

Consumer Products from China: Safety, Regulation, and Supply Chains
Panel II: Shifting Production Networks and Challenges for Supply Chain Resiliency
Testimony before the U.S. – China Economic and Security Review Commission

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I. Introduction

Since the imposition of Section 301 duties on goods from China in 2018 and 2019, U.S. imports from China have declined. As a result, China dropped from the first to the third largest source of U.S. imports in 2023 for the first time in years. U.S. antidumping (“AD”) and countervailing duty (“CVD”) orders have also proved effective in disciplining surges of unfairly traded imports from China. Some importers and Chinese producers have responded to these tariffs and trade remedies by shifting their sources of supply to third countries. While such shifts do not necessarily negate the effectiveness of these trade measures, they do raise concerns if they result from illegitimate circumvention or evasion schemes or constitute continued unfair dumping and subsidies injuring industries and workers in the United States.

This testimony proceeds in four parts. First, I review shifts in trade in response to Section 301 duties and AD and CVD duties on goods from China. The next section reviews the tools the U.S. government has to counteract circumvention or evasion schemes that may be causing trade to appear to shift while China in fact continues to enjoy duty-free access to the U.S. market. The third section reviews evidence that shifts in trade may be related to outbound investment and exports by Chinese firms, including with support from the Government of China. Finally, the last section concludes with policy recommendations to strengthen U.S. trade tools to address these concerns.

II. Shifts in Trade in Response to Tariffs and Trade Remedies on China

Since the imposition of Section 301 tariffs on imports from China in 2018 and 2019, U.S. imports from China have fallen, the U.S. trade deficit with China has declined, China’s share of total U.S. imports has shrunk, and, as of 2023, China is no longer ranked as the top source of U.S. imports. From 2018 to 2023, the value of annual U.S. imports from China shrank by \$121.9 billion, or 22.4 percent.² While U.S. exports to China initially declined in 2019, they were higher than 2018 levels in each year from 2020 to 2023. As a result, the annual U.S. trade deficit with China fell by \$137.8 billion dollars, or 31.8 percent, from 2018 to 2023.

These shifts in trade with China occurred even though overall U.S. imports (and the overall U.S. trade deficit) grew from 2018 to 2023. Total imports from the world rose by \$528.8 billion, or 20.8 percent. At the same time, the U.S. global trade deficit increased by \$251.3 billion, or 22.1

¹ This testimony reflects the individual views of the author, and not necessarily the views of Schagrin Associates or any of its clients.

² USITC Trade DataWeb, imports for consumption, customs value. All U.S. import and export figures are from DataWeb and reflect trade in goods only.

percent. But China’s direct role in U.S. imports and the U.S. trade deficit fell sharply. From 2018 to 2023, China’s share of U.S. imports fell from 21.3 percent to 13.7 percent. Similarly, China’s share of our trade deficit fell from 38.2 percent to 21.3 percent.

In 2023, China fell from its position as the top source of U.S. imports for the first time since it reached that position in 2007. Last year, China was our third largest import source rather than our largest. In 2023, the U.S. imported more from Mexico and more from Canada than it imported from China, a situation that last occurred more than two decades ago, in 2002.

As imports from China fell in response to the imposition of Section 301 tariffs, imports from certain other countries appeared to benefit. From 2018 to 2023, imports from Korea, Vietnam, Taiwan, and India rose by 54.8 percent, 120.1 percent, 91.3 percent, and 53.7 percent, respectively. Vietnam’s growth has been especially rapid, allowing it to rise from our twelfth-largest source of imports in 2018 to our seventh-largest in 2023. At the same time, China’s own exports to these countries have also grown.

U.S. Imports from, and Chinese Exports to, Top U.S. Import Sources³

Country	2023 U.S. Imports (US\$ Billion)	Change in U.S. Imports, 2018 - 2023	Change in China Exports, 2018 - 2022
Mexico	\$473.4	37.5%	76.2%
Canada	\$421.5	32.2%	52.8%
Germany	\$162.2	28.3%	50.0%
Japan	\$151.3	5.4%	17.6%
Korea	\$155.7	54.8%	49.5%
Vietnam	\$112.4	120.1%	75.2%
Taiwan	\$87.3	91.3%	n/a
India	\$84.3	53.7%	54.5%

To be clear, the data do not suggest that the Section 301 duties have not been successful. To the contrary, the duties have been remarkably effective at reducing U.S. imports from China, and they have reduced the U.S. trade deficit with China even more sharply. To the extent that allied countries with more market-based practices have also benefitted, that can be seen as a positive result.

What the data do suggest, however, is that U.S. importers who have shifted their sources away from China in reaction to the Section 301 duties may nonetheless be providing a conduit for upstream goods that are still produced in China and incorporated into global supply chains in third countries before being imported into the United States. A more detailed analysis at a product-by-product level would be needed to demonstrate the extent to which these shifts in trade in fact represent a shifting of supply chains that still provides an outlet for Chinese production. Moreover, as reviewed in more detail below, current enforcement mechanisms for

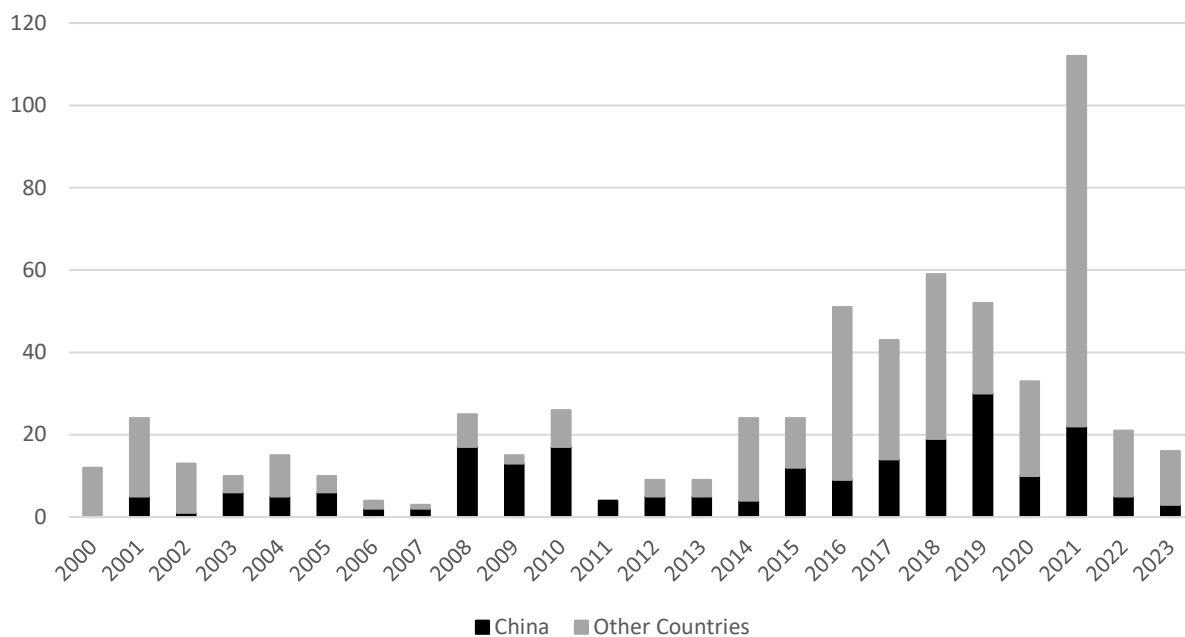
³ *Id.* China’s exports are from UN Comtrade. The latest year for which data is available is 2022. These comparisons should be treated with caution given the longstanding discrepancies between U.S. import data and China’s export statistics.

Section 301 should be strengthened to ensure the duties are not being unfairly circumvented through transshipment or other schemes involving third countries.

Similar shifts in trade that have been seen in response to Section 301 duties have also occurred in the context of other trade remedies. The imposition of Section 301 duties on imports from China in 2018 and 2019 came amidst the imposition and continuation of numerous antidumping (“AD”) and countervailing duty (“CVD”) orders on goods from China. From 2000 to 2023, the U.S. imposed 614 AD and CVD orders on unfairly traded goods from various countries.⁴ Of these, 216 of the orders – or 35.2 percent – have been on goods from China.⁵ This was during a period when imports from China accounted for an average of 17.3 percent of total U.S. goods imports.

The data show that the overall number of AD and CVD orders the U.S. has imposed has risen unevenly since 2000, reaching a peak of 112 orders imposed in 2021. In fourteen of the twenty years from 2000 to 2019, new orders on imports from China accounted for half or more of the new orders imposed each year. The share of new AD/CVD orders accounted for by orders on China has fallen since that time, with orders on China accounting for 30 percent or less of new orders in 2020 through 2023.

U.S. Imposition of Antidumping and Countervailing Duty Orders by Year⁶



One explanation for these trends, particularly in recent years, is the phenomenon of successive investigations on the same product from different countries. As U.S. industries and workers have

⁴ Author’s calculations.

⁵ *Id.*

⁶ *Id.*

successively obtained AD/CVD orders on dumped and subsidized product from China, they have all too often seen a surge in imports of the same product from other countries shortly after the orders on China are imposed, or even while the investigation on China is still pending. As reviewed below, these shifts in trade patterns are sometimes fueled by outbound investments in third countries by the very same Chinese producers that were subject to the original orders.

Thus, to preserve the market discipline the original orders were intended to provide, domestic producers and workers are often forced to seek successive investigations on the same product. Not only must petitioners show that the products from the third countries are also being dumped below normal value and/or subsidized, but they must also once again show that they are being materially injured by the new group of imports in question. This requires a showing of injury during a time period when the industry should have been reaping the benefits of AD and CVD duties on the original Chinese imports of concern. A non-exhaustive list of products that have been the subject of such successive investigations is below.

Examples of Successive AD and CVD Investigations⁷

Product	First Investigation		Successive Investigations	
	Country	Orders	Country(ies)	Orders
Aluminum Extrusions	China	2011	China, Colombia, Dominican Republic, Ecuador, India, Indonesia, Italy, Malaysia, Mexico, South Korea, Taiwan, Thailand, Turkey, United Arab Emirates, Vietnam	Pending
Aluminum Foil	China	2018	Armenia, Brazil, Oman, Russia, Turkey	2021
Boltless Steel Shelving	China	2015	India, Malaysia, Taiwan, Thailand, Vietnam	Pending
Citric Acid	China	2009	Belgium, Colombia, Thailand	2018
Common Alloy Aluminum Sheet	China	2019	Bahrain, Brazil, Croatia, Egypt, Germany, India, Indonesia, Italy, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, Turkey	2021
Laminated Woven Sacks	China	2008	Vietnam	2019
Mattresses	China	2019	Bosnia and Herzegovina, Bulgaria, Burma, China, Cambodia, India, Indonesia, Italy, Kosovo,	2021 and Pending

⁷ Author's analysis of AD and CVD orders and petitions.

Product	First Investigation		Successive Investigations	
	Country	Orders	Country(ies)	Orders
			Malaysia, Mexico, Philippines, Poland, Serbia, Slovenia, Spain, Taiwan, Thailand, Turkey, Vietnam	
Melamine	China	2015	Germany, India, Japan, Netherlands, Qatar, Trinidad and Tobago	Pending
Non-Refillable Steel Cylinders	China	2021	India	Pending
Passenger Vehicle and Light Truck Tires	China	2015	Korea, Taiwan, Thailand, Vietnam	2021
Quartz Surface Products	China	2019	India, Turkey	2020
Steel Nails	China	2008	Vietnam, Korea, Malaysia, Oman, Taiwan, United Arab Emirates	2012 and 2015
Steel Wire Garment Hangers	China	2008	Taiwan, Vietnam	2012, 2013
Truck and Bus Tires	China	2019	Thailand	Pending
Utility Scale Wind Towers	China and Vietnam	2013	India, Malaysia, Spain, Malaysia, Canada, Indonesia, Korea, Vietnam	2020 and 2021

Again, to be clear, the fact that importers shift sources of supply in response to Section 301 tariffs and AD and CVD duties does not mean these tariffs are not effective or not serving their intended purpose. Section 301 duties serve as important leverage and signal to China that disregard for intellectual property rights, technology transfer requirements, and other predatory practices are unacceptable. AD and CVD duties remedy injurious dumping and subsidies, restoring needed price and volume discipline to the market for vulnerable domestic industries and their workers.

There are, however, at least two broad sets of concerns the above patterns raise.

First, are the shifts in patterns of trade legitimate? In other words, are the new suppliers in third countries actually producing the good in question, or are they simply serving as conduits for transshipment or only minor processing that does not fundamentally transform the product in question? In such cases, strict enforcement of existing anti-circumvention and transshipment disciplines is needed, as well as the consideration of new tools to counteract such practices.

Second, to the extent the new supplier in the third country really is producing or substantially transforming the product in question, is the production of those goods in the third country nonetheless still distorted by unfair Chinese trade practices? This can include the third-country producer's reliance on Chinese equipment and inputs imported at non-market prices. In addition, as Chinese companies, including state-owned enterprises ("SOEs"), invest in production in third

countries with support from the Government of China, those Chinese government subsidies may continue to distort production decisions, fuel overcapacity, and depress prices. New tools are needed to remedy these practices as well.

The next two sections address these concerns in turn.

III. Evasion and Circumvention of Tariffs and Trade Remedies

Chinese producers and importers have resorted to a number of strategies to evade duty liability in order to continue to access the attractive U.S. market after duties are imposed. These practices have been most well-documented in the AD/CVD context, where the U.S. Department of Commerce (“Commerce”) and U.S. Customs and Border Protection (“CBP”) have the tools to address such schemes, and domestic industries that have petitioned for relief tend to be vigilant in monitoring enforcement of the duty orders they have obtained.

In 2016, the Enforce and Protect Act (“EAPA”) was signed into law, greatly increasing the transparency of CBP’s enforcement efforts regarding AD and CVD duties.⁸ Under EAPA, outside interested parties may file allegations that an importer is evading AD or CVD duties. EAPA gave CBP new tools to investigate such allegations, and created a more transparent, multi-party process with fixed timelines for CBP to determine whether evasion has occurred and take corrective action.

EAPA has been used frequently since its enactment, and with a fair amount of success. According to CBP, the agency has launched more than 300 EAPA investigations, conducted over 45 on-site visits or verifications overseas as part of its investigations, and identified over one billion dollars of AD/CVD duties owed to the U.S. government.⁹

While a detailed review of every EAPA investigation is beyond the scope of this testimony, a snapshot of cases with determinations over the past three years provides some insight. CBP summarizes 45 unique investigations in which affirmative preliminary or final evasion determinations have been issued since January of 2021.¹⁰ Of these 45 cases, 44 involved evasion of an AD and/or CVD order on a product from China. The types of evasion schemes included transshipment through a third country, misclassification of merchandise as not subject to the order, the use of Chinese subject parts that were not declared and/or only minimally processed in the exporting country, and the undervaluation of imports.¹¹ In some cases, the evasion scheme

⁸ U.S. Customs and Border Protection, “Enforce and Protect Act (EAPA)”, available on-line at [https://www.cbp.gov/trade/trade-enforcement/tftea/eapa#:~:text=EAPA%20establishes%20procedures%20for%20an,\(AD%2FCVD\)%20duties](https://www.cbp.gov/trade/trade-enforcement/tftea/eapa#:~:text=EAPA%20establishes%20procedures%20for%20an,(AD%2FCVD)%20duties).

⁹ *See id.*

¹⁰ *See* U.S. Customs and Border Protection, “Recent EAPA Actions”, available on-line at <https://www.cbp.gov/trade/trade-enforcement/tftea/eapa/recent-eapa-actions>.

¹¹ Because most AD/CVD duties are assessed on an *ad valorem* basis, undervaluation artificially reduces duty liability.

involved multiple practices, such as mis-identifying a product as being both from a non-subject country and falling within a specific product exclusion.

The countries and products involved in these 44 cases were diverse. Evasion of AD/CVD Orders on China was found with regard to products that were imported (or declared as imported) from Cambodia, the Dominican Republic, India, Indonesia, Malaysia, Mexico, Sri Lanka, Thailand, Turkey, and Vietnam. Among the countries cited, Malaysia and Vietnam are cited most frequently. The evasion schemes affected a broad array of products, including many consumer products. The products involved include aluminum extrusions, cast iron soil pipe, cast iron soil pipe fittings, chassis and subassemblies, common alloy aluminum sheet, diamond sawblades, forged steel fittings, glycine, quartz surface products, steel grating, steel wheels, steel wire garment hangers, thermal paper, wooden bedroom furniture, wooden cabinets and vanities, and xanthan gum.

Another important tool that has been used to enforce AD/CVD remedies is the anti-circumvention statute administered by Commerce,¹² as well as Commerce's authority to administer the scope of its AD and CVD Orders. The circumvention provisions allow Commerce to investigate allegations of circumvention (or self-initiate investigations) to determine if goods not technically subject to an existing AD or CVD order are in fact circumventing the order. Examples of such practices covered by the statute include completion or assembly of inputs into covered merchandise in the U.S. or a third country where the completion or assembly process is only minor or insignificant; minor alterations to the merchandise to take it technically outside of the scope; and the later development of merchandise that is generally the same as the merchandise covered by the order in question.¹³ Commerce can also use its existing scope authority to determine whether an imported good was actually transformed in a third country or retains the country of origin of a country covered by an order.

Over the past few years, Commerce has taken a number of steps to strengthen its enforcement of the circumvention statute. First, Commerce has begun to self-initiate its own circumvention investigations and scope inquiries from time to time,¹⁴ which reduces some of the burden on petitioners and sends a strong signal to importers and foreign producers that patterns of trade are being monitored for possible circumvention and evasion schemes. Second, Commerce has strongly defended its authority to determine for itself what the country of origin of an imported

¹² See 19 U.S.C. § 1677m.

¹³ See *id.*

¹⁴ See e.g., U.S. Department of Commerce, "Department of Commerce Self-Initiates Scope and Circumvention Inquiries Into Possible Circumvention of AD/CVD Orders on Quartz Surface Products From China" (Feb. 2, 2022), available online at <https://www.trade.gov/press-release/department-commerce-self-initiates-scope-and-circumvention-inquiries-possible>. See also U.S. department of Commerce, "U.S. Department of Commerce Self-Initiates Circumvention Inquiry Involving Exports of Stainless Steel Sheet and Strip Completed in Vietnam" (May 12, 2020), available online at <https://www.trade.gov/press-release/us-department-commerce-self-initiates-circumvention-inquiry-involving-exports>.

good is in order to enforce the scope of its orders, and this authority has been upheld by the U.S. Court of Appeals for the Federal Circuit.¹⁵

Third, in 2021, Commerce promulgated strong new scope and circumvention regulations codifying its practice and providing clarity to practitioners.¹⁶ In the scope context, Commerce clarified that a finding that a good is within the scope means that good was always within scope, and thus that duties should have been paid on the imports since the original order was imposed. In the circumvention context, Commerce implemented an important change to its regulations allowing affirmative circumvention determinations to also be imposed retroactively in certain circumstances, though that authority is still not regularly used.

Despite these advances, there are still gaps in the enforcement tools available to counteract circumvention and evasion. First, EPA only applies to AD/CVD duties, and not to other duties such as safeguard duties, Section 301 duties, and Section 232 duties. Thus, the private sector has no formal role in helping Customs guard against evasion of these vitally important duties, and the enforcement process is opaque. Second, EPA cases and findings are still specific to particular named importers, forcing petitioners to determine the relevant importer name based on publicly available information and sometimes file multiple successive allegations regarding the same products and the same evasion schemes. Third, the presumption against retroactive application of circumvention findings can deprive petitioners of meaningful relief if the circumvention practice ends once an allegation is initiated but prior violations are never remedied.

Finally, the *de minimis* loophole for individual entries valued under \$800 makes it much more difficult to track whether importers may be engaging in similar schemes to avoid Section 301 duties. While goods subject to AD/CVD duties are not eligible for *de minimis* treatment, the same rule does not apply to goods subject to Section 301 duties.¹⁷ Thus, even goods that should be paying Section 301 duties can be entered informally as *de minimis* shipments, and thus avoid such duty liability. It is also harder for CBP to perform risk targeting to aid enforcement efforts regarding such imports without formal entries that permit CBP to track patterns of trade and shifts in importers and foreign shippers that may indicate circumvention or evasion.

IV. The Role of Chinese Outbound Investment and Transnational Subsidies

As reviewed above, shifts in production to third countries in response to tariffs and trade remedies on goods from China may occur not as the result of circumvention or evasion in the traditional sense but as the result of the creation of new or enhanced production platforms in third countries. In some cases, these investments are carried out by the same Chinese producers that produced the goods in China that were originally found to be dumped or subsidized in the

¹⁵ See *Bell Supply Company, LLC v. United States*, 888 F. 3d 1222 (Fed. Cir. 2018).

¹⁶ See *Regulations To Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 Fed. Reg. 52,300 (Dep't Commerce Sept. 20, 2021).

¹⁷ See U.S. Customs and Border Protection, "Section 301 Trade Remedies Frequently Asked Questions," available online at <https://www.cbp.gov/trade/programs-administration/entry-summary/section-301-trade-remedies/faqs>.

U.S. market or subject to other remedies such as Section 301 duties. This includes SOEs and other firms backed by the Government of China. As part of its “Going Out” strategy and the Belt and Road Initiative, the Government of China also provides generous financial support for outbound investment through its development banks and other state-owned financial institutions. Producers in third countries may also benefit from access to imported capital equipment and inputs from China that are themselves sold at non-market prices, as well as Chinese labor that is easily exploited to gain an unfair advantage. Unfortunately, none of these practices are currently being counteracted by the U.S. government through its AD/CVD laws or enforcement of Section 301 duties.

In response to AD and CVD orders, Chinese firms have shown the willingness and ability to establish production platforms in third countries in order to continue accessing the U.S. market free from duty liability. In 2015, for example, the U.S. imposed AD and CVD duties on imports of passenger vehicle and light truck tires from China. Imports from China were slashed by more than half from 2014 to 2015 – from over 58 million tires to 26 million – and imports from China have continued to fall, hitting just 3.3 million tires in 2023. The orders resulted in significant new investments in the United States: Kumho built a new plant in Macon, Georgia in 2015, Hankook constructed a new facility in Clarksville, Tennessee in 2016, Giti built a new plant in Richburg, South Carolina in 2017, and Nokian started producing at its new plant in Dayton, Tennessee in 2019.¹⁸ The orders thus brought added capacity, production, and jobs to the United States as imports from China were disciplined.

Unfortunately, Chinese producers were also eager to keep accessing the attractive U.S. market despite the orders through new investments outside of the United States. Two Chinese producers, Sentury and Zhongce, opened plants in Thailand in 2015 just as orders were being imposed on China.¹⁹ Additional new plants opened in Thailand in 2017 and 2019, in Vietnam in 2014 and 2017, and in Taiwan in 2017.²⁰ The result was a renewed surge in imports of unfairly traded PVL tires, this time from Korea, Taiwan, Thailand, and Vietnam, forcing domestic tire workers to file a new round of petitions in 2020.

A similar dynamic occurred regarding truck and bus tires from China. After AD and CVD petitions were filed in 2016 and orders were imposed on China in 2019, imports from China fell from 9.2 million tires in 2018 to barely over a million tires in 2023. Since the petitions were filed, three Chinese producers opened plants in Thailand, including Double Coin Holdings in 2017, Jiangsu General Science Technology Co. Ltd. in 2019, and Prinx Chengshan in 2020.²¹ Together, these three plants alone have the capacity to produce over eleven million tires a year, more than the U.S. imported from China at its peak. As a result of these and other investments, Thai exports of truck and bus tires to the United States more than doubled from 4.8 million tires in 2020 to 10.1 million tires in 2022, and domestic tire workers were forced to once again petition the U.S. government for relief.

¹⁸ *See Modern Tire Dealer.*

¹⁹ *See id.*

²⁰ *See id.*

²¹ *See id.*

In some cases, Chinese producers contribute not only capital but also equipment and inputs to ramp up production in third countries in response to AD and CVD orders on products from China. In 2019, for example, while AD and CVD petitions on quartz surface products from China were still pending, Chinese companies began exporting machinery and raw materials to India for conversion into quartz countertops. In an earnings call in February 2019, Pokarna, a major Indian producer, described the situation as follows to its investors:

{W}e are also seeing mushrooming of quartz manufacturers in India, predominantly using Chinese machineries and process to capitalize on their growth opportunities being thrown open by the tariff and duty situations coming out from the US. . . . We do not track the names but I can say that they will be in double digit numbers.²²

Another company official offered the following additional information during the Pokarna earnings call:

{S}peaking to a lot of this upcoming quartz companies, what I get to know is a lot of Chinese companies are giving them plant and machinery at a zero cost for the first line and they are just charging them for the second line, that means lot of tie-ups have happened in such a way and even speaking to many stockist, super stockists in Los Angeles, they are also of the view that we are open to source from many other players in India, so when this trade will shift from China to India and lot of these Chinese companies are saying that you manufacture 100 percent for us and then you sell via India, we will give you the technology and everything.²³

These are not isolated examples. As reviewed in Section II, above, China’s exports have also increased to top U.S. trading partners since the imposition of Section 301 duties. In addition, Chinese outbound greenfield investments are rising, supported by the Government of China’s “Going Out” policy and Belt and Road Initiative. China’s outbound greenfield foreign direct investment hit record levels in 2023.²⁴ According to one analyst, the decision to invest is driven by overcapacity, slowing growth in China, the Chinese government’s policies, and the desire to access new markets.²⁵

The steel industry is a prime example. According to the Organization for Economic Cooperation and Development, the ongoing global steel excess capacity crisis is only accelerating, due to investments by China not only at home but also increasingly abroad:

²² Transcript of Pokarna Earnings Call (Feb. 19, 2019) at 3.

²³ *Id.*

²⁴ See fDi Intelligence, “Chinese outbound FDI boom signals ‘newphase’” (Oct. 3, 2023), available online at <https://www.fdiintelligence.com/content/data-trends/chinese-outbound-fdi-boom-signals-new-phase-83013>.

²⁵ *Id.*

Capacity expansions by Chinese companies in third countries, through cross-border investments, account for 65.1% of total cross-border investments in new steelmaking capacity taking place around the world. Their investments in ASEAN account for 81% of the region's total capacity expansion. Furthermore, the information analysed in this report suggest that outdated induction furnaces, which do not meet environmental and product quality standards, are frequently imported into ASEAN economies, raising concerns in local communities.²⁶

Thus, in one of the world's most trade-sensitive industrial sectors which is already plagued by uneconomic overcapacity, Chinese investments are a leading cause of increasing capacity in third countries. Steel produced in these facilities will not be treated as Chinese in origin, and thus when this steel is exported it will not be subject to existing AD and CVD measures or any other trade remedies that apply on steel from China.

Consistent with Chinese government policies, these overseas investments may be benefitting from generous support from Chinese state-owned financial institutions such as the China Export-Import Bank, the China Development Bank, and others. According to Boston University's Global Development Policy Center, overseas investments supported by these Chinese public institutions include investments in plants producing automobiles, cardboard, cement, chemicals, locomotives, metals, plastics, steel, textiles, and timber products in Asia, Eastern Europe, and South America.²⁷ The Government of China is also involved in setting up Special Economic Zones in third countries that take advantage of Chinese investment and technology to create export platforms for a variety of products.²⁸

Another troubling trend is the exploitation of Chinese and home country workers in projects supported by the Government of China abroad. According to the U.S. Department of State:

PRC and host country nationals employed in some BRI construction projects, mining operations, and factories in African, European, Middle Eastern, Asian, Pacific, Latin American, and Caribbean countries experience deceptive recruitment into debt bondage, arbitrary wage garnishing or withholding, contract irregularities, confiscation of travel and identity documentation, forced overtime, and resignation penalties, as well as intimidation and threats, physical violence, denial of access to urgent medical care, poor working and living conditions, restricted freedom of movement and communication, and retaliation for reported abuses. Those who escape often find themselves at the mercy of local

²⁶ Organization for Economic Cooperation and Development, *Latest Developments in Steelmaking Capacity 2024* (2024) at 4.

²⁷ Boston University Global Development Policy Center, China's Overseas Development Finance Database, available online at <https://www.bu.edu/gdp/chinas-overseas-development-finance/>.

²⁸ See Angela Tritto and A. Camba "State-facilitated Industrial Parks in the Belt and Road Initiative: Towards a framework for understanding the localization of the Chinese development model," *World Development Perspectives*, Vol. 28 (Dec. 2022).

immigration authorities, who are not always trained to receive or care for trafficking victims.²⁹

Labor advocacy groups have documented similar labor concerns in overseas projects supported by China's Belt and Road Initiative.³⁰ The ability to exploit workers with impunity is not only immoral, it also creates another unfair competitive advantage for producers in third countries backed by Chinese government support.

Unfortunately, the U.S. currently is not effectively employing any tools to counteract these types of unfair trade practices associated with Chinese support for overseas manufacturing. Commerce's "non-market economy" AD methodology only applies in cases on imports from non-market economy countries. The fact that a market economy producer in India, for example, may be using equipment and raw materials imported from China at non-market prices is thus not directly remedied under current AD law. In addition, subsidies from the Government of China to producers in other countries – including financing from state-owned banks, equity infusions from SOEs, infrastructure and services in Special Economic Zones, and access to workers with few to no basic labor rights – are not currently countervailed by Commerce in CVD investigations on products from third countries. Instead, Commerce currently requires that the subsidy must be provided by the government in the country of manufacture,³¹ an outdated requirement that fails to reflect current practice by the Chinese Government and Chinese firms. This failure to act also falls short of what the European Union has already been doing under its own CVD regime to counteract Chinese government subsidies benefitting producers in third countries.³²

In short, Chinese firms have responded to tariffs and trade remedies by investing in overseas production, and these investments are consistent with the "Going Out" policies of the Government of China and the Belt and Road Initiative. The U.S. needs to adapt to these trends by strengthening and modernizing its trade remedy regime. Specific policy recommendations are set out in more detail below.

V. Policy Recommendations

There are a number of steps that Congress and the Administration can take to strengthen U.S. trade remedy and enforcement tools to address the concerns about evasion, circumvention, transnational subsidies, and embedded non-market economy inputs described above. Many of these proposals have already been incorporated into pending legislation such as the Leveling the Playing Field 2.0 Act ("LTPFA 2.0") and regulatory changes proposed by Commerce in May of

²⁹ U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, "Forced Labor: The Hidden Cost of China's Belt and Road Initiative."

³⁰ *See, e.g., Trapped: The Belt and Road Initiative's Chinese Workers*, China Labor Watch (Nov. 2022).

³¹ *See* 19 C.F.R. § 351.527.

³² *See* Renato Antonin, et al. "EU Court recognizes transnational subsidies are countervailable" Global Trade and Investment Law Blog (Mar. 21, 2023), available online at <https://www.steptoeglobaltradeblog.com/2023/03/eu-court-recognizes-transnational-subsidies-are-countervailable/>.

last year that would strengthen the enforcement of trade remedy laws (“2023 Proposed Enforcement Rules”).³³

1. Apply EAPA standards and procedures to evasion of Section 301 and 232 duties. As noted above, the EAPA process currently only applies to the evasion of AD/CVD duties. LTPFA 2.0 proposes extending EAPA to evasion of Section 201 safeguard duties.³⁴ EAPA should also be expanded to cover evasion of other important duty programs such as Section 301 and Section 232.
2. Streamline EAPA investigations of multiple importers. As noted above, currently EAPA investigations are limited to individual importers named by the petitioner, limiting the reach of affirmative evasion findings. As proposed in the Customs Modernization Act of 2023, CBP should be able to share the name of importers of concern with petitioners when they submit an EAPA allegation, and CBP should be allowed to include any other importers it believes may be involved when it finds there is reasonable suspicion sufficient to launch an EAPA investigation.³⁵
3. Make affirmative circumvention findings presumptively retroactive. As noted above, under Commerce’s new regulations implemented in 2021, the agency has the discretion to make affirmative circumvention findings retroactive to entries prior to the date of initiation of the inquiry, but Commerce rarely does so in practice.³⁶ Commerce should amend its regulations to make such retroactive application presumptive, or, at a minimum, to provide guidance to parties on the factors Commerce will consider in making its findings retroactive.
4. Exclude all merchandise subject to higher duty levels from eligibility for de minimis treatment. There are numerous proposals for fixing the current de minimis loophole that allows many entries to escape duty liability. As noted above, informal entry also makes it more difficult for CBP to track potential evasion and circumvention of 301 duties. CBP already has the ability to deny de minimis eligibility to protect the revenue,³⁷ and it should invoke this authority to exclude any entries subject to Section 301, Section 232, Section 201, or other elevated duties from de minimis eligibility.
5. Streamline successive trade remedy investigations. As noted above, in far too many cases domestic industries and workers have been forced to petition repeatedly for relief

³³ See Leveling the Playing Field 2.0 Act, H.R. 3882 (“LTPFA 2.0”). See also *Regulations Improving and Strengthening the Enforcement of Trade Remedies Through the Administration of the Antidumping and Countervailing Duty Laws*, 88 Fed. Reg. 29,850 (Dep’t Commerce May 9, 2023) (“2023 Proposed Enforcement Rules”).

³⁴ LTPFA 2.0 at Sec. 502.

³⁵ Customs Modernization Act of 2023, S. 3431 at Sec. 304.

³⁶ See 19 C.F.R. § 351.226(l)(2)(iii)(A) and (3)(iii)(A).

³⁷ See 19 U.S.C. § 1321(b) (Customs may prescribe exceptions to the de minimis provisions if it is “necessary for any reason to protect the revenue or to prevent unlawful importations”). See also 19 C.F.R. §§ 143.22 and 145.12(a) (permitting CBP to require formal entry to protect the revenue).

from successive waves of unfairly traded imports. This often occurs when a first set of cases is successful in disciplining dumped and subsidized imports from China, but production then shifts to third countries, resulting in a renewed surge of unfairly traded imports. Enactment of LTPFA 2.0 would address this problem by establishing special rules for such successive investigations to reduce burdens on petitioners and the agencies and expedite relief.³⁸

6. Empower Commerce to countervail transnational subsidies. As explained above, Commerce’s regulations currently prohibit the agency from countervailing subsidies provided by a government in one country to a recipient in a third country.³⁹ This regulation is not required by statute and should be deleted from Commerce’s regulations, as Commerce proposed in May of 2023.⁴⁰ In addition, LTPFA 2.0 includes provisions that would amend the statute to address cross-border subsidies.⁴¹ These provisions should be reviewed and enacted to ensure they address the full range of cross-border subsidy practices that may be distorting international trade.
7. Prohibit Commerce from relying on costs that are distorted by non-market economy inputs, unfair trade practices, and government intervention. As noted above, when importers shift sourcing from China to other countries, imports from the third country may still be produced using equipment and inputs from China, yet these non-market inputs are not taken into account in Commerce’s AD calculations. There are several steps that could address these concerns. First, LTFPA 2.0 would allow Commerce to disregard inputs from non-market economy suppliers, as well as from SOEs and suppliers that are subsidized or have found to be engaged in dumping, and value those inputs at undistorted rates.⁴² Another step would be to strengthen Commerce’s ability to address costs that are distorted by a particular market situation (“PMS”). LTFPA 2.0 would clarify that Commerce has the ability to address a cost-based PMS regardless of its basis for normal value, correcting court decisions to the contrary that have frustrated Congressional intent in this regard.⁴³ LTFPA 2.0 and Commerce have also proposed revisions that would identify the types of scenarios that give rise to a PMS.⁴⁴ While codification of such scenarios will be helpful, it is important that such codification expand rather than restrict Commerce’s authority to counteract such distortions.
8. Ensure Commerce can address violations of labor rights and human rights in its AD and CVD calculations. As reviewed above, government failures to guarantee basic labor rights have also raised concerns about practices in Chinese-backed investment projects.

³⁸ LTPFA 2.0 at Secs. 101 – 103.

³⁹ See 19 C.F.R. § 351.527.

⁴⁰ See 2023 Proposed Enforcement Rules.

⁴¹ LTPFA 2.0 at Sec. 201.

⁴² See *id.* at Sec. 205.

⁴³ See *id.* at Sec. 204.

⁴⁴ See *id.* See also 2023 Proposed Enforcement Rules at Sec. 416.

Commerce has proposed addressing such distortions by considering the failure to enforce labor rights and human rights when selecting surrogate values and benchmarks, treating the failure to pay required fees, fines, and penalties as countervailable subsidies, and considering the failure to enforce labor and human rights as a PMS that can distort the cost of production.⁴⁵ LTFPA 2.0 would also codify that the failure to implement and enforce labor and human rights standards can give rise to a PMS.⁴⁶

Together, these policy actions would go a long way to strengthening our trade remedy tools and enforcement measures to ensure that duties and trade remedies that are imposed on products from China are not subject to illegitimate evasion or circumvention. In addition, these policies will help ensure that any shifts to third country suppliers in response to duties on goods from China does not create a new conduit for imported goods that are distorted by China's non-market policies and transnational subsidies.

⁴⁵ *See id.* at Secs. 408, 511, 529, and 416.

⁴⁶ LTPFA 2.0 at Sec. 204.