

Reps. Sewell and Johnson Announce Legislation to Combat Unfair Trade Practices

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Reps. Terri Sewell (D-AL) and Bill Johnson (R-OH) have introduced bipartisan legislation to strengthen U.S. trade remedy law and equip administering authorities with new tools to address unfair trade practices. The “Eliminating Global Market Distortions to Protect American Jobs Act of 2021” (also referred to as “The Level the Playing Field Act 2.0”) is the House’s companion legislation to the Senate’s version, introduced earlier this year.

This legislation is primarily intended to address new unfair trade practices of China and other countries. For example, it would address “cross-border” subsidies such as China’s Belt and Road Initiative. The legislation also would address the “whack-a-mole” problem by allowing streamlined successive and concurrent trade remedy investigations and would establish stronger procedures for circumvention inquiries.

The proposed act combats “cross-border” subsidization (*i.e.*, subsidies that one country provides within another country’s borders). Currently, the Department of Commerce (Commerce) will not consider subsidies provided “{b}y a government of a country other than the country in which the recipient firm is located,” except in very limited circumstances. Under the new legislation, Commerce will treat these transnational subsidies as if they were provided by the subject government where (1) the countervailable subsidy is provided by a government outside of the country where the subject product is produced and (2) the government of the subject country facilitates the other government’s subsidization. This is a particularly important addition to U.S. law because the Government of China continues to subsidize Chinese producers located in other Asian countries and around the world.

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The new act also allows rapid successive trade remedy investigations. Domestic producers are often successful in bringing trade cases against dumped and subsidized imports from China, but then imports shift to a third country as producers attempt to avoid duties. This allows an end-run around U.S. trade law, forcing U.S. industries to file brand new trade cases. The new legislation would provide an expedited system to address surges in third-country imports of the same product following a successful trade remedy.

The legislation also strengthens Commerce's ability to root out circumvention and evasion. The new legislation would impose precise timelines for determinations in circumvention inquiries. It would also require Commerce to determine the proper penalties to prevent future evasion, impose importer certification requirements, and introduce factors to help determine the true origin of imported merchandise.

Wiley has industry-leading expertise in the development and enforcement of U.S. trade remedy law. If you have any questions about this, or any other international trade issue, please contact one of the authors.