

ALERT

Leveling the Playing Field 2.0 Act Introduced to Update and Strengthen U.S. Trade Remedy Laws

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On June 7, 2023, the U.S. House of Representatives and U.S. Senate introduced bipartisan legislation that would give the U.S. government 21st Century tools to combat unfair trade practices. The Leveling the Playing Field 2.0 Act updates a similar 2021 bill that passed the House and a companion 2021 bill in the Senate.

The original sponsors of the Act in the House are Reps. Terri Sewell (D-AL-07), Bill Johnson (R-OH-06), Frank Mrvan (D-IN-01), and Beth Van Duyne (R-TX-24). Lead sponsors in the Senate are Sen. Sherrod Brown (D-OH) and Sen. Todd Young (R-IN). The proposed bill would modernize U.S. trade law to counteract evolving unfair trade actions, particularly from China. For example, the Act provides a mechanism to counteract “cross-border” subsidies such as China’s Belt and Road Initiative. The Act also streamlines circumvention investigations and successive investigations into the same or similar products. The proposed legislation identifies examples of distortive particular market situations and provides expansive options to address these distortions. Several provisions are similar to recent proposed regulations at the Department of Commerce (Commerce), but the proposed act would in many cases reinforce or expand on these regulations.

Significant features of the new bill include:

- **“Cross-border” Subsidies.** This provision largely responds to China’s Belt and Road Initiative, which has allowed the Chinese government to provide subsidies to its industries abroad. Currently, Commerce will not find that a subsidy exists

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Practice Areas

Antidumping and Countervailing Duties/
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where funding was from a government outside of the country where the recipient was located. However, the Act would instruct Commerce to treat this third-country funding as if it was provided by the recipient's own government. The subject country's government must also facilitate the other government's subsidization.

- **Successive Investigations.** Often, foreign producers will shut down operations in one country after duties are imposed, only to resume dumping from a different country. Chinese entities do this frequently. To stave off unwarranted economic and potential job losses, domestic producers must then expend significant time and resources on new cases. The Act addresses this “whack-a-mole” problem with a streamlined process for bringing successive investigations. These investigations would proceed on an expedited timeline, and the administering authorities would consider and incorporate findings from concurrent and recently completed investigations.
- **Circumvention Cases.** The proposed Act imposes precise timelines on Commerce to initiate a circumvention inquiry and make a determination. Commerce will also be required to begin collecting cash deposits once the inquiry is initiated. This ensures domestic companies do not continue to suffer injury from dumped and subsidized products while waiting for Commerce to make its determination.
- **Distortive Particular Market Situations.** Under existing law, Commerce may adjust a foreign producer's reported production costs to account for distortive “particular market situations.” Courts have interpreted the current statute to apply in a limited set of circumstances and have prohibited Commerce from making appropriate adjustments. The potential legislation would codify a broader statutory regime for finding and accounting for a particular market situation. The bill also provides a non-exhaustive list of particular market situations that may distort prices or production costs, such as extensive government intervention in a product or input's market or a government's failure to implement or enforce property, human rights, labor, or environmental protection laws and policies.
- **Countering Evasion.** The proposed legislation introduces several provisions designed to eliminate duty evasion. The bill allows Commerce to impose penalties to deter evasion, require importer certifications, and analyze stringent factors to determine the origin of merchandise under review. Finally, the bill also expands evasion investigations to include evasion of safeguard duties.
- **Currency Undervaluation.** The proposed legislation would codify Commerce's new practice of investigating currency undervaluation as a countervailable subsidy.

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