

“significant impact” standard reduces the Act’s coverage and consequence and provides significant discretion to the State Department in the Act’s implementation.

Section 5947’s revision of the Case Act comes amid renewed tensions between Congress and the executive branch regarding what international agreements require congressional approval and the disclosure of draft agreements during negotiations.³³ Information revealed through increased Case Act reporting may have implications for these inter-branch discussions.

INTERNATIONAL ECONOMIC LAW

The United States and Taiwan Sign Trade Agreement and Congress Enacts Law to Regulate the Negotiation and Approval of Taiwan Trade Agreements

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The United States and Taiwan have entered into the first of multiple anticipated trade deals under the framework of the U.S.-Taiwan Initiative on 21st Century Trade.¹ Signed on June 1, 2023, the one-year anniversary of the Initiative’s launch, the First Agreement covers: administration and trade facilitation; good regulatory practices; services domestic regulation; anti-corruption; and small and medium-sized enterprises.² According to the Office of the United States Trade Representative (USTR), under the deal, “U.S. businesses will be able to bring more products to Taiwan and Taiwanese customers, while creating more transparent and streamlined regulatory procedures that can facilitate investment and economic opportunities in both markets, particularly for small- and medium-sized enterprises.”³ Several issues are slated for further negotiations, including agriculture, standards, digital trade, labor,

issued final regulations amending 22 C.F.R. part 181 to reflect the enactment of Section 5947. *See* 88 Fed. Reg. 67,643 (Oct. 2, 2023). The regulations include criteria, which reflect the views of the SFRC, for deciding what constitutes a non-binding agreement “that could reasonably be expected to have a significant impact on the foreign policy of the United States.” *See id.* at 67,643, 67,647 (adding 22 C.F.R. § 181.4(b)); SFRC Report, *supra* note 3, at 6–7.

³³ *See* Jacob Katz Cogan, *Contemporary Practice of the United States*, 117 *AJIL* 702, 707 (2023).

¹ *See* Office of the U.S. Trade Representative Press Release, USTR Announcement Regarding U.S.-Taiwan Trade Initiative (May 18, 2023), at <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/may/ustr-announcement-regarding-us-taiwan-trade-initiative> [<https://perma.cc/SM2G-TM83>] [hereinafter First Agreement Announcement]. Negotiations began in August 2022. *See* Office of the U.S. Trade Representative Press Release, United States and Taiwan Commence Formal Negotiations on U.S.-Taiwan Initiative on 21st Century Trade (Aug. 17, 2022), at <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/august/united-states-and-taiwan-commence-formal-negotiations-us-taiwan-initiative-21st-century-trade> [<https://perma.cc/5VUX-D49D>]; U.S.-Taiwan Initiative on 21st-Century Trade: Negotiating Mandate (Aug. 17, 2022), at [https://ustr.gov/sites/default/files/2022-08/US-Taiwan%20Negotiating%20Mandate%20\(Final\).pdf](https://ustr.gov/sites/default/files/2022-08/US-Taiwan%20Negotiating%20Mandate%20(Final).pdf) [<https://perma.cc/E9MN-HT42>] [hereinafter Negotiating Mandate].

² *See* Agreement Between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States Regarding Trade Between the United States of America and Taiwan (June 1, 2023), at <https://ustr.gov/sites/default/files/2023-05/AIT-TECRO%20Trade%20Agreement%20May%202023.pdf> [<https://perma.cc/9BNF-C4UZ>] [hereinafter First Agreement]; *see also* Office of the U.S. Trade Representative Press Release, Statement from USTR Spokesperson Sam Michel on U.S.-Taiwan Initiative on 21st Century Trade Signing Ceremony (June 1, 2023), at <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/june/statement-ustr-spokesperson-sam-michel-us-taiwan-initiative-21st-century-trade-signing-ceremony> [<https://perma.cc/KE2L-TVDA>] [hereinafter USTR Statement].

³ First Agreement Announcement, *supra* note 1.

environment, and state-owned enterprises.⁴ Congress supported the U.S.-Taiwan Initiative and the substantive terms of the First Agreement, but disagreed with the administration's contention that the agreement did not require congressional approval to go into effect. Congress accordingly (without recorded dissent)⁵ enacted the United States-Taiwan Initiative on 21st-Century Trade First Agreement Implementation Act (Implementation Act). The Implementation Act sets conditions on the agreement's entry into force and requirements for the negotiation and entry into force of future Taiwan Initiative agreements.⁶ Though President Biden signed the bill into law, he objected to certain provisions as unconstitutional and declared them non-binding.⁷ The disagreement between Congress and the president regarding the First Agreement is part of a broader debate between the branches concerning whether Congress must approve binding non-tariff trade agreements prior to their entry into force. The Implementation Act appears to resolve the inter-branch dispute for Taiwan Initiative agreements. The issue will recur, however, because non-tariff agreements are central to the administration's trade policy, which focuses on raising standards and developing common rules, and its signature initiatives, such as the Indo-Pacific Economic Framework for Prosperity (IPEF).⁸

The impetus for the U.S.-Taiwan Initiative is the mutual desire to make Taiwan less economically dependent on China. It comes amid more explicit U.S. support for Taiwan generally, rising U.S.-China tensions, and increased Chinese military pressure on the island.⁹ In 2021, China, including Hong Kong, was the top destination for Taiwanese merchandise

⁴ See Negotiating Mandate, *supra* note 1.

⁵ The House approved the bill by a voice vote, and the Senate approved it by unanimous consent. See 169 CONG. REC. H3051–H3054 (June 21, 2023); 169 CONG. REC. S2977–S2978 (July 18, 2023).

⁶ See United States-Taiwan Initiative on 21st-Century Trade First Agreement Implementation Act, Pub. L. 118-13, 137 Stat. 63 (Aug. 7, 2023) [hereinafter Implementation Act].

⁷ See White House Press Release, Statement from President Joe Biden on H.R. 4004, the United States-Taiwan Initiative on 21st-Century Trade First Agreement Implementation Act (Aug. 7, 2023), at <https://www.whitehouse.gov/briefing-room/statements-releases/2023/08/07/statement-from-president-joe-biden-on-h-r-4004-the-united-states-taiwan-initiative-on-21st-century-trade-first-agreement-implementation-act> [<https://perma.cc/254R-3YBX>] [hereinafter Signing Statement].

⁸ On IPEF, see Jacob Katz Cogan, Contemporary Practice of the United States, 116 AJIL 858, 868 (2022). The first IPEF agreement was “substantially concluded” in May. See U.S. Dep’t of Commerce Press Release, Press Statement on the Substantial Conclusion of IPEF Supply Chain Agreement Negotiations (May 27, 2023), at <https://www.commerce.gov/news/press-releases/2023/05/press-statement-substantial-conclusion-ipef-supply-chain-agreement> [<https://perma.cc/9BWE-8YH2>]. The Critical Minerals Agreement with Japan is another recent example of a non-tariff agreement. See Agreement Between the Government of the United States of America and the Government of Japan on Strengthening Critical Minerals Supply Chains (Mar. 28, 2023), at <https://ustr.gov/sites/default/files/2023-03/US%20Japan%20Critical%20Minerals%20Agreement%202023%2003%2028.pdf> [<https://perma.cc/G48K-FEXV>]. Other negotiations are in progress. See Office of the U.S. Trade Representative Press Release, USTR Releases Summaries from U.S.-Kenya Strategic Trade and Investment Partnership Negotiations (May 23, 2023), at <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/may/ustr-releases-summaries-us-kenya-strategic-trade-and-investment-partnership-negotiations> [<https://perma.cc/DZ4A-CS5Q>]; White House Press Release, U.S.-EU Joint Statement of the Trade and Technology Council (May 31, 2023), at <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/31/u-s-eu-joint-statement-of-the-trade-and-technology-council-2> [<https://perma.cc/BR6D-Q99P>].

⁹ See Chris Buckley & Amy Chang Chien, *China's Military*, “Chasing the Dream,” *Probes Taiwan's Defenses*, N.Y. TIMES (Aug. 11, 2023), at <https://www.nytimes.com/2023/08/11/world/asia/china-taiwan-military.html>; Josh Chin, *China and Taiwan Relations Explained: What's Behind the Divide*, WALL ST. J. (Mar. 30, 2023), at <https://www.wsj.com/articles/china-taiwan-relations-tensions-explained-11653322751>.

exports, accounting for 42.3 percent.¹⁰ The United States was second at 14.7 percent.¹¹ China was also the top importer of goods into Taiwan, at 21.6 percent.¹² The United States placed third at 10.4 percent.¹³ Taiwan was the eleventh highest destination for all U.S. exports, the eighth highest source of imports, and the eighth largest trading partner overall.¹⁴ Trade with Taiwan also has a high strategic value, as it is the leading manufacturer of high-end chips, with 92 percent of the global market.¹⁵ The United States and Taiwan signed a Trade and Investment Framework Agreement in 1994, which established a discussion forum, but prior to the First Agreement there was no trade deal between the two countries. China has actively discouraged countries from entering into trade agreements with Taiwan.¹⁶ Taiwan is not a party to the major regional multilateral agreements, such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership and the Regional Comprehensive Economic Partnership, though it has submitted an application to join the former. And Taiwan has very few free trade agreements and economic cooperation agreements.¹⁷ Under pressure from China, Honduras announced in June 2023 that it was terminating its free trade agreement with Taiwan.¹⁸ Reportedly, Taiwan was not included in IPEF due to concerns that China would retaliate against participating countries if it were.¹⁹ The U.S.-Taiwan Initiative was established as a Taiwanese alternative to IPEF, which is also a trade mechanism designed to counter Chinese economic influence in the region.

Like IPEF, instead of focusing on market access commitments (such as tariff reductions), the Initiative's First Agreement seeks to facilitate trade through the improvement of government operations. According to USTR, the agreement "streamline[s] border procedures and reduce[s] red tape, making it easier, faster, and cheaper for American businesses to bring their products to Taiwan and Taiwanese customers."²⁰ It "creates improved transparency tools and mechanisms that will help small and medium-sized enterprises better understand regulatory procedures."²¹ And it "ensures service suppliers are treated fairly when they apply for permission to operate, and that there is a smooth flow of information between the applicant for a

¹⁰ See World Trade Organization, Trade Profiles: Chinese Taipei (2021), at https://www.wto.org/english/res_e/statis_e/daily_update_e/trade_profiles/TW_e.pdf [<https://perma.cc/SZ4J-YKEA>].

¹¹ See *id.*

¹² See *id.*

¹³ See *id.*

¹⁴ See U.S. Census Bureau, Top Trading Partners (Dec. 2021), at <https://www.census.gov/foreign-trade/statistics/highlights/top/top2112yr.html> [<https://perma.cc/A2AT-RK3J>].

¹⁵ See U.S. Dep't of Commerce Press Release, Remarks by U.S. Secretary of Commerce Gina Raimondo: The CHIPS Act and a Long-Term Vision for America's Technological Leadership (Feb. 23, 2023), at <https://www.commerce.gov/news/speeches/2023/02/remarks-us-secretary-commerce-gina-raimondo-chips-act-and-long-term-vision> [<https://perma.cc/498H-C5AV>].

¹⁶ See generally Niha Masih & Grace Moon, *Who Still Recognizes Taiwan? What to Know About Honduras's Shift to Beijing*, WASH. POST (Mar. 29, 2023), at <https://www.washingtonpost.com/world/2023/03/29/honduras-taiwan-china-allies-relations>.

¹⁷ See Int'l Trade Administration, Taiwan – Country Commercial Guide (Sept. 16, 2022), at <https://www.trade.gov/country-commercial-guides/taiwan-trade-agreements> [<https://perma.cc/E3Q9-D3M3>].

¹⁸ *Honduras Gives 6-Month Notice to End Free Trade Agreement with Taiwan*, FOCUS TAIWAN (June 15, 2023), at <https://focustaiwan.tw/business/202306150006> [<https://perma.cc/8CSU-82T5>].

¹⁹ See Cogan, *supra* note 8, at 869 n. 1.

²⁰ USTR Statement, *supra* note 2.

²¹ *Id.*

license and the regulator.”²² Both sides as well “commit[] [in the agreement] . . . to establish comprehensive anticorruption measures that will prevent and combat bribery and other forms of corruption.”²³ And they also promise to “encourage . . . trade and investment opportunities [for small and medium-sized enterprises (SME)] . . . through training programs, trade education, trade finance, trade missions, and improving SME access to capital and credit.”²⁴ The agreement will enter into force one day after each party has notified the other that “the internal procedures required for entry into force of this Agreement have been completed.”²⁵

In the United States, the “internal procedures” for entry into force are contested for non-tariff trade agreements, like the First Agreement and IPEF.²⁶ Members of Congress claim that those agreements require congressional approval prior to their entry into force, just like trade agreements that provide market access, even if the agreements do not require changes to U.S. law.²⁷ In a December 2022 letter to President Biden focusing on IPEF, a bipartisan group of senators argued that “the use of sole executive agreements to reshape trade relations confuses *the implementation of an agreement*—which may not require congressional action because no domestic laws need to be altered—and *the ability to enter into a binding agreement* with other sovereign nations without congressional approval.”²⁸ “Entering into a significant binding trade agreement [like IPEF],” they asserted, “necessarily utilizes powers reserved to Congress under Article I, Section 8 of the Constitution. Therefore, attempts to use sole executive agreements to bind the United States on broad matters of international trade not only interfere with congressional authority under the Constitution, but also limit Congress’s domestic lawmaking ability without consent.”²⁹ Responding to this letter on behalf of the president, U.S. Trade Representative Katherine Tai and Secretary of Commerce Gina M. Raimondo explained that “USTR and Commerce were directed by the President to negotiate [the IPEF agreements] on behalf of the U.S. Government and thus have focused on relevant Executive Branch authorities for these negotiations.”³⁰ They also noted that “Congress has granted the Trade Representative authority in 19 U.S.C. § 2171 to defend and promote U.S. interests through the negotiation of trade agreements. For at least the last 30 years, USTR has negotiated and entered into numerous agreements pursuant solely to this authority.”³¹

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ First Agreement, *supra* note 2, Art. 8.4.

²⁶ Congress has been protesting the executive branch’s approach to these agreements since the Trump administration.

²⁷ See Letter of Rep. Adrian Smith and Nineteen Other Representatives to President Joseph R. Biden, (Mar. 23, 2023), at <https://estes.house.gov/uploadedfiles/estes-smith-lahood-trade-agenda-letter.pdf> [<https://perma.cc/8Z8K-B3WW>] (“Trade agreements approved by Congress are more durable than any trade-related initiatives that are concluded as executive agreements, and given Congress’s exclusive Constitutional authority over foreign commerce, you lack the ability to bind the United States in this area without congressional approval.”).

²⁸ Letter of Sen. Ron Wyden and Twenty Other Senators to President Joseph R. Biden, Jr. (Dec. 1, 2022), at <https://www.finance.senate.gov/imo/media/doc/Letter%20to%20POTUS%20on%20IPEF%20Authority%20FINAL%2012.1.22.pdf> [<https://perma.cc/RC7T-KJ5P>] (emphasis in the original).

²⁹ *Id.*

³⁰ Letter of U.S. Trade Representative Katherine Tai and Secretary of Commerce Gina M. Raimondo to Senator Ron Wyden (May 30, 2023), at <https://perma.cc/E2D3-FPFH>.

³¹ *Id.* The letter is less clear about the Commerce Department’s authorities, stating: “Commerce is working closely with the Department of State in accordance with the Circular 175 process in connection with its

Consequently, pursuant to existing constitutional and statutory authorities, congressional approval of a non-tariff trade agreement (like IPEF and the First Agreement) is unnecessary. Instead of congressional approval, the letter implies that only “engagement” with Congress is required. Accordingly, during the IPEF negotiations, both USTR and Commerce “provid[ed] Members [of Congress] timely, detailed briefings on negotiations; shar[ed] negotiating text proposals with Congress before sharing them outside the U.S. government; and provid[ed] briefings to congressional committees of jurisdiction, personal office staff for Members on relevant committees, and other staff upon request.”³² Senator Ron Wyden, chair of the Senate Finance Committee and the lead author of the senators’ letter, was disappointed with the administration’s response. “We asked the administration to work with Congress to arrive at a common understanding of how agreements like the IPEF will be approved,” he said.³³ “This letter,” he continued, “neither recognizes Congress’s Constitutional authority, nor attempts to achieve a common understanding on how to move an agreement like the IPEF forward.”³⁴ Trade Promotion Authority (TPA) had once reconciled the competing constitutional claims of the two branches, establishing a process whereby the president could conduct trade negotiations with the expectation that a draft agreement would be put to an up-or-down vote in Congress shortly after the text was finalized.³⁵ But the most recent TPA lapsed in 2021.

The Implementation Act serves belatedly as a Taiwan Initiative-specific TPA setting out procedures for the approval of the First Agreement and requirements for any further agreements. The Act “approves” the First Agreement,³⁶ but it conditions that agreement’s entry into force upon the submission of a certification to Congress (1) that the president has determined that Taiwan has taken measures to comply with the agreement and (2) that identifies the date that the agreement will enter into force.³⁷ Submission of the certification is itself conditioned upon consultation with and reports to specified congressional committees explaining how the United States and Taiwan will comply with the agreement and how the agreement will further trade relations and advance the interests of U.S. stakeholders.³⁸ The negotiation of any future Taiwan Initiative agreements are subject to extensive “transparency and notification” requirements.³⁹ These include: access to the negotiating texts of further agreements; briefings regarding those texts; opportunities to review and provide comments on the texts; notification of negotiation dates; accreditation of designated persons as members of the U.S. delegation; and briefings for those individuals.⁴⁰ Any further

negotiation of [IPEF] Pillars II, III, and the remaining portions of Pillar IV, and expects to complete a rigorous analysis at the conclusion of the negotiations.” *Id.*

³² *Id.*

³³ Margaret Spiegelman, *Tai, Raimondo Defend Engagement with Congress on IPEF; Wyden Unmoved*, INSIDE U.S. TRADE (June 1, 2023), at <https://insidetrade.com/daily-news/tai-raimondo-defend-engagement-congress-ipef-wyden-unmoved> (quoting Sen. Wyden).

³⁴ *Id.*

³⁵ See 19 U.S.C. § 4201 et seq.

³⁶ Implementation Act, *supra* note 6, Sec. 5.

³⁷ See *id.*, Sec. 6.

³⁸ See *id.*

³⁹ See *id.*, Sec. 7.

⁴⁰ See *id.*, Sec. 7(b)–(d).

agreement will not take effect until “a bill is enacted into law expressly approving [that agreement] and, if necessary, making any required changes to United States law.”⁴¹

The statute stresses the constitutional role of Congress in the approval of trade agreements. The law’s findings emphasize that “Article I, section 8, clause 3 of the Constitution of the United States grants Congress authority over international trade” and also that “[t]he President lacks the authority to enter into binding trade agreements absent approval from Congress.”⁴² It also claims that “Congressional approval . . . will ensure that the agreement, and the trade relationship between the United States and Taiwan more broadly, will be durable.”⁴³ Upon passage, House Ways and Means Committee Chair Jason Smith argued that “[t]he Constitution gives Congress authority over trade, because we are the branch closest to the people.”⁴⁴ He continued: “Congress has sent a clear message to President Biden that we are serious about safeguarding our Constitutional trade authority and upholding our duty to protect the workers, farmers, families, and small businesses who are impacted most by our trade policies.”⁴⁵ Senator Wyden and Senator Mike Crapo, ranking member of the Senate Finance Committee, said that the Implementation Act “is necessary to ensure that the agreement can enter into force and become a durable, reliable legal framework for both the United States and Taiwan. This legislation will also ensure that this deal and future trade agreements between the United States and Taiwan are subject to strict requirements on consultation with Congress and transparency for the American public.”⁴⁶

The president objected to those provisions of the Implementation Act that “would impermissibly infringe upon [his] constitutional authority to negotiate with a foreign partner.”⁴⁷ He said he would therefore treat as “non-binding” the Act’s requirements that: require USTR to “provide negotiating texts to congressional committees in the midst of negotiations”; “preclude the USTR from transmitting United States-proposed texts to Taiwan while the Congress is reviewing them”; “afford 2 members of the Congress the power to increase the required waiting period before the USTR may provide texts to Taiwan”; and “require the inclusion of members of the Congress as accredited members of the United States delegation who would be entitled to daily briefings, including of tentative agreements.”⁴⁸ These provisions are more restrictive than those in the TPA. Softening the president’s message, a U.S. Trade Representative official said that “USTR remains committed to maintaining close consultations and cooperating with Congress across its negotiations and

⁴¹ See *id.*, Sec. 7(e).

⁴² *Id.*, Sec. 2(7).

⁴³ *Id.*, Sec. 2(8).

⁴⁴ U.S. House of Representatives Ways and Means Committee Press Release, Bipartisan Taiwan Bill Reasserting Congress’ Constitutional Authority Over Trade Heads to President’s Desk (July 19, 2023), at <https://waysandmeans.house.gov/bipartisan-taiwan-bill-reasserting-congress-constitutional-authority-over-trade-heads-to-presidents-desk> [<https://perma.cc/6TPV-SURD>].

⁴⁵ *Id.*

⁴⁶ U.S. Senate Committee on Finance Press Release, Senate Finance Committee Leaders Praise Passage of Bill to Approve Taiwan Trade Agreement (July 18, 2023), at <https://www.finance.senate.gov/ranking-members-news/senate-finance-committee-leaders-praise-passage-of-bill-to-approve-taiwan-trade-agreement> [<https://perma.cc/5X9W-J22Z>].

⁴⁷ Signing Statement, *supra* note 7.

⁴⁸ *Id.*

anticipates being able to follow the provisions set out in the Bill.⁴⁹ After the president signed the bill, Senator Wyden commented: “Despite the White House statement, I look forward to working with Ambassador Tai to ensure any agreements negotiated by this administration provide high standard trading rules that bulldozer barriers and create a level playing field for U.S. exporters.”⁵⁰ Senator Crapo said that “Congress will ensure the Administration fully complies with the Act.”⁵¹ A second round of Taiwan Initiative negotiations, focusing on agriculture, labor, and the environment, began a week after President Biden signed the Implementation Act into law.⁵²

President Biden Issues Executive Order Restricting Outbound Investment in National Security Technologies and Products

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President Joseph R. Biden, Jr. has issued an executive order that will restrict outbound investment in national security technologies and products. The order directs the Treasury Department to prohibit U.S. persons from “engaging in . . . transactions involving” foreign persons from “countries of concern” that relate to “sensitive technologies and products in the semiconductors and microelectronics, quantum information technologies, and artificial intelligence sectors that are critical for the military, intelligence, surveillance, or cyber-enabled capabilities of a country of concern.”¹ While the order is written generically, its annex names only one “country of concern”:² the People’s Republic of China.³ The order’s prohibition on outbound transactions involving sensitive technologies and products, and its notification requirement for other such transactions, supplement three initiatives previously taken by the United States to counter China’s acquisition of U.S. high-tech: the tightening of the Committee on Foreign Investment in the United States’s (CFIUS) review of inbound foreign investment; the placement of restrictions on the export of semiconductors and semiconductor manufacturing equipment; and the increased focus of U.S. law enforcement and counterintelligence authorities on Chinese economic espionage.⁴ Together, these four mechanisms

⁴⁹ Margaret Spiegelman, *Taiwan Bill Marks New Test in Long Tussle Over Trade Authority*, INSIDE U.S. TRADE (Aug. 14, 2023), at <https://insidetrade.com/daily-news/taiwan-bill-marks-new-test-long-tussle-over-trade-authority>.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² See Office of the U.S. Trade Representative Press Release, United States and Taiwan Hold Second Negotiating Round for the U.S.-Taiwan Initiative on 21st Century Trade (Aug. 18, 2023), at <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/august/united-states-and-taiwan-hold-second-negotiating-round-us-taiwan-initiative-21st-century-trade-1> [<https://perma.cc/5Y7U-84AH>].

¹ Exec. Order 14,105, Secs. 1(a), 9(c), 88 Fed. Reg. 54,867 (Aug. 9, 2023) [hereinafter Executive Order].

² The order defines a “country of concern” as “a country or territory listed in the Annex to this order that the President has identified to be engaging in a comprehensive, long-term strategy that directs, facilitates, or otherwise supports advancements in sensitive technologies and products that are critical to such country’s military, intelligence, surveillance, or cyber-enabled capabilities to counter United States capabilities in a way that threatens the national security of the United States.” *Id.*, Sec. 9(a).

³ See *id.*, Annex. The Special Administrative Region of Hong Kong and the Special Administrative Region of Macau are specifically included.

⁴ See Jacob Katz Cogan, *Contemporary Practice of the United States*, 117 AJIL 128, 144 (2023) (reviewing new export controls on high-end semiconductors and semiconductor manufacturing equipment); Jacob Katz Cogan,