

AN INTRODUCTION TO INTERNATIONAL TRADE, PANDEMIC PROTECTIONISM, AND THE USE OF INTERNATIONAL TRADE AS A FOREIGN POLICY TOOL

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Executive Summary: This memo begins by providing a brief overview of international trade by outlining the governing bodies of law, the jurisdictional bodies, and discussing recent United States actions and cases. This memo concludes by explaining the trend towards protectionism in international procurement during the COVID-19 pandemic as well as discussing the use of international trade, by the American government, as a foreign policy tool against Russia after their invasion of Ukraine.

I. INTRODUCTION

At its core, international trade is simply the exchange of goods and services across international borders.¹ This exchange can bring profound benefits to all countries involved, but it comes with a necessary tradeoff—while it makes foreign markets available to domestic traders, it also subjects domestic firms to competition from abroad.² To balance these tradeoffs with other national priorities, countries attempt to regulate international trade by adopting a variety of regulations. While regulations can be dynamic and complex, they tend to either promote free trade policies or advocate for more restrictive measures.³

Proponents in favor of free trade argue that such policies spur economic growth, promote global efficiency and innovation, raise product standards, reduce the costs of goods, and facilitate an international exchange of ideas.⁴ Conversely, advocates for restrictive measures argue that such policies promote national security, encourage food security, limit consumer exposure to goods derived from unethical or anti-competitive practices, and insulate the country from external economic shocks such as sanctions imposed by adversarial nations.⁵

In the United States, the Constitution grants Congress and the Executive Branch the authority to jointly regulate this complex environment.⁶ The Executive Branch, for

¹ See JOHN H. JACKSON, ET AL., *LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS: CASES, MATERIALS AND TEXT 1* (6th ed. 2013) (introducing the role of international economic relations in trade).

² See generally Marketa Trimble, *Unjustly Vilified TRIPS-Plus?: Intellectual Property Law in Free Trade Agreements*, (Am. U. L. Rev Working Paper, 2021)

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3918052; Kimberly Amadeo, *International Trade: Pros, Cons, and Effect on the Economy*, THE BALANCE, (Oct. 2, 2021, 7:21 PM)

<https://www.thebalance.com/international-trade-pros-cons-effect-on-economy-3305579>.

³ See JACKSON, *supra* note 1, at 5–7 (providing a timeline of the growth of international trade from the mercantilist era to World War II).

⁴ *Id.*

⁵ *Id.*

⁶ U.S. CONST. art. I, § 8; *id.* art. II, § 2.

its part, negotiates and signs treaties, while Congress is responsible for and ratifying those treaties and regulating commerce with foreign countries.⁷ A combination of domestic and international laws governs international trade disputes, and several US courts, including the Federal Circuit, hear and decide these cases.

II. GOVERNING LAWS AND TOOLS OF INTERNATIONAL TRADE

A. *Free Trade Agreements*

Laws that govern international trade are derived from a variety of authorities, including bilateral, multilateral, and regional trade agreements, import policies, export controls, and sanctions. Free Trade Agreements (FTAs), though, are the primary means through which the United States facilitates trade.⁸ Such agreements tend to promote the quasi-unrestricted movement of goods across borders, subject to certain limitations and guarantees.⁹ For instance, by nature, FTAs almost universally include provisions guaranteeing to some extent that every party will enjoy access to the markets of every other participant.¹⁰ Similarly, most FTAs also include provisions mandating protections for intellectual property, promises for fair labor practices, limitations and guarantees on foreign direct investment, tariff regulations, methods for determining country of origin, and clauses detailing dispute settlement procedures, among others.¹¹ Currently, the United States is a party to fourteen FTAs, covering twenty different countries.¹² Most recently, the United States signed the U.S.-Mexico-Canada Agreement¹³ (USMCA) in 2018 to replace the North American Free Trade Agreement¹⁴ (NAFTA), and preemptively withdrew from the Trans-Pacific Partnership (TPP)—an agreement that represents over thirteen percent of global GDP *without* U.S. participation—in 2017 before the agreement came into force, but is now weighing whether to rejoin.¹⁵

B. *Import Policies*

Import policies are another set of important tools the United States utilizes to regulate international trade. Through these policies, the United States can provide

⁷ *Id.*

⁸ See ANDRES B. SCHWARZENBERG & REBECCA M. NELSON, CONG. RSCH. SERV., R45474, INTERNATIONAL TRADE AND FINANCE: OVERVIEW AND ISSUES FOR THE 116TH CONGRESS, 23 (2020).

⁹ See *id.* at 26.

¹⁰ *Id.*

¹¹ *Id.*

¹² See INTERNATIONAL TRADE ADMINISTRATION, <https://www.trade.gov/free-trade-agreements> (last visited Oct. 15, 2021).

¹³ See United States-Mexico-Canada Agreement, Nov. 30, 2018, Pub. L. 116-113, § 2, 134 Stat. 19.

¹⁴ See North American Free Trade Agreement, Dec. 8, 1993, 19 U.S.C. § 3311.

¹⁵ See *The United States Officially Withdraws from the Trans-Pacific Partnership*, U.S. TRADE REP., <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/january/US-Withdraws-From-TPP>.

countries with beneficial access to the United States market.¹⁶ For instance, Congress can enact Trade Preference Programs (TPPs), which provide unilateral and nonreciprocal advantages to designated beneficiary countries.¹⁷ There are several trade preference programs currently in effect, including large programs that target several countries and regions, such as the Generalized System of Preferences (GSP), the Caribbean Basin Trade Partnership Act (CBTPA), and the African Growth and Opportunity Act (AGOA), as well as narrower programs that focus on specific nations, such as the Haitian Hemispheric Opportunity Through Partnership for Encouragement Act (HOPE Act).¹⁸ These programs work to bolster the trade of the beneficiary countries by temporarily allowing them to export specific products to the United States duty-free.¹⁹

C. Import Tariffs, Quotas, and Import Licenses

While many import policies are used to promote the exchange of goods by lowering the costs of trade, these policies can also be used to raise the barrier to entry and limit foreign traders' abilities to export goods to the United States.²⁰ Import tariffs, quotas, and licenses are some of the primary ways the United States government regulates and limits imports from foreign entities. An import tariff is a tax levied against goods imported from another country.²¹ The exact tariff rate is calculated using the Harmonized Tariff Schedule (HTS)—a database operated by the United States International Trade Commission (USITC) that determines the rate after factoring in the type of product being imported, the country of origin, and the existence of any preferential trade agreements, such as a trade preference program or FTA.²²

Quotas, on the other hand, place a limit on the quantity of a specific good that can be imported into the United States over a given time period.²³ While the United States does not currently impose any absolute quotas—those quotas that place a hard limit on the number of specific goods that can be imported—it does impose some tariff-rate quotas, which tax certain goods at higher rates after a certain quantity threshold has been passed.²⁴ Lastly, import licenses are documents issued by the United States that

¹⁶ See generally VIVIAN C. JONES, ET AL., CONG. RSCH. SERV. R41429, TRADE PREFERENCES ECONOMIC ISSUES AND POLICY OPTIONS 1–2 (2013).

¹⁷ *Id.*

¹⁸ See *id.* at 2.

¹⁹ *Id.*

²⁰ See generally *Technical Information on anti-dumping*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm.

²¹ See generally *Import Tariffs Overview*, INT. TRADE ADMIN., <https://www.trade.gov/import-tariffs-fees-overview>.

²² *Id.*

²³ *Quota Enforcement and Administration*, CUSTOMS AND BORDER PATROL, <https://www.cbp.gov/trade/quota/guide-import-goods/commodities>.

²⁴ CUSTOMS AND BORDER PATROL, <https://www.cbp.gov/trade/quota/guide-import-goods/commodities> (last visited Oct. 15, 2022).

authorize international traders to import certain goods.²⁵ The United States imposes import licenses on a variety of products, which in turn limits the number of entities that are permitted to import the related goods.²⁶

D. National Security and Foreign Policy Implications

While international trade issues are mostly centered around economics, there are also important national security and foreign policy implications. When attempting to regulate international trade for foreign policy or national security purposes, export controls and sanctions are some of the primary tools of the United States government.²⁷ Export controls seek to protect national security interests by preventing the proliferation of sensitive and critical technologies, such as nuclear material, defense articles and services, and dual-use goods.²⁸ Sanctions, conversely, are restrictive economic measures used against an individual, entity, or country.²⁹ These measures can include trade embargoes, restrictions on the use of United States dollars, denial of foreign assistance and investments, freezing of foreign assets, and prohibiting transactions with United States entities.³⁰

Throughout its tenure, the former Administration used both of these tools in tandem. For instance, in August 2020, the former Administration announced that it was restricting Huawei, a major Chinese telecommunications provider, from buying computer chips made or designed with American equipment or software—an expansion of a sanction enacted earlier in the year that prohibited companies globally from using American owned software or machines to produce chips designed by Huawei.³¹ Huawei has taken a massive financial hit from these sanctions, and the new administration has reiterated that it may take further action against the company, if needed.³²

III. THE FEDERAL CIRCUIT AND OTHER JURISDICTIONAL BODIES

The U.S. Court of International Trade (CIT) has jurisdiction over customs and

²⁵ See generally *Import Licensing*, U.S. TRADE REP., <https://ustr.gov/trade-agreements/wto-multilateral-affairs/wto-issues/import-licensing>.

²⁶ See *Importing and Exporting*, USA GOV, <https://www.usa.gov/import-export>, (last visited Oct. 15, 2022).

²⁷ See SCHWARZENBERG & NELSON, *supra* note 8, at 49 (mentioning that dual-use technologies include commodity, software, or technology that has both commercial and military applications)

²⁸ ANDRES B. SCHWARZENBERG & CHRISTOPHER A. CASEY, CONG. RSCH. SERV., R46669, INTERNATIONAL TRADE AND FINANCE: OVERVIEW AND ISSUES FOR THE 117TH CONGRESS, 23 (2021)

²⁹ Johnathan Masters, *What Are Economic Sanctions?*, COUNCIL ON FOREIGN RELATIONS, (2019) <https://www.cfr.org/bacjgrounder/what-are-economic-sanctions>.

³⁰ See generally ANDRES B. SCHWARZENBERG & CHRISTOPHER A. CASEY, *supra* note 28.

³¹ 85 Fed. Reg. 29849 (May 19, 2020) (adding Huawei to the entity list); 85 Fed. Reg. 51596 (Aug. 20, 2020) (expanding the sanction against Huawei).

³² See David Kirton, *Huawei Smartphone Revenue to Fall at least \$30-40 Billion in 2021-Chairman, YAHOO!* (Sept. 24, 2021) <https://www.yahoo.com/now/huawei-2021-smartphone-revenue-drop-091225061.html>.

international trade cases and hears claims from both private parties and other government agencies, such as the Department of Commerce (DoC), the Department of Homeland Security (DHS), and the International Trade Commission (ITC). However, government agencies typically try to settle matters involving private entities and the United States government before filing a claim with the CIT. In such instances, several agencies participate and have specialized roles. The DoC investigates issues involving dumping or anti-competitive subsidizing, Customs and Border Patrol (CBP) enforces antidumping and countervailing duty orders, and the ITC looks at whether a substantial injury to a domestic industry exists.³³ However, the decisions and findings of these agencies are appealable to the CIT, and decisions from the CIT are, in turn, appealable to the United States Court of Appeals for the Federal Circuit.

IV. PRESIDENTIAL POWER TO REGULATE TRADE

Congress has enacted several laws that delegate its foreign commerce power to the President, including Section 232 of the Trade Expansion Act of 1962,³⁴ and Sections 201³⁵ and 301 of the Trade Act of 1974.³⁶ However, Presidents have pushed the boundaries of the authorities granted by these acts. Notably, the previous administration unilaterally imposed tariffs to address perceived national security concerns with China's anti-competitive trade practices, impacting approximately sixteen percent of United States imports.³⁷ To date, the new administration has kept in effect most of the trade related actions instigated by its predecessor.

A. *Section 232 and the Trade Expansion Act of 1962*

Section 232 of the Trade Expansion Act of 1962 allows any department, agency head, or interested party to request that the DoC investigate the effect of certain imports on United States national security.³⁸ After initiating an investigation, the DoC consults with the Department of Defense and "other appropriate officers of the United States" to discuss specific policy and security questions relevant to the investigations.³⁹ From there, the DoC has 270 days from the initiation date to produce a report advising the President on the threat to national security posed by the imported product and provide

³³ See *Understanding Anti-Dumping & Countervailing Duty Investigations*, U.S. INT'L TRADE COMM'N, https://www.usitc.gov/press_room/isad.html.

³⁴ 19 U.S.C. § 1862(f)

³⁵ 19 U.S.C. § 2251-2254

³⁶ 15 U.S.C. § 2411-2416

³⁷ See generally RACHEL F. FEFER, ET AL., CONG. RSCH. SERV., R45249, SECTION 232 INVESTIGATIONS: OVERVIEW AND ISSUES FOR CONGRESS 25-28 (2020) (detailing former President Trump's use of Section 232 tariffs); CATHLEEN D. CIMINO-ISAACS, ET AL., CONG. RSCH. SERV. R45417, WORLD TRADE ORGANIZATION: OVERVIEW AND FUTURE DIRECTION 20 (2020).

³⁸ 19 U.S.C. § 1862(b)(1)(a).

³⁹ 19 U.S.C. § 1862(b)(1)(b)-(2)(a)(ii).

recommendations based on the finds.⁴⁰ The President may then decide on necessary remedies.⁴¹

The most notable example of the application of Section 232 in recent memory is then-President Trump's decision in March 2018 to use the section to impose a twenty-five percent tariff on steel imports and a ten percent tariff on aluminum imports, resulting in several international bodies, including the European Union, China, Mexico, and Canada, imposing retaliatory tariffs on the same products.⁴² The tariffs were also met with domestic resistance, including several lawsuits heard by the U.S. Court of International Trade and the U.S. Court of Appeals for the Federal Circuit, challenging the legality of the tariffs.⁴³ The Biden administration has maintained the tariffs imposed by his predecessor, and is considering instigating new Section 232 investigations as part of his supply chain review under EO 14017.⁴⁴

B. Section 201 & 301 of the Trade Act of 1974

Section 201 of the Trade Act of 1974 concerns global safeguard investigations and import relief for domestic industries.⁴⁵ The act states that when a surge in imports seriously threatens domestic industries, the affected industries may petition the ITC for a temporary safeguard.⁴⁶ The ITC then judges if an injury exists, and recommends a remedy to the President who then decides whether to provide relief.⁴⁷ Such relief may include tariff increases to shield the domestic entities, quotas, or negotiated agreements.⁴⁸ It is important to note that Section 201 does not require a finding of unfair trade practices on the part of the importers, but only that the injury be "serious" and that increased imports must be the "substantial cause" of the injury.⁴⁹

Most recently, the ITC undertook two investigations in 2017 addressing injuries

⁴⁰ *Id.* § 1862(b)(3)(a).

⁴¹ *Id.* § 1862(c)(1)(a)(i)-(ii)

⁴² *See Proclamation on Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles into the United States*, NATIONAL ARCHIVES, <https://trumpwhitehouse.archives.gov/presidential-actions/proclamation-adjusting-imports-derivative-aluminum-articles-derivative-steel-articles-united-states>; Joseph Parilla & Max Bouchet, *Which US communities are most affected by Chinese, EU, and NAFTA retaliatory tariffs?*, BROOKINGS INSTITUTE (2018) <https://www.brookings.edu/research/which-us-communities-are-most-affected-by-chinese-eu-and-nafta-retaliatory-tariffs>.

⁴³ *See, e.g.*, *Am. Inst. for Int'l Steel, Inc. v. United States*, 415 F. Supp. 3d. 1267, 1269 (Ct. Int'l Trade 2019) (holding that Congress acted constitutionally when it delegated tariff authority to the executive branch in Section 232 of the Trade Expansion Act of 1962); *Severstal Exp. GmbH v. United States*, 374 F. Supp. 3d. 1368, 1370 (Ct. Int'l Trade 2019) (denying Severstal's challenge for a preliminary injunction that would have stopped the imposition of the President's Section 232 tariff); *Transpacific Steel LLC v. United States*, 415 F. Supp. 3d 1267, 1276 (Ct. of Int'l Trade 2019) (holding the additional Section 232 tariffs on Turkish steel violated statutorily mandated procedures).

⁴⁴ SECTION 232 OF THE TRADE EXPANSION ACT OF 1962, CONG. RSCH. SERV., IF10667 (Apr. 1, 2022).

⁴⁵ *See Understanding Safeguard Investigations*, U.S. INT'L TRADE COMM'N, https://www.usitc.gov/press_room/us_safeguard.htm (last visited Oct. 15, 2022).

⁴⁶ *Id.*

⁴⁷ *Id.*; 19 U.S.C. § 2252(b).

⁴⁸ *Understanding Safeguard Investigations*, *supra* note 45

⁴⁹ *Id.*

sustained by domestic industries due to increased imports of photovoltaic cells⁵⁰ and large residential washing machines.⁵¹ Former President Trump issued a proclamation in January 2018 providing relief to the domestic industries by increasing tariffs on the imported products.⁵² Immediately following, Canadian solar product exporters sought an injunction against the former President’s decision.⁵³ The Federal Circuit denied the exporter’s request, noting that the President enjoyed “substantial discretion” under Section 201 to determine which measures were necessary to protect domestic entities. To date, the tariffs have not been lifted or otherwise altered by the new administration.

Section 301 of the Trade Act of 1974 allows the United States Trade Representative (USTR) to impose sanctions on foreign countries that violate United States trade agreements or engage in practices that unjustifiably burden United States commerce.⁵⁴ While traditionally the United States has used section 301 to pressure other countries to remove trade barriers, thus facilitating a more open international market, in recent years it has relied on Section 301 to impose trade restrictions on imports from China.⁵⁵ Most recently, USTR found that digital tax services (DSTs) of Austria, India, Italy, Spain, Turkey, and the United Kingdom discriminated against major United States digital companies, and unilaterally imposed a twenty-five percent tariff on \$2.1 billion worth of combined goods—though the tariff was suspended and due to come into effect in November of 2021.⁵⁶

V. INTERNATIONAL PROCUREMENT AND INTERNATIONAL TRADE AS A FOREIGN POLICY TOOL

There are no shortage of issues and controversies surrounding international trade, but over the past couple of years a few topics merit special consideration. First, there has been a shift towards protectionism in international procurement that was

⁵⁰ *Section 201—Imported Solar Cells and Modules*, U.S. TRADE REP., <https://ustr.gov/issue-areas/enforcement/section-201-investigations/investigation-no-ta-201-75-cspv-cells> (last visited Oct. 15, 2022).

⁵¹ *Section 201—Imported Large Residential Washing Machines (Washers)*, U.S. TRADE REP., <https://ustr.gov/issue-areas/enforcement/section-201-investigations/section-201-imported-large-residential-washing-machines-washers> (last visited Oct. 15, 2022).

⁵² *See Section 201 Cases: Imported Large Residential Washing Machines and Imported Solar Cells and Modules*, U.S. TRADE REP., <https://ustr.gov/sites/default/files/files/Press/fs/201%20Cases%20Fact%20Sheet.pdf> (last visited Oct. 15, 2022).

⁵³ *Silfab Solar, Inc. v. United States*, 296 F.Supp.3d 1295, 1297 (Ct. Int’l Trade 2018), *aff’d* 892 F.3d 1340, 54 19 U.S.C. § 2411(a)(1).

⁵⁵ ANDRES B. SCHWARZENBERG, CONG. RSCH. SERV., IF11346, SECTION 301 OF THE TRADE ACT OF 1974 1–2 (May 26, 2022).

⁵⁶ *Id.*; *USTR Announces, and Immediately Suspends, Tariffs in Section 301 Digital Services Taxes Investigations*, U.S. TRADE REP., <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/june/ustr-announces-and-immediately-suspends-tariffs-section-301-digital-services-taxes-investigations> (last visited Oct. 5, 2022).

exacerbated by the COVID-19 pandemic.⁵⁷ With this rise of protectionism and promotion of U.S. domestic production, it is important to keep in mind that the U.S. must maintain its commitments to the different international trade agreements that it is a part of.⁵⁸ Second, the Russian invasion of Ukraine caused significant problems to an already complex global supply chain; this conflict has disrupted international trade, caused inflationary pressures, and developed security concerns.⁵⁹ In an effort to bring the conflict to an end, the United States has used international trade as a foreign policy tool against Russia.⁶⁰

A. Protectionism in International Procurement

Government procurement has been an objective of U.S. trade policy, as the U.S. has attempted to offer opportunities for U.S. goods, services, and suppliers to go abroad and compete for foreign government procurement.⁶¹ Government procurement typically comprises of ten to fifteen percent of most country's GDP.⁶² Thus, the creation of the 1979 World Trade Organization (WTO) Agreement on Government Procurement (GPA) would be critical for the global economy, as there would be transparent and nondiscriminatory rules that served to protect and promote procurement amongst the different parties to the GPA.⁶³ The GPA covers 48 parties that have chosen to open up their procurement markets, this particular market is estimated to be worth around 1.7 trillion dollars.⁶⁴ Additionally, GPA market access is negotiated in a reciprocal manner; thus, the procurement coverage in different markets and sectors varies.⁶⁵

Yet the story of the GPA and other international agreements that the U.S. is a party to does not just mean that American domestic goods, services, and suppliers take advantage of the global economy abroad. A study by Government Accountability Office found that in 2017 the U.S. had opened nearly 80% of its federal contracts to suppliers around the world.⁶⁶ Despite being one of the most open markets across the globe the U.S., throughout its history, has attempted to ensure that it has some laws that restrict foreign sourcing.⁶⁷ The two main laws that regulate domestic sourcing are the Buy

⁵⁷ Q3 2022 Overview: Limited Targeting of Essential Goods Essential Goods Initiative: October 2022 data release, GLOBAL TRADE ALERT, <https://www.globaltradealert.org/reports> (last visited October 5, 2022).

⁵⁸ See Arthur Guarino,

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⁶¹ *Government Procurement*, U.S. TRADE REP., <https://ustr.gov/issue-areas/government-procurement> (last visited Oct. 5, 2022).

⁶² *Id.*

⁶³ ANDRES B. SCHWARZENBERG, CONG. RSCH. SERV., R47243, U.S. GOVERNMENT PROCUREMENT AND INTERNATIONAL TRADE (Sept. 19, 2022).

⁶⁴ *Id.* at 1.

⁶⁵ U.S. GOVERNMENT PROCUREMENT AND INTERNATIONAL TRADE, CONG. RSCH. SERV., IF11580 (June 1, 2022).

⁶⁶ *Id.*

⁶⁷ SCHWARZENBERG, *supra* note 59, at 3.

American Act of 1933 (BAA)⁶⁸ and the Trade Agreements Act of 1979 (TAA)⁶⁹. The BAA is a domestic price preference statute for U.S. products that controls federal government procurement.⁷⁰ This statute practically requires that agencies favor domestic end products, yet it does not completely prohibit agencies from choosing a foreign product if agency determines that the foreign product is equivalent and less costly after a comparative price evaluation test.⁷¹ On the other hand, the TAA serves to enforce different trade agreements that ensure that products and services of designated countries do not receive discriminatory treatment for procurements covered by the TAA.⁷²

The COVID-19 pandemic had a massive impact on trade, it has caused many global supply chain issues that governments feel need to be taken care of through different protectionist policies.⁷³ Congress and the President quickly realized that they needed to act, as the COVID-19 pandemic had exposed the U.S. government's reliance on procurement of goods in certain industrial sectors from foreign manufacturers and suppliers.⁷⁴ Members of Congress began to look for ways in which they could promote U.S. domestic production by prioritizing domestic goods in procurement and strengthening government procurement requirements set for foreign suppliers.⁷⁵ An example of the executive branch taking action and favoring domestic goods is the Trump administration raising the domestic content threshold to more than 55 percent, altering what qualifies as a domestic end product under the BAA.⁷⁶

The current administration has not slowed down with protectionist measures of international procurement, as in January of 2021 the Biden administration signed executive order 14005, commonly known as the "Buy America" E.O. This executive order seeks to shift almost 600 billion dollars annually of government procurement spending from foreign to domestic manufacturers.⁷⁷ Similar to his predecessor, Biden's Made in America policy aims to have a threshold of 60 percent, a five percent increase to what can be considered a domestic end product.⁷⁸ This focus on American products stems from an American overreliance on foreign supply chains and manufacturing, particularly fortifying supply chains related to U.S. semiconductors and clean energy.⁷⁹ Additionally, the Biden administration has promised to review past and current actions to make sure that they are consistent with "Made in America Laws," this includes:

⁶⁸ 41 U.S.C. §§8301–8305.

⁶⁹ 19 U.S.C. §§ 2501-2581.

⁷⁰ U.S. GOVERNMENT PROCUREMENT AND INTERNATIONAL TRADE, *supra* note 61.

⁷¹ *Id.*

⁷² *Id.*

⁷³ SCHWARZENBERG, *supra* note 59, at 14.

⁷⁴ *See id.*

⁷⁵ *See id.*

⁷⁶ *Id.* at 7.

⁷⁷ Conor Nolan, 'Buy America': Protectionist Peril or Politically Practical?, GEO. PUB. POL'Y REV., (Oct. 31, 2021) <http://gppreview.com/2021/10/31/buy-america-protectionist-peril-politically-practical>.

⁷⁸ *See id.*

⁷⁹ *See id.*

reviewing agency actions inconsistent with administration policy, updating and centralizing the “Made in America” waiver process, promoting transparency in federal procurement and promoting enforcement of BAA.⁸⁰ As new supply chain issues and conflicts between different countries continue to arise in the international stage there will be no shortage of governments pushing for protectionist policies that prioritize domestic supplies.

B. Russia/Ukraine Conflict: International Trade as a Foreign Policy Tool

The Russian invasion of Ukraine began in February 2022, and with no end in sight, this conflict has caused a global shakeup to international trade and investment.⁸¹ This conflict has further pushed governments across the globe to realize the importance of maintaining a healthy domestic supply chain as well as acknowledging the dependencies on certain countries for specific products.⁸² Yet, beyond the acknowledgement of their own trade setbacks, the U.S. and the European Union have also decided to use international trade as a foreign policy tool against Russia.⁸³ The U.S. and its allies have set sanctions and other actions aimed at affecting Russian economic engagement and trade as well as its access to financial instruments and resources.⁸⁴

Russia makes up less than one percent of U.S. exports and about one percent of U.S. imports, despite this the executive branch has been the primary actor in imposing trade sanctions and actions as American technology is important to goods imported by Russia.⁸⁵ The sanctions imposed by the Biden administration on Russia come from authority delegated to the President in the International Emergency Economic Powers Act (IEEPA) and the National Emergencies Act (NEA).⁸⁶ Biden administration sanctions have included a focus on export controls, export and import restrictions, and the revocation of Russia’s permanent normal trade relations (PNTR) on April 8th.⁸⁷

The DoC’s Bureau of Industry and Security (BIS) have spearheaded certain American export controls, as it announced rules that would restrict the transfer of U.S. origin technologies to Russia and its ally Belarus. Since February 2022, the BIS has focused on degrading Russia’s military capability by denying exports to, reexports to,

⁸⁰ SCHWARZENBERG, *supra* note 59, at 29-30.

⁸¹ CORY WELT, CONG. RSCH. SERV., IN11869, RUSSIA’S 2022 INVASION OF UKRAINE: OVERVIEW OF U.S. SANCTIONS AND OTHER 1 (July 6, 2022).

⁸² SCHWARZENBERG, *supra* note 59, at 34.

⁸³ *See* WELT, *supra* note 77, at 1.

⁸⁴ REBECCA M. NELSON, CHRISTOPHER A. CASEY, & ANDRES B. SCHWARZENBERG, CONG. RSCH. SERV., IF12062 NEW FINANCIAL AND TRADE SANCTIONS AGAINST RUSSIA (March 17, 2022).

⁸⁵ *Id.*

⁸⁶ *See* Russia – Country Commercial Guide, INT’L TRADE ADMIN., <https://www.trade.gov/country-commercial-guides/russia-sanctions-framework> (last visited Oct. 17, 2022) (explaining that under the IEEPA the President issues executive order’s declaring national emergency under the NEA).

⁸⁷ *See* NELSON, CASEY, & SCHWARZENBERG, *supra* note 80; CATHLEEN D. CIMINO-ISAACS, BRANDON J. MURRILL, LIANA WONG, & NINA M. HART, CONG. RSCH. SERV., IF12071, RUSSIA’S TRADE STATUS, TARIFFS, AND WTO ISSUES (APRIL 11, 2022).

and transfers within Russia of items on the Commerce Control List that are unilaterally controlled.⁸⁸ Furthermore, the U.S. has targeted oil refining, industrial and commercial items, chemical and biological producers, and luxury goods by denying these industries exports.⁸⁹ Additionally, the U.S. has added foreign direct product rules (FDPRs) targeted at Russia and Belarus to ensure that U.S. hardware and software is not used to produce foreign items that may support Russia's military capabilities.⁹⁰ These measures are having a severe and long-lasting consequences on Russia's defense industrial base; this has been particularly evident as Russia has suffered from major supply shortages forcing Russia to look to less technologically advanced countries like Iran and North Korea for these supplies and equipment.⁹¹

The PNTR, or most favored nation (MFN), status is a cornerstone of the WTO as it guarantees that members provide other member's lowest tariffs or best trade concessions.⁹² President Biden signed into a law a bill that suspended Russia's PNTR status, this law also allows the Biden administration to further increase non-MFN tariffs through January 1, 2024.⁹³ By revoking Russia's PNTR status higher duty rates apply, an example of this would be the increase of duty rates from 15 percent to 45 percent for certain Russian titanium products.⁹⁴ Additionally, duty rates for most petroleum oil would also double, dealing a severe blow to Russian exports.⁹⁵ On June 27, President Biden issued Presidential Proclamation 10420, this would allow the U.S. to further increase tariffs on certain Russian imports that are worth nearly 2.3 billion dollars.⁹⁶ The U.S. sanction regime does not seem like it will slow down anytime soon. An example can be seen when the Office of Foreign Assets Control (OFAC), on September 9, issued preliminary guidance concerning a ban on maritime transportation of Russian crude oil and petroleum products on December 5, 2022 and February 5, 2023 respectively.⁹⁷ The U.S. is gearing itself towards a more aggressive stance with sanctions, as it looks to go after entities and individuals outside of Russian jurisdiction who provide material

⁸⁸ *Commerce-Treasury-State Alert: Impact of Sanctions and Export Controls on Russia's Military-Industrial Complex*, BUREAU OF INDUS. AND SEC. <https://www.bis.doc.gov/index.php/documents/about-bis/newsroom/press-releases/3172-2022-10-14-impacts-of-sanctions-and-export-controls-on-russian-military-industrial-complex/file>.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² RUSSIA'S TRADE STATUS, *supra* note 83.

⁹³ *Id.*

⁹⁴ *See id.*

⁹⁵ *See id.*

⁹⁶ Kate McNulty, Shara Aranoff, & Alexander Chinoy, *Increased Tariffs on Certain U.S. Imports from Russia Effective July 27, 2022: What Companies Need to Know*, COVINGTON (July 25, 2022), <https://www.globalpolicywatch.com/2022/07/increased-tariffs-on-certain-u-s-imports-from-russia-effective-july-27-2022-what-companies-need-to-know>.

⁹⁷ Peter Flanagan, Kimberly Strosnider, Peter Lichtenbaum, Stephen Rademaker, Corinne Goldstein, Stephen Bartenstein, et al., *The United States Imposes Additional Sanctions and Export Controls Against Russia and Belarus*, COVINGTON (Oct. 13, 2022), <https://www.globalpolicywatch.com/2022/10/the-united-states-imposes-additional-sanctions-and-export-controls-against-russia-and-belarus>.

support to or for Russia.⁹⁸

⁹⁸ *Id.*