S. total imports and 2.4% of total exports in 2021.

4.74. Land covered by forests has remained relatively stable for the last 100 years and, in 2017, there were 765.5 million acres of forests or about 34% of U.S. total land area.<sup>49</sup> Most forests (58%) are private forests; 42% are public forests of which the Federal Government has the most ownership, with smaller amounts owned by states and counties/municipalities.<sup>50</sup> The majority of private forests are owned by almost 10 million private owners, with the top percentage being "family and individual" owned parcels of forest lands averaging less than 10 hectares in size.<sup>51</sup> There have been some ownership shifts in recent years with less private corporate ownership and more non-corporate ownership. Additionally, fewer forests are now owned by integrated wood product manufacturers, and more are owned by real estate investment trusts and timber investment management organizations. This shift has been driven by tax laws that make such ownership more favorable. Forests are roughly divided equally between east and west with Eastern forests dominated by oak, hickory, maple, and beech species and Western forests by fir, pine, and spruce species, with some tropical forests existing in Hawaii and certain U.S. territories. Furthermore, Eastern forests tend to be privately owned, whereas those in the West are often on public lands. Forest volumes are almost evenly split between soft and hardwoods.

<sup>44</sup> Although the reported product-specific MFP payments declined from USD 8.76 billion in 2018/19 to USD 827.7 million in 2019/20, the non-product-specific MFP payments rose from USD 5.2 billion to USD 8.4 billion. Payment rates were set by crop for 2018 MFP, and at the county level for all eligible non-specialty crops for 2019 MFP. One reason for the change of design was to prevent incentivizing production of one crop over another and to minimize distortions.

<sup>45</sup> National Association of State Foresters, *Timber Assurance*. Viewed at: <https://www.stateforesters.org/timber-assurance/legality/forest-ownership-statistics/>.

<sup>46</sup> Includes forestry, fishing, and related activities (NAICS 113). BEA, *Interactive Data: Gross Output by Industry*. Viewed at: <https://apps.bea.gov/iTable/iTable.cfm?reqid=150&step=2&isuri=1&categories=gdp&xind>.

<sup>47</sup> American Forest & Paper Association, *Our Impact – Forest Products Industry Jobs*, August 2021. Viewed at: <https://www.afandpa.org/statistics-resources/our-impact-forest-products-industry-jobs>.

<sup>48</sup> U.S. Bureau of Labor Statistics, *Forestry and Logging: NAICS 113*. Viewed at: <https://www.bls.gov/iag/tgs/iag113.htm#workforce>.

<sup>49</sup> FIA, *Forest Resources of the United States, 2017*. Viewed at: <https://www.fia.fs.fed.us/program-features/rpa/docs/Forest%20Resources%20of%20the%20United%20States%202017%20Tables%20WOGTR97.xlsx>.

<sup>50</sup> Asia-Pacific Economic Cooperation (APEC) Experts Group on Illegal Logging and Associated Trade (EGILAT) (2018), *Timber Legality Guidance Template for the United States of America*. Viewed at: [https://www.apec.org/docs/default-source/groups/eqilat/2018/us\\_timber-legality-guidancetemplate\\_dec-2018.pdf](https://www.apec.org/docs/default-source/groups/eqilat/2018/us_timber-legality-guidancetemplate_dec-2018.pdf).

<sup>51</sup> National Association of State Foresters, *Timber Assurance*. Viewed at: <https://www.stateforesters.org/timber-assurance/legality/forest-ownership-statistics/>; and USDA Forest Service, U.S. Forest Service, *National Woodland Owner Survey*. Viewed at: <https://www.fia.fs.fed.us/nwos/>.

#### 4.1.2.1 Production, trade, and border measures

4.75. The global production, consumption, and trade of forest products reached a peak in 2018 but there have been declines since then, in part attributed to the COVID-19 pandemic. The United States follows similar trends as it is the world's single-largest producer and consumer of wood products.<sup>52</sup> The United States maintained its position as the largest producer of roundwood, wood pellets, and pulp despite slight declines in 2020 attributed to the pandemic and sawmill closures and natural disasters.<sup>53</sup> Although the United States accounted for about 19% of world production and 18% of consumption of roundwood in 2020, in most wood product categories there was a steady decline in output during 2019-20; however, production increased slightly again in 2021 (Table 4.6).<sup>54</sup>

**Table 4.6 Forestry production volumes, 2018-21**

Product	Units ('000)	2018	2019	2020	2021
Roundwood	m <sup>3</sup>	464,118	459,129	429,700	440,968
Industrial roundwood	m <sup>3</sup>	392,510	387,702	369,175	380,380
Other industrial roundwood	m <sup>3</sup>	13,751	13,624	13,215	13,230
Wood fuel	m <sup>3</sup>	71,609	71,427	60,525	60,588
Wood charcoal	tons	852	852	852	..
Wood chips, particles and residues	m <sup>3</sup>	60,105	61,644	57,501	58,376
Wood pellets and other agglomerates	tons	7,580	8,704	8,524	8,855
Sawnwood	m <sup>3</sup>	81,998	82,472	79,134	80,705
Wood-based panels	m <sup>3</sup>	34,245	34,353	33,407	34,486
Veneer sheets	m <sup>3</sup>	2,209	2,229	2,284	2,370
Sawlogs and veneer logs	m <sup>3</sup>	185,837	187,160	180,237	191,345
Pulpwood, round and split, all species	m <sup>3</sup>	192,921	186,918	175,722	175,805
Pulp for paper	tons	52,186	50,956	49,903	..
Wood pulp	tons	53,233	52,062	50,871	50,895
Pulp from fibers other than wood	tons	168	146	149	..
Paper and paperboard	tons	70,891	68,157	66,239	68,536
Packaging paper and paperboard	tons	49,609	48,045	48,163	..
Recovered paper	tons	47,787	44,661	42,248	..

.. Not available.

Source: FAOStat, *Forestry Production and Trade*. Viewed at: <https://www.fao.org/faostat/en/#data>; and FAO, *Forecast of the Committee on Forests and the Forest Industry: Forest Products Production and Trade 2020-2022*.

4.76. The United States runs an overall trade deficit across forestry product categories; the deficit increased from USD 29.2 billion in 2018 to USD 51 billion in 2021, in particular driven by a significant surge in imports. The United States generally runs a trade deficit in wood and wood-related products, i.e. wood, paper, newspapers, books, and wood furniture, and the same trend was exhibited with declining exports, rising imports, and a continual and growing trade deficit over the period 2018-21. While the United States had a near balance of trade on paper goods, other products with a higher value-added, i.e. furniture, are mainly imported. U.S. exports tend to be raw materials or semi-processed wood products. In particular, there is an important trade surplus of roundwood, as the United States has historically been a major exporter with few imports (Table 4.7).

**Table 4.7 Wood and wood product trade, 2018-21**

(USD million, %)

	2018	2019	2020	2021	% of forestry trade in 2021	Major trading partners (top 3 in 2021)
<b>Trade balance</b>	<b>-29,202</b>	<b>-27,661</b>	<b>-32,299</b>	<b>-51,016</b>		
<b>Exports of wood and wood products</b>	<b>43,065</b>	<b>39,067</b>	<b>35,255</b>	<b>41,850</b>		<b>Canada (28.5%), Mexico (17.4%), China (11.3%)</b>
(% of total exports)	2.6%	2.4%	2.5%	2.4%		
Wood and articles of wood; wood charcoal (HS 44)	9,868.3	8,280.3	7,641.3	9,730.9	23.3%	Canada (26.2%), China (21.1%), Mexico (11.2%)
(% of total exports)	0.6%	0.5%	0.5%	0.6%		

<sup>52</sup> United Nations Economic Commission for Europe (UNECE), *United States Forest Products Annual Market Review and Prospects, 2015-2021*. Viewed at: <https://unece.org/fileadmin/DAM/timber/country-info/statements/usa2020.pdf>.

<sup>53</sup> FAO, *Forest Product Consumption and Production, 2020*. Viewed at: <http://www.fao.org/forestry/statistics/80938@180723/en/>.

<sup>54</sup> FAO, *Forest Product Consumption and Production, 2020*. Viewed at: <http://www.fao.org/forestry/statistics/80938@180723/en/>.

	2018	2019	2020	2021	% of forestry trade in 2021	Major trading partners (top 3 in 2021)
Fuel wood	1,173.9	1,222.9	1,225.9	1,338.9	3.2%	United Kingdom (54%), EU-27 (24%), Canada (9.4%)
Raw timber	2,410.7	1,676.0	1,619.3	2,148.4	5.1%	China (50.3%), Japan (19.3%), Canada (13.7%)
Semi-processed	5,195.5	4,245.9	3,824.7	5,048.0	12.1%	Canada (29.3%), Mexico (18.7%), China (18.2%)
Processed	1,088.2	1,135.5	971.5	1,195.6	2.9%	Canada (54.9%), Mexico (10.9%), EU-27 (8.4%)
Paper, books, and cork (HS 45, 47, 48, 49)	30,166.2	27,834.3	25,097.9	29,238.1	69.9%	Canada (26%), Mexico (19.9%), EU-27 (9.3%)
(% of total exports)	1.8%	1.7%	1.8%	1.7%		
Wood furniture (parts of HS 94)	3,030.8	2,952.2	2,516.2	2,880.6	6.9%	Canada (62.6%), Mexico (12.4%), EU-27 (4.3%)
(% of total exports)	0.2%	0.2%	0.2%	0.2%		
<b>Imports of wood and wood products</b>	<b>72,267</b>	<b>66,727</b>	<b>67,554</b>	<b>92,866</b>		<b>Canada (32.5%), China (17%), Viet Nam (13.4%)</b>
(% of total imports)	2.8%	2.6%	2.8%	3.2%		
Wood and articles of wood; wood charcoal (HS 44)	22,606.0	19,304.6	22,602.5	35,544.2	38.3%	Canada (54.5%), EU-27 (9.9%), China (9.5%)
(% of total imports)	0.9%	0.8%	0.9%	1.2%		
Fuel wood	201.3	218.0	251.7	302.1	0.3%	Canada (41.4%), Mexico (24.9%), EU-27 (16.8%)
Raw timber	142.0	145.4	154.8	182.1	0.2%	Canada (69.2%), EU-27 (24.6%), Brazil (2.6%)
Semi-processed	16,304.1	13,277.8	16,406.5	27,263.7	29.4%	Canada (62%), EU-27 (10.3%), Brazil (6.4%)
Processed	5,958.6	5,663.4	5,789.4	7,796.2	8.4%	China (32.9%), Canada (28.8%), EU-27 (7.8%)
Cork, pulp, paper, books, newspapers (HS 45, 47, 48, 49)	27,114.0	26,139.1	23,118.1	27,358.1	29.5%	Canada (32.6%), China (20.4%), EU-27 (18.1%)
(% of total imports)	1.0%	1.0%	1.0%	0.9%		
Wood furniture (parts of HS 94)	22,547.2	21,283.6	21,833.4	29,963.6	32.3%	Viet Nam (36.4%), China (22.7%), EU-27 (9.2%)
(% of total imports)	0.9%	0.8%	0.9%	1.0%		

Source: WTO Secretariat calculations, based on UN Comtrade database and USITC Dataweb.

4.77. Across most export categories, the main destinations in 2021 were Canada, Mexico, and China. For imports, most wood and wood products were sourced from Canada, China, and the European Union except for wood furniture, in which the main source in 2021 was Viet Nam. U.S. exports of wood and wood products increased about 100% in the period 2002-18 driven by increased demand by China; however, there was a significant reversal of this trend since 2018 with significant declines in exports to China.<sup>55</sup>

4.78. U.S. tariffs on wood and wood products such as paper and pulp are very low and averaged 1.1% in 2020 (Table A3.1). However, there are a number of products subject to anti-dumping and/or countervailing duties (AD/CVD): tissue paper, crepe paper, lined paper, coated paper, multi-layered wood flooring, uncoated paper, folding gift boxes, hardwood plywood products, softwood lumber, wood moldings and millwork products, and thermal paper.<sup>56</sup> The United States maintains certain export prohibitions on logs from federal and state lands. Exports of certain unprocessed logs from federal/state lands in western states<sup>57</sup> and of all unprocessed western red cedar logs are prohibited as a result of conservation measures pursuant to the Endangered Species Act/National Forest Management Act and due to short supply controls of the War and Defense Export Regulation statutes, respectively (16 U.S.C. 620 and 50 U.S.C. App. 2406). These statutes are managed through export regulations and policy controls by the Departments of Agriculture, Interior, and Commerce.

<sup>55</sup> Muhammad, A. and Smith, S.A. (2020), *The U.S.-China Phase One Trade Agreement: Implications for U.S. Forestry*, University of Tennessee, Institute of Agriculture. Viewed at: <https://extension.tennessee.edu/publications/Documents/W888.pdf>.

<sup>56</sup> USITC (2021), *Anti-dumping and Countervailing Duty Orders in Place as of 14 December 2021*. Viewed at: [https://www.usitc.gov/trade\\_remedy/documents/orders.xls](https://www.usitc.gov/trade_remedy/documents/orders.xls).

<sup>57</sup> West of the 100<sup>th</sup> meridian, but excluding Alaska and Hawaii. However, Alaska also bans the export of spruce and hemlock logs from Alaska National Forests.



4.79. At the border, the U.S. Fish and Wildlife Service, the U.S. Department of Agriculture Animal and Plant Health Inspection Service (USDA APHIS), and the U.S. Customs and Border Protection (CBP) ensure trade compliance with the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Lacey Act. Amendments to the Lacey Act in 2008 introduced additional declaration requirements for importers, i.e. the specification of the country where the wood was harvested and information on the species. Both CITES and the Lacey Act have an impact on the trade of forestry products as they impose requirements for trade in timber products, e.g. logs, lumber, pulp, paper, and musical instruments.<sup>58</sup> The United States does not require any private or third-party certification schemes for importation.

4.80. The USMCA contains new provisions to help combat illegal logging and associated illegal trade. In Chapter 24 (Environment), the parties agreed to obligations to combat trafficking in timber by strengthening law enforcement and exchanging information and experiences. It also contains provisions to cooperate on initiatives to promote sustainable forest management. Nearly all U.S. FTAs have chapters on the environment that could have an impact on trade in forestry products. More recent FTAs all address illegal logging activities in some way; the FTA with Peru goes further with a dedicated Annex on Forest Sector Governance.

4.81. An assessment fee is charged on imported and domestically manufactured softwood lumber to finance the Softwood Lumber Board's operations to promote softwood lumber in the United States.<sup>59</sup> Exemptions exist for exports, organic products, and small shipments of less than 15 million board feet. The original fee was USD 0.35 per thousand board feet, which was increased to the current rate of USD 0.41 per thousand board feet on 1 April 2021.<sup>60</sup> The fee is assessed and collected by the CBP for imports of certain softwood lumber under 10 HS codes.<sup>61</sup> Domestic producers must remit the fee directly to the Board on a quarterly basis, with a 30-day grace period.

4.82. Under the Softwood Lumber Act of 2008, the President must maintain an importer declaration program with respect to all softwood lumber and softwood lumber product imports.<sup>62</sup> Thus, importers must provide the export price, estimated export charge, and the importer declaration in the entry summary electronic record upon importation.<sup>63</sup> Final rules implementing these provisions were adopted in August 2010 that provide more details on the submission and instructions for importers.<sup>64</sup>

4.83. Since the early 1980s and up until October 2015, U.S. imports of softwood lumber from Canada have periodically been governed by a series of Softwood Lumber Agreements or memoranda of understanding (MOUs) that set quotas for imports from Canada. The latest such agreement expired in October 2015. From 2016 until March 2022, USDOC has conducted both AD and CVD investigations and reviews of softwood lumber from Canada. As of December 2021, the United States applied AD and CVD measures on Canadian softwood lumber (Section 3.1.6); a WTO panel had been appealed to the Appellate Body. The second administrative review of the AD and CVD duty orders conducted in 2021 resulted in an increase in the combined AD and CVD rates for most Canadian firms. While duty rates vary by firm, CVD rates range from 2.42% to 18.07% and

<sup>58</sup> The Lacey Act covers wood products across 11 HS chapters: 33, 42, 44, 66, 82, 92, 93, 94, 95, 96, and 97. The majority are wood items in Chapter 44 but other products such as musical instruments, furniture, and essential oils are also covered. APHIS, *Lacey Act Declaration Implementation Schedule*. Viewed at: <https://www.aphis.usda.gov/aphis/ourfocus/planthealth/import-information/lacey-act/implementation-schedule/hts>.

<sup>59</sup> The Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order, 2011 established the Research & Promotion Program for softwood lumber, as well as the Softwood Lumber Board to administer the terms and provisions of the order. C.F.R. Part 1217 – Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order. Viewed at: <https://www.govinfo.gov/content/pkg/CFR-2013-title7-vol10/pdf/CFR-2013-title7-vol10-part1217.pdf>

<sup>60</sup> *Federal Register* (2021), Vol. 86, No. 36, 25 February, pp. 11387-11391. Viewed at: <https://www.federalregister.gov/documents/2021/02/25/2021-03467/softwood-lumber-research-promotion-consumer-education-and-industry-information-order-assessment-rate>.

<sup>61</sup> HS 4407.11.00, 4407.12.00, 4407.19.05, 4407.19.06, 4407.19.10, 4409.10.05, 4409.10.10, 4409.10.20, 4409.10.90, and 4418.99.10. CBP, *Softwood Lumber*. Viewed at: <https://www.cbp.gov/trade/priority-issues/trade-agreements/softwood-lumber>.

<sup>62</sup> HTSUS subheadings 4407.10.00, 4409.10.10, 4409.10.20, or 4409.10.90. Some products are excluded, such as trusses, garage doors, i-joist beams, door and window frames, and furniture.

<sup>63</sup> Softwood Lumber Act of 2008 (P.L. 110-246). Viewed at: <https://www.congress.gov/110/plaws/publ246/PLAW-110publ246.pdf#page=194>.

<sup>64</sup> *Federal Register* (2010), Vol. 75, No. 165, 26 August, pp. 52453-52455. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2010-08-26/pdf/2010-21244.pdf>.

AD rates from 6.06% to 17.12%, with a combined *ad valorem* effect ranging from 11.14% to 29.66%.<sup>65</sup>

4.84. In October 2020, the United States launched a Section 301 investigation regarding Viet Nam's acts, policies, and practices relating to the import and use of illegal timber.<sup>66</sup> Following consultations and engagement, the United States and Viet Nam reached an agreement in October 2021 on a number of commitments to address illegal timber harvesting and trade.<sup>67</sup> Among these are the obligation by Viet Nam to enhance inspections of timber imports, verify domestic timber harvests, and endeavor to revise its domestic laws on the matter (Section 3.1.7).<sup>68</sup>

#### 4.1.2.2 Framework, policy, and forest management

4.85. U.S. federal laws on forestry are numerous and varied as they contain provisions on forestry management, environmental, and trade matters (Table 4.8). Many of the key provisions of the Forest Service have been codified in 16 U.S.C., including, *inter alia*, on national forests, restoration management, international forestry cooperation, and user fees.

**Table 4.8 Legal framework, main laws and regulations, 2022**

Instrument	Overview	Reference
Lacey Act	Bans the trade of illegally sourced plant and plant products	31 Stat. 187
Multiple Use and Sustained Yield Act of 1960	Requires balanced multiple uses of National Forest lands	P.L. 86-517
Food, Conservation, and Energy Act of 2008	Requires states to have an Assessment and Strategy for Forest Resources	P.L. 110-234
National Forest Management Act of 1976	Requires a land and resource management plan for National Forests	16 U.S.C. 1600
National Environmental Policy Act (NEPA) of 1969	Fosters and promotes the general welfare of the environment	P.L. 91-190
Cooperative Forestry Assistance Act of 1978	Authorizes forestry activities of the Forest Service	P.L. 95-313
Endangered Species Act	Prevents extinction of endangered plants and animals	16 U.S.C. 1531-1544
Conservation	Regulations governing the Forest Service and related matters, etc.	16 U.S.C.

Source: Compiled by the WTO Secretariat from the sources listed and from Forest Service, *Laws and Regulations*. Viewed at: <https://www.fs.usda.gov/about-agency/regulations-policies/laws-regulations>.

4.86. With the exception of foreign trade issues and taxation on imports, the forestry sector is regulated mostly at the state level. Thus, matters such as land ownership and use, intrastate commerce, regulation of businesses and professions, and use of natural resources are all generally regulated at the state level. Forestry administration, policy, and planning matters on private lands are usually determined individually by each state, aside from certain federal environmental laws that apply to all landownership types. The exception are federal forests, in particular National Forests (19% of U.S. forests), which fall under the purview of the Federal Government and are administered by the U.S. Forest Service; other federal forests (12%) are administered by the Bureau of Land Management, the National Park Service, or the U.S. Fish and Wildlife Service. The Federal Government regulates timber harvesting on federal lands. Approximately 24% (46 million acres) of

<sup>65</sup> *Federal Register* (2021), Vol. 86, No. 229, 2 December, pp. 68467-68471. Viewed at: <https://www.federalregister.gov/documents/2021/12/02/2021-26152/certain-softwood-lumber-products-from-canada-final-results-of-the-countervailing-duty-administrative>; *Federal Register* (2021), Vol. 86, No. 229, 2 December, pp. 68471-68475. Viewed at: <https://www.federalregister.gov/documents/2021/12/02/2021-26149/certain-softwood-lumber-products-from-canada-final-results-of-antidumping-duty-administrative-review>; and *Federal Register* (2022), Vol. 87, No. 6, 10 January, pp. 1114-1117. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2022-01-10/pdf/2022-00212.pdf>.

<sup>66</sup> *Federal Register* (2020), Vol. 85, No. 196, 8 October, pp. 63639-63640. Viewed at: <https://www.federalregister.gov/documents/2020/10/08/2020-22270/initiation-of-section-301-investigation-vietnams-acts-policies-and-practices-related-to-the-import>.

<sup>67</sup> USTR (2021), *Agreement between the Government of the Socialist Republic of Viet Nam and the Government of the United States of America on Illegal Logging and Timber Trade*. Viewed at: [https://ustr.gov/sites/default/files/files/Vietnam%20Timber/VN%20Timber%20Agreement%20Text%20\(9-30-21\).pdf](https://ustr.gov/sites/default/files/files/Vietnam%20Timber/VN%20Timber%20Agreement%20Text%20(9-30-21).pdf).

<sup>68</sup> *Federal Register* (2021), Vol. 86, No. 191, 6 October. Viewed at: <https://www.federalregister.gov/documents/2021/10/06/2021-21809/determinations-and-ongoing-monitoring-investigation-concerning-vietnams-acts-policies-and-practices>.

federal forests are designated for timber harvesting; however, most timber harvesting in the United States is conducted on private lands.<sup>69</sup> Federally recognized Indian Tribes manage forests on Tribal trust lands in coordination with the Bureau of Indian Affairs.

4.87. Although laws and regulations that promote or regulate certain forestry aspects exist at the state level, their outreach, with some exceptions, is mainly limited to voluntary guidelines and best management practices, as the majority of forests under state jurisdiction are private forests. Certain incentives, such as lower tax rates/incentives, advisory services, and outreach programs may be used by states to encourage private landowners to comply with voluntary provisions.<sup>70</sup> While the Federal Government has limited control over management and use of private forests, it may still have some influence on them through cooperative programs with states to provide technical assistance to private landowners, by producing and disseminating forest research materials, and by providing funding or incentives. The Forest Inventory and Analysis (FIA) Program of the Forest Service (part of USDA) collects data and reports on the status of U.S. forests.

4.88. Private forestry owners are generally subject to yield or severance taxes on the specific value or volume of timber harvested. These are charged by the states and thus vary significantly.<sup>71</sup> Logging on federal lands is generally done through the identification of a sale package of timber that is offered through bidding/auction.<sup>72</sup> Individuals may collect forest products from federal forests but generally must obtain a permit to do so. In 2020, the Forest Service issued a new Rule that revised categorical exclusions to the National Environmental Policy Act (NEPA) regulations, thereby providing easier approval processes for more logging activities in National Forests.<sup>73</sup>

4.89. In January 2021, the President issued an Executive Order, which put the climate crisis at the center of U.S. foreign policy and national security.<sup>74</sup> The E.O. puts in place multiple actions across the Administration to address the climate crisis, with several points impacting the forest sector, including developing a Climate-Smart Agriculture and Forestry (CSAF) strategy. Based on comments received regarding the CSAF strategy, in February 2022 USDA launched the Partnerships for Climate-Smart Commodities, to provide support for the production and marketing of climate-smart commodities via a set of pilot projects lasting one to five years.

#### 4.1.2.3 Support measures and pandemic-related matters

4.90. The Federal Government plays a role in financing and/or providing support to private forest owners, mostly through state partner agencies. Federal public funds are spent annually on a number of programs that support private forest owners such as research, education, technical assistance, and financial support (Table 4.9). In FY2021, the Forest Service had USD 236.2 million in funding authorized for all assistance programs.<sup>75</sup> Some states also have support programs, both financial and technical. There is a 10% federal tax credit and amortization for certain reforestation expenses, which has been notified to the WTO (Expensing and Seven-Year Amortization for Reforestation

<sup>69</sup> Hardwood Federation. Viewed at: <http://www.hardwoodfederation.com/page-1506331>; and CRS (2019), *Timber Harvesting on Federal Lands*, R45688, 12 April. Viewed at: <https://sgp.fas.org/crs/misc/R45688.pdf>.

<sup>70</sup> American Hardwood Export Council (2020), *Introduction to U.S. Forestry Regulation*. Viewed at: <https://www.americanhardwood.org/sites/default/files/reports/download/2020-07/Introduction%20to%20U.S.%20forestry%20regulation.pdf>; and USDA (2017), *State Property Tax Incentives for Promoting Ecosystem Goods and Services from Private Forest Land in the United States: A Review and Analysis*. Viewed at: [https://www.timbertax.org/taxpolicy/gtr\\_srs228.pdf](https://www.timbertax.org/taxpolicy/gtr_srs228.pdf).

<sup>71</sup> National Timber Tax Website, *Quick Reference: Forest Property Taxation Systems in the United States*. Viewed at: <https://www.timbertax.org/statetaxes/quickreference/>.

<sup>72</sup> USDA Forest Service, *Timber Sales on the National Forests*. Viewed at: <https://www.fs.usda.gov/managing-land/forest-management/products/timber-sales>.

<sup>73</sup> *Federal Register* (2020), Vol. 85, No. 224, 19 November, pp. 73620-73632. Viewed at: <https://www.federalregister.gov/documents/2020/11/19/2020-25465/national-environmental-policy-act-nepa-compliance>.

<sup>74</sup> Executive Order on Tackling the Climate Crisis at Home and Abroad. Viewed at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>.

<sup>75</sup> CRS (2022), *Forest Service Assistance Programs*, R45219, updated 6 January. Viewed at: <https://crsreports.congress.gov/product/pdf/R/R45219>.

Expenditure scheme).<sup>76</sup> The United States has also notified to the WTO its Capital Gains Treatment of Certain Timber Income policy, an income tax concession aimed to encourage domestic timber production, whereby certain timber income can be treated as capital gains for income tax purposes and be subject to a lower tax rate; and its Expensing of Multi-Period Timber Growing Costs scheme, through which timber owners can expense, rather than capitalize, certain costs from taxable income.<sup>77</sup> Other federal tax measures include income exclusions for conservation-oriented programs: the Forest Health Protection Program, the Conservation Reserve Program, the Environmental Quality Incentives Program, and certain state programs.

**Table 4.9 Forestry support measures, FY2021**

Program/Reference	Activity	Budget (USD)
Collaborative Forest Restoration, P.L. 106-393	Forest restoration	13.8 million
Community Forest and Open Space Conservation Program, 16 U.S.C. 2103d	Purchase of forestlands for conservation	4 million
Cooperative Fire Protection, 16 U.S.C. 2106	Wildfire prevention	92.4 million
Forest Health Protection, 16 U.S.C. 2104	To combat forest pests and diseases	46.2 million
Forest Legacy Program, 16 U.S.C. 2103c	Purchase of forestlands	94.3 million
Forest Stewardship Program, 16 U.S.C. 2103a, 16 U.S.C. 2107, 16 U.S.C. 2102	Provides professional planning and technical assistance	11.9 million
International Forestry Program, 16 U.S.C. 4501	Planning, management, prevention	15.4 million
Landscape Scale Restoration Program, 16 U.S.C. 2109a	Forest restoration	14 million
Urban & Community Forestry Assistance Program, 16 U.S.C. 2105	Planning and education	31.9 million
Wood Technology and Innovation Programs: -Community Wood Energy/Innovation, 7 U.S.C. 8113 -Hardwood Technology Transfer, 16 U.S.C. 1650 -Rural Revitalization, 7 U.S.C. 6601 -Wood Innovation Grant Project, 7 U.S.C. 7655d	Technology development	24.8 million

Source: Compiled by the Secretariat from the sources listed in the table and Forest Service (2021), *FY 2022 Budget Justification*. Viewed at: <https://www.fs.usda.gov/sites/default/files/usfs-fy-2022-budget-justification.pdf>.

4.91. The COVID-19 pandemic impacted the U.S. forestry sector in several ways. In the early part of the pandemic, the sector was negatively affected by disruptions to global transportation networks, which impacted wood trade, as well as by the closure of some ports. The pandemic triggered a generally reduced output from sawmills that were not able to meet demand, leading to an increase in imports in response. The slower growth in domestic supply and the supply constraints occurred in parallel to an increase in demand for wood products, boosted by construction, and particularly house renovation, and by the "Zoom Town" phenomenon.<sup>78</sup> The pandemic also delayed the implementation of the Lacey Act's Phase Six enforcement measures, originally scheduled for October 2020. USDA announced the implementation of the measures effective 1 October 2021.<sup>79</sup> The coverage of products subject to import declaration requirements was expanded to include certain essential oils, wooden pallets, trunks and cases of wood, and musical instruments.<sup>80</sup>

4.92. The Consolidated Appropriations Act of 2021 contained a number of provisions for pandemic-related assistance for the forestry sector, including the Pandemic Assistance for Timber Harvesters and Haulers (PATHH) program that provided up to USD 200 million for loggers and log

<sup>76</sup> The first USD 5,000/10,000 depending upon filing status may be deducted with the remainder amortized over 84 months. Forest Service, *Tax Tips for Forest Landowners for the 2021 Tax Year*. Viewed at: <https://www.timbertax.org/publications/fs/taxtips/TaxTip2021.pdf>. This measure was notified in the latest U.S. subsidy notification, WTO document G/SCM/N/372/USA, 14 July 2021. The estimated revenue loss was USD 40 million in FY2019 and USD 50 million in FY2020.

<sup>77</sup> The estimated revenue losses were USD 150 million in FY2019 and USD 130 million in FY2020; and USD 40 million in FY2019 and USD 50 million in FY2020, respectively.

<sup>78</sup> A town or community that has a significant population increase as remote work becomes more popular and workers buy larger houses, often creating more demand for housing and renovation. See: UNECE (2021), *Forest Products Annual Market Review 2020-2021*. Viewed at: [https://unece.org/sites/default/files/2021-11/2114516E\\_Inside\\_Final\\_web.pdf](https://unece.org/sites/default/files/2021-11/2114516E_Inside_Final_web.pdf)

<sup>79</sup> The Lacey Act forbids the importation of illegally taken, possessed, transported, or sold fish, plants, wildlife or wildlife. See: APHIS (2021), "APHIS Announces Phase Six Lacey Act Enforcement Schedule Effective Date of October 1, 2021", 21 July. Viewed at: <https://www.aphis.usda.gov/aphis/newsroom/stakeholder-info/stakeholder-messages/plant-health-news/six-lacey-act-enforcement-schedule#:~:text=Program%20Updates-.APHIS%20Announces%20Phase%20Six%20Lacey%20Act.>

<sup>80</sup> *Federal Register* (2020), Vol. 85, No. 62, 31 March, pp. 17849-17850. Viewed at: <https://www.federalregister.gov/documents/2020/03/31/2020-06695/implementation-of-revised-lacey-act-provisions>.

trucking businesses that suffered revenue losses of at least 10% during 2020.<sup>81</sup> The Infrastructure Investment and Jobs Act (P.L. 117-58) also provided funds for new forest programs and other forestry/wood funding measures, including: (i) mechanical thinning and timber harvesting in an ecologically appropriate manner (USD 500 million); (ii) loan guarantees or low interest loans for wood facilities that purchase by-products of restoration treatments (USD 400 million); (iii) reforestation (public and private lands) (USD 200 million); (iv) the REPLANT Act, which adds funds to the Reforestation Trust Fund for restoration<sup>82</sup>; and (v) wood innovation projects (USD 460 million).<sup>83</sup>

#### 4.1.2.4 International cooperation and agreements

4.93. The Forest Service has a section on International Programs that supports sustainable forest management and biodiversity internationally. The Forest Service works with other U.S. agencies, in particular USAID, to conduct various programs abroad. These programs include Sustainable Forestry & Natural Resource Management, Disaster Assistance & Preparedness, International Law Enforcement (e.g. to combat illegal logging), Migratory Species, and Invasive Species.<sup>84</sup> The United States supports in-country forest programs through its foreign assistance agency. In 2020, USAID forestry investments totaled USD 243 million in 45 countries, with USD 233 million focused on tropical forests. Assistance is planned in cooperation with governments and local stakeholders and includes support for strengthening forest conservation, management, and restoration; enhancing traceability; implementing forest monitoring and information systems to support legal trade; engaging the private sector to mobilize financing for sustainable activities; and expanding the participation of small holders and local communities in supply chains.

4.94. The Department of Justice's Environment and Natural Resources Division engages in bilateral programming to enhance the capacity of law enforcement, prosecutors, and judges to investigate and prosecute timber trafficking crimes.

4.95. The United States has been a long-standing and active member of the UN Forum on Forests and the FAO Committee on Forestry. It is also a member of the 2006 International Tropical Timber Agreement (ITTO) that supports sustainable management and conservation of tropical forests. The United States also participates in the Asia-Pacific Economic Cooperation (APEC) Experts Group on Illegal Logging and Associated Trade (EGILAT). At the recent COP26, the United States undertook a number of forest-related initiatives. The United States announced its Plan to Conserve Global Forests, launched the Forest Investor Club and the Forest Finance Risk Consortium (FFRC), endorsed the Glasgow Leaders' Declaration on Forests and Land Use, and joined the Global Forest Finance Pledge. The Plan to Conserve Global Forests pledges USD 9 billion for international climate funding, subject to Congressional appropriations.<sup>85</sup>

#### 4.1.3 Fisheries

4.96. The U.S. fisheries sector comprises marine, inland, and aquaculture sources of fish and seafood. The marine sector, including nearshore and coastal fisheries, benefits from the largest Exclusive Economic Zone (EEZ) in the world – 13,000 miles of coastline and 3.4 million square nautical miles of ocean – thus marine capture fishing remains the dominant source of fish for the United States.<sup>86</sup> The sector has shared competencies between federal, state, and territorial

<sup>81</sup> USDA (2021), "USDA Issues Final Pandemic Payments for Timber Harvesters and Haulers", 2 December. Viewed at: <https://www.usda.gov/media/press-releases/2021/12/02/usda-issues-final-pandemic-payments-timber-harvesters-and-haulers>.

<sup>82</sup> The Repairing Existing Public Land by Adding Necessary Trees Act of 2021 (REPLANT Act), Title III of the Infrastructure Investment and Jobs Act (P.L. 117-58) removed the funding cap of USD 30 million per year on the Reforestation Trust Fund. The funding is through existing tariffs on wood products.

<sup>83</sup> Infrastructure Investment and Jobs Act (P.L. 117-58). Viewed at: <https://www.congress.gov/bill/117th-congress/house-bill/3684>.

<sup>84</sup> Forest Service, *Program Topics*. Viewed at: <https://www.fs.usda.gov/about-agency/international-programs/program-topics>.

<sup>85</sup> The White House, *Plan to Conserve Global Forests: Critical Carbon Sinks*. Viewed at: [https://www.whitehouse.gov/wp-content/uploads/2021/11/Plan\\_to\\_Conserve\\_Global\\_Forests\\_final.pdf](https://www.whitehouse.gov/wp-content/uploads/2021/11/Plan_to_Conserve_Global_Forests_final.pdf).

<sup>86</sup> NOAA, Map of the U.S. Exclusive Economic Zone. Viewed at: [https://www.gc.noaa.gov/documents/2011/012711\\_gcil\\_maritime\\_eez\\_map.pdf](https://www.gc.noaa.gov/documents/2011/012711_gcil_maritime_eez_map.pdf).



governments. The nearshore, defined as 3 nautical miles of the shoreline<sup>87</sup>, is under state/territorial jurisdiction, whereas coastal waters, defined beyond the 3 nautical miles to the limit of the EEZ at 200 nautical miles from the coast is under federal control, specifically, the National Marine Fisheries Service, within USDOC's National Oceanic and Atmospheric Administration (NOAA), hereinafter NOAA Fisheries. U.S. states also have jurisdiction over much of the Great Lakes and other inland freshwater lakes (there are some 250), as well as over regulation of parts of the aquaculture sector.

4.97. The U.S. fisheries sector contributes a relatively small amount to GDP (Section 4.1.3); however, it is important in the global perspective, as the United States was the largest importer, eighth largest exporter, and second-largest consumer of fish and seafood products in 2018.<sup>88</sup> The United States has also taken a leadership role in many international initiatives, in particular to promote sustainable fishing; combat illegal, unreported, and unregulated (IUU) fishing.

#### 4.1.3.1 Production and trade

4.98. There are over 800 aquatic species produced in the United States; in 2020, commercial fishing landings were 3.8 million tons, with a USD 4.8 billion value. The U.S. commercial marine fish landings reached their highest level, in terms of value and quantity in 2017, and have steadily declined since, and even more rapidly in 2019-20 (Table 4.10). The 2020 catch was 13% lower than the five-year average, and landings were down in all regions and most major species. The decline has been attributed to the COVID-19 pandemic and its related effects. The sector has been affected by a global decline in seafood demand, in particular high-end seafood sold to restaurants, as well as by supply-side impacts from port and border closures, increased shipping costs and timelines, reduced shipping capacity, and closure of processing facilities.<sup>89</sup> The pandemic contributed to some shifts in the sector; for instance, food service sales declined sharply, but retail sales improved considerably as suppliers moved to direct marketing and online sales as a replacement.

**Table 4.10 U.S. Production of fish and aquaculture, 2017-20**

(tons and USD million)

	2017	2018	2019	2020
<b>Marine landings:</b>				
Commercial, quantity (tons)	4,522,975	4,280,321	4,250,453	3,806,452
Commercial value (USD million)	5,834	5,692	5,598	4,780
Main species:				
Salmon	688	588	707	479
Lobsters	594	684	681	569
Crabs	610	644	635	584
Scallops	512	541	572	488
Recreational, quantity (tons)	201,056	158,894	157,842	160,333
<b>Aquaculture:</b>				
Quantity (tons)	286,287	308,550	298,336	..
Value (USD million)	1,497	1,524	1,481	..
Catfish	355	342	362	..
Oysters	211	219	221	..
Crawfish	190	211	224	..

.. Not available.

Source: NOAA, Marine landings database. Viewed at: <https://www.fisheries.noaa.gov/foss/f?p=215:200:29230518756584:Mail:NO>; and NOAA (2021), *Fisheries of the United States, 2019*.

4.99. During 2017-20, the top four species of fish harvested, in terms of value, were salmon, lobsters, clams, and scallops. By value, the U.S. produces slightly more shellfish than finfish. The United States is not a major producer of aquaculture seafood, ranking 18<sup>th</sup> internationally; however, it is a large consumer of aquaculture fish. It is estimated that about 50% of U.S. consumption is

<sup>87</sup> For most states, it is three nautical miles; the exception is for Texas, western Florida, and Puerto Rico in which the limit is nine nautical miles.

<sup>88</sup> USITC (2021), *Seafood Obtained via Illegal, Unreported, and Unregulated Fishing: U.S. Imports and Economic Impact on U.S. Commercial Fisheries*, Pub. No. 5168, February. Viewed at: <https://www.usitc.gov/publications/332/pub5168.pdf>; and FAO (2020), *The State of World Fisheries and Aquaculture 2020*. Viewed at: <https://www.fao.org/publications/sofia/2020/en/>.

<sup>89</sup> NOAA (2021), *U.S. Seafood Industry and For-Hire Sector Impacts from COVID-19: 2020 in Perspective*. Viewed at: <https://spo.nmfs.noaa.gov/sites/default/files/TM221.pdf>.

from aquaculture.<sup>90</sup> U.S. aquaculture production reached USD 1.5 billion in 2019. The United States produces both freshwater and marine species in aquaculture, but freshwater species are dominant in terms of value, in particular catfish, crawfish, and trout. The top marine aquaculture species are oysters, clams, and Atlantic salmon. In comparison to the marine catch sector, aquaculture is small, accounting for about 7% in terms of volume; however, it is more significant in terms of value, accounting for 21% of 2018 production.

4.100. The United States is a significant net importer of fish and fish products and had a trade deficit of USD 24.3 billion in 2021 (Table 4.11). Import figures are magnified due to the processing of U.S. fish abroad where imported fish is actually harvested by U.S. vessels and is landed elsewhere for processing, returning to the United States as an import.<sup>91</sup> In 2020, landings of tuna by U.S.-flagged vessels at ports outside the United States amounted to 189,419 tons. Reflecting this, the United States mainly imports processed fish products, i.e. fish fillets (HS 0304), crustaceans and prepared crustaceans (HS 0306 and 1605), and other prepared and preserved fish products including caviar (HS 1604). With respect to fresh fish, the major seafood species imported include shrimp, Atlantic salmon, crab, and tuna. Overall, the main source countries of seafood imports in 2021 were Canada (17%), India (11%), Chile (10%), and Indonesia (9%).<sup>92</sup> Imports from Canada consisted predominantly of lobster, while those from Indonesia were mostly shrimp and crabmeat, and imports from India consisted mainly of shrimp. China has been a major source of imports in recent years, although imports fell considerably in 2020-21 mainly reflecting the closure of fish processing facilities due to the pandemic, as well as higher tariffs resulting from the Section 301 investigation.

4.101. U.S. fish and fish product exports followed a similar trend as production and overall exports as they generally declined during the initial period and recovered in 2021 albeit not to the level achieved in 2018 (Table 4.11). The major export category is frozen fish (HS 0303). The main fish or fish products exported are lobster, salmon, surimi, and certain non-edible fish products, e.g. fishmeal.<sup>93</sup> The major export markets by value in 2021 were Canada (29%), the European Union (18%), and China (15%).

**Table 4.11 Imports and exports of fish and fish products, 2018-21**

(USD million)

HS	Description	2018	2019	2020	2021
0301	Live fish	84.7	82.8	86.5	125.1
0302	Fish, fresh or chilled, excluding fish fillets, etc.	2,271.8	2,306.9	1,883.2	2,545.8
0303	Fish, frozen, excluding fish fillets and other fish meat of HTSUS 03.04.	761.0	765.1	703.7	982.4
0304	Fish fillets and other fish meat (...), fresh, chilled or frozen	6,696.1	6,421.5	6,100.9	7,472.3
0305	Fish, dried, salted or in brine; smoked fish; flours, meals and pellets of fish, fit for human consumption	276.7	297.6	328.7	359.3
0306	Crustaceans, whether in shell or not, live, fresh, chilled, frozen, etc.	7,337.7	7,653.0	7,700.0	10,940.8
0307	Molluscs, whether in shell or not, live, fresh, chilled, frozen, etc.	1,043.9	931.1	696.5	1,206.5
0308	Aquatic invertebrates other than crustaceans and molluscs, live, etc.	44.3	43.0	39.0	51.0
0508	Coral and similar materials (...); shells of mollusc crustaceans, etc.	20.1	18.8	23.7	24.6
0511	Animal products not elsewhere specified or included	56.4	54.2	61.4	83.4
1504	Fats and oils and their fractions, of fish or marine mammals, etc.	135.4	122.4	121.0	145.3
1603	Extracts and juices of meat, fish or crustaceans, molluscs, etc.	24.8	21.5	27.5	27.3
1604	Prepared or preserved fish; caviar and caviar substitutes, etc.	1,874.9	1,910.4	2,102.3	2,002.0
1605	Crustaceans, molluscs and other aquatic invertebrates, etc.	3,098.0	2,651.0	2,854.8	3,912.7
2301	Flours, meals and pellets, (...), unfit for human consumption; greaves	113.0	94.8	102.2	126.6
<b>Total fish imports</b>		<b>23,839</b>	<b>23,374</b>	<b>22,831</b>	<b>30,005</b>
0301	Live fish	62.2	58.2	35.2	46.5
0302	Fish, fresh or chilled, excluding fish fillets, etc.	187.2	196.2	191.5	234.1
0303	Fish, frozen, excluding fish fillets and other fish meat of heading 03.04.	2,039.9	1,880.1	1,480.3	1,726.4
0304	Fish fillets and other fish meat (...), fresh, chilled or frozen	1,368.7	1,376.4	1,205.2	1,275.7
0305	Fish, dried, salted or in brine; smoked fish; flours, meals and pellets of fish, fit for human consumption	22.1	26.7	21.3	19.9
0306	Crustaceans, whether in shell or not, live, fresh, chilled, etc.	1,081.6	938.7	755.0	1,159.9
0307	Molluscs, whether in shell or not, live, fresh, chilled, frozen, etc.	451.8	371.1	295.7	374.0

<sup>90</sup> NOAA (2021), *Fisheries of the United States, 2019*. Viewed at: <https://media.fisheries.noaa.gov/2021-05/FUS2019-FINAL-webready-2.3.pdf?null=>.

<sup>91</sup> USITC (2021), *Seafood Obtained via Illegal, Unreported, and Unregulated Fishing: U.S. Imports and Economic Impact on U.S. Commercial Fisheries*, Pub. No. 5168. Viewed at: <https://www.usitc.gov/publications/332/pub5168.pdf>.

<sup>92</sup> USITC Dataweb.

<sup>93</sup> NOAA (2021), *Fisheries of the United States, 2019*. Viewed at: <https://media.fisheries.noaa.gov/2021-05/FUS2019-FINAL-webready-2.3.pdf?null=>.

HS	Description	2018	2019	2020	2021
0308	Aquatic invertebrates other than crustaceans and molluscs, live, etc.	38.9	31.4	23.4	25.3
0508	Coral and similar materials, (...); shells of molluscs, crustaceans, etc.	3.8	3.3	3.1	3.5
0511	Animal products not elsewhere specified or included	139.2	113.3	97.7	112.1
1504	Fats and oils and their fractions, of fish or marine mammals, etc.	154.2	193.7	162.5	148.9
1603	Extracts and juices of meat, fish or crustaceans, molluscs, etc.	17.2	16.5	14.7	15.8
1604	Prepared or preserved fish; caviar and caviar substitutes, etc.	307.8	288.1	309.2	279.0
1605	Crustaceans, molluscs and other aquatic invertebrates, etc.	72.4	80.2	67.9	112.9
2301	Flours, meals and pellets, (...), unfit for human consumption; greaves	203.2	198.2	186.6	185.7
<b>Total fish exports</b>		<b>6,150</b>	<b>5,772</b>	<b>4,849</b>	<b>5,720</b>

Source: WTO Secretariat calculations, based on UN Comtrade database.

#### 4.1.3.2 Import, export, and investment provisions

4.102. The importation of fish or seafood is controlled at the border by CBP, but other government agencies also have a role, in particular the Food and Drug Administration (FDA), NMFS, and the Fish and Wildlife Service (FWS). FWS regulates the importation, exportation, and transport of certain wildlife species through a licensing and declaration process. FWS also issues permits and certificates to ensure compliance with CITES and the Endangered Species Act. FDA play a role with respect to the safety of products; foreign processors that ship fish or fish products must conform with the provisions in the Seafood Hazard Analysis Critical Control Point (HACCP) Regulation for fish or the National Shellfish Sanitation Program (NSSP) for bivalves.<sup>94</sup> The regulatory aspects of aquaculture fall under state jurisdiction. NMFS's Seafood Inspection Program provides export certification services to exporters and works in cooperation with FDA through an MOU on a number of fish safety matters including standards, inspections, evaluations, certifications, and information sharing.<sup>95</sup>

4.103. U.S. import tariffs on fish and fish products (WTO definition) are generally very low and averaged 1.4% in 2021, with a range from zero to 35% in 2021 (Section 3.1.3). The vast majority of rates are at zero, with the remainder mostly at 3% or 6%. However, higher tariffs are applied on sturgeon roe (7.5-15%), crabmeat (7.5%), sardines in airtight containers (15-20%), fish sticks (7.5-10%), caviar (15%), prepared meat of crab and lobster (10%), tuna in airtight containers (12.5-35%), and a few products, which are subject to non-*ad valorem* rates. The higher tariffs tend to be on prepared/processed or value-added fish products and specialty items like roe and prepared caviar. The United States maintains a long-standing TRQ on canned tuna imports (Section 3.1.3.5), in which a small quantity, i.e. about 7% of canned tuna imports by value, enter through the TRQ. Due to domestic changes in the tariff schedule, lower quantities of tuna have entered under the TRQ in recent years, and the text providing the quota quantity does not align with that of the United States' bound tariff commitment. AD duties are applied on frozen warm-water shrimp and prawns from China, India, Thailand, and Viet Nam; and on frozen fish fillets from Viet Nam.<sup>96</sup>

4.104. The United States implements the Tuna Tracking and Verification Program (TTVP) at the border to monitor imports of all processed and frozen tuna and tuna products (not fresh tuna) and certify the "dolphin safe" status in conformity with the Dolphin Protection Consumer Information Act.<sup>97</sup> The TTVP requires the submission of a Fisheries Certificate of Origin as part of the import process with CBP, along with attached certifications (i.e. Captain's Statement, Observer Statement, and/or International Dolphin Conservation Program (IDCP) Member Nation Certification), so as to authenticate dolphin-safe claims. The IDCP Member Nation Certificate requirement applies to certain tuna harvested by purse seine vessels with a carrying capacity over 400 short tons in the Eastern Tropical Pacific Ocean (ETP). All of these documents must be submitted to CBP prior to entry through the Automated Commercial Environment (ACE) interface (single window). In addition, for tuna products designated dolphin-safe, the importer of record must maintain recordkeeping information on the complete chain of custody and ensure that such information is readily available to the NMFS upon request. Moreover, any tuna importer must be in possession of an International Fisheries Trade Permit (IFTP). The IFTP, introduced in 2016, replaced some earlier permits and expanded its

<sup>94</sup> FDA has recently proposed a new rule that would require traceability for certain fish products, i.e. finfish, crustaceans, molluscs, and bivalves (Section 3.3.3). FDA no longer has a role in the inspection and safety of catfish species; rather, USDA's Food Safety Inspection Services is responsible.

<sup>95</sup> Memorandum of Understanding Between U.S. Department of Commerce National Oceanic and Atmospheric Administration and U.S. Department of Health and Human Services Food and Drug Administration, MOU 225-09-0008. Viewed at: <https://www.fda.gov/about-fda/domestic-mous/mou-225-09-0008>.

<sup>96</sup> USITC, *Anti-dumping and Countervailing Duty Orders in Place as of 14 December 2021*. Viewed at: [https://www.usitc.gov/trade\\_remedy/documents/orders.xls](https://www.usitc.gov/trade_remedy/documents/orders.xls) (December 2021).

<sup>97</sup> Dolphin Protection Consumer Information Act, 16 U.S.C. 1385.

coverage to other trade monitoring programs. The IFTP is now required for imports, exports, and re-exports of fish and fish products of the Atlantic Highly Migratory Species (HMS) International Trade Program, Antarctic Marine Living Resources (AMLR), the TTVP, and the Seafood Import Monitoring Program (SIMP). Currently, an IFTP requirement applies to 17 types of fish and certain frozen or processed products.<sup>98</sup> IFTPs are granted by the NMFS for a period of one year after approval and payment of a fee (USD 30).<sup>99</sup> Only U.S. residents or entities are eligible for an IFTP.

4.105. Like the TTVP, the AMLR, the HMS program, and SIMP require an IFTP and additional measures at the border to control the trade of certain fish and fish products. For the HMS program, an IFTP is required in order to import, export, and re-export bluefin tuna, frozen bigeye tuna, swordfish, or shark fins. The HMS domestic program requires specific dealer permits for the domestic purchase of certain species. For example, there is a federal Atlantic Tunas Dealer Permit that requires bluefin tuna dealers to submit biweekly electronic reports of domestic purchases. On those forms, dealers must indicate if fish were kept in the U.S. market, imported, exported, or re-exported and include information on the fishing vessel, landings, gear type, catch area, and purchase price. Other dealer permits are in place and require similar information for other species. The AMLR imposes additional requirements for the import of Patagonian toothfish, Antarctic toothfish, and Antarctic krill. It requires dealers to have pre-approval for each shipment of frozen toothfish, and a separate approval for re-exports. A report for fresh air-shipped toothfish must be submitted within 24 hours of import for any shipment of fresh toothfish. The AMLR requires dealers to submit an import ticket for importing Antarctic krill.

4.106. SIMP is a risk-based traceability program that requires the importer of record to file additional data elements electronically through ACE. These data elements include detailed information under three broad categories: entities harvesting or producing the fish, the fish that was harvested and processed, and where and when the fish were harvested and landed.<sup>100</sup> Importers must retain the chain of custody records associated with the import for two years. Inspection upon importation, screening, and assessment, including post-entry audit, is conducted by NMFS.

4.107. Since 1991, the United States has maintained an import ban on wild-caught shrimp and prawns due to harvesting methods that may adversely affect sea turtles (P.L. 101-162, Section 609). Imports are limited to those from sources that have gone through an annual procedure that certifies their fishing environments do not pose a danger to sea turtles or that their sea turtle protection programs are comparable to that of the United States. As at April 2021, 42 economies had received such certification, in some cases only for some regions or species.<sup>101</sup> A completed Shrimp Exporter's/Importer's Declaration must also accompany the shipment. A similar measure is in place with respect to yellowfin tuna caught using purse seine fishing gear in the ETP. Importation is prohibited pursuant to the provisions of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1371, from any nation that harvests yellowfin tuna in the ETP using purse seine vessels that have more than 400 short tons (363 metric tons) carrying capacity if that nation has not received an affirmative finding from the Assistant Administrator for NOAA Fisheries regarding its membership in the Inter-American Tropical Tuna Commission (IATTC) and compliance with rules regarding dolphin protection under the IDCP. This measure currently covers all yellowfin tuna or products derived from yellowfin tuna harvested in the ETP by purse seine vessels of, or exported from seven trading partners. Fresh yellowfin tuna is exempt.

<sup>98</sup> It is required for the import, export, or re-export of abalone, swordfish, shark fins, toothfish, Antarctic krill, Atlantic cod, Pacific cod, blue crab, red king crab, dolphinfish (Mahi Mahi), grouper, red snapper, sea cucumber, sharks, shrimp, swordfish, and tunas (Albacore, Bigeye, Skipjack, Yellowfin, and Bluefin). It is also required for the import of all frozen or processed tuna. For details on products covered and HS tariff codes, see CBP (2020), *ACE Automated Broker Interface Requirements: Implementation Guide for National Marine Fisheries Service*. Viewed at: [https://www.cbp.gov/sites/default/files/assets/documents/2020-Mar/ACE%20NMFS%20PGA%20Implementation%20Guide%2018Feb2020\\_final\\_0.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2020-Mar/ACE%20NMFS%20PGA%20Implementation%20Guide%2018Feb2020_final_0.pdf).

<sup>99</sup> NOAA, *International Fisheries Trade Permit*. Viewed at: <https://www.fisheries.noaa.gov/permit/international-fisheries-trade-permit>.

<sup>100</sup> *Federal Register* (2016), Vol. 81, No. 237, 9 December, pp. 88975-88998. Viewed at: <https://www.federalregister.gov/documents/2016/12/09/2016-29324/magnuson-stevens-fishery-conservation-and-management-act-seafood-import-monitoring-program>.

<sup>101</sup> *Federal Register* (2021), Vol. 86, No. 82, 30 April, pp. 23027-23028. Viewed at: <https://www.federalregister.gov/documents/2021/04/30/2021-09077/bureau-of-oceans-and-international-environmental-and-scientific-affairs-annual-certification-of>.

4.108. The provisions of the MMPA have generally wide-ranging requirements that prohibit importation of fish and fish products if the fishing technology results in the serious injury or death of marine mammals in excess of U.S. standards. The MMPA Import Provisions Rule of August 2016 requires foreign fish harvesters to therefore seek and receive a comparability finding from the NMFS demonstrating they meet this criterion to export fish to the United States.<sup>102</sup> The rule also applies to intermediary countries to ensure there is no circumvention of the import prohibition. The MMPA Import Provisions Rule established a five-year exemption period that initially expired on 31 December 2021. However, an interim final rule extended the exemption period by one year until 31 December 2022.<sup>103</sup> Applications for comparability findings were due on 30 November 2021 and as of March 2022 were being evaluated prior to making decisions by 30 November 2022. In August 2018, pursuant to a Court of International Trade order, CBP implemented import restrictions on certain fish and fish products from Mexico caught with gillnets.<sup>104</sup> A subsequent notice extended existing prohibitions on shrimp, corvina, sierra, and chano fish and fish products harvested by gillnets in the upper Gulf of California.

4.109. Foreign direct investment in U.S. fisheries is prohibited or restricted in certain cases. The main restrictions pertain to the ownership of fishing vessels for the catch and transport of fish in U.S. waters. Regulations 19 (C.F.R. § 4.80) require that the vessel is built in the United States and is owned by a U.S. citizen or where at least 75% of the ownership and control is by U.S. citizens. There are also some restrictions on foreigners to obtain individual fishing quota (IFQ) allocations. Limited Access Privilege Programs (LAPPs) prohibit any person other than a U.S. citizen, a corporation, partnership, or permanent resident alien from acquiring quota. All fish harvested under a LAPP must be processed on vessels of the United States or on U.S. soil, unless a waiver from this requirement has been issued. There are no special restrictions for foreigners engaging in fish product processing and aquaculture.

#### **4.1.3.3 Policy, fisheries management, and support measures**

4.110. In recent years, the United States has worked domestically and internationally to promote sustainable fisheries. It has improved domestic management schemes to prevent overfishing and promoted sustainable fishing. In line with this, it has also improved enforcement and enacted new measures. The United States joined the Port State Measures Agreement in 2016 and has taken other measures to combat IUU fishing. Some examples include the establishment of the Interagency Working Group on IUU fishing under the Maritime Security and Fisheries Enforcement (SAFE) Act<sup>105</sup>, the inclusion in FTAs of provisions to deal with IUU fishing, the use of Customs Mutual Assistance Agreements to cooperate with foreign customs administrations in combating IUU fishing, and the implementation of SIMP, a traceability program.

4.111. SIMP was implemented on 1 January 2018 and aims to deter IUU fish and fish products and misrepresented seafood from entering U.S. commerce and to support the identification of such products while complementing existing NMFS traceability programs for imported seafood products. SIMP requirements apply to 13 single species and species groups that were determined to be the most vulnerable.<sup>106</sup> These species are some of the most popular fish products, thus SIMP covers about half of all U.S. seafood imports.<sup>107</sup> NMFS developed SIMP under the constraint that lawful trade should not be stopped and the volume of imports is too large to inspect every shipment; however, it is possible to prohibit or stop the importation of IUU fish shipments pursuant to the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The SIMP

<sup>102</sup> *Federal Register* (2016), Vol. 81, No. 157, 15 August, pp. 54390-54419. Viewed at: <https://www.federalregister.gov/documents/2016/08/15/2016-19158/fish-and-fish-product-import-provisions-of-the-marine-mammal-protection-act>.

<sup>103</sup> *Federal Register* (2020), Vol. 85, No. 213, 3 November, pp. 69515-69157. Viewed at: <https://www.federalregister.gov/documents/2020/11/03/2020-24210/modification-of-deadlines-under-the-fish-and-fish-product-import-provisions-of-the-marine-mammal>.

<sup>104</sup> *Federal Register* (2018), Vol. 83, No. 167, 28 August, pp. 43792-43796. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2018-08-28/pdf/2018-18628.pdf>.

<sup>105</sup> The Maritime SAFE Act, passed in 2019, calls for the establishment of an interagency working group to strengthen coordination on maritime security and combat IUU fishing.

<sup>106</sup> Since inception it has applied to abalone, Atlantic cod, blue crab (Atlantic), dolphinfish (Mahi Mahi), grouper, king crab (red), Pacific cod, red snapper, sea cucumber, sharks, shrimp, swordfish, and tuna (Albacore, Bigeye, Skipjack, Yellowfin, and Bluefin); however, for the initial period until 31 December 2018, there was a stay on the implementation for abalone and shrimp.

<sup>107</sup> NOAA, *Seafood Import Monitoring Program*. Viewed at: <https://www.fisheries.noaa.gov/international/seafood-import-monitoring-program>.



provisions are implemented by NOAA Fisheries' Office of International Affairs, Trade, and Commerce (IATC), which conducts random and directed audits. SIMP's first assessment, completed in April 2021, showed non-compliance in about 40% of the audits mainly due to discrepancies between information reported at the time of the initial entry and records provided at the time of the audit.<sup>108</sup>

4.112. The SIMP implementing rules were amended in April 2018 to lift the stay that had applied to shrimp and abalone species since inception. The stay had been put in place in the original rule over concerns about equivalency. Recordkeeping and traceability information for domestic aquaculture abalone and shrimp was deemed not equivalent or comparable to that of imported abalone and shrimp, as it was regulated at the state level and was subject to different rules. The Consolidated Appropriations Act of 2018 mandates that the stay for abalone and shrimp be lifted and a new Final Rule in this respect be issued by USDOC. As a result, these two species were added to SIMP with an effective date of 31 December 2018.<sup>109</sup> At the same time, the same Act instructed the Secretary of Commerce to establish a traceability program for inland, coastal, and marine aquaculture of shrimp and abalone by 31 December 2018. These domestic traceability rules were presented in a proposed rule by NOAA on 11 October 2018.<sup>110</sup> The Traceability Information Program for Seafood (TIPS), a proposed domestic counterpart to the shrimp and abalone import requirements under SIMP to verify that U.S. aquacultured shrimp and abalone were lawfully produced, was placed on hold as a result of the impact of the COVID-19 pandemic.

4.113. The USMCA contains provisions on fisheries, marine conservation, and IUU fishing, including articles on IUU fishing, sustainable fisheries management, and conservation of marine species. As part of USMCA implementation, USD 8 million was allocated to NOAA to combat IUU fishing and enhance the implementation of the SIMP.

4.114. E.O. 13921 of 7 May 2020, known as the Seafood Competitiveness Executive Order, made several changes with the aim of improving the competitiveness of the U.S. seafood industry.<sup>111</sup> The main action points included: (i) removing barriers to U.S. fishing, to this end the Order instructed the USDOC to prepare a prioritized list of recommended actions to reduce burdens on domestic fishing and to increase production within sustainable fisheries, including a proposal for initiating each recommended action within one year of the date of the order; (ii) combating IUU fishing; (iii) removing barriers to permits (through rulemaking, technical assistance and training, public-private partnerships, and promoting interagency, intergovernmental, and international cooperation); (iv) improving regulatory transparency for aquaculture, and removing regulatory barriers and opening new areas in the aquaculture sector; (v) updating the Aquaculture Development Plan; (vi) promoting aquatic animal health; and (vii) establishing an Interagency Seafood Trade Task Force. Most of these elements require consulting and reporting, with recommendations or other outcomes generally expected within a one-year time period. One of the key provisions of the E.O. directs NOAA to establish 10 Aquaculture Opportunity Areas (AOAs), small geographic areas with potential suitability for commercial aquaculture. As at March 2022, NOAA had identified potential areas in federal waters off of southern California and the Gulf of Mexico to establish the first two AOAs, and was developing an Environmental Impact Statement for each region to identify the specific areas to be included in each AOA.

<sup>108</sup> During calendar year 2020, 1,073 audits were completed. NOAA (2021), *Report on the Implementation of the U.S. Seafood Import Monitoring Program*. Viewed at: <https://media.fisheries.noaa.gov/2021-05/SIMP%20Implementation%20Report%202021.pdf?null>.

<sup>109</sup> *Federal Register* (2018), Vol. 83, No. 79, 24 April, pp. 17762-17765. Viewed at: <https://www.federalregister.gov/documents/2018/04/24/2018-08553/magnuson-stevens-fishery-conservation-and-management-act-lifting-the-stay-on-inclusion-of-shrimp-and>.

<sup>110</sup> *Federal Register* (2018), Vol. 83, No. 197, 11 October, 51426-51434. Viewed at: <https://www.federalregister.gov/documents/2018/10/11/2018-22039/magnuson-stevens-fishery-conservation-and-management-act-traceability-information-program-for>.

<sup>111</sup> The Order stated that it is "the policy of the Federal Government to: (a) identify and remove unnecessary regulatory barriers restricting American fishermen and aquaculture producers; (b) combat illegal, unreported, and unregulated fishing; (c) provide good stewardship of public funds and stakeholder time and resources, and avoid duplicative, wasteful, or inconclusive permitting processes; (d) facilitate aquaculture projects through regulatory transparency and long-term strategic planning; (e) safeguard [U.S.] communities and maintain a healthy aquatic environment; (f) further fair and reciprocal trade in seafood products; and (g) continue to hold imported seafood to the same food-safety requirements as domestically produced products". *Federal Register* (2020), Vol. 85, No. 92, 12 May, 28471-28477. Viewed at: <https://www.federalregister.gov/documents/2020/05/12/2020-10315/promoting-american-seafood-competitiveness-and-economic-growth>.

4.115. The Interagency Seafood Trade Task Force was made responsible for improving fair and reciprocal trade in seafood products and making recommendations to USTR on a comprehensive interagency seafood trade strategy that identifies opportunities to improve access to foreign markets through trade policy and negotiations. The Task Force submitted recommendations to USTR on 5 August 2020. USTR transmitted its Seafood Trade Strategy to the President on 3 November 2020.

4.116. In aquaculture, U.S. Policy is guided by its Aquaculture Action Plan 2020-24 under the USDA's Agricultural Research Service.<sup>112</sup> The Plan aims to improve domestic aquaculture efficiency and quality by conducting research and developing new technologies: it targets improving efficiencies in catfish, salmonid, hybrid striped bass, and shellfish aquaculture; developing marine finfish feedstocks; and advancing sustainable aquaponic production systems.

4.117. The United States manages fisheries stocks and combats overfishing through the MSA, which is its long-standing and main legislation on fisheries management. There have been several significant amendments or additions to the MSA including the Sustainable Fisheries Act, the Reauthorization Act of 2006, and most recently the Modernizing Recreational Fisheries Management Act, all of which have extended its scope (Table 4.12).

**Table 4.12 Key fisheries legislation, 2022**

Legislation/Reference	Overview
Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, 16 U.S.C. 1801 et seq.	Primary law on fisheries management, i.e. preventing overfishing
Modernizing Recreational Fisheries Management Act (P.L. 115-405)	Makes improvements to recreational fishing data
High Seas Driftnet Fishing Moratorium Protection Act (P.L. 102-582)	Addresses IUU fishing
Endangered Species Act, 16 U.S.C. 1531-1544	Prevents extinction of endangered species
Marine Mammal Protection Act (P.L. 92-522)	Establishes protections to protect marine mammals
National Environmental Policy Act (P.L. 91-190)	Environmental impacts assessment
American Fisheries Act (P.L. 105-277)	Strengthens U.S. ownership standards
Antarctic Marine Living Resources Convention Act, 50 C.F.R. 300.100-300.116	Establishes the Antarctic Marine Living Resources Program for managing Southern Ocean resources
Atlantic Tunas Convention Act, 16 U.S.C. 971	Implements Convention
National Aquaculture Act, 16 U.S.C. 2801	Promotes the development of U.S. aquaculture
Illegal, Unreported, and Unregulated Fishing Enforcement Act (P.L. 114-81), Title 3 Port State Measures Agreement Act of 2015	Amends the Magnuson-Stevens Fishery Conservation and Management Act and implements the Agreement on Port State Measures to Prevent, Deter and Eliminate IUU fishing
Sustainable Fisheries Act (P.L. 104-297)	Measures to prevent overfishing and rebuild stocks
Interjurisdictional Fisheries Act, 16 U.S.C. 4101-4107	Regional management of states' fisheries
The High Seas Fishing Compliance Act, 50 C.F.R. 300.330-300.341	Requires a permit to fish on the high seas

Source: Compiled by the WTO Secretariat from NOAA information.

4.118. In recent years, U.S. fishing stocks managed under the MSA were maintained within catch limits, i.e. between 87% to 93%. The number of stocks on the overfishing list improved slightly, from 30 to 26 over the period; however, the number overfished deteriorated slightly from 38 to 49.

4.119. Support measures to the fishing sector involve a number of programs at the federal and state levels, including tax concessions or rebates, loans, and pandemic-related measures. Most measures have been in place for many years and are notified to the WTO as subsidies and compiled by the OECD in its annual reporting of support to the sector. More recently, the CARES Act provided additional funding to NOAA for fisheries assistance that aims to help states, Tribes, and territories with coastal and marine fisheries who have been negatively affected by the COVID-19 pandemic; USD 300 million was allocated for 2020.<sup>113</sup> The funds are directed through fisheries commissions and involve direct and indirect payments for fishery-related losses; aquaculture enterprises are also eligible. One third of the funds are allocated to Alaska and Washington.

<sup>112</sup> USDA (2020), *USDA ARS National Program 106, Aquaculture Action Plan 2020-2024*. Viewed at: [https://www.ars.usda.gov/ARSUserFiles/np106/NP106%20Aquaculture%20Action%20Plan%202020-2024%20Amended%207-20-2021\\_final2.pdf](https://www.ars.usda.gov/ARSUserFiles/np106/NP106%20Aquaculture%20Action%20Plan%202020-2024%20Amended%207-20-2021_final2.pdf).

<sup>113</sup> NOAA (2020), "Commerce Secretary Announces Allocation of \$300 Million in CARES Act Funding", 7 May. Viewed at: <https://www.fisheries.noaa.gov/feature-story/commerce-secretary-announces-allocation-300-million-cares-act-funding>.

4.120. An excise tax has been charged on fishing gear since 1950 pursuant to the Dingell–Johnson Act. The current rate is 10% of the value of the sale and it is charged on manufacturers and importers of, *inter alia*, specified fishing gear, reels, outboard motors, and nets.<sup>114</sup> The Dingell–Johnson Act also directs other tax payments, in addition to excise receipts, to the Sport Fish Restoration and Boating Trust Fund. The Fund was recently reauthorized through FY2026.<sup>115</sup> The other receipts include: (i) federal fuel taxes attributable to motorboat fuel from the Highway Trust Fund (HTF); (ii) receipts attributable to small engine fuel used for outdoor power equipment from the HTF; and (iii) annual receipts from import duties on fishing tackle, yachts, and pleasure craft. The majority of the receipts in the Fund, about two thirds, are from the motorboat fuel tax, 18% from excise duty receipts, and about 10% from import duties.<sup>116</sup> In 2020, the Fund disbursed nearly USD 1 billion, and over the course of its history disbursed nearly USD 23 billion.<sup>117</sup> The funds are allocated to each state but are generally spent on wetlands restoration (19%), boating safety (17%), boat infrastructure such as docks and outreach (6%), and state fish and wildlife agencies (58%).<sup>118</sup>

4.121. In its annual notification to the WTO pursuant to Article XVI:1 of GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures, the United States notified eight programs in the fisheries area (Table 4.13).

**Table 4.13 Fisheries subsidies notified to the WTO**

(USD)

Program/Reference	Amount of subsidy/loans outstanding
Columbia River Fishery Development Program (Mitchell Act), 16 U.S.C. 755-757	USD 17,310,648
Fisheries Finance Program, 46 U.S.C. 53701	USD 92,000,000
Saltonstall-Kennedy R&D Program Annual Grant Competition: Fisheries R&D, 15 U.S.C. 713c-3(c)	USD 10,000,000
Capital Construction Fund (CCF), 46 U.S.C. 535	USD 2,500,000
Bycatch Reduction Engineering Program (BREP), 16 U.S.C. 1865	USD 2,342,000
The Vessel Monitoring System (VMS) Reimbursement Program, 16 U.S.C. 1801 et seq.	USD 706,174
Fishing Capacity Reduction Loan Program, 16 U.S.C. 1801 et seq.	none
Fishery Disaster Assistance Program, 16 U.S.C. 1801 et seq. and 16 U.S.C. 4101-4107	USD 165,000,000

Source: WTO document G/SCM/N/372/USA, 14 July 2021.

#### 4.1.3.4 International agreements and cooperation

4.122. In 2015, the United States enacted the Port State Measures Agreement Act, which implemented the Port State Measures Agreement.<sup>119</sup> The Agreement entered into force for the United States on 5 June 2016 and works to deter or prevent IUU fishing among the 70 parties to the Agreement.<sup>120</sup> Many of the provisions of the Agreement were already common practice in the United States prior to ratification; however, there have been improvements to the screening and administration of landings in particular. The United States is also a party to the Multilateral Treaty on Fisheries Between Certain Governments of the Pacific Island States and the Government of the United States of America (commonly known as the South Pacific Tuna Treaty) with 16 Pacific Island parties that allows U.S. purse seine vessels to fish tuna in the EEZ of these parties in exchange for certain payments or fees.<sup>121</sup> The Treaty has been in place since 1988 but has been amended several

<sup>114</sup> IRS, *Field Directive Federal Excise Tax on the Importation and Manufacture of Fishing and Archery Products*. Viewed at: <https://www.irs.gov/businesses/small-businesses-self-employed/field-directive-federal-excise-tax-on-the-importation-and-manufacture-of-fishing-and-archery-products>.

<sup>115</sup> P.L. 117-52, 15 November 2021.

<sup>116</sup> National Marine Manufacturers Association, *Sport Fish Restoration and Boating Trust Fund*. Viewed at: [https://www.nmma.org/assets/cabinets/Cabinet585/NMMA\\_Trust%20Fund%20One-Pager\\_Oct%202019.pdf](https://www.nmma.org/assets/cabinets/Cabinet585/NMMA_Trust%20Fund%20One-Pager_Oct%202019.pdf).

<sup>117</sup> Department of the Interior (2020), "Sportsmen and Sportswomen Generate Nearly \$1 Billion in Conservation Funding", 19 March. Viewed at: <https://www.doi.gov/pressreleases/sportsmen-and-sportswomen-generate-nearly-1-billion-conservation-funding>.

<sup>118</sup> National Marine Manufacturers Association, *Sport Fish Restoration and Boating Trust Fund*. Viewed at: [https://www.nmma.org/assets/cabinets/Cabinet585/NMMA\\_Trust%20Fund%20One-Pager\\_Oct%202019.pdf](https://www.nmma.org/assets/cabinets/Cabinet585/NMMA_Trust%20Fund%20One-Pager_Oct%202019.pdf).

<sup>119</sup> Port State Measures Agreement Act of 2015. Viewed at: <https://uscode.house.gov/view.xhtml?path=/prelim@title16/chapter93&edition=prelim>.

<sup>120</sup> FAO, *Agreement on Port State Measures*. Viewed at: <https://www.fao.org/port-state-measures/en/>.

<sup>121</sup> Parties to the Treaty include Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga,

times. In the latest amendment in 2016, the United States secured a more flexible arrangement in terms of fishing days and modernized the way access is secured.<sup>122</sup> The amended Treaty is awaiting Senate consent and amendments to its implementing legislation, the South Pacific Tuna Act. The Agreement on the International Dolphin Conservation Program (AIDCP) is a multilateral agreement to reduce incidental dolphin mortalities in tuna purse seine fishing in the ETP area and ensure the long-term sustainability of tuna stocks. The United States is a member since its inception in 1999.

4.123. The United States is a member of a number of bilateral and regional fisheries management agreements, including membership in nine Regional Fisheries Management Organizations (RFMOs). One new agreement entered into force recently: the Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean came into force on 25 June 2021. The United States is one of the 10 parties that have agreed to protect the Arctic high seas from commercial fishing activities before they have begun and potentially manage commercial fishing if it becomes possible. The Agreement also facilitates joint research and monitoring of the area.<sup>123</sup>

## 4.2 Energy

### 4.2.1 General

4.124. Primary energy consumption amounted to 100.4 quadrillion British thermal units (Btu) in 2019, 0.8% less than in the previous year. In 2020, primary energy consumption dropped a further 7.4% due to lower economic activity and reduced demand for transportation due to the COVID-19 pandemic. These effects were particularly pronounced in April-May 2020. Although the return to a normalized consumption pattern continued during 2021, with consumption up 7.5% year-on-year from April until November, primary energy consumption remains below the peak reached in 2018.<sup>124</sup>

4.125. The U.S. economy has gradually become more energy efficient. Whereas, in the past, economic growth was associated with rising need for energy, the growth trends have decoupled since 2005. From 1990 to 2017, a period during which the population rose by 30% and real GDP almost doubled, the rise in total primary energy consumption was more moderate (up 16%). Fossil fuels constitute nearly 80% of the domestic supply of primary energy. The share has not changed much in recent years as rising output of crude oil and natural gas has outstripped declining production of coal. Biomass, wind, and hydropower are the main sources of renewable energy. The contribution from nuclear power to primary U.S. energy production is about 11%.

4.126. Overall, the United States was a net exporter of energy through 1953, after which it became a net importer. The dependency on energy imports grew considerably in the 1960s and 1970s and, with the energy crises of 1973/74 and 1979/80 in mind, energy security became a matter of political concern. However, the energy outlook did not begin to change until technological breakthroughs in the production of shale oil and gas around 2005 made such exploitation economical. Net imports of primary energy, about 30.2 quadrillion Btu in 2005, declined by 63% until 2015 and, after a slight rise in 2016, the energy trade balance narrowed further. The United States became a net energy exporter during 2019 and, except for a small deficit in June 2020, it has maintained a steady surplus in energy trade since then.

4.127. Total greenhouse gas emissions in the United States amounted to 6,457 million tons of carbon dioxide equivalent in 2017, or about 12% of global emissions. Emissions of carbon dioxide, mostly from combustion processes, accounted for 82% of the total. The remainder – primarily methane and nitrous oxide emissions – originated from agriculture, waste management, and the

---

Tuvalu, the United States, and Vanuatu. NOAA Fisheries, *South Pacific Tuna Treaty*. Viewed at: <https://www.fisheries.noaa.gov/pacific-islands/international-affairs/south-pacific-tuna-treaty>.

<sup>122</sup> NOAA Fisheries, *South Pacific Tuna Treaty*. Viewed at: <https://www.fisheries.noaa.gov/pacific-islands/international-affairs/south-pacific-tuna-treaty>.

<sup>123</sup> The signatories are Canada, China, Denmark (in respect of the Faroe Islands and Greenland), the European Union, Iceland, Japan, the Republic of Korea, Norway, the Russian Federation, and the United States. FAO (2018), *Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean*. Viewed at: <http://extwprlegs1.fao.org/docs/pdf/mul199323.pdf>.

<sup>124</sup> U.S. Energy Information Administration (EIA), *Monthly Energy Review January 2022*, DOE/EIA-0035(2022/1), Table 1.1. Viewed at: <https://www.eia.gov/totalenergy/data/monthly/archive/00352201.pdf>.

production of oil and gas.<sup>125</sup> The United States has been party to the United Nations Framework Convention on Climate Change (UNFCCC) since it entered into force in 1994 and signed the Paris Agreement on 3 September 2016. The United States withdrew from the Paris Agreement in November 2020, but its absence was brief. The new U.S. administration announced that the United States was re-entering the Paris Agreement in January 2021. In April 2021, the United States submitted its Nationally Determined Contribution to reduce net greenhouse gas emissions by 50% to 52% below 2005 levels by 2030, create a carbon-pollution-free electric power sector by 2035, and achieve net-zero emissions economy-wide by no later than 2050.<sup>126</sup> A National Climate Task Force has been formed to mobilize action on climate change by all federal government agencies.

4.128. In November 2021, the U.S. Administration released a report regarding the Long-Term Strategy of the United States, which lays out pathways to reach the net-zero emissions 2050 goal and identifies the clean energy deployment and scale-up needed to meet this target.<sup>127</sup> Pursuant to Article 4.19 of the Paris Agreement, the report serves to communicate the Long-Term Strategy to the international community, and shows how current and near-term policies and actions across the country deliver a pathway through the 2030s and 2040s to reach the 2050 net-zero goal. The analysis finds that mobilizing to achieve net-zero will reduce distributional inequities of environmental pollution and climate vulnerability, improve public health, and promote economic growth. The report also states that all viable routes to net-zero involve five key transformations: decarbonize electricity; electrify end uses and switch to other clean fuels; reduce energy waste; reduce methane, hydrofluorocarbons, and other non-CO<sub>2</sub> greenhouse gas emissions; and scale up CO<sub>2</sub> removal, including through land carbon sinks and engineered strategies.

4.129. The United States is a global leader in energy-related research, development, and demonstration. In 2017, some USD 7.3 billion in federal funds were allocated to basic energy research (31%), energy efficiency (24%), renewable energy (16%), nuclear energy (11%), fossil fuels (6%), and electric power systems (5%).

#### 4.2.2 Crude oil

4.130. Crude oil is produced in 32 states and in U.S. coastal waters, primarily in the Gulf of Mexico. Incentives for oil (and gas) production are mainly provided in the form of tax breaks to the producing companies, and petroleum products are taxed (relatively) lightly. The production of light tight (shale) oil is price sensitive, and the industry boom slowed down in 2015-16 as global oil prices softened, only to rise again as markets tightened. The United States became the world's largest producer of crude oil in mid-2018, having first overtaken the Kingdom of Saudi Arabia (in February 2018) and then the Russian Federation (in July 2018). The growth in U.S. production continued through 2019 and into the first months of 2020. The COVID-19 pandemic, which had strong effects on demand and in global prices, triggered a drop in U.S. production of crude oil that continued into 2021. Exploration and production companies cut capital expenditures, focusing on well completions rather than new drilling. U.S. production, which is increasing once again, may average about 12 million barrels/day (b/d) in 2022, but will still be below the November 2019 level (13 million b/d).

4.131. The United States holds about one fifth of the world's refining capacity. The industry expanded with the boom in shale oil production when exports of crude oil were subject to licensing, and effectively banned, whereas refined products could be exported with more ease. The 40-year-old ban on crude oil exports was lifted in 2015. Due to high domestic demand, the United States is a net importer of certain petroleum products.

4.132. The United States' Strategic Petroleum Reserve (SPR) comprises four sites with deep underground storage caverns capable of holding up to 727 million barrels of crude oil in total. From FY2017 through FY2020, about 60 million barrels of oil were sold from the SPR. At the end of 2021,

<sup>125</sup> International Energy Agency (2019), *Energy Policies of IEA Countries: United States 2019 Review*. Viewed at: <https://www.iea.org/reports/energy-policies-of-iea-countries-united-states-2019-review>.

<sup>126</sup> U.S. Department of State and U.S. Executive Office of the President (2021), *The United States' Nationally Determined Contribution: Reducing Greenhouse Gases in the United States: A 2030 Emissions Target*. Viewed at:

<https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/United%20States%20of%20America%20First/United%20States%20NDC%20April%2021%202021%20Final.pdf>.

<sup>127</sup> U.S. Department of State and U.S. Executive Office of the President (2021), *The Long-Term Strategy of the United States: Pathways to Net-Zero Greenhouse Gas Emissions by 2050*. Viewed at: <https://www.whitehouse.gov/wp-content/uploads/2021/10/US-Long-Term-Strategy.pdf>.



the SPR inventory nevertheless amounted to 593.7 million barrels of crude oil. Legislation in place would allow a drawdown of the SPR to some 310 million barrels by 2031.

#### 4.2.3 Natural gas

4.133. The United States has been the world's largest producer of natural gas since 2011. Shale gas is now the dominant source of supply. The growth in U.S. shale gas production is projected to continue through 2050. Natural gas accounted for 36% of the production of primary energy in 2020 and 2021. Domestic consumption appears to have reached a historic peak in 2019, driven by demand from the transformation sector (i.e. heat and power generation) and industry, in particular the chemicals sector. The United States has an extensive network of transmission pipelines – about 210 pipeline systems with a total length of nearly 500,000 km.

4.134. Imports or exports of natural gas require short- or long-term authorizations from the Department of Energy, in accordance with the Natural Gas Act of 1938, as amended. Applications involving countries that have concluded FTAs with the United States are granted without modification or delay, and exports to non-FTA countries are also authorized unless considered inconsistent with public interest or explicitly prohibited by law or policy. The first major export shipment of LNG took place in February 2016; since then, exports have been on the rise. Net exports of natural gas grew by 178% in 2019, followed by a further 44% rise in 2020, and another 41% increase in 2021.

#### 4.2.4 Coal

4.135. The United States holds the world's largest reserves of coal and ranks second (after China) in global output, and third (after China and India) in global consumption of coal. Coal mining takes place in three main regions that cover 25 states. Wyoming (41% of total production) and West Virginia (13%) were the two principal coal mining states in 2020. Coal is predominantly (about 94%) used for heat and power generation, and domestic demand for coal has fallen dramatically as public utilities have been switching to abundant natural gas supplies as the main feedstock. About 13% of the coal produced in 2019 and 2020 was exported. Europe, and increasingly countries in Asia, constitute the main markets for U.S. coal. In the first 11 months of 2021, coal accounted for 11% of the primary energy production in volume in the United States, down from 28.4% in 2011.

4.136. Environmental regulations have significant impact on coal-fired power generation. Older, smaller, and less efficient production units have closed, and further retirements may be expected in the coming years. Moreover, as market conditions remain unfavorable, no new coal plants are being considered. The combustion of coal generates greenhouse gases and other pollutants (e.g. mercury, sulphur dioxide, and nitrogen oxides) in larger quantities relative to other sources of fuel. The issue is being addressed through, *inter alia*, the funding of research on carbon capture, utilization, and storage technologies. The American Jobs Creation Act of 2004 established a tax credit for the production of refined coal, i.e. coal that has been treated to lower emissions during combustion. A coal excise tax is levied on underground and surface mining to finance health-related expenditures for miners under the Black Lung Disability Fund.

#### 4.2.5 Renewable energy

4.137. About 12.6% of the production of primary energy was derived from renewable sources in 2021, compared to 9.3% in 2005. Among renewables, biomass (including renewable waste) has for many years accounted for 50% (or more) of the energy output, but its share is slowly declining. Solid biomass is used in electricity generation as well as in certain industries, in particular pulp and paper. Another important bio-component is ethanol, mainly produced from maize, which is blended to make transport biofuel. The Energy Policy Act of 2005 established a Renewable Fuel Standard (RFS), further expanded by the Energy Independence and Security Act of 2007. The RFS mandates the incorporation of renewable fuels into the domestic transportation fuel supply. Each year, the U.S. Environmental Protection Agency (EPA) issues RFS rulemakings with increasing volume requirements specific to certain renewable fuel categories. For example, the RFS sets a target of 36 billion gallons per year of renewable fuel by 2022, with conventional (maize) ethanol accounted for in the RFS limited to 15 billion gallons per year.

4.138. The United States does not have a national target for renewable energy nor an explicit federal support mechanism. However, the Public Utilities Regulatory Policies Act of 1978 requires

regulated utilities to purchase power from alternative energy sources produced by "qualified facilities" at rates that cover their costs of such production. Incentives are also provided in the form of investment tax credits for the installation of solar panels, and production tax credits for power generated by wind turbines. Although wind and solar power still accounted for 3.4% and 1.5%, respectively, of primary energy production in 2021, their growth rates have been high, and generation from wind power has in general exceeded that from hydroelectric sources since August 2019. Renewable portfolio standards have been enacted by 31 states and the District of Columbia, each with their own specific policies, eligible sources and technologies, trading rules, and targets.

#### 4.2.6 Nuclear energy

4.139. The Nuclear Regulatory Commission (NRC) is responsible for industry oversight, including reactor safety, materials safety and materials licensing, waste management, and the issuance and renewal of reactor licenses. The NRC is required by law to recover approximately 90% of its annual budget from the nuclear industry. Reactor licenses are issued for an initial term of 40 years and may be extended for an unlimited number of 20-year periods.

4.140. The United States is the world's largest producer of nuclear power. Its 56 commercially operating nuclear power plants, comprising 93 light water reactor units across 28 states, generate about one third of the world's nuclear electricity. Most of the reactors were built between 1967 and 1990. Units 3 and 4 at the Alvin W. Vogtle Electric Generating Plant in Georgia, planned for completion in 2022 and 2023, are the first new nuclear units to be built in the United States in more than 30 years. Federal loan guarantees and tax credits similar to those granted for renewable projects have been provided to support the project.

4.141. Facing competition from shale gas and subsidized wind power, several nuclear plants have shut down before the end of their operating licenses in recent years. High costs for repair and refurbishment, and compliance with stricter environmental requirements, have also been contributing factors. Three states (New York, Illinois, and New Jersey) have introduced zero-emissions credit programs to provide subsidies to their nuclear energy producers and thereby secure the long-term operation of the reactors. The Nuclear Waste Policy Act of 1982 made the final repository of such waste a federal responsibility, and a charge is levied on all generated nuclear power for the benefit of the Nuclear Waste Fund. More than USD 44 billion has been accumulated in the fund to date. As no central repository is available, nuclear waste continues to be stored on-site, and nuclear utilities receive some USD 800 million per year in compensation for their storage costs.

#### 4.2.7 Electricity

4.142. In 2021, electricity end-use consumption amounted to approximately 3.93 trillion kWh, 96.6% of which was sold by retail and the remaining consumed directly by end users. After reaching in 2020 its lowest level since 2012, electricity consumption returned to prior COVID-19 levels in 2021, mainly through increases in consumption of the commercial and industrial sectors.<sup>128</sup> In 2021, the residential sector was the largest user of electricity, with a share of 38.9% of all retail sales, followed by the commercial (34.9%) and industrial sectors (26.0%).

4.143. During the review period, the use of natural gas increased, from 32% in 2017 to 38% of electricity generation in 2021.<sup>129</sup> Similarly, renewable energy sources (including wind, hydroelectric, solar, biomass, and geothermal energy) generated a record 826 billion kWh of electricity, corresponding to 20% of all the electricity generated in the country (17% in 2017). Excluding hydropower, renewable energy sources represent nearly 14% of total U.S. generation, and their capacity has increased by 10% between 2020 and 2021. Generation from renewable sources has surpassed nuclear (19%) (Chart 4.5). In general, generation from non-renewable sources has been losing share: coal-fired power plants delivered 899 billion kWh in 2021, 55% less than its peak production observed in 2007. Petroleum accounted for less than 0.5% of the electricity generated in 2021. The increase in renewable energy has partly resulted from the swift deployment of wind

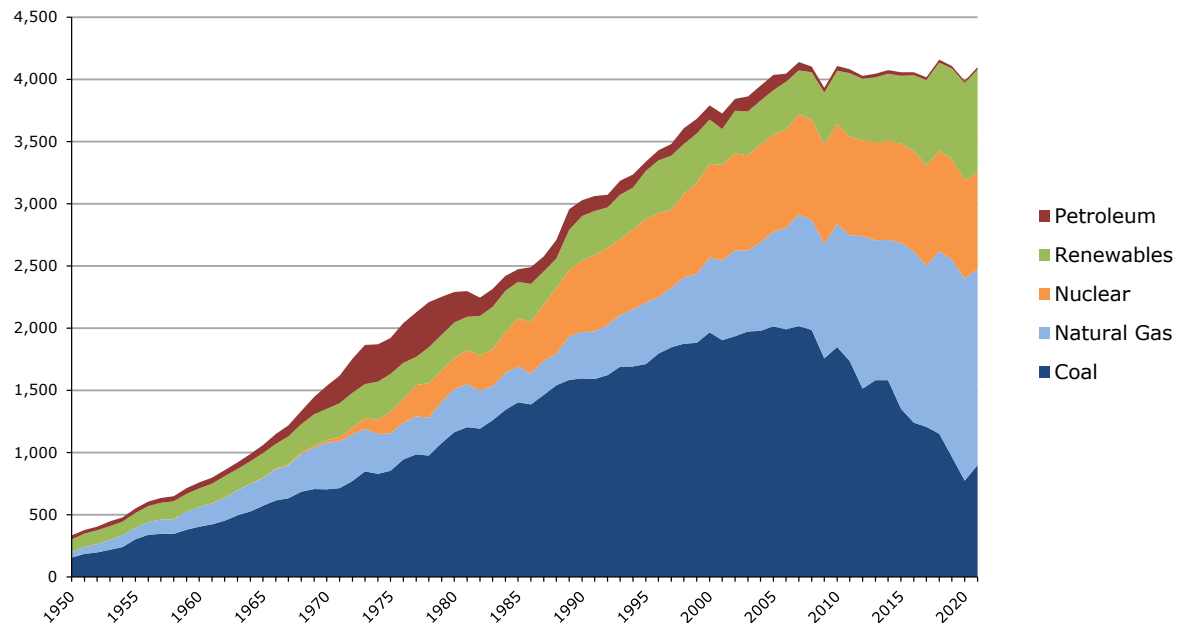
<sup>128</sup> U.S. EIA (2022), *Monthly Energy Review: March 2022*, Table 7.6. Electricity End Use. Viewed at: <https://www.eia.gov/totalenergy/data/monthly/pdf/mer.pdf>.

<sup>129</sup> However, U.S. EIA expects a decline in the share of natural gas in electricity generation in coming years, replaced by renewables, in particular wind and solar energy. U.S. EIA, *Short Term Energy Outlook*, February 2022. Viewed at: <https://www.eia.gov/outlooks/steo/report/electricity.php>.

and solar energy installations since 2015. Reflecting this, wind energy production almost doubled between 2015 and 2021, surpassing hydroelectric generation as the largest source among renewables in 2019. Solar energy has increased almost five-fold its share in electricity generation since 2015 and contributed nearly 3% of the electricity generated nationwide in 2021. On the other hand, hydroelectric production has decreased since 2017 (-13% in 2021), partially due to severe droughts in the last year. The United States is a net importer of electricity. In 2021, electricity imports and exports amounted to 53 billion kWh and 14 billion kWh, respectively. These amounts are small as compared to domestic production. In fact, electricity trade with neighboring Canada and Mexico remains marginal, representing less than 2% of total domestic demand for electricity.

**Chart 4.5 U.S. electricity net generation by major sources, 1950-2021**

(Billion kWh)



Source: U.S. EIA, *Monthly Energy Review*, various issues, Table 7.2a. Viewed at: <https://www.eia.gov/totalenergy/data/annual/index.php>.

4.144. Federal tax credit programs play a key role in new generation capacity. These programs include the Renewable Electricity Production Tax Credit (PTC), the Investment Tax Credit (ITC), and the Residential Energy-Efficient Property Credit (REEPC).<sup>130</sup> Renewable energy developers may choose to benefit from the PTC or the ITC but cannot receive the two benefits. The PTC provides eligible generation facilities with a tax credit per kWh for the first 10 years a facility is in operation.<sup>131</sup> The Further Consolidated Appropriations Act of 2020 (P.L. 116-94) and the Consolidated Appropriations Act of 2021 extended the PTC tax benefit for wind and other renewables facilities that began construction before the end of 2021. Similarly, the ITC, introduced in 2005, has been extended several times since then. Solar and geothermal energy has a permanent 10% ITC; however, the Bipartisan Budget Act of 2018 (P.L. 115-123) and the Consolidated Appropriations Act of 2021 increased the ITC temporarily to 30% through 2021.<sup>132</sup> The REEPC is a tax credit for residential owners for qualifying properties, such as, *inter alia*, solar electric property, solar water

<sup>130</sup> Other grant and loan programs may be available from several government agencies, including the Department of Agriculture, the Department of Energy, and the Department of the Interior.

<sup>131</sup> The PTC originally granted a 100% qualify for a production tax credit on projects starting before 1 January 2015 and that entered into service before 2023. To address delays related to the COVID-19 pandemic, the Taxpayer Certainty and Disaster Tax Relief Act of 2020, extended the PTC for 10 years at 60% of the full credit amount (USD 0.018 per kWh) in December 2020 for projects commencing construction before 2022.

<sup>132</sup> The ITC credit rate is reduced to 26% and 22% for facilities commencing construction in 2022 and 2023, respectively. The tax credit rate for offshore wind facilities is 30% until 2025 and does not phase out. CRS (2021), *The Energy Credit or Energy Investment Tax Credit (ITC)*, 23 April. Viewed at: <https://crsreports.congress.gov/product/pdf/IF/IF10479>.

heaters, geothermal heat pumps, small wind turbines, and fuel cell property.<sup>133</sup> Estimated revenue losses related to these tax provisions amounted to USD 13.2 billion and USD 12.6 billion in FY2020 and FY2021, respectively.<sup>134</sup>

4.145. In addition to federal regulation, the electricity industry is subject to regulatory regimes at municipal and state levels. State Public Utility Commissions deal with regulatory issues, including the regulation of retail sales to customers, the approval of generation facilities, distinct reliability issues, and more recently, renewable portfolio standards programs. Several incentives supporting renewables and energy efficiency are also available at this level.<sup>135</sup>

### 4.3 Manufacturing

4.146. The contribution of manufacturing to U.S. GDP has continued to decline since the last Review in 2018. This trend, as well as the related decline of manufacturing jobs, has been well documented since the beginning of the 2000s<sup>136</sup> and it has been behind some policy decisions, e.g. on procurement, by the U.S. authorities during the review period. In 2021, the manufacturing sector contributed 11.1% of the total value added produced in the United States, a mild recovery (+0.2 percentage points) following the negative shock in 2020 related to the COVID-19 pandemic, and down from 11.7% in 2015 (Table 4.14). The contribution of durable goods to national output has fallen by almost half a percentage point since 2015; durable goods accounted for 6.1% of GDP in 2021. The manufacturing of durable goods witnessed a loss of more than half a million jobs between 2019 and 2020, and employment levels in 2020 were below their respective values in 2015. As for non-durable goods, their decline in GDP participation was limited to 0.18 percentage points since 2015. In terms of employment, non-durable manufacturing showed higher resilience to the COVID-19 recession and kept employment levels similar to those observed in 2015.

**Table 4.14 Evolution of the manufacturing sector, 2015-21**

(USD billion and % of GDP)

	2015	2016	2017	2018	2019	2020	2021 <sup>a</sup>
Manufacturing sector (USD billion)	2,131	2,103	2,199	2,334	2,371	2,272	2,484
	(% of GDP)						
Manufacturing sector	11.7	11.2	11.3	11.4	11.1	10.9	11.1
Durable goods	6.5	6.4	6.3	6.3	6.2	6.1	6.1
Wood products	0.2	0.2	0.2	0.2	0.2	0.2	0.3
Non-metallic mineral products	0.3	0.3	0.3	0.3	0.3	0.3	0.3
Primary metals	0.3	0.3	0.3	0.3	0.3	0.3	0.3
Fabricated metal products	0.8	0.8	0.8	0.8	0.8	0.7	0.7
Machinery	0.8	0.8	0.8	0.8	0.8	0.8	0.7
Computer and electronic products	1.5	1.4	1.4	1.5	1.4	1.5	1.5
Electrical equipment, appliances, and components	0.3	0.3	0.3	0.3	0.3	0.3	0.3
Motor vehicles, bodies and trailers, parts	0.8	0.8	0.8	0.8	0.7	0.7	0.8
Other transportation equipment	0.8	0.8	0.8	0.8	0.8	0.6	0.6
Furniture and related products	0.2	0.2	0.2	0.2	0.2	0.2	0.1
Miscellaneous manufacturing	0.4	0.5	0.5	0.5	0.5	0.5	0.5
Non-durable goods	5.2	4.9	4.9	5.0	4.9	4.8	5.0
Food and beverage and tobacco products	1.4	1.4	1.4	1.3	1.3	1.4	1.4
Textile mills and textile product mills	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Apparel and leather and allied products	0.1	0.1	0.0	0.0	0.0	0.0	0.1
Paper products	0.3	0.3	0.3	0.3	0.3	0.3	0.3
Printing and related support activities	0.2	0.2	0.2	0.2	0.2	0.2	0.2
Petroleum and coal products	0.8	0.5	0.7	0.9	0.8	0.5	0.8
Chemical products	1.8	1.9	1.9	1.8	1.8	1.9	1.9
Plastics and rubber products	0.4	0.4	0.4	0.4	0.4	0.4	0.4

<sup>133</sup> This credit terminates in December 2023, and its current rate (26%) will reduce to 22% for properties entering into service after December 2022. Internal Revenue Service (IRS), *Energy Incentives for Individuals*. Viewed at: <https://www.irs.gov/newsroom/energy-incentives-for-individuals-residential-property-updated-questions-and-answers>.

<sup>134</sup> Congress of the United States, Joint Committee on Taxation (2020), *Estimates of Federal Tax Expenditures for Fiscal Years 2020-2024*. Viewed at: <https://www.jct.gov/publications/2020/jcx-23-20/>.

<sup>135</sup> North Carolina State University (NCSU) provides an overview of financial incentives and other policies. NCSU, *Database of State Incentives for Renewables & Efficiency*. Viewed at: <https://www.dsireusa.org/>.

<sup>136</sup> The decline is in terms of contribution to GDP and not in terms of output or production levels, which continued to increase during the review period. As for employment, the declining trends were described in CRS reports: CRS (2018), *Labor Market Patterns Since 2007*. Viewed at: <https://crsreports.congress.gov/product/pdf/R/R45330>; and CRS (2019), *Job Creation in the Manufacturing Revival*. Viewed at: <https://crsreports.congress.gov/product/pdf/R/R41898>.

	2015	2016	2017	2018	2019	2020	2021 <sup>a</sup>
	<b>Employment ('000)</b>						
Manufacturing sector	12,332	12,335	12,440	12,672	12,806	12,109	..
Durable goods	7,763	7,702	7,744	7,943	8,035	7,544	..
Non-durable goods	4,569	4,633	4,695	4,729	4,770	4,565	..

.. Not available.

a The first semester of 2021 at seasonally adjusted annual rates.

Note: Statistics do not include self-employment.

Source: U.S. Bureau of Economic Analysis.

4.147. With more than 12 million jobs, the manufacturing sector remains the third-largest employer in the U.S. private industries in 2020, just behind retail trade, and health care and social assistance. Manufacturing is also the largest exporting sector of the U.S. economy, accounting for more than 80% of total U.S. goods exports (nearly 55% of all U.S. exports) in 2020; the United States remained the second-largest exporter of manufactured goods in 2020.<sup>137</sup> U.S. manufacturing exports in 2020 were dominated by motor vehicles for the transport of persons, and their parts and accessories; electronic integrated circuits; petroleum gases; telephone sets, including mobile phones; medical instruments and appliances; medicaments, including immunological products such as vaccines; and automatic data processing machines. Petroleum gases, electronic integrated circuits, and immunological products were the fastest-growing exports in the manufacturing sector and have accounted for a combined increase of USD 40.9 billion since 2015. On the other hand, parts and accessories for vehicles, motor cars, and telephone sets have cumulated a decrease of USD 27.3 billion in U.S. exports since 2015.

#### 4.3.1 Border measures

4.148. The U.S. MFN simple average applied tariff for the non-agricultural sector in 2021 was 4.0% (WTO definition). The manufactured products with higher-than-average tariffs include footwear, and textiles and clothing. The HS sections of pulp and paper and works of art have the lowest rates of duty, all at zero. Steel and aluminum products generally face low or zero MFN tariff rates, but many are subject to AD and CV duties, as well as Section 232 measures (Sections 3.1.6 and 3.1.7). Since 2018, USDOC has conducted and completed seven Section 232 investigations: two investigations were on steel and aluminum; and one each on automobiles and auto parts; uranium; titanium sponge; lamination for stacked cores; and vanadium. The President took action only with respect to the aluminum and steel investigations, in the form of tariff surcharges. An investigation with respect to imports of neodymium-iron-boron (NdFeB) permanent magnets was initiated in September 2021.<sup>138</sup> The investigation was ongoing in February 2022. As of February 2022, two sets of safeguard measures, on Crystalline Silicon Photovoltaic Cells, and on Large Residential Washers, were in place (Sections 3.1.6 and 3.1.7). Some 95% of the 489 AD measures in place as of end-2021 were applied on manufactured or semi-manufactured goods; 48.0% of the total were applied on iron and steel products, and 14.0% on chemicals and pharmaceuticals. Some 90% of the CVD measures in place on the same date were on manufactured products (Section 3.1.6). Of the affirmative determinations of duty evasion against individual importers made by the CBP under the Enforce and Protect Act (EAPA) up to January 2022, the vast majority were on manufactured goods, to a large extent, steel products. Imports of semiconductors and many associated products from China have been subject to Section 301 tariffs of 25% since July and August 2018 (Section 3.1.7).<sup>139</sup>

4.149. The United States requires licenses or permits to import a limited number of manufactured products including some chemicals, firearms, explosives, and nuclear materials, generally for protection and safety reasons. The United States changed its automatic import licensing procedures concerning the amended aluminum and steel monitoring mechanisms, i.e. the Steel Import

<sup>137</sup> USTR (2021), *2021 Trade Policy Agenda and 2020 Annual Report*. Viewed at: <https://ustr.gov/sites/default/files/files/reports/2021/2021%20Trade%20Agenda/Online%20PDF%202021%20Trade%20Policy%20Agenda%20and%202020%20Annual%20Report.pdf>.

<sup>138</sup> USDOC (2021), "The U.S. Department of Commerce Announces Section 232 Investigation into the Effect of Imports of Neodymium Magnets on U.S. National Security", 24 September. Viewed at: <https://www.commerce.gov/news/press-releases/2021/09/us-department-commerce-announces-section-232-investigation-effect>.

<sup>139</sup> WTO document WT/TPR/S/382/Rev.1, 27 March 2019, provides a detailed description of the initiation of these actions. Additional information is available on the USTR website. Manufacturers might request an exemption for an imported input subject to Section 301 tariffs under some conditions.



Monitoring and Analysis (SIMA) system and the Aluminum Import Monitoring and Analysis (AIM) system, which entered into force in October 2020 and June 2021, respectively.

#### 4.3.2 Main policy developments

4.150. During the review period, authorities actively sought to foster the development of the manufacturing sector in the United States through policies oriented in different areas, such as intensifying regional trade integration, COVID-19-related policy responses facilitating the vaccines' development, strengthening the domestic resilience of supply chains in pharmaceuticals and semi-conductors, incentives to advance manufacturing, domestic purchase programs including for government procurement, and other measures covered in other sections of this report.

4.151. The USMCA aims to reinforce economic interlinkages between signatories, particularly in motor vehicles (Section 2.3.2). For automotive goods, it raises the regional value content requirements to 75% (up from 62.5% under NAFTA), imposes mandatory production of core parts in the region, and requires steel and aluminum purchases within the region of at least 70% for car manufacturers, among other measures. Thirteen manufacturers were granted an alternative staging regime allowing them to gradually meet regional value content levels in the next five years.<sup>140</sup> The authorities confirmed an increase in U.S. exports of textiles and apparel to Canada and Mexico since the implementation of USMCA; these products benefit from increased tariff preferences and more flexible rules of origin as well. Under the Phase One Agreement with China signed on 15 January 2020, the U.S. manufacturing sector was expected to benefit from additional purchases of manufactured goods by China amounting to USD 77.7 billion (above the 2017 baseline) in calendar years 2020 and 2021 (Section 2.3.3).

4.152. Between October 2018 and June 2020, 15 Presidential Determinations were issued, aimed at improving the domestic<sup>141</sup> capability for the production, including separation and processing in some cases, of goods and materials declared essential for national defense under Section 303 of the Defense Production Act (DPA) of 1950 (50 U.S.C. 4533), as amended. Goods declared as essential for national defense are mainly related to supplies for the military; however, some of them have a large potential civil use, such as rare earth elements and permanent magnets. The total value of all actions covered by a given Presidential Determination cannot exceed USD 50 million, unless otherwise authorized by the President, authorized in law by Congress, or waived during a national emergency declared by Congress or the President. Though any industry may apply for DPA assistance, only those products covered by a Presidential Determination or a national emergency waiver are eligible for funding. For FY2018 to FY2021, Congress appropriated USD 330 million for DPA activities.<sup>142</sup>

4.153. In March 2020, the EPA and the Department of Transportation's (DOT) National Highway Traffic Safety Administration (NHTSA) issued a final rule, which set carbon dioxide emission and fuel efficiency standards for passenger car and light trucks for model years 2021-26.<sup>143</sup> In December 2021, the EPA revised its greenhouse gas emission standards for passenger cars and light duty trucks for model years 2023-26.<sup>144</sup> The NHTSA also proposed revisions for model years 2024-26 in August 2021.<sup>145</sup>

4.154. Since 2014, the United States supports a National Network for Manufacturing Innovation, known as "Manufacturing USA", bringing together industry, academia, and federal partners with the goal of ensuring global leadership in advanced manufacturing through large-scale public-private

<sup>140</sup> *Federal Register* (2020), Vol. 85, No. 77, 21 April, pp. 22238-22244. Viewed at: <https://www.federalregister.gov/d/2020-08405>. Manufacturers granted this benefit are listed on the USTR website. Viewed at: <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/alternative-staging>.

<sup>141</sup> 50 U.S.C. 4552 defines a "domestic source" as a business concern that performs substantially all of the R&D, engineering, manufacturing, and production activities required by it in the United States or Canada.

<sup>142</sup> This amount does not include USD 1.0 billion in supplemental appropriations provided by Congress via the CARES Act to respond to the COVID-19 pandemic.

<sup>143</sup> *Federal Register* (2020), Vol. 85, No. 84, 30 April, pp. 24174-25278. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-04-30/pdf/2020-06967.pdf>.

<sup>144</sup> *Federal Register* (2021), Vol. 86, No. 248, 30 December, pp. 74434-74256. Viewed at: <https://www.federalregister.gov/d/2021-27854>.

<sup>145</sup> *Federal Register* (2021), Vol. 86, No. 169, 3 September, pp. 49602-49883. Viewed at: <https://www.federalregister.gov/d/2021-17496>.

collaboration on technology, supply chain, and workforce development. Besides federal agencies and more than 1,200 manufacturers, the network consists of 16 manufacturing innovation institutes partially sponsored by federal funds.<sup>146</sup> At the state level, several programs aim to attract investment in manufacturing across all U.S. states.<sup>147</sup>

4.155. Advancing and defending the interests of manufacturers and their workers remain priorities for the authorities. Other policy actions include temporary waivers to tariff duties such as those defined by the American Manufacturing Competitiveness Act (AMCA) of 2016<sup>148</sup>; safeguard measures proclaimed under Section 201 of the Trade Act of 1974; export control measures necessary for essential security interests; and investigations to counter foreign trade-distorting practices or foreign trade practices that threaten national security.

4.156. On 24 February 2021, the President issued E.O. 14017 on America's Supply Chains. The E.O. calls for more resilient, diverse, and secure U.S. supply chains to ensure prosperity and national security, which would support domestic production and promote a world-class U.S. manufacturing base and workforce, and the E.O. declares that it is the policy of the current Administration to strengthen the resilience of U.S. supply chains. The E.O. instructed: (i) the Secretary of Commerce to submit a report identifying risks and policy recommendations in the semiconductor manufacturing and advanced packaging supply chains; (ii) the Secretary of Energy to submit a report identifying risks and policy recommendations in the supply chain for high-capacity batteries, including electric-vehicle batteries; (iii) the Secretary of Defense to submit a report identifying risks in the supply chain for critical minerals and other identified strategic materials, including rare earth elements; and (iv) the Secretary of Health and Human Services (HHS) to submit a report identifying risks and policy recommendations in the supply chain for pharmaceuticals and active pharmaceutical ingredients. The 100-day reports were published on 8 June 2021.<sup>149</sup> E.O. 14017 also required that, within one year of the date of the order, the heads of agencies submit reports on sectoral supply chain assessments for the defense industrial base (Secretary of Defense); public health and biological preparedness industrial base (HHS); critical sectors and subsectors of the information and communications technology (ICT) industrial base (Commerce and Homeland Security); the energy sector industrial base (Energy); the transportation industrial base (Transportation); and the production of agricultural commodities and food products (Agriculture). In February 2022, seven one-year agency reports and a capstone report detailing actions taken to support supply chains since the E.O. and plans for continuing work were released.<sup>150</sup>

### 4.3.3 COVID-related measures and other support

4.157. In response to the COVID-19 pandemic, in May 2020, the Government launched Operation Warp Speed (OWS), a public-private partnership with the participation of several federal agencies to facilitate a quick development and safe delivery of vaccines, therapeutics, and diagnostics for COVID-19.<sup>151</sup> OWS efforts were led by a federal partnership between the Department of Defense (DOD) and the Department of HHS. This partnership was renamed the COVID-19 Countermeasures Acceleration Group (CAG) in late February 2021. The CAG transferred its responsibilities to the Department of HHS on 31 December 2021. According to a report by the CBO, OWS provided,

<sup>146</sup> The maximum support by federal funds in total costs of an institute is fixed at 50%. In 2020, the 16 institutes attracted USD 425 million, of which USD 163 million were federal funds. Manufacturing USA (2021), "Manufacturing USA Highlights Report Released", 5 November. Viewed at: <https://www.manufacturingusa.com/reports/manufacturing-usa-highlights-report-released>.

<sup>147</sup> The subscription-based State Business Incentives Database developed by the Council for Community and Economic Research (C2ER) allows users to consult more than 2,300 state incentives programs offered by U.S. states. Viewed at: <http://selectusa.stateincentives.org/>.

<sup>148</sup> P.L. 114-159. The last cycle of tariff suspensions related to the AMCA expired on 31 December 2020.

<sup>149</sup> The White House (2021), *Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth: 100-Day Reviews under Executive Order 14017*. Viewed at: <https://www.whitehouse.gov/wp-content/uploads/2021/06/100-day-supply-chain-review-report.pdf>.

<sup>150</sup> The White House (2022), "The Biden-Harris Plan to Revitalize American Manufacturing and Secure Critical Supply Chains in 2022", 24 February. Viewed at: <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/24/the-biden-harris-plan-to-revitalize-american-manufacturing-and-secure-critical-supply-chains-in-2022/>.

<sup>151</sup> OWS was a partnership among components of the Department of HHS, including the Centers for Disease Control and Prevention (CDC), the FDA, the National Institutes of Health (NIH), and the Biomedical Advanced Research and Development Authority (BARDA), and the DOD. OWS engaged with private firms and other federal agencies. Funding was provided through BARDA.

through the Biomedical Research and Development Authority (BARDA)<sup>152</sup>, more than USD 19.0 billion in assistance to seven private pharmaceutical manufacturers developing vaccines by covering R&D costs in five cases and by committing to advance purchases of successful vaccines in six cases.<sup>153</sup> The related appropriations of funds for these activities were passed by the Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020 (P.L. 116-123), the CARES Act, the Consolidated Appropriations Act of 2021, and the ARP Act. The United States was able to procure 700 million doses of 3 vaccines authorized for emergency use by the FDA on 11 December 2020, 18 December 2020, and 27 February 2021, respectively.

4.158. Section 2303 of the ARP Act appropriated, for FY2021, USD 6.05 billion, for expenses with respect to research, development, manufacturing, production, and the purchase of vaccines, therapeutics, and ancillary medical products and supplies to prevent, prepare, or respond to COVID-19 or any disease with potential for creating a pandemic or to SARS-CoV-2 or any viral mutation with pandemic potential. Section 2304 appropriated USD 500 million for the evaluation of the continued safety and effectiveness of vaccines, therapeutics, and diagnostics approved, cleared, licensed, or authorized for use for the treatment, prevention, or diagnosis of COVID-19. Section 2402 appropriated USD 1.75 billion for genomic sequencing and surveillance.

4.159. Following the increased demand for medicines and medical equipment related to the COVID-19 pandemic, E.O. 13944<sup>154</sup> of 6 August 2020 instructed the establishment of a list of Essential Medicines, Medical Countermeasures, and Critical Inputs.<sup>155</sup> E.O. 13944 aims to accelerate the development of domestic production of medicines, personal protective equipment, critical inputs, finished drugs, and other finished devices by prioritizing federal contracts or orders of these goods, and by maximizing domestic production in federal procurement. E.O. 13944 also calls for reducing dependence on foreign manufacturers for these products and for ensuring reliable long-term domestic production, and states that it is the policy of the United States to accelerate the development of cost-effective and efficient domestic production of essential medicines and medical countermeasures.

4.160. The Defense Production Act Loan Program, administered by the recently established U.S. International Development Finance Corporation (DFC) in partnership with DOD, seeks to restore the domestic production of strategic resources needed to respond to the COVID-19 outbreak, and to strengthen any relevant domestic medical supply chains.<sup>156</sup> To this end, E.O. 13922 of 14 May 2020 delegated a time-limited authority under Title III of the Defense Production Act (DPA) of 1950, as amended, to DFC. DFC's participation in the program expired in March 2022. Also, the ARP Act appropriated USD 10 billion, available until 30 September 2025, for all activities under the DPA.<sup>157</sup> Following E.O. 14017, a review of pharmaceuticals and active pharmaceutical ingredients, prepared by the Department of HHS and published in June 2021, calls for continued financial incentives or investments in domestic production capacity under the DPA, and suggests a focus on

<sup>152</sup> BARDA, within the Office of the Assistant Secretary for Preparedness and Response in the Department of HHS, promoted the development of medical countermeasures, including vaccines, drugs, therapies, and diagnostic tools for public health medical emergencies such as chemical, biological, radiological, and nuclear (CBRN) accidents, incidents and attacks, pandemic influenza, and emerging infectious diseases. Viewed at: <https://www.medicalcountermeasures.gov/barda/>.

<sup>153</sup> CBO (2021), *Research and Development in the Pharmaceutical Industry*, April. Viewed at: <https://www.cbo.gov/system/files/2021-04/57025-Rx-RnD.pdf>.

<sup>154</sup> *Federal Register* (2020), Vol. 85, No. 158, 14 August, pp. 49929-49934. Viewed at: <https://www.federalregister.gov/d/2020-18012>.

<sup>155</sup> In consultation with federal partners, the FDA made the list publicly available in October 2020. FDA (2020), *Drug and Biologic Essential Medicines, Medical Countermeasures, and Critical Inputs for the List Described in Section 3(c) of the Executive Order 13944*. Viewed at: <https://www.fda.gov/media/143406/download>.

<sup>156</sup> *Federal Register* (2020), Vol. 85, No. 97, 19 May, pp. 30583-30584. Viewed at: <https://www.federalregister.gov/d/2020-10953>. Generally, the loan coverage does not exceed 80% of project investment, and maturity can go up to 25 years; loan amounts and interest rate are determined project-by-project. As of March 2022, no loan funds had been distributed.

<sup>157</sup> Appropriations must be used for the purchase, production, or distribution of medical supplies and equipment to combat the COVID-19 pandemic, including *in vitro* diagnostic products for the detection of the virus that causes COVID-19; face masks and personal protective equipment; and drugs, devices, and biological products that are approved, cleared, licensed, or authorized for use in treating or preventing COVID-19.

the 50-100 most critical drugs (Critical Drug List).<sup>158</sup> In March 2022, the list of most critical drugs was not yet published.

4.161. The measures taken worldwide to counter the COVID-19 pandemic caused disruptions in the supply chains of several U.S. (sub)sectors operating under a just-in-time logistic. Disruptions in the production and delivery of semiconductors created problems for several domestic manufacturing activities, including vehicles, medical devices, and other products in 2021. Lawmakers enacted the Creating Helpful Incentives To Produce Semiconductors For America Act, or CHIPS for America Act, Title XCIX of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, which authorizes USDOC, to award financial assistance to private entities or public-private consortia to finance, construct, expand, or modernize facilities to support the fabrication; assembly, test, and packaging; and advanced packaging of semiconductors. However, the Act does not appropriate funding for the law.

4.162. Other supply chains of interest for U.S. authorities mentioned in E.O. 14017 are (i) high capacity batteries, including electric-vehicle (EV) batteries, and (ii) critical minerals and other identified strategic materials, including rare earth elements. The authorities support the development of clean cars and trucks and have set up an objective of 50% of passenger cars and light trucks sold in 2030 to be zero-emission vehicles.<sup>159</sup> The EV Charging Action Plan outlines steps federal agencies are taking to support the establishment of a national network of EV chargers (USD 7.5 billion allocated by the Infrastructure Investment and Jobs Act, to replace old school buses with U.S.-made, zero-emission buses (additional USD 7.5 billion allocated)), to promote the manufacturing of battery minerals, refined materials, battery components and batteries (USD 6 billion allocated), and to foster the manufacturing of qualifying components for eligible vehicles (USD 17 billion in direct loans available through the Department of Energy Loan Programs Office's Advanced Technology Vehicles Manufacturing Program), among others. As concerns minerals and other strategic materials, the List of 35 Critical Minerals, established in 2018 following E.O. 13817<sup>160</sup>, served as a basis for the 2021 review, which extends the analysis to strategic products other than minerals. Similar to what was stated in E.O. 13953<sup>161</sup>, the recent review highlights the dependence on imports of several products and suggests adopting an environmentally and socially responsible production; expanding domestic production and processing capacity, including recycling; using DPA Title III and similar programs to support domestic capacities and emerging technologies; and strengthening U.S. stockpiles, among others. An updated List of Critical Minerals covering 50 minerals was published in February 2022.<sup>162</sup>

#### 4.3.4 Small businesses

4.163. Based on 2018 U.S. Census Bureau data, 32.5 million small businesses represented 99.7% of all businesses in the U.S. economy and employed 61.2 million workers (46.8% of all employees).<sup>163</sup> Women made up 47.3% of workers and owned 43.1% of small businesses; only one fifth of small businesses are owned by racial minorities. Goods exported by some 280,000 small businesses valued at USD 460 billion made up 31.6% of all exports in 2019. Although the 242,000 small businesses (with employees) in the manufacturing sector account for only 4% of all small businesses nationwide, their 5.1 million employees correspond to 42.6% of employment in the manufacturing sector and 8.3% of all employment generated by small businesses. SMEs in manufacturing are a source of employment opportunities.

4.164. For the first time in a U.S. trade agreement, the USMCA includes a dedicated chapter on small and medium-sized enterprises (SMEs), recognizing their role in each signatory economy.

<sup>158</sup> E.O. 14017 of 24 February 2021, America's Supply Chains, *Federal Register* (2021), Vol. 86, No. 38, 1 March, pp. 11849-11854. Viewed at: <https://www.federalregister.gov/d/2021-04280>.

<sup>159</sup> Zero-emissions vehicles refer to battery electric, plug-in hybrid electric, or fuel cell electric vehicles. Stricter standards of fuel efficiency are also set for other types of vehicles. E.O. 14037, *Federal Register* (2021), Vol. 86, No. 151, pp. 43583-43585. Viewed at: <https://www.federalregister.gov/d/2021-17121>.

<sup>160</sup> *Federal Register* (2017), Vol. 82, No. 246, 26 December, pp. 60835-60837. Viewed at: <https://www.federalregister.gov/d/2017-27899>.

<sup>161</sup> *Federal Register* (2020), Vol. 85, No. 193, 5 October, pp. 62539-62544. Viewed at: <https://www.federalregister.gov/d/2020-22064>.

<sup>162</sup> *Federal Register* (2022), Vol. 87, No. 37, 24 February, pp. 10381-10382. Viewed at: <https://www.federalregister.gov/d/2022-04027>.

<sup>163</sup> SBA, Office of Advocacy, *2021 Small Business Profile*. Viewed at: <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/08/30144808/2021-Small-Business-Profiles-For-The-States.pdf>.



U.S. companies with less than 500 employees represent two thirds of companies trading goods with Canada and Mexico. The Agreement promotes cooperation and information sharing to increase opportunities for SME trade and investment in the region, cuts red tape for shipments with a value lower than USD 2,500, increases *de minimis* levels, eliminates the local presence requirement for cross-border service providers, and facilitates the exchange of information and best practices for SME participation in covered government procurement, among other measures.<sup>164</sup>

4.165. The U.S. Small Business Administration (SBA) keeps track of savings related to reduced regulatory burden affecting small businesses in a yearly report.<sup>165</sup> Enhancing the ability of small businesses to participate in the global marketplace is a key objective for the authorities. Recommendations resulting from the E.O. 14017 review call for: (i) investing in small, medium, and disadvantaged businesses in critical supply chains; (ii) developing an ecosystem that includes growing innovative small, medium, and disadvantaged businesses; and (iii) examining the ability of the U.S. Export-Import Bank to use existing authorities to support U.S. manufacturing. Other policies such as government procurement set-asides and preferences promote economic opportunities for small businesses, including those in manufacturing (Section 3.3).

4.166. As noted in Section 1, to attenuate the impact of the COVID-19 pandemic on small businesses, the CARES Act established the Paycheck Protection Program (PPP) and the COVID-19 Economic Injury Disaster Loan (EIDL) Program. Subsequently, the PPP was adjusted several times<sup>166</sup> and consisted of two draws with only certain prior PPP borrowers eligible for the second draw of PPP loans. PPP loans were aimed at providing a direct incentive for small businesses to keep their workers on the payroll. While businesses with 500 or fewer employees<sup>167</sup> were eligible for the first draw, only businesses with 300 or fewer employees were eligible for the second draw which ended in December 2021. As of 5 June 2020, loans carried an interest of 1%, had a maturity of five years, and no collateral was required; the maximum loan amount was fixed at 2.5 times the average monthly 2019 or 2020 payroll costs (or 3.5% for accommodation and food services sector) up to USD 10 million. For the second draw of PPP loans, the maximum amount was USD 2 million. Borrowers were able to request loan forgiveness based on some criteria for employee retention and fund use.<sup>168</sup> The manufacturing sector received some USD 76 billion for the whole PPP loan program.<sup>169</sup>

4.167. The SBA's COVID-19 Economic Injury Disaster Loan (EIDL) Program provided working capital assistance to small businesses, which were defined as having 500 or fewer employees with limited exceptions.<sup>170</sup> The loan program also initially offered the option of requesting an EIDL Advance, which was emergency economic relief up to USD 10,000 (USD 1,000 per employee) requested at the time of the loan application by businesses that were currently experiencing a loss of revenue.<sup>171</sup>

<sup>164</sup> USTR, *USMCA Fact Sheets – Small and Medium-Sized Businesses*. Viewed at: <https://ustr.gov/sites/default/files/files/Press/fs/USMCA/USMCA-SME.pdf>.

<sup>165</sup> The SBA's latest report regarding savings during FY2020 was published in July 2021. SBA (2021) *Report on the Regulatory Flexibility Act, FY 2020: Annual Report of the Chief Counsel for Advocacy on Implementation of the Regulatory Flexibility Act and Executive Order 13272*. Viewed at: <https://advocacy.sba.gov/2021/07/21/report-on-the-regulatory-flexibility-act-fy-2020-annual-report-of-the-chief-counsel-for-advocacy-on-implementation-of-the-regulatory-flexibility-act-and-executive-order-13272/>.

<sup>166</sup> Laws amending the PPP, appropriating funds to the program, adjusting its eligibility criteria, or extending its application period include the Paycheck Protection Program and Health Care Enhancement Act, the Paycheck Protection Program Flexibility Act of 2020 (P.L. 116-147), the Consolidated Appropriations Act of 2021, and the PPP Extension Act of 2021.

<sup>167</sup> Businesses with more than 500 employees, but within the SBA thresholds in terms of employees for their NAICS activity, were also eligible.

<sup>168</sup> SBA, *PPP Loan Forgiveness*. Viewed at: <https://www.sba.gov/funding-programs/loans/COVID-19-relief-options/paycheck-protection-program/ppp-loan-forgiveness>.

<sup>169</sup> SBA, *Paycheck Protection Program (PPP) Reports*, various editions. Viewed at: [https://www.sba.gov/sites/default/files/2021-06/PPP\\_Report\\_Public\\_210531-508.pdf](https://www.sba.gov/sites/default/files/2021-06/PPP_Report_Public_210531-508.pdf); and [https://www.sba.gov/sites/default/files/2021-09/PPP\\_Report\\_-\\_2020-08-10-508.pdf](https://www.sba.gov/sites/default/files/2021-09/PPP_Report_-_2020-08-10-508.pdf).

<sup>170</sup> Exceptions outlined on the SBA website: *SBA, COVID EIDL Loans Information as of September 8, 2021*. Viewed at: <https://www.sba.gov/sites/default/files/2021-09/COVID-EIDL-FAQs-090821-508.pdf>.

<sup>171</sup> Businesses with 300 or fewer employees with a revenue loss greater than 30% over an 8-week period since 2 March 2020 (compared to the previous year) and located in low-income communities (defined by Section 45D(e) of the Internal Revenue Code) were eligible to request a non-repayable grant (Targeted EIDL Advance) of up to USD 10,000. A supplemental grant of USD 5,000 (Supplemental Targeted Advance) was available for business with 10 or fewer employees in the same communities demonstrating a revenue loss greater than 50% for the same period; the total amount of these benefits was up to USD 15,000 including the



Loan applications were open only until 31 December 2021 with a loan term of up to 30 years with an automatic deferment of 2 years for the initial payment, and an interest rate of 3.75% for small businesses. The maximum loan amount was USD 2 million, and collateral was needed for loans above USD 25,000.<sup>172</sup> Additionally, the ARP Act allowed any business with fewer than 500 employees to claim refundable tax credits equivalent to the cost of providing paid sick and family leave to their employees due to COVID-19. This benefit was available from 1 April 2021 to 30 September 2021.<sup>173</sup> Finally, the CARES Act also provided relief to small businesses regarding the Bankruptcy Code (11 U.S.C. 101 et seq.) Notably, it increased the aggregate debt limit for small businesses filing for relief from USD 2.73 million to USD 7.5 million, excluding federal COVID-19-related relief payments from disposable income while filing bankruptcy, and allowed modifications of Chapter 13-confirmed plans by extending payments for up to seven years. Relief was extended until 26 March 2022.<sup>174</sup>

## 4.4 Services

### 4.4.1 Financial services

#### 4.4.1.1 Overview

4.168. The financial services sector is a substantial contributor to the U.S. economy. In 2021 (third quarter), the share of financial services in GDP was 8.5%, up from 7.5% in 2017, as reported in the previous Review. Banking services generated 3.7% of GDP; insurance and related services 2.9%; securities, commodity contracts, and investment 1.7%; and funds trusts and other financial vehicles 0.1%.<sup>175</sup> The United States continued to run a significant surplus in trade in financial services during the period under review. In 2020, exports of financial services excluding insurance services were USD 144.34 billion, a 6% increase from 2019 levels, while imports of financial services amounted to USD 42.26 billion. On the other hand, it runs a deficit on insurance services, with exports of USD 20.43 billion compared with imports of USD 55.62 billion in 2020.<sup>176</sup>

4.169. As of 31 December 2021, only one bank remained under the Troubled Asset Relief Program (TARP), put in place by the Government as a response to the financial crisis. The initial authorization for TARP was USD 700 billion, later reduced to USD 475 billion. As of 31 December 2021, a total of USD 443 billion had been disbursed under TARP, and a total of USD 442.7 billion had been collected back. The Treasury estimates that the combined overall cost of TARP at USD 32.1 billion. As part of TARP, the Treasury put in place the Capital Purchase Program (CPP), a preferred stock and equity warrant purchase program. As of 31 December 2021, the Treasury had recovered USD 226.8 billion from the CPP through repayments, dividends, interest, and other income, compared to the USD 204.9 billion initially invested under the program.<sup>177</sup> As of February 2022, the Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corp (Freddie Mac) continue to be under conservatorship.

4.170. As of 30 September 2021, there were 2,127 "large" commercial banks in the United States, each with consolidated assets of USD 300 million or more, compared to 1,812 in 2017. At the same date, total banking system assets were USD 21.6 trillion (USD 16.7 trillion in 2017), of which

---

maximum USD 10,000 Targeted EIDL Advance. SBA (2021), *Targeted and Supplemental Advance: Frequently Asked Questions*, 27 April. Viewed at: [https://www.sba.gov/sites/default/files/2021-04/Targeted%20and%20Supplemental%20Advance%20FAQ\\_FINAL-508.pdf](https://www.sba.gov/sites/default/files/2021-04/Targeted%20and%20Supplemental%20Advance%20FAQ_FINAL-508.pdf).

<sup>172</sup> The minimum disaster loan amount for which the SBA may require collateral was fixed at this level initially for three years by the RISE After Disaster Act of 2015 (P.L. 114-88) and was extended for another four years by the Rebuilding Small Businesses After Disasters Act (P.L. 116-70), enacted on 22 November 2019.

<sup>173</sup> IRS (2021), *Under the American Rescue Plan, Employers Are Entitled to Tax Credits for Providing Paid Leave to Employees Who Take Time Off Related to COVID-19 Vaccinations*, 28 July. Viewed at: <https://www.irs.gov/newsroom/employer-tax-credits-for-employee-paid-leave-due-to-COVID-19>.

<sup>174</sup> COVID-19 Bankruptcy Relief Extension Act of 2021 (P.L. 117-5).

<sup>175</sup> Bureau of Economic Analysis, *Interactive Data*. Viewed at: <https://apps.bea.gov/iTable/iTable.cfm?reqid=150&step=2&isuri=1&categories=gdp&ind>.

<sup>176</sup> Bureau of Economic Analysis, *International Data*. Viewed at: <https://apps.bea.gov/iTable/iTable.cfm?reqid=62&step=9&isuri=1&6210=4>.

<sup>177</sup> Department of the Treasury (2022), *Troubled Asset Relief Program, Monthly Report to Congress, December 2021*. Viewed at: <https://home.treasury.gov/system/files/256/2021-12-December-Monthly-Report-to-Congress.pdf>.

USD 19.7 trillion were of domestic banks and USD 1.9 trillion were assets of foreign-owned banks.<sup>178</sup> There are some 5,098 credit unions in the United States. Credit unions are not-for-profit organizations owned by their members; they accept deposits, make loans, and provide a wide array of other financial services. The United States is the largest insurance market in the world, with net insurance premiums that amounted to USD 1.28 trillion in 2020, and total cash and invested assets of USD 9.7 trillion.<sup>179</sup>

4.171. U.S. financial markets were strongly impacted by the onset of the COVID-19 pandemic. After reaching record highs in mid-February 2020, as the number of coronavirus cases continued to increase, the perception of risk increased, and financial markets experienced significant corrections, while demand for safe and more liquid assets, such as U.S. Treasury instruments, rose, prompting price increases, and higher corporate bond spreads.<sup>180</sup> The Federal Reserve responded by adopting measures such as the reduction of the primary credit rate by 150 basis points to 0.25%, effective 16 March 2020, and a reduction of the reserve requirement ratios to 0% effective on 26 March 2020. It also encouraged banks to use their capital and liquidity buffers. Measures to support credit allocation were also put in place (see below).

#### 4.4.1.2 Legislation and regulation

4.172. There are numerous significant laws governing the financial sector, including, *inter alia*, the SEC Act, the Investment Company Act, the Bank Holding Company Act, the National Bank Act, and the Federal Deposit Insurance Act. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (DFA) made significant additions and revisions to the law governing the financial sector. Reforms to the DFA were introduced in 2018, by Title IV, Tailoring Regulations for Certain Bank Holding Companies, of the Economic Growth, Regulatory Relief, and Consumer Protection Act (P.L. 115-174), of 24 May 2018 (see below).

4.173. Several institutions and agencies are charged with the supervision and regulations of different aspects of the financial sector, including the Federal Reserve, the Office of the Comptroller of the Currency (OCC), and the FDIC for the banking sector; the National Credit Union Administration (NCUA); the Securities and Exchange Commission (SEC); the Commodity Futures Trading Commission (CFTC); the Federal Housing Finance Agency (FHFA); and the Consumer Financial Protection Bureau (CFPB), an independent bureau of the Federal Reserve System. The Financial Stability Oversight Council (FSOC), created by the DFA, was established to identify risks to U.S. financial stability that could arise from material financial distress, failure, or ongoing activities of large, interconnected bank holding companies (BHCs) or nonbank financial companies; of promoting market discipline; and of responding to emerging threats to the stability of the U.S. financial system. While the business of insurance is regulated primarily at the state level, the DFA also provides that the Federal Reserve regulate insurers affiliated with savings and loan holding companies and gave the Treasury's Federal Insurance Office (FIO) responsibility for monitoring all aspects of the insurance sector. In addition, the DFA granted the SEC and the CFTC authority to regulate over-the-counter derivatives (swaps).

4.174. Under Section 113 of the DFA, the FSOC is authorized to make a determination as to whether a non-bank financial company must be supervised by the Board of Governors of the Federal Reserve System and be subject to enhanced prudential standards if material financial distress at the company could pose a threat to U.S. financial stability.<sup>181</sup> In December 2019, the FSOC approved the Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, its updated final rule and interpretive guidance for non-bank financial company determinations, which replaced prior guidance.<sup>182</sup> The new guidance prioritizes the FSOC's efforts to identify potential risks and threats

<sup>178</sup> Federal Reserve Statistical Release. Viewed at: <https://www.federalreserve.gov/releases/lbr/current/>.

<sup>179</sup> Insurance Information Institute, *Facts + Statistics: Industry Overview*. Viewed at: <https://www.iii.org/fact-statistic/facts-statistics-industry-overview>.

<sup>180</sup> Financial Stability Board (2020), *Holistic Review of the March Market Turmoil*, 17 November. Viewed at: <https://www.fsb.org/wp-content/uploads/P171120-2.pdf>.

<sup>181</sup> Department of the Treasury, *Designations*. Viewed at: <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/fsoc/designations>.

<sup>182</sup> Financial Stability Oversight Council, *Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies*, *Federal Register* (2019), Vol. 84, No. 249, 30 December, pp. 71740-71770. Viewed at: <https://home.treasury.gov/system/files/261/Authority-to-Require-Supervision-and-Regulation-of-Certain-Nonbank-Financial-Companies.pdf>.

to U.S. financial stability on a system-wide basis through an activities-based approach, rather than through entity-specific determinations, as was before, to reduce the potential for competitive market distortions that could arise from entity-specific determinations.

4.175. Section 804 of the DFA authorizes the FSOC to designate a Financial Market Utility (FMU) as systemically important if it determines that the failure of, or a disruption to the functioning of, the FMU could create or increase the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the U.S. financial system. Designated FMUs are subject to heightened prudential and supervisory provisions; must provide advance notice and review of changes to their rules, procedures, and operations; and are subject to relevant examination and enforcement provisions. The FSOC has designated eight FMUs as systemically important under the DFA.<sup>183</sup>

4.176. Section 318 of the DFA directed the Federal Reserve Board to collect assessments, fees, or other charges, from certain large bank holding companies and savings and loan holding companies and nonbank financial companies designated by the FSOC for supervision by the Board equal to the expenses the Board estimates are necessary or appropriate to carry out its supervision and regulation of those companies. In December 2020, the Federal Reserve issued a final rule to adjust the amount charged to assessed companies with total consolidated assets between USD 100 billion and USD 250 billion to reflect changes in supervisory and regulatory responsibilities resulting from the Economic Growth, Regulatory Relief, and Consumer Protection Act of 24 May 2018 (EGRRCPA) (P.L. 115 174); the rule also increased the minimum threshold for assessment from USD 50 billion to USD 100 billion.<sup>184</sup>

4.177. Section 619 of the DFA, commonly referred to the Volcker Rule, came into force in July 2015. The objective of the Volcker Rule is to reduce the amount of speculative investments on large firms' balance sheets. To achieve this, it prohibits banking entities from proprietary trading of any security, derivatives, and certain other financial instruments for a banking entity's own account, subject to certain exemptions.<sup>185</sup> The EGRRCPA removed certain Volcker Rule limitations on hedge fund and private equity fund naming conventions, exempted most small banks from the purview of the Volcker Rule by increasing the minimum limit, reduced regulatory burdens for small and medium-sized BHCs, and introduced changes regarding custodial banks' supplementary leverage ratio calculations.<sup>186</sup>

4.178. The CARES Act, enacted on 27 March 2020, contains a provision granting temporary relief for community banks, by fixing a Community Bank Leverage Ratio of 8% (the minimum allowed by law)<sup>187</sup>, and granting a qualifying community bank that falls below this ratio a reasonable grace period to satisfy it. These provisions were effective until the earlier of the termination date of the national emergency concerning the COVID-19 outbreak or 31 December 2020. The ratio was increased to 8.5% in 2021 and subsequently to its original 9% level in the first quarter of 2022.<sup>188</sup> The CARES Act allowed temporary access to credit for corporate credit unions in addition to natural-person credit unions. The Act amended the Federal Credit Union Act to provide greater flexibility to corporate credit unions with respect to the amount they must pay to subscribe to the

<sup>183</sup> These are the Clearing House Payments Company LLC; CLS Bank International; Chicago Mercantile Exchange, Inc.; the Depository Trust Company; Fixed Income Clearing Corporation; ICE Clear Credit LLC; National Securities Clearing Corporation; and the Options Clearing Corporation. Department of the Treasury, *Designations*. Viewed at: <https://www.treasury.gov/initiatives/fsoc/designations/Pages/default.aspx>.

<sup>184</sup> Federal Reserve System 12 C.F.R. Part 246.Regulation TT. Docket No. R-1683. *Supervision and Regulation Assessments of Fees for Bank Holding Companies and Savings and Loan Holding Companies with Total Consolidated Assets of \$100 Billion or More*. Viewed at: <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20201119a.htm>.

<sup>185</sup> Such as trading transactions in government securities, and transactions in connection with underwriting or market-making, on behalf of customers by an insurance company solely for the general account of the company. Additionally, certain risk-mitigating hedging is allowed, as well as proprietary trading conducted solely outside of the United States by a banking entity not directly or indirectly controlled by a banking entity organized under U.S. federal or state laws.

<sup>186</sup> OCC, Final Rule on Covered Savings Associations, *Federal Register* (2019), Vol. 84, No. 101, 24 May, pp. 23991-24007. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2019-05-24/pdf/2019-10902.pdf>.

<sup>187</sup> The EGRRCPA instructed Federal banking agencies to develop a Community Bank Leverage Ratio of not less than 8% and not more than 10% for qualifying community banks.

<sup>188</sup> Board of Governors of the Federal Reserve System (2021), *SR 21-21: Interagency Statement on the Community Bank Leverage Ratio Framework*, 21 December. Viewed at: <https://www.federalreserve.gov/supervision/srletters/SR2121.htm>.

capital stock of the Central Liquidity Facility (CLF).<sup>189</sup> The CARES Act temporarily increased the NCUA Board's borrowing authority on behalf of the CLF to 16 times the subscribed capital stock and surplus of the CLF.<sup>190</sup> In December 2020, the NCUA extended the effective date of its temporary final rule, issued in April 2020, which modified certain regulatory requirements to ensure that federally insured credit unions (FICUs) can conduct appropriate liquidity management to address the conditions caused by the COVID-19 pandemic, until 31 December 2021. The rule temporarily raised the maximum aggregate amount of loan participations that an FICU may purchase from a single lender to the greater of USD 5 million or 200% of the FICU's net worth.

4.179. The Federal Reserve introduced the following emergency lending facilities to support the flow of credit into the economy: (i) the Primary Market Corporate Credit Facility, open to investment-grade companies and which provides bridge financing of up to four years; (ii) the Secondary Market Corporate Credit Facility, which purchases in the secondary market corporate bonds issued by investment-grade U.S. companies and U.S.-listed exchange traded funds; (iii) the Term Asset-Backed Securities Loan Facility, which provides non-recourse loans to holders of certain eligible asset-backed securities; (iv) the Money Market Mutual Fund Liquidity Facility (MMLF), which makes loans available to eligible financial institutions secured by high-quality assets purchased from Money Market Mutual Funds; (v) the Commercial Paper Funding Facility, which purchases eligible three-month unsecured commercial paper and asset-backed commercial paper from eligible issuers; (vi) the Primary Dealer Credit Facility, which offers overnight and term funding with maturities up to 90 days against a wide range of collateral; (vii) the Paycheck Protection Program Liquidity Facility (PPPLF), which extends non-recourse loans to eligible financial institutions that pledge loans covered under the SBA's (PPP); (viii) the Municipal Liquidity Facility, which purchases short-term notes directly from the different constituencies; and (ix) the Main Street Lending Program, which purchases participations in loans made to eligible small and medium-sized businesses.<sup>191</sup> The Federal Reserve also participated in Central Bank Liquidity Swaps coordinated with other central banks, as well as in a Temporary Foreign and International Monetary Authorities (FIMA) Repo Facility, which was extended through 30 September 2021.

4.180. U.S. banking regulators adopted the Liquidity Coverage Ratio (LCR) stipulated under Basel III rules, through a final rule, in September 2014.<sup>192</sup> The rule requires that companies have a LCR of 100% or more, and applies to certain large banking organizations, generally, those with USD 100 billion or more in total consolidated assets. Community banks are exempt from the rule. LCR requirements are tailored to the risks of large banking organizations, with the most stringent requirements applying to the largest and most complex organizations. In response to the COVID-19 pandemic, in May 2020, the federal banking regulators adopted an interim final rule to modify the LCR requirement to support banking organizations' participation in the MMLF and the PPPLF.<sup>193</sup> The modification lasted until 30 July 2021, after which no new credit extensions under the PPPLF were granted (for the MMLF, it was 31 March 2021).

<sup>189</sup> The CLF is a mixed-ownership government corporation that provides the credit union system with a contingent source of funds to assist with system-wide liquidity events. The CLF also serves as an additional liquidity source for the National Credit Union Share Insurance Fund. Member credit unions own the CLF, which exists within the NCUA. Joining the facility is voluntary.

<sup>190</sup> In July 2020, 3,797 credit unions, or 73% of all federally insured credit unions, had access to the CLF, either as a regular member or through their corporate credit union. As of 31 May 2020, the facility's borrowing authority stood at USD 25.8 billion, an increase of USD 15.3 billion since April 2020. NCUA (2020), "CLF Borrowing Capacity Exceeds \$25 Billion", 6 July. Viewed at: <https://www.ncua.gov/newsroom/press-release/2020/clf-borrowing-capacity-exceeds-25-billion>.

<sup>191</sup> Board of Governors of the Federal Reserve System, *COVID-19 Supervisory and Regulatory FAQs, Federal Reserve Liquidity Programs*. Viewed at: <https://www.federalreserve.gov/COVID-19-supervisory-regulatory-faqs.htm>.

<sup>192</sup> The LCR is the ratio of high-quality, liquid assets (central bank reserves and government and corporate debt that can be converted quickly into cash) to its projected net cash outflows over a 30-day period.

<sup>193</sup> The rule seeks to neutralizes the effect on the LCR requirement of a bank's participation in the MMLF or PPPLF by excluding cash flows from MMLF and PPPLF funding and assets securing such funding, from the calculation of a banking organization's total net cash outflow amount. OCC, Board of Governors of the Federal Reserve System, and FDIC, *Interim Final Rule on Liquidity Coverage Ratio Rule: Treatment of Certain Emergency Facilities*, *Federal Register* (2020), Vol. 85, No. 88, 6 May, pp. 26835-26842. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2020-05-06/pdf/2020-09716.pdf>.



4.181. In July 2013, the Federal Reserve issued a final rule to implement Basel III capital rules in the United States.<sup>194</sup> The rule stipulates a minimum ratio of Tier 1 capital to risk-weighted assets of 6% and a minimum leverage ratio of 4% for all banking organizations, as well as a ratio of total capital to risk-weighted assets (total capital ratio) of 8%. Under prompt correction action requirements for banks, a bank meets the regulatory definition of "well-capitalized" when its total risk-based capital ratio equals or exceeds 10%, its Tier 1 risk-based capital ratio equals or exceeds 8%, its leverage ratio equals or exceeds 5%, and its common equity Tier 1 risk-based capital ratio equals or exceeds 6.5%. In September 2016, the Federal Reserve Board issued a policy statement regarding considerations the Board would use in implementation of a counter-cyclical capital buffer, to range from 0% to 2.5% of risk-weighted assets, when authorities determine credit growth may result in systemic risk.

4.182. The Community Reinvestment Act (CRA) (12 USC 2901), enacted in 1977, encourages federally insured commercial banks and savings associations to help meet the credit needs of the local communities in which they do business. CRA new final rules were issued in June 2020 to provide metrics to evaluate the CRA performance of national banks and savings associations supervised by the OCC. Although the final rule was effective 1 October 2020, its general compliance date was 1 January 2023, or 1 January 2024 for small and intermediate banks. In December 2021, the OCC issued a new final rule to rescind the 2020 CRA rule and replace it with one that aligned the OCC's CRA rules with Federal Reserve and FDIC rules.<sup>195</sup> The final rule took effect on 1 January 2022, with a separate compliance date of 1 April 2022.<sup>196</sup> Financial institutions are evaluated under different CRA examination procedures based upon their asset-size classification.

4.183. CRA regulations require commercial banks and savings associations above the small and intermediate small bank asset-size thresholds to collect and report data regarding their small business and small farm lending and community development lending. The reporting threshold is adjusted annually based on changes to the CPI; since 1 January 2022, it has been USD 1.384 billion.<sup>197</sup> In 2020, 687 lenders, of which 124 had assets below the mandatory reporting threshold, reported data about originations and purchases of small loans (of up to USD 1 million) to businesses and farms; 139 large reporters with assets of USD 10 billion or more accounted for 71% of the CRA reported small business loans. CRA reporters accounted in 2020 for 75% of small business loans outstanding and 32% of small farm loans outstanding at bank and thrift institutions; 8.4 million small business loans totaling nearly USD 461.8 billion were reported in 2020, up 10.9% from 2019. The value of the small business loans increased by 78.7%, mainly due to lending from the PPP.<sup>198</sup>

4.184. In December 2020, the OCC, the Federal Reserve, and the FDIC issued an interim final rule to mitigate temporary transition costs on banking organizations related to COVID-19. The rule permits national banks, savings associations, state banks, BHCs, savings and loan holding companies, and U.S. branches and agencies of foreign banking organizations with under USD 10 billion in total assets as of 31 December 2019 to use asset data as of that date to determine the applicability of various regulatory asset thresholds during calendar years 2020 and 2021. In January 2021, the regulators issued a final rule that requires certain banking organizations to make a deduction from their regulatory capital for certain investments in unsecured debt instruments issued by foreign or U.S. global systemically important banks (G-SIBs) for the purpose of meeting minimum total loss-absorbing capacity requirements and, where applicable, long-term debt requirements, or for investments in unsecured debt instruments issued by G-SIBs that are subordinated to such debt instruments. In March 2021, the OCC, the Federal Reserve, and the FDIC issued an interim final rule to facilitate the implementation of the Emergency Capital Investment

<sup>194</sup> Board of Governors of the Federal Reserve System, *Basel Regulatory Framework*. Viewed at: <http://www.federalreserve.gov/bankinfo/basel/default.htm>.

<sup>195</sup> OCC, Final Rule on Treasury Community Reinvestment Act Regulations, *Federal Register* (2021), Vol. 86, No. 238, 15 December, pp. 71328-71354. Viewed at: <https://www.occ.gov/news-issuances/federal-register/2021/86fr71328.pdf>.

<sup>196</sup> OCC (2021), *Community Reinvestment Act: Final Rule to Rescind and Replace Community Reinvestment Act Rule Issued in 2020*. Viewed at: <https://www.occ.gov/news-issuances/bulletins/2021/bulletin-2021-61.html>.

<sup>197</sup> Federal Reserve (2021), "Agencies Release Annual Asset-Size Thresholds under Community Reinvestment Act Regulations", 16 December. Viewed at: <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20211216a.htm>.

<sup>198</sup> Federal Financial Institutions Examination Council (FFIEC), *Findings from Analysis of Nationwide Summary Statistics for 2020 Community Reinvestment Act Data Fact Sheet*. Viewed at: [https://www.ffiec.gov/hmcpr/cra\\_fs21.htm](https://www.ffiec.gov/hmcpr/cra_fs21.htm).



Program (ECIP), through which the Treasury makes capital investments in low- and moderate-income community financial institutions.<sup>199</sup>

#### 4.4.1.3 Consolidated financial sector regulation

4.185. During the period under review, there has been no change in legislation governing financial sector consolidation. The Gramm-Leach-Bliley Act (Financial Services Modernization) of 1999 (GLBA) regulates financial consolidation. The GLBA allows domestic and foreign banks to affiliate with entities that engage in financial activities or provide services that are incidental or complementary to a financial activity, provided certain capital and managerial standards are met. The Act allows commercial banks, investment banks, securities firms, and insurance companies to consolidate and create a financial holding company (FHC). As of 30 September 2021, there were 366 FHCs, of which 151 were large FHCs, with assets of above USD 10 billion each.<sup>200</sup>

4.186. The Federal Reserve is responsible for the overall regulation and supervision of large, consolidated banking institutions including FHCs. The FSOC also monitors the risks to financial stability posed by such institutions. The FSOC is empowered to determine that certain financial companies should be subject to supervision by the Federal Reserve and make recommendations concerning prudential standards that should apply to those companies. Furthermore, the activities of subsidiaries of FHCs are regulated by the appropriate regulator: the OCC in the case of national banks; a state banking agency and the Federal Reserve or the FDIC in the case of state-chartered banks; the SEC in the case of securities firms; and in cases where the Federal Reserve has supervisory authority over an insurer (because it is a designated insurer or it is part of a savings and loan holding company), the relevant state insurance commissioner will exercise concurrent supervisory authority. There currently are no designated insurers.

4.187. In October 2019, the Federal Reserve issued a final rule that updated the prudential framework for stress testing rules for large BHCs and U.S. intermediate holding companies (IHCs) of foreign banking organizations (FBOs) (tailoring rules). Also in October 2020, the OCC, the Federal Reserve, and the FDIC issued a final rule that implements a stable funding requirement for certain large banking organizations, and establishes a quantitative metric, the net stable funding ratio (NSFR), to measure the stability of the funding profile of certain large banking organizations; it requires these banking organizations to maintain minimum amounts of stable funding to support their assets, commitments, and derivatives exposures over a one-year time horizon. The final rule applies to certain large U.S. depository institution holding companies, depository institutions, and U.S. IHCs of FBOs, each with total consolidated assets of USD 100 billion or more, together with certain depository institution subsidiaries.

#### 4.4.1.4 Banking services

4.188. A number of federal and state regulators are responsible for the supervision of the banking sector. The Federal Reserve is responsible for supervising BHCs, saving and loan holding companies, foreign banks' U.S. operations, state member banks, foreign branches, Edge Act and agreement corporations<sup>201</sup>, and designated financial market utilities.<sup>202</sup> The OCC charters, regulates, and supervises all national banks and federally chartered savings associations and also supervises the federal branches and agencies of foreign banks, as well as the international activities of U.S. national banks. The OCC is the primary regulator of banks chartered under the National Bank Act and federal

<sup>199</sup> Under the Emergency Capital Investment Program (ECIP), established by the Consolidated Appropriations Act of 2021, the Treasury allocated up to USD 9 billion in capital directly to depository institutions that are certified Community Development Financial Institutions (CDFIs) or minority depository institutions (MDIs) to provide loans, grants, and forbearance for small businesses, minority-owned businesses, and consumers, especially in low-income and underserved communities. The Treasury set aside USD 2 billion for CDFIs and MDIs with less than USD 500 million in assets and an additional USD 2 billion for CDFIs and MDIs with less than USD 2 billion in assets. Department of the Treasury, *Emergency Capital Investment Program*. Viewed at: <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-small-businesses/emergency-capital-investment-program>.

<sup>200</sup> Federal Financial Institutions Examination Council, National Information Center (NIC), *BHCPR Peer Group Average Reports*. Viewed at: <https://www.ffiec.gov/npw/FinancialReport/BHCPRReports>.

<sup>201</sup> Edge Act and agreement corporations are subsidiaries of banks or BHCs, organized to allow international banking and financial business.

<sup>202</sup> Financial market utilities provide the essential infrastructure for transferring, clearing, and settling payments, securities, and other financial transactions among financial institutions.

savings associations chartered under the Home Owners' Loan Act. The OCC issues rules and regulations that govern the banks it supervises and takes supervisory actions against banks that do not comply with these statutes or that otherwise engage in risky practices.<sup>203</sup> The FDIC is the primary federal regulator for state-chartered institutions that are not members of the Federal Reserve System. State regulators are organized in the Conference of State Bank Supervisors (CSBS).<sup>204</sup> Banking and other financial service regulators and representatives are members of the FSOC.

4.189. The United States provides national treatment with respect to all banking services, except that branches of foreign banks are not allowed to have FDIC deposit insurance and therefore cannot accept retail deposits (unless grandfathered<sup>205</sup>) and agencies of foreign banks are not permitted to accept deposits from U.S. citizens and residents. The United States made GATS commitments in market access and national treatment for all subsectors included in the Annex on Financial Services, and in line with the Understanding on Commitments in Financial Services.<sup>206</sup> Although geographic and other limitations are applied to foreign banks and foreign-owned bank subsidiaries generally on a national treatment basis, the U.S. GATS Schedule contains some exceptions to national treatment. For example, foreign banks cannot be members of the Federal Reserve System, although foreign-owned U.S. bank subsidiaries are not subject to this limitation. Also, foreign ownership of Edge Act corporations is limited to foreign banks and U.S. subsidiaries of foreign banks, while domestic non-bank firms may own such corporations.

4.190. The FDIC provides deposit insurance on deposits in FDIC-insured banks. The amount insured in 2022 is USD 250,000 per depositor, per insured bank, for each account ownership category; this amount has not changed since the previous Review.<sup>207</sup> Foreign banks in the United States can be insured by the FDIC. The FDIC covers checking accounts; negotiable order of withdrawal (NOW) accounts; savings accounts; money market deposit accounts; time deposits such as certificates of deposit (CDs); and cashier's checks, money orders, and other official items issued by a bank. Depositors do not need to apply for FDIC insurance. Coverage is automatic whenever a deposit account is opened at an FDIC-insured bank or financial institution.

4.191. Under U.S. law, interstate banking is allowed; this can be done either through a merger or through the establishment of new branches, subject to certain restrictions. In the case of mergers, size limitations apply on a non-discriminatory basis, whereby the merged bank cannot control more than 10% of the total deposits of insured depository institutions in the United States. Additionally, limits on the total deposits of the merged bank within a state apply as well.

4.192. Under the International Banking Act of 1978, foreign banks can establish a commercial presence in the United States by setting up federal- or state-licensed branches and agencies, or representative offices, or through the acquisition of a national or state subsidiary bank. These are accorded national treatment. Foreign persons may establish or acquire a nationally chartered bank subsidiary in all states, subject to commercial presence requirements. Initial entry or expansion by a foreign person through the acquisition or establishment of a state-chartered commercial bank subsidiary is prohibited or limited in 22 states; other limitations also apply at the state level.<sup>208</sup>

4.193. Chartered national banks must apply to the OCC to make substantial changes to their activities or structure. Under OCC regulations, a national bank is permitted to issue additional common stock if approved by holders of at least two thirds of the shares of the bank's voting stock. Common stock may be issued with or without a par value; a par value may not exceed USD 100 per share. Prior approval is required if the national bank is issuing stock in exchange for other than cash.

<sup>203</sup> OCC, *What We Do*. Viewed at: <https://www OCC.gov/about/what-we-do/index-what-we-do.html#:~:text=The%20OCC%20is%20the%20primary,govern%20the%20banks%20it%20supervises>.

<sup>204</sup> CSBS. Viewed at: <https://www.csbs.org>.

<sup>205</sup> Branches covered by FDIC deposit insurance prior to the passage of the Federal Deposit Insurance Corporation Improvement Act of 1991 (P.L. 102-242), which prohibited foreign branches from having FDIC insurance coverage, were permitted to retain that insurance.

<sup>206</sup> WTO document GATS/EL/90/Suppl.3, 26 February 1998.

<sup>207</sup> FDIC, *Understanding Deposit Insurance*. Viewed at: <https://www.fdic.gov/resources/deposit-insurance/understanding-deposit-insurance/>.

<sup>208</sup> Branch licenses for foreign banks are not permitted in Georgia, Louisiana, Missouri, and Oklahoma. Representative offices of foreign banks are not permitted in 12 states, and are subject to limitations in Oklahoma, while some states require their incorporation. Some states also place limitations on the acquisition by a foreign person of savings banks or loan associations (Tennessee and Washington).

A national bank must obtain prior OCC approval for transactions that reduce permanent capital.<sup>209</sup> Under federal and state law, certain types of depository institutions may convert to a national bank or a federal savings association (FSA). These institutions include commercial banks, state banks, state savings associations (mutual form or stock form), trust companies, and credit unions. A state bank converting to a national bank must have the approval of shareholders who together own at least 51% of the institution's capital stock. Under the National Bank Act, if the institution's charter or bylaws require a more stringent approval threshold, the institution must adhere to this threshold. If the converting state bank's holding company is the sole shareholder, the holding company may authorize the conversion through a board resolution. All holding companies, however, must follow state law requirements.<sup>210</sup>

#### 4.4.1.5 Insurance services

4.194. The insurance sector in the United States is divided into three segments: life and health (L&H) insurers, property and casualty (P/C) insurers, and health insurers. Companies in the L&H sector offer life insurance and annuities, as well as accident and health products that cover expenses for health and long-term care or provide income in the event of disability. P/C insurers offer products that generally protect against the risk of financial loss associated with damage to property or exposure to liability for individuals and families (personal lines, e.g. auto and homeowners' insurance) and for businesses (commercial lines, e.g. professional liability insurance). The health segment includes companies licensed solely as health insurers or as health maintenance organizations. In 2020, there were 4,550 insurers licensed in the United States, including 2,614 P/C insurers, 1,260 health insurers, and 676 L&H insurers.<sup>211</sup>

4.195. The U.S. insurance industry employed 2.9 million people in 2020, of which 1.7 million worked for insurance companies, including life and health insurers (962,500 workers), P/C insurers (665,900 workers), and reinsurers (27,300 workers). The remaining 1.2 million people worked for insurance agencies, brokers, and other insurance-related enterprises.

4.196. Net premiums written for the P/C insurance sector totaled USD 647.3 billion in 2020. Net premiums written for the L&H segment totaled USD 627.5 billion in 2020.<sup>212</sup> Total private health insurance direct premiums written were USD 1.1 trillion in 2020, comprising USD 834.5 billion from the health insurance segment, USD 208.7 billion from the L&H segment, and USD 6.8 billion from the P/C segment. In addition to private sources of coverage, the health insurance segment extends to government programs. Total P/C cash and invested assets were USD 2.0 trillion in 2020, while L&H cash and invested assets totaled USD 4.7 trillion in 2020; separate accounts assets totaled USD 3.0 trillion. Total general account cash and invested assets for the L&H segment was USD 6.7 trillion, mostly in bonds (55% of P/C investment portfolio, and 70% of L&H investment portfolio). At the end of 2020, the U.S. insurance sector held approximately USD 11 trillion in total assets, with approximately USD 8 trillion held by the L&H segment, USD 2.4 trillion held by the P/C segment, and USD 0.5 trillion held by the health segment.

4.197. P/C insurers paid out USD 74.4 billion in property losses related to natural catastrophes in 2020, considerably above the USD 38.7 billion paid in 2019, and USD 60.4 billion in 2018, including losses from the National Flood Insurance Program.<sup>213</sup> As of 31 December 2020, capital and surplus in the L&H segment stood at USD 440 billion; the P/C segment reported policyholder surplus of some USD 914 billion; and the health segment reported approximately USD 244 billion.<sup>214</sup>

<sup>209</sup> OCC (2021), *Comptroller's Licensing Manual: Capital and Dividends*, December. Viewed at: <https://www.occ.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/licensing-booklet-capital-and-dividends.html>.

<sup>210</sup> OCC (2021), *Comptroller's Licensing Manual: Conversions to Federal Charter*, December. Viewed at: <https://www.occ.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/licensing-booklet-conversions-to-federal-charter.html>.

<sup>211</sup> Department of the Treasury (2021), *Annual Report on the Insurance Industry*, September. Viewed at: <https://home.treasury.gov/system/files/311/FIO-2021-Annual-Report-Insurance-Industry.pdf>.

<sup>212</sup> Department of the Treasury (2021), *Annual Report on the Insurance Industry*, September. Viewed at: <https://home.treasury.gov/system/files/311/FIO-2021-Annual-Report-Insurance-Industry.pdf>.

<sup>213</sup> Insurance Information Institute. Viewed at: <https://www.iii.org/fact-statistic/facts-statistics-industry-overview>.

<sup>214</sup> Department of the Treasury (2021), *Annual Report on the Insurance Industry*, September. Viewed at: <https://home.treasury.gov/system/files/311/FIO-2021-Annual-Report-Insurance-Industry.pdf>.

4.198. The L&H segment continues to be concentrated in the United States. In 2020, the top 10 firms in the L&H segment were responsible for nearly 54% of the direct premiums written (Table 4.15). MetLife Inc. continued to be the market leader. The health segment is even more concentrated, with the top 10 firms being responsible for over 60.4% of the direct premiums written in 2020. The United Health Group, which was the largest firm, had 14.3% of the market share. The P/C insurance sector is less concentrated than the other two: the top 10 companies were responsible for 48.2% of direct premiums written in 2020, a small increase from the 47.9% registered in 2019.

**Table 4.15 L&H insurance: U.S. life and annuities subsector direct premiums written**

2019 rank	2020 rank	Insurance group	2019 direct premiums written (USD '000)	Share of total (%)	2020 direct premiums written (USD '000)	Share of total (%)
1	1	MetLife Inc.	95,079,321	12.99	103,335,055	13.06
3	2	Equitable Holdings	44,612,694	6.09	62,688,657	7.92
2	3	Prudential Financial Inc.	56,206,131	7.68	61,913,976	7.82
4	4	New York Life Insurance Group	34,984,924	4.78	40,211,642	5.08
5	5	Massachusetts Mutual Life Insurance Co.	30,375,127	4.15	38,461,197	4.86
7	6	Principal Financial Group Inc.	27,038,400	3.69	26,439,671	3.34
6	7	Lincoln National Corp.	28,471,688	3.89	25,385,450	3.21
11	8	Western & Southern Financial Group	20,594,041	2.81	22,920,717	2.90
10	9	Transamerica	22,360,111	3.05	22,875,109	2.89
8	10	American International Group	25,684,294	3.51	22,620,803	2.86
		Combined top 10	387,869,365	52.97	426,852,277	53.94
		Combined top 25	585,155,216	79.92	636,498,353	80.44
		Combined top 100	722,558,422	98.68	782,664,853	98.93
		Total U.S. life insurance lines	732,191,458	100.0	791,277,958	100.0

Source: Department of the Treasury (2021), *Annual Report on the Insurance Industry*, September.  
Viewed at: <https://home.treasury.gov/system/files/311/FIO-2021-Annual-Report-Insurance-Industry.pdf>.

4.199. Despite the negative effects of the pandemic, the U.S. insurance industry was able to maintain its financial health in 2020. Although there were increased balance sheet pressures, the L&H segment achieved an increase in its capital and surplus, boosted by growth in cash and invested assets. Also, and despite the effects of COVID-19, the P/C segment also increased its policyholder surplus, reflecting steady leverage ratios and improved liquidity levels. On the other hand, the sustained low interest rate environment continued to affect the insurance industry's performance. Both the L&H and P/C segments exhibited declining operating margins and some deterioration in the quality of their investment portfolios in 2020. The L&H segment's underwriting performance was mainly impacted by negative premium growth. The P/C segment's reduced net investment income largely drove negative operating growth. The industry continued to seek higher yields, increasing its non-investment-grade bond holdings and alternative investments in 2020.<sup>215</sup>

4.200. Under the McCarran-Ferguson Act of 1945 and the GLBA, the business of insurance is regulated mainly at the state level, both in terms of market conduct and prudential standards. As a result, in the United States, the primary regulators of the business of insurance are the 50 states, the District of Columbia, and the five U.S. territories. However, the Federal Government also plays an important role in the insurance industry, mainly through FIO, which was established within the Treasury by Title V of the DFA. FIO monitors the insurance sector and represents the United States on prudential aspects of international insurance matters. The Federal Reserve may also have an insurance supervisory role in some cases.

4.201. In addition to advising the Secretary of the Treasury on domestic and prudential international insurance policy issues and participating in the FSOC, FIO has authority to: (i) monitor all aspects of the insurance industry; (ii) recommend to the FSOC that it designate an insurer as an entity subject to regulation by the Federal Reserve as a non-bank financial company; (iii) assist the Secretary in the administration of the Terrorism Risk Insurance Program (TRIP); (iv) coordinate federal efforts and develop federal policy on prudential aspects of international insurance matters, including representing the United States; (v) determine whether state insurance measures are

<sup>215</sup> Department of the Treasury (2021), *Annual Report on the Insurance Industry*, September.  
Viewed at: <https://home.treasury.gov/system/files/311/FIO-2021-Annual-Report-Insurance-Industry.pdf>.

pre-empted by covered agreements; and (vi) consult with the states regarding insurance matters of national importance and prudential insurance matters of international importance. FIO and the Federal Reserve coordinate on the performance of annual analyses of non-bank financial companies supervised by the Federal Reserve, particularly with respect to stress testing. FIO has several statutorily imposed reporting obligations, under the DFA and the EGRRCPA.<sup>216</sup>

4.202. To be able to offer insurance services, insurance companies, agents, and brokers need to be licensed in the state where they plan to provide services. Licensing requirements vary depending upon the type of services offered (e.g. insurers have different licensing requirements than do agents) and also across states. Furthermore, insurance premiums need to be approved by the state regulators. Foreign firms can access the direct insurance market by acquiring a licensed insurance company, or as a subsidiary or a branch of a foreign insurance company. The majority of states prohibit the conduct of business by government-controlled or government-owned insurance companies. A foreign company operation as a branch may only write premiums based on the capital it has deposited in the state where it is conducting business. However, this condition is usually waived, particularly if the company has a deposit in another state. In certain cases, such as large industrial placements, MAT (marine, aviation, or transport insurance), or "surplus lines" insurance, exemptions from the state residency requirements exist; these vary across states. Foreign reinsurers that are permitted to conduct cross-border business with U.S. companies even when not licensed in a particular state may be required to make a trust account deposit in the United States for the full amount of their liabilities or to provide a letter of credit to this effect.

4.203. Insurance premiums covering U.S. risks paid to companies not incorporated in the United States or in countries with which the United States has a double taxation treaty are subject to a federal tax of 1% on life insurance and reinsurance, and 4% on non-life insurance premiums. This was listed as a national treatment exemption in the U.S. GATS schedule.

4.204. Although insurance is regulated at the state level, efforts have been made to reinforce state coordination. To this end, state regulators participate in the National Council of State Insurance Legislators (NCOIL) and the National Association of Insurance Commissioners (NAIC). The NCOIL comprises state legislators, whose purpose is to help legislators make informed decisions on insurance issues that affect their constituents. NAIC, composed of the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories, provides a forum for policy coordination, establishing standards and best practices, and coordinating regulatory oversight.

4.205. The Terrorism Risk Insurance Program (TRIP), created by the Terrorism Risk Insurance Act of 2002 (TRIA), was most recently extended through 31 December 2027 by the Terrorism Risk Insurance Program Reauthorization Act of 2019 (P.L. 116-94). Under TRIA, the Government pays 80% of the insured losses of an insurer resulting from certified acts of terrorism where industry-wide insured losses exceed USD 200 million, subject to payment of a deductible. The Government's share of industry losses is capped at an annual aggregate maximum of USD 100 billion. FIO assists the Secretary of the Treasury in administering the TRIP. In June 2021, FIO published a study noting the significant participation of small insurers in terrorism risk insurance.<sup>217</sup>

4.206. The Bilateral Agreement between the U.S. and the EU on Prudential Measures Regarding Insurance and Reinsurance, generally known in the United States as the U.S.-EU Covered Agreement, was signed by the parties in September 2017, and entered into force on 4 April 2018. It addresses three areas of insurance and reinsurance prudential measures: (i) group supervision; (ii) reinsurance supervision, including collateral and local presence requirements; and (iii) exchange of information between supervisory authorities. More specifically, the agreement eliminated, under specified conditions, local presence and collateral requirements in each Party for reinsurers from the other Party. The agreement gave a five-year period for the implementation of the collateral requirements.<sup>218</sup> It also addressed the role of the host and home supervisory authorities with respect

<sup>216</sup> Department of the Treasury (2021), *Annual Report on the Insurance Industry*, September.

Viewed at: <https://home.treasury.gov/system/files/311/FIO-2021-Annual-Report-Insurance-Industry.pdf>.

<sup>217</sup> FIO (2021), *Study of Small Insurer Competitiveness in the Terrorism Risk Insurance Marketplace*.

Viewed at: <https://home.treasury.gov/system/files/311/2021TRIPSmallInsurerReportJune2021.pdf>.

<sup>218</sup> Non-U.S. reinsurers have been historically required to hold 100% collateral within the United States for the risks they assume from U.S. insurers. In 2011, NAIC adopted a revised Credit for Reinsurance model law and model regulation that allowed non-U.S. reinsurers to post less than 100% collateral for U.S. claims, if the non-U.S. reinsurer showed proven financial strength and the effectiveness of its home-country regulator.



to prudential group supervision of an insurance or reinsurance group whose worldwide parent undertaking is in the home Party, and reaffirmed the Parties' mutual support for the exchange of information between supervisory authorities, recommending practices for such exchange.<sup>219</sup> The U.S.-UK Covered Agreement, substantively similar to the agreement with the European Union, was signed by the parties in December 2018, and entered into force on 31 December 2020.<sup>220</sup> The covered agreement with the United Kingdom is based upon the provisions of the U.S.-EU Covered Agreement in view of the withdrawal of the United Kingdom from the European Union: it incorporates its timeframes and addresses the same topics.

4.207. The NAIC Credit for Reinsurance Model Law and Regulation, as amended in 2019, provides a basis for U.S. states to revise their credit for reinsurance measures for purposes of achieving consistency with the covered agreements and avoiding a potential pre-emption determination under the FIO Act.<sup>221</sup> Implementation of the Covered Agreements contemplates action by each U.S. State to revise its relevant credit for reinsurance measures, and in 2019, NAIC adopted amendments to its Credit for Reinsurance Model Law and Regulation in response to the Covered Agreements. The 2019 Model Law and Regulation were later designated by NAIC as accreditation standards, and U.S. States are revising their credit for reinsurance measures based on the 2019 Model Law and Regulation.<sup>222</sup> The 2019 Credit or Reinsurance Model Law and Regulation are an NAIC accreditation requirement, effective 1 September 2022. Under the Covered Agreements, if U.S. insurance supervisors do not develop and implement a group capital assessment applicable to U.S. groups with insurance operations in the European Union and the United Kingdom, regulators from those jurisdictions could impose their domestic group capital requirements on such groups and may not be precluded from imposing collateral requirements on U.S. reinsurers assuming business from insurers in those jurisdictions.

4.208. In December 2020, NAIC members adopted revisions to the Insurance Holding Company System Model Act and Insurance Holding Company System Model Regulation to implement the Group Capital Calculation (GCC) and Liquidity Stress Test (LST). The LST for large life insurance groups meeting the scoping criteria provides lead state regulators with more insights into the groups' liquidity risk.<sup>223</sup> To facilitate implementation of these models in the states, NAIC adopted additional changes to the Uniform Application Checklist for Certified Reinsurers and a new Uniform Checklist

Following the agreements with the European Union and the United Kingdom, in June 2019, NAIC adopted revisions to the models intended to implement the reinsurance collateral provisions of the Covered Agreements. The revisions eliminate reinsurance collateral requirements for reinsurers that have their head office or are domiciled in an EU-member country (or the United Kingdom); a U.S. jurisdiction (state) that meets the requirements for accreditation under NAIC financial standards and accreditation program; and a non-U.S. jurisdiction recognized as a Qualified Jurisdiction that meets additional requirements consistent with the terms of the EU/U.S. Covered Agreement.

<sup>219</sup> Department of the Treasury, *U.S.-EU Covered Agreement*. Viewed at: <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/covered-agreements/us-eu-covered-agreement>.

<sup>220</sup> Department of the Treasury, *U.S.-UK Covered Agreement*. Viewed at: <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/covered-agreements/us-uk-covered-agreement>.

<sup>221</sup> The FIO Act of 2010 sets forth procedures for the pre-emption of state insurance measures by the FIO Director in connection with a covered agreement. A state insurance measure shall be pre-empted only if the FIO Director determines that it: (i) results in less favorable treatment of a non-U.S. insurer domiciled in a foreign jurisdiction that is subject to a covered agreement than a U.S. insurer domiciled, licensed, or otherwise admitted in that state; and (ii) is inconsistent with the covered agreement. FIO, *Preemption Analysis*. Viewed at: <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/covered-agreements/preemption-analysis>.

<sup>222</sup> FIO evaluated whether a U.S. State credit for reinsurance measures were consistent with the Covered Agreements with the European Union and the United Kingdom. In case of inconsistency, State measures are subject to potential pre-emption under the FIO Act. The agreements required the United States to complete any pre-emption determination by 1 September 2022. FIO, *Preemption Analysis*. Viewed at: <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/covered-agreements/preemption-analysis>.

<sup>223</sup> NAIC (2021), *NAIC 2020 Liquidity Stress Test Framework for Life Insurers Meeting the Scope Criteria*, May. Viewed at: [https://content.naic.org/sites/default/files/inline-files/Final%202020%20LST%20Framework\\_0.pdf](https://content.naic.org/sites/default/files/inline-files/Final%202020%20LST%20Framework_0.pdf). The GCC is a groupwide capital reporting and assessment framework including insurers and financial and nonfinancial businesses within an insurance group. Entities included for the purposes of LS testing include U.S. life insurance legal entities, including reinsurers; where applicable, holding companies that could be a source or draw of liquidity to the life insurance legal entities; and non-life insurance entities and non-insurance entities with material sources of liquidity, which could pose material liquidity risk to the U.S. group.

for Reciprocal Jurisdiction Reinsurers. All states with a group impacted by the Covered Agreement were encouraged to adopt the GCC revisions effective 7 November 2022.<sup>224</sup> In 2021, 22 life insurance groups filed an LST using 2020 data.

4.209. In 2021, NAIC adopted revisions to statutory accounting rules and interpretations, relating to insurer transactions with affiliates, which clarifies that any direct or indirect ownership interest greater than 10% in a reporting entity results in a related party designation. NAIC has reported advances in adoption of common regulatory measures on the part of the states: as of October 2021, 16 states had adopted the 2020 revisions to NAIC's Suitability in Annuity Transactions Model Regulation, and it was pending in six states.<sup>225</sup> Also as of October 2021, 18 states had adopted some form of the NAIC's Insurance Data Security Model Law, which establishes standards for insurer data security and for notification to state insurance regulators of a cybersecurity event.

4.210. E.O. 14030 of 20 May 2021 on Climate-Related Financial Risk instructed the Treasury to direct FIO to assess climate-related issues or gaps in the supervision and regulation of insurers, and the potential for major disruptions of private insurance coverage in U.S. regions particularly vulnerable to climate change impacts. To this end, FIO issued a request in August 2021 to solicit public comment on the insurance sector and climate-related financial risks.

#### 4.4.1.6 Securities services

4.211. The U.S. equity markets are the largest in the world; at USD 52 trillion (almost 2.5 times GDP) in 2021, they represented 42.0% of the USD 125 trillion global equity market capitalization in that year. The U.S. market share increased during 2021; it averaged 37.4% over the 2012-21 period. The main indexes showed positive results in 2021: the S&P 500 index averaged 4,273.41 for FY2021, and it was 29.5% higher than in FY2020; the Dow Jones Industrial Average (DJIA) averaged 34,055.29, +22.1% over FY2020; the Nasdaq averaged 14,371.66, +28.7%. Total equity issuance was USD 390.4 billion in FY2021.<sup>226</sup> The number of initial public offerings (IPOs) was up 21.7% year-on-year (Table 4.16).

**Table 4.16 U.S. primary and secondary equity markets, FY2020 and FY2021**

(USD billion and %)

	FY2021	FY2020	Y/Y
<b>Primary market</b>			
Total equity issuance (USD billion)	435.8	390.4	11.6%
Total IPO value (USD billion)	153.1	85.4	79.2%
Number of IPOs	393	209	88.0%
Small cap as % Total IPOs	66%	73%	-7.4%
Number of listed companies	4,734	4,771	-0.8%
Private equity deal value (USD billion)	1,035.7	689.6	50.2%
<b>Secondary markets</b>			
Equity average daily trading volume (USD billion)	11.4	10.9	4.4%
ETF average daily trading volume (USD billion)	1.7	2.0	-15.1%
ETFs as % equity ADV	14.8%	18.2%	-3.4%
Options ADV (millions)	39.2	29.5	32.7%
Market performance (price) S&P 500	4,273.41	3,217.86	32.8%
Dow Jones Industrial Average	34,055.29	26,890.67	26.6%

<sup>224</sup> NAIC, Financial Regulation Standards and Accreditation Committee: Draft Minutes -12 April 2021, Meeting. Viewed at: [https://content.naic.org/sites/default/files/call\\_materials/Group%20Capital%20Calcuation%20%28E%29%20Working%20Group\\_Minutes.pdf](https://content.naic.org/sites/default/files/call_materials/Group%20Capital%20Calcuation%20%28E%29%20Working%20Group_Minutes.pdf).

<sup>225</sup> NAIC Model Laws, Regulations, Guidelines and Other Resources—Spring 2020, *Suitability in Annuity Transactions Model Regulation*. Viewed at: <https://content.naic.org/sites/default/files/inline-files/MDL-275.pdf>.

<sup>226</sup> SIFMA (2022), *Research Quarterly – 4Q21. Primary Market: US Equity Capital Formation. Secondary Markets: US Cash Equities, ETFs, and Multi-Listed Options*, January. Viewed at: <https://www.sifma.org/wp-content/uploads/2022/01/US-Research-Quarterly-Equity-2022-01-26-SIFMA.pdf>.

	FY2021	FY2020	Y/Y
Nasdaq	14,371.66	10,201.51	40.9%
Russell 2000	2,242.91	1,523.90	47.2%
VIX	19.66	29.25	-32.8%

Note: ETF = Exchange Traded Fund; IPO = Initial Public Offering; VIX = Chicago Board Options Exchange Volatility Index.

Source: SIFMA Research Quarterly – 4Q21. Primary Market: US Equity Capital Formation; Secondary Markets: US Cash Equities, ETFs, and Multi-Listed Options, January 2022. Viewed at: <https://www.sifma.org/wp-content/uploads/2022/01/US-Research-Quarterly-Equity-2022-01-26-SIFMA.pdf>.

4.212. The main legislation regarding the securities sector is contained in the Securities Act of 1933, the Securities Exchange Act of 1934, the Sarbanes-Oxley Act of 2002 (SOX), the DFA, Jumpstart Our Business Startups (JOBS) Act of 2012, and the Economic Growth, Regulatory Relief and Consumer Protection Act of 2018 (EGRCPA).

4.213. The Securities Act mandates a full disclosure of securities being offered for sale; securities generally need to be registered if offered for sale in the United States.<sup>227</sup> Debt securities such as bonds, debentures, and notes need to be registered under the Securities Act. However, if such securities are offered for public sale, a formal agreement between the bond issuer and the bond holder known as the "trust indenture" is needed. The trust indenture needs to conform to the provisions of the Trust Indenture Act.<sup>228</sup> Companies, including mutual funds, that engage in investing, reinvesting, and trading in securities, and whose own securities are offered to investors, are regulated under the Investment Company Act (ICA). Under the ICA, companies are required to disclose their financial condition and investment policies to investors when the stock is initially offered for sale and subsequently on a regular basis. Investment advisors, firms, or individuals engaged in advising others about securities investment for compensation are regulated under the Investment Advisors Act (IAA), amended in 1996 and 2010. Advisors who manage USD 100 million or more or advise a registered investment company, must register with the SEC. As per the national treatment exemption undertaken by the United States in GATS, domestic banks involved in securities advisory and investment management services are exempt from registration under the IAA, while foreign banks are required to register. The registration requirement involves maintenance of records, inspections, submission of reports, and paying a fee. The Investment Company Act regulates the organization of companies, that engage primarily in investing, reinvesting, and trading in securities, and whose own securities are offered to the investing public.

4.214. The Securities and Exchange Commission (SEC), established by the Securities and Exchange Act (SEC Act), is the principal regulator of the securities sector in the United States.<sup>229</sup> The SEC Act empowered the SEC with broad authority over all aspects of the securities industry, including the power to register, regulate, and oversee brokerage firms, transfer agents, and clearing agencies as well as securities self-regulatory organizations (SROs). The SEC Act also identifies and prohibits certain types of conduct in the markets and provides the SEC with disciplinary powers over regulated entities and persons associated with them. It empowers the SEC to require periodic reporting of information by companies with publicly traded securities: companies with more than USD 10 million in assets with securities held by more than 500 owners must file annual and other periodic reports. These reports are available to the public through the SEC's EDGAR database. The SEC Act requires disclosure of information by anyone seeking to acquire more than 5% of a company's securities by direct purchase or tender offer. It also prohibits insider trading, which is illegal when a person trades a security while in possession of material non-public information in violation of a duty to withhold the information or refrain from trading. The Act requires market participants including exchanges, brokers and dealers, transfer agents, and clearing agencies to register with the SEC. Registration statements and prospectuses become public shortly after filing with the SEC. If filed by U.S. domestic

<sup>227</sup> Although, in general, securities sold in the United States must be registered, not all offerings of securities must be registered with the SEC. Private offerings to a limited number of persons or institutions; offerings of limited size; intrastate offerings; and securities of municipal, State, and Federal Governments are exempt from registration requirements. Furthermore, foreign issuers can opt to use different registration and periodic reporting forms than those used by domestic users.

<sup>228</sup> Under the Trust Indenture Act, securities may not be offered for sale to the public unless a formal agreement between the issuer of bonds and the bondholder, known as the trust indenture, conforms to the standards of this Act.

<sup>229</sup> This includes the power to register, regulate, and oversee brokerage firms, transfer agents, and clearing agencies as well as securities self-regulatory organizations (SROs).

companies, the statements are available on the EDGAR database, accessible at [www.sec.gov](http://www.sec.gov). Registration statements are subject to examination for compliance with disclosure requirements.

4.215. The SEC Act identifies the various securities exchanges, such as the New York Stock Exchange, the Nasdaq Stock Market, and the Chicago Board of Options exchanges, and the Financial Industry Regulatory Authority (FINRA) as SROs that must create rules that allow for disciplining members for improper conduct and for establishing measures to ensure market integrity and investor protection. SRO proposed rules are subject to SEC review and published to solicit public comment. Many SRO proposed rules are effective upon filing, but some require SEC approval before they can go into effect.

4.216. The Commodity Futures Trading Commission (CFTC), which was created by the Commodity Futures Trading Commission Act of 1974, is responsible for administering the Commodity Exchange Act (CEA), as supplemented by the DFA of 2010. The CEA stipulates that persons engaged in offering or selling foreign exchange traded futures and options to persons based in the United States need to register with the CFTC or petition the CFTC for an exemption from registration.<sup>230</sup>

4.217. The SOX Act created the Public Company Accounting Oversight Board (PCAOB) to oversee the activities of the auditing profession. The Act mandates that senior corporate officers personally certify in writing that the company's financial statements comply with SEC disclosure requirements. Officers who sign off on financial statements that they know to be inaccurate are subject to criminal penalties. The Act requires that management and auditors establish internal controls and reporting methods to ensure the adequacy of those controls, and contains rules with respect to recordkeeping, including scope, retention period, and record destruction and falsification.

4.218. The DFA governs consumer protection, trading restrictions, credit ratings, regulation of financial products, corporate governance and disclosure, and transparency of financial services related activities. The DFA amended the SEC Act, whereby the SEC, when considering the application of a foreign person or an affiliate of a foreign person to register in the United States as a broker or a dealer, must consider if the applicant poses a risk to the stability of the U.S. financial system and whether the applicant's home country has legislation in place that would mitigate such risk. Furthermore, the SEC is authorized to revoke the authorization of foreign brokers and dealers if their home country has not taken appropriate steps to mitigate risk. The DFA also amended the SEC Act to require that each nationally recognized statistical rating organization set up, enforce, and document an effective internal control structure to determine policies, procedures, and framework for assigning credit ratings. The DFA established a comprehensive regulatory framework for swaps and security-based swaps: swap dealers and major swap participants are required to register with the CFTC, while security-based swap dealers and major security-based swap participants need to register with the SEC. The JOBS Act allows for an exemption for up to five years from the SOX requirement to obtain an annual verification report from a registered public accounting firm.

4.219. Section 501 of the EGRRCPA amended the Securities Act, exempting from the obligation of state registration securities approved by the SEC for national trading and authorized to be listed on a national securities exchange. It also directs the SEC to report on the risks and benefits of algorithmic trading in capital markets. Section 504 of the Act creates a new subset of venture capital funds called qualifying venture capital funds (QVCFs), not defined as an investment company as stipulated in the ICA. To qualify as a QVCF, a venture capital fund must have less than 250 beneficial investors and less than USD 10 million in invested capital. The Act also increased the threshold amount of stock that a company can sell to its corporate employees in a year, without being subject to additional disclosure requirements, from USD 5 million to USD 10 million. The Act allows certain "fully reporting" companies to be eligible for certain exemptions from disclosure requirements; it also allows closed-end funds to use certain streamlined reporting procedures.

---

<sup>230</sup> The CFTC is authorized under CFTC Regulation 30.10 to provide an exemption to the petitioner if the petitioner demonstrates that its home-country regulatory regime is comparable to the CFTC's and that the home-country regulator has an appropriate information sharing arrangement with the CFTC. Currently, 17 self-regulatory and regulatory organizations have been granted order exemption under CFTC Regulation 30.10, in 14 trading partners: Australia; Brazil; Canada; France; Germany; Hong Kong, China; India; Japan; the Republic of Korea; Malaysia; Singapore; Spain; Chinese Taipei; and the United Kingdom. CFTC, *Foreign Part 30*. Viewed at: <http://sirt.cftc.gov/sirt/sirt.aspx?Topic=ForeignPart30Exemptions&implicit=true&status=Order+Issued+Granting&CustomColumnDisplay=TTTTTTT>.

4.220. The Holding Foreign Companies Accountable Act (P.L. 116-222), enacted on 18 December 2020, amended the SOX Act to require the SEC to identify each covered issuer that retains a registered public accounting firm that has a branch or office located in a foreign jurisdiction, which the PCAOB determined it is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction. If the SEC determines that a covered issuer has three consecutive non-inspection years, it must prohibit the securities of the covered issuer from being traded on a national securities exchange or through any other method that is within the jurisdiction of the SEC to regulate, including through over-the-counter trading. The prohibition is removed on proof of compliance, but, in case of re-incidence, a new prohibition, for a minimum of five years, will be imposed.

#### 4.4.2 Telecommunications

4.221. The telecommunications market in the United States is valued at USD 583.4 billion in 2021 in terms of revenue. In 2020, the United States had a USD 18.1 billion trade surplus in telecommunications, computer, and information services, with exports totaling USD 56.7 billion, and imports reaching USD 38.6 billion.<sup>231</sup> Export growth (36.8%) between 2015 and 2020 denoted a dynamic exporting sector; imports remained almost unchanged over the same period, mainly due to a sharp decline of USD 4 billion in imports of computer services between 2019 and 2020. Export growth was driven by increases in exports of computer services whose export values more than doubled since 2015 to USD 42.1 billion in 2020.<sup>232</sup>

4.222. Mobile phone subscriptions reached 351 million in 2020, with a penetration rate of 106.2%. Fixed telephone subscriptions dropped by 24 million between 2015 and 2020, and subscriptions per inhabitants are at their lowest level since the 1970s; only 3 of 10 U.S. citizens had a fixed line subscription in 2020. Broadband subscriptions, whether fixed or wireless, have steadily increased since 2015; fixed-broadband subscriptions increased by almost 20 million until 2020 (reaching a penetration rate of 36.4%)<sup>233</sup> while the threshold of 500 million subscriptions was exceeded for wireless broadband in 2020, i.e. a penetration rate of 156.7%. The progress in broadband use also reflects the increased access to the Internet – 9 out of 10 U.S. citizens used the Internet in 2020, up from nearly 75% in 2015 (Table 4.17).

**Table 4.17 Selected telecommunications indicators, 2015-20**

	2015	2016	2017	2018	2019	2020
Fixed telephone subscriptions (million)	125	121	116	110	107	101
Fixed telephone subscriptions per 100 inhabitants	38.9	37.6	35.8	33.7	32.4	30.7
Mobile-cellular telephone subscriptions (million)	382	396	400	348	356	351
Mobile-cellular telephones per 100 inhabitants	119.1	122.6	123.0	106.5	108.1	106.2
Internet users (%)	74.6	85.5	87.3	88.5	89.4	90.9
Fixed-broadband subscriptions (million)	102	106	108	111	114	121
Fixed-broadband subscriptions per 100 inhabitants	31.8	32.7	33.3	33.9	34.7	36.6
Wireless-broadband total subscriptions (million)	375	409	431	463	493	519
Wireless-broadband total subscriptions per 100 inhabitants	117.0	126.7	132.7	141.6	149.8	156.7

Source: ITU World Telecommunication/ICT Indicators Database, July 2021 Edition. Viewed at: <https://www.itu.int/en/ITU-D/Statistics/Pages/publications/wtid.aspx>.

4.223. The U.S. telecommunications market consolidated during the review period. In April 2020, the merger between operators T-Mobile and Sprint was approved after two years of review by different regulatory instances, including the Federal Communications Commission (FCC), the Department of Justice, and the California Public Utilities Commission.<sup>234</sup> There are now three

<sup>231</sup> BEA, *International Transactions, International Services, and International Investment Position Tables*. Viewed at: <https://apps.bea.gov/iTable/iTable.cfm?ReqID=62&step=1>.

<sup>232</sup> Computer software, including end-user licenses and customization, accounted for nearly half of U.S. exports (USD 27 billion) of the whole sector in 2020; exports of these activities have increased by almost USD 15 billion since 2015. Exports related to cloud computing and data storage services are the fastest growing; exported value increased four-fold between 2015 and 2020.

<sup>233</sup> According to the OECD, the fixed-broadband penetration in the United States has consistently remained above the OECD average rate. OECD, *OECD Digital Economy Outlook 2020*. Viewed at: <https://www.oecd-ilibrary.org/sites/bb167041-en/index.html?itemId=/content/publication/bb167041-en>.

<sup>234</sup> Several conditions were part of settlements for this approval, which included the sale of subsidiary mobile phone network (Boost Mobile) to Dish Network, transition services and network access to users of



nationwide mobile network operators in the market (AT&T, Verizon, and T-Mobile), each of them with more than 100 million subscribers.

4.224. The Communications Act of 1934 (47 U.S.C. 151 et seq.), as amended by the Telecommunications Act of 1996 (P.L. 104-104), is the main law governing the sector; it established FCC. The Commission regulates interstate and international communications nationwide, including U.S. territories, and its regulatory oversight covers telecommunications carriers and other carriers transmitting by wire or radio, including wireline<sup>235</sup>; wireless companies; radio and TV broadcasters; cable providers; and satellite companies. The National Telecommunications and Information Administration (NTIA), under USDOC, is the main advisor to the President on telecommunications and information policy issues. The International Communication and Information Policy (CIP) Office under the Department of State and USTR also play an active role in developing and coordinating telecommunications policy in international fora, including in the negotiation of bilateral and multilateral agreements.

4.225. Overseen by Congress, FCC is an independent government agency responsible for implementing and enforcing communications laws and regulations. As such, FCC has rulemaking authority, and may initiate a rulemaking proceeding when Congress specifically requests it, when the agency itself identifies a need requiring a new or an amended rule, or a change of rule, or when the public address a petition for the agency to take action.<sup>236</sup> Under the Communications Act, FCC manages the electromagnetic spectrum and grants licenses or authorizations, including for public safety, commercial and non-commercial fixed and mobile wireless services, broadcast television and radio, satellite, and other services. Before requesting a license, individuals and businesses must obtain an FCC registration (10-digit) number. Depending on the type of service, FCC maintains several licensing systems and provides search functionalities into the different databases, *inter alia*, by file number; applicant name or purpose; and call sign, licensee name, station, or radio service.<sup>237</sup>

4.226. Common carriers are generally required to interconnect with each other, either directly or through other common carriers' facilities. Interconnection agreements may be regulated at both the state and federal levels and FCC has the authority to address interconnection issues for such common carriers. Since the release of the 2017 Restoring Internet Freedom Order<sup>238</sup>, providers of broadband Internet access services are regulated as information services.

4.227. Before a company may assign an FCC license to another company or acquire a company holding an FCC license, it must receive the Commission's approval. FCC reviews applications for the transfer of control and assignment of licenses and authorizations to ensure that the public interest is served by approving the applications.<sup>239</sup> As part of its public interest review, the FCC hears from the public and considers several factors, including competition.<sup>240</sup> The agency may issue conditional approvals requesting the implementation of actions to remedy public interest harms of mergers (e.g. divestiture). During the review period, the FCC conditionally approved the acquisition of Sprint by T-Mobile, the fourth- and the third-largest national wireless carriers in the United States at the time of the filing.<sup>241</sup> Although the FCC aims to complete reviews in 180 days, major transactions such as the one previously mentioned may exceed that timespan.

---

Dish Network, the sale of the Sprint's 800 MHz spectrum to Dish three years after closing the merger, commitments on its coverage of 5G wireless services, and the freeze on retail prices for three years.

<sup>235</sup> Intrastate wireline telecommunications providers are primarily regulated by a public utility commission (PUC) in each state, and some PUCs also lightly regulate wireless companies and/or interconnected VoIP providers. Cable operators are licensed by cable franchising authorities at the local or state level, and regulatory power over them is shared by local/state authorities and FCC.

<sup>236</sup> FCC, *Rulemaking Process*. Viewed at: <https://www.fcc.gov/about-fcc/rulemaking-process>.

<sup>237</sup> Search interfaces into FCC databases are available at: <https://www.fcc.gov/licensing-databases/search-fcc-databases>.

<sup>238</sup> FCC (2017), *Declaratory Ruling, Report and Order, and Order in the Matter of Restoring Internet Freedom*, WC Docket No. 17-108. Viewed at: <https://www.fcc.gov/document/fcc-releases-restoring-internet-freedom-order>.

<sup>239</sup> FCC, *Mergers and Acquisitions*. Viewed at: <https://www.fcc.gov/proceedings-actions/mergers-and-acquisitions>.

<sup>240</sup> Depending on the type of license, factors such as the deployment of advanced services, and the diversity of license holders, information sources, and services available to the public, may be considered.

<sup>241</sup> FCC, *Current and Recent Major Transactions*. Viewed at: <https://www.fcc.gov/transactions/recent-transactions>.

4.228. To deter conduct by a foreign carrier that could result in harm to competition in the U.S. telecommunications market, FCC maintains regulatory safeguards such as the "no special concessions" rule, the benchmark settlement rates policy, and dominant carrier requirements. Under the no special concessions rule (47 C.F.R. 63.14), U.S. international carriers are prohibited from agreeing to enter into exclusive arrangements with foreign carriers with sufficient market power to affect competition adversely in the U.S. market. The Foreign Participation Order adopted a presumption that carriers with a market share of less than 50% in the foreign market lack such market power. The rules concerning foreign ownership limitations in the telecommunications sector remained unchanged during the review period. Foreign ownership in some services, such as wireline-based carriers and submarine cable landing licensees, must comply with restrictions in the FCC's general obligations and qualifications for ownership of such businesses. Under Section 310 of the Communications Act<sup>242</sup>, foreign ownership in common carriers is limited, unless FCC approves otherwise, to 20% direct investment and 25% indirect investment for common carrier wireless licensees.<sup>243</sup> FCC conducts a public interest analysis when evaluating applications to receive authorization to exceed the 25% foreign ownership benchmark.<sup>244</sup> The methodology used to assess compliance with foreign ownership statutory benchmarks is detailed in a 2016 FCC Order.<sup>245</sup>

4.229. E.O. 13913 of 4 April 2020, Establishing the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector, formalized the establishment of a Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector, which assists FCC in its public interest review of national security and law enforcement concerns raised by foreign participation in the U.S. telecommunications services sector.<sup>246</sup> Upon referral by FCC, the Committee conducts a 120-day review of certain types of applications, which can be extended by 90 days in case of a potential secondary assessment.<sup>247</sup> The Committee can make a range of recommendations to FCC including no objection to an application, approval of an application subject to mitigation, denial of an application, or modification or revocation of a license. In September 2020, FCC adopted a Second Report and Order that provides for new rules and procedures to formalize the review process of the Committee, notably by defining the scope of the review and establishing categories of information to be submitted by applicants.<sup>248</sup> This review differs from the one conducted by CFIUS as it is focused on the operation purposes of licenses; some transactions may trigger a review by the two bodies. Following procedures initiated before the issuance of E.O. 13913, FCC revoked the licenses of four foreign common carrier wireless providers during the review period.

---

<sup>242</sup> Under Section 310 of the Communications Act of 1934, common carrier radio licenses cannot be granted to or held by non-U.S. citizens, corporations not organized under U.S. laws, or foreign governments. Nor can licenses be granted to U.S. corporations of which more than 20% of the capital stock is owned of record or voted by any of these entities. However, licenses may be granted to companies set up in the United States that are controlled by holding companies set up in the United States and in which foreign individuals, corporations, or Governments own of record or vote more than 25% of the capital stock, unless FCC finds that such ownership is inconsistent with the public interest.

<sup>243</sup> Non-common carrier wireless licensees are not subject to foreign ownership restrictions.

<sup>244</sup> The public interest analysis conducted to review an application by a supplier from a WTO Member relies on an "open entry" standard, whereby FCC starts from a presumption (subject to rebuttal) that the foreign entry does not threaten competition in the U.S. telecommunications market. It also involves a consideration of policy concerns raised by federal government agencies in relation to national security, law enforcement, foreign policy, or trade policy issues.

<sup>245</sup> FCC, *Report and Order in the Matter of Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, GN Docket No. 15-236. Released: 30 September 2016. Viewed at: <https://docs.fcc.gov/public/attachments/FCC-16-128A1.pdf>.

<sup>246</sup> *Federal Register* (2020), Vol. 85, No. 68, pp. 19643-19650. Viewed at: <https://www.federalregister.gov/d/2020-07530>.

<sup>247</sup> Department of Justice, *Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector – Frequently Asked Questions*. Viewed at: <https://www.justice.gov/nsd/committee-assessment-foreign-participation-united-states-telecommunications-services-sector>.

<sup>248</sup> FCC, *Report and Order in the Matter of Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-155. Viewed at: <https://docs.fcc.gov/public/attachments/FCC-20-133A1.pdf>. In a Second Report and Order, issued in September 2021, the FCC adopted standard questions to be addressed during the review. Viewed at: <https://docs.fcc.gov/public/attachments/FCC-21-104A1.pdf>.

4.230. Since 2018, at least seven states have enacted net neutrality laws, which have generated ongoing legal challenges from litigants arguing a conflict with the Restoring Internet Freedom Order.<sup>249</sup> In July 2021, E.O. 14036 encouraged FCC to restore net neutrality rules.<sup>250</sup>

4.231. There is a digital divide in the United States across different dimensions, including speed; up-to-date technology; and use of fixed versus mobile.<sup>251</sup> In its 2021 Broadband Deployment Report<sup>252</sup>, prepared under Section 706 of the Telecommunications Act of 1996, FCC reported that, for the third consecutive year, advanced telecommunications capability is being deployed on a reasonable and timely basis. Following the Broadband DATA Act (P.L. 116-130), NTIA released detailed maps of broadband availability and needs in June 2021 to contribute to the implementation of federal initiatives and programs on broadband deployment.<sup>253</sup> NTIA is responsible for overseeing more than USD 50 billion in programs related to broadband deployment authorized by the Consolidated Appropriations Act of 2021 and the Infrastructure Investment and Jobs Act.<sup>254</sup>

4.232. In October 2018, a Presidential Memorandum on *Developing a Sustainable Spectrum Strategy for America's Future*, requested federal agencies to coordinate efforts regarding the spectrum repurposing (reassignment) for 5G deployment.<sup>255</sup> Since then, FCC has taken several actions, including the reallocation of already established license holders, to make additional spectrum at high, mid, and low bands available for 5G services either for exclusive or shared use. The attribution, by auction, of several of these bands was completed over the 2019-21 period. For instance, the auction of the new flexible-use overlay licenses (granted for up to 15 years from the date of issuance) in the 3.7 GHz band was concluded in February 2021<sup>256</sup>, and raised a record amount of USD 81 billion in bids.<sup>257</sup> In January 2021, NTIA released the National Strategy to Secure 5G and Next Generation Wireless Communications, as required by the Secure 5G and Beyond Act of 2020 (P.L. 116-184).<sup>258</sup> The second *Annual Report on the Status of Spectrum Repurposing*, issued in January 2021, highlighted the progress done while recognizing that additional spectrum repurposing is still needed. At the same time, FCC has modernized its rules to accelerate the deployment of next-generation networks and services by removing barriers to infrastructure investment, streamlining rules on the use of utility poles for new network equipment, setting deadlines for the review of modifications of the wireless infrastructure, and stating its opposition to state and local moratoriums on telecommunications services and facilities deployment.

4.233. The Cybersecurity and Infrastructure Security Agency (CISA) was established by P.L. 115-278 in November 2018 to lead cybersecurity and critical infrastructure security programs, operations, and associated policy. CISA's mandate includes providing guidance and recommendations on the security of underseas cables, which carry the bulk of international data

<sup>249</sup> States that adopted net neutrality regulations are California, Colorado, Maine, New Jersey, Oregon, Vermont, and Washington. Lide, C. (2022), "State Net Neutrality Laws May Lead to Federal Legislation", The National Law Review, Vol. XI, No. 60, 1 March. Viewed at: <https://www.natlawreview.com/article/state-net-neutrality-laws-may-lead-to-federal-legislation>. *American Cable Association v. Becerra*, Case No. 18-CV-2684. Viewed at: <https://www.courtlistener.com/docket/7987167/american-cable-association-v-becerra/>; and *New York State Telecommunications Association v. James*, Case No. 2:21-cv-2389.

<sup>250</sup> The White House (2021), *Fact Sheet: Executive Order on Promoting Competition in the American Economy*, 9 July. Viewed at: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/>.

<sup>251</sup> FCC (2020), *The Digital Divide in US Mobile Technology and Speeds*. Viewed at: <https://docs.fcc.gov/public/attachments/DOC-369010A1.pdf>.

<sup>252</sup> FCC (2021), *2021 Broadband Deployment Report*, GN Docket No. 20-269. Viewed at: <https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf>.

<sup>253</sup> NTIA, *BroadbandUSA, Public Maps & Tools*. Viewed at: <https://broadbandusa.ntia.doc.gov/resources/data-and-mapping>.

<sup>254</sup> These programs include, *inter alia*, the Broadband Equity, Access, and Deployment Program, the 5G Fund for Rural America, Digital Equity Act Programs, Middle Mile Grant Program, and the Tribal Broadband Connectivity Program.

<sup>255</sup> *Federal Register* (2018), Vol. 83, No. 210, 25 October, pp. 54513-54516. Viewed at: <https://www.federalregister.gov/documents/2018/10/30/2018-23839/developing-a-sustainable-spectrum-strategy-for-americas-future>.

<sup>256</sup> FCC, *Auctions Summary*. Viewed at: <https://www.fcc.gov/auctions-summary>.

<sup>257</sup> The deployment of services was delayed due to potential risks of interference with aircraft communications systems. FAA (2022), "FAA Statements on 5G", 23 February. Viewed at: <https://www.faa.gov/newsroom/faa-statements-5g>.

<sup>258</sup> NTIA (2021), *National Strategy to Secure 5G Implementation Plan*, 6 January. Viewed at: [https://www.ntia.doc.gov/files/ntia/publications/2021-1-12\\_115445\\_national\\_strategy\\_to\\_secure\\_5g\\_implementation\\_plan\\_and\\_annexes\\_a\\_f\\_final.pdf](https://www.ntia.doc.gov/files/ntia/publications/2021-1-12_115445_national_strategy_to_secure_5g_implementation_plan_and_annexes_a_f_final.pdf).

traffic; however, CISA has no formalized policy or procedure regarding data traffic on the grounds of cybersecurity. The Department of Homeland Security Data Framework Act of 2018 (P.L. 115-331) and the Strengthening, and the Enhancing Cyber-capabilities by Utilizing Risk Exposure (SECURE) Technology Act (P.L. 115-390) were enacted in December 2018. They aim at enhancing the cybersecurity framework and at mitigating supply chain risks in the acquisition of technology and equipment through a strategic plan to be developed by the Federal Acquisition Security Council. E.O. 13873 of 15 May 2019, Securing the Information and Communications Technology and Services Supply Chain, declared a national emergency to deal with the threat constituted by the unrestricted acquisition and use of certain information and communications technology and services transactions.<sup>259</sup> E.O. 14028 of 12 May 2021, Improving the Nation's Cybersecurity, sought to widen cybersecurity efforts throughout all government agencies, and to enhance the security of the supply chain for critical software used by the Federal Government.<sup>260</sup>

4.234. In line with the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (P.L. 115-232), FCC prohibited the use of Universal Service Funds for the purchase of products and services from two manufacturers (Huawei and ZTE) in November 2019.<sup>261</sup> The Secure and Trusted Communications Networks Act of 2019 (P.L. 116-352) established a mechanism to prevent the entry of communications equipment or services that pose a national security risk to U.S. networks and to mandate their removal if in current use. FCC is responsible for publishing and maintaining a list of equipment or services prohibited to be purchased with federal funds. In March 2021, FCC published the list of equipment and services covered by this legislation.<sup>262</sup> The Secure Equipment Act of 2021 (P.L. 117-55) requires FCC not to review or approve products on this list.

4.235. As part of its response to the COVID-19 pandemic, FCC launched a USD 3.2 billion Emergency Broadband Benefit (EBB) program, succeeded by the Connectivity Program on 31 December 2021, which provide direct support to eligible households for the payment of their broadband connection. Other FCC programs aimed at mitigating the negative impacts of the pandemic include a USD 7.2 billion Emergency Connectivity Fund (ECF) for schools and libraries, and a USD 450 million COVID-19 Telehealth Program<sup>263</sup>, initiated by the CARES Act.

4.236. The United States maintains several Mutual Recognition Agreements for conformity assessment of telecommunications equipment (Section 3.3).<sup>264</sup> In June 2021, the United States and the European Union launched the EU-US Trade and Technology Council (TTC) that serves as a forum for the European Union and the United States to coordinate approaches to key global trade, and economic and technology issues, and to deepen transatlantic trade and economic relations based on shared democratic values. Working groups, such as Technology Standards, Secure Supply Chains, and Information and Communication Technology and Services, were established.

#### 4.4.3 Transport

##### 4.4.3.1 Air transport and airports

###### 4.4.3.1.1 Air transport

4.237. The Office of the Assistant Secretary for Aviation and International Affairs within the U.S. Department of Transportation (DOT) is responsible for a wide spectrum of policies and

<sup>259</sup> *Federal Register* (2019), Vol. 84, No. 96, pp. 22689-22692. Viewed at: <https://www.federalregister.gov/documents/2019/05/17/2019-10538/securing-the-information-and-communications-technology-and-services-supply-chain>.

<sup>260</sup> *Federal Register* (2021), Vol. 86, No. 93, 17 May, pp. 26633-26647. Viewed at: <https://www.federalregister.gov/d/2021-10460>.

<sup>261</sup> *Report and Order, Further Notice of Proposed Rulemaking, and Order in the Matter of Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs, Huawei Designation, and ZTE Designation*, WC Docket 18-89, PS Docket 19-351, and PS Docket 19-352. Viewed at: <https://docs.fcc.gov/public/attachments/FCC-19-121A1.pdf>.

<sup>262</sup> FCC, List of Equipment and Services Covered by Section 2 of the Secure Networks Act. Viewed at: <http://www.fcc.gov/supplychain/coveredlist>.

<sup>263</sup> FCC, *Report and Order and Order on Reconsideration in the matter of COVID-19 Telehealth Program Promoting Telehealth for Low-Income Consumers*, WC Docket No. 20-89 and WC Docket No. 18-213. Viewed at: <https://www.fcc.gov/document/fcc-moves-forward-round-2-covid-19-telehealth-program>.

<sup>264</sup> FCC, *Equipment Authorization – Mutual Recognition Agreements*. Viewed at: <https://www.fcc.gov/general/equipment-authorization-mutual-recognition-agreements>.



regulatory activities relating to domestic and international aviation. DOT and the Office of Aviation Negotiations of the Department of State, in close coordination with USDOC, conducts bilateral and multilateral negotiations of international air transport agreements to liberalize commercial aviation markets. The Federal Aviation Administration (FAA), an operating administration within DOT, is responsible for the safety of aircraft and flight operations, including certification of aircraft, pilots, instructors, flight crews, and airport operators; air traffic control; designation of airspace; and federal assistance to airports. As an operational arm of the FAA, the Air Traffic Organization (ATO) provides air navigation services in the airspace of the United States and large portions of the Atlantic and Pacific Oceans and the Gulf of Mexico.<sup>265</sup> The Department of Homeland Security's Transportation Security Administration (TSA) aims to ensure air transport security, at U.S. airports, and for all domestic and international aircraft operations while maintaining freedom of movement for people and commerce.

4.238. In 2019, civil aviation in the United States accounted for 6.5 million jobs, contributed USD 779 billion annually to the U.S. economy, and was responsible for 4.2% of GDP.<sup>266</sup> In FY2019, and prior to any COVID-19-related travel restrictions, FAA guided 27.7 million flights every year, consisting of 16.4 million instrument flight rule flights (radar assisted) and 11.3 million visual-flight-rule flights (low-flying planes). It manages 520 control towers and 21 air route traffic control centers, with more than 14,000 air traffic controllers.<sup>267</sup>

4.239. Four air passenger carriers (American Airlines, Southwest Airlines, Delta Air Lines, and United Airlines) account for two thirds of the domestic market (65.2% based on domestic revenue passenger miles)<sup>268</sup> and are among the six largest commercial airlines worldwide.<sup>269</sup> In February 2022, two low-cost airlines, Spirit and Frontier, announced the intended merger to create the fifth-largest U.S. carrier. In September 2021, the Department of Justice, together with Attorneys General in six states and the District of Columbia, announced a civil antitrust complaint against a series of agreements between American Airlines and Jet Blue, known as the Northeast Alliance.<sup>270</sup>

4.240. The air transport sector was severely hit by the travel restrictions and quarantine requirements related to the COVID-19 pandemic since 2020. Based on information reported by 24 U.S. airlines, the second quarter of 2021 is the first quarter with an after-tax profit since the end of 2019; the after-tax net profit in the second quarter of 2021 was USD 1 billion, and losses cumulated since the beginning of the pandemic amounted to USD 38.1 billion.<sup>271</sup> The sector is witnessing a recovery, although airline travel has not yet recovered to levels observed in 2019.

4.241. Air freight accounted for less than 0.1% of total freight in terms of weight and represented 6.3% of total freight value in 2018. In 2018, total freight transported by air was valued at USD 1.18 trillion, with international trade via air freight accounting for 88% of that figure (at USD 1.04 trillion). U.S. exports (imports) carried via air represented USD 482 billion (USD 562 billion) or 29.1% (23.3%) of all U.S. exports (imports).<sup>272</sup> Federal Express (FedEx) and United Parcel Services (UPS) remain the world's two largest air cargo carriers with fleets of nearly 700 and more than 500 aircraft, respectively. Amazon Air is a recent entrant to this market.

4.242. Foreign and U.S. carriers are subject to two separate authorizations to provide air transport services in the United States: (i) an economic authorization in the form of a certificate for interstate or foreign passenger and/or cargo authority issued by the Office of the Secretary of Transportation;

<sup>265</sup> FAA, *Air Traffic Organization*. Viewed at:

[http://www.faa.gov/about/office\\_org/headquarters\\_offices/ato/](http://www.faa.gov/about/office_org/headquarters_offices/ato/).

<sup>266</sup> IATA (2019), *The Value of Air Transport in the United States*. Viewed at:

<https://www.iata.org/contentassets/cf15de08044e49b6b6e1ebf8a3513ed4/economic-studies-usa-eng-final.pdf>.

<sup>267</sup> FAA, *Air Traffic by the Numbers*. Viewed at: [https://www.faa.gov/air\\_traffic/by\\_the\\_numbers/](https://www.faa.gov/air_traffic/by_the_numbers/).

<sup>268</sup> Bureau of Transportation Statistics (BTS). Viewed at: <https://transtats.bts.gov>.

<sup>269</sup> IATA (2021), *World Air Transport Statistics 2021*. Viewed at:

<https://www.iata.org/contentassets/a686ff624550453e8bf0c9b3f7f0ab26/wats-2021-mediakit.pdf>.

<sup>270</sup> Department of Justice (2021), "Justice Department Sues to Block Unprecedented Domestic Alliance between American Airlines and JetBlue", 21 September. Viewed at: <https://www.justice.gov/opa/pr/justice-department-sues-block-unprecedented-domestic-alliance-between-american-airlines-and-jetblue>.

<sup>271</sup> BTS, *U.S. Airlines Show First Profit Since COVID-19 in 2nd Quarter 2021*. Viewed at: <https://www.bts.gov/newsroom/us-airlines-show-first-profit-covid-19-2nd-quarter-2021>.

<sup>272</sup> BTS, *Freight Facts and Figures: Moving Goods in the United States*. Viewed at: <https://data.bts.gov/stories/s/Moving-Goods-in-the-United-States/bcyt-rqmu>.



and (ii) a safety authorization in the form of an Air Carrier Certificate and Operations Specifications issued by FAA.<sup>273</sup> The economic authorization is conditional on obtaining the safety authorization. Authorizations are not transferable without prior DOT approval. The United States has Open Skies Agreements (OSAs) with over 130 foreign partners.<sup>274</sup>

4.243. C.F.R. Title 14 contains regulations concerning air transport. U.S. carriers are required to be owned and controlled by U.S. citizens; non-U.S. citizens can hold up to 25% of the voting interest of any airline providing domestic services. Further nationality requirements apply for the airline's management: the president and not less than two thirds of the board of directors and other managing officers must be U.S. citizens. Since 1991, foreign investors whose country of origin has an Open Skies air services agreement in effect with the United States may own up to 49% of total equity ownership, comprising both voting and non-voting stock in airlines.<sup>275</sup> Except in limited circumstances and unless specifically approved by DOT, cabotage can be provided only by U.S. carriers (49 U.S.C. 41703(c)). Only U.S. nationals or residents can serve as crew in domestic air passenger and freight service.

4.244. Government-financed transportation of passengers or cargo must utilize services supplied by a U.S. air carrier, a service supplied by a foreign airline under a U.S. carrier code, or a service supplied by a foreign air carrier operating pursuant to an applicable OSA in effect that provides such opportunities for government-procured travel.<sup>276</sup> In very special circumstances, a foreign carrier can be used for transportation between two places outside the United States (49 U.S.C. 40118(d)).

4.245. To ensure that small communities continue receiving a minimum scheduled air service after deregulation adopted in 1978, DOT subsidizes commuter and certified air carriers to 59 communities in Alaska and 111 communities in the other 49 U.S. states and Puerto Rico through the Essential Air Service (EAS) program. In general, EAS subsidizes two round trips a day with 30- to 50-seat aircraft, or additional frequencies with aircraft with 9 seats or fewer, usually to a large- or medium-hub airport. Carriers are typically selected for two-, three-, four-, or five-year contracts, DOT compensates the carriers in arrears on a per flight-completed basis, and the per passenger subsidy is capped at USD 200, unless the communities are located more than 210 miles from the nearest large- or medium-hub airport.

4.246. Eligible communities to receive EAS subsidies are defined in 49 U.S.C. 41731(a)(1)(B). Requirements include maintaining an average of 10 enplanements or more per service day, as determined by the Secretary of Transportation, during the most recent fiscal year, except for locations in Alaska and Hawaii, and for communities more than 175 driving miles away from the nearest large- or medium-hub airport.<sup>277</sup> To provide more flexibility to communities, an Alternate Essential Air Service Program (AEAS) allowing communities to forgo their EAS for a prescribed amount of time in exchange for receiving a grant to spend in a variety of ways that might better suit their individual needs was established in 2004. In February 2022, seven communities participated in the AEAS program, and all have secured public charter air transportation. In 2022, the annual contract subsidy rates, including AEAS grants, amounted to USD 321.7 million for communities outside Alaska and USD 28.8 million for communities in Alaska.<sup>278</sup>

<sup>273</sup> DOT, *Aviation Policy*. Viewed at: <https://www.transportation.gov/policy/aviation-policy>.

<sup>274</sup> The Multilateral Agreement on the Liberalization of International Air Transportation (MALIAT) between the United States, Brunei Darussalam, Chile, New Zealand and Singapore is the only multilateral open skies agreement signed by the United States. DOT, *Air Service Agreements*. Viewed at: <https://www.transportation.gov/policy/aviation-policy/international-relations/air-service-agreements>. The list of OSAs currently applied may be viewed at: <https://www.transportation.gov/policy/aviation-policy/open-skies-agreements-being-applied>.

<sup>275</sup> Average foreign ownership is 15% and only one U.S. carrier (Polar Air Cargo) is owned at 49% by a foreign investor, with a 25% voting interest. Government Accountability Office, *U.S. Airlines: Information on DOT's Oversight of and Stakeholders' Perspectives on Foreign Ownership*. Viewed at: <https://www.gao.gov/products/gao-19-540r>.

<sup>276</sup> Open Skies Agreements that provide foreign carriers the right to carry U.S. Government-funded traffic include those with Australia, the European Union, Japan, the Kingdom of Saudi Arabia, and Switzerland. These rights do not apply to transportation funded by the DOD.

<sup>277</sup> Communities with an average subsidy per passenger of more than USD 1,000 during the most recent fiscal year face termination of eligibility, regardless of distance to a hub airport.

<sup>278</sup> DOT, *Subsidized EAS Communities – February 2022*. Viewed at: <https://www.transportation.gov/sites/dot.gov/files/2022->

4.247. The Small Community Air Service Development Program (SCASDP) is a separate grant program designed to help small communities address air service and airfare issues. Among other conditions, SCASDP applicants cannot be larger than a small-hub airport, communities cannot benefit simultaneously from SCASDP and EAS, air carriers cannot directly benefit from the financial assistance through SCASDP, and only one project can be supported in each community at any one time. Provided in the form of a reimbursable grant, financial assistance can be used as, *inter alia*, revenue guarantees, financial assistance for marketing programs, start-up costs and studies. In January 2022, DOT invited applications for FY2021 and announced reserves of USD 17 million to carry out the program. In FY2019, the SCASDP offered a total of USD 18 million in grants to 22 local communities in 22 states; individual grants ranged between USD 450,000 and USD 1 million. In response to the COVID-19 pandemic, the duration of existing grants was extended between one and five years at the written request of communities.<sup>279</sup>

4.248. To respond to the challenges due to lockdowns and travel restrictions related to the COVID-19 pandemic, the Department of the Treasury authorized three consecutive programs to provide assistance to passenger air carriers, cargo air carriers, and aviation contractors. Established under the CARES Act, the Consolidated Appropriations Act of 2021, and the ARP Act of 2021, these programs were directed to provide payroll support of up to USD 54 billion to passenger air carriers, and USD 4 billion to cargo air carriers. More than 300 passenger air carriers and nearly 40 cargo air carriers benefited from the payroll support.<sup>280</sup> In addition to payroll support, Section 4003 of the CARES Act authorizes the Treasury to make loans, loan guarantees, and other investments to provide liquidity to eligible air carriers. Among other conditions, beneficiaries were required to not reduce their employment levels by more than 10% until September 2020, to not repurchase stock, and to not pay dividends until 12 months after the loan has been repaid. Authorized amounts for passenger and cargo air carriers were USD 25 billion and USD 4 billion, respectively. According to a February 2022 report available, 24 air carriers benefited from a loan; although USD 21.9 billion were authorized for loans, total disbursements only amounted to USD 2.7 billion.<sup>281</sup>

4.249. The Aircraft Certification, Safety, and Accountability Act, enacted in December 2020, requires the FAA to implement major changes in its policies and procedures concerning certification of commercial passenger and cargo jets and to review its policies for delegating certification authority to private entities under its Organization Designation Authorization (ODA) program. Recent developments in air transport regulation include the issuance by the DOT of final rules on the definition of unfair or deceptive practices by airlines or ticket agents, the transport of service animals trained to help individuals with disabilities while ensuring safety for the general public, and on compensation due to oversales and mishandled baggage in domestic air transportation. The latter rule also increased the liability limits for denied boarding and mishandled baggage.

4.250. The FAA Reauthorization Act (P.L. 115-254), signed into law on 5 October 2018, extended the FAA's funding and authorities through FY2023 and introduced important legislative changes related to, *inter alia*, increasing safety, improving infrastructure, enabling innovation including the pace of Unmanned Aircraft System (UAS) integration, expediting the financing and development of airport capital projects, advancing leadership in international aviation safety and supersonic aircraft policies, addressing aircraft noise, and ensuring safe lithium battery transport. The FAA published its Strategic Plan for FY2019 through FY2022; strategic goals include reducing fatalities and serious injuries, investing in aviation infrastructure, developing and deploying innovative practices and technologies, and reducing regulatory burden.

---

[02/Subsidized%20EAS%20report%20for%20communities%20in%2048%20states\\_HI\\_PR\\_Feb2022.pdf](#); and DOT, *Subsidized EAS Report for Alaska Communities – February 2022*. Viewed at: [https://www.transportation.gov/sites/dot.gov/files/2022-02/Subsidized%20EAS%20report%20for%20communities%20in%20Alaska\\_Feb2022.pdf](https://www.transportation.gov/sites/dot.gov/files/2022-02/Subsidized%20EAS%20report%20for%20communities%20in%20Alaska_Feb2022.pdf).

<sup>279</sup> DOT, *Order Awarding Grants in the Matter of the Small Community Air Service Development Program*, Docket DOT-OST-2020-0231. Viewed at: [https://www.transportation.gov/sites/dot.gov/files/2021-07/FY2019-SCASDP-Selection\\_Order2021-7-13.pdf](https://www.transportation.gov/sites/dot.gov/files/2021-07/FY2019-SCASDP-Selection_Order2021-7-13.pdf).

<sup>280</sup> Department of the Treasury, *Airline and National Security Relief Programs*. Viewed at: <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-american-industry/airline-and-national-security-relief-programs>.

<sup>281</sup> Department of the Treasury (2022), *Report Under Section 4026(b)(1)(C) of the CARES Act*, February. Viewed at: <https://home.treasury.gov/system/files/136/4026b1CLoanReport02012022.pdf>.

#### 4.4.3.1.2 Airports

4.251. In 2020, there were 19,633 airports in the United States; of these, 5,082 were airports for public use and 14,551 were smaller airports for private use.<sup>282</sup> There are currently (2022) 519 commercial service airports, understood as those receiving scheduled passenger service and boarding at least 2,500 passengers a year. Almost all commercial airports are owned by local and state governments, or by public entities such as airport authorities or multipurpose port authorities. In 2019, there were 10.4 million scheduled flights; air passenger traffic was down 60% in 2020.<sup>283</sup>

4.252. Grants for the planning and development of public-use airports included in the National Plan of Integrated Airport Systems (NPIAS)<sup>284</sup> are made available through the Airport Improvement Program, funded through taxes on passenger ticket sales and on aviation fuel. The share of costs covered by Program grants depends on the type of work and the size of the airport. Program-funded projects remain subject to Buy American provisions regarding steel and manufactured goods.<sup>285</sup> The FAA has the authority to waive these preferences under certain conditions: 60% domestic content is reached and final assembly of the facility or equipment has occurred in the United States; steel and goods are not domestically produced in a sufficient and reasonably available amount or are not of a satisfactory quality; or when the purchase of domestic products implies a 25% increase in the cost of the overall project. In FY2020, USD 3.18 billion were authorized for the Airport Improvement Program. The ARP Act authorized Program grants to be awarded at a 100% federal share.<sup>286</sup>

4.253. Commercial airports controlled by public agencies may also obtain funds for projects enhancing safety, security, or capacity; reducing noise; or increasing air carrier competition through the Passenger Facility Charge (PFC) Program. PFC fees may go up to USD 4.50 for every eligible passenger per segment (maximum two segments on a one-way trip and four in a round trip). As of January 2022, the total amount of PFC funds collected at airports was USD 116.6 billion.<sup>287</sup> The Infrastructure Investment and Jobs Act, enacted in November 2021, provided additional funds to be invested in runways, taxiways, safety, sustainability, terminal, airport-transit connections, and roadway projects under the existing Airport Improvement Program and PFC. A total amount of USD 15 billion for airport infrastructure grants will be distributed evenly (USD 3 billion per year) across FY2022-26 and will remain available until FY2030 for project completion. The legislation foresees an additional USD 5 billion fund (USD 1 billion per year across FY2022-26) to provide competitive grants for airport terminal development and airport-tower projects that address the ageing infrastructure of the nation's airports. These grants will cover, *inter alia*, projects on airport rail access, maintenance of air traffic control towers, increased and improved capacity and passenger access, replacement of ageing infrastructure, and on energy efficiency.<sup>288</sup>

4.254. In response to the COVID-19 pandemic, several emergency funds were awarded as economic relief to eligible U.S. airports. These funds include USD 10 billion from the CARES Airport Program, USD 2 billion from the Airport Coronavirus Response Grant Program, and USD 8 billion from Airport Rescue Grants. The distribution of grants was structured according to airport size, categories, and traffic, and workforce retention requirements apply to awarded airports. Under these programs, 30 large hub airports, 32 medium-hub airports, and nearly 70 small-hub airports benefited from some economic support. The ARP Act granted USD 8 billion in funds (Airport Rescue Grants) to eligible U.S. airports to respond to the COVID-19 pandemic. Primary commercial service airports (over 10,000 annual passenger boardings) were allocated nearly USD 6.5 billion; an additional

<sup>282</sup> Some 300 public and private airports are also used by the military. BTS, *Number of U.S. Airports*. Viewed at: <https://www.bts.gov/content/number-us-airportsa>.

<sup>283</sup> BTS, *Full Year 2020 and December 2020 U.S. Airline Traffic Data*. Viewed at: <https://www.bts.gov/newsroom/full-year-2020-and-december-2020-us-airline-traffic-data>.

<sup>284</sup> There are 3,310 airports covered in the NPIAS. The NPIAS contains all commercial service airports, all reliever airports, and selected public-owned general aviation airports. Viewed at: [http://www.faa.gov/airports/planning\\_capacity/npias/](http://www.faa.gov/airports/planning_capacity/npias/).

<sup>285</sup> FAA, *AIP Buy American Preference Requirements – Airports*. Viewed at: [http://www.faa.gov/airports/aip/buy\\_american/](http://www.faa.gov/airports/aip/buy_american/).

<sup>286</sup> FAA, *Airport Rescue Grants – Airports*. Viewed at: [https://www.faa.gov/airports/airport\\_rescue\\_grants/](https://www.faa.gov/airports/airport_rescue_grants/).

<sup>287</sup> FAA, *Passenger Facility Charge (PFC) Monthly Reports – Airports*. Viewed at: [https://www.faa.gov/airports/pfc/monthly\\_reports/](https://www.faa.gov/airports/pfc/monthly_reports/).

<sup>288</sup> FAA, *Bipartisan Infrastructure Law – Airport Terminals Program*. Viewed at: <https://www.faa.gov/bil/airport-terminals>.

USD 800 million was allocated to provide relief from rent and minimum annual guarantees to eligible in-terminal airport concessions.

4.255. Private ownership of airports in the United States remains quite limited. Although policies to promote airport privatization of publicly owned airports have been in place for years, participation in the process so far has been limited. The Airport Privatization Pilot Program (APPP), established in 1996, was renamed the Airport Investment Partnership Program (AIPP) by the FAA Reauthorization Act of 2018 (P.L. 115-254). Restrictions on the number and type of public airports participating in the AIPP were removed, the joint management of airports by public sponsors and private operators was introduced, and the privatization of multiple airports owned by the same public sponsor was authorized. Commercial airports can only be leased, while general aviation airports can be sold or leased. Airports can partly or wholly outsource the operation and management of facilities to third parties. Out of 12 airports in the AIPP, only two airports have completed the privatization process, and one of them later reverted to public ownership.<sup>289</sup>

4.256. Slot allocation in the United States follows the process laid out in IATA's Worldwide Slot Guidelines. The FAA establishes runway limitations and runs formal schedule reviews for some Level 3 and Level 2 airports.<sup>290</sup> The process relies mainly on "historic slots", a two-month minimum usage requirement, and other provisions in the FAA order and rules such as FAA High Density Rules.

4.257. In the GATS, the United States submitted commitments with respect to aircraft repairs and maintenance, and scheduled MFN exemptions for the sale and marketing of air transport services and the operation and regulation of Computer Reservation System services. As a contracting party to the WTO Plurilateral Agreement on Trade in Civil Aircraft, national treatment is granted to the acquisition of civil aircraft and related articles originating from other parties of the Agreement.

#### **4.4.3.2 Maritime transport, port services, and shipbuilding**

##### **4.4.3.2.1 Maritime transport**

4.258. In 2020, waterborne shipping carried more tonnage (nearly 1.5 billion short tons) in U.S. international trade than any other mode of transportation. Tonnage corresponding to exports totaled 846 million short tons, while that corresponding to imports was 638 million short tons.<sup>291</sup> Domestic waterborne tonnage was 492 million short tons, of which 251 million short tons were intrastate commerce. Statistics on international maritime cargo include containerized freight, dry bulk ships for grain and other commodities, tanker ships for energy products, roll-on/roll-off (Ro/Ro) ships for cars, trucks, and construction vehicles, and breakbulk ships for a variety of non-containerized products, such as rolls of paper or coils of steel, and commodities.<sup>292</sup> In 2020, U.S. ports saw more than 465,000 vessel calls, representing more than 10% of the global total. Each port has its own arrangement of marine terminals serving different types of cargo.

4.259. The United States considers its Marine Transportation System (MTS) as critical to national security and economic prosperity. The MTS is an integrated network that consists of 25,000 miles of coastal and inland waters and rivers serving 361 ports, supports USD 5.4 trillion of economic

<sup>289</sup> The Luis Muñoz Marín International Airport, a medium-hub airport in San Juan, Puerto Rico, is the only commercial service airport operating under private management since 2013.

<sup>290</sup> In the United States, the FAA operates slot allocation in three Level 3 airports (John F. Kennedy International Airport, LaGuardia Airport, and Ronald Reagan Washington National Airport), and four Level 2 airports (Chicago O'Hare International Airport, Los Angeles International Airport, Newark Liberty International Airport, and San Francisco International Airport). Orlando International Airport (MCO) and Seattle-Tacoma International Airport, two international passenger terminals, are at Level 2; however, they are non-FAA Level 2 designated airports, and they are managed by local authorities.

<sup>291</sup> U.S. Corps of Engineers, USACE Digital Library (2021), *Waterborne Tonnage for Principal U.S. Ports and All 50 States and U.S. Territories; Waterborne Tonnages for Domestic, Foreign, Imports, Exports and Intra-State Waterborne Traffic*. Viewed at:

<https://usace.contentdm.oclc.org/digital/collection/p16021coll2/id/7447/rec/18>.

<sup>292</sup> BTS (2021), *On National Maritime Day and Every Day, U.S. Economy Relies on Waterborne Shipping*, 12 May. Viewed at: <https://www.bts.dot.gov/data-spotlight/national-maritime-day-and-every-day-us-economy-relies-waterborne-shipping>.

activity each year, and accounts for the employment of more than 31 million people.<sup>293</sup> The size of the U.S.-flagged, privately owned fleet of self-propelled, cargo-carrying vessels of 1,000 gross tons and above continued to decline over the period under review: as of October 2021, there were a total of 180 privately owned vessels with a capacity of 8.2 million dead weight tons, down from 181 vessels in 2018.<sup>294</sup> Of these, 96 were Jones Act eligible. The composition of the fleet was 65 tankers, 62 container ships, 26 Ro/Ro, 20 general cargo ships, 4 dry bulk ships, and 3 vehicle carriers. Some 70% of the volume and 40% of the value of goods that the United States imports and exports move by water transportation.<sup>295</sup> However, it is estimated that just 1.5% of U.S. waterborne imports and exports by tonnage move on oceangoing commercial vessels registered under the flag of the United States. Although, the U.S. domestic water transportation (Jones Act) market is served by approximately 41,000 vessels, only about 96 are above 1,000 tons; the rest are small ships, mainly tugs and barges, work and supply vessels used in the offshore oil industry, and specialty vessels such as pilot boats, dredge vessels, and others.<sup>296</sup>

4.260. The Maritime Administration (MARAD), under the DOT, is the agency responsible for developing programs that promote the use of waterborne transportation and its integration with other segments of the transportation system, and the viability of the U.S. Merchant Marine. MARAD is charged with carrying out the national policies established by the Merchant Marine Act of 1936 (see below). MARAD's mission is to foster, promote, and develop the maritime industry of the United States to meet the nation's economic and security needs. For this, MARAD supports the technical aspects of U.S. maritime transportation infrastructure.<sup>297</sup> MARAD also maintains a fleet of cargo ships in reserve to provide surge sealift during war and national emergencies. MARAD also advocates for the maritime industry; manages assets in support of the DOD, including maintaining a fleet of government-owned cargo vessels; administers and funds the Maritime Security Program (MSP) and the Voluntary Intermodal Sealift Agreement (VISA) program; operates the U.S. Merchant Marine Academy (USMMA); provides training ships, funding, and other support for the six State Maritime Academies (SMA) (Maine, Massachusetts, New York, Texas, California, and Michigan); and administers the Federal Ship Financing Program (Title XI).

4.261. The Federal Maritime Commission (FMC) is responsible for regulating ocean-borne liner transport, including ocean transportation intermediaries, and for supervising the collective activities of shipping lines that are not subject to U.S. antitrust laws for both U.S. and foreign operators of liner shipping services with fixed schedules. The U.S. Coast Guard, under the Department of Homeland Security, is in charge of regulating maritime transport in areas including vessel safety and security, environmental protection, and licensing mariners.

4.262. The Merchant Marine Act of 1936, as amended, one of the main laws governing maritime transport, provides for the Government's support of the Merchant Marine. Under the Act, it is U.S. maritime transport policy to have a merchant marine: sufficient to carry the waterborne domestic commerce and a substantial part of the waterborne U.S. foreign trade and to provide shipping services essential for maintaining the flow of the waterborne domestic and foreign trade at all times; capable of serving as a naval and military auxiliary in time of war or national emergency; owned and operated as U.S. vessels by U.S. citizens; composed of vessels constructed in the United States and manned with trained and efficient U.S. personnel; and supplemented by facilities

<sup>293</sup> DOT (2020), *Goals and Objectives for a Stronger Maritime Nation: A Report to Congress*, February. Viewed at: <https://www.maritime.dot.gov/sites/marad.dot.gov/files/docs/outreach/policy-papers-and-fact-sheets/12561/national-maritime-strategy.pdf>.

<sup>294</sup> United States Maritime Administration (MARAD), *United States-Flag Privately-Owned Merchant Fleet Report: Oceangoing, Self-Propelled Vessels of 1,000 Gross Tons and Above that Carry Cargo from Port to Port*. Viewed at: [https://www.maritime.dot.gov/sites/marad.dot.gov/files/2021-12/DS\\_USFlag-Fleet\\_2021\\_1014\\_Bundle\\_0.pdf](https://www.maritime.dot.gov/sites/marad.dot.gov/files/2021-12/DS_USFlag-Fleet_2021_1014_Bundle_0.pdf).

<sup>295</sup> BTS, *International Freight Gateways*. Viewed at: <https://data.bts.gov/stories/s/International-Freight-Gateways/4s7k-yxvu/>.

<sup>296</sup> DOT (2020), *Goals and Objectives for a Stronger Maritime Nation: A Report to Congress*, February. Viewed at: <https://www.maritime.dot.gov/sites/marad.dot.gov/files/docs/outreach/policy-papers-and-fact-sheets/12561/national-maritime-strategy.pdf>.

<sup>297</sup> MARAD, *About Us*. Viewed at: <https://www.maritime.dot.gov/about-us>.



for building and repairing vessels. The Act defines as the policy of the United States to encourage and aid the development and maintenance of a merchant marine.<sup>298</sup>

4.263. Accordingly, one of the main DOT policy objectives is to keep the MTS strong in international trade, and, to this end, government programs under the DOT seek to partially compensate carriers for the operating cost differential between U.S.-flagged and foreign-flagged vessels. The DOT considers that U.S. regulatory compliance is not a major impediment to the competitiveness of the U.S. flag registry, but future improvements in the regulatory process and policy may reduce costs without decreasing safety risk. To this end, legislation has been enacted requiring the DOT to collaborate with other agencies to address challenges within the MTS. Section 169 of the Consolidated Appropriations Act of 2014 provided that the DOT, in collaboration with the DOD, further develop a national sealift strategy that ensures the long-term viability of the Merchant Marine; Section 603 of the Howard Coble Coast Guard and Maritime Transportation Act of 2014 (Coble Act) directed the DOT in consultation with the U.S. Coast Guard (USCG) to submit to Congress a national maritime strategy to: (i) identify federal regulations and policies that reduce the competitiveness of U.S.-flagged vessels in international transportation markets; and (ii) include recommendations to make U.S.-flagged vessels more competitive in shipping routes between the United States and foreign ports, increase the use of U.S.-flagged vessels to carry cargo imported to and exported from the United States, and enhance the United States' shipbuilding capability. More recently, Section 3513(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 amended Section 603(a) of the Coble Act to set a deadline of not later than 18 months after its enactment for the submission of the report. DOT issued a report to Congress with recommendations to improve competitiveness and the regulatory framework in early 2020.<sup>299</sup>

4.264. The United States maintains restrictions to cabotage services of both cargo and passengers under the coastwise laws. Section 27 of the Merchant Marine Act of 1920, commonly referred to as the Jones Act (46 U.S.C. 55102), reserves cargo service between two points in the United States (including its territories and possessions), either directly or via a foreign port, for ships that are registered and built (or repaired) in the United States and that are at least 75% owned by a U.S. corporation, and on which 100% of the officers and 75% of the crew are U.S. citizens.<sup>300</sup> In general, the same requirements apply to the domestic passenger service under the Passenger Vessel Service Act of 1886 (46 U.S.C. 55103). As noted above, as of October 2021, 96 oceangoing, self-propelled, cargo-carrying and owned vessels of 1,000 gross tons and above with a dead weight of 4.8 billion DWT were eligible as Jones Act vessels.<sup>301</sup> Cargo carried on routes covered by the Jones Act, including coastwise, intercoastal, Great Lakes, and inland shipping, reached 3,467.51 million gross tons, accounting for 47.1% of the U.S. domestic cargo carried by all means of transport. Although the Jones Act limits cargo services to companies that use U.S.-built ships and U.S. mariners, it does not prevent foreign companies from establishing shipping companies in the United States if their U.S. affiliates can meet the law's requirements regarding citizenship, crew, and operation of domestic-built vessels. Foreign-owned U.S. companies may also own and operate ships flying the U.S. flag in international service. CBP is responsible for enforcing the coastwise laws, including the Jones Act, and can impose fines and penalties on violators.

4.265. Waivers to the provisions of the Jones Act and other coastwise laws may be granted under limited circumstances. There are two types of Jones Act waiver request processes, one for the

<sup>298</sup> MARAD (2017), *Maritime Administration Strategic Plan Navigating the Future, 2017-2021*. Viewed at: <https://www.maritime.dot.gov/sites/marad.dot.gov/files/docs/resources/3606/marad-strategic-plan-2017-2021-20170119-final-signed.pdf>.

<sup>299</sup> To address legislative requirements, DOT/MARAD conducted outreach activities with industry and the public from October 2013 through December 2019, which resulted in the development of four strategic goals: Goal 1: Strengthen U.S. Maritime Capabilities Essential to National Security and Economic Prosperity; Goal 2: Ensure the Availability of a U.S. Maritime Workforce that Will Support the Sealift Resource Needs of the National Security Strategy; Goal 3: Support Enhancement of U.S. Port Infrastructure and Performance; and Goal 4: Enable Maritime Industry Innovation in Information, Automation, Safety, Environmental Impact and Other Areas. To achieve these goals, 39 objectives were developed. DOT (2020), *Goals and Objectives for a Stronger Maritime Nation: A Report to Congress*, February. Viewed at: <https://www.maritime.dot.gov/sites/marad.dot.gov/files/docs/outreach/policy-papers-and-fact-sheets/12561/national-maritime-strategy.pdf>.

<sup>300</sup> Under 46 U.S.C. 8103(b)(B), "not more than 25% of the total number of unlicensed seamen on the vessel may be aliens lawfully admitted to the United States for permanent residence".

<sup>301</sup> MARAD, *United States-Flag Privately-Owned Merchant Fleet Report: Oceangoing, Self-Propelled Vessels of 1,000 Gross Tons and Above that Carry Cargo from Port to Port*. Viewed at: [https://www.maritime.dot.gov/sites/marad.dot.gov/files/2021-12/DS\\_USFlag-Fleet\\_2021\\_1014\\_Bundle\\_0.pdf](https://www.maritime.dot.gov/sites/marad.dot.gov/files/2021-12/DS_USFlag-Fleet_2021_1014_Bundle_0.pdf).

Secretary of Defense (SECDEF) regarding military operations and one for all other cases including Non-Military Operations (NMO) of DOD. For SECDEF waiver requests, the Secretary of Homeland Security is only authorized to grant a waiver if it is considered "necessary in the interest of national defense" (see 46 U.S.C. 501(a)). CBP has the delegated authority to grant such waivers. SECDEF must explain the circumstances for such a measure to Congress within 24 hours of issuance. For all other NMO waiver requests, the Secretary of Homeland Security is only authorized to grant a waiver if he or she considers it "necessary in the interest of national defense" (see 46 U.S.C. 501(b)). As a result, when an NMO waiver request is submitted, the Department of Homeland Security screens it and makes an assessment regarding whether there is sufficient "interest of national defense" to proceed. If the application passes the test, MARAD must make a formal determination regarding the availability of coastwise-qualified U.S.-flagged vessel capacity to meet the national defense requirements and identify in its determination any actions that could be taken to enable qualified United States flag capacity to meet the need. DHS also consults DOD and other federal government agencies in making its determination. After these consultations, the Secretary of Homeland Security makes the waiver decision. DHS must report all waivers and valid waiver applications to Congress within 48 hours. MARAD is required to inform the Secretary of Transportation when formal advice is issued, and post non-availability advice on MARAD's website. Upon completion of the voyage of a vessel that operated under a waiver, the owner or operator of the vessel must submit a report to MARAD.<sup>302</sup>

4.266. MARAD also administers other exemption programs that allow the use of foreign vessels domestically under precise circumstances and conditions, such as the Small Passenger Vessels waiver program. The Small Vessel Coastwise Endorsement Eligibility Determination (46 U.S.C. 12121) authorizes MARAD to administratively exempt the U.S.-build requirements of the Passenger Vessel Services Act (for domestic passenger transport) on a case-by-case basis for foreign-built small passenger vessels carrying 12 passengers or less. Approximately 150 waivers of the U.S. build requirement are granted each year to foreign vessels or vessels of unknown build to operate in the United States as commercial passenger vessels. To benefit from the program, the vessel must be at least three years old and owned by a U.S. citizen. Activities such as carriage of cargo, commercial fishing, towing, dredging, and salvage do not qualify for this program. The intended use of the vessel must be published in the *Federal Register*; after the publication, MARAD will determine if the issuance of the waiver will cause an "undue adverse effect" on existing operators and shipbuilders. If that is not the case, the waiver is approved.<sup>303</sup> Once obtained, the waiver stays with the vessel if it is sold. Once a waiver is received, the applicant should file for a Coastwise Trade Endorsement for the passenger trade with the USCG. MARAD no longer issues waivers valid for all U.S. coasts: the waiver request must list all states of intended operation.

4.267. Waivers may also be exceptionally granted under the Launch Barge Exemption Program. This waiver is granted on rare occasions, when the launch of an exceptionally large oil rig or offshore platform requires the use of a foreign-built launch barge. 46 U.S.C. 55108 allows MARAD to make determinations allowing the use of these launch barges when no U.S.-built launch barge is available or technically capable. Regulations require that the platform owner or operator notify MARAD at least 21 months prior to the contemplated use of a foreign-built launch barge. No new exemptions have been requested or granted during the period under review; one exemption was granted in 2014. MARAD may also grant waivers under the Anchor Handling Exemption Program. MARAD is authorized to make determinations under P.L. 111-281, allowing the use of foreign anchor-handling vessels (used to position mobile offshore drilling units) if no U.S.-flagged vessels are available. This program only applies to operations in the Beaufort Sea and Chukchi Sea, adjacent to Alaska. Since 2006, MARAD has issued decision letters allowing three foreign-flagged vessels into service for a limited length of time. No new exemptions have been granted since 2015.

4.268. Under the Aquaculture Program, implemented following the enactment of the Coast Guard Authorization Act of 2010, 46 U.S.C. 12102, the Secretary of Transportation has the discretionary authority to issue exemptions allowing documented vessels with registry endorsements or foreign-flagged vessels to be used in operations that treat aquaculture fish to protect the fish from disease, parasitic infestation, or other threats to their health when suitable U.S. vessels are not available. The authority has been delegated to MARAD, which has recently been granting

<sup>302</sup> MARAD, *Domestic Shipping: U.S. Shipping in U.S. Waters*. Viewed at: <https://www.maritime.dot.gov/ports/domestic-shipping/domestic-shipping/>.

<sup>303</sup> MARAD, *Small Passenger Vessel Waiver Program*. Viewed at: <https://www.maritime.dot.gov/ports/domestic-shipping/small-vessel-waiver-program>.

approximately four exemptions of this type per year. MARAD is responsible for determining U.S.-flagged Oil Spill Response Vessel (OSRV) availability before deciding to use a foreign vessel.<sup>304</sup>

4.269. Public Resolution No. 17 of 1934 requires that exports of goods that benefit from export loans or credit guarantees from the Export-Import Bank be carried in U.S.-flagged vessels, although the vessels of a recipient country where there is no discriminatory treatment against U.S.-flagged carriers may be granted access to 50% of those cargoes. Waivers may be granted, subject to reciprocity treatment. Under 10 U.S.C. 2631 Preference for United States Vessels in Transporting Supplies by Sea (2021), 100% of military supplies must be transported in available U.S.-flagged vessels at rates that are fair and reasonable for U.S. commercial vessels. If availability or cost conditions cannot be met, the DOD can issue a waiver. In any case, the DOD is to ensure compliance via its contracting officers, and provide a report to Congress each year on the waivers issued and the reason for each action. Contractors who violate this law can be suspended or debarred. Cargo preference applies not only to the end product but also to component parts.<sup>305</sup> The Cargo Preference Act of 1954 requires that at least 50% of the gross tonnage of all government-generated cargo be transported on privately owned, domestically flagged commercial vessels to the extent that such vessels are available at fair and reasonable rates. Shipments from or to the Strategic Petroleum Reserve must use domestically flagged tankers for at least 50% of oil transport.

4.270. MARAD also administers two maritime transport programs related to national defense: the MSP and the Voluntary Intermodal Sealift Agreement (VISA) program. The MSP, created by the Maritime Security Act of 1996 to replace the operating-differential subsidy (ODS), supports the U.S.-flagged merchant marine by providing a fixed payment to U.S.-flagged vessel operators.<sup>306</sup> The purpose of the MSP is to provide a fixed payment to U.S.-flagged vessel operators to ensure that a limited number of militarily useful vessels from the commercial fleet are available to meet the nation's sealift requirements in time of war or national emergencies. Hence the MSP maintains a fleet of commercially viable, militarily useful merchant ships active in international trade. The program also provides DOD access to MSP participants' global intermodal transportation network of terminals, facilities, logistic management services, and U.S. citizen merchant mariners. The program was originally established for FY1996 through FY2005, to provide funding of up to USD 100 million annually for up to 47 vessels and was subsequently prolonged and its scope extended. In February 2022, 60 ships from 14 shipping companies participated in the MSP, totaling 3.3 million GT and 2.99 DWT. The Maritime Security Act of 2003 reauthorized the MSP for FY2006 through FY2015 and increased the size of the Maritime Security Fleet receiving stipend payments to 60 vessels. The National Defense Authorization Act (NDAA) for FY2013 (P.L. 112-239) further extended the MSP from FY2016 through FY2025.<sup>307</sup> Section 3504 of the NDAA for FY2016 (P.L. 114-92) and Division O, Title 1, Section 101(e) of the Consolidated Appropriations Act of 2016 (P.L. 114-113) revised the annual MSP payment schedule through FY2021. The authorized funding for FY2018-20 was USD 5 million each fiscal year. The NDAA for FY2020 authorized the extension of existing MSP operating agreements through 30 September 2035. All MSP dry cargo ships are enrolled in the VISA program, while MSP tankers are enrolled in the Voluntary Tanker Agreement.

4.271. MARAD's VISA program, authorized under the Defense Production Act of 1950 as amended and the Maritime Security Act of 2003, and approved as a DOD commercial sealift readiness program in January 1997, is a partnership between the Government and the maritime industry to provide the DOD with assured access to commercial sealift and intermodal capacity to support the emergency deployment and sustainment of U.S. military forces during a national emergency or wartime operations. The VISA program provides for a time-phased activation of commercial intermodal equipment to coincide with DOD requirements while minimizing disruption to U.S. commercial operations.<sup>308</sup> It can be activated in three stages as determined by the DOD with each stage representing a higher level of capacity commitment. In Stage III, participants must commit at least

<sup>304</sup> MARAD, *Domestic Shipping: U.S. Shipping in U.S. Waters*. Viewed at: <https://www.maritime.dot.gov/ports/domestic-shipping/domestic-shipping/>.

<sup>305</sup> MARAD, *Cargo Preference*. Viewed at: <https://www.maritime.dot.gov/ports/cargo-preference/cargo-preference>.

<sup>306</sup> The ODS, granted on a 20-year contract basis, was provided for U.S.-flagged vessels operating in international trade routes in order to compensate for cost differences between U.S. and foreign operators. WTO document S/NGMTS/W/2/Add.11, 31 January 1995.

<sup>307</sup> MARAD, *Maritime Security Program*. Viewed at: <https://www.maritime.dot.gov/national-security/strategic-sealift/maritime-security-program-msp>.

<sup>308</sup> MARAD, *Voluntary Intermodal Sealift Agreement (VISA)*. Viewed at: <https://www.maritime.dot.gov/national-security/strategic-sealift/voluntary-intermodal-sealift-agreement-visa>.

50% of their capacity, except dry cargo vessels, which must commit 100%. VISA program participants get priority preference when bidding on DOD peacetime cargo. As of February 2022, there were 105 oceangoing, self-propelled, cargo-carrying vessels of 1,000 gross tons and above in the VISA program, with 4.73 million GT and 4.25 million DWT; MSP participants' vessel capacity made up to 70.4% of the VISA capacity.<sup>309</sup>

4.272. The maritime transport sector enjoys antitrust immunity for certain operations. U.S. and foreign operators of liner shipping services and marine terminal operators in the United States benefit from exemptions to antitrust laws, including the Sherman and Clayton Acts, with respect to their operations in U.S.-foreign ocean-borne trade. Under the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act (OSRA) of 1998, agreements among liner operators and marine terminal operators (MTOs) to discuss, fix, or regulate transportation rates, and other conditions of service, or cooperate on operational matters must be filed with and examined by the FMC. Privately owned ocean carriers must publish tariff rates and charges for carriage for trade with foreign countries. These rates are reviewed by the FMC, which also reviews the rates of government-controlled ocean carriers to ensure that they are not unreasonably low.

4.273. The American Fisheries Act of 1998 (AFA), incorporated in the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (P.L. 105-277), contains U.S. citizen ownership and control requirements for U.S.-flagged fishing industry vessels of 100 feet and greater in registered length. Under the AFA and its implementing regulations (46 C.F.R. Part 356), 75% of the ownership and control of the vessel must be vested in U.S. citizens at each tier and in the aggregate. MARAD is responsible for determining whether vessels are owned and controlled by U.S. citizens and eligible for documentation with a fishery endorsement. In addition, MARAD must determine whether lenders are qualified to hold a preferred mortgage on fishing industry vessels; if that is not the case, the lender must utilize an approved mortgage trustee to hold the preferred mortgage for its benefit, and MARAD must review the transaction to verify that this does not result in a transfer of control to a non-citizen.<sup>310</sup> The U.S. fishing industry has a Treaty of Friendship, Commerce, and Navigation with Denmark, Japan, and the Republic of Korea to foster fair and efficient ownership practices.

4.274. MARAD's America's Marine Highway Program seeks to improve U.S. economic competitiveness while creating and sustaining jobs, including through the reduction of landside traffic congestion, the ability to add cost-effective new freight and passenger transportation capacity, reducing greenhouse gas emissions, adding to U.S. strategic sealift resources, and supporting the U.S. shipbuilding industry.<sup>311</sup> MARAD works closely with public and private organizations to develop and expand marine highway service options and facilitate their further integration into the current U.S. surface transportation system, especially where water-based transport is the most efficient, effective, and sustainable option. Support is also provided through the America's Marine Highway Project Grants program. The first round of Marine Highway Grants was awarded in September 2010. Since then, Congress has periodically appropriated funds for subsequent rounds, which are advertised through Notices of Funding Opportunity published in the *Federal Register*. Between 2010 and December 2021, 44 grants were given, for USD 51,704,000.<sup>312</sup>

4.275. Under the Foreign Shipping Practices Act of 1988 (FSPA) (46 U.S.C. 42302), the FMC is required to investigate and take action in response to conditions arising from foreign government measures or business practices in the U.S.-foreign shipping trades that adversely affect U.S. carriers but do not apply to foreign carriers in the United States. Section 19 of the Merchant Marine Act of 1920 authorizes the FMC to investigate and take action to address "unfavorable shipping conditions in U.S. foreign commerce and may impose penalties". No action was taken during the period under review. The FMC maintains a Passenger Vessel (Cruise) Operator program, with some 200 cruise

<sup>309</sup> Based on tonnage, see: MARAD, *United States-Flag Privately-Owned Merchant Fleet Report: Oceangoing, Self-Propelled Vessels of 1,000 Gross Tons and Above that Carry Cargo from Port to Port*. Viewed at: [https://www.maritime.dot.gov/sites/marad.dot.gov/files/2021-12/DS\\_USFlag-Fleet\\_2021\\_1014\\_Bundle\\_0.pdf](https://www.maritime.dot.gov/sites/marad.dot.gov/files/2021-12/DS_USFlag-Fleet_2021_1014_Bundle_0.pdf).

<sup>310</sup> MARAD, *American Fisheries Act*. Viewed at: <https://www.marad.dot.gov/ships-and-shipping/american-fisheries-act/>.

<sup>311</sup> MARAD (2011), *America's Marine Highway: Report to Congress*. Viewed at: <https://cms.marad.dot.gov/sites/marad.dot.gov/files/docs/intermodal-systems/marine-highways/3051/maradamhreporttocongress.pdf>.

<sup>312</sup> MARAD, *Grants: American Marine Highways Grants*. Viewed at: <https://cms.marad.dot.gov/grants-finance/marine-highways/grants>.



vessels registered in it and monitored by FMC. The FMC is also engaged in regulatory reform.<sup>313</sup> In 2020, the FMC issued Federal Maritime Commission Proposed FY 2022-2026 Strategic Goals and Stewardship. Among the strategic goals are: (i) maintaining a competitive and reliable international ocean transportation supply system; (ii) developing and implementing a comprehensive monitoring program to assess covered services; (iii) protecting the public from unlawful, unfair, and deceptive ocean transportation practices, by identifying them and preventing public harm through licensing and financial responsibility requirements; and (iv) resolving international shipping disputes through alternative dispute resolution and adjudication.<sup>314</sup>

4.276. The United States did not make any commitment on maritime transport under the GATS and maintains an MFN exemption covering restrictions on performance of longshore work by crews of foreign vessels owned and flagged in countries that similarly restrict U.S. crews on U.S.-flagged vessels from longshore work. The United States has bilateral agreements with Brazil, China, the European Union, Japan, the Republic of Korea, the Russian Federation, Panama, and Viet Nam.<sup>315</sup> It also has a Memorandum of Cooperation with the Philippines.

#### 4.4.3.2.2 Port services

4.277. The United States has over 360 ports, which are operated by a state, a county, a municipality, a private corporation, or a combination of these. The top 50 ports account for roughly 85% of total U.S. waterborne cargo tonnage. Port congestion, particularly in the U.S. West Coast ports continues to be a challenge, requiring an improvement in infrastructure. MARAD provides expertise on port investment and finance and assists ports of all sizes and functions with infrastructure development, efficiency (agile port systems and cargo handling), deepwater port licensing, and conveyance. MARAD also chairs the National Port Readiness Network (NPRN) Steering Group and administers Port Planning Orders for certain commercial ports to support national defense.

4.278. The United States does not grant domestic preferential treatment with respect to the use of port and harbor facilities. The United States maintains an MFN exemption covering restrictions on performance of longshore work by crews of foreign vessels owned and flagged in countries that similarly restrict U.S. crews on U.S.-flagged vessels from longshore work. The Immigration and Nationality Act of 1952, as amended, prohibits non-U.S.-national crewmembers from performing longshore work in the United States, but provides a reciprocity exception.

4.279. Under Title I of the Maritime Transportation Security Act of 2002 (P.L. 107-295), commercial vessels arriving in the United States from a foreign port are required to transmit electronically, in advance, information on passengers, crew, and cargo. The Maritime Transportation Security Act of 2004 amended federal shipping law to grant U.S. district courts jurisdiction to restrain violations of certain port security requirements and authorized the Secretary of Transportation to refuse or revoke port clearance to any owner, agent, master, officer, or person in charge of a vessel that is liable for a penalty or fine for violation of such requirements.

4.280. The Deepwater Port Act of 1974 as amended (DWPA) (P.L. 93-627) (33 U.S.C. 1501 et seq.) and its regulations (68 FR 36496) establish a licensing system for ownership, construction, operation and decommissioning of deepwater port structures located beyond the U.S. territorial sea for the import and export of oil and natural gas. The Act sets out conditions that license applicants must meet, including environmental ones and the submission of detailed plans for construction, operation, and decommissioning of deepwater ports. The DWPA also contains detailed procedures for the issuance of licenses by the Secretary of Transportation and prohibits the issuance of a license without the approval of the Governors of the Adjacent Coastal States. MARAD is responsible for determining the financial capability of potential licensees and the citizenship of the applicant, and for issuing or denying the deepwater port license. The DWPA establishes a specific time-frame of 330 days from

<sup>313</sup> FMC, *FMC Regulations & Statutes*. Viewed at: <https://www.fmc.gov/about-the-fmc/fmc-regulations-statutes/>.

<sup>314</sup> FMC (2021), *Proposed FY 2022-2026 Strategic Goals and Stewardship*. Viewed at: <https://www.fmc.gov/wp-content/uploads/2022/01/FY2022-2026ProposedStrategicGoals.pdf>.

<sup>315</sup> MARAD, *International Agreements*. Viewed at: <https://cms.marad.dot.gov/economic-security/international-agreements>.



the date of publication in the *Federal Register* for approval or denial of the deepwater port license.<sup>316</sup> As of end-2021, 28 Deepwater Port License Applications had been filed for approval: 18 for licenses to import liquefied natural gas (LNG); 2 to export LNG; 6 to export oil; and 2 for licenses to import oil. As of that date, 10 applications had been approved and 7 licenses had been issued. Of the seven licenses issued, three were issued for currently operational facilities (Louisiana Offshore Oil Port, Neptune, Northeast Gateway); three licenses had been surrendered (Gulf Landing, Port Dolphin, Port Pelican); and one had been issued for a facility that was decommissioned (Gulf Gateway).<sup>317</sup>

4.281. MARAD's Office of Port Infrastructure Development is charged with assisting with port, terminal, waterway, and transportation network development issues. The Office, *inter alia*, coordinates and manages port infrastructure projects for state, local, and territorial authorities; provides discretionary grant funding on a competitive basis for maritime infrastructure projects; promotes the use of waterways and ports; coordinates studies, surveys, and investigations of port and inter-modal facilities. The Office manages the Port Infrastructure Development Program (PIDP), a discretionary grant program. Funds for the PIDP are awarded on a competitive basis to projects that improve the safety, efficiency, or reliability of the movement of goods into, out of, around, or within a port. The FY2019 Consolidated Appropriations Act provided first-year funds of USD 293 million for the program; the corresponding Acts for FY2020 and FY2021 appropriated USD 225 million and USD 230 million, respectively. During 2019-21, 232 ports applied for funds under the PIDP; the 2022 PIDP Notice of Funding Opportunity was published in February 2022 announcing USD 450 million in funding available for port-related projects.<sup>318</sup>

4.282. The Port of Guam Improvement Enterprise Program is a partnership between the Federal Government, the Government of Guam, and the Port Authority of Guam to modernize and improve the Jose D. Leon Guerrero Commercial Port. The Hawaii Harbors Infrastructure Expansion Program provides modern commercial harbor facilities within the state of Hawaii through a partnership between the Federal Government and the State of Hawaii, to provide more efficient movement of goods and services through the State of Hawaii to foster trade, encourage natural resource exports, and create employment opportunities by attracting new industry and new cargo movement.<sup>319</sup>

#### 4.4.3.2.3 Shipbuilding and ship repairs

4.283. Under U.S. law, only U.S.-built ships qualify for domestic service; the United States was granted an exemption from GATT rules for measures prohibiting the use, sale, or lease of foreign-built or foreign-reconstructed vessels in commercial applications between points in national waters or the waters of an exclusive economic zone. There are no restrictions on foreign investment in U.S. shipyards or ship-repair facilities but floating dry-docks are eligible for loan guarantees under the Federal Ship Financing Program only if owned by U.S. citizens.

4.284. MARAD provides financial assistance to shipowners and U.S. shipyards through the Federal Ship Financing Program (Title XI), established pursuant to Title XI of the Merchant Marine Act of 1936, as amended. The aim of the Title XI Program is to promote the growth and modernization of the U.S. merchant marine and U.S. shipyards. The program provides U.S. Government-guaranteed debt issued by: (i) U.S. or foreign shipowners for the purpose of financing or refinancing either U.S.-flagged vessels or eligible export vessels constructed, reconstructed, or reconditioned in U.S. shipyards; and (ii) U.S. shipyards for the purpose of financing advanced shipbuilding technology and modern shipbuilding technology of a privately owned, general shipyard facility located in the United States. It also assists U.S. shipyards with modernizing their facilities for repairing vessels.

<sup>316</sup> MARAD, *About the Deepwater Port Act*. Viewed at: <https://cms.marad.dot.gov/ports/deepwater-ports-and-licensing/about-deepwater-port-act>.

<sup>317</sup> MARAD, *Overview of Deepwater Port Applications Reviewed by the Maritime Administration*. Viewed at: <https://cms.marad.dot.gov/ports/deepwater-ports-and-licensing/approved-applications>.

<sup>318</sup> MARAD, *Notice of Funding Opportunity for the Maritime Administration's Port Infrastructure Development Program (PIDP) under the Infrastructure Investment and Jobs Act ("Bipartisan Infrastructure Law")*. Viewed at: <https://www.maritime.dot.gov/sites/marad.dot.gov/files/2022-02/2022%20PIDP%20NOFO%20FINAL.pdf>.

<sup>319</sup> MARAD, *Office of Port Infrastructure Development*. Viewed at: <https://cms.marad.dot.gov/office-port-infrastructure-development/port-and-terminal-infrastructure-development/office-port-and->

Since the obligations are guaranteed by the Government, the repayment term allowed is longer and the interest rates lower than those available from the commercial lending market.<sup>320</sup>

4.285. Title XI, by offering long-term debt repayment guarantees, encourages U.S. and foreign shipowners to obtain new vessels from U.S. shipyards. However, applicants for a project involving a vessel to be operated in the U.S. coastwise trade must demonstrate U.S. citizenship for the owner and any bareboat charterer. Additionally, if the applicant is a partnership or limited liability company, governing agreements for the entities must be in a form and substance satisfactory to MARAD. The guarantee is based on the actual cost of the vessels or the technology used in shipbuilding, which generally includes the cost of construction, reconstruction, or reconditioning of the vessel, together with construction period interest and the guarantee fee. The guarantees are up to 87.5% of the value of the project, for up to 25 years depending on the type of project. The approximate subsidy available for Title XI was USD 35.4 million, as of April 2021. Loan guarantees based on the average risk for projects MARAD previously guaranteed could support some USD 487 million in loan guarantees. As of January 2022, there were six applications pending for a total of USD 569.2 million; in five cases, the review was in progress; in one case, it had been completed and was pending recommendation.<sup>321</sup> As of end-December 2020, Title XI guarantees totaling USD 2.49 billion were outstanding.<sup>322</sup>

4.286. The Capital Construction Fund (CCF) and Construction Reserve Fund (CRF) allow U.S. citizens owning or leasing vessels to obtain tax benefits for the construction, reconstruction, or acquisition of vessels. CCF vessels must be U.S. built and documented under U.S. laws for operation in foreign, Great Lakes, Short-Sea Shipping, or non-contiguous domestic trade or fisheries. The CCF program was created to help owners and operators of U.S.-flagged vessels secure the capital necessary to modernize and expand the U.S. Merchant Marine. The program encourages construction, reconstruction, or acquisition of vessels through the deferment of federal income taxes on certain deposits of money or other property placed into a CCF.

4.287. The CRF scheme provides tax-deferral benefits to U.S.-flagged operators with respect to gains attributable to the sale or loss of a vessel, provided the proceeds are used to expand or modernize the U.S. merchant fleet. Its main purpose is to promote the construction, reconstruction, reconditioning, or acquisition of merchant vessels that are necessary for national defense and to the development of U.S. commerce. A CRF may be established by any U.S. citizen who owns, in whole or in part, a vessel or vessels operating in the foreign or domestic commerce of the United States or in the fisheries. Owners of vessels operating in the fisheries of the United States, its territories, and possessions are also eligible. Deposits into the CRF must be made within 60 days after receipt of the proceeds of the sale of a vessel. Tax benefits are only granted if the funds deposited in the CRF are expended for the construction, reconstruction, or acquisition of a new vessel or vessels. The new vessel (built not more than five years prior to acquisition) must be constructed or reconstructed in the United States and documented under U.S. laws. Vessels must be suitable for use on the high seas or Great Lakes. Within three years from the date of any deposit into a CRF, the funds must be used for the construction or acquisition of a new vessel, no less than 12.5% of the price of the vessel must be expended or irrevocably obligated, and no less than 5% of the work on the vessel must be completed. MARAD must determine that the price of the new vessel is fair and reasonable.<sup>323</sup>

4.288. The Manufacturing Extension Program (P.L. 108-87, Section 8062) makes U.S. naval shipyards eligible to participate in any manufacturing extension program financed by funds appropriated by any Act. The Small Shipyard Grant Program, Section 3501 of P.L. 116-92, authorizes MARAD to provide assistance in the form of grants to make capital and related improvements in small shipyards and to provide training for workers in shipbuilding, ship repair, and associated industries. The Consolidated Appropriations Act of 2021 appropriated USD 20 million to

<sup>320</sup> MARAD, *Federal Ship Financing Program (Title XI)*. Viewed at: <https://www.maritime.dot.gov/grants/title-xi/federal-ship-financing-program-title-xi#:~:text=The%20Federal%20Ship%20Financing%20Program,merchant%20marine%20and%20U.S.%20shipyards>.

<sup>321</sup> MARAD, *Pending Applications*. Viewed at: <https://www.maritime.dot.gov/grants/title-xi/pending-applications>.

<sup>322</sup> MARAD. Viewed at: <https://www.maritime.dot.gov/grants/title-xi/outstanding-guarantees>

<sup>323</sup> MARAD, *Construction Reserve Fund*. Viewed at: <https://cms.marad.dot.gov/grants/construction-reserve-fund>.

the Program, of which the total amount available for grant awards was USD 19.6 million.<sup>324</sup> The purpose of the Program is to foster efficiency, and quality ship construction, repair, and reconfiguration in small shipyards across the United States in addition to fostering employee skills and enhanced productivity related to shipbuilding, ship repair, and associated industries. Grants are available for: (i) capital and related improvements to qualified shipyard facilities that will be effective in fostering efficiency, competitive operations, and quality ship construction, repair, and reconfiguration; and (ii) training projects that would be effective in fostering employee skills and enhanced productivity related to shipbuilding, ship repair, and associated industries. No more than 25% of the funds available will be awarded to shipyard facilities in one geographic location that have more than 600 production employees. Grants are capped at 75% of the project's estimated cost and are available to facilities with fewer than 1,200 production employees.

4.289. As at end-2021, there were 124 shipyards and ship-repair facilities in the United States. The order book was estimated at 547 commercial and military vessels at more than USD 110.3 billion. U.S.-flagged vessels repaired in most foreign countries face a 50% *ad valorem* duty, assessed on the cost of equipment and non-emergency repairs in foreign countries, although exemptions apply under certain circumstances in accordance with U.S. bilateral agreements. U.S.-owned foreign-flagged vessels are not subject to any duty.

#### 4.4.4 Medical professional and health services

##### 4.4.4.1 Overview

4.290. The U.S. healthcare sector is one of the largest in the world, and the United States has the highest expenditure on health as a percentage of GDP<sup>325</sup>; total national health expenditure amounted to USD 4.1 trillion in 2020, an increase of 9.7% from 2019. Employment in the sector is also significant, 14.6 million in 2020, or 11% of the domestic workforce.<sup>326</sup> The domestic sector is large with limited but growing trade as exports reached USD 1.3 billion in 2020. Potential exists for future growth and opportunity, in part driven by advancements in technology, regulatory enhancements, and measures taken during the COVID-19 pandemic. This section covers professional medical and healthcare services and approximates as much as possible the classification used under GATS.<sup>327</sup>

4.291. There is no federal healthcare system in the United States, although the Federal Government does have a significant role in certain areas. The private sector is the predominant provider of health services in the United States. Hospitals, of which there are over 6,000, are mainly non-profit community hospitals (48.5%), for-profit community hospitals (20.2%), and state, local, and federal government hospitals (19%).<sup>328</sup> The Federal Government is mainly involved in Medicare, providing health coverage for persons over 65 and persons under 65 with certain disabilities, and others with end-stage renal disease; Medicaid (jointly funded by the Federal Government and the states but mostly administered by the states), providing health coverage to persons with disabilities and with low income; the Children's Health Insurance Program for low-cost health coverage to certain children pursuant to income levels; and health services to the active and retired military.<sup>329</sup> There has been a gradual increase in total health care expenditure over the last few years, as well as in all the main categories of expenditure, e.g. hospitals and dental services (Box 4.1). An exception to this is private health insurance spending, which declined 1.2% in 2020 compared to 2019. Health expenditures by the Federal Government experienced a 36% increase between 2019 and 2020, largely due to the

<sup>324</sup> MARAD, *Small Shipyard Grant Program: Notice of Small Shipyard Grants Application Deadlines*, *Federal Register* (2021), Vol. 86, No. 13, 22 January, pp. 6733-6737. Viewed at: <https://www.govinfo.gov/content/pkg/FR-2021-01-22/pdf/2021-01359.pdf>.

<sup>325</sup> OECDstat, *Health Expenditure and Financing*. Viewed at: <https://stats.oecd.org/Index.aspx?ThemeTreeId=9>.

<sup>326</sup> Full-time equivalent employees in hospitals, ambulatory healthcare, and nursing and residential care facilities. BEA statistical information, Table 6.5D: Full-Time Equivalent Employees by Industry. Viewed at: [https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=3&isuri=1&nipa\\_table\\_list=197#reqid=19&step=3&isuri=1&nipa\\_table\\_list=197](https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=3&isuri=1&nipa_table_list=197#reqid=19&step=3&isuri=1&nipa_table_list=197).

<sup>327</sup> Under the GATS Services Sectoral Classification List (MTN.GNS/W/120), medical professional services are covered under 1. Business, A. Professional Services, h. Medical and dental services, and j. Services provided by midwives, nurses, physiotherapists and para-medical personnel (CPC 9312, 93191); and health services are covered under 8. Health Related and Social Services, A. Hospital services, and B. Other human health services (CPC 9311 and 9319, other than 93191).

<sup>328</sup> American Hospital Association (AHA), *Fast Facts on U.S. Hospitals, 2022*. Viewed at: <https://www.aha.org/statistics/fast-facts-us-hospitals>.

<sup>329</sup> Includes the Military Health System and Veterans Health Administration, including hospitals.

COVID-19 pandemic, to almost USD 1.5 trillion. This was the highest annual growth rate on record since the statistics series commenced in the mid-1980s. The Federal Government is the largest contributor to total healthcare expenditures, mainly due to payments under Medicaid and Medicare, which together accounted for over half of federal expenditures.

4.292. The COVID-19 pandemic has affected the sector in many ways. There was an initial decline in revenues and employment, followed by rising costs, and medical supply chain issues. The Government responded with a number of COVID-19-specific appropriation measures that supported the Public Health Service sector directly or through an emergency fund (Public Health and Social Services Emergency Fund (PHSSEF)).<sup>330</sup> These measures are wide ranging and include, *inter alia*, funds for vaccine and drug development, COVID-19 testing, manufacturing of medical products, support for healthcare providers. Another development during the review period was increased healthcare coverage. While the United States does not have universal healthcare *per se*, most of the population is covered by private or government healthcare insurance or programs. With the entry into force of most provisions of the Affordable Care Act (ACA) in 2014 and revisions to Medicaid eligibility, the share of the U.S. population without health insurance has gradually declined; although this share increased slightly in the 2018-20 period, it remains below pre-ACA levels. As of 2020, some 60.7% of the population was covered by private insurance, while 9.5% were uninsured.<sup>331</sup>

#### Box 4.1 Key healthcare facts, 2020

National Health Expenditure (NHE)	USD 4,124 billion
-by federal	USD 1,499 billion (36%)
-by households	USD 1,078 billion (26%)
-by private business	USD 691 billion (17%)
-by state and local	USD 588 billion (14%)
-by other private revenues	USD 269 billion (7%)
NHE per person	USD 12,530
Hospital expenditures	USD 1,270 billion
Physician and clinical services expenditure	USD 810 billion
Retail prescription drug expenditures	USD 348 billion
Nursing care expenditures	USD 197 billion
Dental service expenditures	USD 142 billion
Licensed physicians	1,018,776
Graduates of U.S. and Canadian medical schools	783,639 (77%)
Graduates of international medical schools	233,177 (23%)
Licensed RN/PN nurses	6,033,911
Density of doctors per 10,000 population (2019)	26
Density of nursing and midwifery personnel per 10,000 population (2019)	157
Density of dentists per 10,000 population (2019)	6

Source: U.S. Centers for Medicare & Medicaid Services (CMS), *National Health Expenditure Fact Sheet*. Viewed at: <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NHE-Fact-Sheet>; WHO (2021), *World Health Statistics, 2021*. Viewed at: <https://apps.who.int/iris/bitstream/handle/10665/342703/9789240027053-eng.pdf>; Federation of State Medical Boards (FSMB), *Physician Licensure*. Viewed at: <https://www.fsmb.org/u.s.-medical-regulatory-trends-and-actions/u.s.-medical-licensing-and-disciplinary-data/physician-licensure/>; National Council of State Boards of Nursing, *The National Nursing Database*. Viewed at: <https://www.ncsbn.org/national-nursing-database.htm>.

#### 4.4.4.2 Regulatory framework

4.293. The U.S. healthcare regulatory framework involves a web of federal, state, local, and private bodies.<sup>332</sup> All healthcare professionals and care are regulated, sometimes by both government and

<sup>330</sup> Division A of the Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020 (P.L. 116-123); Division A of the Families First Coronavirus Response Act (FFCRA) (P.L. 116-127); Division B of the CARES Act (P.L. 116-136); Division B of the Paycheck Protection Program and Health Care Enhancement Act (PPHCEA) (P.L. 116-139); Division M of Consolidated Appropriations Act of 2021 (P.L. 116-260); and the ARP Act. The total amount allocated through these first five Acts and the PHSSEF was USD 305.6 billion. The ARP Act has USD 1.9 trillion allocated in total, including other stimulus measures.

<sup>331</sup> WTO Secretariat calculation, based on: CMS, *National Health Expenditure Fact Sheet, Historical National Health Expenditure Accounts, NHE Table 22*. Viewed at: <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsHistorical>.

<sup>332</sup> Field, R.I., Department of Health Management and Policy, Drexel University, *Regulation of Health Care in the United States: Complexity, Confrontation and Compromise*. Viewed at: <https://anaisihmt.com/index.php/ihmt/article/download/45/38/>.

non-government entities. The regulatory framework for professional medical personnel, in particular doctors, nurses, and dentists, is mainly the responsibility of state licensing boards, which accredit personnel or grant licenses to allow them to practice.<sup>333</sup> While there are normally restrictions requiring healthcare workers to be licensed in each state in which they intend to practice, this has been relaxed in some states recently as part of the public health emergency due to the pandemic.<sup>334</sup> In addition, doctors and other medical professionals who treat Medicare patients must also meet certain federal standards in order to be reimbursed through the program, and doctors who practice through hospitals or health maintenance organizations may also face additional regulations. The American Medical Association (AMA), a private professional association of registered doctors, also plays a role in accreditation or standard setting with respect to certain aspects of the medical profession or professionals.<sup>335</sup>

4.294. Hospitals, like medical professionals, are regulated at the state level. In addition, federal programs such as Medicare and Medicaid impose conditions of reimbursement that have the effect of mandating compliance with specified standards. Government reimbursement programs determine compliance through certification, a process in which the evaluation is frequently delegated to non-profit accreditation organizations. The largest of the accrediting organizations for hospitals is the Joint Commission.<sup>336</sup> The establishment of hospitals and other health facilities, e.g. out-patient and long-term care facilities, is also controlled by state Certificate of Need (CON) laws. At present, 35 states have CON laws that regulate various aspects including construction, establishment, capital expenditures, acquisition of medical equipment, provision of services, and moratoriums.<sup>337</sup> Many CON laws were established to avoid costly duplicative services in a particular area and also ensure services to underserved areas.

4.295. The regulation of telemedicine or telehealth<sup>338</sup> is particularly important as it can influence the mode and cross-border tradability of healthcare services beyond state or national borders. Since the COVID-19 pandemic, the United States has liberalized many domestic telehealth restrictions, mostly on a temporary basis. The Federal Government has several laws or statutes that define telemedicine or telehealth and its role in the provision of healthcare. The Health Care Safety Net Amendments Act of 2002 (P.L. 107-251) introduced the term "telehealth" when it directed the Department of HHS to establish demonstration projects on the use of telehealth care services. Provisions in the Indian Health Care Improvement Act (P.L. 94-437) also used the term "telemedicine" but without specifically indicating its use. The rules under the Veterans Administration allow for telehealth by its healthcare professionals and in particular allow it across state borders (38 U.S.C. 1730C). The federal rules of Medicare have increased its use recently (see section below) but do not allow payment for health services that are not furnished within the United States.<sup>339</sup> This

<sup>333</sup> Although licensure is by individual states, a 2015 Interstate Medical Licensure Compact was agreed upon whereby 29 state medical boards (and Guam and the District of Columbia) are joined together to facilitate licensure across several states. The states have agreed to adopt common rules and procedures to streamline the process of obtaining medical licenses in multiple states. As at 2020, more than 10,000 licenses have been issued through this process. FSMB, *About Physician Licensure*. Viewed at:

<https://www.fsmb.org/u.s.-medical-regulatory-trends-and-actions/guide-to-medical-regulation-in-the-united-states/about-physician-licensure/>. In addition, there are several other Compacts facilitating licensure for nurses, psychologists, physical therapists, EMS workers, occupational therapists, and speech language therapists in obtaining licensure in multiple states. HHS, *Telehealth Licensing Requirements and Interstate Compacts*. Viewed at: <https://telehealth.hhs.gov/providers/policy-changes-during-the-COVID-19-public-health-emergency/telehealth-licensing-requirements-and-interstate-compacts/>.

<sup>334</sup> The Uniform Emergency Volunteer Health Practitioner Act allows states that have adopted it to recognize out-of-state licenses for certain healthcare workers during a state of emergency.

<sup>335</sup> Field, R.I., Department of Health Management and Policy, Drexel University, *Regulation of Health Care in the United States: Complexity, Confrontation and Compromise*. Viewed at: <https://anaisihmt.com/index.php/ihmt/article/download/45/38/>.

<sup>336</sup> The Joint Commission is a non-profit tax-exempt organization that accredits health care organizations and programs. The majority of state governments recognize Joint Commission accreditation as a condition of licensure for the receipt of Medicaid and Medicare reimbursements. Member health care organizations are subject to a three-year accreditation cycle, and laboratories are surveyed every two years.

<sup>337</sup> As of 2021, 13 states had moratoriums on certain types of healthcare. National Conference of State Legislatures, *Certificate of Need (CON) State Laws*. Viewed at: <https://www.ncsl.org/research/health/con-certificate-of-need-state-laws.aspx>.

<sup>338</sup> U.S. legislation uses both terms and defines them in various laws and statutes.

<sup>339</sup> Section 1862(a)(4) of the Social Security Act and 42 C.F.R. 411.9. There are limited exceptions to the payment exclusion that do not involve telehealth. They allow Medicare to pay for inpatient hospital services and physician and ambulance services furnished in connection with covered inpatient hospital services outside



payment exclusion remains in effect during a public health emergency and is not affected by telehealth flexibilities put in place for the COVID-19 pandemic. Medicaid, as regulated by the Federal Government and implemented by the states may cover services while a beneficiary is abroad.<sup>340</sup> However, states are prohibited from making direct payments to foreign institutions or entities.

4.296. All U.S. states have some type of telehealth/telemedicine policy and regulation; however, they differ by state.<sup>341</sup> Telemedicine is generally limited by regulations in the type of healthcare service; by modality, i.e. using video, telephone, or other technologies; and by whether prescribing controlled substances is allowed, limited, or prohibited. Forty-nine states require that telemedicine be conducted by physicians licensed in the state where the patient is located.<sup>342</sup> Some states require special licenses or authorizations to conduct telemedicine specifically. Most states also have detailed rules on the practice of telemedicine by out-of-state physicians. As of 2021, all states except three required a full license or telemedicine permit in that state to perform telemedicine. However, some of these requirements were suspended due to temporary COVID-19 measures (see below).<sup>343</sup> Since 2020, many states are considering making some arrangements permanent. For example, in 2021, 43 state bills were enacted that addressed cross-state licensing.<sup>344</sup> A recent study by the industry on regulatory overload in the healthcare sector notes that hospitals, health systems, and post-acute-care providers must comply with at least 629 separate regulatory measures, across 9 domains at the federal level, leading to regulatory compliance costs of USD 39 billion annually.<sup>345</sup>

#### 4.4.4.2.1 Recent developments and issues

4.297. In March 2020, the CARES Act came into force in response to the pandemic and its impact on the economy and public health. In Part II, in support of healthcare providers, it provided funding and grants for telehealth networks and telehealth resource centers that serve medically underserved populations. Financial support of USD 100 billion was also allocated in the Act to healthcare providers who had to cut back on elective procedures, had forgone revenues, or otherwise faced financial hardship. These funds were established and distributed through the Provider Relief Fund (PRF). The Act also allowed for some accommodations or flexibilities to use telehealth instead of in-person meetings where there was a requirement under existing rules. Additionally, it provided USD 200 million to the FCC for telecommunications services and related items in support of the efforts of the provision of telehealth services.

4.298. In response to the CARES Act funding, an FCC Report and Order of April 2020 established the COVID-19 Telehealth Program in response to the CARES Act funding, which provides reimbursements to eligible health care providers for authorized expenses and services; these include telecommunications services and broadband connectivity services, information services, and connected devices/equipment.<sup>346</sup> In the same Report and Order, the FCC also set up a three-year Connected Care Pilot Program that provides USD 100 million funding for selected pilot projects covering 85% of eligible costs of broadband connectivity, network equipment, and information services necessary for connected care patient services to eligible low-income persons and to

of the United States in some instances. Specifically, Medicare may pay only if: (i) at the time of an emergency, the beneficiary is in Canada traveling between Alaska and another state without unreasonable delay and by the most direct route; (ii) the beneficiary is in the United States when there is an emergency, and the foreign hospital was closer to the site of the emergency than the nearest U.S. hospital that can treat their medical condition; (iii) the beneficiary lives in the United States, and the foreign hospital is closer to their home than the nearest U.S. hospital that can treat their medical condition, regardless of whether it is an emergency.

<sup>340</sup> Medicaid (2010), *The Affordable Care Act and SMDL #10-026*. Viewed at: <https://www.medicaid.gov/federal-policy-guidance/downloads/smd10026.pdf>.

<sup>341</sup> CCHP. Telehealth policies by state for rules of each jurisdiction can be viewed at: <https://www.cchpca.org/all-telehealth-policies/>.

<sup>342</sup> FSMB, *Telemedicine Policies*. Viewed at: [https://www.fsmb.org/siteassets/advocacy/key-issues/telemedicine\\_policies\\_by\\_state.pdf](https://www.fsmb.org/siteassets/advocacy/key-issues/telemedicine_policies_by_state.pdf).

<sup>343</sup> FSMB, *Regulations on the Practice of Telemedicine and Out-of-State Physicians*. Viewed at: <https://www.fsmb.org/siteassets/advocacy/regulatory/additional-policies/regulations-on-the-practice-of-telemedicine-and-out-of-state-physicians.pdf>.

<sup>344</sup> CCHP (2021), *2021 in Review: State Telehealth Policy Legislative Roundup*. Viewed at: <https://mailchi.mp/cchpca/2021-in-review-state-telehealth-policy-legislative-roundup>.

<sup>345</sup> AHA (2017), *Regulatory Overload. Assessing the Regulatory Burden on Health Systems, Hospitals and Post-acute Care Providers*, October 2017. Viewed at: <https://www.aha.org/system/files/2018-02/regulatory-overload-report.pdf>.

<sup>346</sup> FCC, *Report and Order, 20-44*. Viewed at: <https://www.fcc.gov/document/fcc-fights-COVID-19-200m-adopts-long-term-connected-care-study>.

veterans. In December 2020, the Consolidated Appropriations Act of 2021 provided additional funding of USD 250 million to the COVID-19 Telehealth Program. It also made other healthcare-changes through Division CC on Health Extenders by extending or making permanent the existing temporary COVID-19 provisions that allow Medicare beneficiaries who do not live in rural areas to receive mental health services provided via telehealth. The Paycheck Protection Program and Health Care Enhancement Act (PPHCEA) (P.L. 116-139) added additional funds, USD 75 billion, to the PRF.

4.299. The United States made unprecedented use of telehealth in 2020 during the COVID-19 pandemic.<sup>347</sup> Both federal and state regulators made use of emergency measures or otherwise waived existing provisions to allow greater use of telehealth and other measures to mitigate the situation caused by the pandemic. The Federal Government implemented a large number of temporary waivers and related policy measures that predominantly impact the federal programs Medicaid and Medicare. The Secretary of the Department of HHS, using Section 1135 of the Social Security Act (SSA), waived or temporarily modified provisions per the public health emergency declaration status. The waivers impacted most areas across the healthcare spectrum including many with a particular effect on professional services or the ability to provide healthcare through new or novel means, i.e. telemedicine (Box 4.2). While many of these measures were temporary, the Centers for Medicaid and Medicare Services have extended some telehealth services under Medicaid and Medicare unconditionally until the end of 2023. U.S. states have also responded by waiving or amending telemedicine rules to alleviate pressure on the healthcare system. These telehealth flexibilities are monitored by the Federation of State Medical Boards (FSMB). As at January 2022, 26 states had some form of telehealth waiver in place due to the pandemic.<sup>348</sup>

#### **Box 4.2 Selected HHS federal waivers and policy changes due to COVID-19 impacting supply of medical services**

<b>Medicare telehealth waivers</b>	
Patient location	Provision to offer telehealth services to patients located in their homes and outside of designated areas
Practicing across state lines	Allowing health care providers to furnish telehealth services using communications technology where the patient is located, subject to state requirements
Patient-provider relationship	Providers may see new and established patients using communications technology
Types of telehealth services covered	Expands the services that can be provided via telehealth. Of the 272 services authorized in 2022, 98 were added temporarily due to the pandemic
Eligible telehealth providers	Eligible Medicare providers are eligible to bill for telehealth
<b>Medical staff</b>	
Right to continue practicing for those whose privileges will expire	42 C.F.R. 482.22(a)(1)-(4) is waived
Right to practice prior to full medical governing body approval	42 C.F.R. 482.22(a)(1)-(4) is waived
<b>Public Readiness and Emergency Preparedness Act (PREP Act) (P.L. 109 148)</b>	
Telehealth cross-state licensing	Allows cross-state licensing of healthcare personnel using telehealth to administer COVID-19-covered countermeasures

Source: HHS, Medicare and Medicaid Policies. Viewed at: <https://telehealth.hhs.gov/providers/policy-changes-during-the-COVID-19-public-health-emergency/medicare-and-medicaid-policies/#:~:text=The%20Centers%20for%20Medicare%20%26%20Medicaid%20Services%20announced%20a%20waiver%20allowing,home%2C%20even%20across%20state%20lines>; CMS, *Coronavirus Waivers & Flexibilities*. Viewed at: <https://www.cms.gov/about-cms/emergency-preparedness-response-operations/current-emergencies/coronavirus-waivers>; and CCHP, *Federal Telehealth Laws*. Viewed at: <https://www.cchpca.org/federal/>.

<sup>347</sup> CCHP (2021), *2021 in Review: State Telehealth Policy Legislative Roundup*. Viewed at: <https://mailchi.mp/cchpca/2021-in-review-state-telehealth-policy-legislative-roundup>.

<sup>348</sup> FSMB, *U.S. States and Territories Modifying Licensure Requirements for Physicians in Response to COVID-19*. Viewed at: <https://www.fsmb.org/siteassets/advocacy/pdf/state-emergency-declarations-licensure-requirementsCOVID-19.pdf>.

4.300. The regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, as amended (collectively, HIPAA) governs the privacy and security of health information for certain medical entities, in particular, patient protected health information (PHI). Under HIPAA, all U.S. healthcare institutions and most businesses supplying services for them, e.g. treatment providers, billing organizations, and vendors, must be HIPAA compliant.<sup>349</sup> Foreign providers of these services should ensure HIPAA compliance. How HIPAA may apply to certain cases, such as U.S. persons abroad, international research projects, and clinical trials, is still not entirely clear, although they are not in principle exempt from privacy requirements.<sup>350</sup> In general, privacy and data sharing of health information has become a growing issue, in particular as other jurisdictions have different or conflicting rules. One recent paper suggests a "sector-specific" approach be taken by the United States to facilitate international transfers of health data, i.e. a HIPAA Shield, in particular between the United States and the European Union to facilitate international research.<sup>351</sup>

#### 4.4.4.2.2 Trade

4.301. U.S. trade in professional medical and health services is relatively small compared to other service sectors and also with respect to the size of the domestic market but it has exhibited steady growth in recent years. Analysis of this trade is hampered by definitional aspects and the overlap of medical professional and health services and by the suppression of data, but nevertheless some general trends can be presented. Cross-border trade in health services and the U.S. trade surplus in this sector appear to have grown between 2015-20. On a regional basis, most U.S. cross-border trade in the sector has been with Europe. Health services' trade is reportedly dominated by health-related travel services and telemedicine. For mode 4, certain impediments exist, such as licensing requirements that reportedly prevent access of foreign health practitioners to supply the U.S. market.<sup>352</sup> Services provided by mode 1, telemedicine, while allowed in principle, may be negatively impacted by patient data and privacy laws. A recent report by the World Bank suggests two main policy initiatives to increase trade in health services: to allow more healthcare workers to cross borders through special visas or temporary work permits (mode 4); and to increase the scope for cross-border telemedicine (mode 1).<sup>353</sup>

4.302. As is the case with many U.S. services sectors, health services are mainly traded through affiliates (mode 3), with much less trade in modes 1 and 4 (Table 4.18). The United States has a significant trade deficit of cross-border health services through affiliates, as imports are approximately three times the level of exports. This is due to foreign healthcare companies investing and expanding in the U.S. market more than U.S. firms have expanded abroad. The expansion of U.S. medical institutions abroad has frequently been in the form of medical schools or training facilities for foreign health workers, rather than by establishing medical treatment facilities, thus exporting education services.

4.303. The examination of health-related travel statistics as U.S. persons travel abroad for healthcare, or foreign patients travel to the U.S. for treatment, indicates a significant U.S. trade surplus. Although these figures are overestimated as they include travel services, they, nevertheless, can be examined for general trends. Since 2015, there was a steady growth in imports and exports as both have increased by about the same amount until 2020 when there was a precipitous fall due

<sup>349</sup> HIPAA defines "covered entities" that include health plans, healthcare providers, healthcare clearinghouses, and business associates and their sub-contractors, e.g. cloud service providers, attorneys, CPAs, and transcriptionists. HHS, *Covered Entities and Business Associates*. Viewed at: <https://www.hhs.gov/hipaa/for-professionals/covered-entities/index.html>.

<sup>350</sup> The treatment of foreign national beneficiaries abroad by DOD or other federal agencies is, however, exempt. HHS, *Appendix H: Clarify in Guidance that IRB Alteration of HIPAA's Authorization Requirement May Be Sought and Granted for International Research*. Viewed at: <https://www.hhs.gov/ohrp/sacrp-committee/recommendations/2004-september-27-letter-appendix-h/index.html>.

<sup>351</sup> Bradford, L., Aboy, M., and Liddell, K. (2020), "International transfers of health data between the EU and USA: a sector-specific approach for the USA to ensure an 'adequate' level of protection", *Journal of Law and the Biosciences*, Vol. 7, Issue 1, January-June 2020. Viewed at: <https://academic.oup.com/jlb/article/7/1/lsaa055/5871850>.

<sup>352</sup> USITC (2021), *Recent Trends in U.S. Services Trade: 2018 Annual Report*, Pub. No. 5192. Viewed at: <https://usitc.gov/publications/332/pub4789.pdf>.

<sup>353</sup> World Bank (2020), *Trade and COVID-19 Guidance Note, Health Services Trade and the COVID-19 Pandemic*. Viewed at: <https://documents1.worldbank.org/curated/en/804331588657997511/pdf/Health-Services-Trade-and-the-COVID-19-Pandemic.pdf>.

to the COVID-19 pandemic. In 2020, imports and exports were nearly identical, indicating that incoming health-related travel fell more than outgoing travel.

4.304. According to a study that surveys hospital members that cater to inbound medical tourists, over 58,000 foreign tourists visited the United States for treatment and generated USD 2.9 billion in revenues in 2018-19.<sup>354</sup> This survey accounted for just 51 hospitals, thus it significantly underrepresents the market size, as many other hospitals and healthcare facilities were not included, but nevertheless gives some estimate of the size of the sector.

**Table 4.18 Trade in health services, 2015-20**

(USD million)

	2015	2016	2017	2018	2019	2020
<b>Modes 1 and 4</b>						
Exports						
Other personal, cultural, and recreational services	3,532	3,837	3,454	2,960	3,662	5,764
Health services	1,005	(D)	(D)	(D)	(D)	1,339
Imports						
Other personal, cultural, and recreational services	1,479	1,647	1,877	1,772	2,324	2,684
Health services	135	183	146	(D)	588	(D)
Balance						
Other personal, cultural, and recreational services	2,053	2,190	1,577	1,188	1,338	3,080
Health services	870	..	..	..	..	..
Exports	980	1,030	1,098	1,126	1,174	271
Imports	526	584	639	677	716	235
Balance	454	446	459	453	458	36
Health care and social services supplied to Foreign persons by U.S. MNEs through their MOUSAs	6,827	6,738	6,096	6,621	(D)	..
Health care and social services supplied to U.S. persons by Foreign MNEs through their MOUSAs,	14,100	14,652	17,427	18,744	19,847	..

(D) Suppressed to avoid the disclosure of data of individual companies.

.. Not available.

MNEs: Multinational enterprises.

MOUSAs: Majority-owned U.S. affiliates.

Source: Bureau of Economic Analysis, interactive data tables.

#### 4.4.4.3 GATS commitments

4.305. The United States' GATS schedule includes some commitments on hospital and other health care facilities in Section 8 on health services. There are no commitments on professional services and on medical and related professions, and no horizontal commitments are directly applicable to the sector. The schedule contains a horizontal commitment with respect to the temporary entry and stay of intra-corporate transferees that includes "specialists". The commitment on hospitals and other health care facilities concerns direct ownership, management, and operation by contract of hospital and other health care facilities on a "for fee" basis. In terms of national treatment, healthcare reimbursed by the Government is limited to U.S. facilities, i.e. the payment of healthcare via Medicaid and Medicare is limited to healthcare establishments in the United States. In addition, needs-based quantitative limits may be imposed and at the sub-federal level; the States of New York and Michigan impose additional requirements.

#### 4.4.4.4 Provisions in FTAs

4.306. The USMCA introduced no changes to U.S. service commitments on medical professionals or healthcare; however, it did introduce commitments on data transfer that potentially impact the healthcare sector. Provisions in the chapter on digital trade prevent restrictions on data transfers across borders, including personal information, if it is for the conduct of the business of a covered person; however, there are exceptions for legitimate public policy objectives.<sup>355</sup> The USMCA, like NAFTA, contains rights with respect to the temporary entry of business persons, with a special

<sup>354</sup> U.S. Cooperative for International Patient Programs (USCIPP), *USCIPP Annual Market Update: 2018-2019*. Viewed at: <https://www.laingbuissonnews.com/imtj/news-imtj/uscipp-annual-market-update-2018-2019/>.

<sup>355</sup> USMCA, Chapter 19, Digital Trade. Viewed at: <https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/19-Digital-Trade.pdf>.

appendix outlining the education and credentials needed to work as professionals.<sup>356</sup> The medical and allied professions section of the appendix contains 12 professional categories, e.g. dentist, pharmacist, and medical laboratory technologist; the appendix has the same provisions as in NAFTA. The FTAs with Chile and Singapore cover temporary entry of business professionals, but these are not specific to medical professionals.

#### 4.4.5 E-commerce

4.307. The U.S. retail e-commerce is the second largest in the world with an estimated revenue of USD 870.8 billion in 2021.<sup>357</sup> In the United States, e-commerce accounts for approximately 12.5% of the trade of physical goods, i.e. business-to-business and business-to-consumer sales considered together. A small number of online platforms (Amazon, Facebook, eBay, Walmart) concentrate several hundred million monthly visitors to their websites; online platforms have also specialized themselves in different categories of products according to their business strategies. Licensed as a money transmitter at the state level, PayPal is the most used online payment service in the United States.

4.308. Currently, online platforms do not uniquely focus on sales of physical products, but also advertise the provision of services – to be delivered physically or remotely, and the delivery of other digital services, such as streaming, digital marketing, and cloud computing.

4.309. Various aspects of e-commerce are subject to federal and state measures in the United States. U.S. laws seek to offer online consumers levels of protection similar to in-person consumers with regard to the use of their personal information, advertising, intellectual property, cybercrime, taxation, and online speech.

4.310. The enforcement authority of the Federal Trade Commission (FTC) over unfair and deceptive practices in commerce extends to various aspects of electronic transactions such as online advertising, mobile and in-app payments, online medical claims, and consumer privacy. Regarding e-commerce activities, in 2020 and 2021, the FTC conducted 24 enforcement actions for alleged unfair or deceptive privacy and data security practices. The Restore Online Shoppers' Confidence Act (P.L. 111-345) bans certain online negative option features<sup>358</sup> unless sellers make appropriate disclosures, get proper consent, and provide simple ways to stop recurring charges. The FTC also takes actions to counter misleading online advertisements on the basis of regulations governing conventional advertisements. Commercial messaging through email, not only bulk emails, must comply with requirements established by the CAN-SPAM Act<sup>359</sup>, including providing an opt-out option; violations may carry penalties and they can amount up to USD 46,517 for each separate non-complying email.<sup>360</sup>

4.311. The Electronic Signatures in Global and National Commerce Act of 2000 (P.L. 106-229) provides that generally an electronic signature, contract, or other record may not be denied legal effect solely because it is in electronic form. The Uniform Electronic Transactions Act aimed at harmonizing state laws in this regard and provided a model law that can be adopted by states.<sup>361</sup> The Internet Tax Freedom Act (P.L. 105-277) prohibits state and local taxation of Internet access and multiple and discriminatory taxation on e-commerce; this prohibition has been indefinitely

<sup>356</sup> USMCA, Chapter 16, Temporary Entry for Business Persons, Annex 16-A, Section D: Professionals. Viewed at: [https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/16\\_Temporary\\_Entry.pdf](https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/16_Temporary_Entry.pdf).

<sup>357</sup> U.S. Census Bureau (2022), *Quarterly Retail E-Commerce Sales 4th Quarter 2021*. Viewed at: [https://www.census.gov/retail/mrts/www/data/pdf/ec\\_current.pdf](https://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf).

<sup>358</sup> The term "negative option feature" is defined as, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer. 16 C.F.R. 310.2(w).

<sup>359</sup> The Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act) (P.L. 108-187) sets the rules for commercial email, establishes requirements for commercial messages, and spells out penalties for violations.

<sup>360</sup> FTC, *CAN-SPAM Act: A Compliance Guide for Business*. Viewed at: <https://www.ftc.gov/tips-advice/business-center/guidance/can-spam-act-compliance-guide-business>. Some specific conducts, such as the harvesting of email addresses, may be subject to criminal penalties, including imprisonment.

<sup>361</sup> The Uniform Electronic Transactions Act (UETA) is one of the several United States Uniform Acts proposed by the National Conference of Commissioners on Uniform State Laws. As of 2021, 49 states, the District of Columbia, and the U.S. Virgin Islands have passed laws adopting this model.



extended by the Trade Facilitation and Trade Enforcement Act (P.L. 114-125). However, regarding taxation on sales online, the states may compel online retailers to charge sales tax regardless of a physical presence in the state<sup>362</sup>; small sales exceptions for sales tax registration depend on economic thresholds that vary substantially across U.S. states.

4.312. Section 230 of the Communications Decency Act of 1996 (47 U.S.C. 230) provides immunity to interactive computer service users and providers, including online platforms such as Facebook and Twitter, from civil liability based on third-party content and for the removal of content in certain circumstances.<sup>363</sup> Section 512 of the Digital Millennium Copyright Act (P.L. 105-304) shields online service providers from monetary liability and limits other forms of liability for copyright infringement – referred to as safe harbors – in exchange for cooperating with copyright owners to expeditiously remove infringing content if the online service providers meet certain conditions.

4.313. There is no comprehensive federal consumer data protection and privacy regulation in the United States; however, there are sector-specific federal laws. For instance, HIPAA (P.L. 104-191) requires covered entities and their business associates to safeguard protected health information they collect or process. HIPAA prohibits the sale of protected health information by a covered entity or business associate without the prior written consent of the patient. The Gramm-Leach-Bliley Act (P.L. 106-102) requires financial institutions to inform consumers regarding their privacy practices, have processes in place to secure consumer financial information, and provide opt-out options if the institution shares consumer financial information with non-affiliated third parties. In addition, several states, including California and Virginia, have adopted horizontal data protection laws.

4.314. The country code top-level domain (ccTLD) for the United States, ".us", can only be granted to U.S. citizens, U.S. permanent residents, or persons whose primary domicile is the United States; or to entities or organizations incorporated in the United States or having a bona fide presence in the country. Most U.S.-based websites use the ".com" TLD and do not use a ccTLD.

4.315. The United States keeps a decentralized, market-driven approach to regulate digital services through policies, regulations, and laws on specific issues and/or sectors that together support the progression of digital transformation. Although there is no general consensus on the contours of the digital economy or of digital trade, concerns regarding data security as well as an open, non-discriminatory, and fair competition in the digital economy have been rising.

4.316. To counter counterfeit goods, narcotics, and contraband sent through the smaller express carrier or international mail services sold through online platforms, E.O. 13904, Ensuring Safe and Lawful E-Commerce for United States Consumers, Businesses, Government Supply Chains, and Intellectual Property Rights Holders, prescribed the establishment of an importer of record program from which violators of import requirements are to be excluded.<sup>364</sup> In October 2020, the Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers Beyond Borders Act of 2006 (U.S. SAFE WEB Act of 2006) (P.L. 109-455), which authorizes the FTC to take actions against cross-border fraud and deception occurring over the Internet, was reauthorized until FY2027 by P.L. 116-173.

4.317. To address competition issues, especially below-cost remuneration for delivery of international packets, the United States encouraged the revision of remuneration rates for bulky letters and small packets at the Universal Postal Union (UPU), whose 2019 Extraordinary Congress approved a self-declaration mechanism for such rates for the United States from July 2021.<sup>365</sup>

4.318. As part of the responses to cyber threats, the Cybersecurity and Infrastructure Security Agency (CISA) was established in November 2018 by the Cybersecurity and Infrastructure Security Agency Act of 2018 (P.L. 115-278). CISA's responsibilities include leading cybersecurity and critical infrastructure security programs, operations, and associated policy. Since its establishment, CISA

<sup>362</sup> Supreme Court of the United States, Syllabus, *South Dakota v. Wayfair, Inc., et al., Certiorari to the Supreme Court of South Dakota*, No. 17–494. Viewed at: [https://www.supremecourt.gov/opinions/17pdf/17-494\\_j4el.pdf](https://www.supremecourt.gov/opinions/17pdf/17-494_j4el.pdf).

<sup>363</sup> Section 230 may not protect users and providers, for example, if they are responsible for the creation or development of content, in whole or in part, though they may ultimately not be liable for underlying claims for other reasons (e.g. lack of causation). Section 230 also contains some statutory exceptions.

<sup>364</sup> *Federal Register* (2020), Vol. 85, No. 24, 5 February, pp. 6725-6729. Viewed at: <https://www.federalregister.gov/d/2020-02439>.

<sup>365</sup> UPU, *Terminal Dues*. Viewed at: <https://www.upu.int/en/Postal-Solutions/Programs-Services/Remuneration/Terminal-Dues>.

has, *inter alia*, focused on election security, mitigated supply chain risks from cyber threats, protected the .gov domain, and provided telework guidance during the pandemic, among others.<sup>366</sup>

4.319. Following E.O. 13636, Improving Critical Infrastructure Cybersecurity<sup>367</sup>, in 2013 the National Institute of Standards and Technology (NIST) developed a Cybersecurity Framework guiding the (voluntary) use of better cybersecurity practices by both governmental and non-governmental actors. In April 2018, an updated version of the Framework was made available. In February 2022, NIST requested stakeholders to assist in evaluating and improving its resources, including potential updates to the Cybersecurity Framework.<sup>368</sup> Recognizing the limitations of small businesses and their exposure to cyber threats, the NIST Small Business Cybersecurity Act (P.L. 115-236) required NIST to consider SMEs' characteristics while developing standards to reduce cyber risks; NIST was also required to tailor its cybersecurity guidance documents and resources to SMEs.

4.320. In March 2019, FTC initiated a study on privacy practices among the six largest broadband providers whose findings were published in October 2021.<sup>369</sup> The FTC report found that Internet service providers collected and used data in ways that raise several privacy concerns for consumers; it underscored the importance of restricting such practices. In October 2019, FTC brought up its first case against stalking apps on mobiles, which provided third-party access to sensitive data about device users (physical movements, online activities, data collection).<sup>370</sup>

4.321. In January 2020, NIST launched a Privacy Framework, which is a voluntary tool helping organizations identify and manage privacy risks and allowing them to continue building innovative products and services while protecting individuals' privacy.<sup>371</sup> In December 2021, NTIA hosted three listening sessions concerning personal data (privacy, equity, and civil rights) to gather information on the ways in which commercial data flows of personal information can lead to disparate impact and outcomes for marginalized or disadvantaged communities.

4.322. Three E.O.s issued in August 2020 and January 2021 took actions to limit the functionalities of a dozen mobile applications identified as posing a threat to the privacy of U.S. citizens and residents.<sup>372</sup> These decisions were later revoked by E.O. 14034 in June 2021<sup>373</sup>; however, this directive required instead that, not later than 180 days after the date of the order, the Secretary of Commerce provide a report to the Assistant to the President and National Security Advisor recommending additional executive and legislative actions to address the risk associated with connected software applications that are designed, developed, manufactured, or supplied by persons owned or controlled by, or subject to the jurisdiction or direction of, a foreign adversary. The

<sup>366</sup> CISA, *2020 Year in Review*. Viewed at:

[https://www.cisa.gov/sites/default/files/publications/CISA\\_Year\\_in\\_Review\\_2020\\_Final.pdf](https://www.cisa.gov/sites/default/files/publications/CISA_Year_in_Review_2020_Final.pdf).

<sup>367</sup> *Federal Register* (2013), Vol. 78, No. 33, pp. 11737-11744. Viewed at:

<https://www.federalregister.gov/d/2013-03915>.

<sup>368</sup> NIST, Evaluating and Improving NIST Cybersecurity Resources: The Cybersecurity Framework and Cybersecurity Supply Chain Risk Management, *Federal Register* (2022), Vol. 87, No. 35, 22 February, pp. 9579-9581. Viewed at: <https://www.federalregister.gov/d/2022-03642>.

<sup>369</sup> FTC (2021), *A Look at What ISPs Know About You: Examining the Privacy Practices of Six Major Internet Service Providers*. Viewed at: [https://www.ftc.gov/system/files/documents/reports/look-what-isps-know-about-you-examining-privacy-practices-six-major-internet-service-providers/p195402\\_isp\\_6b\\_staff\\_report.pdf](https://www.ftc.gov/system/files/documents/reports/look-what-isps-know-about-you-examining-privacy-practices-six-major-internet-service-providers/p195402_isp_6b_staff_report.pdf).

<sup>370</sup> FTC. Viewed at: <https://www.ftc.gov/enforcement/cases-proceedings/172-3118/retina-x-studios-llc-matter>.

<sup>371</sup> The Privacy Framework is part of a broader privacy engineering program at NIST.

<sup>372</sup> E.O. 13942, Addressing the Threat Posed by TikTok, and Taking Additional Steps to Address the National Emergency With Respect to the Information and Communications Technology and Services Supply Chain, *Federal Register* (2020), Vol. 85, No. 155, 11 August, pp. 48637-48639. Viewed at: <https://www.federalregister.gov/d/2020-17699>; E.O. 13943, Addressing the Threat Posed by WeChat, and Taking Additional Steps to Address the National Emergency With Respect to the Information and Communications Technology and Services Supply Chain, *Federal Register* (2020), Vol. 85, No. 155, 11 August, pp. 48641-48643. Viewed at: <https://www.federalregister.gov/d/2020-17700>; and E.O. 13971, Addressing the Threat Posed by Applications and Other Software Developed or Controlled by Chinese Companies, *Federal Register* (2021), Vol. 86, No. 5, 8 January, pp. 1249-1251. Viewed at: <https://www.federalregister.gov/d/2021-00305>.

<sup>373</sup> E.O. 14034, Protecting Americans' Sensitive Data From Foreign Adversaries, *Federal Register* (2021), Vol. 86, No. 111, 11 June, pp. 31423-31426. Viewed at: <https://www.federalregister.gov/d/2021-12506>.

Department of Commerce continues to work with the National Security Council and the Assistant to the President and National Security Advisor on those recommendations.

4.323. The Internet of Things (IoT) Cybersecurity Improvement Act of 2020 (P.L. 116-207) required NIST to develop and publish standards and guidelines for the Federal Government on the appropriate use and management of IoT devices. The OMB must update policies and principles to be consistent with standards and guidelines established by NIST. Subsequently, NIST developed IoT-specific guidelines for federal agencies and a collection of technical and non-technical cybersecurity capabilities required to implement the cybersecurity controls.<sup>374</sup>

4.324. At the multilateral level, the United States is actively engaged in e-commerce issues in the WTO. It is a party to the expanded Information Technology Agreement, participates in WTO programs covering certain aspects of e-commerce and digital trade, and adheres to the WTO moratorium on imposing customs duties on electronic transmissions. With 85 other parties, the United States participates in the ongoing plurilateral negotiation on e-commerce aiming to establish a global framework for a global digital market.

4.325. Since 2003, all trade agreements signed by the United States include a chapter aimed at facilitating its development of cross-border e-commerce. In line with the approach adopted for its domestic market, the priorities for U.S. trade policy concerning e-commerce were set in the Trade Priorities and Accountability Act of 2015 (P.L. 114-26), or Trade Promotion Authority (TPA). The recently signed USMCA, includes a chapter on digital trade that contains broad commitments on digital trade.<sup>375</sup> Similar provisions are also reflected in the U.S.-Japan Digital Trade Agreement, an executive agreement entered into force in January 2020.

4.326. The United States participates in the APEC Cross Border Privacy Rules (CBPR) system<sup>376</sup>, which is recognized in the USMCA as a mechanism to facilitate cross-border information transfers while protecting personal information. Similarly, the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (IF) served as a venue for negotiations between 141 parties on a multilateral solution to address the tax challenges arising from the digitalization of the economy.<sup>377</sup> In 2019, the United States initiated several Section 301 investigations related to the implementation of digital services taxes on U.S. providers by some trading partners; in November 2021 the United States agreed to suspend the proposed application of duties to seven trading partners during the interim period before Pillar 1 of the IF is fully implemented.

4.327. The United States also works on a bilateral basis to facilitate the development and deployment of new technologies. For example, working groups of the U.S.-EU Trade and Technology Council are looking at data governance and tech platform regulation, misuse of technology threatening security and human rights, and information and communications technology and services (ICTS) security and competitiveness.

---

<sup>374</sup> NIST, NIST Cybersecurity for IoT Program, *IoT Device Cybersecurity Guidance for the Federal Government: Establishing IoT Device Cybersecurity Requirements*. Viewed at: <https://www.nist.gov/itl/applied-cybersecurity/nist-cybersecurity-iot-program/sp-800-213-series>; and NIST Special Publication 800-213A, *IoT Device Cybersecurity Guidance for the Federal Government: IoT Device Cybersecurity Requirement Catalog*. Viewed at: <https://doi.org/10.6028/NIST.SP.800-213A>.

<sup>375</sup> Provisions in the agreement cover, *inter alia*, prohibitions on customs duties, non-discrimination, restrictions on cross-border data flows and on localization requirements, forced disclosure of source code or algorithms, technology transfer, access to proprietary cryptography information, electronic signatures, authentication, and IPR protection.

<sup>376</sup> The APEC CBPR system is a multilateral framework establishing common privacy standards and mutual recognition of certifications issued in different jurisdictions.

<sup>377</sup> OECD, *International Community Strikes a Ground-Breaking Tax Deal for the Digital Age*. Viewed at: <https://www.oecd.org/tax/international-community-strikes-a-ground-breaking-tax-deal-for-the-digital-age.htm>.

## 5 APPENDIX TABLES

Table A1.1 Merchandise exports by HS section and main chapter, 2017-21

(USD million and %)

Description	2017	2018	2019	2020	2021
Total exports	1,545,810	1,665,303	1,644,276	1,430,254	1,753,137
	(% of total exports)				
1 – Live animals; animal products	1.8	1.8	1.8	2.1	2.1
02. Meat and edible meat offal.	1.1	1.0	1.1	1.3	1.3
04. Dairy produce; birds' eggs; natural honey; edible products of animal origin.	0.3	0.3	0.3	0.4	0.4
03. Fish and crustaceans, molluscs and other aquatic invertebrates.	0.3	0.3	0.3	0.3	0.3
2 – Vegetable products	4.4	4.0	3.9	5.1	5.0
12. Oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruit.	1.7	1.3	1.5	2.2	1.9
10. Cereals.	1.2	1.3	1.0	1.4	1.7
08. Edible fruit and nuts; peel of citrus fruit, etc.	1.0	0.9	0.9	1.0	0.9
3 – Animal or vegetable fats and oils, etc.	0.2	0.2	0.2	0.3	0.2
4 – Prepared foodstuffs; beverages, spirits, vinegar; tobacco	2.8	2.8	2.7	3.0	2.8
23. Residues and waste from the food industries.	0.6	0.7	0.6	0.8	0.8
21. Miscellaneous edible preparations.	0.6	0.5	0.6	0.6	0.6
22. Beverages, spirits and vinegar.	0.5	0.5	0.5	0.6	0.5
5 – Mineral products	9.6	12.2	12.8	11.5	14.3
27. Mineral fuels, mineral oils, etc.	9.0	11.6	12.1	10.8	13.7
6 – Products of the chemical or allied industries	10.3	10.3	10.6	11.6	12.1
30. Pharmaceutical products.	2.9	2.9	3.3	3.8	4.4
29. Organic chemicals.	2.3	2.4	2.4	2.4	2.4
38. Miscellaneous chemical products.	1.8	1.8	1.9	2.2	2.1
33. Essential oils and resinoids; perfumery, cosmetic or toilet preparations.	0.8	0.8	0.8	0.9	0.8
7 – Plastics and articles thereof; rubber, etc.	4.9	4.8	4.8	5.0	5.0
39. Plastics and articles thereof.	4.0	4.0	3.9	4.2	4.2
8 – Raw hides and skins, leather, furskins and articles thereof; travel goods, handbags; articles of animal gut	0.3	0.2	0.2	0.2	0.2
9 – Wood and articles of wood; wood charcoal; cork and articles of cork	0.4	0.5	0.5	0.5	0.6
10 – Pulp of wood or of other fibrous cellulosic material; paper and paperboard and articles thereof	1.9	1.8	1.7	1.8	1.7
48. Paper and paperboard; articles of paper pulp, of paper or of paperboard.	1.0	1.0	0.9	1.0	0.9
47. Pulp of wood or of other fibrous cellulosic material; recovered paper.	0.6	0.6	0.5	0.5	0.6
11 – Textiles and textile articles	1.7	1.6	1.6	1.6	1.5
52. Cotton.	0.5	0.5	0.5	0.5	0.4
12 – Footwear, headgear, umbrellas; prepared feathers and articles; artificial flowers	0.1	0.1	0.1	0.1	0.1
13 – Articles of stone, plaster, cement, etc.; ceramic products; glass and glassware	0.8	0.7	0.7	0.7	0.7
14 – Natural or cultured pearls, precious or semi-precious stones, precious metals	3.9	3.8	3.6	4.1	4.6
15 – Base metals and articles of base metal	4.4	4.4	4.1	4.0	4.3
73. Articles of iron or steel.	1.2	1.2	1.1	1.1	1.1
72. Iron and steel.	1.0	1.0	0.9	0.9	1.1
76. Aluminium and articles thereof.	0.7	0.8	0.7	0.7	0.7
16 – Machinery and mechanical appliances; electrical equipment; television image and sound recorders	24.3	23.4	23.1	24.2	22.5
84. Nuclear reactors, boilers, machinery and mechanical appliances.	13.1	12.8	12.5	12.8	11.9
85. Electrical machinery and equipment; sound recorders and reproducers.	11.3	10.6	10.5	11.4	10.6
17 – Vehicles, aircraft, vessels, etc.	9.4	8.7	9.1	8.3	7.8
87. Vehicles other than railway or tramway rolling-stock, parts and accessories.	8.4	7.9	8.1	7.4	7.0
88. Aircraft, spacecraft, and parts thereof.	0.7	0.5	0.6	0.7	0.5
18 – Optical, photographic, precision, medical or surgical instruments; clocks and watches; musical instruments	5.5	5.5	5.7	6.0	5.4
90. Optical, photographic, cinematographic, measuring, precision, medical instruments, etc.	5.4	5.4	5.5	5.8	5.2
19 – Arms and ammunition	0.3	0.3	0.4	0.3	0.2
20 – Miscellaneous manufactured articles	1.3	1.2	1.2	1.1	1.0
94. Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings.	0.7	0.7	0.6	0.6	0.5
21 – Works of art, collectors' pieces and antiques	0.8	0.9	0.8	0.6	0.5
Other	10.8	10.8	10.6	8.0	7.5

Source: WTO Secretariat calculations, based on UN Comtrade database.

**Table A1.2 Merchandise imports by HS section and main chapter, 2017-21**

(USD million and %)

Description	2017	2018	2019	2020	2021
Total	2,405,277	2,611,432	2,567,492	2,405,382	2,932,976
	(% of total imports)				
1 – Live animals; animal products	1.4	1.3	1.3	1.4	1.5
03. Fish and crustaceans, molluscs and other aquatic invertebrates.	0.7	0.7	0.7	0.7	0.8
02. Meat and edible meat offal.	0.3	0.3	0.3	0.4	0.4
2 – Vegetable products	2.0	1.9	2.0	2.1	2.0
08. Edible fruit and nuts; peel of citrus fruit or melons.	0.8	0.7	0.8	0.8	0.8
07. Edible vegetables and certain roots and tubers.	0.4	0.4	0.4	0.5	0.5
3 – Animal or vegetable fats and oils	0.3	0.3	0.3	0.3	0.3
4 – Prepared foodstuffs; beverages, spirits and vinegar; tobacco	2.7	2.8	2.9	3.2	3.1
22. Beverages, spirits and vinegar.	1.0	1.0	1.1	1.1	1.1
5 – Mineral products	8.8	9.6	8.5	5.7	7.9
27. Mineral fuels, mineral oils and products of their distillation.	8.5	9.3	8.2	5.4	7.6
6 – Products of the chemical or allied industries	8.3	9.0	9.6	10.7	10.0
30. Pharmaceutical products.	4.0	4.4	5.0	5.8	5.1
29. Organic chemicals.	1.9	2.1	2.1	2.3	2.2
38. Miscellaneous chemical products.	0.6	0.6	0.6	0.8	0.7
7 – Plastics and articles thereof; rubber and articles thereof	3.4	3.5	3.5	3.8	4.2
39. Plastics and articles thereof.	2.3	2.4	2.4	2.6	2.8
40. Rubber and articles thereof.	1.2	1.1	1.2	1.2	1.4
8 – Raw hides and skins, leather, furskins; etc.	0.6	0.6	0.5	0.4	0.5
9 – Wood and articles of wood; wood charcoal; cork and articles of cork	0.6	0.6	0.8	1.0	1.3
44. Wood and articles of wood; charcoal.	0.5	0.6	0.8	0.9	1.2
10 – Pulp of wood or of other fibrous cellulosic material; paper and paperboard, etc.	1.0	1.0	1.0	0.9	0.9
48. Paper and paperboard	0.7	0.7	0.7	0.7	0.6
11 – Textiles and textile articles	4.7	4.6	4.7	4.9	4.4
61. Articles of apparel and clothing accessories, knitted or crocheted.	1.9	1.8	1.9	1.6	1.8
62. Articles of apparel and clothing accessories, not knitted or crocheted.	1.6	1.5	1.5	1.4	1.2
12 – Footwear, headgear, umbrellas; prepared feathers and articles; artificial flowers	1.3	1.3	1.3	1.1	1.2
13 – Articles of stone, plaster, cement, etc.; ceramic products; glass and glassware	1.0	0.9	0.9	0.9	1.0
14 – Natural or cultured pearls, precious or semi-precious stones, precious metals	2.4	2.3	2.2	4.4	3.1
15 – Base metals and articles of base metal	5.5	5.6	5.1	4.7	5.8
73. Articles of iron or steel.	1.6	1.7	1.6	1.5	1.6
72. Iron and steel.	1.2	1.2	1.0	0.8	1.3
76. Aluminium and articles thereof.	1.0	0.9	0.9	0.8	1.0
16 – Machinery and mechanical appliances; electrical equipment; etc.	29.3	28.8	28.5	29.3	28.8
84. Nuclear reactors, boilers, machinery and mechanical appliances.	14.5	14.8	14.8	15.0	14.6
85. Electrical machinery and equipment; sound recorders and reproducers.	14.8	14.1	13.7	14.3	14.2
17 – Vehicles, aircraft, vessels and associated transport equipment	13.7	13.1	13.6	11.9	10.7
87. Vehicles other than railway or tramway rolling-stock, parts and accessories.	12.2	11.7	12.1	10.6	9.7
88. Aircraft, spacecraft, and parts thereof.	1.3	1.2	1.4	1.2	0.9
18 – Optical, photographic, precision, medical or surgical instruments; clocks and watches; musical instruments	3.8	3.8	4.0	4.0	3.9
19 – Arms and ammunition	0.1	0.1	0.1	0.2	0.2
20 – Miscellaneous manufactured articles	4.4	4.3	4.2	4.5	4.8
94. Furniture; bedding, mattresses, etc.	2.8	2.8	2.6	2.7	2.8
95. Toys, games and sports requisites; etc.	1.4	1.3	1.3	1.5	1.8
21 – Works of art, collectors' pieces, antiques	0.4	0.5	0.5	0.2	0.3
Other	4.1	4.1	4.4	4.3	4.1

Source: WTO Secretariat calculations, based on UN Comtrade database.



**Table A1.3 Merchandise exports and by trading partner, 2017-21**

(USD million and %)

Description	2017	2018	2019	2020	2021
Total exports	1,545,810	1,665,303	1,644,276	1,430,254	1,753,137
	(% of exports)				
Americas	43.7	43.8	43.2	41.8	43.2
Canada	18.3	18.0	17.8	17.8	17.5
Mexico	15.8	15.9	15.6	14.9	15.8
Brazil	2.4	2.4	2.6	2.5	2.7
Chile	0.9	0.9	1.0	0.9	1.0
Colombia	0.9	0.9	0.9	0.8	0.9
Dominican Republic	0.5	0.5	0.6	0.5	0.6
Peru	0.6	0.6	0.6	0.5	0.6
Panama	0.4	0.4	0.5	0.4	0.5
Guatemala	0.4	0.4	0.4	0.4	0.5
Argentina	0.6	0.6	0.5	0.4	0.4
Costa Rica	0.4	0.4	0.4	0.4	0.4
Honduras	0.3	0.3	0.3	0.3	0.4
Ecuador	0.3	0.4	0.3	0.3	0.3
Europe	21.0	21.7	22.7	22.8	21.5
EU-27	14.7	15.2	16.3	16.2	15.5
Germany	3.5	3.4	3.6	4.0	3.7
Netherlands	2.7	2.9	3.1	3.2	3.1
Belgium	1.9	1.9	2.1	1.9	1.9
France	2.2	2.3	2.4	2.0	1.7
Italy	1.2	1.4	1.4	1.4	1.2
EFTA	1.8	1.7	1.4	1.5	1.6
Switzerland	1.4	1.3	1.1	1.3	1.4
Other Europe	4.5	4.9	5.1	5.1	4.4
United Kingdom	3.6	4.0	4.2	4.1	3.5
Türkiye	0.6	0.6	0.6	0.7	0.7
Commonwealth of Independent States (CIS) <sup>a</sup>	0.6	0.5	0.5	0.4	0.5
Russian Federation	0.5	0.4	0.4	0.3	0.4
Africa	1.4	1.6	1.6	1.5	1.5
Egypt	0.3	0.3	0.3	0.3	0.3
South Africa	0.3	0.3	0.3	0.3	0.3
Middle East	4.2	3.8	4.0	3.3	3.0
United Arab Emirates	1.3	1.2	1.2	1.0	1.0
Israel	0.8	0.8	0.9	0.7	0.7
Saudi Arabia, Kingdom of	1.1	0.8	0.9	0.8	0.6
Asia	29.1	28.6	27.9	30.2	30.3
China	8.4	7.2	6.5	8.7	8.6
Japan	4.4	4.5	4.5	4.5	4.3
Other Asia	16.4	16.9	16.9	17.0	17.4
Korea, Republic of	3.1	3.4	3.5	3.6	3.8
India	1.7	2.0	2.1	1.9	2.3
Chinese Taipei	1.7	1.8	1.9	2.1	2.1
Singapore	1.9	2.0	1.9	1.9	2.0
Hong Kong, China	2.6	2.2	1.9	1.7	1.7
Australia	1.6	1.5	1.6	1.6	1.5
Other	0.0	0.0	0.0	0.0	0.0
Memorandum:					
EU-28	18.3	19.1	20.5	20.4	19.0

a Commonwealth of Independent States, including certain associate and former member States.

Source: WTO Secretariat calculations, based on UN Comtrade database.

**Table A1.4 Merchandise imports by trading partner, 2017-21**

(USD million and %)

Description	2017	2018	2019	2020	2021
Total imports	2,405,277	2,611,432	2,567,492	2,405,382	2,932,976
	<b>(% of imports)</b>				
Americas	30.9	30.7	31.2	29.1	30.0
Mexico	13.1	13.4	14.1	13.7	13.2
Canada	12.7	12.5	12.7	11.5	12.4
Brazil	1.3	1.2	1.2	1.0	1.1
Chile	0.5	0.5	0.4	0.5	0.5
Colombia	0.6	0.5	0.6	0.5	0.5
Ecuador	0.3	0.3	0.3	0.3	0.3
Peru	0.3	0.3	0.3	0.2	0.3
Costa Rica	0.2	0.2	0.2	0.2	0.2
Dominican Republic	0.2	0.2	0.2	0.2	0.2
Honduras	0.2	0.2	0.2	0.2	0.2
Argentina	0.2	0.2	0.2	0.2	0.2
Guatemala	0.2	0.2	0.2	0.2	0.2
Nicaragua	0.1	0.1	0.2	0.2	0.2
Trinidad and Tobago	0.1	0.1	0.1	0.1	0.2
El Salvador	0.1	0.1	0.1	0.1	0.1
Europe	20.7	21.5	23.1	23.7	22.2
EU-27	16.2	16.7	18.0	17.6	17.1
Germany	5.0	4.9	5.1	4.9	4.7
Ireland	2.0	2.2	2.4	2.7	2.5
Italy	2.1	2.2	2.3	2.1	2.1
France	2.1	2.1	2.3	1.8	1.8
Netherlands	0.8	1.0	1.2	1.2	1.2
EFTA	1.8	1.9	2.1	3.3	2.4
Switzerland	1.5	1.6	1.8	3.1	2.2
Other Europe	2.7	2.9	3.0	2.7	2.6
United Kingdom	2.3	2.4	2.5	2.1	1.9
Türkiye	0.4	0.4	0.4	0.5	0.6
Commonwealth of Independent States (CIS) <sup>a</sup>	0.8	0.9	1.0	0.8	1.2
Russian Federation	0.7	0.8	0.9	0.7	1.0
Kazakhstan	0.0	0.1	0.0	0.0	0.1
Africa	1.4	1.4	1.2	1.0	1.3
South Africa	0.3	0.3	0.3	0.5	0.5
Nigeria	0.3	0.2	0.2	0.1	0.1
Egypt	0.1	0.1	0.1	0.1	0.1
Middle East	2.7	2.8	2.1	1.5	1.8
Israel	0.9	0.8	0.8	0.6	0.6
Saudi Arabia, Kingdom of	0.8	0.9	0.5	0.4	0.5
United Arab Emirates	0.2	0.2	0.2	0.1	0.2
Asia	43.4	42.7	41.4	43.8	43.6
China	21.9	21.6	18.4	19.0	18.5
Japan	5.8	5.6	5.7	5.1	4.8
Other Asia	15.7	15.5	17.3	19.7	20.3
Viet Nam	2.0	2.0	2.7	3.5	3.7
Korea, Republic of	3.1	2.9	3.1	3.3	3.4
Chinese Taipei	1.8	1.8	2.2	2.6	2.8
India	2.1	2.2	2.3	2.2	2.6
Malaysia	1.6	1.5	1.6	1.9	2.0
Thailand	1.3	1.3	1.4	1.6	1.7
Singapore	0.8	1.0	1.0	1.3	1.0
Indonesia	0.9	0.8	0.8	0.9	1.0
<i>Memorandum:</i>					
EU-28	18.5	19.1	20.5	19.8	19.1

a Commonwealth of Independent States, including certain associate and former member States.

Source: WTO Secretariat calculations, based on UN Comtrade database.

**Table A1.5 U.S. trade in services by type of service (Modes 1, 2, and 4), 2017-21**

(USD million)

	2017	2018	2019	2020	2021
<b>Exports of services</b>	<b>833,775</b>	<b>861,725</b>	<b>876,295</b>	<b>705,643</b>	<b>771,247</b>
Maintenance and repair services n.i.e.	23,239	28,036	27,698	13,278	12,048
Transport	86,342	93,107	91,017	56,706	65,044
Sea transport	18,211	19,019	18,222	17,782	19,558
Freight	4,066	4,208	3,850	3,769	4,202
Port	14,145	14,811	14,372	14,013	15,356
Air transport	63,506	68,942	68,047	34,316	40,598
Passenger	37,290	41,261	40,082	11,393	12,197
Freight <sup>a</sup>	13,486	15,232	14,720	16,034	21,397
Port	12,730	12,449	13,244	6,889	7,003
Other modes of transport	4,625	5,146	4,748	4,608	4,888
Postal services	737	949	891	1,004	..
Road and other transport	3,887	4,197	3,857	3,603	..
Travel (for all purposes including education)	196,469	200,724	199,364	72,813	68,759
Business	38,351	37,855	37,916	11,933	12,865
Expenditures by border, seasonal, short-term workers	8,458	8,484	9,542	6,772	7,813
Other business travel	29,893	29,371	28,374	5,161	5,052
Personal	158,118	162,868	161,448	60,879	55,894
Health related	1,098	1,126	1,174	271	184
Education related	44,825	47,263	47,857	38,962	31,801
Other personal travel	112,195	114,480	112,416	21,646	23,908
Construction	2,053	2,842	3,127	2,349	2,797
Construction abroad	2,053	2,842	3,127	2,349	2,797
Foreign contractors' expenditures in the United States	..	..	..	..	..
Insurance services <sup>b</sup>	18,976	19,118	18,528	20,431	22,672
Direct insurance	1,949	1,844	1,650	1,707	1,741
Reinsurance	15,239	15,354	15,268	16,455	18,152
Auxiliary insurance services	1,788	1,920	1,610	2,270	2,779
Financial services	128,035	132,448	136,046	144,343	164,088
Explicitly charged and other financial services	111,825	113,620	116,509	125,410	144,621
Brokerage and market-making services	10,654	9,592	8,940	10,950	12,687
Underwriting and private placement services	2,551	2,774	2,680	3,855	5,141
Credit card and other credit-related services	22,997	25,711	28,452	23,901	29,144
Financial management services	47,281	45,930	46,042	52,284	58,200
Financial advisory and custody services	7,623	7,814	7,256	7,901	9,414
Securities lending, electronic funds transfer, and other	20,720	21,799	23,139	26,519	30,035
Financial intermediation services indirectly measured	16,209	18,828	19,537	18,933	19,467
Charges for the use of intellectual property n.i.e.	118,147	114,819	115,529	113,779	124,827
<i>By type of intellectual property:</i>					
Franchises and trademarks licensing fees	23,930	25,090	26,295	23,983	25,489
Trademarks	18,724	19,534	19,590	19,550	..
Franchise fees	5,206	5,556	6,706	4,434	..
Licenses for the use of outcomes of R&D <sup>c</sup>	51,595	47,523	48,193	50,473	57,771
Licenses to reproduce /distribute computer software	38,406	37,587	36,145	34,115	36,885
Licenses to reproduce /distribute audiovisual products	4,216	4,619	4,896	5,208	4,682
Movies and television programming	1,581	1,524	1,623	1,699	..
Books and sound recordings	826	1,174	1,339	1,474	..
Broadcasting and recording of live events	1,810	1,921	1,933	2,034	..
<i>By affiliation:</i>					
Unaffiliated	38,666	35,258	36,468	34,665	..
Affiliated	79,481	79,561	79,062	79,113	..
U.S. parents' exports to their foreign affiliates	67,953	67,763	66,580	67,442	..
U.S. affiliates' exports to their foreign parent groups	11,528	11,798	12,482	11,671	..
Telecommunications, computer, and information services	47,657	49,245	54,766	56,682	58,142
Telecommunications services	10,220	8,998	7,999	7,680	7,344
Computer services	28,838	30,724	36,312	42,136	44,798
Computer software, including end-user licenses	18,956	20,156	23,921	27,018	..
Cloud computing and data storage services	3,207	3,633	5,659	7,093	..
Other computer services	6,674	6,935	6,732	8,025	..
Information services	8,599	9,524	10,455	6,865	5,999
News agency services	296	288	295	257	..
Database and other information services	8,303	9,236	10,160	6,608	..
Other business services	167,270	176,540	185,573	183,180	206,542
Research and development services	45,550	47,857	49,446	44,858	47,818
Work undertaken to increase the stock of knowledge	15,704	16,227	17,604	14,467	..
Provision of customized and non-customized R&D services	15,476	15,908	17,195	14,210	..
Sale of proprietary rights arising from R&D	229	319	409	256	..
Other research and development services	29,846	31,629	31,842	30,391	..
Professional and management consulting services	85,553	92,576	102,022	107,912	126,544
Legal, accounting, management consulting, public relations services	67,891	73,511	80,597	86,046	..
Legal services	11,301	11,714	13,156	14,220	..
Accounting, auditing, bookkeeping, and tax consulting	2,490	2,604	2,569	3,370	..
Business and management consulting, public relations	54,100	59,193	64,872	68,456	..
Advertising and related services	17,663	19,065	21,425	21,865	..
Advertising services	14,524	16,397	19,266	19,656	..
Market research and public opinion polling services	3,001	2,571	2,088	2,158	..
Trade exhibition and sales convention services	137	97	72	51	..
Technical, trade-related, and other business services	36,167	36,107	34,104	30,410	32,180
Architectural, engineering, scientific, other	14,955	14,981	12,360	10,415	..
Architectural services	927	845	942	816	..
Engineering services	13,720	13,791	11,075	9,201	..

	2017	2018	2019	2020	2021
Scientific and other technical services	308	344	344	398	..
Waste treatment, de-pollution, agricultural, mining serv.	3,215	3,239	2,664	2,377	..
Waste treatment and de-pollution services	12	8	(D)	18	..
Services incidental to agriculture, forestry, and fishing	12	14	(D)	26	..
Services incidental to mining, and oil and gas extraction	3,191	3,217	2,607	2,333	..
Operating leasing services	7,179	6,650	6,869	6,564	..
Trade-related services	2,177	2,495	2,097	1,786	..
Other business services n.i.e. <sup>d</sup>	8,641	8,743	10,114	9,269	..
Personal, cultural, and recreational services	25,664	22,715	22,193	20,442	22,965
Audiovisual services	21,500	19,160	17,871	14,213	14,431
Audiovisual production services	736	752	(D)	(D)	..
Rights to use audiovisual products	20,741	18,402	(D)	(D)	..
Movies and television programming	18,553	16,084	15,033	(D)	..
Books and sound recordings	2,188	2,319	(D)	(D)	..
Audiovisual originals	23	5	6	9	..
Movies and television programming	(D)	4	4	(D)	..
Books and sound recordings	(D)	2	2	(D)	..
Artistic-related services	711	595	659	465	457
Other personal, cultural, and recreational services	3,454	2,960	3,662	5,764	8,077
Health services	(D)	(D)	(D)	1,339	..
Education services	2,444	1,965	2,287	(D)	..
Heritage and recreational services	(D)	(D)	(D)	(D)	..
Government goods and services n.i.e.	19,924	22,131	22,453	21,642	23,364
<b>Imports of services</b>	<b>547,172</b>	<b>563,926</b>	<b>591,121</b>	<b>460,301</b>	<b>541,245</b>
Maintenance and repair services n.i.e.	6,796	7,354	8,866	6,090	7,514
Transport	96,515	110,441	112,798	72,411	104,806
Sea transport	31,362	33,292	32,663	34,158	55,905
Freight	29,252	31,034	30,757	32,176	53,919
Port	2,111	2,258	1,907	1,982	1,985
Air transport	61,275	73,296	76,376	34,722	44,830
Passenger	40,359	50,678	52,795	13,032	16,181
Freight <sup>a</sup>	7,869	8,983	8,495	9,343	13,601
Port	13,047	13,635	15,086	12,348	15,048
Other modes of transport	3,877	3,853	3,759	3,530	4,072
Postal services	333	339	304	327	..
Road and other transport	3,544	3,514	3,456	3,203	..
Travel (for all purposes including education)	117,931	126,139	133,285	35,808	57,940
Business	19,240	19,081	18,414	4,852	8,126
Expenditures by border, seasonal, short-term workers	1,404	1,531	1,669	1,057	1,064
Other business travel	17,836	17,550	16,745	3,795	7,062
Personal	98,691	107,059	114,871	30,955	49,814
Health related	639	677	716	235	312
Education related	10,776	11,553	12,112	6,626	5,595
Other personal travel	87,276	94,829	102,043	24,094	43,908
Construction	1,950	3,077	1,377	1,131	1,262
Construction in the United States	806	959	961	851	915
U.S. contractors' expenditures abroad	1,144	2,119	417	280	346
Insurance services <sup>b</sup>	53,267	43,797	51,632	55,617	57,658
Direct insurance	4,012	3,837	4,317	4,860	5,232
Reinsurance	47,399	38,261	45,412	48,422	49,877
Auxiliary insurance services	1,855	1,699	1,903	2,335	2,550
Financial services	36,649	39,445	41,210	42,256	44,966
Explicitly charged and other financial services	30,048	32,102	33,927	34,795	37,788
Brokerage and market-making services	4,592	4,968	4,936	5,233	5,486
Underwriting and private placement services	803	575	656	697	1,018
Credit card and other credit-related services	8,154	9,402	10,529	8,692	10,109
Financial management services	9,524	9,733	9,832	12,252	13,380
Financial advisory and custody services	2,940	3,147	3,274	3,247	3,456
Securities lending, electronic funds transfer, other	4,034	4,277	4,701	4,675	4,340
Financial intermediation services indirectly measured	6,601	7,342	7,284	7,461	7,177
Charges for the use of intellectual property n.i.e.	44,405	42,736	41,730	42,984	46,849
<i>By type of intellectual property:</i>					
Franchises and trademarks licensing fees	4,661	4,617	4,636	4,816	5,237
Trademarks	4,526	4,489	4,494	(D)	..
Franchise fees	136	128	142	(D)	..
Licenses for the use of outcomes of R&D <sup>c</sup>	28,623	24,164	23,324	25,559	27,338
Licenses to reproduce/distribute computer software	9,868	10,971	11,887	11,360	11,340
Licenses to reproduce /distribute audiovisual products	1,253	2,985	1,883	1,248	2,933
Movies and television programming	130	269	239	311	..
Books and sound recordings	232	274	322	325	..
Broadcasting and recording of live events	891	2,441	1,322	612	..
<i>By affiliation:</i>					
Unaffiliated	9,124	11,048	10,536	12,639	..
Affiliated	35,282	31,688	31,195	30,345	..
U.S. parents' imports from their foreign affiliates	7,780	7,455	7,389	8,564	..
U.S. affiliates' imports from foreign parent groups	27,502	24,233	23,806	21,781	..
Telecommunications, computer, and information services	43,091	41,701	42,961	38,594	41,358
Telecommunications services	5,766	5,686	5,007	4,659	5,221
Computer services	34,694	34,056	35,203	30,929	32,686
Computer software, including end-user licenses	13,378	12,399	11,585	11,885	..
Cloud computing and data storage services	883	785	535	475	..
Other computer services	20,433	20,872	23,083	18,569	..
Information services	2,632	1,959	2,750	3,006	3,451
News agency services	76	80	15	20	..
Database and other information services	2,556	1,879	2,735	2,986	..

	2017	2018	2019	2020	2021
Other business services	106,991	107,435	112,776	117,673	126,780
Research and development services	37,059	34,261	33,375	33,290	36,843
Work undertaken to increase the stock of knowledge	22,357	20,543	12,837	12,432	..
Provision of R&D services	22,139	20,399	12,775	12,403	..
Sale of proprietary rights arising from R&D development	219	144	62	29	..
Other research and development services	14,702	13,718	20,538	20,858	..
Professional and management consulting services	47,109	52,380	54,944	60,453	62,065
Legal, accounting, management consulting, public relations services	40,609	45,811	48,955	55,832	..
Legal services	3,584	3,950	4,433	4,951	..
Accounting, auditing, bookkeeping, tax consulting	3,220	3,395	5,086	6,354	..
Business and management consulting, public relations	33,805	38,466	39,436	44,527	..
Advertising and related services	6,500	6,569	5,989	4,621	..
Advertising services	4,485	4,550	4,955	3,793	..
Market research and public opinion polling services	1,928	1,956	972	771	..
Trade exhibition and sales convention services	87	63	62	57	..
Technical, trade-related, and other business services	22,823	20,794	24,457	23,931	27,872
Architectural, engineering, scientific, and other	6,104	6,028	7,816	8,119	..
Architectural services	283	144	136	134	..
Engineering services	5,591	5,596	7,583	7,933	..
Scientific and other technical services	230	289	96	52	..
Waste treatment, de-pollution, agricultural, mining serv.	1,126	771	783	950	..
Waste treatment and de-pollution services	24	22	21	21	..
Services incidental to agriculture, forestry, and fishing	3	2	24	21	..
Services incidental to mining, and oil and gas extraction	1,100	746	738	908	..
Operating leasing services	3,512	2,254	1,803	1,740	..
Trade-related services	2,234	2,438	2,518	2,457	..
Other business services n.i.e. <sup>d</sup>	9,845	9,304	11,537	10,665	..
Personal, cultural, and recreational services	17,530	18,825	20,486	23,185	26,952
Audiovisual services	14,328	16,015	17,408	20,142	23,453
Audiovisual production services	1,555	1,817	1,807	(D)	..
Rights to use audiovisual products	12,711	14,169	15,565	17,880	..
Movies and television programming	6,803	6,832	7,385	7,152	..
Books and sound recordings	5,908	7,337	8,179	10,728	..
Audiovisual originals	63	29	36	(D)	..
Movies and television programming	8	(D)	(D)	(D)	..
Books and sound recordings	55	(D)	(D)	4	..
Artistic-related services	1,325	1,038	754	359	331
Other personal, cultural, and recreational services	1,877	1,772	2,324	2,684	3,167
Health services	146	(D)	588	(D)	..
Education services	1,731	1,586	1,661	1,926	..
Heritage and recreational services	(*)	(D)	76	(D)	..
Government goods and services n.i.e.	22,047	22,975	24,000	24,553	25,160
<b>Balance on services (exports less imports)</b>	<b>286,603</b>	<b>297,799</b>	<b>285,174</b>	<b>245,342</b>	<b>230,001</b>
<b>Addenda:</b>					
Exports of services by affiliation:					
Unaffiliated	568,967	592,739	595,388	427,777	..
Affiliated	264,808	268,986	280,907	277,866	..
U.S. parents' exports to their foreign affiliates	211,906	215,136	224,331	223,339	..
U.S. affiliates' exports to their foreign parent groups	52,902	53,851	56,576	54,527	..
Imports of services by affiliation:					
Unaffiliated	375,105	397,421	423,566	295,408	..
Affiliated	172,067	166,504	167,555	164,893	..
U.S. parents' imports from their foreign affiliates	113,507	113,963	114,811	113,177	..
U.S. affiliates' imports from their foreign parent groups	58,560	52,542	52,744	51,715	..

(\*) Transactions between zero and +/- USD 500,000.

(D) Suppressed to avoid the disclosure of data of individual companies.

n.i.e. Not included elsewhere.

.. Not available.

a Courier services are included in "Air transport, freight" but are not separately identifiable.

b Insurance services transactions are considered to be unaffiliated even when they are between affiliated companies because the services are considered to be provided to the policyholders who pay the insurance premiums and who are unaffiliated with either company. The only insurance services considered to be affiliated are primary insurance transactions between a U.S. company that is not an insurance company and an affiliated foreign insurance company, such as a captive foreign insurance affiliate. Data on these affiliated insurance services are not separately available.

c Outcomes of research and development include patents, industrial processes, and trade secrets.

d This category includes installation, alteration, and training services; contract manufacturing services; photographic services (including satellite photography services); and other business services n.i.e.

Source: Bureau of Economic Analysis, interactive data tables, International transactions, services and IIP, U.S. trade in services, table 2.1; and International transactions (ITA) tables 1.2 and 3.1. Viewed at: <https://apps.bea.gov/iTable/iTable.cfm?ReqID=62&step=1>.



**Table A2.1 Activity in WTO dispute settlement to which the United States is a Party<sup>a</sup>, August 2018–March 2022**

Subject/ WTO document series	Respondent/ Complainant	Consultations Request date	Status (as at 31 March 2022)
<b>United States as a complainant</b>			
India – Additional Duties on Certain Products from the United States /WT/DS585	India	03/07/2019	Panel established, on-going panel proceedings
Russian Federation – Additional Duties on Certain Products from the United States / WT/DS566	Russian Federation	27/08/2018	Panel established, on-going panel proceedings
<b>United States as a respondent</b>			
United States – Origin Marking Requirement /WT/DS597	Hong Kong, China	30/10/2020	Panel established, on-going panel proceedings
United States – Tariff Measures on Certain Goods from China III /WT/DS587	China	02/09/2019	Consultations
United States – Anti-Dumping Measures on Carbon-Quality Steel from Russian Federation /WT/DS586	Russian Federation	05/07/2019	Consultations
United States – Anti-dumping and Countervailing Duties on Ripe Olives from Spain/ WT/DS577	European Union	29/01/2019	Report adopted on 20 December 2021
United States – Measures Relating to Trade in Goods and Services /WT/DS574	Bolivarian Republic of Venezuela	28/12/2018	Requests for consultations and panel establishment, thereafter removed from DSB agenda
United States – Tariff Measures on Certain Goods from China II /WT/DS565	China	23/08/2018	Consultations
United States – Certain Measures on Steel and Aluminium Products /WT/DS564	Türkiye	15/08/2018	Panel established, on-going panel proceedings
United States – Certain Measures Related to Renewable Energy /WT/DS563	China	14/08/2018	Consultations
<b>Implementation (Articles 21.5 and 22.6)</b>			
United States – Countervailing Measures on Supercalendered Paper /WT/DS505	Canada	Recourse to Article 22.6 by the US on 26/06/2020; arbitrator composed on 6/08/2020	
United States – Countervailing Duty Measures on Certain Products /WT/DS437	China	Recourse to Article 22.6 by the US on 25/10/2018; arbitrator composed 15/11/2019	
United States – Anti-Dumping Measures on Certain Oil Country Tubular Goods /WT/DS488	Korea, Republic of	Recourse to Article 22.6 by the US on 29 July 2019	
Indonesia – Import Licensing Regimes /WT/DS478	Indonesia	Recourse to Article 22.6 by Indonesia on 15/08/2018	
China – Domestic Support for Agricultural Producers /WT/DS511	China	Recourse to Article 22.6 by China on 27/07/2020. /Recourse to Article 21.5 by China on 5/08/2020	
China – Tariff Rate Quotas for Certain Agricultural Products /WT/DS517	China	Recourse to Article 22.6 by China on 26/07/2021 /Recourse to Article 21.5 by China on 15/07/2021	
<b>Appeals to the Appellate Body</b>			
United States – Anti-Dumping and Countervailing Duties on Certain Products and the Use of Facts Available /WT/DS539	Korea, Republic of	19/03/2021 <sup>b</sup>	US appealed
United States – Tariff Measures on Certain Goods /WT/DS543	China	26/10/2020 <sup>b</sup>	US appealed
United States – Countervailing Measures on Softwood Lumber /WT/DS533	Canada	28/09/2020 <sup>b</sup>	US appealed
United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products /WT/DS436	India	18/12/2019 <sup>b</sup>	US appealed
United States – Certain Measures Relating to the Renewable Energy Sector /WT/DS510	India	15/08/2019 <sup>b</sup>	US appealed
United States – Countervailing Measures on Certain Pipe and Tube Products /WT/DS523	Türkiye	25/01/2019 <sup>b</sup>	US appealed
United States – Anti-Dumping Measures Applying Differential Pricing Methodologies to Softwood Lumber /WT/DS534	Canada	04/06/2019 <sup>b</sup>	Canada appealed
India – Export Related Measures /WT/DS541	India	19/11/2019 <sup>b</sup>	India appealed
European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft /DS/316	EU	06/12/2019 <sup>b</sup>	EU appealed
United States – Safeguard Measure on Imports of Crystalline Silicon Photovoltaic Products /WT/DS562	China	16/09/2021 <sup>b</sup>	China appealed

a Actions initiated during the period.

b Dates of the notice of appeal.

Source: WTO Secretariat.

Table A2.2 Selected U.S. notifications to the WTO, August 2018-March 2022

WTO Agreement / Description	Document symbol / Date
<b>Agreement on Agriculture</b>	
Articles 10 and 18.2 (ES:1, ES:2, ES:3). Export subsidies commitments: budgetary outlays and quantity reduction commitments; and notification of total exports	G/AG/N/USA/159, 28/10/2021; G/AG/N/USA/154, 16/08/2021; G/AG/N/USA/151, 31/05/2021; G/AG/N/USA/144, 26/02/2021; G/AG/N/USA/139, G/AG/N/USA/138, G/AG/N/USA/137, G/AG/N/USA/136, 18/08/2020; G/AG/N/USA/133, G/AG/N/USA/132, G/AG/N/USA/131, 16/06/2020; G/AG/N/USA/128, G/AG/N/USA/127, G/AG/N/USA/126, 26/08/2019.
Article 16.2 NF:1 (1)-(4). Net-Food Importing Developing Country (NFIDC) Decision	G/AG/N/USA/160, 01/12/2021; G/AG/N/USA/146, G/AG/N/USA/145, 01/03/2021; G/AG/N/USA/129, 16/12/2019.
Article 18.2 (DS:1). Domestic support	G/AG/N/USA/157, 30/09/2021; G/AG/N/USA/135/Rev.1, G/AG/N/USA/150, 08/04/2021; G/AG/N/USA/135, 24/07/2020; G/AG/N/USA/123, 31/10/2018
Article 18.3 (DS:2). Domestic support	G/AG/N/USA/156, 07/10/2020; G/AG/N/USA/143 01/10/2021; G/AG/N/USA/134/Rev.1, 06/08/2020; G/AG/N/USA/134, 10/07/2020.
Article 18.2 (MA:1 and MA:2) Administration of tariff and other quota commitments	G/AG/N/USA/158, 01/10/2021; G/AG/N/USA/15531/08/2021; G/AG/N/USA/153, 03/06/2021; G/AG/N/USA/149, G/AG/N/USA/148, G/AG/N/USA/147,02/03/2021; G/AG/N/USA/125, G/AG/N/USA/124, 07/02/2019; G/AG/N/USA/122, 15/10/2018
Articles 5.7 and 18.2 (MA:5). Special safeguard provisions	G/AG/N/USA/152, 31/05/2021; G/AG/N/USA/142, G/AG/N/USA/141, G/AG/N/USA/140, 20/08/2020; G/AG/N/USA/130, 15/05/2020
<b>Enabling clause</b>	
Paragraph 4(a) of the Decision of 28 November 1979	WT/COMTD/N/1/Add.12, 04/02/2022; WT/COMTD/N/1/Add.11, 27/03/2020; WT/COMTD/N/1/Add.10, 17/06/2019
<b>General Agreement on Trade in Services (GATS)</b>	
Article V:7(a). / Notification of Regional Trade Agreement: Agreement between Canada, the United States of America, and the United Mexican States; and the Republic of Korea and the United States	S/C/N/4/Add.1, 09/10/2020; S/C/N/1017, 17/09/2020; S/C/N/621/Add.1, 07/03/2019
<b>Agreement on the Implementation of Article VI of the GATT 1994 (Anti-dumping Agreement)</b>	
Article 16.4 – semi-annual / Anti-dumping actions (taken within the preceding six months)	G/ADP/N/357/USA, 13/10/2021; G/ADP/N/350/USA, 15/04/2021; G/ADP/N/342/USA, 09/10/2020; G/ADP/N/335/USA, 25/06/2020; G/ADP/N/328/USA/Rev.1, 19/12/2019; G/ADP/N/328/USA, 23/10/2019; G/ADP/N/322/USA, 19/03/2019; G/ADP/N/314/USA, 18/09/2018
Article 16.4 – <i>ad hoc</i> / Anti-dumping actions (preliminary and final)	G/ADP/N/367, 15/03/2022; G/ADP/N/365, 24/01/2022; G/ADP/N/362, 16/11/2021; G/ADP/N/359, 09/08/2021; G/ADP/N/358, 15/07/2021; G/ADP/N/356, 09/06/2021; G/ADP/N/354, 13/04/2021; G/ADP/N/353, 10/03/2021; G/ADP/N/352, 23/02/2021; G/ADP/N/351, 26/01/2021; G/ADP/N/349, 17/12/2020; G/ADP/N/348, 13/11/2020; G/ADP/N/346, 09/09/2020; G/ADP/N/345, 19/08/2020; G/ADP/N/343, 18/06/2020; G/ADP/N/341, 20/05/2020; G/ADP/N/340, 24/04/2020; G/ADP/N/339, 30/03/2020; G/ADP/N/334, 15/11/2019; G/ADP/N/332, 14/08/2019; G/ADP/N/331, 28/06/2019; G/ADP/N/329, 28/06/2019; G/ADP/N/327, 29/05/2019; G/ADP/N/326, 25/04/2019; G/ADP/N/325, 01/04/2019; G/ADP/N/323, 25/01/2019; G/ADP/N/321, 07/01/2019; G/ADP/N/320, 29/11/2018; G/ADP/N/319, 18/10/2018; G/ADP/N/317, 21/08/2018
Article 16.5 / Competent authorities	G/ADP/N/14/Add.54, 21/04/2021; G/ADP/N/14/Add.49, 05/11/2019
Article 18.5 / Laws and regulations, and changes thereto, including changes in the administration of such laws	G/ADP/N/1/USA/1/Suppl.31, 01/10/2021; G/ADP/N/1/USA/1/Suppl.30, G/ADP/N/1/USA/1/Suppl.29, 16/07/2020; G/ADP/N/1/USA/1/Suppl.28, 17/04/2020; G/ADP/N/1/USA/1/Suppl.27, G/ADP/N/1/USA/1/Suppl.26, 31/03/2020
<b>GATT 1994</b>	
Article XVII:4(a) and Paragraph 1 of the Understanding on the Interpretation of Article XVII / State-trading activities	G/STR/N/18/USA, 15/06/2020
Article XXIV:7(a) / Notification of Regional Trade Agreement: Agreement between Canada, the United States of America, and the United Mexican States; and the Republic of Korea and the United States	WT/REG407/N/1, 17/09/2020; WT/REG4/N/1, 09/10/2020; WT/REG311/N/1/Add.1, 07/03/2019
Article XXVIII:5 / Invocation of para. 5	G/MA/389, 26/11/2020
Paragraph 3(c) / Notification and statistical data	WT/L/1121, 11/12/2021; WT/L/1108, 14/01/2020; WT/L/1078, 28/11/2019; WT/L/1055, 09/01/2019
<b>Agreement on Government Procurement 1994</b>	
Article XIX:5 / Statistical submissions	GPA/123/Add.8/Rev.1, 14/02/2020; GPA/123/Add.8, 29/10/2019; GPA/119/Add.7, 31/10/2018
<b>Agreement on Government Procurement 2012</b>	
Article XIX / Modifications	GPA/MOD/USA/18, 27/11/2020
Article XVI: 4-5 / Statistics	GPA/STAT(18)/USA/1, 25/11/2020; GPA/STAT(17)/USA/1, 29/10/2019; GPA/142/Add.10, 31/10/2018; GPA/130/Add.11, 25/11/2020
Appendix I / Thresholds	GPA/THR/USA/2, 01/08/2020

WTO Agreement / Description	Document symbol /Date
<b>Agreement on Import Licensing</b>	
Article 5.1 to 5.4 /New legislation or procedures	G/LIC/N/2/USA/5, 03/08/2021; G/LIC/N/2/USA/4, 25/02/2021
Article 7.3 /Replies to the questionnaire	G/LIC/N/3/USA/18, 05/10/2021; G/LIC/N/3/USA/17, 14/12/2020; G/LIC/N/3/USA/16, 28/01/2020; G/LIC/N/3/USA/1505/10/2018
<b>Agreement on Trade Facilitation</b>	
Articles 1.4, 10.4.3, 10.6.2, 12.2.2, 22.1, and 22.2 / Notification of category commitments	G/TFA/N/USA/5, 08/06/2021; G/TFA/N/USA/1/Rev.1, 26/10/2020; G/TFA/N/USA/4, 08/10/2020; G/TFA/N/USA/3, 13/05/2019
<b>Decision on Notification Procedures for Quantitative Restrictions</b>	
G/L/59/Rev.1 /Notification of QRs	G/MA/QR/N/USA/5/Add.3, 21/03/2022; G/MA/QR/N/USA/5/Add.2, 16/09/2021; G/MA/QR/N/USA/5/Add.1, 01/02/2021; G/MA/QR/N/USA/5, 06/10/2020; G/MA/QR/N/USA/4/Add.2, 01/09/2020; G/MA/QR/N/USA/4/Add.1, 14/05/2020; G/MA/QR/N/USA/4, 03/10/2018
<b>Agreement on Rules of Origin</b>	
Paragraph 4 of Annex II and Paragraph 4.3 of the 2015 Ministerial Decision on preferential rules of origin for least developed countries.	G/RO/N/210, 04/02/2021; G/RO/LDC/N/USA/4, 30/11/2018
<b>Agreement on Subsidies and Countervailing Measures</b>	
Article 25.1 and GATT 1994 Article XVI:1 /Subsidies	G/SCM/N/372/USA, 14/07/2021; G/SCM/N/343/USA/Suppl.1, 01/04/2021; G/SCM/N/343/USA/Corr.1, 27/08/2019; G/SCM/N/343/USA, 16/07/2019
Article 25.11 – <i>ad hoc</i> / Countervailing duty actions (preliminary and final)	G/SCM/N/389, 08/03/2022; G/SCM/N/387, 18/01/2022; G/SCM/N/384, 11/11/2021; G/SCM/N/381, 06/08/2021; G/SCM/N/380, 06/07/2021; G/SCM/N/378, 03/06/2021; G/SCM/N/376, 09/04/2021; G/SCM/N/375, 11/03/2021; G/SCM/N/374, 19/02/2021; G/SCM/N/373, 21/01/2021; G/SCM/N/370, 07/12/2020; G/SCM/N/369, 06/11/2020; G/SCM/N/367, 08/09/2020; G/SCM/N/366, 20/08/2020; G/SCM/N/364, 12/06/2020; G/SCM/N/337/Rev.1, 19/05/2020; G/SCM/N/362, 15/05/2020; G/SCM/N/361, 24/04/2020; G/SCM/N/360, 18/03/2020; G/SCM/N/355, 07/11/2019; G/SCM/N/353, 24/09/2019; G/SCM/N/352, 14/08/2019; G/SCM/N/350, 28/06/2019; G/SCM/N/348, 29/05/2019; G/SCM/N/347, 18/04/2019; G/SCM/N/346, 20/03/2019; G/SCM/N/344, 25/01/2019; G/SCM/N/341, 18/12/2018; G/SCM/N/340, 28/11/2018; G/SCM/N/33916/10/2018; G/SCM/N/33730/08/2018
Article 25.11 – semi-annual / Countervailing duty actions (taken within the preceding six months)	G/SCM/N/379/USA, 08/10/2021; G/SCM/N/371/USA, 07/04/2021; G/SCM/N/363/USA/corr.1, 28/10/2020; G/SCM/N/363/USA, 16/10/2020; G/SCM/N/356/USA, 25/06/2020; G/SCM/N/349/USA, 23/10/2019; G/SCM/N/342/USA, 16/04/2019; G/SCM/N/334/USA, 27/09/2018
Article 25.12 /Competent authorities	G/SCM/N/18/Add.54, 21/04/2021; G/SCM/N/18/Add.49, 05/11/2019
Article 32.6 /Laws/regulations and changes thereto, including changes in administration of such laws	G/SCM/N/1/USA/1/Suppl.32, 01/10/2021; G/SCM/N/1/USA/1/Suppl.31, 02/10/2020; G/SCM/N/1/USA/1/Suppl.30, 01/10/2020; G/SCM/N/1/USA/1/Suppl.29, G/SCM/N/1/USA/1/Suppl.28, 16/07/2020; G/SCM/N/1/USA/1/Suppl.27, 17/04/2020; G/SCM/N/1/USA/1/Suppl.26, G/SCM/N/1/USA/1/Suppl.25, 31/03/2020.
<b>Agreement on Safeguards</b>	
Termination /No measure imposed	G/SG/N/9/USA/5, 06/04/2021
Article 12.1(a) /Initiation of an investigation	G/SG/N/6/USA/13/Corr.1, 21/10/2020; G/SG/N/6/USA/13/Suppl.1, 12/10/2020; G/SG/N/6/USA/13, 08/10/2020; G/SG/N/6/USA/11/Suppl.4, 01/10/2021; G/SG/N/6/USA/11/Suppl.3, 19/08/2021; G/SG/N/6/USA/11/Suppl.2, 10/08/2021
Article 12.1(b) /Finding a serious injury or threat thereof Article 12.1(c) /Decision to apply or extend a safeguard measure	G/SG/N/10/USA/8/Suppl.7, 22/01/2021; G/SG/N/10/USA/8/Suppl.6, 15/12/2020; G/SG/N/10/USA/8/Suppl.5, 22/10/2020; G/SG/N/10/USA/7/Suppl.12, 20/10/2020; G/SG/N/10/USA/7/Suppl.11, 15/06/2020; G/SG/N/10/USA/7/Suppl.10, 22/04/2020; G/SG/N/10/USA/7/Suppl.9, 12/02/2020; G/SG/N/10/USA/7/Suppl.8, 06/01/2020; G/SG/N/10/USA/7/Suppl.7, 20/12/2019; G/SG/N/10/USA/7/Suppl.6, 09/10/2019; G/SG/N/10/USA/7/Suppl.1, 24/09/2019; G/SG/N/10/USA/8/Suppl.4, 09/08/2019; G/SG/N/10/USA/7/Suppl.5, 07/08/2019; G/SG/N/10/USA/7/Suppl.4, 14/06/2019; G/SG/N/8/USA/9/Suppl.6, G/SG/N/10/USA/7/Suppl.3, G/SG/N/10/USA/8/Suppl.3, G/SG/N/11/USA/6/Suppl.2, G/SG/N/8/USA/10/Suppl.5, G/SG/N/11/USA/7/Suppl.2, G/SG/N/8/USA/10/Suppl.5, G/SG/N/8/USA/9/Suppl.6, 07/06/2019; G/SG/N/8/USA/9/Suppl.5/Corr.1, G/SG/N/10/USA/7/Suppl.2/Corr.1, G/SG/N/11/USA/6/Suppl.1/Corr.1, G/SG/N/10/USA/8/Suppl.2/Corr.1, G/SG/N/8/USA/10/Suppl.4/Corr.1, G/SG/N/11/USA/7/Suppl.1/Corr.1, G/SG/N/8/USA/10/Suppl.4/Corr.1, G/SG/N/8/USA/9/Suppl.5/Corr.1, 27/05/2019; G/SG/N/8/USA/9/Suppl.5, G/SG/N/10/USA/7/Suppl.2, G/SG/N/11/USA/6/Suppl.1, G/SG/N/10/USA/8/Suppl.2, G/SG/N/8/USA/10/Suppl.4 G/SG/N/11/USA/7/Suppl.1, G/SG/N/8/USA/10/Suppl.4, G/SG/N/8/USA/9/Suppl.5, 22/05/2019; G/SG/N/10/USA/8/Suppl.1, 26/02/2019
Article 12.6 / Laws and regulations	G/SG/N/1/USA/1/Suppl.2, 08/10/2020
Article 9.1 footnote 2 /Notification pursuant to Article 9.1, footnote 2	G/SG/N/10/USA/7/Suppl.12, 20/10/2020; G/SG/N/10/USA/7/Suppl.11, 15/06/2020; G/SG/N/10/USA/7/Suppl.10, 22/04/2020; G/SG/N/10/USA/7/Suppl.9, 12/02/2020; G/SG/N/10/USA/7/Suppl.8, 06/01/2020; G/SG/N/10/USA/7/Suppl.7, 20/12/2019; G/SG/N/10/USA/8/Suppl.7, 22/01/2021; G/SG/N/10/USA/8/Suppl.6, 15/12/2020; G/SG/N/10/USA/8/Suppl.5, 22/10/2020; G/SG/N/10/USA/7/Suppl.6, 09/10/2019; G/SG/N/10/USA/8/Suppl.4, 09/08/2019; G/SG/N/10/USA/7/Suppl.5, 07/08/2019;

WTO Agreement / Description	Document symbol /Date
	G/SG/N/10/USA/7/Suppl.4, 14/06/2019; G/SG/N/10/USA/7/Suppl.3, G/SG/N/11/USA/6/Suppl.2, G/SG/N/8/USA/9/Suppl.6, G/SG/N/10/USA/8/Suppl.3, G/SG/N/8/USA/10/Suppl.5, G/SG/N/11/USA/7/Suppl.2, 07/06/2019; G/SG/N/10/USA/7/Suppl.2/Corr.1, G/SG/N/10/USA/8/Suppl.2/Corr.1, G/SG/N/8/USA/10/Suppl.4/Corr.1, G/SG/N/11/USA/7/Suppl.1/Corr.1, G/SG/N/8/USA/9/Suppl.5/Corr.1, G/SG/N/11/USA/6/Suppl.1/Corr.1, 27/05/2019; G/SG/N/10/USA/7/Suppl.2, G/SG/N/8/USA/10/Suppl.4, G/SG/N/11/USA/6/Suppl.1, G/SG/N/10/USA/8/Suppl.2, G/SG/N/11/USA/7/Suppl.1, G/SG/N/8/USA/9/Suppl.5, 22/05/2019; G/SG/N/10/USA/8/Suppl.1, 26/02/2019; G/SG/N/10/USA/7/Suppl.1, 24/09/2018.
<b>Agreement on the Application of Sanitary and Phytosanitary Measures</b>	
Article 7 Annex B. Sanitary and phytosanitary regulations	Some 300 notifications (series G/SPS/N/USA/ <a href="http://spsims.wto.org/">http://spsims.wto.org/</a> )
<b>Agreement on Technical Barriers to Trade</b>	
Annex C. Notification of acceptance of the Code of Good Practice	G/TBT/CS/N/202, 10/01/2022; G/TBT/CS/N/199, 20/02/2019
Article 10.7. Agreement with any other country on issues related to technical regulations, standards or conformity assessment procedures which may have a significant effect on trade	G/TBT/10.7/N/158, G/TBT/10.7/N/157, 23/02/2021
Article 2.10 Notification of technical regulations	G/TBT/N/USA/1764, 17/08/2021; G/TBT/N/USA/1700, 18/02/2021; G/TBT/N/USA/1688, 11/01/2021; G/TBT/N/USA/1561/Add.2, 12/08/2020; G/TBT/N/USA/1561/Add.1, 21/04/2020; G/TBT/N/USA/1561, 14/01/2020; G/TBT/N/USA/1551/Add.4, 18/06/2020; G/TBT/N/USA/1551/Add.3, 21/04/2020; G/TBT/N/USA/1551/Add.2, 12/03/2020; G/TBT/N/USA/1551/Add.1, 27/01/2020; G/TBT/N/USA/1551, 25/11/2019; G/TBT/N/USA/1546, 13/11/2019; G/TBT/N/USA/1542/Add.1, 29/01/2020; G/TBT/N/USA/1542, 25/10/2019; G/TBT/N/USA/1541/Add.1, 29/01/2020; G/TBT/N/USA/1541, G/TBT/N/USA/1540, 22/10/2019
Articles 2.10 and 5.7. Technical regulations and conformity assessment procedures	G/TBT/N/USA/1602/Add.1, 31/08/2020; G/TBT/N/USA/1602, 15/04/2020
Article 2.9. Technical regulations	Some 600 notifications (series G/TBT/N/USA/ <a href="http://tbtims.wto.org/">http://tbtims.wto.org/</a> )
Articles 2.9 and 5.6. Technical regulations and conformity assessment procedures	Some 200 notifications (series G/TBT/N/USA/ <a href="http://tbtims.wto.org/">http://tbtims.wto.org/</a> )
Article 3.2. Technical regulations (local government)	Some 90 notifications (series G/TBT/N/USA/ <a href="http://tbtims.wto.org/">http://tbtims.wto.org/</a> )
Articles 3.2 and 7.2. Technical regulations and conformity assessment (local government)	G/TBT/N/USA/1842, 07/03/2022; G/TBT/N/USA/1737, 07/06/2021; G/TBT/N/USA/1664/Add.1, 01/04/2021; G/TBT/N/USA/1664, 28/10/2020; G/TBT/N/USA/1633, G/TBT/N/USA/1632, 16/07/2020; G/TBT/N/USA/871/Rev.1, 08/07/2020; G/TBT/N/USA/1574, 10/02/2020; G/TBT/N/USA/295/Rev.1/Add.1, 22/09/2020; G/TBT/N/USA/295/Rev.1, 06/11/2019; G/TBT/N/USA/1489/Add.1, 10/12/2019; G/TBT/N/USA/1489, 04/06/2019; G/TBT/N/USA/1452/Add.1, 18/05/2019; G/TBT/N/USA/1452, 01/04/2019; G/TBT/N/USA/1407/Add.1, 11/04/2019; G/TBT/N/USA/1408, 30/10/2018; G/TBT/N/USA/1406, G/TBT/N/USA/1407, 29/10/2018; G/TBT/N/USA/1403/Add.1, 25/10/2019; G/TBT/N/USA/1403, 25/10/2018; G/TBT/N/USA/1344/Add.1, G/TBT/N/USA/1365/Add.1, 15/08/2018; G/TBT/N/USA/1361/Add.1, 21/02/2019; G/TBT/N/USA/1344/Add.2, 18/05/2021.
Article 5.6. Conformity assessment procedures	G/TBT/N/USA/1720, 20/04/2021; G/TBT/N/USA/1646, 14/09/2020; G/TBT/N/USA/1606/Add.1, 21/04/2021; G/TBT/N/USA/1606/Corr.1, 03/06/2020; G/TBT/N/USA/1606, 20/04/2020; G/TBT/N/USA/1477/Add.1, 12/03/2020; G/TBT/N/USA/1477, 29/04/2019; G/TBT/N/USA/1412, 05/11/2018; G/TBT/N/USA/1397/Corr.1, 25/10/2018; G/TBT/N/USA/1397, 05/10/2018; G/TBT/N/USA/1173/Add.1, 04/03/2019
Article 5.7. Conformity assessment procedures	G/TBT/N/USA/1673, 02/12/2020
Article 7.2. Conformity assessment (local government)	G/TBT/N/USA/1795, 02/11/2021; G/TBT/N/USA/1741, 29/06/2021; G/TBT/N/USA/1613, 21/04/2020
Unspecified. Notification (other)	Some 270 notifications (series G/TBT/N/USA/ <a href="http://tbtims.wto.org/">http://tbtims.wto.org/</a> )
<b>Agreement on Trade-Related Aspects of Intellectual Property Rights</b>	
Article 63.2. Notification of laws and regulations	IP/N/1/USA/66; IP/N/1/USA/T/8, 04/02/2022; IP/N/1/USA/65; IP/N/1/USA/P/17, 25/09/2020; IP/N/1/USA/64; IP/N/1/USA/P/16, 25/09/2020; IP/N/1/USA/63; IP/N/1/USA/C/8, 13/02/2019; IP/N/1/USA/62; IP/N/1/USA/C/7, 13/02/2019; IP/N/1/USA/61; IP/N/1/USA/P/15, 13/02/2019

Source: WTO Secretariat.

**Table A3.1 Summary analysis of United States MFN tariff, 2021**

Description	MFN				
	No. of lines	Average (%)	Range (%)	Coefficient of variation (CV)	Bound average <sup>a</sup> (%)
<b>Total</b>	<b>10,905</b>	<b>4.8</b>	<b>0 – 439.9</b>	<b>2.8</b>	<b>4.8</b>
HS 01-24	1,928	8.2	0 – 439.9	3.5	8.2
HS 25-97	8,977	4.1	0 – 59	1.4	4.1
<b>By WTO category</b>					
WTO agriculture	1,708	9.2	0 – 439.9	3.3	9.2
- Animals and products thereof	162	3.3	0 – 26.4	1.8	3.3
- Dairy products	167	27.0	0 – 354.8	1.4	27.0
- Fruit, vegetables and plants	532	5.4	0 – 131.8	2.1	5.4
- Coffee and tea	82	9.8	0 – 140	1.6	9.8
- Cereals and preparations	190	9.4	0 – 220.5	2.2	9.4
- Oil seeds, fats and oils and their products	107	7.2	0 – 163.8	3.3	7.2
- Sugars and confectionery	53	9.9	0 – 70.5	1.2	9.9
- Beverages, spirits and tobacco	153	22.7	0 – 439.9	3.5	22.7
- Cotton	16	3.2	0 – 16.9	1.5	3.2
- Other agricultural products n.e.s.	246	1.5	0 – 37.8	2.1	1.6
WTO non-agriculture (incl. petroleum)	9,197	4.0	0 – 59	1.4	4.0
- WTO non-agriculture (excl. petroleum)	9,165	4.0	0 – 59	1.4	4.0
- - Fish and fishery products	368	1.4	0 – 35	2.5	1.4
- - Minerals and metals	1,567	2.6	0 – 38	1.6	2.6
- - Chemicals and photographic supplies	1,941	3.7	0 – 6.5	0.7	3.7
- - Wood, pulp, paper and furniture	605	1.1	0 – 16	2.4	1.1
- - Textiles	1,099	7.9	0 – 40.2	0.7	7.9
- - Clothing	647	11.3	0 – 32	0.7	11.3
- - Leather, rubber, footwear and travel goods	421	7.5	0 – 59	1.5	7.4
- - Non-electric machinery	820	1.3	0 – 9.9	1.4	1.3
- - Electric machinery	543	1.7	0 – 15	1.4	1.7
- - Transport equipment	261	2.4	0 – 25	1.9	2.4
- - Non-agriculture articles n.e.s.	893	2.8	0 – 32	1.4	2.8
- Petroleum	32	2.1	0 – 7.1	1.3	2.2
<b>By HS section</b>					
01 Live animals & prod.	605	8.5	0 – 354.8	2.7	8.6
02 Vegetable products	563	3.9	0 – 163.8	3.0	3.9
03 Fats & oils	69	3.7	0 – 36.3	1.5	3.7
04 Prepared food etc.	691	12.0	0 – 439.9	3.4	12.0
05 Minerals	204	0.6	0 – 14	2.7	0.7
06 Chemical & prod.	1,804	3.5	0 – 15.2	0.8	3.5
07 Plastics & rubber	376	3.7	0 – 14	0.7	3.7
08 Hides & skins	231	4.9	0 – 20	1.1	4.9
09 Wood & articles	299	2.3	0 – 18	1.4	2.3
10 Pulp, paper etc.	275	0.0	0 – 0	n.a.	0.0
11 Textile & articles	1,675	9.0	0 – 32	0.7	9.0
12 Footwear, headgear	197	13.4	0 – 59	1.1	13.4
13 Articles of stone	317	5.4	0 – 38	1.1	5.4
14 Precious stones, etc.	105	3.0	0 – 13.5	1.1	3.1
15 Base metals & prod.	988	2.0	0 – 24.6	1.5	2.0
16 Machinery	1,383	1.4	0 – 15	1.4	1.5
17 Transport equipment	272	2.3	0 – 25	1.9	2.4
18 Precision equipment	518	2.6	0 – 31.8	1.5	2.6
19 Arms and ammunition	33	1.9	0 – 9.5	1.3	1.9
20 Miscellaneous manufacturing	293	3.5	0 – 32	1.2	3.4
21 Works of art, etc.	7	0.0	0 – 0	n.a.	0.0

n.a. Not applicable.

a Bound tariff is in the same HS17 nomenclature as the MFN tariff, however, it is based on the draft HS17 CTS submission and is not certified as at March 2022.

Note: The table uses average rates, thus in certain cases the average applied may marginally exceed the average bound due to unique circumstances such as nomenclature changes and AVE calculations.

Source: WTO Secretariat calculations, based on data provided by the authorities.



**Table A3.2 Tariff-rate quotas and fill rates, agricultural products, 2018-20**

ID	Description of products /Tariff item numbers	Tariff quota quantity	Fill rate 2018	Fill rate 2019	Fill rate 2020
USAQ001	Beef: fresh, chilled or frozen. Additional U.S. Note 3 to chapter 2. /0201.10.10; 0201.20.10; 0201.20.30; 0201.20.50; 0201.30.10; 0201.30.30; 0201.30.50; 0202.10.10; 0202.20.10; 0202.20.30; 0202.20.50; 0202.30.10; 0202.30.30; 0202.30.50	696,621 mt	71%	64.9%	65.3%
USAQ002 <sup>a</sup>	Milk and cream, fluid or frozen, fresh or sour, containing over 6% but not over 45% by weight of butterfat. Additional U.S. Note 5 to chapter 4/0401.40.05; 0401.50.05; 0403.90.04	6,694,840 l	15.2%	13.6%	15.2%
USAQ004 <sup>a</sup>	Butter, and fresh or sour cream containing over 45% by weight of butterfat. Additional U.S. Note 6 to chapter 4: 0401.50.50; 0403.90.74; 0405.10.10	6,977,000 kg	99%	98.5%	96.7%
USAQ006 <sup>a</sup>	Dried milk, whether or not containing added sugar or other sweetening matter. Additional U.S. Note 7 to chapter 4. /0402.10.10; 0402.21.05	5,261,000 kg	6.8%	2.5%	1.8%
USAQ008 <sup>a</sup>	Dried milk and dried cream, whether or not containing added sugar or other sweetening matter. Additional U.S. Note 8 to chapter 4. / 0402.21.30; 0403.90.51	3,321,300 kg	43.6%	52.9%	92.7%
USAQ009 <sup>a</sup>	Dried milk and dried cream, whether or not containing added sugar or other sweetening matter. Additional U.S. Note 9 to chapter 4. / 0402.21.75; 0403.90.61	99,500 kg	0.1%	56.5%	9.3%
USAQ010 <sup>a</sup>	Dairy products described in additional U.S. note 10 to chapter 4./ 0402.29.10, 0402.99.70, 0403.10.10, 0403.90.90, 0404.10.11, 0404.90.30, 0405.20.60, 1517.90.50, 1704.90.54, 1806.20.81, 1806.32.60, 1806.90.05, 1901.10.21, 1901.10.41, 1901.10.54, 1901.10.64, 1901.20.05, 1901.20.45, 1901.90.61, 1901.90.64, 2105.00.30, 2106.90.06, 2106.90.64, 2106.90.85, 2202.99.24	4,105,000 kg	79.6%	81%	80.6%
USAQ012 <sup>a</sup>	Milk and cream, condensed or evaporated. Additional U.S. Note 11 to chapter 4. 0402.91.10; 0402.91.30; 0402.99.10; 0402.99.30	6,857,300 kg	78.6%	79.8%	77.4%
USAQ013 <sup>a</sup>	Dried milk, dried cream and dried whey, the foregoing whether or not containing added sugar or other sweetening matter. Additional U.S. Note 12 to chapter 4 /0403.90.41; 0404.10.50	296,000 kg	38.3%	10.8%	55.5%
USAQ014 <sup>a</sup>	Butter substitutes containing over 45% by weight of butterfat. Additional U.S. Note 14 to chapter 4 /0405.20.20; 0405.90.10; 2106.90.24; 2106.90.34	6,080,500 kg	92.2%	99.7%	93.7%
USAQ016 <sup>a</sup>	Cheeses and substitutes for cheese (except (i) cheese not containing cow's milk; (ii) soft ripened cow's milk cheese; (iii) cheese (except cottage cheese)) containing 0.5% or less by weight of butterfat; and, (iv) articles within the scope of other. Additional U.S. Note 16 to chapter 4. /0406.10.04; 0406.10.84; 0406.20.89; 0406.30.89; 0406.90.95	48,627,859 kg	76.3%	79%	66.5%
USAQ017 <sup>a</sup>	Blue mold cheese (except Stilton produced in the United Kingdom) and cheese and substitutes for cheese containing, or processed from, blue-mold cheese. Additional U.S. Note 17 to chapter 4. /0406.10.14; 0406.20.24; 0406.20.61; 0406.30.14; 0406.30.61; 0406.40.54; 0406.40.58; 0406.90.72	2,911,001 kg	96.6%	95.9%	58.4%
USAQ018 <sup>a</sup>	Cheddar cheese and cheese and substitutes for cheese containing, or processed from Cheddar cheese. Additional U.S. Note 18 to chapter 4. / 0406.10.24; 0406.20.31; 0406.20.65; 0406.30.24; 0406.30.65; 0406.90.08; 0406.90.76	13,256,306 kg	59.7%	56.9%	54.5%
USAQ019 <sup>a</sup>	American-type cheese, including Colby, washed curd and granular cheese (but not including Cheddar cheese), and cheese and substitutes for cheese containing, or processed from, such American-type cheese. Additional U.S. Note 19 to chapter 4. /0406.10.34; 0406.20.36; 0406.20.69; 0406.30.34; 0406.30.69; 0406.90.52; 0406.90.82	3,522,556 kg	2.3%	1.7%	0%
USAQ020 <sup>a</sup>	Edam and Gouda cheeses and of cheese and substitutes for cheese containing, or processed from, Edam and Gouda cheese. Additional U.S. Note 20 to chapter 4. /0406.10.44; 0406.20.44; 0406.20.73; 0406.30.44; 0406.30.73; 0406.90.16; 0406.90.86	6,816,402 kg	98.8%	99.1%	95.2%
USAQ021 <sup>a</sup>	Italian-type cheeses, made from cow's milk, in original loaves (Romano made from cow's milk, Reggiano, Parmesan, Provolone, Provoletti and Sbrinz); and Italian-type cheeses, made from cow's milk, not in original loaves (Romano made from cow's milk, Reggiano). Additional U.S. Note 21 to chapter 4. /0406.10.54; 0406.20.51; 0406.20.77; 0406.30.77; 0406.90.31; 0406.90.36; 0406.90.41; 0406.90.66	13,481,064 kg	70.2%	71.2%	70.1%
USAQ022 <sup>a</sup>	Swiss or Emmentaler cheese other than with eye formation, Gruyere-process cheese and of cheese and substitutes for cheese containing, or processed from, such cheeses. Additional U.S. Note 22 to chapter 4. /0406.10.64; 0406.20.81; 0406.30.51; 0406.30.81; 0406.90.90	7,854,833 kg	38.4%	40.4%	32.8%
USAQ023 <sup>a</sup>	Cheese and substitutes for cheese, containing 0.5% or less by weight of butterfat (except articles within the scope of other import quotas provided for in additional U.S. notes 16 through 22, inclusive, or additional U.S. notes 24 and 25 to this chapter). /0406.10.74; 0406.20.85; 0406.30.85; 0406.90.93; 1901.90.34	5,474,908 kg	0.3%	0.1%	1.9%
USAQ024 <sup>a</sup>	Swiss and Emmentaler cheese with eye formation. Additional U.S. Note 25 to chapter 4. /0406.90.46	34,475,276 kg	64.3%	61.9%	51.9%
USAQ025	Green whole olives. Additional U.S. Note 4 to chapter 20. /0711.20.18; 2005.70.06	4,400 mt	8.9%	100%	100%
USAQ026 <sup>a,b</sup>	Peanuts. Additional U.S. Note 2 to chapter 12. /1202.30.40; 1202.41.40; 1202.42.20; 2008.11.25; 2008.11.45	52,906 mt	29.9%	33.2%	32%
USAQ028 <sup>b</sup>	Sugars, syrups and molasses. Additional U.S. Note 5 to chapter 17. /1701.12.10; 1701.91.10; 1701.99.10; 1702.90.10; 2106.90.44	22,000 mt	100%	100%	100%

ID	Description of products /Tariff item numbers	Tariff quota quantity	Fill rate 2018	Fill rate 2019	Fill rate 2020
USAQ030 <sup>b</sup>	Articles containing over 10% by dry weight of sugars described in additional U.S. Note 8 to chapter 17. /1701.91.54; 1704.90.74; 1806.20.75; 1806.20.95; 1806.90.55; 1901.10.74; 1901.90.69; 2101.12.54; 2101.20.54; 2106.90.78; 2106.90.95	64,709 mt	85.6%	81.7%	97.3%
USAQ033 <sup>b</sup>	Raw cane sugar. Additional U.S. Note 5 to chapter 17. /1701.13.10; 1701.14.10	1,117,195 mt	85.1%	95%	100%
USAQ034	Cocoa powder containing over 10% by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients. Additional U.S. Note 1 to chapter 18. /1806.10.10; 1806.10.34; 1806.10.65	2,313 mt	100%	100%	100%
USAQ035 <sup>a</sup>	Chocolate containing over 5.5% by weight of butterfat (excluding articles for consumption at retail as candy or confection). Additional U.S. Note 2 to chapter 18. /1806.20.24; 1806.32.04; 1806.90.15	26,167,700 kg	58.2%	66.3%	66.2%
USAQ036 <sup>a</sup>	Chocolate and low fat chocolate crumb containing 5.5% or less by weight of butterfat (excluding articles for consumption at retail as candy or confection). Additional U.S. Note 3 to chapter 18. /1806.20.34; 1806.20.85; 1806.32.14; 1806.90.25	2,122,834 kg	0%	0%	0%
USAQ037	Infant formula containing oligosaccharides, approved by the Food and Drug Administration. Additional U.S. Note 2 to chapter 19. /1901.10.11; 1901.10.33	100 mt	100%	97%	99%
USAQ038	Mixes and doughs. Additional U.S. note 3 to chapter 19. /1901.20.30; 1901.20.65	5,398 mt	89.2%	99.9%	100%
USAQ039 <sup>a</sup>	Peanut butter and paste. Additional U.S. Note 5 to chapter 20. /2008.11.05	20,000 mt	87.3%	89.3%	87.7%
USAQ040	Green ripe olives. /2005.70.02	730 mt			
USAQ041	Place packed stuffed olives. /2005.70.16	2,700 mt	19.9%	19.7%	27.4%
USAQ042	Green olives, other. /2005.70.91	550 mt	77.5%	75.1%	62.4%
USAQ043	Mandarin Oranges (satsuma). /2008.30.42	40,000 mt	100%	99.9%	100%
USAQ044 <sup>b</sup>	Mixed condiments and mixed seasonings. Additional U.S. Note 4 to chapter 21. /2103.90.74	689 mt	98.4%	99.7%	100%
USAQ045 <sup>a</sup>	Ice Cream. Additional U.S. Note 5 to chapter 21. /2105.00.10	5,667,846 l	71.9%	72.7%	87.5%
USAQ046 <sup>a</sup>	Animal feed containing milk or milk derivatives. Additional U.S. Note 2 to chapter 23. /2309.90.24; 2309.90.44	7,399,700 kg	0%	0%	0%
USAQ047 <sup>b</sup>	Tobacco. Additional U.S. Note 5 to chapter 24. /2401.10.63; 2401.20.33; 2401.20.85; 2401.30.33; 2401.30.35; 2401.30.37; 2403.11.00; 2403.19.60; 2403.91.45; 2403.99.60	150,700 mt	42.2%	50.9%	42.9%
USAQ049 <sup>b</sup>	Cotton, not carded or combed, the product of any country or area including the United States, having a staple length under 28.575 mm (1-1/8 inches) (except harsh or rough cotton, having a staple length under 19.05 mm (3/4 inch)). Additional U.S. Note 5 to chapter 52. / 5201.00.14	20,207 mt	0%	0%	0%
USAQ050	Harsh or rough cotton, not carded or combed, the product of any country or area including the United States, having a staple length of 29.36875 mm (1-5/32 inches) or more but under 34.925 mm (1-3/8 inches) and white in color (except cotton of perished staple, grabbotts and cotton pickings). Additional U.S. Note 6 to chapter 52. / 5201.00.24	1,400 mt	0%	0%	0%
USAQ051	Cotton, not carded or combed, the product of any country or area including the United States, having a staple length of 28.575 mm (1-1/8 inches) or more but under 34.925 mm (1-3/8 inches) (except harsh or rough cotton, not carded or combed, having a staple length of 29.36875 mm (1-5/32 inches) or more but under 34.925 mm (1-3/8 inches) and white in color (except cotton of perished staple, grabbotts and cotton pickings)). Additional U.S. Note 7 to chapter 52./ 5201.00.34	11,500 mt	0%	0%	0%
USAQ052	Cotton, not carded or combed, the product of any country or area including the United States, having a staple length of 34.925 mm (1 3/8 inches) or more. Additional U.S. Note 8 to chapter 52./ 5201.00.60	40,100 mt	1.8%	0%	1.2%
USAQ053 <sup>b</sup>	Card strips made from cotton having a staple length under 30.1625 mm (1-3/16 inches), and lap waste, silver waste and roving waste of cotton, all the foregoing the product of any country or area including the United States. Additional U.S. Note 9 to chapter 52. /5202.99.10	3,335,427 kg	27.8%	25.4%	47.3%
USAQ054 <sup>b</sup>	Fibers of cotton processed but not spun. Additional U.S. Note 10 to chapter 52. /5203.00.10	2,500 kg	0%	0%	0%

a Does not include quantities reserved for Mexico under NAFTA.

b Not on a calendar year basis.

Notes: In cases where in-quota imports exceed the TRQ quantities, fill rates are capped at 100%.  
Tariff lines are from the 2020 U.S. Harmonized Tariff Schedule.  
All are on a calendar year basis unless otherwise indicated.

Source: WTO documents G/AG/N/USA/147 and G/AG/N/USA/148, 2 March 2021; and G/AG/N/USA/153, 3 June 2021.

**Table A3.3 Import prohibitions, restrictions, and other measures 2022**

General description /Legal basis	WTO Justification /Agency
Prohibition of importation of shrimp and shrimp products harvested with commercial fishing technology that may adversely affect sea turtles. /Section 609, P.L. 101-162, 1990; 16 U.S.C. 1537.	(1) /State
Prohibition on importation of yellowfin tuna caught using purse seine fishing gear in the Eastern Tropical Pacific Ocean. Implementation of the International Dolphin Conservation Agreement Program (AIDCP). /Marine Mammal Protection Act of 1972, Section 101 (16 U.S.C. 1371)	(2) /NOAA
Prohibition on the importation of marine mammals and marine mammal products /Marine Mammal Protection Act of 1972, (16 U.S.C. 1371-1372)	(1) /NOAA, FWS
Prohibition on the importation of certain toxic substances. / Toxic Substances Control Act of 1976 (15 U.S.C. 2601 et seq.)	(2) /EPA
Prohibition on the importation of certain ozone-depleting substances. Implementation of the Montreal Protocol. /Clean Air Act Amendments of 1990 (42 U.S.C. 7671o)	(2) /EPA
Prohibition on importing, transporting, selling, receiving, acquiring, or purchasing in interstate or foreign commerce any fish, wildlife or plant, taken, possessed, transported or sold in violation of relevant U.S. or foreign laws. /Lacey Act Amendments of 1981, as amended. (16 U.S.C. 3371)	(1) /FWS
Prohibition on importing, transporting, selling, receiving, acquiring, or purchasing in interstate or foreign commerce any live lion, tiger, leopard, snow leopard, clouded leopard, jaguar, cheetah, or cougar, or any hybrids of any of these species, with some exceptions. /Captive Wildlife Safety Act, (16 U.S.C. 3371)	(1) /FWS
Prohibition on the importation of species, including offspring and eggs, designated through statute or regulation to be injurious to human beings, to the interests of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the United States, with some exceptions. / Lacey Act of 1900, as amended (18 U.S.C. 42(a)-(b)); 18 U.S.C. § 42(a)(1); 50 C.F.R. §§ 16.3-16.15.	(2) /FWS
Prohibition on the importation of endangered and threatened species. /Endangered Species Act of 1973, Section 9 (16 U.S.C. 1538)	(1) /FWS, NOAA, APHIS
Prohibition on the importation of certain species pursuant to Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). / Endangered Species Act of 1973, Section 9 (16 U.S.C. 1538)	(1) /FWS, NOAA, APHIS
Import prohibition of African elephant ivory. /African Elephant Conservation Act (16 U.S.C. 4201)	(1) /FWS
Prohibition on sale, or import of any product, item, or substance intended for human consumption or application containing, or labeled or advertised as containing, any substance derived from any species of rhinoceros or tiger. /Rhinoceros and Tiger Conservation Act (16 U.S.C. 5301 et seq.)	(1) /FWS
Prohibition on the import of exotic bird species. /Wild Bird Conservation Act (16 U.S.C. 4901 et	(1) /FWS
Prohibition on the import of bald and golden eagles. /Bald and Golden Eagle Protection Act (16 U.S.C. 668)	(1) /FWS
Prohibition on the import of migratory birds. /Migratory Bird Treaty Act (16 U.S.C. 703 et seq.)	(1) /FWS
Import quota on steel mill products from Korea, Rep. of. / Trade Expansion Act of 1962, Section 232 (19 U.S.C. 1862)	GATT Article XXI /BIS
Import quota on steel mill products from Argentina. /Trade Expansion Act of 1962, Section 232	Article XXI /BIS
Import quota on steel mill products from Brazil. / Trade Expansion Act of 1962, Section 232	Article XXI /BIS
Import quota on aluminum products from Argentina. / Trade Expansion Act of 1962, Section 232	Article XXI /BIS
Prohibition on the importation, distribution, transport, manufacture or sale of products containing dog and cat fur. /Dog and Cat Protection Act of 2000	(1) /CBP
The importation of rough diamonds into the United States requires a Kimberley Process Certificate. /Clean Diamond Trade Act, P. L. 108-19	(5) /CBP
Import of white phosphorus matches is prohibited, 19 C.F.R. 12.34/ An Act to Provide for a Tax Upon White Phosphorus Matches and for Other Purposes	(2) /CBP
The transportation, importation, sale, or possession of the skins of fur seals or sea otters is prohibited except under special permit. /58 Stat. 100-104; U.S. Marine Mammal Protection Act (16 U.S.C. 3371)	(1) /NOAA, FWS
Importation of switchblade knives is prohibited unless for use primarily as utilitarian knives. /19 C.F.R. 12.96; Switchblade Knife Act of 1958 (15 U.S.C. §1241-1245)	(4) /CBP
Importation of pre-Columbian monumental or architectural sculpture or mural is prohibited except if permitted by the exporting country. /19 C.F.R. 12.106; 19 U.S.C. 2091 – 2095 (P.L. 92-587)	(3) /State
Allowance Allocation and Trading Program restricts imports. /American Innovation and Manufacturing Act of 2020 (AIM Act)	(2)/ EPA
Certain cultural property is restricted unless allowed through exporting country certification /19 C.F.R. 12.104	(3) /State
Imports of viruses, therapeutic serum, toxin, antitoxin, or analogous product, or arsphenamine or its derivatives, applicable to the prevention, treatment, or cure of diseases or injuries of man are prohibited. /Public Health Service Act, § 351(a)&(i)(42 U.S.C. § 262(a)&(i))	(2) /HHS
Infectious biological materials that could causing communicable disease in humans. /42 C.F.R. 71.54	(2) /HHS
Books, writings, advertisements, circulars, or pictures advocating or urging treason or insurrection against the United States are prohibited. /Section 305, Tariff Act of 1930	(4) /CBP
Imports of goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor are prohibited. /19 U.S.C. Chap. 4	Article XX(e)/ CBP
Import prohibition of seafood products derived from fisheries found not to have comparable protections for marine mammals. /58 Stat. 100-104; U.S. Marine Mammal Protection Act; MMPA Import regulations (80 C.F.R. 54390)	(1) /NOAA

Note: (1) Conservation of exhaustible natural resources; (2) Protection of human, animal or plant life or health; (3) Protection of national artistic, historic, or archaeological treasures; (4) Protection of public morals; (5) Kimberley Process Certification Scheme.

Institutions: State: U.S. Department of State; NOAA: National Oceanic and Atmospheric Administration, (USDOC); FWS: U.S. Fish and Wildlife Service, Department of the Interior; EPA: U.S. Environmental Protection Agency; U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS); BIS: Bureau of Industry and Security, USDOC; CBP: U.S. Customs and Border Protection; HHS: Department of Health and Human Services.

Source: WTO document G/MA/QR/N/USA/5; CBP. Viewed at: [https://www.cbp.gov/sites/default/files/assets/documents/2017-Aug/ACE%20PGA%20Import%20Forms%20-%20August%202017\\_0.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2017-Aug/ACE%20PGA%20Import%20Forms%20-%20August%202017_0.pdf); <https://www.cbp.gov/sites/default/files/documents/Importing%20into%20the%20U.S.pdf>; Title 19, Chapter 4, Subtitle II, Part I-Miscellaneous; 19 C.F.R. Part 12-Special Classes of Merchandise.

**Table A3.4 Products subject to import licensing, 2022**

Products	Agency	Purpose / Legal reference	License conditions
<b>Automatic</b>			
Certain aluminum products including unwrought aluminum; bars, rods, and profiles; plates, sheet, and strip; wire; foil; pipe and tubes; castings and forgings	ITA, USDOC	Monitoring of import surges of specific aluminum products through the Aluminum Import Monitoring and Analysis (AIM) system. / 13 U.S.C. 301(a) and 302	Importers, importing agents, or brokers may apply for the license. Foreign filers may apply if they have a valid U.S. address.
All basic steel mill products (over 700 products)	ITA	To provide fast and reliable statistical information on steel imports to the Government and the public through the Steel Import Monitoring and Analysis (SIMA) system. / 85 FR 56162	Only registered users may file for steel licenses
<b>Non-automatic</b>			
Certain live animals, animal derived products/by-products, organisms and vectors, and veterinary biologics	Department of Agriculture	To protect domestic agriculture from animal diseases not present in the United States. / Title 9 C.F.R., Parts 92 through 98, 104 and 122	All persons, firms and institutions in the United States may apply for permits
Controlled substances and listed chemicals	Department of Justice, Drug Enforcement Administration	To: restrict the quantity of imports of controlled substances and listed chemicals; maintain a monitoring system; and meet the obligations under UN Conventions on these substances. / Title 21, C.F.R., Parts 1300, 1310, 1312, 1313; 21 U.S.C. Sections 822, 823, 826, 952, 953, 957 and 958	Importation only by approved, registered importers who must be inspected for adequate records, security, etc. prior to DEA registration.
Certain butter, dried skim milk, dried whole milk, dried buttermilk & whey, butter substitutes, and certain cheeses.	Department of Agriculture	An administrative tool that governs imports of certain dairy products subject to TRQs resulting from the Uruguay Round Agreement. / 7 C.F.R. 6.20-6.36	Importers or manufacturers of dairy products may apply for licenses. Importers must meet the Import Regulation performance criteria on the quantity of imports entered in a previous 12-month period. Manufacturers must meet a specified level of dairy production in a previous 12-month period and be listed in USDA's "Dairy Plants Surveyed" For items other than cheese, applicants may qualify by meeting minimum export requirements.
Distilled spirits, wine, and malt beverages for non-industrial use.	Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau	To protect consumers by oversight of labelling and advertising, to prevent unfair trade practices, and enforce federal laws on spirits, wine, and malt beverages. / Federal Alcohol Administration Act, 27 C.F.R. Part 1.	Any person, firm or institution may apply for a license as long as they are citizens or legal residents, or the firm/institution is incorporated in the United States.
Distilled spirits or alcohol for industrial use, including alcohol for fuel use.	Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau	To prevent tax fraud / 26 U.S.C. 5001, 5002(a), 5171, 5181, 5271; 27 C.F.R. Part 19	Any person, firm or institution may apply for a license as long as they are citizens or legal residents, or the firm/institution is incorporated in the United States.
Explosives, blasting agents and detonators	Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives	To keep explosives out of the hands of persons, prohibited by law from receiving or possessing explosives and to ensure safe and secure storage. / 18 U.S.C. Chapter 40; 27 C.F.R. Part 555	All persons, firms, and institutions may apply for a license or permit
Firearms and ammunition	Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives	Licensing provisions under the Gun Control Act, the Arms Export Control Act, and National Firearms Act. / 18 U.S.C., Chapter 44; 22 U.S.C., § 2778, 26 U.S.C. Chapter 53	All persons, firms, and institutions may apply for a license or permit
Defense articles on the U.S. Munitions Import list	Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives	To regulate permanent importation of U.S. Munitions Import List defense articles consistent with U.S. national security and foreign policy. / 18 U.S.C. Chapter 44, 22 U.S.C. § 2778, 26 U.S.C. Chapter 53	All persons, firms, and institutions may apply for a license or permit
Fish and wildlife, alive or dead, including endangered species	Department of the Interior, U.S. Fish and Wildlife Service	To: identify commercial importers and exporters of wildlife; require records of each importation or exportation of wildlife and the subsequent disposition of the wildlife by the importer or exporter, and assist in efforts to conserve endangered and threatened species. / 50 C.F.R. Part 14	All persons, firms, and institutions may apply for a license

Products	Agency	Purpose /Legal reference	License conditions
Natural gas, including LNG, CNG, and compressed gas liquid	Department of Energy	To fulfil the requirements of the Natural Gas Act requiring authorization to import. /Section 3, Natural Gas Act; 15 U.S.C. 717b; 10 C.F.R. Part 590	All persons, firms, and institutions may import natural gas
Pesticides, toxic and hazardous substances, and pesticide devices	Protection of human, animal or plant life or health, <i>inter alia</i>	The Federal Insecticide, Fungicide, and Rodenticide Act 1976, as amended, 7 U.S.C. 136; 19 C.F.R. Parts 12.110-117. /U.S. Environmental Protection Agency	
Production and utilization facilities, special nuclear materials, source materials, and by-product materials, including when such materials are contained in radioactive waste	Nuclear Regulatory Commission	To protect public health and safety and the environment, and maintain the common defense and security of the United States, by exercising controls over the possession, use, distribution, and transport of such items. /Atomic Energy Act, 10 C.F.R. Part 110	All persons, firms and institutions must have a permanent (physical) address within the United States
Certain plant and plant products	Department of Agriculture	To protect against the entry of plant pests and diseases, and to protect endangered plant species. /Section 412 of the Plant Protection Act, 7 U.S.C. 7712, the Endangered Species Act, and Title 7 C.F.R. Part 319	Any individual, partnership, corporation, association, joint venture, or other legal entity may be eligible to apply for licenses.
All basic steel mill products (over 700 products)	Department of Commerce, International Trade Administration	To provide fast and reliable statistical information on steel imports to the Government and the public through the Steel Import Monitoring and Analysis (SIMA) system. /85 FR 56162	Only registered users may file for steel licenses
Raw and refined sugar, syrups	Department of Agriculture	To administer the sugar TRQs and the sugar reexport program, including the Certificate of Quota Eligibility (CQE) program. /15 C.F.R. 2011, Sub-part A and Sub-part B; 7 C.F.R. 1530	All importers are eligible to apply for certificates for specialty sugars. Only U.S. refiners may apply for licenses to import quota-exempt sugar under the reexport program. CQEs are issued by the exporting country.
Tobacco products, processed tobacco, and proprietors of export warehouses	Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau	Primary purpose is to ensure proper collection of Federal excise tax revenue on tobacco products. /Title 26 U.S.C. Chapter 52	Any person, firm or institution may apply for a license as long as they are citizens or legal residents, or the firm/institution is incorporated in the United States.
TSCA Import Requirements: <a href="https://www.epa.gov/tsca-import-export-requirements/tsca-requirements-importing-chemicals#uses">https://www.epa.gov/tsca-import-export-requirements/tsca-requirements-importing-chemicals#uses</a>	Protection of human, animal or plant life or health, <i>inter alia</i>	Toxic Substances Control Act. /U.S. Environmental Protection Agency	

Source: WTO documents G/LIC/3/USA/16, 28 January 2020; G/LIC/N/3/USA/18, 5 October 2021; G/LIC/N/2/USA/5, 3 August 2021; "ACE PGA Import Forms"; information compiled by the Secretariat from sources listed in the table and information provided by the authorities.



**Table A3.5 Final changes in U.S. export controls, August 2018-January 2022**

Date	Title / Citation	Purpose
<b>2018</b>		
01/08	Addition of Certain Entities; and Modification of Entry on the Entity List / 83 FR 37423	44 entities added (destination China), one entry modified
03/08	U.S.-India Major Defense Partners: Implementation Under the EAR of India's Membership in the Wassenaar Arrangement / 3 FR 38018	EAR amended to recognize and implement India's membership in the Wassenaar Arrangement. Addition of India to Country Group A:5/
03/08	Revision of Export and Reexport License Requirements for Republic of South Sudan Under the Export Administration Regulations (EAR)/ 83 FR 38021	EAR updated to restrict exports and re-exports of certain items on the CCL to South Sudan
30/08	Final rule reflecting changes to the Missile Technology Control Regime Annex agreed in October 2017 / 83 FR 44216	Revisions to the Export Administration Regulations Based on the 2017 Missile Technology Control Regime Plenary Agreements
04/09	Addition of Certain Persons to the Entity List, Revision of Entries on the Entity List and Removal of Certain Entities From the Entity List (final rule) / 83 FR 44821	15 entities added (China; Hong Kong, China; Pakistan; Russian Federation; Kingdom of Saudi Arabia; Türkiye; the UAE; and the United Kingdom).
26/09	Addition of Certain Entities to the Entity List, and Removal of an Entity From the Entity List / 83 FR 48532	14 entities added (destination Belarus, Islamic Republic of Iran, Russian Federation, and Singapore).
24/10	Wassenaar Arrangement 2017 Plenary Agreements Implementation (Final Rule) / 83 FR 53742	Final rule implementing changes to List of Dual-Use Goods and Technologies agreed in December 2017
30/10	Addition of an Entity to the Entity List / 83 FR 54519	One entity added (destination China)
19/11	Review of Controls for Certain Emerging Technologies / 83 FR 58201	Advance notice of proposed rulemaking seeking public comment (by 10 January 2019).
20/12	Control of Military Electronic Equipment and Other Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML) / 83 FR 65292	Correcting two entries on the CCL that control global navigation satellite systems receiving equipment
<b>2019</b>		
11/04	Revisions to the Unverified List (UVL) / 84 FR 14608	50 persons added. One entry modified
13/05	Addition of Certain Entities to the Entity List, Revision of an Entry on the Entity List, and Removal of an Entity from the Entity List / 84 FR 21233	12 entities added (destination China; Hong Kong, China; Pakistan; and the UAE).
21/05	Huawei and Affiliates Entity List Rule / 84 FR 22961	Huawei Technologies Co., Ltd and 68 of its non-U.S. affiliates (in 26 destinations) added
22/05	Temporary General License / 84 FR 23468	90-day license partially restoring licensing requirements to Huawei and 68 non-U.S. affiliates
23/05	Implementation of Certain New Controls on Emerging Technologies Agreed at Wassenaar Arrangement 2018 Plenary / 84 FR 23886	Final rule implementing changes to the Wassenaar Arrangement List of Dual-Use Goods and Technologies agreed in 2018
24/05	Revisions to Country Group Designations for Venezuela and Conforming Changes for License Requirements / 84 FR 24018	Bolivarian Republic of Venezuela moved to Country Group D:1 (national security concern) and Country Groups D:2-4 (nuclear, weapons, and missile technology concern)
05/06	Restricting the Temporary Sojourn of Aircraft and Vessels to Cuba / 84 FR 25986	Tightening of travel restrictions
24/06	Addition of Entities to the Entity List and Revision of an Entry on the Entity List / 84 FR 29371	Five entities added (destination China). One entry modified
27/06	Revisions to the UVL / 84 FR 30593	Eight persons removed, one name corrected
14/08	Addition of Certain Entities to the Entity List, Revision of Entries on the Entity List, and Removal of Entities from the Entity List / 84 FR 40237	17 entities added (Armenia; Belgium; Canada; China; Georgia; Hong Kong, China; Malaysia; Netherlands; Russian Federation; UAE; United Kingdom).
21/08	Temporary General License: Extension of Validity, Clarifications to Authorized Transactions-	Extension through 18 November 2019 for Huawei and its listed non-U.S. affiliates / 84 FR 43487
21/08	Addition of Entities to the Entity List / 84 FR 43493	46 entities added (all non-U.S. affiliates of Huawei)
09/10	Addition of Entities to the Entity List / 84 FR 54002	28 entities added (destination China)
21/10	Restricting Additional Exports and Reexports to Cuba/ 84 FR 56117	Tightening of sanctions towards Cuba
13/11	Addition of Certain Entities to the Entity List / 84 FR 61538	22 entities added (the Kingdom of Bahrain, France, the Islamic Republic of Iran, Jordan, Lebanon, Oman, Pakistan, the Kingdom of Saudi Arabia, Senegal, Syria, Türkiye, UAE, and United Kingdom)
20/11	Temporary General License: Extension of Validity, effective 18 November 2019 / 84 FR 64018	Extension through 16 February 2020 for Huawei and its listed non-U.S. affiliates
<b>2020</b>		
06/01	Addition of Software Specially Designed to Automate the Analysis of Geospatial Imagery to the Export Control Classification Number 0Y521 Series / 85 FR 459	Interim final rule imposing a license requirement for export and re-export of related software to all destinations, except Canada
23/01	Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control under the USML / 85 FR 4136	Final rule incorporating comments received on the transfer of items from Categories I, II and III of the USML to the CCL
18/02	Temporary General License: Extension of Validity, effective 13 February 2020 BIS Final rule / 85 FR 8722	Temporary general license for Huawei and non-U.S. affiliates (114) extended through 1 April 2020
24/02	Amendments to Country Groups for Russian Federation and Yemen Under the EAR / 85 FR 10274	Russian Federation moved to Country Groups D:2 and D:4; Yemen moved to Country Group D:1
06/03	Amendments to Country Groups for Russian Federation and Yemen Under the EAR / 85 FR 13009	Correction (removing Yemen from Country Group B)
12/03	Temporary General License: Extension of Validity final rule	Temporary general license for Huawei and non-U.S.

Date	Title / Citation	Purpose
16/03	10/03/20 / 85 FR 14416 Addition of Entities to the Entity List, and Revision of Entry on the Entity List / 85 FR 14794	affiliates (114) extended through 15 May 2020 24 entities added (China, Islamic Republic of Iran, Pakistan, Russian Federation, and the UAE).
02/04	Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control Under the USML / 85 FR 18438	Alerting the public of interim measures applied following a court order issued on 6 March 2020
28/04	Expansion of Export, Reexport, and Transfer (in-Country) Controls for Military End Use or Military End Users. Final rule, effective 29 June 2020 / 85 FR 23459	Tightening the control of items intended for military end use or military end users in China, the Russian Federation, or the Bolivarian Republic of Venezuela
28/04	Elimination of License Exception Civil End Users (CIV) Final Rule, effective 29 June 2020 / 85 FR 23470	Requiring a license for all national security controlled items to countries of national security concern
18/05	Temporary General License: Extension of Validity final rule 15/05/20 / 85 FR 29610	Temporary general license for Huawei and non-U.S. affiliates (114) extended until 13 August 2020
19/05	Amendments to General Prohibition Three (Foreign-Produced Direct Product Rule) and the Entity List / 85 FR 29849	New control over certain foreign-produced items when there is knowledge that they are destined to a designated entity on the Entity List-
03/06	Expansion of Export, Reexport, and Transfer Controls for Military End Use or Military End Users / 85 FR 34306	Correction to final rule published on 28 April 2020
05/06	Addition of Entities to the Entity List, and Revision of Entry on the Entity List / 85 FR 34495	24 entities added (China; Hong Kong, China; and the United Kingdom).
05/06	Addition of Entities to the Entity List, and Revision of Entry on the Entity List / 85 FR 34503	Nine entities added (destination China).
17/06	Implementation of the February 2020 Australia Group Intersessional Decisions: / 85 FR 36483	Final rule implementing changes agreed in the Australia Group List
18/06	Release of "Technology" to Entities on the Entity List in the Context of Standards Organizations / 85 FR 36719	Authorizing the release without a license of certain technology to Huawei and its listed non-U.S. affiliates
22/07	Addition of Certain Entities to the Entity List; Revision of Existing Entries on the Entity List / 85 FR 44159	11 entities added (destination China). 37 entries modified or revised
31/07	Revision to the EAR: Suspension of License Exceptions for Hong Kong, China / 85 FR 45998	Suspending the availability of all license exceptions for Hong Kong, China
20/08	Addition of Huawei Non-U.S. Affiliates to the Entity List, Removal of Temporary General License / 85 FR 51596	Final rule implementing three sets of changes to controls of Huawei and its listed non-U.S. affiliates
20/08	Requirements for Listed Entities When Party to a Transaction final rule on public display / 85 FR 51335	Clarifying the supplemental license requirements for parties on the Entity List
27/08	Addition of Entities to the Entity List, and Revision of Entries on the Entity List / 85 FR 52898	60 entities added (China; France; Hong Kong, China; Indonesia; Malaysia; Oman; Pakistan; Russian Federation; Switzerland; and the UAE).
11/09	Wassenaar Arrangement 2018 Plenary Agreements Implementation; and other Revisions Related to National Security Controls / 85 FR 56294	Final rule implementing changes to the Wassenaar Arrangement List of Dual-Use Goods and Technologies and Munitions List agreed in 2018
22/09	Addition of Entities to the Entity List; Corrections to Certain Existing Entries on the Entity List / 85 FR 59419	47 entities added (Canada; China; Hong Kong, China; Islamic Republic of Iran; Malaysia; Oman; Pakistan; Thailand; Türkiye; the UAE; and the United Kingdom).
05/10	Implementation of Certain New Controls on Emerging Technologies Agreed at Wassenaar Arrangement 2019 final rule / 85 FR 62583	Implementing multilateral controls on six recently developed or developing technologies
06/10	Information Sharing for Purposes of Judicial Review 2019 final rule/ 85 FR 63011	Procedure for classified national security information submitted <i>ex parte</i> and <i>in camera</i> to a court reviewing any agency action under the EAR
06/10	Amendment to Licensing Policy for Items Controlled for Crime Control Reasons / 85 FR 63007	Human rights concerns
06/10	Controls on Exports and Reexports of Water Cannon Systems / 85 FR 63009	Imposing a license requirement on exports and re-exports of water cannon systems
09/10	Revisions to the Unverified List (UVL) / 85 FR 64014	40 persons removed and 26 persons added
29/10	Amendments to National Security License Review Policy under the EAR / 85 FR 68448	Revising the license review policy for items destined to China, the Bolivarian Republic of Venezuela, or the Russian Federation
18/11	Revisions to Export Enforcement Provisions / 85 FR 73411	Amending and clarifying certain provisions of the EAR
04/12	Wassenaar Arrangement 2018 Plenary Decisions Implementation / 85 FR 78684	Correcting errors in the Federal Register publication of 11 September 2020
22/12	Addition of Entities to the Entity List, Revision of Entry on the Entity List, and Removal of Entities from the Entity List, effective 18 December 2020. / 85 FR 83416	77 entities added (China; Bulgaria; France; Germany; Hong Kong, China; Italy; Malta; Pakistan; Russian Federation; UAE). Four removed (Israel; UAE)
23/12	Addition of "Military End User" (MEU) List to the Export Administration Regulations and Addition of Entities to the MEU List. / 85 FR 83793	Final rule amending the EAR by adding a Military End User (MEU) List including the first tranche of entities (China, Russian Federation, and the Bolivarian Republic of Venezuela)
23/12	Removal of Hong Kong, China as a Separate Destination under the EARs / 85 FR 83765	Implementing Sections 2 and 3 of Executive Order 13936 of 14 July 2020
28/12	Amendment to Country Groups for Ukraine, Mexico and Cyprus Under the EARs / 85 FR 84211	Ukraine moved to Country Group B, Mexico and Cyprus added to Country Group A:6
<b>2021</b>		
06/01	Technical Amendments to the EAR: Export Control Classification Number 0Y521 Series Supplement—Software Specially Designed To Automate the Analysis of Geospatial Imagery Classification / 86 FR 461	Extending controls by one year
07/01	Chemical Weapons Convention Regulations and the EAR:	Reflecting recent additions to the CWC

Date	Title / Citation	Purpose
07/01	Additions to Schedule 1(A) of the Annex on Chemicals to the Chemical Weapons Convention (CWC) / 86 FR 936	Clarifying the scope of export controls applicable to certain vaccines
11/01	Commerce Control List: Clarifications to the Scope of Export Control Classification Number 1C991 / 86 FR 944	Three persons removed
12/01	Revisions to the Unverified List (UVL) / 86 FR 1766	U.S. UAS Export Policy change reflecting announcement by the President on 24 July 2020
15/01	Change to the License Review Policy for Unmanned Aerial Systems (UAS) / 86 FR 2252	One entity added (destination China). One entity added to the MEU List and duplicate entry removed
15/01	Addition of Entity to the Entity List, and Addition of Entity to the Military End-User (MEU) List / 86 FR 4862	Interim final rule to implement provisions of the ECRA regarding certain military intelligence end uses and end users
19/01	Expansion of Certain End-Use and End-User Controls and Controls on Specific Activities of U.S. Persons / 86 FR 4865	Rescission of Sudan's designation resulting in a relaxation of measures
18/02	Implementation in the EAR of the United States' Rescission of Sudan's Designation as a State Sponsor of Terrorism / 86 FR 4929	Limit exports and re-exports of sensitive goods to the military and security services of Myanmar
04/03	Burma: Implementation of Sanctions Effective: 17/02/21 / 86 FR 10011	14 entities added (Germany, Russian Federation, and Switzerland).
08/03	Addition of Certain Entities to the Entity List; Correction of Existing Entries on the Entity List / 85 FR 12529	Final rule implementing sanctions on Myanmar
08/03	Burma: Implementation of Sanctions / 85 FR 13173	Four entities added (destination Myanmar)
17/03	Additions of Entities to the Entity List / 85 FR 13179	Correction of interim final rule
18/03	Expansion of End-Use and End-User Controls and Controls on Specific Activities of U.S. Persons / 86 FR 14534	Sanctions imposed on the Russian Federation
29/03	Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 / 86 FR 14689	Final rule revising the CCL and parts of the EAR
09/04	Wassenaar Arrangement 2019 / 86 FR 16482	Seven entities added (destination China)
09/04	Addition of Entities to the Entity List / 86 FR 18437	Interim final rule expanding controls on certain military-intelligence end uses and end users. Sanctions on Myanmar tightened
01/06	Expansion of Certain End-Use and End-User Controls and Controls on Specific Activities of U.S. Persons; Corrections; and Burma Sanctions / 86 FR 18433	Transfer of jurisdiction of certain "software" and "technology" resulting from action by the Court of Appeals for the Ninth Circuit
01/06	Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control Under the USML / 86 FR 29189	Eight entities added (Pakistan and the UAE). Revisions and removals (China and Pakistan)
09/06	Revision of Entry and Removal of Entity from the Military End-User List (MEU) / 86 FR 29190	Antiboycott provisions not applicable after 16 August 2020
16/06	EARs: Termination of UAE Participation in the Arab League Boycott of Israel / 86 FR 30535	One entity removed
24/06	Removal of Entity from the Entity List / 86 FR 31909	Five entities added (destination China)
06/07	Addition of Entities to the Entity List / 86 FR 33119	Four entities added (destination Myanmar)
12/07	Addition of Entities to the Entity List / 86 FR 35389	34 entities added, one entry revised, and one entry removed from the Entity List. One entity added to the MEU List
19/07	Addition of Certain Entities to the Entity List; Removal of Entity from the Unverified List; and Addition of Entity to the MEU List / 86 FR 36496	Six entities added and one entry corrected (destination Russian Federation)
02/08	Addition of Entities and Revision of Entry on the Entity List / 86 FR 37901	Publication of Section 232 Report. Summary of the findings of the investigation
19/08	Effect of Imports of Uranium on the National Security / 86 FR 41540	Corrections and clarifications to the Jan. 2020 rule transferring items on the USML (Cat. I, II, and III) to the CCL
05/10	Control of Firearms, Guns, Ammunition and Related Articles the President Determines No Longer Warrant Control under the USML / 86 FR 46590	Editorial corrections and clarifications
05/10	Export Administration Regulations / 86 FR 54807	Final rule implementing a decision of the Australia Group
06/10	Commerce Control List: Expansion of Controls on Certain Biological Equipment "Software" / 86 FR 54814	Final rule transferring the licensing authority from the NRC to the BIS
21/10	Control of Deuterium That is Intended for Use Other Than in a Nuclear Reactor Under EAR / 86 FR 55492	Interim final rule and requesting public comment by 12 December 2021
22/10	Information Security Controls: Cybersecurity Items / 86 FR 58205	Proposal to amend the EAR to clarify and expand restrictions on the availability of STA
04/11	Clarifications of Availability and Expansion of Restrictions on Availability of License Exception Strategic Trade Authorization Under the EAR / 86 FR 568615	Four entities added (Israel, Russian Federation, Singapore)
26/11	Addition of Certain Entities to the List / 86 FR 60759	27 entities added (China, Japan, Pakistan, and Singapore). One entity in the Russian Federation added to the MEU List
09/12	Addition of Entities and Revision of Entries on the Entity List; and Addition of Entity to the Military End-User (MEU) List / 86 FR 67317	More restrictive treatment of exports, re-exports, and in-country transfers to Cambodia
17/12	Revision to Controls for Cambodia under the Export Administration Regulations / 86 FR 70015	37 entities added and one entry revised (destination China, Georgia, Malaysia, and Türkiye)
29/12	Addition of Entities and Revision of Entries on the Entity List / 86 FR 71557	Mandatory filing of reports and other documents electronically replacing existing manual reporting and processing procedures
29/12	Additional Protocol Regulations: Mandatory Electronic Submission of Reports through the Additional Protocol Reporting System (APRS) / 86 FR 74006	

---

Date	Title / Citation	Purpose
<b>2022</b>		
06/01	Export Control Classification Number 0Y521 Series Supplement—Extension of Controls on an Emerging Technology /87 FR 729	Extending controls in place since 6 January 2020

Source: WTO Secretariat, based on Bureau of Industry and Security online information. Viewed at: <https://www.bis.doc.gov/index.php/federal-register-notices>.

**Table A3.6 Summary of IP protection, December 2021**

Form	Main legislation	Coverage	Duration
Copyright and related rights	-Copyright Act of the United States (1976), as amended, and as incorporated in Title 17 of the U.S. Code. -Marrakesh Treaty Implementation Act, 10 October 2018 (modified copyright exceptions for blind or print disabled persons). -Music Modernization Act (MMA), 11 October 2018. -Subtitle A of Title I of Division Q of the Consolidation Appropriations Act, 2021	Authors' economic and moral rights in original works of authorship. The Act also provides rights of attribution and integrity for authors of works of visual art. Other federal and state laws address additional protection for the attribution and integrity of other works and authors. Works must be original creations. Registration is not required for protection. The MMA modified copyright-related issues due to new forms of technology like digital streaming	Life of author plus 70 years for works created on or after 1 January 1978. Anonymous and pseudonymous works and works made for hire are protected for 95 years after publication or 120 years after creation, whichever expires first.
Patents	-Patent Law of the United States, as incorporated in Title 35 of the U.S. Code -Leahy-Smith America Invents Act (AIA) of 2011. Patent Law Treaties Implementation Act of 2012	Inventions that are new, useful, and nonobvious are patentable.  Patents may be granted for a process, machine, manufacture or composition of matter, or improvements thereof.	20 years from filing date
Industrial designs	-Patent Law of the United States, as incorporated in Title 35 of the U.S. Code -Patent Law Treaties Implementation Act of 2012	Any new, original and ornamental design for an article of manufacture	For applications filed before 13 May 2015, 14 years from the date of grant; for applications filed on or after 13 May 2015, 15 years from the date of grant
Trademarks	-Lanham Act of 1946, as amended (15 U.S.C. 1051) et - Modernization Trademark Act of 2021.	Any sign used to identify and distinguish goods or services of one enterprise from those of another enterprise	10 years from registration date; renewable indefinitely as long as the trademark is in use in commerce that is lawfully regulated by Congress
Geographical indications	-Lanham Act of 1946, as amended and state laws, and supplemented with the Federal Alcohol Administration Act of 1935	Geographic signs and names of viticultural significance	10 years from registration date; renewable indefinitely as long as the trademark is in use in commerce that is lawfully regulated by Congress
New plant varieties	-Plant Variety Protection Act Amendments of 1994 (7 U.S.C. 2321 et seq.) Amended by the 2018 Farm Bill, P.L. 115-334, 20 December 2018  -Patent Law of the United States, as incorporated in Title 35 of the U.S. Code	New plant varieties reproduced by seed or tuber-propagated, or asexually reproduced, not previously sold in the United States for purposes of exploitation of the variety, more than 1 year prior to the date of filing; or in any area outside the United States more than 4 years prior to the filing date, or, in the case of a tree or vine, over 6 years prior to the filing date Plant patents may be granted to asexually-reproduced plant varieties that are distinct and new.	20 years from date of issue of the certificate in the United States  20 years from date of filing
Layout designs of integrated circuits	Semiconductor Chip Protection Act of 1984 (17 U.S.C. 901 et seq.)	Topography of microelectronic semiconductor products, provided it is original and is not staple, commonplace or familiar in the industry at the time of creation	10 years from filing date (or, if earlier, from first use)
Trade secrets	-Economic Espionage Act of 1996 and state laws. -Defend Trade Secrets Act, P.L. 114-153, 2016 amended the Economic Espionage Act.	Any information, not generally known to the relevant portion of the public, that provides an economic benefit to its holder, and is the subject of reasonable efforts to maintain its secrecy	Indefinite

Source: WIPO; USDOC; and notifications to the WTO.