

Washington, D.C. Update: Federal Government Policy Developments

Prepared by
The Franklin Partnership, LLC
Policy Resolution Group at Bracewell
July 22, 2022



Your Team in Washington, D.C.



Lobbying Firm – The Franklin Partnership, LLC

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- Clients include: manufacturing associations, defense contractors, hospitals, cities



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- Promote NTMA and PMA in print, digital and other media
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- Representing metalworking industry since 2003

Nothing contained in here shall be deemed legal or financial advice.

Contents

- Federal COVID Regulatory Activity
- Federal Agency Regulatory Activity
- Update on Competition, Supply Chain Bill
- Tariffs Update

Recent COVID Regulatory Actions

EEOC COVID Guidance Updated

A.5. When an employee returns to the workplace after being out with COVID-19, does the ADA allow employers to require a note from a qualified medical professional explaining that it is safe for the employee to return (i.e., no risk of transmission) and that the employee is able to perform the job duties? *(Updated 7/12/22)*

Yes. Alternatively, employers may follow [CDC guidance](#) to determine whether it is safe to allow an employee to return to the workplace without confirmation from a medical professional.

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

EEOC COVID Guidance Updated

A.6. Under the ADA, may an employer, as a mandatory screening measure, administer a COVID-19 viral test (a test to detect the presence of the COVID-19 virus) when evaluating an employee's initial or continued presence in the workplace?

(Updated 7/12/22)

Yes, if the employer can show it is job-related and consistent with business necessity.

A COVID-19 viral test is a medical examination within the meaning of the ADA. Therefore, if an employer implements screening protocols that include COVID-19 viral testing, the ADA requires that any mandatory medical test of employees be “job-related and consistent with business necessity.” Employer use of a COVID-19 viral test to screen employees who are or will be in the workplace will meet the “business necessity”

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

EEOC COVID Guidance Updated

A.7. Under the ADA, may an employer require antibody testing before permitting employees to re-enter the workplace? *(Updated 7/12/22)*

No. An antibody test, as a medical examination under the ADA, must be job-related and consistent with business necessity. As of July 2022, CDC [guidance](#) explains that antibody testing may not show whether an employee has a current infection, nor establish that an employee is immune to infection; as a result, it should not be used to determine whether an employee may enter the workplace. Based on this CDC guidance, at this time such testing does not meet the ADA's "business necessity" standard for medical examinations or inquiries for employees. Therefore, requiring antibody testing before allowing employees to re-enter the workplace is not allowed under the ADA. An [antibody test](#) is different from a [test to determine if someone has evidence of infection with SARS-CoV-2 or has COVID-19 \(i.e., a viral test\)](#). The EEOC addresses COVID-19 viral screening tests in [A.6.](#)

EEOC COVID Guidance Updated

C.1. If an employer is hiring, may it screen applicants for symptoms of COVID-19?

(Updated 7/12/22)

Yes. An employer may screen job applicants for symptoms of COVID-19 after making a conditional job offer, as long as it does so for all entering employees in the same type of job. This ADA rule applies whether or not the applicant has a disability.

In addition, if an employer screens **everyone** (i.e., applicants, employees, contractors, visitors) for COVID-19 before permitting entry to the worksite, then an applicant in the pre-offer stage who needs to be in the workplace as part of the application process (e.g., for a job interview) may likewise be screened for COVID-19. The screening is limited to the same screening that everyone else undergoes; an employer that goes beyond that screening will have engaged in an illegal pre-offer disability-related inquiry and/or medical examination. For information on the ADA rules governing such inquiries and examination, see [Section A](#).

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

EEOC COVID Guidance Updated

C.4. May an employer withdraw a job offer when it needs an applicant to start working immediately, whether at the worksite or in the physical presence of others outside of the worksite, because the individual has tested positive for the virus that causes COVID-19, has symptoms of COVID-19, or has been exposed recently to someone with COVID-19? *(Updated 7/12/22)*

An employer should consult and follow current [CDC guidance](#).

C.5. May an employer postpone the start date or withdraw a job offer because of the employer's concern that the individual is older, pregnant, or has an underlying medical condition that puts the individual at increased risk from COVID-19? *(Updated 7/12/22)*

No.

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

EEOC COVID Guidance Updated

K.5. May an employer require an employee to comply with a COVID-19 vaccination requirement applicable to all employees entering the workplace if that employee has sought an exemption based on disability? *(Updated 7/12/22)*

Under the ADA, an employer may require an individual with a disability to meet a qualification standard applied to all employees, such as a safety-related standard requiring COVID-19 vaccination, if the standard is job-related and consistent with business necessity as applied to that employee. An employer does not have to show that a qualification standard in general (i.e., as applied to all employees) meets the “business necessity” standard. Under the ADA it must satisfy this standard only as applied to an employee who informs the employer that a disability prevents compliance.

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

California: COVID Rule Through 2024

- Current Cal/OSHA Standard expires December
- Cal/OSHA proposed rule June 18 goes through 2024
- Most of proposed new rules align with existing ETS
- Close Contact: 15 mins continuous contact over 24 hrs
- More time to notify close contact: as soon as possible
- Reporting/Recordkeeping: keep confidential close contact, cases; retain records for two years
- Does not require employers to provide exclusion pay

Recent Regulatory Actions

Impact of Supreme Court EPA Decision

WEST VIRGINIA ET AL. v. ENVIRONMENTAL PROTECTION AGENCY ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

No. 20–1530. Argued February 28, 2022—Decided June 30, 2022*

In 2015, the Environmental Protection Agency (EPA) promulgated the Clean Power Plan rule, which addressed carbon dioxide emissions from existing coal- and natural-gas-fired power plants. For authority, the Agency cited Section 111 of the Clean Air Act, which, although known as the *New Source Performance Standards* program, also authorizes regulation of certain pollutants from *existing* sources under Section 111(d). 42 U. S. C. §7411(d). Prior to the Clean Power Plan, EPA had used Section 111(d) only a handful of times since its enactment in 1970. Under that provision, although the States set the actual enforceable rules governing existing sources (such as power plants), EPA determines the emissions limit with which they will have to comply.

Capping carbon dioxide emissions at a level that will force a nationwide transition away from the use of coal to generate electricity may be a sensible “solution to the crisis of the day.” *New York v. United States*, 505 U. S. 144, 187 (1992). But it is not plausible that Congress gave EPA the authority to adopt on its own such a regulatory scheme in Section 111(d). A decision of such magnitude and consequence rests with Congress itself, or an agency acting pursuant to a clear delegation from that representative body. The judgment of the Court of Appeals for the District of Columbia Circuit is reversed, and the cases are remanded for further proceedings consistent with this opinion.

It is so ordered.

Impact of Supreme Court EPA Decision

- 6-3 Decision on *West Virginia v. EPA*
- Even if capping CO₂ nationwide may be a “sensible solution to crisis of day...not plausible that Congress gave EPA the authority to adopt on its own” the rule
- EPA did not have clear direction from Congress
- Goal: Bill together by July 4; August final passage
- No statute allows EPA to “solve” climate change

Impact of Supreme Court EPA Decision

- EPA can still issue environmental rules
- Carbon capture and storage technology still permitted
- EPA likely to tighten existing standards, rules
- NAAQS; Mercury and Air Toxic Standards; Cross State Pollution Rule; effluent limitations; transport rule
- Does not change 2007 *Massachusetts v. EPA*
- EPA can still cut vehicle emissions; tighter standards

Impact of Supreme Court EPA Decision

- Unclear if EPA can force companies to switch to electric vehicles; may need Congressional authority
- Security and Exchange Commission requirement companies disclose emissions data in jeopardy
- Several OSHA rules could be in doubt
- What authority Congress gave to agencies critical
- Groups will contest resurrected NLRB, EEOC rules

Efforts to Add Union Language to NDAA



COALITION FOR A **DEMOCRATIC WORKPLACE**

July 11, 2022

U.S. House of Representatives
Washington, DC 20515

Dear Representative:

The Coalition for a Democratic Workplace (“CDW”) urges you to reject Amendment 237 to the annual defense authorization bill, H.R. 7900, National Defense Authorization Act for Fiscal Year 2023. Amendment 237, which was introduced by Representative Norcross, would eliminate workers’ right to secret ballots in union representation elections, infringing on their right to privacy and their right to vote their conscience on whether or not they want to be represented by a union.

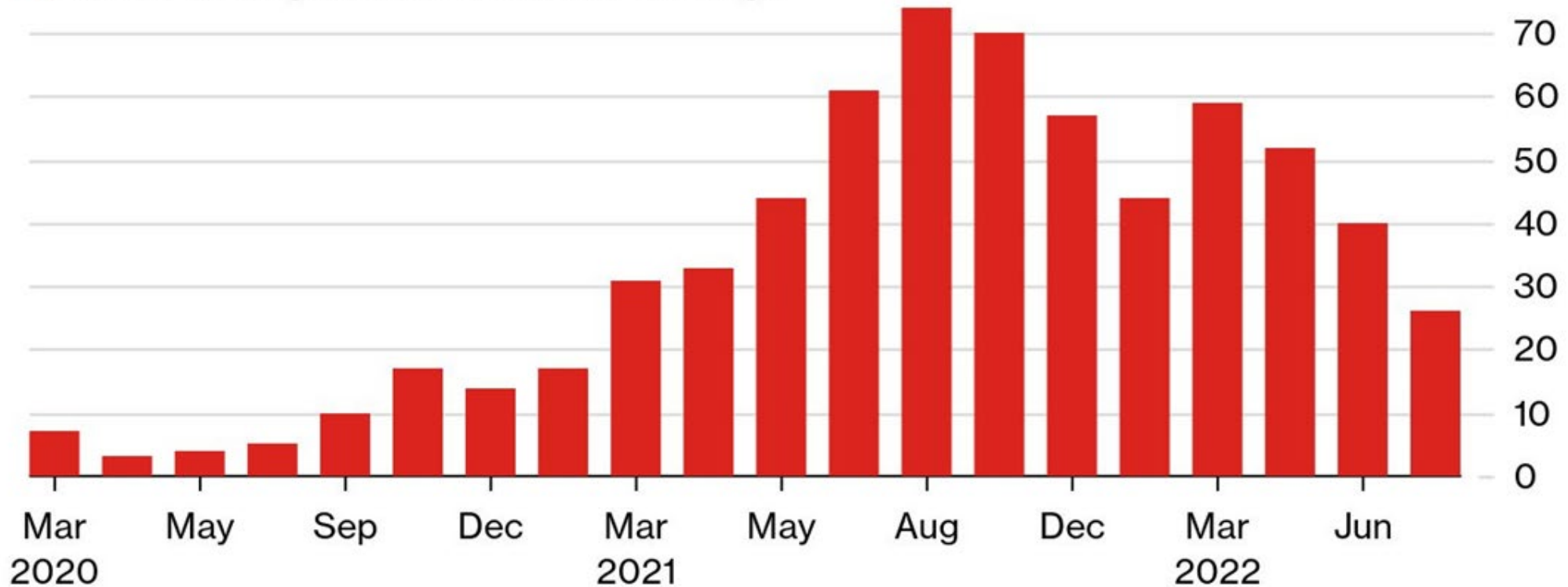
Congressional Activity:
Manufacturing, Supply Chain
Competitiveness Bill

Are Supply Chain Challenges Easing?

Speaking of Shortages

Frequency of the Fed's referrals to 'shortage' in the Beige Book is declining

■ Number of Beige Book mentions of 'shortage'



Source: Federal Reserve's Beige Book, Bloomberg calculations

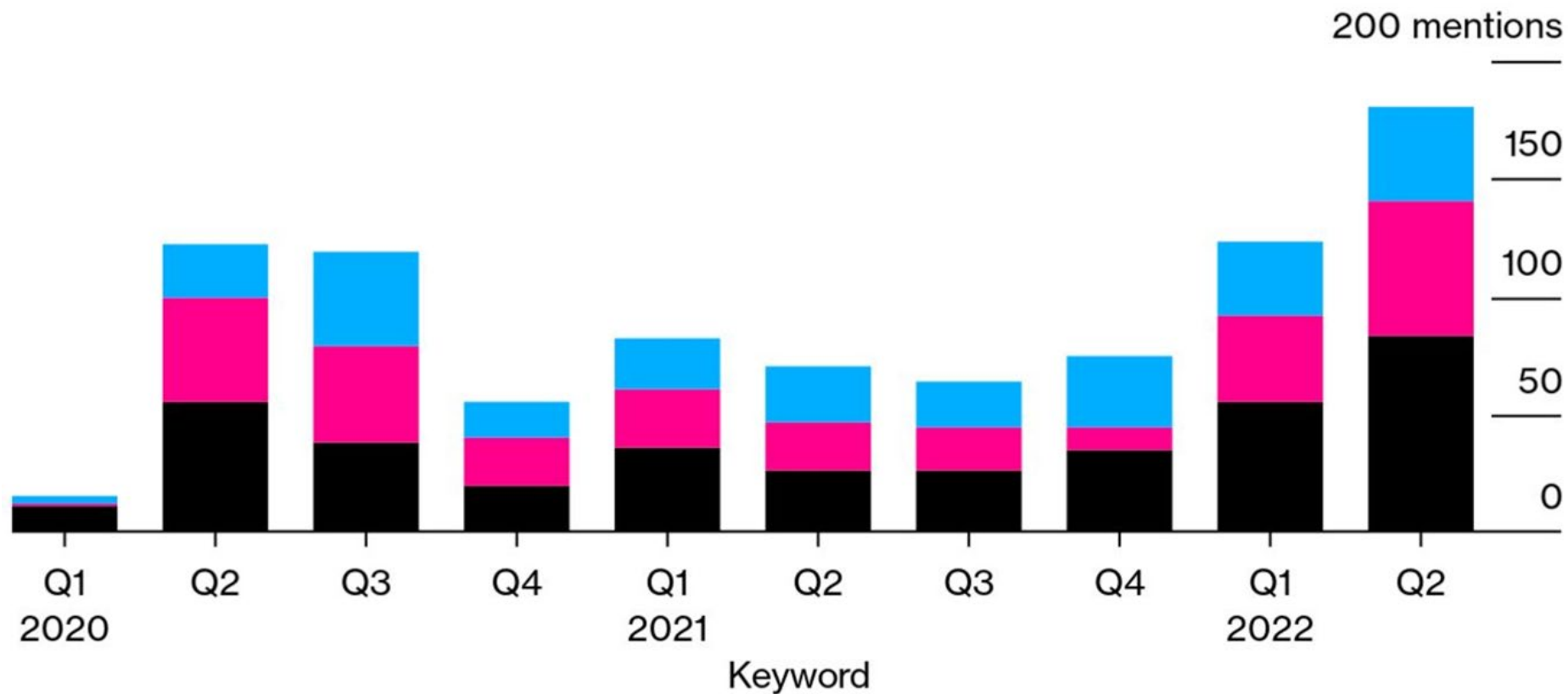
Bloomberg

Corporations Explore Reshoring/Onshoring

Coming Home

Supply-chain shifts get more attention during US corporate presentations

■ Onshoring ■ Reshoring ■ Nearshoring



116% increase
in construction
of new mfg
plants in U.S.

Source: Bloomberg data

Bloomberg

Unions, Freight Rail Talks at Impasse



BRIEFING ROOM

Executive Order on Establishing an Emergency Board to Investigate Disputes Between Certain Railroads Represented by the National Carriers' Conference Committee of the National Railway Labor Conference and Their Employees Represented by Certain Labor Organizations

JULY 15, 2022 • PRESIDENTIAL ACTIONS

- Past six years, lost 45k rail workers or 29%
- Executive Order averts freight rail strike
- Presidential Emergency Board recommendations
- Congress could mandate the recommendations

U.S. Requests Talks w/Mexico over Energy

- Biden requests dispute-settlement talks under USMCA
- Mexico has up to 30 days to schedule consultations
- USTR argues Mexico favoring state utility a violation
- U.S. industry says unfair treatment by Mexico
- Denial and revocation of U.S. firms' ability to operate

China Competition, Supply Chain, and Semiconductor Bill

China Competition Bill Moving

- Senate began procedural votes July 19
- 16 GOP Senators supported moving forward
- Senators still adding to bill throughout week
- Will likely lose at least 1-2 Senate Democrat
- Pelosi has come out in support; will need GOP votes
- Senate could pass bill week of July 25th

\$52B to Incentivize Semiconductor Mfg

- \$39 billion for legacy chip production
- \$11b for R&D and workforce development programs
- \$2 billion for a CHIPS for America Defense Fund
- \$500m International Technology Innovation Fund
- \$200m to grow semiconductor workforce
- Advanced Manufacturing Investment Credit
 - 25% investment credit for investment in semiconductor manufacturing
 - Incentives for advanced manufacturing semiconductor tooling equipment
 - Property placed in service after 12/31/22 ; construction begins by 1/1/27

Downstream Mfg Language in Bill

“(5) To build capabilities across the Hollings Manufacturing Extension Partnership for domestic supply chain resiliency and optimization, including—

“(A) assessment of domestic manufacturing capabilities, expanded capacity for researching and deploying information on supply chain risk, hidden costs of reliance on offshore suppliers, redesigning products and processes to encourage reshoring, and other relevant topics; and

“(B) expanded services to provide industrywide support that assists United States manufacturers with reshoring manufacturing to strengthen the resiliency of domestic supply chains, including in critical technology areas and foundational manufacturing capabilities that are key to domestic manufacturing competitiveness and resiliency, including forming, casting, machining, joining, surface treatment, tooling, and metal or chemical refining.

Manufacturing in USA Investments

USICA Division B Summary for NSF, DOC, NIST, and NASA

	Five-Year Authorization	Increase over Baseline
National Science Foundation (NSF)	\$81 billion	\$36 billion
• NSF Tech Directorate	\$20 billion	\$20 billion
• NSF Core Activities	\$61 billion	\$16 billion
Department of Commerce (DOC)	\$11 billion	\$11 billion
• <u>Regional Technology Hubs</u>	\$10 billion	\$10 billion
• RECOMPETE Pilot	\$1 billion	\$1 billion
National Institute of Standards and Technology (NIST)	\$10 billion	\$5 billion
• NIST Research	\$6.9 billion	\$2.8 billion
• <u>Manufacturing USA</u>	\$829 million	\$744 million
• <u>Manufacturing Extension Partnership</u>	\$2.3 billion	\$1.5 billion
Total	\$102 billion	\$52 billion

Manufacturing in USA Investments

National Institute of Standards and Technology Authorization (\$9 billion total, +\$4 billion over baseline)

- **Support Critical Technology Research and Standards.** Advances research and standards development for industries of the future, including quantum information science, artificial intelligence, cybersecurity, advanced communications technologies, and semiconductors.
- **Strengthen Small Manufacturers.** Triples funding for Manufacturing Extension Partnership, to support small- and medium-sized manufacturers with cybersecurity, workforce training, and supply chain resiliency (\$2 billion total)
- **Combat Supply Chain Disruption.** Leverages the Manufacturing Extension Partnership to create a National Supply Chain Database, to assist the businesses with supplier scouting and minimizing supply chain disruptions (\$131 million total)
- **Grow Manufacturing USA.** Supports the creation of new competitively-awarded manufacturing research institutes with expanded capacity for education and workforce development (\$829 million total)
- **Promote Competitiveness in International Standards.** Expands interagency coordination and information exchange activities to support private sector engagement and ensure effective Federal engagement in the development and use of international standards.

USTR 301 Four Year Review

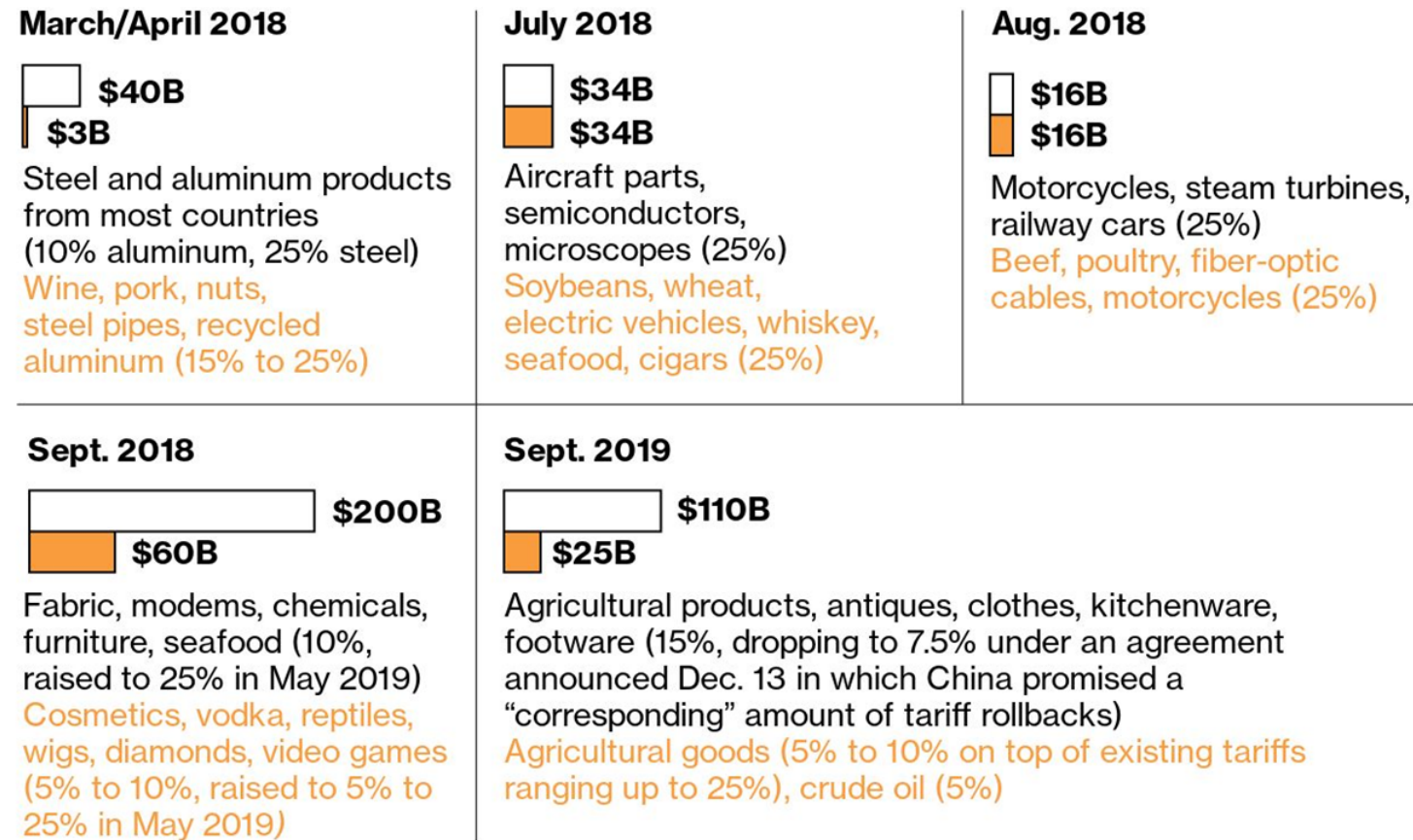
USITC Section 301 China &
232 Steel, Aluminum Tariff Investigation

Level of Tariffs Imposed on China

The U.S.-China Tariffs

Tariffs, by percentage rate, imposed by the U.S. and China on each other since March 2018

□ Imposed by the U.S. on China ■ Imposed by China on the U.S.



Sources: Office of the U.S. Trade Representative, Bloomberg

Note: Dec. 13 reference in Sept. 2019 box is for same year

- The average monthly amount of 301 tariffs paid under Biden — \$3.8 billion — is 67% higher than the average paid during Trump's tenure
- About 55% of all Section 301 tariffs have been paid under Trump, with the rest paid under Biden

USTR 4-Year Review of 301 Tariffs

- 4-Year review required by law for Lists 1-4a
- USTR received 327 comments supporting 301 tariffs
- Next deadline for comments for List 2 is August 22
- USTR to continue tariffs while reviewing comments
- Biden still not decided on which tariffs to keep

USITC 301/232 Investigation July 20-22

- U.S. International Trade Commission (ITC)
- Congress mandated ITC investigate impact of Section 301 China and 232 steel/aluminum tariffs on U.S. industry
- Roughly 75 witnesses testified on both 301 and/or 232
- ITC will issue report to Congress March 2023
- Does not lead to recommendation on lifting tariffs

One Voice Members Testifying at ITC

“The result of protecting one industry at the expense of another simply shifts injury from a small set of companies, steel producers, to a broader set, steel consumers,” stated **Mark Vaughn, President of Vaughn Manufacturing** in Nashville, TN. “The Section 232 tariffs have shifted the injury to us without significantly increasing the availability of the material here in the U.S.”

“What matters most to U.S. manufacturers is the price difference between what they pay for steel versus what their global competitors are paying. Simply put, the Section 232 tariffs have placed U.S. manufacturers at a significant disadvantage,” testified **David Klotz, President of the Precision Metalforming Association**.

“We need stability and certainty in our industry and the Section 232 national security tariffs on our allies and now some Tariff Rate Quotas create more instability, not less, even if you do not import much steel,” testified **Stuart Speyer, President of Tensco LLC** in Dickson, TN.

These ongoing tariffs, which are now more than four years old, have severely damaged U.S. manufacturing global competitiveness and an independent review of their impact is long overdue,” said **Scott Buehrer, President of B. Walter & Co.** in Wabash, IN



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U.S. Manufacturers Testify at USITC on Negative Economic Impact of Section 232 Steel and Aluminum Tariffs

More than 75% of manufacturers surveyed report challenges sourcing steel and aluminum

Any gains seen by the steel industry from tariffs have been overshadowed by the losses for downstream companies and higher prices for consumers.



US steel, aluminum industry representatives debate impact of 232, 301 tariffs at USITC hearing

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<https://www.pma.org/advocacy/donate-today.asp>

Questions?

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