

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

Prepared by
The Franklin Partnership, LLC &
Policy Resolution Group at Bracewell
September 8, 2023



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

Contents

- U.S. Congress
- Regulatory Update
- Trade and Tariffs
- Supply Lines



All information presented as of September 7, 2023

U.S. Congress

Status on Capitol Hill

- Congress left DC for annual August break
- Senate returned to session Sept. 5
- House returning to session Sept. 12
- Senate could start moving minibus spending bills
 - Agriculture-FDA; Military Construction-VA; Transportation-HUD up first
 - All Senate spending bills are bipartisan and have passed Committee
 - Senators trying to pressure House GOP for a bipartisan outcome
- Federal government spending expires Sept. 30th

Status on Capitol Hill

- Many believe government shutdown possible
- House GOP pushing back on funding extension
- Talks of funding extension to November
- Senate, White House want Ukraine supplemental
- Hurricane, fire disaster funding support needed
- FAA, Farm bills expire Sept 30, extension needed
- House GOP may try again in Sept. on tax bill

Regulatory Update

OSHA Worker Walkaround Proposed Rule

- Allows third-party employee representatives during OSHA inspections, including union rep.
 - Employees may authorize a non-employee third party if the compliance officer determines the third-party rep is “reasonably necessary” for a effective and thorough inspection
- Rule codifies 2013 Obama-era OSHA guidance challenged in court; rescinded by Trump in 2017
- Public comments on proposed rule due Oct. 30

NLRB Releases Union Vote Expedite Rule

The National Labor Relations Board today adopted a [Final Rule](#) amending its procedures governing representation elections.

This Rule largely reverses the amendments made by the Board's 2019 Election Rule, which introduced new delays in the election process. The new rule returns the Board's key election procedures to those put in place by a 2014 rule that was adopted using a notice-and-comment process and that was uniformly upheld by federal courts. Last year, the United States Court of Appeals for the District of Columbia Circuit struck down parts of the 2019 Rule, and the Board has [already rescinded](#) those provisions.

"It is a basic principle of the National Labor Relations Act that representation cases should be resolved quickly and fairly," said Chairman Lauren McFerran. "By removing unnecessary delays from the election process, the new rule supports these important goals, and allows workers to more effectively exercise their fundamental rights."

The new rule will meaningfully reduce the time it takes to get from petition to election in contested elections and will expedite the resolution of any post-election litigation. Highlights of the new rule's changes include:

- Allowing pre-election hearings to begin more quickly;
- Ensuring that important election information is disseminated to employees more quickly;
- Making pre- and post-election hearings more efficient; and
- Ensuring that elections are held more quickly.

As with prior changes to the Board's election processes, the new rule will become effective four months from the date of publication to ensure adequate time for the NLRB's Regional offices to implement the new procedures. A companion rule also ensures that two provisions of the 2019 Rule that had been previously enjoined by a federal district court, but were scheduled to become effective on September 10, 2023, will not take effect. The [new rule](#) rescinds those provisions.

As of Aug. 23, 2023

<https://www.nlr.gov/news-outreach/news-story/national-labor-relations-board-issues-final-rule-to-restore-fair-and>

NLRB Employer Rule Lawfulness Standard

- On Aug. 2, NLRB adopted new standard for evaluating employer workplace rules
- Presumes rule unlawful, reversing current policy
- NLRB considers an employer rule unlawful if it “could” be interpreted to limit employee rights
- Current standard “permits employers to adopt overbroad work rules that chill” exercise of rights
- Stated employees are economically dependent

Salaries Overtime Proposed Rule Released

- 3.6m more salaried workers eligible for overtime
- Takes effect November 7, 2023 (announced Aug. 30)
- Increases Executive, Administrative, Professional & Clerical employee overtime salary threshold
 - Threshold increased from \$35,568 to \$55,068 per year for EAP employees
 - Highly Compensated Employee increased from \$107,432 to \$143,988
- Automatically increases every 3 years
 - Adjusting to remain at 35th percentile of weekly earnings of full-time non-hourly workers in the lowest-wage region of U.S. <https://www.dol.gov/agencies/whd/overtime>

OSHA Starts Small Biz Heat Rule Review

- Proposed indoor/outdoor 80°F heat index rule
- Will include requirements for all employers when heat index exceeds 80°F, regardless of location
- Dept. of Labor, Small Business Administration convened Small Business Advocacy Review panel
- Small Entity Representatives announced Aug. 25
- Panel will take 60 days; 5 public sessions w/SERs

OSHA Starts Small Biz Heat Rule Review

- Single webpage with all information
- List of SBAR government panel members
- Materials posted online
- Times and links for meetings
- Review moving quickly

[Small Business Regulatory Enforcement Fairness Act \(SBREFA\)](#)

[What is a Small Business Advocacy Review \(SBAR\) Panel](#)

[Additional SBREFA Resources](#)

[Small Entity Representative Materials](#)

[SBREFA Session Schedule and Public Listening Links](#)

[List of SBAR Panel Members and Staff Representatives](#)

[Public Comments](#)

<https://www.osha.gov/heat/sbrefa>

OSHA Small Biz Review Sessions Started

- OSHA posted possible contents of a plan
- Want employers to customize, create a plan
- Identify components of a plan employer can use
- Sessions will review the materials ahead of rule

Small Entity Representative Materials

Heat SER Materials – Regulatory Framework: outlines potential options for the various elements of a potential heat injury and illness prevention standard.

Heat SER Materials – SER Background Document: provides an overview of several options that OSHA is considering for a potential standard, estimates of the time and resources needed for each option, and types of small entities that would likely be affected by a standard as outlined in the regulatory framework.

Heat SER Materials – List of SBAR Panel Questions: includes a list of questions for SERs prepared by the SBAR Panel. SERs may answer and provide input on any or all questions, along with any other issues they would like the Panel to consider.

OSHA Small Biz Review Sessions Started

- Public can listen in to 5 SBREFA Sessions:
- Sept. 7, 12, 13, 14, 18

[SBREFA Session Schedule and Public Listening Links](#)

All videoconferences will be open to the public, but only SERs and SBAR Panel members can participate in the discussions. Sessions may be viewed via the Webex meeting links or telephone information below:

<https://www.osha.gov/heat/sbrefa>

OSHA Heat SBREFA Meeting, Session 2
Tuesday, September 12, 2023 9:00 AM |
(UTC-04:00) Eastern Time (US &
Canada)

Join link:

<https://abtassociates.webex.com/abtassociates/j.php?MTID=m79029ea3a17cd7e8dd988032c504ac60>

Webinar number: 2425 867 4742

Webinar password: SBREFA3 (7273323
from phones and video systems)

Join by phone

+1-855-797-9485 US Toll free

+1-415-655-0002 US Toll

Access code: 242 586 74742

OSHA To Require Heat Injury Plans

Heat Injury and Illness Prevention Program

OSHA is considering requiring employers to create a written Heat Injury and Illness Prevention Program (HIIPP), developed with the input of employees, that could include:

- Procedures to identify when heat hazards exist for employees, including procedures for environmental monitoring and the identification of work processes and external factors that increase the likelihood of heat-related injury and illness
- Procedures for implementing engineering controls
- Procedures for implementing administrative controls, including the provisions of drinking water, rest breaks in a cool and/or shaded area, acclimatization protocols for new and returning employees, and supervision of employees for signs and symptoms of heat-related illness
- Procedures for high heat
- Procedures for when employees are exhibiting symptoms of heat-related illness and emergency response procedures
- Training of employees and supervisors
- Selection of designated individual(s) to oversee and implement the HIIPP, including environmental monitoring

OSHA is considering exempting very small employers (e.g., those with 10 or fewer employees) from requirements to have a written HIIPP.

https://www.osha.gov/sites/default/files/Heat_SER_Background_Document_8-21-2023.pdf

Heat Triggers Determine Action Taken

Table 1. Options for heat triggers being considered by OSHA

	Initial Heat Trigger			High-Heat Trigger		
	Ambient	Heat Index	WBGT	Ambient	Heat Index	WBGT
When using a forecast	78°F or higher	76°F or higher	N/A	86°F or higher	83°F or higher	N/A
When measuring onsite	82°F or higher	80°F or higher	ACGIH AL or NIOSH RAL	90°F or higher	87°F or higher	ACGIH TLV or NIOSH REL

Note: The values in this table represent the minimum values currently being considered.

Table 2. Heat triggers in state heat standards

	Setting	Initial Heat Trigger	High-Heat Trigger
California (proposal)	Indoor	82°F (Ambient)	87°F (Ambient or Heat Index), except for certain clothing or in high radiant heat (82°F)
Minnesota ¹	Indoor	86°F (WBGT), Light work; 80°F, Moderate work; 77°F, Heavy work	

OSHA Potential Heat Rule Requirements

Figure 1. Potential elements and when they might be required

Potential Elements	All Covered Workplaces (see Scope)	At or Above Initial Heat Trigger	At or Above High-Heat Trigger
Hazard identification and monitoring (based on forecast or workplace measurements)	•	•	•
Drinking water	•	•	•
Emergency response procedures	•	•	•
Training for employees and supervisors	•	•	•
Heat injury and illness prevention plan	•	•	•
Recordkeeping	•	•	•
Shade or cool-down area		•	•
Indoor air movement and humidity control		•	•
Acclimatization for new or returning workers, and during heat waves		•	•
Rest breaks (as needed or 10 min every 2 hours)		•	•
Effective communication means with employees		•	•
Rest breaks (minimum 15 min every 2 hours)			•
Supervisor or buddy system to observe for signs and symptoms			• (+ during acclimatization)
Pre-shift meetings or employee notifications			•

https://www.osha.gov/sites/default/files/Heat_SER_Background_Document_8-21-2023.pdf

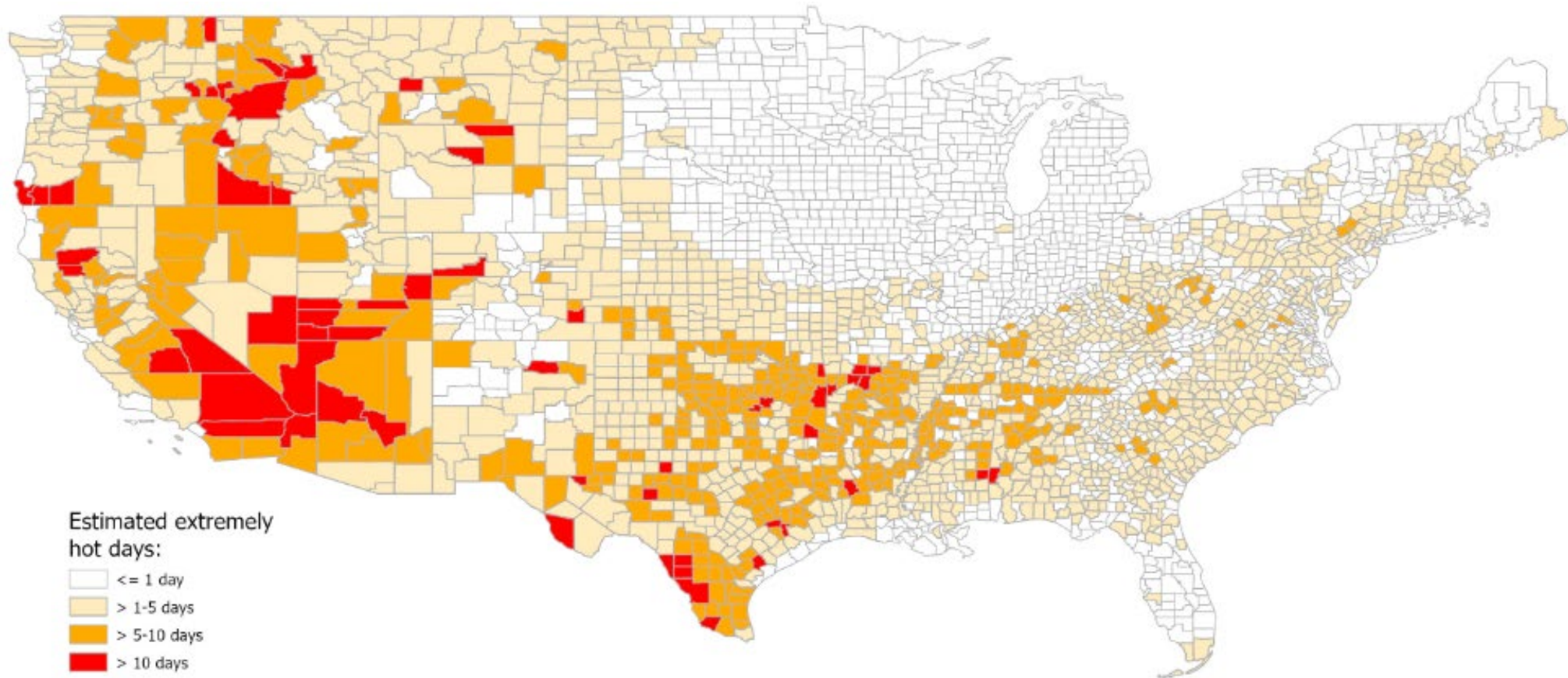
OSHA Potential Heat Rule Requirements

Table 3. Compliance Estimates for Heat Injury and Illness Prevention Program

Regulatory Option	Labor Category	Value	Unit	Frequency
Initial HIIPP Development				
Write HIIPP – No Program in Place	Designated Person	40	Hours	One-Time per Establishment
Review and Modify HIIPP – Existing Program in Place	Designated Person	2.5	Hours	One-Time per Establishment
Write HIPP - Use HIIPP Template	Designated Person	6	Hours	One-Time per Establishment
HIIPP Development Involvement – Employee	Employee	1	Hours	One-Time per Employee Participant
Review and Update HIIPP				
Review and Update HIIPP	Designated Person	1	Hours	Per Establishment – Recurring ^a
HIIPP Review and Update Involvement – Employee	Employee	1	Hours	Per Employee Participant – Recurring ^a

[a] Potential options for the frequency of HIIPP updates are as follows: (1) whenever necessary to ensure its ongoing effectiveness; (2) whenever a heat-related illness or injury occurs; (3) annually; (4) whenever a heat-related illness or injury occurs, but no less than annually.

Dept. of HHS Launches Heat Tracker



<https://www.hhs.gov/climate-change-health-equity-environmental-justice/climate-change-health-equity/climate-health-outlook/extreme-heat/index.html>

Waters of the U.S. (WOTUS) Final Rule

- Definition of WOTUS narrowed on Aug 29
 - EPA and Army Corps amended rule to conform with SCOTUS decision
 - Eliminates the “significant nexus” test for jurisdictional waters
 - Excludes “adjacent” wetlands & “interstate wetlands” from definition of jurisdiction waters
- Rule issued using “good cause” authority to enact without waiting for public comment
- Effective immediately upon publication in Federal Register; dispute ongoing for years

IRS Releases IRA Guidance — Ends Phase 1

Q1. What credits or deductions may be increased if prevailing wage and apprenticeship requirements are satisfied? (added August 29, 2023)

A1. The IRA makes several clean energy tax incentives available to taxpayers that satisfy certain prevailing wage and apprenticeship requirements. In general, a taxpayer that meets the prevailing wage and apprenticeship requirements will multiply the base amount of the tax incentive (credit or deduction) by five. Increased credit and deduction amounts are available for taxpayers satisfying prevailing wage and apprenticeship requirements under the following sections of the Internal Revenue Code (Code):

- Section 30C alternative fuel vehicle refueling property credit
- Section 45 renewable electricity production credit
- Section 45Q credit for carbon oxide sequestration
- Section 45V credit for production of clean hydrogen
- Section 45Y clean electricity production credit
- Section 45Z clean fuel production credit
- Section 48 energy credit
- Section 48C qualifying advanced energy project credit
- Section 48E clean electricity investment credit
- Section 179D energy efficient commercial buildings deduction

[https://home.treasury.gov/
news/press-
releases/jy1708](https://home.treasury.gov/news/press-releases/jy1708)

Trade and Tariffs

USTR Extends Expiring 301 Exclusions (again)

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Extension for Product Exclusions: China's Acts, Policies, and Practices

Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice.

SUMMARY: In prior notices, the U.S. Trade Representative modified the actions in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation by excluding from additional duties certain products of China, including medical-care products needed to address COVID. In December 2022, the U.S. Trade Representative determined to extend 352 previously reinstated exclusions through September 30, 2023 and in May 2023 determined to extend 77 COVID-related exclusions through September 30, 2023. This notice announces the U.S. Trade Representative's determination to further extend the 352 reinstated exclusions and 77 COVID-related exclusions until December 31, 2023.

DATES: The extensions in this notice extend the 352 reinstated exclusions and 77 COVID-related exclusions through December 31, 2023. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

- USTR extends 429 Section 301 China tariff exclusions
- Were set to expire Sept. 30, extended to Dec. 31, 2023
- USTR may conclude 301 review this fall

Commerce Dept. Updating 232 Exclusions

Bureau of Industry and Security Continues to Update Section 232 Exclusions Process

New proposed rule makes additional improvements and requests further public input

WASHINGTON, DC—Today, the U.S. Commerce Department's Bureau of Industry and Security (BIS) published a proposed rule that continues the Department's efforts to improve the exclusion process for steel and aluminum tariffs and obtain public feedback.

The proposed rule published today responds to public comments received since BIS's February 2022 notice, proposes four additional changes to the Section 232 exclusions process, and requests additional public comment on a series of issues. This proposed rule (and subsequent final rule(s) that will follow) will build on the existing five interim final rules (IFRs) issued since 2018, and which remain in effect.

BIS has administered the Section 232 exclusions process since the imposition of duties on imports of aluminum and steel in 2018 following investigations into the national security impacts of imports of [aluminum](#) and [steel](#) to the United States. Since 2018, BIS has published five IFRs that established and made various revisions to the Section 232 exclusions process.

Commerce Dept. Updating 232 Exclusions

1. Proposes a more efficient General Approved Exclusions (GAE) process by changing the criteria generally used for determining GAEs by focusing on the substance of objections submitted rather than whether any objection has been submitted or not.
2. Introducing a “General Denied Exclusions” (GDE) process to limit further exclusions on products which have consistently been found to be manufactured in the United States. Similar to General Approved Exclusions, GDEs would be identified on the volume and substance of Objections submitted to such products in the 232 Exclusions Process.
3. Modifying the existing certification language and introducing new certification requirements for exclusion requests, including by making changes to the Exclusion Request Form so that requestors can demonstrate that they made reasonable efforts to source their product from the United States or from countries which the United States has arrived at a satisfactory alternative means to address U.S. national security concerns, which currently are: Argentina, Australia, Brazil, Canada, the European Union, Japan, Mexico, South Korea, and the United Kingdom.
4. Proposing similar certification language on the objection form to further ensure objectors can supply comparable quality and quantity steel or aluminum and make it “immediately available” to requestors in line with the standards described in the previous Section 232 IFRs.

Steel “Immediately Available” = 8 weeks

(i) *Not produced in the United States in a sufficient and reasonably available amount.* The exclusion review criterion “Not produced in the United States in a sufficient and reasonably available amount” means that the amount that is needed by the user requesting the exclusion is not available immediately in the United States to meet its specified business activities. Available “immediately” means that a product (whether it is currently being produced in the United States, or could be produced in the United States) can be produced and delivered by a U.S. producer “within eight weeks” from the receipt of a binding purchase order, or, if that is not possible, by a date earlier than the time required for the requester to obtain the entire quantity of the product from the requester’s foreign supplier. Furthermore, to the extent that an objector can produce and deliver a portion, which is less than 100 percent, but ten percent or more, of the amount of steel or aluminum needed in the business activities of the user requesting the exclusion in the United States described in the exclusion request, the Department of Commerce may deny a requested exclusion for that percentage of imported steel or aluminum. It is incumbent upon both the exclusion requester, and objecting producers, to provide evidence supporting their claimed delivery times.

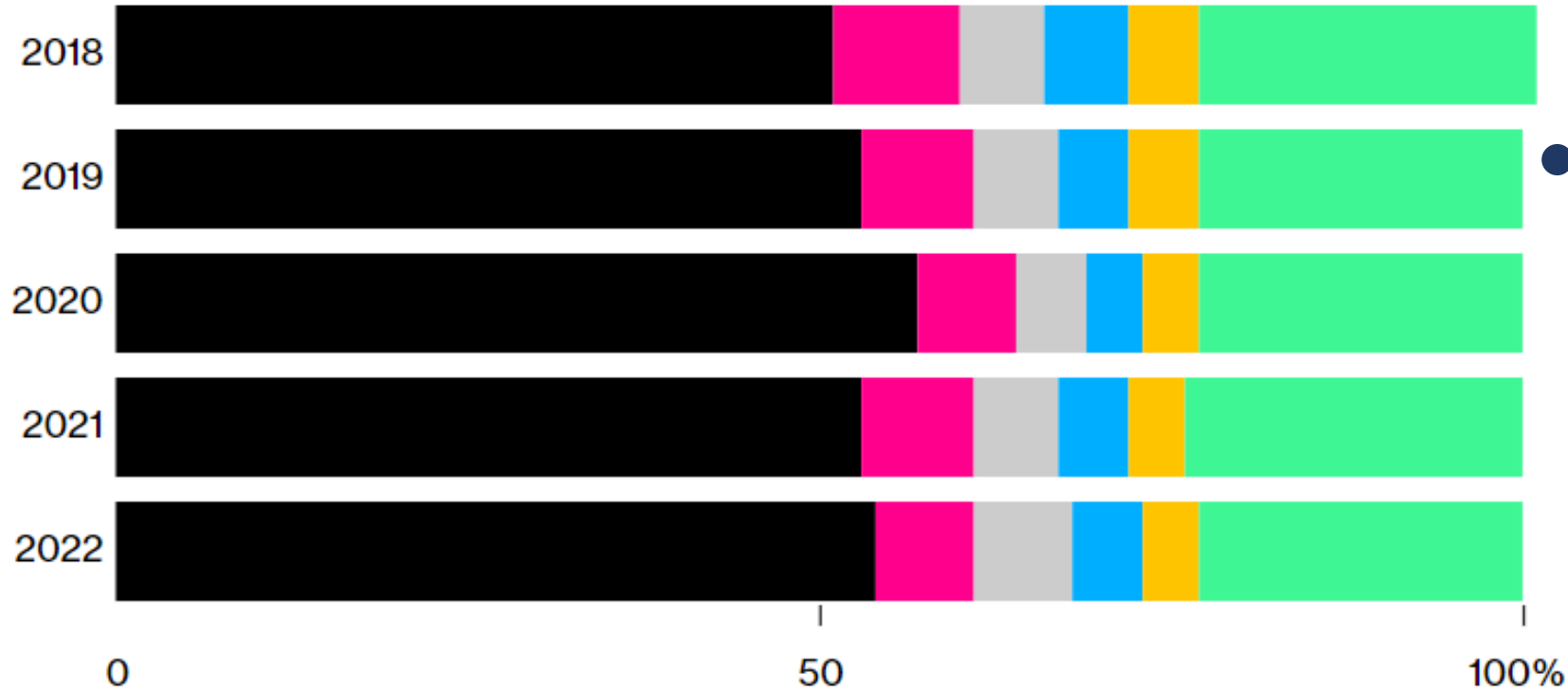
(ii) *Not produced in the United States in a satisfactory quality.* The exclusion review criterion “not produced in the United States in a satisfactory quality” does not mean the steel or aluminum needs to be identical, but it does need to be equivalent as a substitute product. “Substitute product” for purposes of this review criterion means that the steel or aluminum being produced by an objector can meet “immediately” (i.e. paragraph (c)(6)(i) of this supplement) the quality, regulatory, or testing standards for the U.S.-produced steel to be used in the business activity in the United States of the user requesting the exclusion.

U.S.-EU: Interim Steel Tariffs Deal...?

Global Steel Production

China accounts for more than half of the world's total steel production

■ China ■ EU ■ India ■ Japan ■ US ■ Other



Source: World Steel Association

- 232 US-EU carbon tariffs talks still far apart;
- Temporary deal possible for tariffs on excess steel from non-market countries such as China, others

Supply Chains

Possible UAW/Unifor Strike Sept. 14

Survey:

If the UAW/Unifor strike starting September 14 for at least 8 days at one or all of the Detroit 3, what impact will it have on your operations?

No Impact – Not a supplier

No Impact – Detroit 3 supplier

Will reduce employee hours

Will layoff employees

Will suspend operations until strike concludes

Will close the business

Significant Drop in Durable Goods Orders

August 24, 2023 — The U.S. Census Bureau announces the July advance report on durable goods manufacturers' shipments, inventories and orders:



DURABLE GOODS – NEW ORDERS

JULY 2023	\$285.9 billion	-5.2%*
JUNE 2023 (revised)	\$301.5 billion	+4.4%*

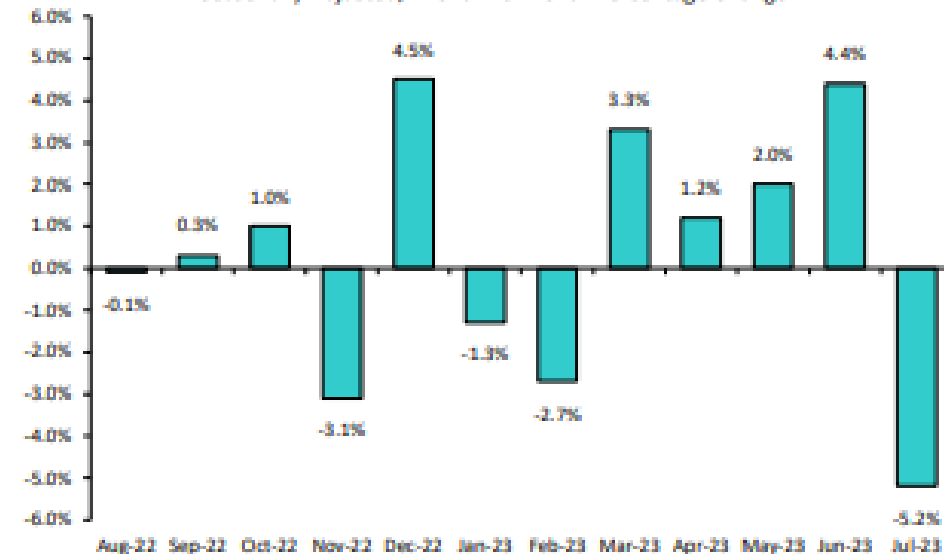
Next release: September 27, 2023

Data adjusted for seasonal variation but not for price changes.

*Statistical significance is not measurable for this survey. The Manufacturers' Shipments, Inventories, and Orders estimates are not based on a probability sample, so the sampling error of these estimates cannot be measured nor can the confidence intervals be computed.

Source: U.S. Census Bureau, Manufacturers' Shipments, Inventories and Orders, August 24, 2023.

DURABLE GOODS NEW ORDERS 2022-2023
Seasonally Adjusted, Month-To-Month Percentage Change



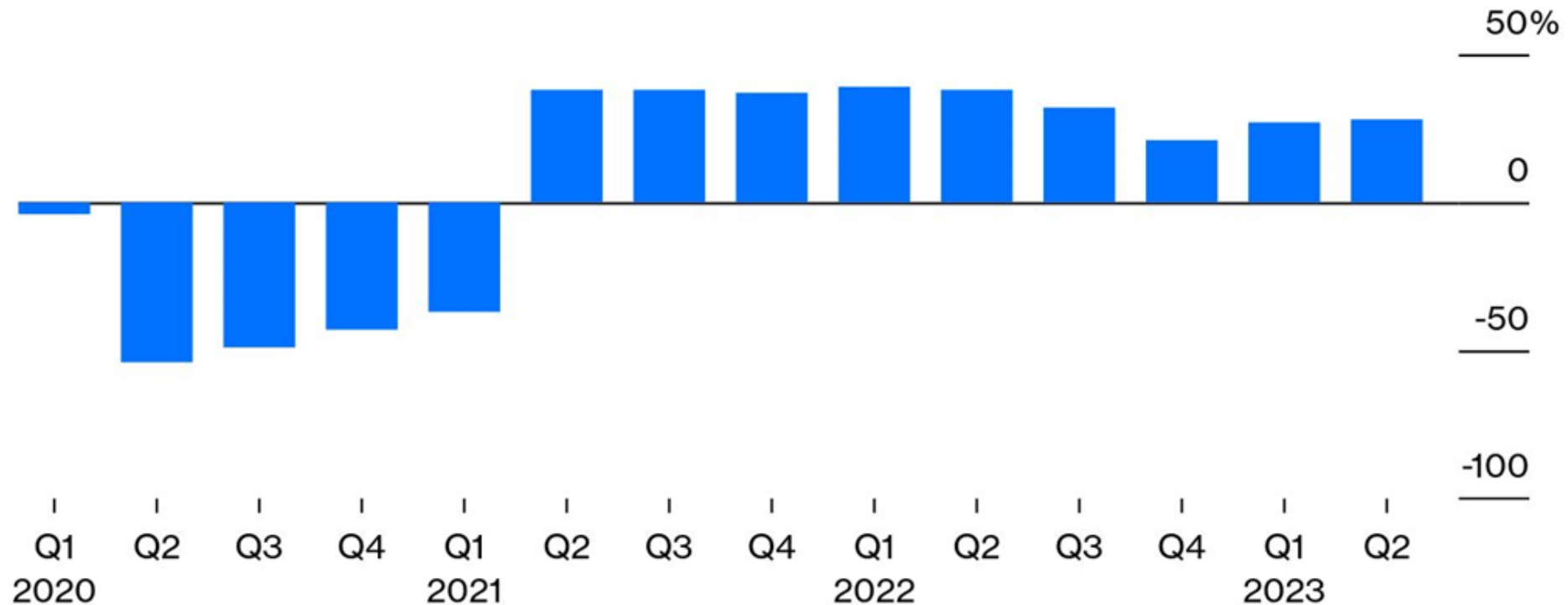
Source: U.S. Census Bureau, Manufacturers' Shipments, Inventories, and Orders, August 24, 2023.

Aircraft Parts Demand Remains Elevated

Bouncing Back and Then Some

Demand for aircraft parts, maintenance and repair services has surged amid the "revenge travel" phenomenon and long waits for new jets

■ Commercial Aftermarket Core Growth Rates



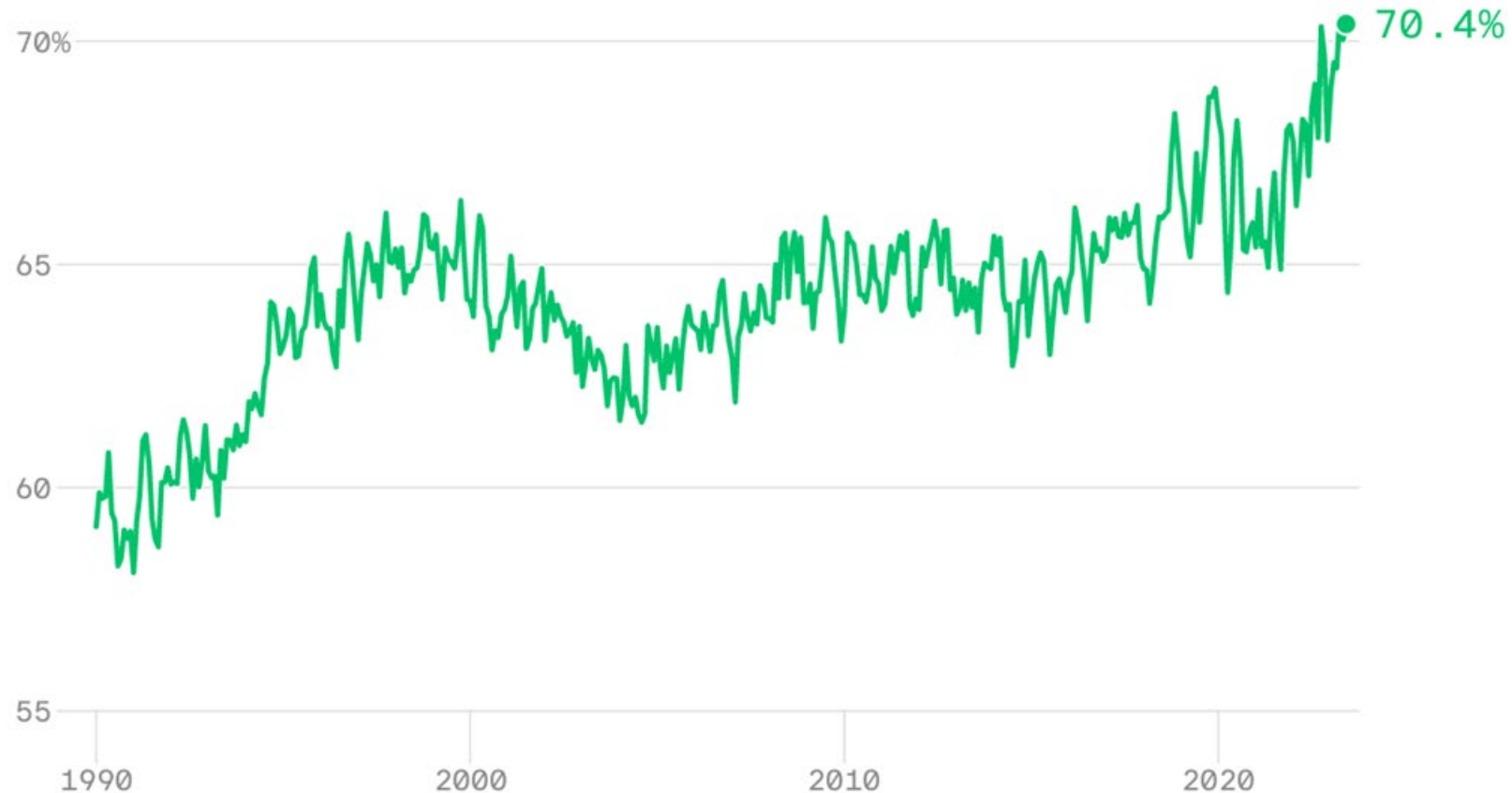
Source: Melius Research analyst Robert Spingarn

Bloomberg **Opinion**

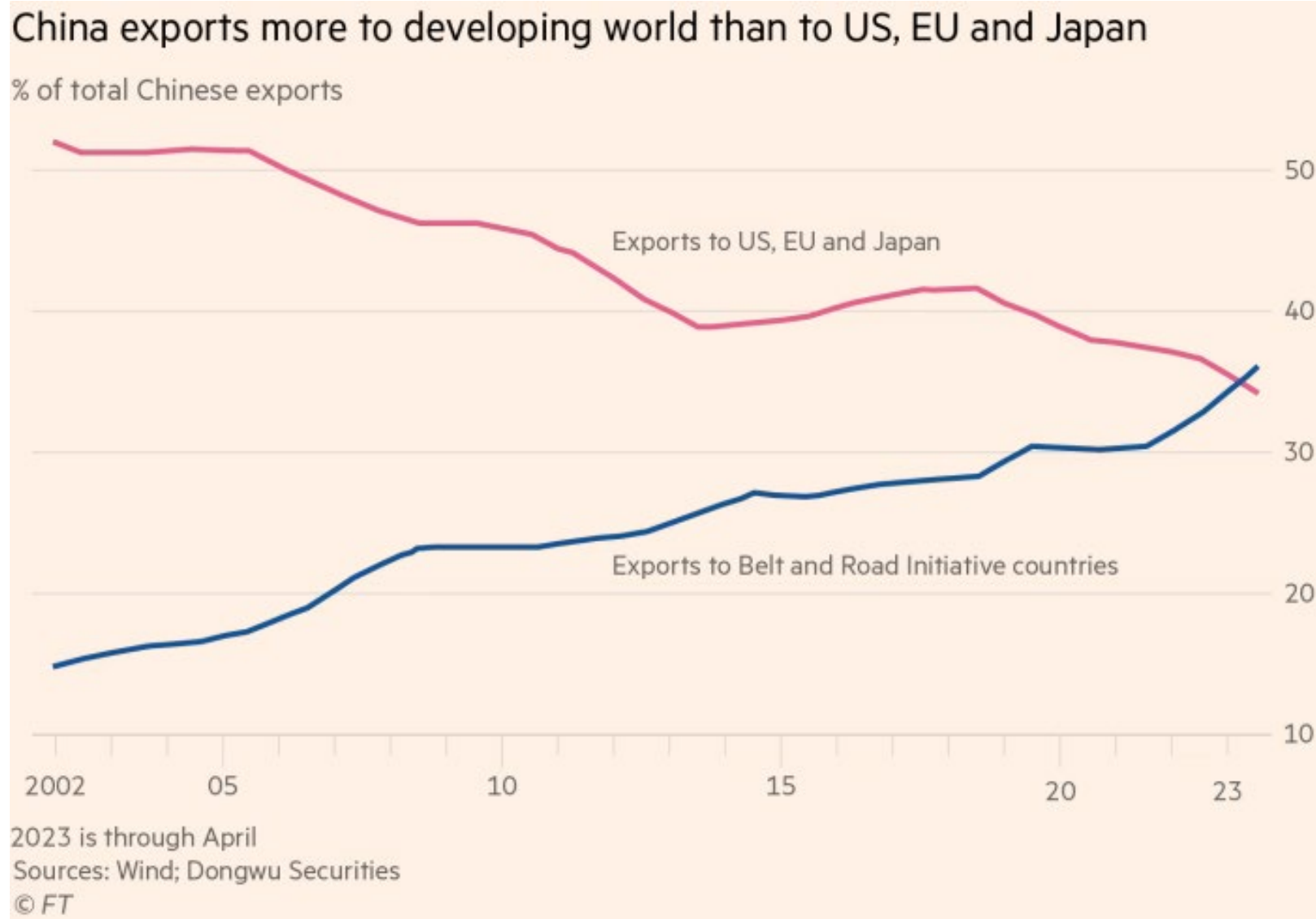
Labor Force Participation Increasing

Labor force participation rate for mothers with kids under age 5

Monthly; January 1990 to June 2023



China Wants to Counter U.S.-led West

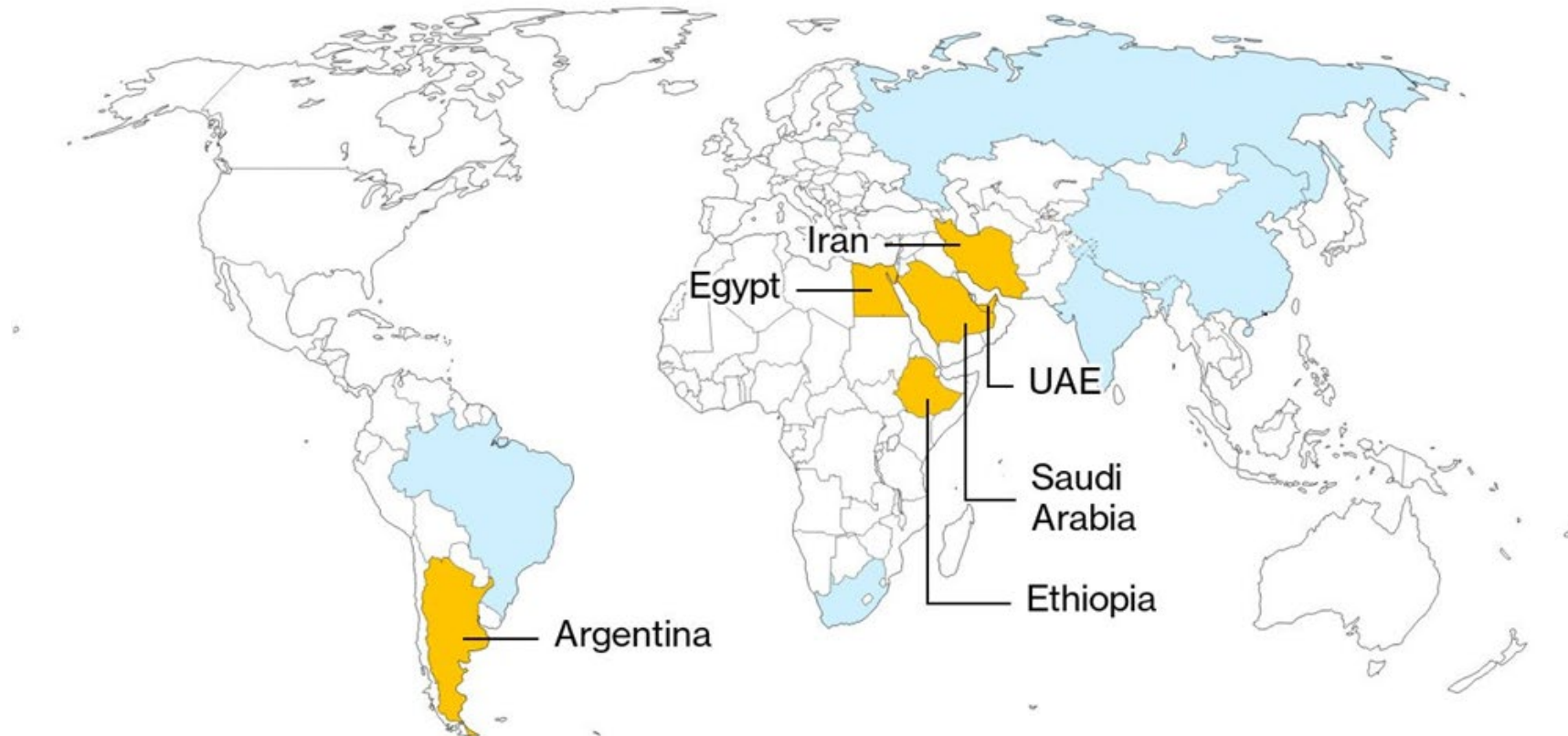


BRICS Expanding Next Year

BRICS Invited Six New Members to Join the Club

Membership status for distinct economies

■ Current members ■ Invited



Source: Bloomberg

Bloomberg

THE WALL STREET JOURNAL.

U.S Steel Takeover Talk Rattles Manufacturers

“We already have a very concentrated market for steel,” said **Scott Buehrer, president of B. Walter & Co.**, an Indiana-based manufacturer of wire racks, furniture hardware and other fabricated steel products. “It’s hard to compete with companies outside the U.S. who have access to much lower-priced steel.”

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NTMA's Government Affairs Administrative Fund (GAAF) allows the association to undertake initiatives aimed at educating elected officials on tooling and machining and the industry's priority issues. It also permits us to support a variety of activities to inform and mobilize our members, as well as to protect and promote the industry with key lawmakers. You can use corporate OR personal funds to donate to the GAAF.

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PMA ADVOCACY FUND

PMA's Advocacy Fund supports the association's day-to-day lobbying and public relations efforts in Washington, D.C., increasing the industry's visibility in Congress, the Administration and the public. You can use corporate OR personal funds to donate to the advocacy fund.

Donate Today!

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

Questions?

The Franklin Partnership, LLC

Omar S. Nashashibi

Omar@franklinpartnership.com

John Guzik

jguzik@franklinpartnership.com

Policy Resolution Group

Caitlin Sickles

Caitlin.sickles@bracewell.com

Paul Nathanson

Paul.nathanson@bracewell.com

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

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