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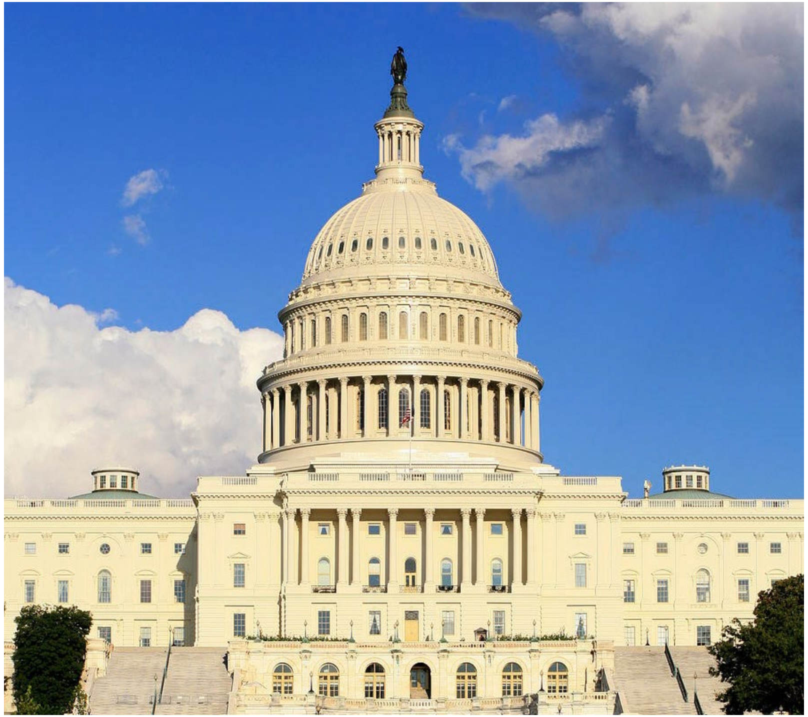
Dan Ujczo

March 16, 2023

118th Congress



- House majority flips to **R**
  - Speaker McCarthy
  - Rules Changes
  - Check on Biden Agenda
- Senate majority moves slightly **D** (51/49)

118th Congress—Key Issues

- House Investigations
- Debt Ceiling
- War in Ukraine
- China
- Svb—more shoes to drop?
- Supply Chain

Hot Topics

TRANSPORTATION

- 118th Congress
- Rail Derailments and Safety
- OSRA '22 Implementation & Ocean Industry Issues
- Driver Classification and FMCSA Update
- FAA and STB Update

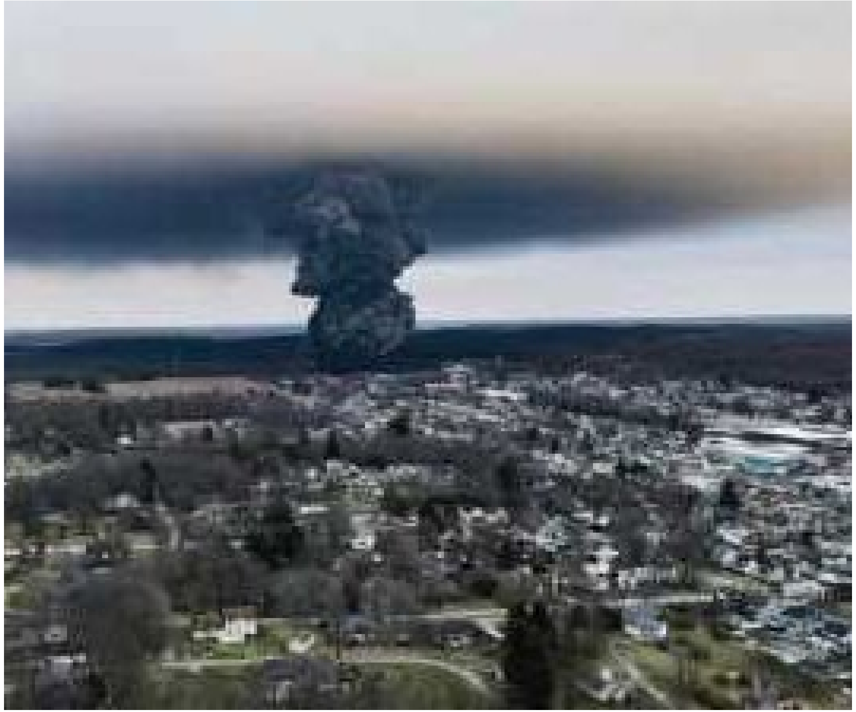
TRADE

- Section 301 Tariffs
- Forced Labor
- USMCA
- Inflation Reduction Act
- Build American/Buy American

TRANSPORTATION HOT TOPICS

Rail Derailments & Safety

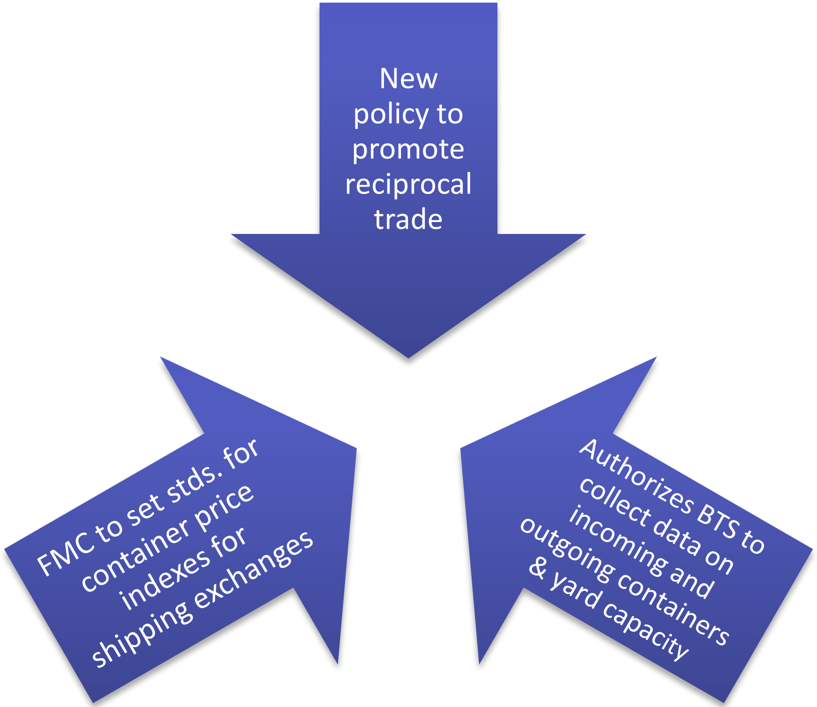
- Railroad Safety Act
- DERAIL Act
- Hazmat focus
- DOT/FRA/EPA
- States & Localities



Rail Derailments & Safety

- Community and industry impacts
- Rail cars maintenance and inspection
- Labor—2 man crews
- Costs/shipment delays?

OSRA22 Technical Corrections Bill



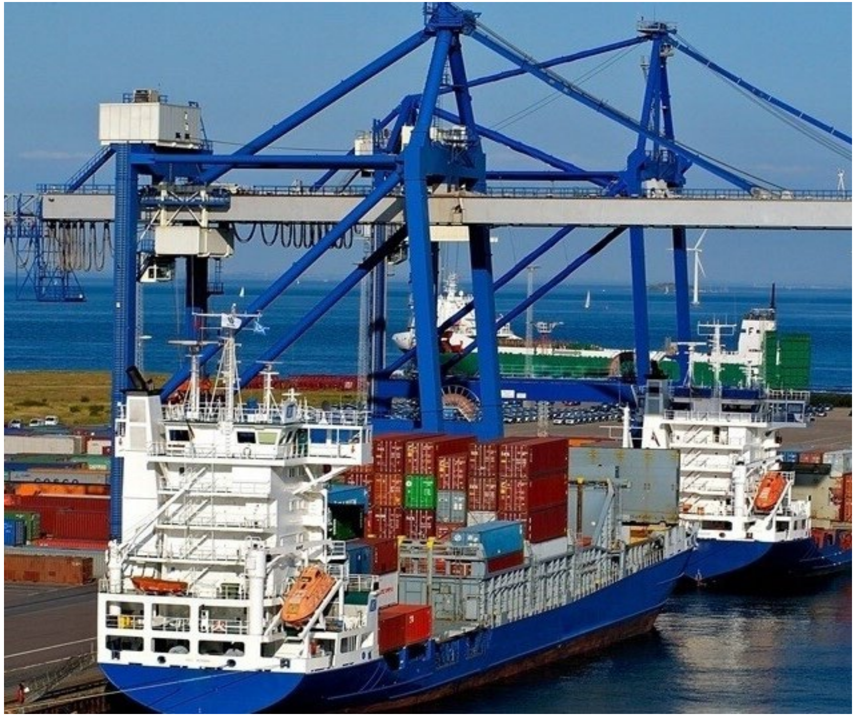
- DOT to set an "open data" std. for maritime logistics
- Prohibition Against Chinese Logistics Platforms
- Independent Study of China's Shanghai Shipping Exchange

OSRA '22 Implementation

- **FMC Rulemakings**
  - Unreasonable Refusals to Deal—*Supplemental NPRM*
  - D&D Billing Requirements
  - Unreasonable Discrimination
  - D&D Reasonableness
- FMC Charge Complaints
- GAO Study on Hazmats
- Chassis Best Practices

Ocean Issues to Watch

- ILWU / PMA contract
- 2M Disbandment 2025
- FMC Maritime Transportation Data Initiative
- Intermodal rail demurrage



Trucking Update: DOL Rulemaking

- DOL Independent Contractor rulemaking
- Affects classification of drivers as “contractors” or “employees” under FLSA

DOL Rulemaking

- Rule applies broadly to most industries, including trucking
- Involves a highly fact-specific inquiry
- Burden on trucking companies that rely on independent contractor model to show that their drivers qualify as independent workers and not employees
- Differs from CA AB-5 (ABC Test)
- Impacts on capacity and interstate commerce

DOL Rulemaking

Factors to be Considered:

- Opportunity for profit or loss depending on managerial skill
- Investments by the worker and the employer (capital and entrepreneurial)
- Exclusivity of work relationship
- Degree of control (scheduling, prices, ability to work for others)
- Extent to which the work performed is an integral part of the employer's business
- Skill and initiative
- Any other relevant factors

FMCSA Update

Broker Financial Responsibility: *NPRM Issued 1/5/23*

Automated Driving Systems CMVs: *NPRM 2/1/23*

Automatic Emergency Braking Systems: *Projected NPRM 3/23*

Safety Fitness Procedures: *Projected ANPRM 3/23*

Heavy Vehicle Speed Limiters: *Projected SNPRM 6/23*

Air (FAA) and Rail (STB) Update

- **FAA NOMINEE:** Washington hearing
- **NOTAM BACKUP:** Following national groundstop
- **RUNWAY SAFETY:** Surface Safety Risk index to measure runway collision risks
- **NAS MODERNIZATION:** Tech., ops., management

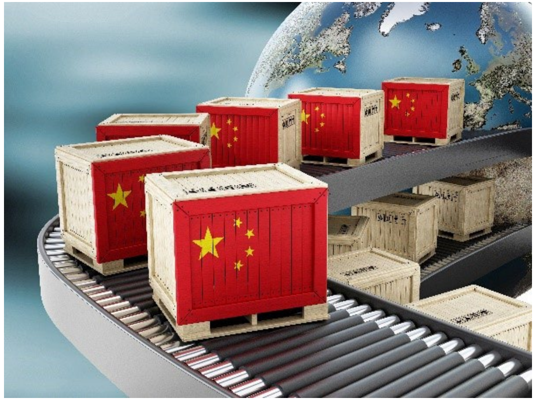
- **SERVICE/LABOR:** Strike averted but systemic challenges continue
- **MERGERS:** CP/KCS
- **COMPETITION:** Reciprocal Switching (EP 711)
- **RATES:** Final Offer Rate Review; Voluntary Arbitration of Rate Disputes

INTERNATIONAL TRADE HOT TOPICS

The Balance and Costs of Trade?

- Inflation – Costs will go up? Whether we can reach 2% target
- Worker-Centric Trade – Costs, Compliance Procedures with HR, Collective Bargaining as Default?
- Manufacturing / Industrial Policy / "Friendshoring" – Buy America(n) and definition of FTAs
- Climate Change / "Green Shoring"

China Section 301 Developments



- Section 301 tariffs (Lists 1, 2, 3 and 4A) still in effect on $350 million in Chinese goods
- 6,804 product exclusions granted
- No current product exclusion process – most exclusions have expired
- 81 (of 99) COVID-19 product exclusions extended through May15, 2023
- 352 product exclusions expiring Dec. 31, 2022, extended through Sept. 30, 2023

China Section 301 Developments *(cont.)*

- China Section 301 tariffs currently subject to USTR four-year review
- Comments portal closed Jan. 17, 2023 – 1500 responses on continuation, termination, new product exclusion process, and *de minimis* decrease ($800 to $200)
- **Likely outcome:** Continuation with new product exclusion process
- Tariffs are now status quo, and U.S. government wants negotiating chip with China

China Section 301 Developments *(cont.)*

- CIT Section 301 tariff refund litigation over Lists 3 and 4A products (Sept. 2020)
- **Initial CIT April 2022 ruling:** Within President's authority to assess these tariffs, but USTR did not follow Administrative Procedure Act when it failed to provide adequate responses and explanations
- On remand, CIT instructed USTR to show adequate responses and explanations
- February 7, 2023 oral argument on August 1, 2022 USTR remand determination
- Final CIT decision expected by summer – vacate tariffs, further remand or affirm
- Any decision will be appealed by losing side to CAFC; CAFC decision could be appealed to and certified by U.S. Supreme Court
- **Outcome:** This won't be resolved for a long time

Substantial Transformation

Trendlines in post-COVID environment

Vietnam, Philippines, India, Thailand, Taiwan, Mexico, favorable if originate/“start there” and still acceptable if final assembly/finishing in China. “Rebalance by Reversal”
(e.g., “steel from global sources”)

Focus on “Enabling Technology”
(e.g., security cameras, PCBAs)

Pharmaceuticals/APIs, Automotive/Aerospace (EVs, batteries), Chemicals, Metals, Critical Minerals warrant close attention, less so on consumer goods

"At the Border" Issues

- CBP push for import certifications or permits for pharma and other life sciences.
- APIs will be a focus of "at the border" issues

Forced Labor Legal Trends

2012
California Transparency in Supply Chains Act

2015
UK Modern Slavery Act

2018
EU Non-Financial Reporting Law

2020
Dutch Child Labor Due Diligence Law

2021
Uyghur Forced Labor Prevention Act

2022-2024
EU Forced Labor Ban Proposal

2015
US Trade Facilitation & Trade Enforcement Act

2017
French Duty of Care Law

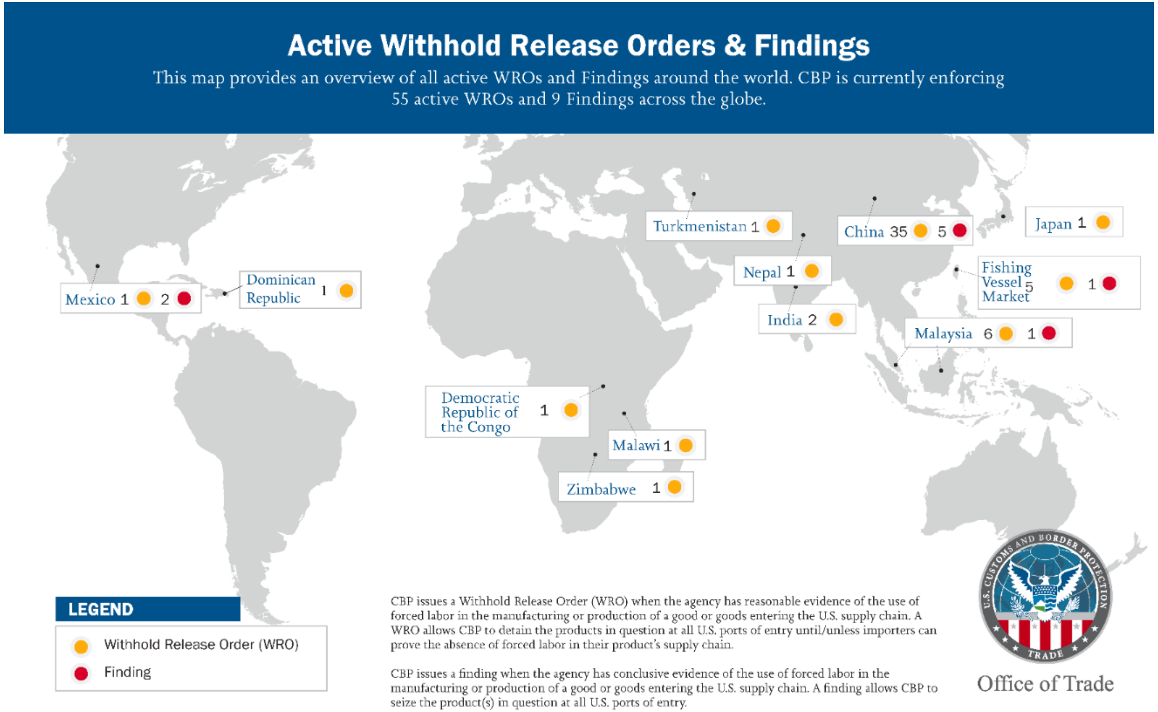
2019
Australia Modern Slavery Act

2021
German Human Rights Due Diligence Law

2022-2024
EU Directives on Corporate Sustainability Due Diligence and Corporate Sustainability Reporting

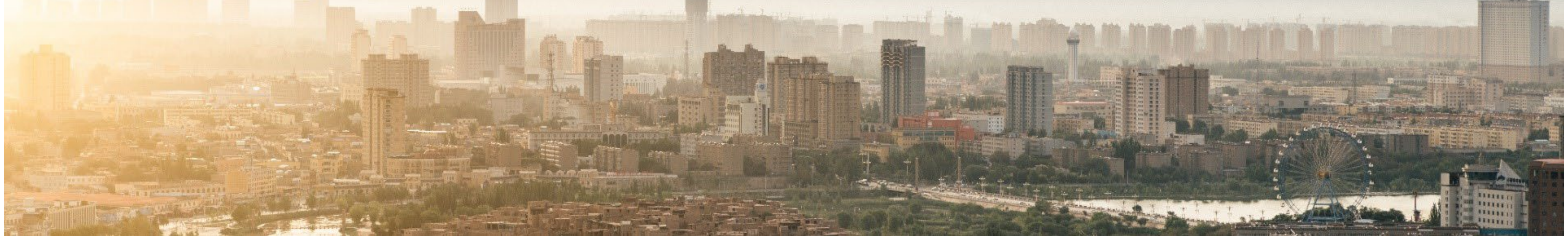
U.S. Forced Labor Trends

- 54 active WROs and 9 findings
- 35 WROs and 5 findings related to China

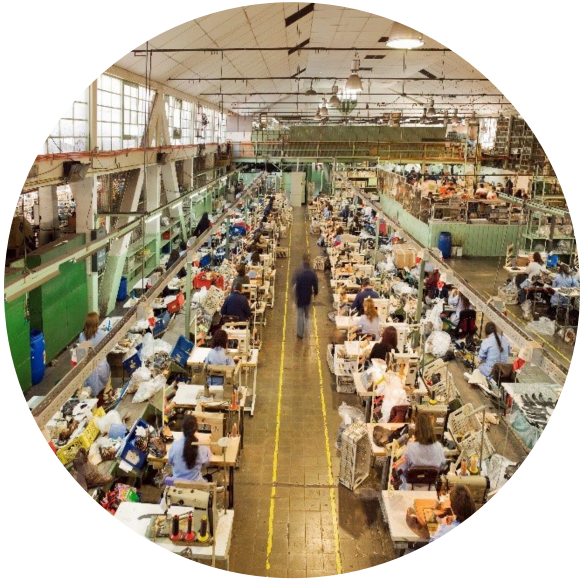


Focus on Xinjiang

- Xinjiang Business Advisories, issued in 2020 and 2021, warn companies about the import/export risks of doing business in certain industries and in the region
- Uyghur Forced Labor Prevention Act (UFLPA) was signed into law and became effective on June 21, 2022
- UFLPA establishes a rebuttable presumption that imports of goods produced in whole or in part in the XUAR or involving a UFLPA Entity List person are produced from forced labor



2023 – Forced Labor Focus



- Continued focus on supply chains tied to Xinjiang with spotlight on new industries
- Certain industries move out of spotlight as these industries improve supply chain management, but continue to see detentions
- CBP's enhanced resources continue to lead to new WROs
  - Companies should pay close attention to DOL List and news reports

Outside the United States

EU Corporate Due Diligence Directive

EU Forced Labor Proposal

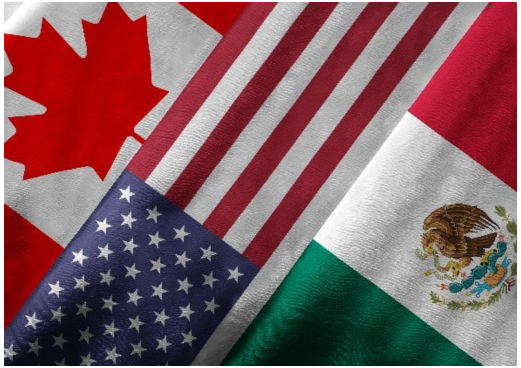
EU Corporate Sustainability Reporting Directive

Canada – Modern Slavery Act

And More China

- Export Controls
- CFIUS / FDI
- Investment in China (semi-conductors)
- Various Congressional Committees and Reviews

Key USMCA Developments



- Rapid Response Labor Enforcement Mechanism (May 2023)
- Labor Value Content / Forced Labor
- Key Disputes (e.g., auto ROO) and Potential Retaliation
  - Expect new US-CBP guidance on Auto Roo and Uniform Regs

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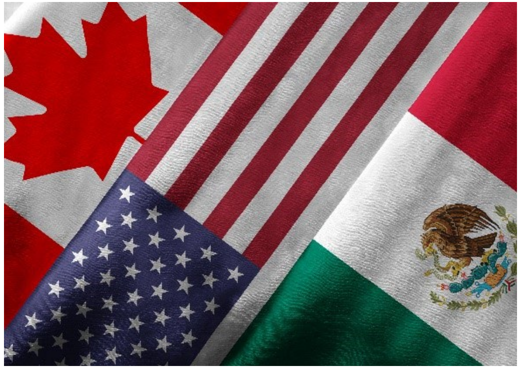
Key USMCA Developments

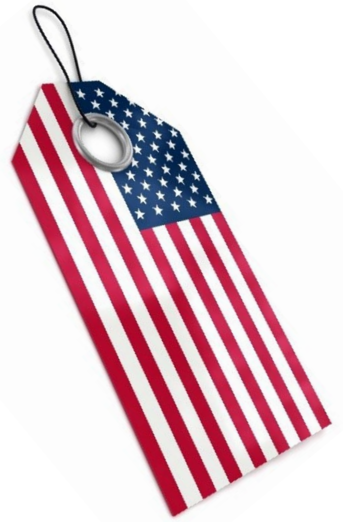


- USMCA PSRO & Auto ROO + Substantial Transformation when 301, 232, 201 and AD/CVD
- Certification of Origin (verb) vs. Certificate of Origin
  - Know your supplier's supplier
- Terms and Conditions

Key IRA Developments

- **Inflation Reduction Act of 2022 (IRA)**
  - Comments pending with Treasury and expected in March 2023 – "substantially all of the manufacturing or assembly activity" and definition of FTA
  - Tax vs. Trade Dispute (Canada, Mexico, E.U., Japan)
  - Extensions of existing programs likely acceptable; new investment credits (e.g., EVs) likely subject to challenge
  - Large focus on processing of critical minerals

Key BAA Developments



- **Buy America<u>n</u> Act (BAA)**
  - Steel and Iron thresholds increasing to 60% (October 2022), 65% (2024) and 75% (2029)
  - Fallback to 55% if not available
  - Commercial Off the Shelf, WTO Government Procurement Agreement, and Domestic Content Test all remain in effect
  - Price Preference program

Key BABA Developments

- **Build America, Buy American**
  - Broader types of projects (broadband, telecom, etc.)
  - Iron and Steel – Melted And Poured
  - Construction Materials – 60%
  - Manufactured Products – 60% AND manufactured in U.S.
  - COTS limited only to 60% threshold – still must be in U.S.
  - Still unclear as to WTO GPA

Biden Administration and FTAs

No further FTA discussions with EU, UK and Kenya (currently, 14 FTAs with 20 countries)

No renewal of TPA (expired July 2021) needed or required (i.e., no Congressional involvement); executive agreement mechanism only

No FTAs addressing market access issues and lower tariff barriers expected the next two years

Biden Administration and FTAs *(cont.)*

Trade framework/dialogue talks launched instead

- India-Pacific Economic Framework (IPEF) on certain trade issues, supply chains, clean energy, infrastructure, anti-corruption, etc.; reestablish U.S. economic presence in Asia in the wake of Trans-Pacific Partnership (TPP) withdrawal
- December 2022 U.S. Memorandum of Understanding with African Continental Free Trade Area (AfCFTA) to promote sustainable trade, economic integration, investment and infrastructure development
- U.S.-E.U. Trade & Technology Council (TTC) on digital trade, export controls, regulatory standards and coordinated trade response to Russia and China
- Americas Partnership for Economic Prosperity (APEP) to build on existing FTAs to pursue worker-centric trade policies; ministerial last Friday
- U.S.-Taiwan Initiative on 21st Century Trade negotiating round January 14-17 on trade facilitation, anti-corruption, SMEs, regulatory practices and China's "economic coercion"
- Minerals Security Partnership with Korea, Japan, E.U., Canada, Australia, etc. to ensure secure, diversified critical minerals supply chain away from China and emphasize ESG principles

QUESTIONS?

Thank you!

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