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Description of document: International Trade Administration (ITA) Transition Briefing for the Incoming Biden Administration, 2020

Requested date: 04-January-2021

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Source of document: Freedom of Information Act Request
International Trade Administration
Freedom of Information Officer
Room 11025
14th and Constitution Avenue, N.W.
Washington, D.C. 20230
Email: foia@trade.gov
www.FOIA.gov

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**UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration**

Washington, D.C. 20230

November 20, 2024

RE: DOC-ITA-2021-000605

This letter is in response to your Freedom of Information Act (FOIA) request received by the International Trade Administration (ITA) on January 4, 2021. In your request, you sought:

A digital/electronic copy of the transition briefing document(s) (late 2020) prepared by the International Trade Administration for the incoming Biden Administration.

This is the final response to your FOIA request. ITA began its search on January 4, 2021, which is the cut-off date for responsive records. After a thorough search, ITA has located forty-six (46) pages responsive to your request. Of the records located, four (4) pages contain redactions under Exemption 5 of the FOIA and one (1) page contains redactions under Exemption 6, 5 U.S.C. §§ 552 (b)(5) (b)(6).

Exemption 5 protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party... in litigation with the agency." 5 U.S.C. § 552(b)(5). This exemption has been construed to exempt those documents normally privileged in the civil discovery context, such as attorney-client communications, attorney-work product documents, and pre-decisional and deliberative process material.

The information withheld under Exemption 5 has been deemed pre-decisional and/or deliberative in nature concerning internal ITA discussions and including external government entities. The information withheld also contains privileged attorney work product. ITA may consider these preliminary views and privileged communications as part of the process that will lead to the agency's final decision about these matters, and within its discretion, can withhold this information from the public. The information does not represent a final agency position, and its release would compromise the deliberative process by which the government makes its decisions. Withholding this information protects against the premature disclosure of proposed policies regarding personnel matters, protects the candor of intra-agency communications, and prevents confusion to the public that could result from disclosing alternative rationales for agency decisions. Thus, ITA has determined the public's interest in disclosure of the information does not outweigh the foreseeable harm of such disclosure, and therefore, information is withheld under Exemption 5 of the FOIA.

Exemption 6 allows an agency to withhold a private living individual's name, e-mail address, telephone numbers, date of birth, passport numbers, and other information, "the disclosure of which would constitute a clearly unwarranted invasion of privacy." 5 U.S.C. § 552(b)(6). We neither perceive, nor have you



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enunciated, any public interest that would be served in disclosing personal telephone numbers that would outweigh the privacy interest of the living individuals. Thus, the public's interest in disclosure of the information does not outweigh the privacy interests for confidentiality, and therefore, information is withheld under Exemption 6 of the FOIA.

If you have any questions or concerns or would like to discuss any aspect of your request, you may contact the analyst who processed your request, **Bianca Kegler**, at foia@trade.gov.

You may also contact ITA's FOIA Public Liaison, using the following information:

Bianca Kegler
FOIA Officer
Compliance and Regulatory Affairs
International Trade Administration
1401 Constitution Avenue, N.W.
Washington, D.C. 20230
Email: foia@trade.gov

Please refer to your FOIA request tracking number, DOC-ITA-2021-000605 when contacting ITA.

In addition, you may seek FOIA mediation services offered by the National Archives and Records Administration, Office of Government Information Services (OGIS). You may contact OGIS using the following information:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740-6001
Email: ogis@nara.gov

In accordance with 15 C.F.R. §§ 4.10(a) and (b), you have the right to appeal this determination within 90 calendar days from the date of this letter. The Department deems appeals arriving after normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday) as received on the next normal business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely. The appeal should include a copy of the original request, this response, and a statement of the reasons why you consider the Department made this determination in error. Please mail written appeals to:

Assistant General Counsel for Employment, Litigation, and Information
U.S. Department of Commerce
1401 Constitution Avenue, N.W. Room 5896
Washington, D.C. 20230



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You may send an appeal by e-mail to FOIAppeals@doc.gov. Clearly mark “Freedom of Information Act Appeal”, in the e-mail subject line, or on both the appeal letter and envelope.

For the purpose of assessing fees, there are no billable fees for processing of this request.

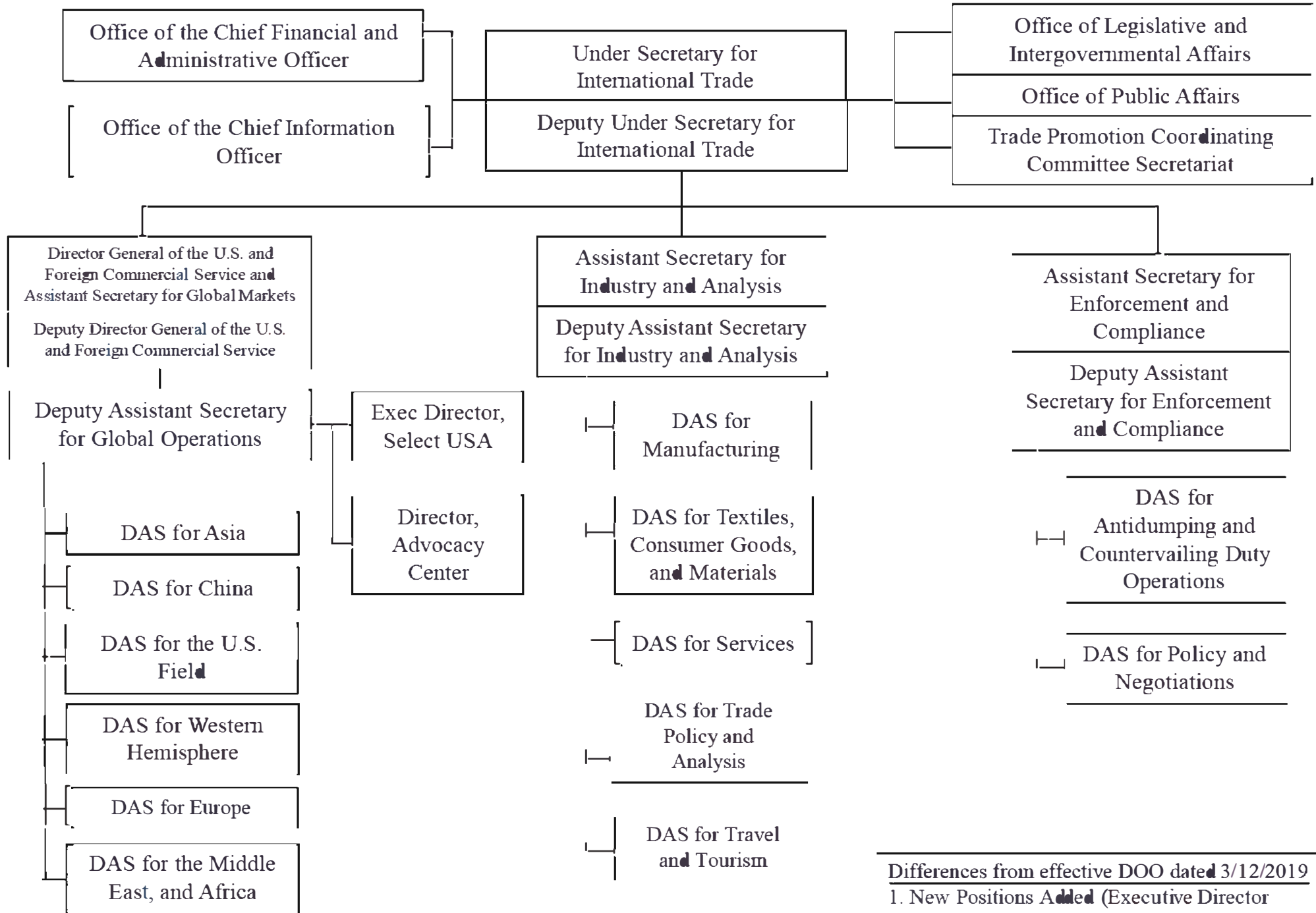
Sincerely,

Bianca Kegler

Bianca Kegler
FOIA Officer
International Trade Administration



International Trade Administration



Differences from effective DOO dated 3/12/2019

1. New Positions Added (Executive Director Select USA and Advocacy Center Director)

International Trade Administration

**Deputy Under Secretary for
International Trade performing the
non-exclusive duties of the Under
Secretary**

Joseph C. Semsar

Joseph C. Semsar is Deputy Under Secretary for International Trade, Performing the non-exclusive functions and duties of the Under Secretary for International Trade. In this role, he plans, determines, and coordinates policy; directs the International Trade Administration; and is responsible for all activities of ITA. He coordinates all issues concerning international trade policy and promotion, trade law enforcement, trade agreements compliance, investment, and global competitiveness and directs the development of trade policy recommendations and positions.

Prior to joining the International Trade Administration, Mr. Joe Semsar served as the Chief of Staff to the Deputy Secretary of Commerce. In this role, he was actively engaged in all aspects of running the 47,000 employee Department, including both interagency and intra-agency management, oversight, and policy initiatives. He served as the Deputy Secretary's primary advisor on the Administration's trade agenda, encouraging free and fair trade, addressing trade barriers, ensuring trade enforcement, as well as advising on export controls, Entity List filings, actions under the Committee on Foreign Investment in the United States, and Section 232 cases. Mr. Semsar also engaged in high-level commercial bi-lateral dialogues and served as a senior advisor for the Department's engagement in the Administration's Prosper Africa trade and investment initiative.

Prior to his tenure at Commerce, Mr. Semsar served at the United States Office of Personnel Management's Office of the Director as the Deputy Chief of Staff and Acting Communications Director.

Before joining the Administration, Mr. Semsar worked for Deloitte Consulting LLP's Federal Practice, serving a diverse array of clients. He is a Teach for America former staff member and corps member alumnus, where he earned a Teacher of the Year award.

Mr. Semsar holds a Master of Public Administration degree from the University of Pennsylvania's Fels Institute of Government and Bachelor of Arts degree from Clemson University.

International Trade Administration

Deputy Under Secretary for Policy

Greg Kalbaugh

Greg Kalbaugh presently serves as the Deputy Under Secretary for Policy at the International Trade Administration. Immediately prior to this, he served as the Executive Director of SelectUSA, the government-wide initiative dedicated to advancing President Trump's trade and economic agenda by actively attracting job-creating business investment into the United States.

Prior to joining the Trump administration, Mr. Kalbaugh was a senior executive at a U.S.-based biotech company, where he led government affairs and reimbursement efforts in seven of the company's top-ten global markets and was a member of the company's senior leadership team. Mr. Kalbaugh's earlier experience includes serving as Deputy Vice President for International Intellectual Property at PhRMA, as International Trade Counsel at the Senate Finance Committee, and as Director and Counsel at the U.S. Chamber of Commerce.

He holds a law degree from University College Cork and earned an LL.M. In Intellectual Property Law from The George Washington University School of Law in Washington, DC.

International Trade Administration

**Acting Deputy Under Secretary for
International Trade**

Diane Farrell

Diane Farrell is the Acting Deputy Under Secretary for International Trade. She oversees the daily operations of the ITA, which has an annual budget of \$483 million and about 2,100 trade and investment professionals, based in over 100 U.S. cities and 70 markets around the world.

She most recently served as the Deputy Assistant Secretary for Asia, where she was the principal advisor to the Assistant Secretary for Global Markets on all matters concerning international economics, trade, investment, and commercial policy programs and agreements with respect to Asia. In this role, she also oversaw planning and execution of Commerce commercial diplomacy and export promotion strategies at United States Missions in Region Asia.

Previously, Ms. Farrell worked at the U.S. India Business Council (USIBC). As Executive Vice President, she oversaw business advocacy policy and government relations. Prior to joining USIBC, Ms. Farrell served on the Board of Directors at the Export Import Bank of the United States. A Presidential appointee, confirmed by the U.S. Senate, she was responsible for voting on transactions more than \$10 million and policy matters. Her responsibilities included small business, India, Southeast Asia, and portions of Latin America. She was also named a member of the White House Business Council. During her tenure at U.S. Exim Bank, India transactions expanded and diversified as aircraft sales and conventional and green energy projects led to India becoming the second largest country by U.S. dollar allocation in the bank's overall portfolio.

Before serving at U.S. Exim Bank, Ms. Farrell was elected as the First Selectwoman in Westport, Connecticut. A strong mayor form of government, she managed multi-million-dollar budgets within the Consumer Price Index and maintained the town's AAA bond rating at a time when significant infrastructure investment was taking place. She oversaw the construction of schools, a municipal wastewater treatment plant, affordable housing, and other necessary facilities. She also served as Chairwoman of the Southwestern Connecticut Regional Planning Agency Metropolitan Planning Organization that was responsible for federally funded transportation infrastructure in a vital commercial corridor. As a select member of the National League of Cities Transportation and Infrastructure Steering and Policy Committee, she helped set policy goals for transportation and infrastructure initiatives in support of cities and towns across the United States.

Ms. Farrell holds a B.A. from Wheaton College Norton, Massachusetts with a degree in American Government.

International Trade Administration
Assistant Secretary for Enforcement
and Compliance

Jeffrey I. Kessler

Jeffrey I. Kessler was confirmed unanimously by the U.S. Senate on April 3, 2019 and assumed his position as Assistant Secretary of Commerce for Enforcement and Compliance on April 11, 2019. In his role, Mr. Kessler administers U.S. antidumping and countervailing duty laws, works to ensure foreign compliance with trade agreements, supports the negotiation and implementation of international trade agreements to open foreign markets, and administers the Foreign Trade Zones program – all with the goal of promoting U.S. jobs and economic growth.

Prior to joining the Department of Commerce, Mr. Kessler worked as an international trade attorney in private practice. In that capacity, Mr. Kessler advised leading global companies and U.S. industry associations on a wide range of high-profile, cutting-edge international trade, investment, and market access issues. Mr. Kessler was also involved in litigating several precedent-setting World Trade Organization cases, with successful challenges to foreign country trade practices that restrict billions of dollars of international trade per year, as well as successful defenses of U.S. trade practices.

Mr. Kessler also assisted U.S. companies and industry associations – especially those in innovative, IP-intensive industries – to decipher and navigate foreign trade and investment barriers. Mr. Kessler earned a BA magna cum laude from Yale University, an MA from the University of Chicago, and an JD and MA from Stanford University, where he was an Articles Editor of the Stanford Law Review and a John M. Olin Law and Economics fellow.

Mr. Kessler is a member of the American Bar Association and a Term Member of the Council on Foreign Relations. Mr. Kessler resides in Arlington, Virginia with his wife Bethany and their two daughters, Lucy and Diana.

International Trade Administration
Assistant Secretary for Industry and
Analysis

Nazak Nikakhtar

Nazak Nikakhtar was nominated by President Donald J. Trump to become the Assistant Secretary for Industry and Analysis and was confirmed by the U.S. Senate on March 19, 2018. Ms. Nikakhtar serves as the Department's primary liaison with U.S. industry and trade associations to help address industry concerns and support American competitiveness. As the Department's lead on the Committee on Foreign Investment in the United States (CFIUS), she plays a key role in shaping U.S. investment policy and addressing national security threats. She also advises the Secretary on trade and economic issues impacting the global competitiveness of U.S. businesses, heading the division that conducts trade policy research and analysis on manufacturing, services, e-commerce, privacy and cybersecurity, emerging technologies, and economic trends that impact the International Trade Administration's mission.

Ms. Nikakhtar previously worked in private practice as a partner at the international trade law firm of Cassidy Levy Kent LLP, where she represented clients in international trade law matters, including antidumping and countervailing duty proceedings, export controls, trade agreements, customs matters, trade policy, and World Trade Organization (WTO) dispute settlement proceedings. She also served as an adjunct professor at Georgetown University Law Center.

During her previous tenure at the International Trade Administration, Ms. Nikakhtar worked at ITA's China/Non-Market Economy Office. In that position, Ms. Nikakhtar led numerous complex antidumping cases, advised on legal and regulatory matters related to the enforcement of U.S. trade laws, and participated in bilateral negotiations on trade issues between the United States and China. She received several award medals from the Department for her work on cutting-edge trade policy issues. Ms. Nikakhtar also served at the U.S. Department of Commerce's Bureau of Industry and Security as an industry analyst, where she performed statistical analyses for the U.S. government's defense industrial base surveys.

Ms. Nikakhtar received her Bachelor of Arts degree from the University of California, Los Angeles, and her Juris Doctor and Master of Economics degrees from Syracuse University. She served as the Editor-in-Chief of the Syracuse Journal of International Law and Commerce, and as a judicial extern for the Honorable Ronald S.W. Lew in the U.S. District Court for the Southern District of California.

International Trade Administration
Assistant Secretary for Global
Markets and Director General of the
United States and Foreign
Commercial Service

Ian Steff

Ian Steff is the Assistant Secretary for Global Markets and Director General of the United States and Foreign Commercial Service. He oversees about 1,400 trade and investment professionals based in over 100 U.S. cities and 70 markets around the world. He manages a \$300 million budget and a broad portfolio of ITA initiatives aimed at increasing competitiveness of U.S. manufacturers and service providers. He is among those senior officials responsible for executing the Administration's plans to foster growth in U.S. jobs, exports, and investments.

Before joining the U.S. Department of Commerce, Steff served as the state of Indiana's first Chief Innovation Officer under then-Governor Pence and subsequently Governor Holcomb. He was Executive Vice President for the Indiana Economic Development Corporation and the state's senior advisor for science, technology, and advanced manufacturing. Steff oversaw Indiana's strategy regarding science and technology economic development and was directly responsible for the implementation of the Governor's billion-dollar innovation and entrepreneurship initiative. He worked to expand investments and public-private partnerships in information technology, life sciences, composite materials, nanotechnology, energy storage, and the Internet of Things. He served on the Board of Battery Innovation Center, Dean of Engineering's Advisory Council at Purdue University, Vice Chancellor for Research's Advisory Board at IUPUI, and the Institute for Advanced Composites Manufacturing Innovation Board.

He also worked for the Semiconductor Industry Association (SIA) for nearly a decade. At the SIA, he was vice president of global policy and technology partnerships. He was Executive Chairman the Board of the United States Information Technology Office in Beijing, a member of the Executive Committee of the International Technology Roadmap for Semiconductors, and the Advisory Board of Rochester Institute of Technology's School of Microelectronics.

Steff started his professional career as a member of the Ways and Means trade staff. Steff graduated Magna Cum Laude from American University where he possesses a B.A. in International Studies. He also completed graduate work at the National Defense University in Washington, D.C., and received a M.A. in International Science and Technology Policy from the George Washington University.

International Trade Administration

**Deputy Assistant Secretary for
Services Industry and Analysis**

James M. Sullivan

James M. Sullivan was named Deputy Assistant Secretary for Services in July 2017. In this role, Mr. Sullivan directs the U.S. Department of Commerce's efforts to strengthen the global competitiveness of U.S. services firms, which account for 80 percent of the nation's private sector economy. His primary areas of focus include the financial, digital and internet, supply chain, and professional and business services industries.

Prior to joining Commerce, Mr. Sullivan was cofounder and president of TKOUT, a SaaS (software-as-a-service) provider of on-demand ordering solutions to ICT (information and communication technology) and digital media companies. Before that, he served as managing director and general counsel of Clover Investment Group, a private equity firm focused on lower middle-market hospitality and technology businesses. Previously, from 1999 to 2006, he practiced law in Washington, D.C., as a member of the white-collar defense teams at Morrison & Foerster and DLA Piper.

Mr. Sullivan earned his BA in political science from the College of the Holy Cross, his JD from the Catholic University of America, and his MBA from Georgetown University. He is a member of the bars of the District of Columbia and the State of New York.



Section 4-5 b - ITA Leadership Biographies



International Trade Administration

Deputy Assistant Secretary for U.S. Field Operations, Global Markets

Ana Guevara

Ana M. Guevara was appointed Deputy Assistant Secretary for U.S. Field Operations at the U.S. Department of Commerce's International Trade Administration (ITA) in January 2019. She oversees approximately 275 trade professionals based in more than 100 U.S. cities, focused on assisting U.S. businesses to export their goods and services to foreign markets.

Ms. Guevara is a respected leader in both the public and private sectors, with extensive experience in international trade and development. Previously, she served at the US Agency for International Development as the Senior Advisor for Trade and Economic Growth; at the World Bank as the US representative on the Board of Directors; and at ITA as Deputy Assistant Secretary for Service Industries. Ms. Guevara has also served at two Fortune 50 companies as a Vice President. She received her B.A. in public and international affairs from the George Washington University.

Section 4-5 b - ITA Leadership Biographies

International Trade Administration

**Deputy Assistant Secretary for
Manufacturing Industry and
Analysis**

Christopher Abbott

Biographical information not currently available.

International Trade Administration

**Deputy Assistant Secretary for
Textiles, Consumer Goods, and
Materials Industry and Analysis**

Lloyd E. Wood III

Lloyd Wood was appointed the Deputy Assistant Secretary (DAS) for Textiles, Consumer Goods, and Materials (TCGM) in February 2019. As DAS, he oversees programs and strategies to designed to boost U.S. jobs and exports by improving the global competitiveness of a wide range of U.S. manufacturing industries, including textiles, apparel, footwear, travel products, consumer goods, chemicals, metals, building products, and forest products.

Wood leads a staff of industry trade specialists and economists who: provide market intelligence and data analysis that enables industry and government agencies to make better informed strategic decisions about trade and related business activities work closely with U.S. industries to represent their views in the development of trade policy, as well as for trade agreement negotiations, implementation, and enforcement execute programs that promote U.S. exports by identifying and working to eliminate non-tariff barriers, particularly with respect to regulations, standards and testing

Prior to joining the International Trade Administration, Wood consulted or worked for organizations representing domestic textile interests, including the National Council of Textile Organizations; the U.S. Industrial Fabrics Institute and Narrow Fabrics Institute divisions of the Industrial Fabrics Association International; and the American Manufacturing Trade Action Coalition.

International Trade Administration

**Deputy Assistant Secretary for
Travel and Tourism Industry and
Analysis**

Phil Lovas

Phil Lovas began serving as U.S. Department of Commerce Deputy Assistant Secretary for Travel and Tourism in August 2018. Prior to joining, Commerce, he served as Regional Advocate for the U.S. Small Business Administration's Office of Advocacy covering Arizona, California, Hawaii and Nevada. While there, he worked with small business owners and proponents advocating against overly burdensome federal rules and regulations.

In the private sector, for nearly 15 years he worked in the hotel industry as a franchise developer establishing franchises throughout the western United States for Cendant, InterContinental Hotels Group and Red Lion Hotels.

Phil also served five years as a state representative in the Arizona legislature beginning in February 2012. During his time in the legislature, he chaired the Rules, Ethics and Insurance committees. Phil and his wife Corinne have three children and they live in Peoria, Arizona.

International Trade Administration

**Deputy Assistant Secretary for
Policy and Negotiations Enforcement
and Compliance**

Joseph A. Laroski

Joseph Laroski is Deputy Assistant Secretary for Policy & Negotiations. He joined the U.S. Department of Commerce, International Trade Administration, in May 2017. Prior to this, Mr. Laroski served as Counsel in the International Trade Practice Group in King & Spalding's Washington, DC office. His practice drew upon his extensive experience in trade negotiation and international dispute settlement to assist clients in the removal of market access barriers to exporting goods and services. He provided trade policy advice on a wide variety of matters, including U.S. legislation, trade remedies, and the negotiation of international agreements.

From 2008 to 2012, Mr. Laroski served as Associate General Counsel in the Office of the U.S. Trade Representative, Executive Office of the President (USTR), where he was responsible for legal matters involving Customs, Labor, and Technical Barriers to Trade. He served as lead counsel for the United States in numerous dispute settlement proceedings before the World Trade Organization (WTO), including the successful US challenges to the Chinese application of antidumping and countervailing duty measures on US grain-oriented electrical steel products and Chinese subsidies for indigenous Chinese-branded products. Mr. Laroski also served as the U.S. lawyer in the negotiation of the Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Labor, and Regulatory Coherence chapters to the Trans-Pacific Partnership free trade agreement negotiations. He coordinated the U.S. government response to anti-subsidy proceedings in Australia, China, Peru, and the European Union.

Prior to joining USTR, he counseled foreign government officials, domestic and foreign corporations, and industry associations on U.S. laws and international rules governing cross-border trade, with a particular focus on handling antidumping and countervailing duty litigation before the U.S. Department of Commerce, U.S. International Trade Commission, U.S. Court of International Trade, U.S. Court of Appeals for the Federal Circuit, and the WTO.

From 1998 to 1999, he served as law clerk to Senior Judge Dominick L. DiCarlo on the U.S. Court of International Trade. His law degree is from Fordham University School of Law in 1997. He later earned his LL.M degree (with distinction) in International and Comparative Law from Georgetown University Law Center in 1998 and previously received his undergraduate diploma from Georgetown's Edmund A. Walsh School of Foreign Service in 1994.

International Trade Administration

**Executive Director for Advocacy
Center Global Markets**

José E. V. Cunningham

José E. V. Cunningham is the Executive Director at the International Trade Administration's (ITA) Advocacy Center. In this role he directs a terrific team at the intersection of business and foreign policy, where commercial diplomacy efforts are required to let U.S. business compete fairly. The team's mission is to coordinate U.S. Government resources and authority in order to level the playing field on behalf of U.S. business interests as they compete against foreign firms for specific public international contracts, both commercial and defense sales. The Advocacy Center also has commercial service liaisons to five Multinational Development Banks to assist U.S. firms and advocate on their behalf when they compete for Bank tenders and Requests for Proposals. Our advocacy is provided to engage U.S. Government support for exports, create new jobs, counter foreign governments' advocacy and political pressure, and encourage transparency and fairness in the tender process.

Prior to his tenure at Commerce, José served as Chief Marketing & Business Development Officer at three AmLaw 100 law firms - Nixon Peabody LLP, Crowell & Moring LLP, and Shaw Pittman LLP - where he worked, inter alia, on international trade policy, trade law enforcement, trade agreements compliance, and investment issues. At the law firms he led global teams responsible for uncovering significant opportunities to better serve clients, achieving differentiation, and unlocking additional value.

He began his professional career as an analyst for the U.S. Department of Defense and went on to work as a U.S. Department of State Foreign Service Officer. He attended the University of California at Los Angeles, Cambridge University (England), the University of Southern California, the University of Vienna (Austria), and George Washington University.

Before joining the Trump Administration, he served nearly six years as elected Chairman of the DC Republican Party, Chairman of the Washington, DC delegation to 2016 Republican National Convention in Cleveland, OH, and a member of the Republican National Committee (RNC). He is a competitive Masters swimmer, and has proudly served as co-chair of the Legal Marketing Association's global Diversity & Inclusion Committee.

International Trade Administration

Chief of Staff

Lawson Kluttz

Lawson Kluttz serves as the Chief of Staff at the International Trade Administration (ITA). In Lawson's most recent role, he was detailed to the White House Office of Intergovernmental Affairs (IGA) as a Policy Advisor where he focused on the implementation and coordination of the CARES Act and COVID-19 recovery. Before joining the White House IGA office, Lawson served as the Acting Deputy Assistant Secretary for Legislative and Intergovernmental Affairs at the Department of Commerce. Prior to serving in the Trump Administration, Lawson worked as an aide to House Minority Leader Kevin McCarthy and to Majority Leader Eric Cantor. Lawson, a graduate of the University of North Carolina, is from Winston-Salem, North Carolina.

International Trade Administration (ITA)

Mission

Create prosperity by strengthening the international competitiveness of U.S. industry, promoting trade and investment, and ensuring fair trade and compliance with trade laws and agreements.

Locations and Workforce Demographic Trends*

Headquarters: Washington DC ~ 959 federal employees

Field Offices: Domestic (106 offices) ~ 301 federal employees

International (117 offices) ~ 224 federal employees

*Based on current workforce trends. Does not include locally-engaged staff.

Historical Total Staffing Levels (Positions)

FY 2017 Actual	FY 2018 Actual	FY 2019 Actual	FY 2020 Budget	FY 2021 President's Budget
1,764	1,998	1,980	2,142	1,481

Budget Trend- Appropriations (\$ in Millions)

FY 2017 Actual	FY 2018 Actual	FY 2019 Actual	FY 2020 Budget	FY 2021 President's Budget
\$483	\$482	\$484.0	\$510.3	\$474.4

Principal Responsibilities

Free and fair trade are critical to the economy and the strategic position of the United States. To implement the nation's trade and investment goals and help American job creators overcome the challenges they face abroad, ITA utilizes its global network of trade, industry, and country experts, to enforce U.S. trade laws and agreements and open markets for U.S. products and services. With industry and country experts located in Washington, D.C., and with teams located in 117 international cities in 76 countries and 106 locations across the United States, ITA is well positioned to eliminate trade barriers, negotiate fair trade deals, ensure compliance with trade laws and agreements, and expand trade and investment opportunities for U.S. businesses.

ITA's FY 2021 President's budget request of \$474.4 million supports targeted investments to:

1. Ensure that U.S. industries and workers have an effective remedy for the injurious impact of dumped and subsidized goods entering the United States.

Section 4-5 c - ITA Overview Fact Sheet

2. Deliver high quality sectoral and analytical capacity to support trade to combat Chinese industrial policy.
3. Support its Committee on Foreign Investment in the United States (CFIUS) coordinator role to meet the expected increase in case load under the Foreign Investment Risk Review Modernization Act (FIRRMA).
4. Advocate for U.S. companies to win international government procurements.

ITA will also continue to execute required sector reviews for Section 201 cases, and Section 232 and Section 301 exclusion requests.

ITA is comprised of the following four business units working in tandem to execute its vision and mission:

Enforcement & Compliance (E&C) (2020 Budget - \$91.8 million)

Ensures that rules-based trade works for domestic industries by enforcing U.S. trade laws that address unfairly priced or subsidized foreign goods, monitoring compliance with existing trade agreements, and aiding in negotiation of new trade agreements that address trade-impeding and trade-distorting practices. E&C also administers the U.S. Foreign Trade Zones program, which enhances the competitiveness of domestic manufacturers. E&C's most significant operational function is the enforcement of the U.S. antidumping (AD) and countervailing duty (CVD) laws. These laws help level the economic playing field for American businesses, workers, farmers, and ranchers by providing for remedial duties that offset the injurious effects of imports that are sold by foreign exporters at dumped prices or subsidized by their governments.

Global Markets (GM) (2020 Budget - \$333 million)

Enhances job creation in the United States and strengthen U.S. economic and national security by increasing U.S. exports; facilitating, attracting, and retaining business investment in the United States; and ensuring a level playing field in international trade for U.S. firms and workers by advancing and protecting U.S. commercial interests overseas and helping U.S. companies win foreign government procurements. GM is uniquely positioned to provide this assistance through its global network of trade and investment professionals located in Washington, DC, 106 domestic locations that cover all U.S. states and territories, and 76 countries that represent nearly 95 percent of world gross domestic product (GDP). GM's trusted expertise, impartial assistance, and affordable services cannot be found in the private-sector or in any other U.S. Government agency. They ensure that U.S. businesses and commercial interests have a robust advocate and first line of defense against unfair foreign trade practices and market access barriers. GM experts also help lead USG interagency-wide initiatives, such as Prosper Africa, the Indo-Pacific Network, and *América Crece*, and they form the backbone of an interagency global Deal Team Initiative, co-chaired by Commerce and State at the Under Secretary level.

Within GM, the **SelectUSA** program leads the interagency effort to facilitate business investment in the United States in order to create jobs, spur economic growth, and promote American competitiveness. As a result, over the past three years GM's trade and investment experts have assisted more than 77,000 export and investment clients, 90 percent of which were small- and medium-sized enterprises (SMEs); facilitated over \$296 billion in U.S. exports and inward

investment; supported 1.3 million American jobs; and returned over \$300 to the U.S. economy for every \$1 appropriated.

Industry & Analysis (I&A) (2020 Budget - \$62.5 million)

Provides unique sectoral and analytical expertise that supports U.S. Government efforts to protect U.S. business and grow their exports. Its specialized knowledge is specifically tailored to inform decisions across the government, from trade negotiations, to trade enforcement, to investment, national security, and export promotion priorities. I&A has developed data tools specifically intended to support ITA's analytical work in trade and competitiveness. It also makes data, analytical tools and market intelligence accessible to decision-makers in the private sector. I&A's sectoral expertise and analytical capabilities support trade negotiations, and efforts to counter the effects of foreign industrial policies, such as those of China, on U.S. industry competitiveness, as well as analyze supply chain policy decisions and the impact of proposed trade actions under various trade authorities (Section 232, Section 201, and Section 301). As the Commerce lead on CFIUS, I&A conducts national security reviews. I&A expertise is also sought in policy discussions on critical sectors such as fifth generation (5G) technology, semiconductors, critical minerals, autos, space, civil nuclear, biotechnology, and digital trade.

Executive Direction and Administration (ExAd) (2020 Budget - \$23 million)

Coordinates policy and strategy across ITA, directs program activities, manages the agency's budget and administrative functions, and provides strategic and operational management of information technology resources.

For more information about the specific initiatives in the FY 2021 ITA budget, please see our budget summary at:

https://www.commerce.gov/sites/default/files/2020-02/fy2021_ita_congressional_budget_justification.pdf

Summary of Major Organizational Improvement Initiatives

- **Digital Transformation:** The overarching goal of digital transformation at ITA is to deliver on the agency's priority goals and provide digital support for expanding the frontier of trade enforcement, eliminating trade barriers, facilitating export growth, accelerating business matchmaking, attracting foreign direct investment, and increasing organizational capacity. ITA is committed to becoming an organization intensely focused on understanding our client needs, delivering a customer-centric experience, learning and adapting, measuring customer-focused and organizational performance metrics, and strengthening business processes and technology infrastructure. More specifically, ITA's digital transformation dramatically expands the reach of ITA's expertise and services to the millions of small- and medium-sized businesses throughout the United States as well as establishing the United States as the country of choice for innovation and investment.
- **Steel Import Monitoring and Analysis (SIMA)/Aluminum Import Monitoring (AIM) Systems:** ITA has upgraded its platform for steel import licensing and issued new regulations to allow SIMA to expand the number of imported steel products subject to licensing and to collect data to help identify duty evasion. ITA is also in the process of

developing AIM, a new aluminum import licensing and data collection system modeled on SIMA.

Strategic Partnerships, Key Stakeholders, and Interagency Groups

Strategic Partnerships

- **Government-to-Government Dialogues:** U.S.-India Strategic and Commercial Dialogue, U.S.-German Informal Commercial Exchange, U.S.-France Economic and Commercial Dialogue, U.S.-Norway Informal Commercial Exchange, U.S.-Sweden Informal Commercial Exchange, U.S.-Netherlands Economic Dialogue, U.S.-Poland Economic and Commercial Dialogue, U.S.-Brazil Commercial Dialogue, U.S.-Mexico High Level Economic Dialogue, U.S.-Canada Regulatory Cooperation Council, U.S.-Argentina Commercial Dialogue, North American Steel Trade Committee, Bilateral Working Group on Digital Economy Issues with Priority Trade Partners including Europe, India, Japan, Brazil and Indonesia, and various Asia Pacific Economic Cooperation (APEC) Working Groups and Committees
- **Government-to-Business Dialogues:** U.S.-India CEO Forum, U.S.-Brazil CEO Forum, U.S.-Brazil Defense Industry Dialogue, U.S.-Mexico Business Energy Council, APEC Food Safety public private partnership, World Wine Trade Group, International Wine Technical Summit, APEC Wine Regulatory Forum
- **Formal Strategic Partnerships:** Cooperative arrangements between ITA and outside organizations (*e.g.*, private corporations, trade associations, chambers of commerce, economic development organizations and educational institutions) to improve the global business environment and help U.S. companies compete abroad
- **Market Development Cooperator Program (MDCP):** Financial and technical assistance for 13 partners undertaking projects to remove trade barriers
- **Multilateral Organizations:** Organization of Economic Development and Cooperation (OECD); Asia Pacific Economic Cooperation (APEC); World Trade Organization (WTO); World Tourism Organization (UNWTO); World Health Organization (WHO); Codex Alimentarius

Key Stakeholders

- **Advisory Committees:** Industry Trade Advisory Committees (ITACs), President's Export Council (PEC), President's Advisory Council on Doing Business in Africa (PAC-DBIA), U.S. Investment Advisory Council (IAC), U.S. Travel and Tourism Advisory Board (TTAB), Trade Finance Advisory Council (TFAC), Advisory Committee on Supply Chain Competitiveness (ACSCC), Environmental Technologies Trade Advisory Committee (ETAC), Civil Nuclear Trade Advisory Committee (CINTAC), Renewable Energy and Energy Efficiency Advisory Committee (REEAC)
- District Export Councils (DECs)
- Trade associations and business groups (*e.g.*, Committee to Support U.S. Trade Laws, U.S. Chamber of Commerce, Customs and International Trade Bar Association)
- Regional and country-specific trade associations (*e.g.*, U.S.-India Business Council, American Chambers of Commerce in regions, U.S.-Saudi Business Council)

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- Industry-specific trade associations (e.g., National Association of Manufacturers, American Iron and Steel Institute, Steel Manufacturers Association, American Association of Independent Music, U.S. Travel Association)
- State/local: State International Development Organizations, Economic Development Organizations, National Governors Association, Destination Management Organizations
- Investment-related organizations: International Economic Development Council, Organization for International Investment
- **Privacy Shield Program:**
 - Participants comprise of over 5,300 self-certified U.S. companies under the EU-US Privacy Shield (including U.S. subsidiaries of EU-headquartered companies). Sixty percent of these companies are small and medium-sized businesses.
 - Privacy Shield Dispute Resolution Providers including the Better Business Bureau, TrustArc, American Arbitration Association, Direct Marketing Association, Judicial Arbitration and Mediation Services (JAMS)

Interagency Groups:

- White House Policy Coordinating Committee
- Trade Policy Review Group/Trade Policy Staff Committee and Subcommittees (e.g., Interagency Compliance Task Force)
- Trade Promotion Coordinating Committee (TPCC) and member agencies
- Committee on Foreign Investment in the United States (CFIUS)
- Defense Advocacy Working Group
- Interagency Investment Working Group
- Tourism Policy Council
- Border Interagency Executive Council (CBP)
- Export-Import Bank Board: The Secretary is an *ex officio*, non-voting member of EXIM's Board of Directors, with representation at Board meetings delegated to ITA.
- Development Finance Corporation Board
- Federal Consortium on Advanced Batteries

Any Potential Congressional or Media Issues (first 100 days from 1/20/2021)

- The new Congress will be sworn in the first week of January, and it will take them a few weeks to organize. In the first 100 days, OLIA should do outreach to members of key oversight committees (Senate Finance, House Ways and Means, Senate Commerce, House Energy and Commerce, Senate Banking, House Foreign Affairs, Senate Foreign Relations) to provide them a background on what ITA does.
- As the White House announces ITA's Presidentially-appointed, Senate-confirmed (PAS) nominees (Under Secretary for International Trade; Assistant Secretary for Global Markets and Director General of the U.S. and Foreign Commercial Service; Assistant Secretary for Industry and Analysis; and Assistant Secretary for Enforcement and Compliance), ITA OLIA is responsible for moving the nominee through the confirmation process.
- Miscellaneous Tariff Bills (MTBs): A final bill enacting the tariff reductions from the 2019-2020 MTB process could be introduced or voted on during this period. In April, Commerce submitted its report to the House Ways and Means and Senate Finance Committees,

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identifying whether there are domestic producers and noting whether the domestic producers object to the proposed tariff reductions being enacted. The U.S. International Trade Commission (ITC) released its final report on the list of submitted products in August.

- The U.S. Congress and media remains very interested in the resolution of issues surrounding the July 16, 2020, EU Court of Justice judgement declaring as “invalid” the European Commission’s Decision (EU) on the adequacy of the protection provided by the EU-U.S. Privacy Shield. As a result of that decision, the EU-U.S. Privacy Shield Framework is no longer a valid mechanism to comply with EU data protection requirements when transferring personal data from the European Union to the United States.

Awaiting Decisions (first 100 days from 1/20/2021)

- If extended, final determination in CVD investigation of *Passenger Vehicles and Light Truck Tires from Vietnam* and preliminary determination in CVD investigation of *Twist Ties from the Peoples Republic of China*. First two CVD investigations in which E&C will address allegations of currency undervaluation as a subsidy.
- If extended, final determinations in AD/CVD investigations of *Common Alloy Aluminum Sheet from Taiwan, Brazil, South Africa, Croatia, Spain, Indonesia, South Korea, Slovenia, Bahrain, Oman, Italy, India, Greece, Serbia, Turkey, Romania, Egypt, and Germany*.
- WTO Dispute Panel review of *United States — Anti-Dumping and Countervailing Duties on Ripe Olives from Spain* (DS577). Addressing measurement of subsidies under processed agricultural products provisions.

Quick Wins (first 100 days from 1/20/2021)

- **Asia EDGE Trade Mission:** ITA will organize an executive-led business development mission to Indonesia and Vietnam with an optional program in Thailand on March 17-26, 2021. The trade mission will be the first organized under Asia EDGE, the whole of government energy initiative for the Indo-Pacific region.

Points of Contact

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Enhance Trade: Economic Growth and U.S. Industry Competitiveness (ITA)

Executive Summary

The current economic environment is characterized by a global economic slowdown caused by the Covid-19 pandemic and other challenges such as: 1) increased global competition in strategic industries (e.g., steel, semiconductors, and advanced battery technology), 2) heightened foreign government intervention in markets, and 3) growing pressure on the domestic economy from competitor nation exports. ITA's global trade resources and expertise are critical to promoting economic growth and ensuring fair competition for U.S. industry abroad and domestically. ITA has a broad set of tools, programs, and services that can be used to support U.S. economic growth, protect our nation's industrial competitiveness, and address the national economic security challenges posed by the United States' strategic competitors. ITA is making greater use of U.S. antidumping (AD) and countervailing duty (CVD) laws to reduce foreign dumping and subsidies across a broad range of industries. ITA's analysis has informed U.S. policy responses on a range of topics, from Section 301 to U.S. 5G competitiveness to vulnerabilities in the national security supply chain. ITA works with the private sector to help ensure that U.S. strategic competitors' activities in their own markets, in third countries, and in international organizations do not disadvantage U.S. producers and service providers. ITA also works directly with U.S. businesses to educate them on how they can increase protections against intellectual property theft and unfair trade practices while growing their businesses through exporting. Finally, ITA is leading the Administration's reshoring initiative and is leveraging interagency efforts and encouraging companies to reshore supply chains back to the United States.

Department of Commerce leadership engagement is needed in certain cases under the Committee on Foreign Investment in the United States (CFIUS) and on critical industry sectors impacted by the pandemic, including travel and tourism. Additionally, Secretarial-level participation in upcoming major trade and investment events could attract high level engagement from U.S. and foreign decision makers and stakeholders and secure successful U.S. economic outcomes. Finally, Commerce leadership's advocacy for the President's FY21 budget request could help address the historic trade enforcement caseload.

Background

ITA's business units offer programs and policy support that draw upon ITA's network of experts from around our Nation and the world to deliver a wide range of services to facilitate foreign market entry for U.S. exporters. ITA leverages its strengths by leading USG international trade efforts throughout the interagency, in collaboration with the State Department, the Office of the United States Trade Representative (USTR), other federal agencies, departments, and financial and development organizations, as well as state and local governments and non-governmental organizations. U.S.-based Foreign Trade Zones also encourage business development and investment in the United States. ITA also has a statutory responsibility to vigorously enforce the U.S. AD/CVD laws and protect American industries, workers, farmers, ranchers, and businesses from the injurious effects of imports sold by foreign exporters at dumped prices or unfairly subsidized by foreign governments. The demand for ITA to pursue trade remedies and AD/CVD actions since March 2020 has been at a historic high.



Key Challenges to Date

Historic trade enforcement caseload: Trade enforcement activity, including new investigations, anti-circumvention activity, and administrative reviews, is at a historic high. At the outset of FY21, ITA's Enforcement and Compliance (E&C) unit was enforcing an all-time high 540 AD/CVD discrete orders under which it instructs Customs and Border Protection to collect remedial duties against specific foreign imports determined to have been unfairly dumped or subsidized. As the number of AD/CVD orders have increased, so too have instances of circumvention. In FY20, E&C initiated seven new circumvention inquiries and issued 25 preliminary and/or final determinations in circumvention inquiries. Staff and budget resources to manage the historically high caseload are not keeping pace. The Department requested \$2 million and eight positions for AD/CVD Administrative Reviews in FY21.

Growing Number of Section 232 steel and aluminum exclusion requests: While the Bureau of Industry and Security (BIS) is the lead bureau administering the steel and aluminum Section 232 tariffs, E&C plays a critical and highly resource-intensive role in evaluating requests for tariff exclusions to which domestic aluminum or steel producers object. The number of incoming requests that E&C must individually review is growing exponentially. ITA did not receive funding for Section 232 in FY18, FY19, nor FY20. While ITA will continue to strive for more efficiency gains, staffing and funding will have to be diverted from other projects to continue to meet Section 232 performance obligations in the absence of adequate appropriated funds in FY21. Additional, \$3 million in funding for ITA's processing of Section 232 steel and aluminum tariff exclusions is requested in FY21.

Impact of the pandemic on U.S. travel and tourism: In 2019, international travel to the United States, including travel for business, leisure, leisure education, and medical purposes, accounted for 9.1 percent of all U.S. exports and supported 1.3 million U.S. jobs. However, the pandemic halted international travel from our major markets and significantly curtailed domestic travel, resulting in a devastating blow to the sector. ITA's National Travel and Tourism Office (NTTO) would expect to engage with the Office of the Secretary on key issues to support recovery, including the safe resumption and expansion of international air service, bio-security in both domestic and international travel, and stimulating demand to support the recovery of the sector, as well as any new mandates from Congress through proposed legislation (<https://www.congress.gov/bill/116th-congress/senate-bill/3831>). The Secretary chairs the legislatively mandated Tourism Policy Council, consisting of interagency members including the Departments of Homeland Security, Transportation, State, and Interior. Commerce also administers the Travel and Tourism Advisory Board (TTAB), rechartered in Fall 2020 for a two-year term, which provides advice to the Secretary on tourism policy matters. Additionally, Commerce is the federal government liaison to Brand USA, the public-private partnership responsible for the nation's international marketing efforts to stimulate tourism growth.

Supply Chain Resiliency: The pandemic and increased competition in critical strategic sectors from countries, such as China, have focused attention on supply chain issues, not only in regards to critical medical supplies and personal protective equipment, but for products necessary for U.S. industrial base competitiveness, such as advanced battery storage, critical minerals, and large power transformers. ITA is analyzing critical supply chains and overall industry



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competitiveness, performing assessments of industries weakened by predatory import competition and predatory foreign direct investment practices, developing policy recommendations, and leading a reshoring initiative to leverage interagency efforts and engage companies to reshore supply chains back to the United States. ITA's SelectUSA program will continue to focus on virtual events, lead generation, research, and foreign direct investment engagements in national security critical supply chain sectors (e.g., semiconductors, energy storage, advanced manufacturing), as well as services, programs and research targeting emerging technology sectors, U.S. innovation ecosystems, and interagency collaboration.

Sustaining and Strengthening U.S. Exports: Small- and medium-sized enterprises (SMEs), in particular, have faced significant challenges during the pandemic in sustaining their business around the world, particularly due to their inability to travel to overseas markets. More than 90 percent of the companies supported by ITA are SMEs. During the pandemic through the end of FY20, ITA's Global Markets (GM) unit provided its range of fee-for-service programs (e.g., business matchmaking programs and single-company promotions) at no or reduced fees to SMEs, which were allowed to register for up to five services in advance, to be used in the following year. More than 1,200 U.S. companies, 92 percent of which were SMEs, signed up for more than 2,000 free services by the end of FY20. Web-based export awareness programs that traditionally attracted between 100 to 200 participants on topics ranging from regional market opportunities, to exports facilitation, to trade barriers often drew between 1,000 to 2,000 participants during the pandemic. To meet U.S. business demand under the current conditions, ITA has begun to implement solutions that enhance virtual client contact and product offerings, as well as topical/regional information dissemination through webinars and virtual events.

Key Progress to Date

ITA continues to advance key trade policy issues and agreements that support market access initiatives to enhance the competitiveness of U.S. exporters worldwide. For example, ITA develops information resources that enable companies to take advantage of the U.S.-Mexico-Canada Agreement (USMCA) and to monitor Canada and Mexico's compliance with their commitments to ensure U.S. exporters fully benefit from the agreement. Efforts to address challenges and costs imposed by divergent or inconsistent regulatory practices, inefficient and inconsistent border clearance procedures, and corruption remain essential to ensuring U.S. goods and services can enter and be successful in foreign markets. The U.S.-hosted Summit of the Americas in 2021 is an action-focusing event ITA would like to leverage to secure high-level commitments from U.S. trading partners on these issues.

ITA is focused on key sectors for U.S. companies in other important regions of the world. These key sectors include cyber security, energy, and infrastructure, and offer more than \$150 billion in opportunities for U.S. exports in Asia, where data privacy and cross-border data flows have also emerged as key policy issues. In China, ITA is collaborating with the Department of Energy on an initiative to promote exports of U.S. coal, LNG, petroleum, and petroleum products. ITA's Office for China and Mongolia continues to focus on the first-year review of the Phase I Trade Deal, particularly regarding a path forward on China's commitment to imports from the United States. Data privacy frameworks, infrastructure events, and innovation dialogues are an ITA priority in the Middle East. Ongoing support of the U.S.-Kenya Free Trade Agreement negotiations and implementation of a bilateral commercial cooperation dialogue, along with



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continued support of the President's Advisory Council on Doing Business in Africa (PAC-DBIA), remain priorities in Africa. In Europe, ITA continues to focus on the impacts of economic security on national security, where ITA leads the interagency to achieve tangible commercial results for U.S. business. ITA prioritizes commercial activities in support of U.S. companies in the region with a focus on government procurements, removing market access barriers, and increasing exports. Other priorities include ensuring continued transatlantic digital data flows and a focus on energy sales to Europe and Eurasia.

Planning for the Future

The rapidly developing digital economy has made it essential for businesses to sell directly online. B2B eCommerce is forecast to soon eclipse retail sales. ITA has begun to address key eCommerce trade issues, in support of U.S. exporters, including: 1) lack of business digital strategy and know-how, 2) lack of eCommerce service provider awareness, 3) digital non-tariff barriers, 4) shipping and logistics costs, and 5) online payment solutions.

Relevant Internal Stakeholders

BIS, MBDA, PTO, NIST, NOAA

Relevant External Stakeholders

U.S. domestic industries, U.S. companies, foreign buyers, foreign respondents to AD/CVD case filings, foreign governments, state and local economic development organizations (EDOs), chambers of commerce, advisory committees, foreign embassies and business chambers, U.S. District Export Councils (DECs), American Chambers of Commerce overseas, and Congress

Relevant Inter-Agency Groups

Customs and Border Protection, Department of Justice, International Trade Commission, CFIUS, and Trade Promotion Coordinating Committee (TPCC) agencies including USTR, the State Department, DFC, SBA, USTDA, EXIM, DFC, FTC, USAID, DOE, and USDA

Next Steps/Upcoming Deadlines/Timing

The Secretary may engage on the following issues, as well as participate in key annual trade and investment events that will promote U.S. exports and contribute to economic growth:

- ITA coordinates Commerce's participation in the CFIUS process, an interagency committee authorized to review certain transactions involving foreign investment in the United States. ITA reviews numerous filings and declarations, some of which may require Secretary-level attention. ITA leads Commerce engagement on CFIUS on behalf of the Secretary, who is a member of CFIUS.
- ITA is organizing an executive-led business development mission to Southeast Asia (March 17 to 26, 2021). This mission will be the first one organized under Asia EDGE, the whole-of-government energy initiative for the Indo-Pacific region. Secretarial involvement will need to be decided in consultation with the Office of Secretary and could range from leading the mission to providing a recorded message to the delegates.
- Secretarial Meetings of the Tourism Policy Council and Travel and Tourism Advisory Board to be scheduled at the discretion of the Office of the Secretary. National Travel and Tourism week is May 2-8, 2021.



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- The **SelectUSA Investment Summit** (June 6-9, 2021 – Washington, DC) is hosted by the Secretary of Commerce. Other participants could include the President, Cabinet members, and CEOs. The Summit promotes foreign direct investment in the United States, enables vital direct connections between investors and U.S. EDOs, and focuses on the U.S. investment environment, industry trends, and new opportunities. A decision has not been made yet to hold the event in-person, virtually, or as a hybrid event. At the 2019 Summit, nearly \$100 million in new investment projects were announced. In total, 1,200 business investors from a record 79 international markets joined economic developers from 49 states and territories.
- The Secretary may deliver keynote remarks at the **Discover Global Markets (DGM, planned for October 2021, location TBD)** conference, held in a different location in the United States each year, which brings together local and regional governments and economic development agencies with U.S. industry in key sectors to discuss export opportunities and challenges. ITA's trade experts from around the world meet with U.S. companies to provide guidance on doing business and opportunities in their markets. The 2020 DGM focused on intelligent manufacturing and drew 500 participants from over 40 countries, including 290 U.S. companies and economic development organizations from 39 states and territories, 85 foreign buyers, 6 representatives from foreign ministries, and 49 foreign investors.
- The Secretary may also deliver keynote remarks at ITA's **Trade Winds** conference, ITA's largest overseas event that attracts several hundred U.S. companies, international buyers and key stakeholders. The Trade Winds conference, next scheduled for early 2022, is held in conjunction with the largest USG-led trade mission and is targeted to markets where trade opportunities for U.S. exports are significant or developing, often due to U.S. trade policies, negotiations, or agreements with those countries, where senior-level USG participation can directly contribute to the success of U.S. business and industry.

E&C will issue over 50 preliminary or final AD/CVD determinations from January 20, 2021, through March 30, 2021. Some of the more high-profile final determinations are listed below:

- **February 3, 2021** –(AD) Seamless Carbon and Alloy Steel Standard Line Pipe (Czech Republic, Korea, Russia, and Ukraine)
- **February 5, 2021** – (AD) Prestressed Concrete Steel Wire Strand (Argentina, Colombia, Egypt, Taiwan, the United Arab Emirates, the Netherlands, Turkey)
- **February 16, 2021** – (AD/CVD) Twist Ties from China (CVD includes currency allegation and could be extended)
- **February 18, 2021** – (AD/CVD) Common Alloy Aluminum Sheet (18 countries)
- **March 11, 2021** – (AD/CVD) Mattresses (Cambodia, China (CVD only), Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam)
- **March 29, 2021** – (AD) Prestressed Concrete Steel Wire Strand (Indonesia, Italy, Malaysia, Spain, South Africa, Tunisia, and Ukraine)
- **March 29, 2021** – (AD/CVD) Wire Mesh (Mexico)

ITA also provides quarterly updates to Congress focused on ITA operations, including budget, staffing, and key activities, in accordance with Title I, Department of Commerce, "ITA Quarterly Updates" of Division B-Commerce, Justice, Science, Explanatory Statement of the Consolidated Appropriations Act, 2020, P.L. 116-93.



Identify Critical Technologies for Effective Foreign Investment and Export Control Reviews (BIS, ITA)

Executive Summary

The passage of the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) and the Export Control Reform Act of 2018 (ECRA) emphasized the interaction and complementary nature of investment screening under the Committee on Foreign Investment in the United States (CFIUS) and export controls. For example, FIRRMA contains a definition of “critical technologies” that is in part linked to the Export Administration Regulations (EAR): If a U.S. company is involved in “critical technologies” controlled for specific reasons on the EAR’s Commerce Control List (e.g., regime-controlled items, items controlled for regional security and surreptitious listening reasons, items controlled under the “emerging and foundational technologies” provision in ECRA), it can be subject to part of the expanded definition of a “covered transaction” under CFIUS, which subjects a related investment to interagency review. Also, CFIUS is specifically identified as a source of information for the Bureau of Industry and Security (BIS) to identify emerging and foundational technologies for export control evaluation purposes. BIS has enacted internal procedures to ensure that all CFIUS filings are reviewed by technical experts with a specific focus on emerging and foundational technology reviews. Consistent with the requirements of ECRA, BIS is leading a regular, ongoing interagency process to identify and control the export of emerging and foundational technologies that are essential to the national security of the United States. As part of this process, and in accordance with ECRA, BIS consults regularly with industry; Technical Advisory Committees (TACs), including the Emerging Technology Technical Advisory Committee (ETTAC) mandated by ECRA; the public; the Departments of Defense, Energy, and State; and other U.S. Government agencies as needed, to identify emerging technologies and review them to determine whether they merit additional controls of any type. To date, BIS published four separate rules implementing controls on 37 specific emerging technologies. BIS also published an Advance Notice of Proposed Rulemaking (ANPRM) seeking comment on the definition of, and criteria for, identifying foundational technologies.

Background

The Secretary of Commerce delegated CFIUS responsibilities and authorities to the International Trade Administration (ITA) and BIS. ITA serves as Commerce’s CFIUS Coordinator, providing analysis of economic vulnerabilities, market trends, and business rationale, while BIS provides analysis of dual-use export control implications and defense industrial base issues. BIS also vets corporate entities and corporate officers to determine whether there are current investigations or derogatory information. Chaired by Treasury, CFIUS is the interagency committee that conducts national security reviews of mergers, acquisitions, or takeovers with potential to result in foreign control of a U.S. business; certain non-controlling investments in U.S. companies involved with critical technologies, critical infrastructure, or sensitive personal data; and certain real estate transactions near sensitive government facilities. Should a particular transaction raise national security concerns, CFIUS has the authority to mitigate those national security concerns, or it may recommend the President prohibit or suspend the transaction. The President signed FIRRMA



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into law in August 2018. FIRRMA achieves the goals of protecting our national security and preserving our long-standing open investment policy. FIRRMA was fully implemented in February 2020, significantly expanding the scope of transactions subject to CFIUS jurisdiction. BIS's engagement in CFIUS is critical to implementing FIRRMA and to ensuring that Administration and Congressional objectives of strengthening national security reviews of foreign investment in the United States are achieved.

Section 1758 (50 U.S.C. 4801) of ECRA requires the Department of Commerce to establish appropriate controls on the export, reexport, or transfer (in country) of emerging and foundational technologies. Under ECRA, emerging and foundational technologies are those technologies that are essential to the national security of the United States and are not critical technologies described in Section 721(a)(6)(A)(i)–(v) of the Defense Production Act of 1950, as amended (DPA). ECRA notes the national security importance of U.S. leadership in science, technology, engineering, and manufacturing, including foundational technology that is essential to innovation. Items subject to the EAR (15 CFR parts 730-774) that are not covered by the DPA's definition of critical technologies are items controlled only for anti-terrorism (AT), crime control (CC), or short supply (SS) reasons, subject to United Nations (UN) embargoes, or designated as EAR99.

Key Challenges to Date

Key challenges include identifying new technology areas with appropriate parameters when considering controls on emerging and foundational technologies that are essential to U.S. national security. Such parameters must be sufficient to capture technical specifications for commodities, software, and technologies identified as emerging or foundational technologies. These parameters are coordinated with interagency partners and consider public and TAC comments. Two additional challenges, given resource constraints, are 1) assessing the impacts of emerging and foundational technologies on the U.S. industrial base and U.S. technological leadership and 2) measuring the effectiveness of export controls on limiting the proliferation of controlled emerging or foundational technologies in countries of concern.

Key Progress to Date

The Department, with its interagency partners, multilateral export control regimes, industry, academia, and the public, continues to identify emerging and foundational technologies that warrant more restrictive export control, which also impacts CFIUS reviews. In November 2018, the Department launched a rulemaking process that sought public comment to inform the interagency process to identify and describe emerging technologies. To date, the Department published four rules which imposed controls on 37 emerging technologies in the aerospace, additive manufacturing, biotechnology, chemical, electronics, encryption, geospatial imagery, semiconductor, telecommunications, and marine sectors.¹ The Department, along with other

¹ Multilateral controls on: 1) certain microwave transistors (a major component of wideband semiconductors); 2) continuity of operation software; 3) postquantum cryptographic algorithms; 4) underwater transducers designed to operate as hydrophones; 5) aircraft specially designed or modified to be air-launch platforms; 6) single-use biological cultivation chambers; 7-30) 24 chemical weapons precursors controlled for Chemical/Biological and Anti-Terrorism reasons; 31)



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agencies, continues to evaluate additional technologies for potential unilateral or multilateral controls.

In accordance with ECRA, the Department reconstituted the ETTAC, which assists in the review and identification of emerging and foundational technologies. ETTAC members are drawn from individuals in academia, industry, and federal laboratories who are engaged in the development and production of cutting-edge technologies in areas key to maintaining U.S. global leadership in innovation. U.S. Government agencies have non-member representatives to this Committee, including the Departments of Commerce, Defense, and State. On August 27, 2020, BIS published an ANPRM on foundational technology. Public comments from the ANPRM, due November 9, 2020, will help inform the interagency process to identify and describe foundational technologies.

Planning for the Future

As the Department identifies emerging and foundational technologies that have national security implications, additional rules specific to those technologies will be published, pursuant to Section 1758 of the ECRA.

Relevant Internal Stakeholders

- TACs to provide input on proposed emerging and foundational technologies.
- Relevant internal bureaus, such as NIST, to assist in the evaluation of emerging technologies (e.g., quantum radios).

Relevant External Stakeholders

- Industry and academia involved in the development of emerging technologies.
- Multilateral regimes, including the Wassenaar Arrangement and the Australia Group, to coordinate multilateral emerging and foundational technology control proposals.

Relevant Inter-Agency Groups

- Department of Treasury, which leads the overall CFIUS process.
- Interagency partners involved in the review of proposed emerging or foundational technology controls (e.g., the Departments of Defense, Energy, and State), who may also assist in identifying such technologies for potential control through the National Security Council's sprint teams.

Next Steps/Upcoming Deadlines/Timing

- Foundational Technologies ANPRM comments are due by November 9, 2020.
- ETTAC meetings will be held in November and December 2020.
- BIS is leading the ongoing process to identify and evaluate emerging and foundational technologies.

Hybrid additive manufacturing/computer numerically controlled tools; 32) computational lithography software designed for the fabrication of extreme ultraviolet masks; 33) technology for finishing wafers for 5nm production; 34) forensics tools that circumvent authentication or authorization controls on a computer and extract raw data; 35) software for monitoring and analysis of communications and metadata acquired from a telecommunications service provider via a handover interface; 36) sub-orbital aircraft; and 37) unilateral controls on software specially designed to automate the analysis of geospatial imagery.



Digital Flow of Data / Privacy (ITA)

Executive Summary

The International Trade Administration's (ITA) mandate includes facilitating international data flows in a way that protects data privacy and promotes trust and confidence in the digital economy. ITA's Office of Digital Services Industries (ODSI) leads Commerce's work on digital trade issues.

Cross-border data flows enable and underpin today's globally connected world and are integral to commerce and trade. Data flows currently drive 22 percent of global economic output and are expected to add \$11 trillion to global Gross Domestic Product by 2025. There is no globally accepted standard or definition of data privacy and no comprehensive multilateral framework governing online privacy and data protection. The costs of this fragmentation are experienced in real dollars and undermine U.S. policy objectives to promote innovation and economic growth. Separately, in its role as coordinator of the Department's review of foreign investments under the Committee on Foreign Investment in the United States (CFIUS), ITA analyzes potential national security concerns related to the security of data associated with specific foreign investments.

In contrast to U.S. trade policy, which seeks to balance the need for cross-border data flows with online privacy and security, the European Union (EU) and China have established prescriptive rules on cross-border data flows and personal data. China is focused on its national security. The EU is driven by concerns about protecting personal data from government access and commercial misuse.

A July 16, 2020 decision by the European Court of Justice (ECJ) created enormous uncertainty about the ability for companies to transfer personal data from the European Union to the United States in a manner consistent with EU law. This decision generated significant legal and operational challenges. Managing the fallout from this decision and ensuring the viability of other mechanisms meant to protect data flows will require the Secretary of Commerce to proactively advocate for U.S. interests early in 2021.

Background

The digital economy accounted for 6.9 percent of U.S. GDP in 2017 and includes 1) the information and communications technology (ICT) sector and underlying infrastructure, 2) digital transactions or e-commerce, and 3) digital content or media. It supported 5.1 million jobs, or 3.3 percent of total U.S. employment in 2017, and almost two-thirds of jobs created in the United States since 2010 required medium or advanced levels of digital skills. Cross-border data flows underpin the digital economy. One study estimated that digital trade was worth between \$800-1,500 billion in 2019, and another estimated that data flows will increase 2020 global GDP by over \$3.5 trillion (CRS: <https://ersreports.congress.gov/product/pdf/R/R45584>).

While digital technologies create new opportunities for U.S. consumers and businesses, they also present new challenges in international trade. Businesses use advanced ICT to reach new



markets, track global supply chains, analyze big data, and create new products and services. As the digital economy has expanded, so too have concerns over data privacy, leading some countries to adopt data protection measures that can hinder data flows and place undue financial burdens on U.S. businesses.

The July action by the ECJ that invalidated the EU-U.S. Privacy Shield Framework creates significant challenges to the legal transfer of personal data for commercial purposes from the EU to the United States. Privacy Shield, in place since 2016, is a mechanism to certify that transfers of personal data from the EU to the United States comply with EU data protection law. It facilitated the movement of data that underpins the \$7.1 trillion transatlantic economic relationship. Managed by ITA, this Framework facilitated data flows for over 5,000 participating U.S. companies, of which more than 70 percent are small- to medium-sized enterprises. The court case also called into question the legality of transfers of personal data to the United States using other mechanisms like Standard Contractual Clauses and Binding Corporate Rules, so the concerns extend to all transfers of personal data.

Beyond Privacy Shield, ITA has led on a significant data privacy initiative within the Asia-Pacific Economic Cooperation (APEC) forum known as the Cross-Border Privacy Rules (CBPR) System. The APEC CBPR System is a government-backed certification mechanism created to facilitate cross border data flows and to promote internationally recognized data protection best practices. The CBPR System reduces regulatory compliance costs for U.S. companies and offers an alternative data protection model to the EU's costly and burdensome General Data Protection Regulation (GDPR)—primarily related to individual privacy—and China's "Internet Sovereignty" concept—focusing on government authority to control the internet.

The G20 and several international organizations, including the Organization for Economic Cooperation and Development (OECD) and APEC, have sought to develop best practice guidelines and principles related to privacy and cross-border data flows. Furthermore, recent trade agreements have established new enforceable trade rules and disciplines.

Key Challenges to Date

Schrems II: The ECJ decision in *Schrems II* invalidated the European Commission's adequacy decision underlying the EU-U.S. Privacy Shield Framework. The court held that U.S. national security and law enforcement agencies' access to EU personal data meant that transfers to the United States failed to meet EU data protection requirements. The ruling has generated significant uncertainties about the \$300 billion in annual transatlantic digital trade and the ability of U.S. companies (small- and medium-sized enterprises in particular) to transfer and receive European personal data. Shortly after the *Schrems II* decision was issued, Switzerland followed the EU's lead and determined that the Swiss-U.S. Privacy Shield did not provide adequate protection under Swiss law.

GDPR's Influence on Data Privacy Regimes: The EU's GDPR and data localization requirements pose challenges to cross-border data flows and interoperability between data protection regimes. Many countries have modeled their own data



protection regimes on GDPR, although their national divergences inhibit interoperability often resulting in restrictions on cross-border data flows with the EU.

China's Trade and Internet Policies: China's trade and internet policies reflect state direction and industrial policy, limiting both the free flow of information and individual privacy. Citing national security concerns, Chinese laws impose strict requirements on companies. For example, China's Cybersecurity Law requires that critical information infrastructure operators store personal data and critical business data domestically and mandates that such operators undergo security assessments that provide Chinese authorities access to proprietary business information. Some countries are now following China's approach in creating cybersecurity policies that limit data flows and require local data storage and possible access by government authorities.

Key Progress to Date

Privacy Shield: In August 2020, the Department of Commerce and the European Commission jointly announced discussions to evaluate the potential for an enhanced EU-U.S. Privacy Shield framework to comply with the *Schrems II* judgment. In September, Commerce, Justice, and the Office of the Director of National Intelligence (ODNI) released a White Paper to assist organizations in assessing whether their transfers of EU personal data to the United States under data transfer mechanisms other than Privacy Shield offer appropriate protection in accordance with the *Schrems II* ruling. An interagency group overseen by the National Economic Council and the National Security Council manages the U.S. response on Privacy Shield, where Commerce is a leading participant. The United States has stressed to the European Commission that significant changes to the U.S. national security commitments that underpin Privacy Shield would be extremely difficult to implement.

Bilateral and Multilateral Engagement: ITA engages bilaterally with countries and in multilateral fora, such as the G7/G20, the World Trade Organization, and the OECD (where key privacy guidelines are currently under review) to promote the development of interoperable data protection regimes and promote adoption of APEC CBPRs. To date, APEC CBPRs have been adopted by nine APEC economies including the U.S., Mexico, Canada, Japan, South Korea, Singapore, Chinese Taipei (Taiwan), Australia, and the Philippines.

Digital Trade in Free Trade Agreements: ITA supports USTR in ensuring U.S. digital trade objectives are included in free trade agreements (FTA). All three parties to the U.S.-Mexico-Canada Agreement agreed to recognize the APEC CBPR system to facilitate data transfers and agreed to prohibit data localization. The United States and Japan also agreed to continue to promote interoperability of enforcement regimes, such as CBPRs, in the U.S.-Japan Digital Trade Agreement.

Planning for the Future

ITA remains committed to working with its EU counterparts to negotiate an enhanced EU-U.S. Privacy Shield. ODSI will continue to lead efforts to promote recognition and expansion of APEC CBPRs and continue to work with USTR to ensure U.S. digital trade objectives are included in future FTAs.



Relevant Internal Stakeholders

ITA works across bureaus in the Department, and the Secretary's office on digital trade issues. The National Institute of Standards and Technology (NIST) supports ITA on multiple digital trade issues, including privacy through its recently published NIST Privacy Framework.

Relevant External Stakeholders

- A broad range of internet services and software providers across all sectors of the U.S. economy, as well as the number of companies that straddle the line between being a provider and a user of ICT (e.g., Amazon)
- Information Technology Industry Association, the U.S. Chamber of Commerce, and the Business Software Alliance.
- Industry Trade Advisory Committee on Digital Economy (ITAC 8)

Relevant Inter-Agency Groups

ITA is active in several interagency groups including the Commerce Privacy Coordination Group (with NIST, NTIA, PTO, OGC, and other bureaus as appropriate), the Privacy Shield Interagency Group (including the Federal Trade Commission, Department of Justice, ODNI, Department of State, and USTR), and the APEC Digital Economy Steering Group.

Next Steps/Upcoming Deadlines/Timing

Privacy Shield: ITA leads weekly interagency calls to coordinate strategy and decision-making.

- Possible Congressional hearing on data privacy in November 2020 (TBC)
- Forum Europe's 10th Annual European Data Protection & Privacy Conference – December 8, 2020
- EU Commissioner for Justice Didier Reynders announced that the Commission plans to finalize its modernized Standard Contractual Clauses, which are the primary mechanism to send personal data from the EU to the rest of the world, by the end of 2020.

APEC CBPRs: ITA will continue bilateral engagement with APEC member economies to promote CBPR adoption.

- APEC Digital Economy Steering Group = October 21, 2020



Use Commerce Tools to Address China and Other Strategic Competitors (OS, BIS, ITA, NTIA, NIST, USPTO)

Executive Summary

The Department of Commerce and entire U.S. Government remain open to constructive, results-oriented engagement and cooperation with China where our interests align, but our mission is to protect the United States' vital interests. The Department of Commerce's China-related activities align with the four pillars of the 2017 National Security Strategy of the United States of America: 1) protect the American people, homeland, and way of life; 2) promote American prosperity; 3) preserve peace through strength; and 4) advance American influence. The Department's agenda is executed by multiple agencies and ongoing lines of effort, including:

- **The International Trade Administration (ITA)** counters national economic security threats posed by China through supply chain analysis; trade law enforcement and compliance; trade and investment promotion; bilateral and multilateral commercial diplomacy; and efforts to incentivize the reshoring of important and strategic supply chains, including through the recent and ongoing semiconductor initiative. Additionally, ITA promotes U.S. interests in areas of strategic importance, including 5G, critical minerals, standards, and intellectual property.
- **The Bureau of Industry and Security (BIS)** fosters, serves, and promotes the Nation's economic development and technological advancement through regulatory actions related to export controls, including the administration and enforcement of the Export Administration Regulations (EAR). Export controls pursuant to the EAR complement other Department authorities (e.g., the Committee on Foreign Investment in the United States [CFIUS]) addressing the acquisition of U.S. technology enabling unauthorized military modernization, weapons of mass destruction proliferation, and human rights abuses by China and others. Additional responsibilities include addressing adversary nation strategies, such as the Made in China (MIC) 2025 and Military-Civil Fusion (MCF), contrary to U.S. national security and foreign policy interests.
- **The National Telecommunications and Information Administration (NTIA)** is supporting the implementation of the Executive Order on Securing the Information and Communications Technology and Services (ICTS) Supply Chain in collaboration with the Office of Intelligence and Security and BIS. (b) (5)

- **The U.S. Patent and Trademark Office (USPTO)** has a dedicated group of China intellectual property (IP) experts, the China team, that work with U.S. government agencies and China counterparts to improve the IP environment in China for the benefit of U.S. companies. The China team works with its U.S. Trade Representative (USTR) counterparts on other challenges including confronting competition from China's growing technological advances. USPTO's China IP work comprises of advising and coordinating with U.S. government agencies and China counterparts to resolve IP issues, promoting U.S. IP policy, encouraging effective IP protection and enforcement in China,



5-1 b Use Commerce Tools to Address China and Other Strategic Competitors

and securing high standards in China IP laws and trade agreements, for the benefit of U.S. rights holders.

- **The National Institute of Standards and Technology (NIST) plays a key role in opposing China's malign influence in determining how next generation technologies – from advanced telecommunications to artificial intelligence – will work. NIST plays this important role through its research and development (an area China has been investing larger and larger sums), by coordinating the Federal Government's engagement in standards development organizations, supporting the Department of State in multilateral fora that develop standards, engaging with private sector partners, and by resisting attempts to dominate the standards landscape for key critical and emerging technologies.**
- **The Office of the Secretary's Office of Intelligence and Security (OIS) plays a key role in assessing the national security threats posed by the ICTS equipment of foreign adversaries, including China, and in supporting the implementation of the Executive Order on Securing the ICTS Supply Chain in collaboration with NTIA and BIS.**

Key Challenges to Date

- **China has implemented laws, policies, and practices related to technology, innovation, and intellectual property that may encourage or require the transfer of American capital, technology, and intellectual property to Chinese enterprises and negatively affect American economic interests. These laws, policies, and practices inhibit U.S. exports, deprive U.S. citizens of fair remuneration for their innovations, divert American jobs to workers in China, contribute to our trade deficit with China, and otherwise undermine American manufacturing, services, and innovation. China seeks to use these policies to dominate key strategic sectors to control future economic and military conflicts.**
- **Through the Chinese Belt and Road Initiative (i.e., One Belt One Road Initiative), Chinese companies, whether state-owned or otherwise beholden to the Chinese Communist Party (CCP), have pledged over \$1 trillion in infrastructure investments globally, although a substantial portion of these pledges will never materialize. China's aggressive lending for often ill-considered projects raises serious concerns about many poor and already heavily indebted countries' debt burdens. China's overseas investment activities simultaneously encourage dependency on Beijing and promote behaviors that benefit the CCP under the auspices of assisting with global development.**
- **The Chinese government's massive stimulus and its MIC 2025 program, which calls for global leadership in various technological sectors, particularly semiconductors and 5G, by 2025, has led to global overcapacity in strategic sectors and displaced the sales of U.S. domestic and export sales, both in China and third markets.**
- **For years, U.S. industries have expressed concern about China and other countries manipulating their currencies to increase their exports. Members of Congress from both parties have long called on successive Administrations to take tougher action on currency misalignment by U.S. trading partners.**
- **Adapting U.S. export controls to keep pace with adversaries' changing tactics to illicitly acquire U.S. technologies requires constant vigilance, including by amending controls, identifying end users of concern, and monitoring compliance.**
- **China is quickly closing the research and development gap, which drives technological innovation, standards development, and ultimately market power. China has continuously**



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increased its R&D spending by double-digit percentages—in 2019 total public and private R&D funding rose 12.5%.

- Many technologies sought by adversaries are below multilateral control thresholds or may be ubiquitous or globally available (e.g., cameras used for surveillance), which requires novel use of export authorities (e.g., end-use/user controls, controls on foreign-produced items) to address these threats.
- The President determined in May 2019 that the unrestricted acquisition or use of ICTS that are designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. Implementing the Executive Order on Securing the ICTS Supply Chain has been challenging.
- U.S. companies doing business in China continue to face a range of challenges in protecting and enforcing their IP, as well as in navigating China's complex IP system.
- China continues to allocate vast resources towards becoming a technological competitor by making advancements in critical and emerging technologies such as 5G, IoT, and AI. In addition, China has pressured U.S. companies to transfer their technology to Chinese entities, directed and unfairly facilitated the acquisition of U.S. companies and assets by domestic firms to obtain cutting edge technologies, and conducted and supported unauthorized cyber intrusions into U.S. companies' networks to access sensitive information and trade secrets.
- Chinese mobile apps, such as TikTok and WeChat, can threaten the national security, foreign policy, and economy of the United States as well as the privacy of and access to accurate information by the American people. These apps capture vast swaths of information from users, including Internet and network activity information; location data; and browsing and search histories. This data threatens to allow the Chinese Communist Party access to Americans' personal and proprietary information, including the potential locations of Federal employees and contractors and access to dossiers of personal information for blackmail or corporate espionage. These applications can also be mouthpieces for Chinese propaganda, by shaping content made available to app users.

Key Progress to Date

- ITA completed supply chain analysis work at the request of the NSC. Certain critical supply chains have started reshoring, including the recent announcement by TSMC of a \$12 billion leading edge silicon chip fab in Arizona. The Department also drafted the Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals.
- ITA has vigorously continued to administer trade enforcement and compliance, including 211 antidumping and countervailing duty (AD/CVD) orders on imports from China. Additionally, Commerce published a final regulation on February 4, 2020, on countervailing subsidies associated with currency undervaluation that clarifies how Commerce will apply CVD law to subsidies resulting from currency undervaluation.
- ITA, including the Advocacy Center, coordinates USG resources and authority in order to level the playing field on behalf of U.S. business interests as they compete against foreign firms, including Chinese firms that are often supported by the government, for specific foreign government tenders or other U.S. export opportunities that involve strategic industries.



5-1 b Use Commerce Tools to Address China and Other Strategic Competitors

- The Department provided analysis for USTR's Section 301 Report into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation.
- The USG has counterbalanced Chinese participation and proposals in the International Organization for Standardization (ISO), reducing the number of standards under development from China's original 56 to 3, one each for terminology, safety, and hygiene.
- The Department sent a report to Congress on foreign direct investment transactions made by entities of the People's Republic of China required under the John S. McCain National Defense Authorization Act for Fiscal Year 2019.
- BIS has expanded controls on unilaterally controlled items when destined for certain military end uses/users. Additionally, BIS has identified parties acting contrary to U.S. national security and foreign policy interests on the Entity List, including Chinese parties enabling human rights violations in the Xinjiang Uyghur Autonomous Region, Chinese and Russian military end users, parties supporting Pakistan's and Iran's WMD programs, and 153 Huawei-related affiliates associated with the Department of Justice indictments related to sanctions violations and criminal activities.
- On September 26, BIS announced the addition of 24 Chinese entities to the Entity List for their role in helping the Chinese military construct and militarize the internationally condemned artificial islands in the South China Sea.
- BIS has expanded controls on foreign-produced items purchased or destined for Huawei; eliminated a license exception related to civil end users to address MCF concerns; proposed an elimination of license exceptions related to re-exports of U.S. items to address diversion concerns; and expanded collaboration with interagency partners to identify, detain, and investigate possible violations.
- On November 27, 2019, the Department published a Notice of Proposed Rule Making to implement the terms of the Executive Order on ICTS. The proposed rule sets forth processes for 1) how the Secretary would identify and assess transactions involving ICTS to determine whether they involve a foreign adversary and if they pose an undue risk of sabotage to or subversion of the ICTS supply chain, or an unacceptable risk to the national security of the United States or the security and safety of U.S. persons; 2) how the Secretary would notify parties to transactions under review of the Secretary's decision regarding the ICTS Transaction, including whether the Secretary would prohibit or mitigate the transaction; and 3) how parties to transactions reviewed by the Secretary could comment on the Secretary's preliminary decisions. The proposed rule also provided that the Secretary could act without complying with the proposed procedures where required by national security. Finally, the Secretary would establish penalties for violations of mitigation agreements, the regulations, or the Executive Order.
- On August 6, 2020, the President signed two Executive Orders to address the threats posed by TikTok and WeChat as well as their respective parent companies, ByteDance and TenCent. Pursuant to the TikTok and WeChat Executive Orders, on September 18, the Department published lists of prohibited transactions with TikTok and WeChat. Currently, the Department has been preliminarily enjoined from enforcing the list of prohibited transactions due to pending litigation.
- The U.S. and China signed a Phase One trade agreement on January 15, 2020. Phase One includes chapters dedicated to forced technology transfer and addressing many of the IP challenges identified by U.S. stakeholders, including trade secrets; patents and



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pharmaceutical-related IP; enforcement against trademark and copyright infringement; bad faith trademarks; and geographical indications. Both parties have agreed to address additional IP issues in Phase Two negotiations. The USPTO team actively supported USTR in Phase One negotiations and continues to closely engage with USTR to determine if China is successfully implementing its Phase One IP commitments, (b)(5)

- USPTO maintains bilateral relationships with Chinese IP entities and prepares and submits comments on China's draft IP legislation and rules in consultation with stakeholders and the interagency. USPTO also continues to analyze foreign investments into U.S. businesses whose R&D, innovation, and participation in the U.S. supply chain impact directly or indirectly U.S. national security, as well as participate in an interagency task force to secure 5G. Lastly, USPTO remains engaged in extensive outreach to educate U.S. companies on protecting and enforcing their IP in China, including by conducting free China IP Road Shows across the country to update U.S. rights holders on IP protection and enforcement in China; holding webinars on IP developments in China; and preparing a written China IPR toolkit to assist U.S. IP rights holders entering the China market for IP protection.

Planning for the Future

ITA will continue to push China to fulfill its commitments under the Phase One trade agreement; address other barriers to increasing U.S. exports to China with USTR; lead commercial policy initiatives in the Indo-Pacific region to counterbalance the activities of China; work with interagency partners and foreign allies on supply chain realignment efforts; and ensure resources and personnel are aligned to support initiatives on supply chain analysis, trade enforcement, and trade promotion. The final details of the initiative to incentivize the domestic reshoring of semiconductor supply chains are being negotiated with the Hill; upon the initiative's successful creation and implementation, additional strategic sectors and industries will be pursued with similar initiatives to encourage the return of their production to the United States. BIS will update controls, amend licensing policies, and identify parties of U.S. national security and foreign policy concern as they continuously evaluate the efforts of China and other strategic competitors to acquire U.S. technology for illicit purposes in addition to continuing to conduct compliance and enforcement activities. (b)(5)

USPTO will continue to engage with U.S. government agencies, U.S. stakeholders, and China counterparts to closely monitor and improve the IP environment in China. NIST will increase its coordination with State on multilateral fora that development standards (e.g. ITU), as well as its R&D and standards engagement in advanced communications, quantum information science, and artificial intelligence among other areas.

Relevant Internal Stakeholders

OS, OGC, OIS, OPSP, ITA, BIS, NTIA, USPTO, NIST

Relevant External Stakeholders

- USTR; State; USITC; Treasury; DOD; sector-specific agencies; Market Development Cooperator Program partners; ITA Advisory Committees; Private sector firms and trade associations; International standards-setting bodies; World Intellectual Property



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Organization; National Economic Council/National Security Council; Industry partners, in the United States and abroad, exporting and reexporting advanced technologies (e.g., artificial intelligence, semiconductors, night vision equipment); International partners, including European countries and Japan, especially those with the ability to backfill exports restricted by U.S. export controls; Industry trade associations; IP professional organizations, and international partners including IP counterparts in Japan, Europe, and Korea; DHS; ODNI; FBI; FCC; White House

Relevant Inter-Agency Groups

- CFIUS; DC Central Deals Team; Trade Promotion Coordinating Committee; Interagency partners involved in the review of license applications and supporting enforcement activities (e.g., the Departments of Defense, Energy, and State); Interagency partners involved in supporting law enforcement activities (e.g., the Departments of Defense, Homeland Security, and Justice); The Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector; the Intelligence Community; Federal Acquisition Security Council; Communications and Information Technology Sector Coordinating Councils under the Critical Infrastructure Partnership Advisory Council (CIPAC); DHS Information and Communications Technology (ICT) Supply Chain Risk Management (SCRM) Task Force

Next Steps/Upcoming Deadlines/Timing

- Commerce is currently investigating the countervailability of undervalued currency in two ongoing CVD investigations: *Passenger Vehicle Tires from Vietnam* with an expected final determination date on January 13, and *Twist Ties from China* with an expected final determination date on February 16 (both of these dates may be extended).
- Regulatory actions related to export controls continue to be evaluated to address changing tactics, and compliance and enforcement activities are on-going.
- While the ICTS interim final rule will become effective 60 days after publication in the Federal Register, the Department of Commerce will continue to welcome public input and thus will be seeking additional public comment. The Department is committed to issuing a subsequent final rule in which the Department will consider and respond to additional comments received.



5G and Beyond-Commerce Future of Communications (NIST, NTIA, ITA, BIS)

Executive Summary

The Department of Commerce is helping to drive the expeditious, safe, and secure deployment of 5G and future networks (5G networks). Broadly speaking, networks include the spectrum, standards, network infrastructure, and devices that enable high speed, low latency, high-capacity, and reliable connectivity that will be the foundation on which much of the future economy is built. The Department has particular equities in conducting research and development, supporting industry's transition to open, interoperable networks and facilitating a marketplace with sufficient vendor diversity to ensure security and resilience of 5G networks, and supporting the growth and exports of U.S. industry.

Within the Department of Commerce, NIST, NTIA, and ITA each play important roles to ensure the expeditious, safe, and secure deployment of 5G networks as well as ensure U.S. firms have access to foreign markets. Much of the work of the Department on 5G issues is captured in various interagency documents, most notably the National Strategy to Secure 5G.

Background

The Department of Commerce leads the government's research and development efforts for advanced telecommunications, as well as efforts to manage the Federal Government's allocation and use of spectrum. The Department is the Executive Branch's interlocutor with the Federal Communications Commission and works closely with other elements of the interagency ensure unity in Executive Branch positions domestically and overseas.

Additionally, the Department is taking a leading role in building a more trusted United States telecommunications system by leading implementation of the Executive Order (EO) on Securing the Information and Communications Technology and Services Supply Chain as well as the EOs on Addressing the Threats Posed by TikTok and WeChat. These EOs protect U.S. national security, foreign policy, and economy from threats posed by the use of information and communications technology and services designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries.

Within the Department, many bureaus and programs play strong roles in developing and protecting our telecommunications system. For example, NIST is a leader in 5G and advanced communications R&D, working directly with industry and other government partners to provide measurements and standards necessary to ensure the security, and accelerate the delivery, of next generation communications capabilities. The NIST Communications Technology Lab is the hub of NIST's efforts, investing approximately \$75 million in advanced communications research and standards development and currently exploring how to realign existing resources to meet the demand of interagency and industry stakeholders. NIST, with its leading efforts in cybersecurity and the unique capabilities of the National Cybersecurity Center of Excellence, also works with industry to develop tools and guidelines for organizations to manage risks to the security of 5G networks. Through these efforts, NIST conducts leading edge research and leads federal



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engagement in international standards development for advanced communications. Key elements of NIST activities include:

- The operation of critical state-of-the-art testbeds and infrastructure for 5G, including the National Broadband Interoperability Testbed, the Antenna Communications and Metrology Laboratory, and the new 5G Cellular Network Metrology Testbed—the only 5G lab network outside a corporate environment.
- The management and operation of the National Advanced Spectrum and Communications Test Network (NASTCTN), a multiagency-chartered partnership that includes DOD, NASA, NOAA, NSF, and NTIA. NASTCTN also works with commercial carriers and academic institutions through the DOD CIO Coordinated Carrier Test Program. In addition, NASTCTN runs its own test program through which it completes tests at the request of industry, including CTIA, the primary industry association representing the U.S. wireless communications industry.
- The conduct of research to meet the future communications needs of our First Responders. NIST efforts directly support FirstNet's National Public Safety Broadband Network. The Public Safety Communications Research Program (PSCR) carries out forward looking research for NIST, federal sponsors, and public safety stakeholders including focusing on end-to-end systems integration and evaluating performance of wireless technologies to support public safety network deployment, as well as engaging in key standards development activities.

NTIA, through its responsibility for managing the Federal Government's use of spectrum, ensures that this critical and limited resource is used efficiently and effectively to enable federal agencies to fulfill their national security, military, and law enforcement missions while identifying spectrum bands that can be made available for commercial purposes, including for 5G networks. NTIA's Office of Spectrum Management (OSM) is responsible for, among other things, investigating and identifying candidate bands of spectrum potentially suitable for commercial uses – whether, for example, by relocating existing federal operations to other spectrum bands or by managing the shared use of a spectrum band. These 5G spectrum efforts are supported by NTIA's Institute for Telecommunication Sciences (ITS), which tests and evaluates 5G technologies and operations and researches advances in spectrum sharing.

(b) (5)



NTIA also recently established the Communications Supply Chain Risk Information Partnership (C-SCRIP). This is a program targeted toward small and rural equipment suppliers and providers



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of communications services to improve these companies' access to information about risks to key elements in their supply chain.

Internationally, NTIA plays a key role in representing U.S. interests, including at the International Telecommunications Union and the quadrennial World Radio Conference (next held in 2023), where NIST and other members of the USG also send experts, and is working with international partners to develop principles for open and interoperable networks.

ITA is increasing the market presence and competitiveness of U.S. companies around the globe, by working to create favorable trade, regulatory, and market policies in foreign countries. Additionally, ITA supports other priorities such as promoting U.S. leadership in international standards development for 5G technology through private sector and international engagement. ITA is also working with the Department of State, U.S. Agency for International Development, Development Finance Corporation, and Export-Import Bank to identify foreign telecommunications infrastructure development opportunities and provide financial and other assistance to counter China's attempts to capture market share by selling products and services at below market price to further its global ambitions.

Key Challenges to Date

- Research and development—necessary inputs both to spur U.S. innovation and to participate in standards development activities—require patience and resources.
- Increased federal use of spectrum, at times for national security missions, makes it increasingly difficult to “clear” a spectrum band to allow for commercial use. Consequently, it is necessary to improve spectrum sharing to enable timely and cost-effective spectrum use.
- U.S. companies face many challenges competing in the global 5G marketplace including low price offers from foreign vendors who are supported by foreign government-subsidized financing packages in addition to foreign governments implementing coordinated, market-distorting activities to help “national champions” win market share.
- The U.S. does not have a full-systems integrator that can compete with Huawei, ZTE, Ericsson, Nokia, and Samsung. Over 200 U.S. companies supply components and segments of the network, but none that provide a “full-system kit.” The U.S. does not have any manufacturers of radio base stations. This impedes the ability of U.S. companies to compete for the end-to-end systems that many buyers prefer.
- China is expected to publish China Standards 2035, an ambitious strategy to achieve a leadership role in standards for next-generation technologies. China continues to increase its investment in research and development (a necessary ingredient to developing standards) as well as its commitment to send technical experts to standards development organizations—two areas where the U.S. Government has lost ground. Left unchecked, the achievement of China's ambitions will result in a Chinese competitive advantage over American technologies.
- China has made a concerted effort to lead in multilateral fora that produce standards, such as the ITU, in which the Department of State leads and NIST and NTIA support as well as voluntary consensus standards organizations or standards development organizations which are private-sector led and for which NIST coordinates Federal Government



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engagement. In the ITU, in pertinent technology study groups, China provides 40% of all participants, including having approximately 40-65% of the editors in study groups working on future networks, security, and Internet of Things (IoT) Smart Cities.

- Trade practices such as local content requirements and overly burdensome regulatory environments create barriers for U.S. companies to compete in foreign countries.

Key Progress to Date

- Commerce, with involvement from the Bureau of Industry and Security (BIS), ITA, NTIA, and OIS, published an NPRM and will publish the IFR implementing the EO on Securing the Information and Communications Technology and Services Supply Chain.
- NIST has, with engagement from government, industry, and academia, launched an R&D effort to provide U.S. industry and government with a suite of inexpensive tools for supply chain risk management. These tools, based on NIST measurement capabilities, will be accurate enough to not only quantify manufacturing variations but discern differences due to different manufacturing sources and malicious hardware and software modifications. This measurement-based framework will encompass security from the chip level to the system level, support cost-effective supply chain risk management, and enable independent verification throughout the supply chain.
- NIST and its partners from across the government are enabling generation of validated data and models for use by the spectrum sharing community. These validated models enable more efficient spectrum use and are essential to accurately characterize wireless interference, signal propagation, and overall systems performance. These models will enable policy makers to more effectively manage spectrum; vendors to develop better wireless transmitters and receivers; and operators to understand in what environments they can deploy.
- NIST awarded over \$52M in grants and cooperative agreements with industry and academia. NIST awarded another \$674,000 to 39 teams through prize competitions which will improve 5G wireless connectivity, and deployment of secure 5G. These awards and challenges are integral to developing ecosystems, applications, and additional functionality in support of mission critical public safety requirements (for example, those deployed at the Boston Marathon: <https://www.nist.gov/news-events/news/2019/05/psiap-award-recipient-deploys-technology-2019-boston-marathon>) such as push-to-talk user interface, location-based services, and more.
- NIST identified significant research challenges and gaps facing the communications industry (“Future Generation Wireless Research and Development Gaps Report”) and NIST led the IEEE “5G and beyond” roadmap working group to identify hardware technology gaps for deploying mm-wave fixed and mobile wireless, resulting in the IEEE “5G and Beyond Roadmap White Paper.”
- NTIA published a technical study that found that shared access to the 3450-3550 MHz segment of this band for 5G was likely feasible subject to further efforts.
- NTIA published a Request for Comment to inform the development of an Implementation Plan for the National Strategy to Secure 5G.
- NTIA established the C-SCRIP, targeted toward small and rural equipment suppliers and providers of communications services, this program will improve these companies’ access to information about risks to key elements in their supply chain.



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- BIS has placed 153 Huawei-related affiliates on its Entity List, thereby restricting exports to those companies, and severely limiting their ability to continue to manipulate the global marketplace, as well as encouraging new companies to enter the market.
- BIS amended the longstanding foreign-produced direct product rule to prevent Huawei's acquisition of semiconductors that are the direct product of certain U.S. software due to its ongoing activities contrary to the national security or foreign policy interest of the United States.
- (b) (5)
- FirstNet, in June 2020, made its first investment to begin upgrading the Nationwide Public Safety Broadband Network to 5G and will continue to ensure the network is able to meet public safety's needs in the years to come.
- NTIA is making considerable progress in working with the FCC to make more spectrum commercially available—especially in the midband (1GHz to 10 GHz)), which is particularly important for 5G deployment—which now totals 1130.5 MHz with the recent inclusion of 100 MHz from 3450-3550 MHz.
- NTIA, on behalf of the Executive Branch, filed with the FCC the Executive Branch's support of prohibiting the use of Universal Service Fund to acquire equipment or services produced or provided by a covered company posing a national security threat to the integrity of U.S communications networks, including Huawei and ZTE.

Planning for the Future

- Commerce will publish an Interim Final Rule, followed by a Final Rule, to implement the Executive Order on Securing the Information and Communications Technology and Services Supply Chain. Within Commerce, the Office of the Secretary's Office of Intelligence and Security (OIS), BIS, and NTIA will support this effort.
- NIST is exploring options to realign existing resources from across its laboratory programs relevant to advanced communications to increase research, development, testing, and standards engagement and meet the demand of interagency and industry stakeholders.
- NIST's National Cybersecurity Center of Excellence along with industry partners, will complete the project "5G cybersecurity: preparing a secure evolution to 5G."
- NIST's Communications Technology Laboratory will launch the Spectrum Sharing 5G Test Bed including new testing chambers that operate on the Boulder, Colorado campus.
- NIST is integrating critical emerging technologies such as artificial intelligence (AI) into advanced communications, (e.g., demonstrating the effectiveness of AI applied to spectrum sharing and testing). NIST 5G Spectrum Sharing Test Bed enables testing of the impact of spectrum sharing on communications and RF remote sensing in adjacent bands.

(b) (5)



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- ITA is developing new bilateral and multilateral engagements with trading partners to promote improved regulatory and market environments for 5G ecosystems. ITA improved the collection and sharing of relevant market intelligence across the agency and with U.S. companies and worked with interagency colleagues to organize Deal Teams that can assist U.S. companies to win market opportunities overseas.
- ITA is developing new bilateral and multilateral engagements with trading partners to promote improved regulatory and market environments for 5G ecosystems. For example, ITA collaborates with industry and foreign government partners through the U.S.-ASEAN 5G Standards Workshops, the U.S.-Israel Innovation Forum, and the U.S.-India CEO Forum. ITA also improved the collection and sharing of relevant market intelligence across the agency and with U.S. companies and worked with interagency colleagues to organize Deal Teams that can assist U.S. companies to win market opportunities overseas.
- ITA planned programs such as trade missions and reverse trade mission to promote innovative U.S. telecommunications solutions and enabling technologies to foreign customers.
- NTIA plans to continue to work with the FCC, federal users, and the private sector to make additional spectrum available for use by the private sector and to ensure a balanced, forward-looking, flexible, and sustainable approach to spectrum management, which includes additional resources for IT modernization that can efficiently satisfy both industry and government's needs for additional spectrum as the Nation transition to 5G.

Relevant Internal Stakeholders

- ITA, NIST, NTIA, OIS, USPTO

Relevant External Stakeholders

- Standards development organizations (3GPP, IEEE, IETF, ATIS, ISO-IEC, FIDO Alliance, and the Wireless Innovation Forum) and multilateral organizations that develop standards (ITU, CITELE)
- Key industry partners and associations
- Public safety community
- 5G mmWave Channel Model Alliance

Relevant Inter-Agency Groups

- White House National Science and Technology Council National IT R&D (NITRD) Subcommittee Wireless Spectrum R&D Interagency Working Group
- NSC Policy Coordination Committee on 5G
- NSC Sub-Policy Coordination Committee on Standards
- DHS Information and Communications Technology Supply Chain Risk Management Task Force (NIST co-chairs)
- Federal Acquisition Security Council



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Next Steps/Upcoming Deadlines/Timing

- Commerce and its bureaus will begin implementing the National Strategy to Secure 5G. (Q4 2020)
- NIST will deliver the security profile required by EO 13905 on Strengthening National Resilience Through Responsible Use of Position, Navigation, and Timing Services. (February 2021)
- NTIA will publish the Future Spectrum Requirements Report. (November 2020)
- NTIA will work with the FCC and Executive Branch to identify additional “mid-band” spectrum for 5G use.
- NIST will launch the Spectrum Sharing 5G Testbed including new testing chambers will be operational on the Boulder, Colorado campus. (FY21)