

Trade 101 – Trade Fundamentals



Trade 102 – Update on Recent Federal Trade Activity

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Presentation to the Citizen Trade Policy Commission

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TRADE POLICY 101 + 102

- “Trade policy” versus “trade”
- Who makes trade policy?
 - Role of President, Congress, states, private sector
 - Advisory committees
- US state policies in conflict with WTO rules
- More about WTO and bilateral trade rules
- A word about reforms in the new NAFTA
- Current US trade policy
- Glossary - some terms that get thrown around and an alphabet soup of trade agreements

Trade: A partnership with Arctic Countries



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MENADO

The Maine North Atlantic Development Office (MENADO) was formed in 2013 as an initiative of the Maine International Trade Center to increase trade, investment, and collaborative activity between the State of Maine and markets of the North Atlantic and to develop Maine's engagement in Arctic affairs.



Arctic change will have a direct impact on Maine's economy, coastline, and natural resources. MENADO develops strategic relationships throughout the region to ensure Maine's place in the global conversation about the Arctic and empowers businesses in the state to leverage sustainable development opportunities. MENADO facilitates Arctic geopolitical and economic conversations as they relate to Maine interests and provides leadership and consultation with other states and communities wishing to enter the dialogue.



MENADO Director



Dana Eidsness
Director, Maine North Atlantic Development Office



Trade policy not “trade”

- Countries including the US engage in trade by selling goods and services across borders, without a “free trade agreement” (FTA) in effect between those countries
- Countries that joined the World Trade Organization (WTO) agree to be bound by the rules it establishes; the US is a member
- FTAs and WTO rules can significantly restrict domestic policy choices of federal, state and local governments under trade liberalization rules designed to remove real or perceived barriers to trade and to prevent favoring domestic industries over foreign products or services
- One can support more trade without necessarily supporting additional or more comprehensive trade agreements

Who Decides Trade Policy? Congress + President

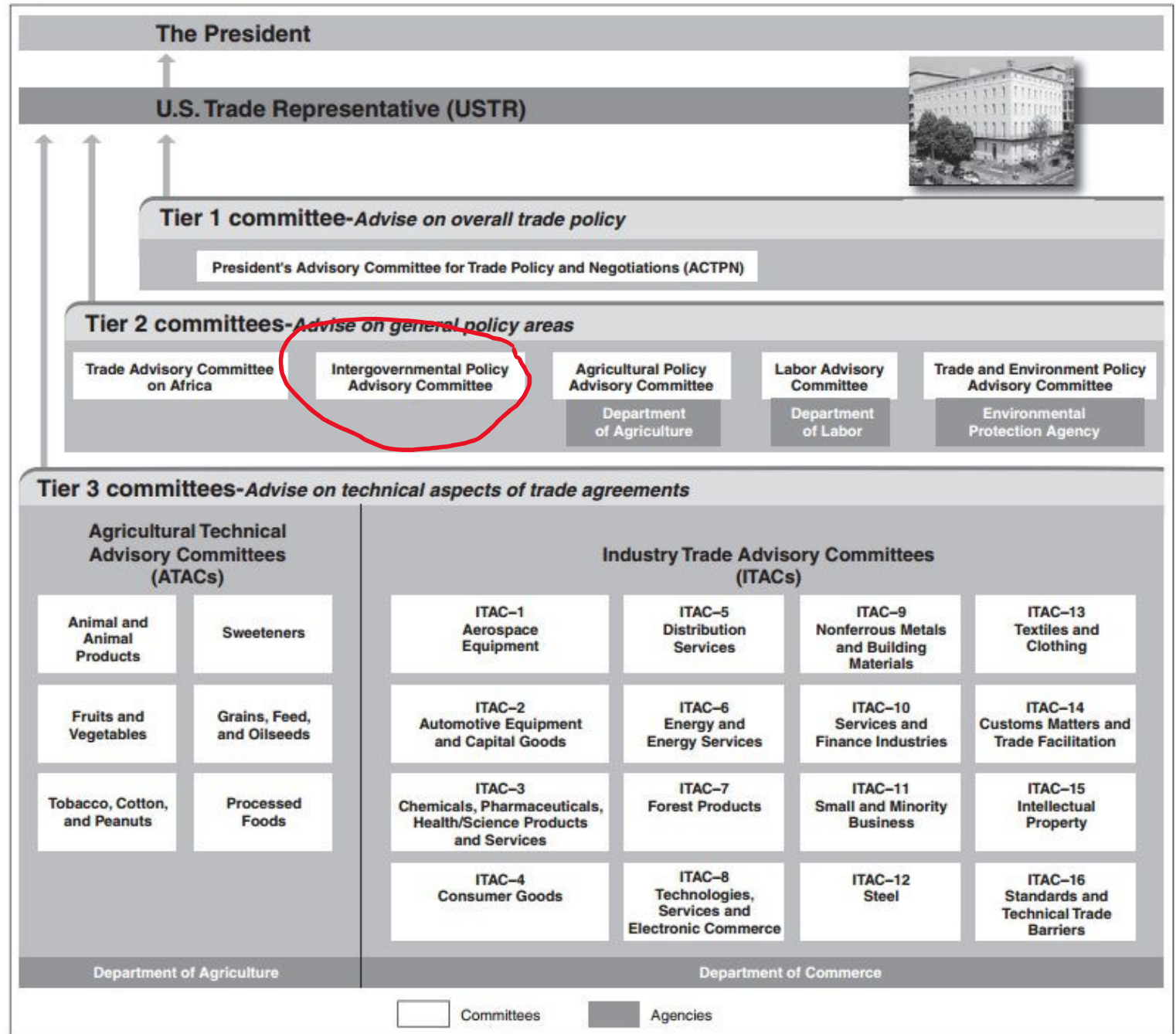
- **The President has authority to negotiate international agreements, including trade agreements, but the Constitution gives Congress sole authority over regulation of foreign commerce.**
- Until 1934, directly set tariffs. Since then, through several acts Congress has delegated authority to the President to enter into trade agreements, implemented through the Office of the US Trade Representative (USTR), located in the Executive Office of the President.
- **Congress has retained the authority to approve these agreements (or not).**
- **Since 1974, Congress has agreed to an expedited process known as “fast track” Trade Promotion Authority (TPA). Under TPA, Congress has only an up-or-down, majority vote – NO AMENDMENTS.** These rules also establish a timetable for voting on implementing legislation, limit debate, and require USTR to brief certain Congressional committees during negotiation of an agreement.
- Fast track has been renewed 4 times and was reauthorized in 2015 under the Obama administration. It was in effect through July 1, 2021. **The current Congress has not renewed fast track and to date, the Biden administration has not requested renewal.**
- Despite the up-or-down vote provisions of fast track which were in effect at the time, after the new NAFTA (USMCA or US-Mexico-Canada Agreement) was fully negotiated and signed by the three countries’ presidents, members of the House of Representatives negotiated with then-US Trade Representative Lighthizer to make some significant changes. **Legislators had leverage because they could have blocked the entire agreement without the changes.**
- In another example of Congressional activism despite fast track, in 2007 environmental, labor and access to medicine protections were added to FTAs already negotiated and signed by the Executive branch with Panama, Peru and Korea. This is known as the “May 10 agreement.”

States' Role in Trade Policy

States have a limited role advising on trade policy, yet international treaties affect jobs & policies in the states

- Formal state role: Intergovernmental Policy Advisory Council (IGPAC) & State Points of Contact (SPOC)
- Lack of transparency – secret texts, can't consult experts
- Lack of state expertise; negotiating process hard to navigate & expensive to participate in

Figure 1: Trade Advisory Committee Structure



Sources: GAO and USTR.

Some trade policy basics

- Tariffs
- Principle of national treatment; nondiscrimination
- Principle of most favored nation
- Technical barriers to trade (agreement part of the WTO and common chapter in most FTAs)
- Sanitary and phytosanitary rules (agreement part of the WTO and common chapter in most FTAs)

What is a tariff and what is its purpose?



A tariff is a tax on imported goods. It is paid by the importing company (unless an alternative agreement reached). Tariffs are adopted for a variety of reasons including:

- Protecting domestic employment from unfair competition
- Helping infant industries succeed
- National Security
- Retaliation (example: when US imposed tariffs on steel & aluminum imports, China imposed other tariffs on US (Maine) lobster)

What is most-favored-nation (MFN) treatment?

Most-favored-nation treatment (MFN) is the fundamental principle of nondiscrimination in the multilateral trading system. MFN requires World Trade Organization (WTO) members to grant each other member country treatment at least as favorable as it grants to its most-favored trade partner—in other words, every member must treat all members equally.

For example, if a country grants a trade benefit or concession to one country, such as lower tariffs, it would have to extend the same benefit to all other members.

There are a number of permitted exceptions to MFN treatment, however. For example, countries can establish trade agreements with one another outside of the WTO, granting additional preferences to those in the agreement, provided certain conditions are met.

What is national treatment?

- National treatment is another fundamental principle of nondiscrimination in the multilateral trading system. **It obligates each trading partner not to discriminate between domestic and foreign products.** In other words, once an imported product enters a country, it must be treated no less favorably than a “like” product produced domestically. The same concept is also applied to foreign and domestic services and intellectual property rights.
- In 2019 the WTO found renewable energy laws in seven US states discriminatory and in violation of this rule because they provided preferential treatment to locally manufactured products or local labor.

Important decision from WTO finds US state renewable energy policies violate trade laws

No.	Full name	Short name
1	Washington Renewable Energy Cost Incentive Program (RECIP): Additional incentive for use of components manufactured in Washington State	Washington State additional incentive
2	California Self-Generation Incentive Program (SGIP): Additional benefits for use of equipment manufactured in California	California Manufacturer Adder
4	Montana tax incentive for ethanol production	Montana tax incentive
5	Montana tax credit for biodiesel blending and storage	Montana tax credit
6	Montana tax refund for biodiesel	Montana tax refund
7	Connecticut Residential Solar Investment Program (CRSIP): Additional incentives for use of components manufactured in Connecticut	Connecticut additional incentive
8	Renewable Energy Standards Program in the State of Michigan (RESP): Additional benefits for use of equipment manufactured in Michigan or using workforce from residents in Michigan	Michigan Equipment Multiplier / Michigan Labour Multiplier
9	Delaware Renewable Energy Portfolio Standards Act (REPSA): Additional benefits for use of equipment manufactured in Delaware or using workforce from residents in Delaware	Delaware Equipment Bonus / Delaware Workforce Bonus
10	Minnesota solar energy production incentive	SEPI
	Minnesota solar thermal rebate	Minnesota solar thermal rebate
	Minnesota solar photovoltaic rebate	Minnesota solar PV rebate

The WTO also Ruled Against COOL

- Country of Origin Labeling (COOL) is a US consumer labeling law for a broad array of horticultural, nut, fish, shellfish and meat products, first mandated in the 2002 U.S. Farm Bill.
- The mandatory application of COOL to meat products was challenged by Mexico and Canada in the World Trade Organization as a discriminatory policy. In December 2015, the WTO agreed and gave Canada and Mexico the right to impose over a billion dollars' worth of sanctions per year on the US unless Congress repealed COOL for meat (beef, pork and poultry)-- which it promptly did.
- COOL informed consumers where animals were born, raised and slaughtered before sale as a meat product. Repeal has undermined consumers' right to know as well as the thousands of cattle producers in this country who count on COOL's enforcement to differentiate their grass-fed, high quality beef from cheaper product imported in whole or part from other countries.
- Renegotiating NAFTA was the best opportunity to restore COOL, but the US failed to raise the subject, an issue with some members of Congress.

Will the WTO be Cool with Maine COOL?

APPROVED	CHAPTER
JUNE 21, 2019	455
BY GOVERNOR	PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND NINETEEN

H.P. 277 - L.D. 351

An Act To Ensure Accuracy in the Labeling of Maine Meat and Poultry

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §2157, sub-§15 is enacted to read:

15. Mislabeling poultry and meat. If it is poultry, a poultry product, meat or a meat product offered for sale, sold or distributed within the State and labeled or advertised as "Maine-raised" or by a similar designation unless the poultry or animal was raised in Maine. A determination that poultry, a poultry product, meat or a meat product is misbranded may be waived by the commissioner upon application if the commissioner finds a waiver warranted due to economic factors, including, but not limited to, the proximity of processing facilities to the in-state poultry producer or meat producer and the availability of poultry processing facilities or meat processing facilities in the State. For purposes of this subsection, "raised in Maine" means:

A. For poultry and poultry products, that the poultry was raised solely in the State from no later than the 7th day after hatching and processed solely in the State; and

B. For meat and meat products, that the animal was born, raised and processed solely in the State.

As used in this subsection, "poultry," "poultry product," "meat" and "meat product" have the same meanings as in section 2511.

What is SPS? Sanitary and phytosanitary rules



AGRICULTURE LATEST NEWS MERCOSUR WTO DISPUTE SETTLEMENT

Brazil sues EU over salmonella regulations at the WTO

11/11/2021 / by Iana Dreyer / 0 comments

Almost ten years after rules on salmonella in poultry meat were amended in the European Union, Brazil is filing for consultations at the dispute settlement body of the World Trade Organization in Geneva over what it sees as discriminatory treatment of its processed poultry meat.

“The dispute concerns what Brazil sees as a discrepancy in the amount of residual traces of salmonella bacteria allowed in the EU market.

Brazil contends that rules amended in 2011 allowed residual salmonella bacteria in EU *fresh* poultry meat. But it continued to enforce a full ban of any traces of salmonella for *processed* poultry meat, which is intended to be eaten cooked – i.e. is considered less risky in terms of food safety.

The EU presently applies to fresh poultry meat a salmonella food safety criterion that is different from and less stringent than that applied to poultry meat preparations, without adequate technical or scientific evidence,’ Brazil states in its formal request for consultations at the WTO. This has “adversely affected Brazilian exports of poultry meat preparation to the EU, in particular exports of salted poultry meat and turkey meat with pepper.

What is ISDS?

- **Investor-state dispute settlement (ISDS)** is a parallel justice system for corporations. Companies can sue countries when they think that government decisions or court rulings – even those whose explicit aim is to protect people or the environment – affect their profits.
- These lawsuits bypass domestic courts and take place before an international tribunal of arbitrators: essentially three investment lawyers.
- ISDS is hugely controversial, because it gives foreign corporations greater rights than domestic corporations; has built-in conflicts of interest; is very expensive (just to litigate a case averages \$10 million, not counting costs of paying damages if on the losing end); has been used to essentially blackmail governments not to adopt policies such as tobacco restrictions or environmental protections under threat of litigation; and has led to many decisions that are viewed as arbitrary and against the public interest.
- **The Maine Citizen Trade Policy Commission has repeatedly taken positions against ISDS.** In the recent NAFTA renegotiation which resulted in the USMCA, ISDS was phased out as between the US and Canada and scaled back for disputes involving corporations in Mexico.

Can ISDS be used to challenge state policies?

Yes. If a corporation challenges a state or local law, in the US the federal government is responsible for defending the laws. Some ISDS challenges to state or local policies:

- When a Mexican municipality required Metalclad Corporation, a US waste management corporation, to clean up existing problems before expanding a toxic waste facility, Metalclad launched a NAFTA case that resulted in an ISDS tribunal ordering Mexico to pay the corporation \$16 million.
- When a Mississippi state court jury ruled in a private contract dispute against the Loewen Group, a Canadian funeral home conglomerate, Loewen launched an ISDS claim seeking \$725 million, claiming that the requirement to post bond and the jury trial system violated the company's investor rights under NAFTA. Although Loewen lost the case on a technicality, the tribunal ruled that court decisions, rules and procedures are government "measures" subject to ISDS challenge.
- The Canadian fish farm corporation, Cooke Aquaculture (which also has operations in Maine), threatened to use NAFTA's ISDS in order to deter Washington State lawmakers from approving a ban on the farming of Atlantic salmon in the state. The company stated it would seek \$76 million in damages if the ban passed. The law was enacted anyway. Cooke still has 3 years to file a claim even under the USMCA's phase-out of ISDS between the US & Canada.

Trade Policy 102 – What’s Happening Now

- New NAFTA/USMCA status and contents
- EU-US Trade and Technology Council
- Possible digital-only trade agreements modeled on USMCA (as in US-Japan)
- Resolution of longstanding Boeing-Airbus dispute
- Modification of steel & aluminum tariffs (EU lifts retaliatory tariffs on whiskey etc as part of deal) with link to decarbonization (details unclear)
- Other possible trade deals (negotiations started in Trump administration for US-UK and US-Kenya have been paused)

Changes in USMCA compared to NAFTA

- **TARIFFS:** Already reduced to zero for most goods in original. Focus on increasing dairy access with Canada, limiting supply management.
- **RULES OF ORIGIN:** Focus on auto parts and increasing domestic content and wages in Mexico.
- **LABOR:** Stronger rules. ★
- **ENVIRONMENT:** Originally significantly weaker than the TPP and other recent trade agreements; enforcement also lacking. Some improvements. ★
- **ACCESS TO MEDICINES:** Intellectual property and “transparency” provisions delay access to generics and keep drug prices high. Some provisions removed. ★
- **INVESTOR-STATE:** Reforms phase out ISDS between US and Canada except for “legacy claims”, but continue for energy, infrastructure contracts with Mexico.
- **LABELING:** Country of origin (COOL) not restored; food, cosmetic, workplace chemical labeling restricted in Technical Barriers to Trade chapter.
- **FOOD SAFETY & BIOTECH:** Safety checks “streamlined” and weakened; gene-editing can’t be regulated; more GMO contamination allowed.
- **DIGITAL:** New rules would make it harder to protect digital privacy.
- **REGULATORY COOPERATION:** “Harmonization” and “regulatory coherence” measures increase corporate and other countries’ influence, delay protections, and encourage repeal of existing regulations



Not in original USMCA as signed by Mexico, US and Canada. Congress negotiated changes that improved it (see “protocol of amendment”).

UE-US Trade & Technology Council

US-EU Trade and Technology Council			
TTC Working Group	Topics	US Departments	EU Directorates General
Technology Standards Cooperation	Artificial Intelligence, Internet of Things	Commerce	CONNECT
	Biotechnology, Pharmaceutical products, medical devices		GROW
	Additive manufacturing, robotics, blockchain, other emerging technologies		
Climate and Clean Technologies	Climate, energy, and environmental initiatives that involve trade and technology	State	CONNECT
		USTR	CLIMA
		Energy	GROW
Secure Supply Chains	Semiconductors	Commerce	TRADE
	Batteries, critical minerals, active pharmaceutical ingredients	State	GROW
			CONNECT
ICTS Security and Competitiveness	Data security standards	State	CONNECT
	Secure, resilient, and diverse telecommunications and ICT infrastructure supply chains, 5G/6G	Commerce	
Data Governance and Technology Platforms	Establish responsibility of technology platforms, content regulation, targeted advertising and use of big data	White House	CONNECT JUST

Misuse of Technology Threatening Security & Human Rights	Counter cyber threats and technology used to violate human rights Address those conducting information / disinformation operations	State	CONNECT
			EEAS
			JUST
Export Controls Cooperation	Align export controls, improve information sharing and assess risks for sensitive and emerging technologies, including surveillance technologies impacting human rights	Commerce	TRADE
		State	
Investment Screening Cooperation	Improve information-sharing for screening of inbound foreign investment	Treasury	TRADE
		State	
Promoting SME Access to and Use of Digital Technologies	Empower SMEs to reach more clients, ensure digital technologies benefit underserved communities	Commerce	GROW
			CONNECT
Global Trade Challenges	Trade policy toward non-market economies Avoid new technical barriers to trade with each other Trade and labor, including forced labor Other	USTR	TRADE
<p>ICTS = Information Communication Technology Services; SME = small and medium-sized enterprise; USTR = US Trade Representative; CONNECT = Directorate-General for Communications Networks, Content & Technology; CLIMA = Directorate-General for Climate Action; GROW = Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs; TRADE = Directorate-General for Trade; EEAS = European External Action Service; JUST = Directorate-General for Justice and Consumers.</p>			

Glossary - Some terms that get thrown around

- FTA – Free Trade Agreement
- USTR – United States Trade Representative
- IGPAC – Intergovernmental Policy Committee (USTR advisory committee)
- WTO – World Trade Organization
- MFN - Most Favored Nation
- National Treatment
- ISDS – Investor-State Dispute Settlement
- FET - Fair and Equitable Treatment
- MSN – Minimum Standard of Treatment
- NTF - Non-tariff Barrier
- ROO - Rules of Origin
- COOL – Country of Origin Labeling
- SPS – Sanitary and Phytosanitary (food safety)
- TBT – Technical Barriers to Trade (labeling and other standards)

An alphabet soup of trade agreements

- **NAFTA** (North America Free Trade Agreement, with Canada & Mexico)
- **CAFTA** (Central America Free Trade Agreement)
- **GATT** (General Agreement on on Tariffs and Trade administered by the **WTO** --World Trade Organization -- involves 157 countries)
- **GATS** (General Agreement Trade in Services administered by the WTO)
- **BITs** – Bilateral investment trade agreements between two countries (**KORUS**, **AUSFTA** etc)
- **TPP** (TransPacific Partnership) – US negotiated for years but failed to sign
- **CPTTP** (Comprehensive and Progressive TransPacific Partnership – TPP as agreed to by 11 Pacific rim countries, which suspended provisions demanded by US including biologics and drug pricing restrictions)
- **TTIP** –Transatlantic Partnership, FTA with EU that is in “deep freezer”
- **USMCA** - (US-Mexico-Canada Agreement) - US name for NAFTA 2.0/New NAFTA known as Canada–United States–Mexico Agreement (CUSMA) in Canada (Accord Canada–États-Unis–Mexique (ACEUM) in French), and Tratado entre México, Estados Unidos y Canadá (T-MEC) in Mexico
- **TTC** – Trade & Technology Council (between EU and US – initiated 2021)

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