



Nordic Newsletter

July 2026

COVINGTON

BEIJING BOSTON BRUSSELS DUBAI FRANKFURT
JOHANNESBURG LONDON LOS ANGELES NEW YORK
PALO ALTO SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

Editors' Note

Hi friends!




We are excited to share the latest edition of our Nordic Newsletter, designed to keep you up to date on key legal developments and emerging trends affecting Nordic businesses operating in dynamic and increasingly challenging markets.

This issue features a range of timely topics, including:

- updates on Section 232 measures under the Trump administration,
- developments relating to the EU's new Foreign Investment Screening Regulation and the Foreign Subsidies Regulation Guidelines, and
- an analysis of a recent U.S. case exploring the evolving interplay between artificial intelligence and legal privilege.

In addition, we invite you to get to know Jared Manes, Co-Head of our Nordic Initiative. Jared brings extensive experience advising Nordic clients on their most complex cross-border transactions, while also serving as a trusted day-to-day U.S. advisor. (And, in the unlikely event he hasn't already stopped by your office during one of his regular Nordic visits, now is a great opportunity to connect.)

Barbara, Uri and Jared

	<p>Uri Doron M&A, Private Equity Partner, New York +1 212 841 1042 UDoron@cov.com</p>		<p>Jared Manes M&A, Private Equity Partner, New York +1 212 841 1054 JManes@cov.com</p>
	<p>Barbara Asiain M&A, Private Equity Associate, New York +1 212 841 1053 BAsiain@cov.com</p>		



Contents

UK Government launches the Fair Work Agency: What do employment and business and human rights specialists need to know?



New Foreign Investment Screening Regulation – Key Takeaways from the Agreed Compromise Text



The European Commission adopts the Foreign Subsidies Regulation Guidelines



European Commission Publishes the Proposed Industrial Accelerator Act



AI and Legal Privilege: Key Takeaways from US v. Heppner



Current and Forthcoming Section 232 Actions by the Trump Administration



FTC Sweep on “Made in the USA” Claims



Meet the Nordic Initiative: Jared Manes

Who is Jared Manes?

Father, husband, trusted (I think) advisor, NY transplant, former Copenhagen resident, Nordic restaurant recommender and taco snob.

Tell us about your legal practice...

I advise Nordic-based companies, private equity funds and pension funds on their day-to-day and transformative matters in the United States and around the world.

What inspired you to become a lawyer?

When I was 21 years old, I didn't know what I wanted to do when I grew up, so I followed in my father's footsteps and went to law school. I still don't feel like a grown-up...

Your go-to Nordic restaurant / dish

Without a doubt, the smørrebrød at Sankt Peder in Hellerup/Copenhagen, the salmon soup at SOUP + MORE in the Vanha Kauppahalli in Helsinki and (may it rest in peace) Esperanto Restaurant in Stockholm.

Ideal Nordic holiday

Any visit to the region during the summer...

Licorice or kanelbulle?

Both are great (although, the salty licorice was an acquired taste)... but, really, the rhubarb pastries from Lagkagehuset or the Nutella croissant from BUKA.



Past Events

COUNSEL SUMMIT

Nordic-American Counsel Summit

We had the pleasure of inaugurating Covington’s Nordic-American Counsel Summit, held in early May at our Washington, D.C. offices. The event brought together an exclusive group of U.S.-based lawyers from leading Nordic-headquartered companies for a program that combined substantive training sessions with networking and social events.

Discussions featured high-profile leaders from both the United States and the Nordics, including [Eric Holder](#) (former U.S. Attorney General), the Danish Ambassador to the U.S., the Deputy Chief of Mission of the Swedish Embassy to the U.S., and [Torja Nuland](#) (former U.S. Ambassador to NATO).

If you are interested in joining a future summit or becoming part of this community, please feel free to reach out to any member of our Nordic Initiative—we would be delighted to connect you.



UK Government launches the Fair Work Agency: What do employment and business and human rights specialists need to know?

On April 7, 2026, the Fair Work Agency (“**FWA**”) was established as a new single enforcement body for employment rights in the UK, operating under the framework set out in Part 5 of the Employment Rights Act 2025 (“**ERA**”). In this alert, we provide an overview of the FWA and its civil and criminal investigation and enforcement powers and some practical considerations for employers.

What is the FWA?

As an executive agency of the Department for Business and Trade (DBT), the FWA consolidates a range of labour market enforcement functions previously exercised by separate bodies, including:

- Enforcement of employment agency standards, formerly carried out by the Employment Agency Standards Inspectorate (EASI);
- Gangmaster licensing requirements and protections against serious labour exploitation, formerly overseen by the Gangmasters and Labour Abuse Authority (GLAA); and
- Enforcement of pay-related rights, including the national minimum wage (“**NMW**”) and national living wage, which will transfer to the FWA from His Majesty’s Revenue and Customs (HMRC) in April 2027.



Enforcement powers

For employers, the establishment of the FWA reflects a shift from a predominantly complaint-driven enforcement model towards more proactive regulatory oversight of labour standards in relation to the legislation in scope of the FWA's remit (i.e. "relevant labour market legislation" listed in Part 1 of Schedule 7 of the ERA).

The FWA has broad supervisory and investigatory powers, including the ability to proactively initiate investigations into suspected breaches of relevant labour market legislation. In particular:

- **Search powers:** FWA enforcement officers may enter premises (subject to obtaining the necessary warrants) and compel the production of specified information and documents.
- **Notices of Underpayment:** The FWA may issue notices of underpayment where an employer has failed to pay sums due under specified statutory pay provisions (including, in due course, NMW, statutory sick pay, and holiday pay), requiring payment of the outstanding amount within 28 days. A notice can capture: (i) "underpayments" (sums owed to each underpaid individual), going back up to six years from the date the notice is issued; and (ii) penalties of 200% of the amount specified in the notice (subject to a minimum of £100 and a maximum of £20,000 per individual). A single notice may cover multiple workers. As such, where underpayments affect multiple workers across a workforce, employers could be faced with significant financial exposure from combined arrears and penalties.
- **Criminal enforcement:** Where there is evidence of a criminal labour market offence (i.e. an offence under the relevant in-scope labour market legislation), the FWA may use "labour market enforcement undertakings" ("**LME Undertakings**") and "labour market enforcement orders" ("**LME Orders**"). An LME Undertaking is a voluntary agreement between the FWA and a person or business that the FWA believes to have committed a criminal labour market offence, setting out the steps that must be taken to prevent further offending and protect workers. Where appropriate, an LME Undertaking may remain in force for up to two years. Where a person or business does not agree to enter into an undertaking within the statutory period, or where the undertaking is breached, the FWA may apply to court for an LME Order. An LME Order may remain in force for up to two years and may be varied or discharged by the court on application.
- **Costs:** Secondary regulations may require a person who has failed to comply with any relevant labour market legislation to pay a charge relating to the enforcement costs incurred by the FWA. The amount may be a fixed sum or calculated by reference to an hourly rate. These cost provisions must be introduced by secondary legislation, and it is not clear when these will be introduced or how robustly costs will be enforced, but this provision at least theoretically represents a potential to shift the cost of enforcement directly onto non-compliant employers.





Employment rights

The FWA will have oversight over a wide range of employment rights, including monitoring compliance with holiday pay and statutory sick pay rules. For example, the FWA will ensure that all employers keep records to demonstrate compliance with holiday entitlement and holiday pay for six years from the date the records were made (failure to do this is a new criminal offence under the ERA, punishable by a fine).

Significantly, the FWA will have the ability to bring civil proceedings on behalf of workers in the Employment Tribunal. In reality, it is expected that this power will only be used where a large number of people have been impacted or there is a strategic aspect to such litigation. The FWA will also be able to provide legal assistance, including legal advice and representation, to employees (and potentially employers and trade unions) wishing to bring employment claims and to recover the costs of doing so. This assistance will not extend to offering facilities to settle a dispute (e.g., mediation). It remains to be seen how the role of the FWA here will interact with the current roles of ACAS.

Modern slavery offences

The FWA is also now responsible for enforcing provisions of the Modern Slavery Act 2015 (“**MSA**”) relating to offences of slavery, servitude and forced or compulsory labour, as

well as associated prevention and risk orders. The FWA can investigate modern slavery across all industry sectors in England and Wales. In exercising these functions, the FWA will operate within a multi-agency framework, working alongside the police, the National Crime Agency and other law enforcement bodies, and has defined statutory investigatory and enforcement powers for criminal investigations into relevant MSA offences within its remit. Note that there is the potential for further regulation in relation to modern slavery/forced labour (about which see our recent post [here](#)). Though it is not yet clear where that regulatory landscape is headed, if there is further regulation, it is possible the FWA could also be a key regulator in that context.

Effectiveness in practice

While the agency consolidates a broad enforcement remit, the extent to which the FWA drives a sustained change in labour market enforcement will depend on its operational capacity and resourcing over time. It is not yet clear how the FWA will be funded or how it will navigate the 2026–2027 “transitional year”, which the Government frames in its policy paper as a period of “enhanced business as usual”. During this period, the FWA is expected to maintain at least the level of operational performance delivered by its predecessor bodies and to meet the same performance metrics previously applied across EASI, GLAA and HMRC’s National Minimum Wage functions.

Practical implications for companies

As the FWA becomes fully operational, organisations can begin to prepare for potential interactions with the agency by:

- Reviewing labour standards practices (e.g. compliance with existing employment rights, such as national minimum wage, holiday pay and agency worker rights) to inform assessment of potential risks.
- Ensuring that all statutory pay provisions are correctly calculated and applied, given that the FWA's notice of underpayment regime can capture underpayments going back up to six years from the date a notice is issued.
- Maintaining accurate and comprehensive labour-related records.
- Developing a response plan to handle interactions with the FWA, including inspections and information requests.
- Monitoring forthcoming guidance from the FWA, including on the exercise of its new power to bring Employment Tribunal proceedings on behalf of workers.

You can read more about further changes under the Employment Rights Act [here](#) and our UK Business and Human Rights landscape: 2026 Outlook [here](#).



Chris Bracebridge
Regulatory and Public Policy
Partner, London
+44 20 7067 2063
CBracebridge@cov.com



Antonio Michaelides
Regulatory and Public Policy
Partner, London
+44 20 7067 2027
AMichaelides@cov.com



Hannah Edmonds-Camara
Regulatory and Public Policy
Special Counsel, London
+44 20 7067 2181
Hedmonds-Camara@cov.com



Salena Mann
Employment
Associate, London
+44 20 7067 2156
SMann@cov.com



Emma Sawatzky
Human Rights and Sustainability
Associate, London
+44 20 7067 2196
ESawatzky@cov.com



Richard Rowlands
Employment
Associate, London
+44 20 7067 2210
RRowlands@cov.com



Pimara Soongswang
Regulatory and Public Policy
Associate, London
+44 20 7067 2151
PSoongswang@cov.com

New Foreign Investment Screening Regulation – Key Takeaways from the Agreed Compromise Text

On 10 February 2026, the EU released the [agreed compromise text](#) of the new Regulation on the screening of foreign investments in the EU (the “**New FIR Regulation**”). The three EU institutions (Commission, Parliament and Council) reached the compromise on the text in December 2025 (see our [blog](#)) following several months of trilogues (see our [blog](#)). The New FIR Regulation will repeal and replace the current [FDI Screening Regulation \(EU\) 2019/452](#) (the “**2019 FDI Regulation**”). The New FIR Regulation further integrates the EU’s investment screening framework into the EU’s economic security strategy.

Against the backdrop of rising geopolitical friction, the New FIR Regulation aims to address the risk that investors structure transactions to get access to the EU market by anchoring their investments in Member States with lighter FIR controls. To do so, the New FIR Regulation establishes a unified minimum screening framework across the Member States (e.g., through mandatory national screening mechanisms, harmonised review timelines, and strengthened cooperation obligations), whilst preserving Member States’ ultimate sovereignty on matters of national security. This will be a major evolution from the 2019 FDI Regulation, which was limited to establishing an information-sharing mechanism while leaving Member States wide discretion as to whether and how to screen foreign investments.

This post discusses the five major areas of change for prospective investors, before offering a few forward-looking considerations.



I Five major changes brought about by the New FIR Regulation

A. Pan-EU Mandatory National Screening System with Two-Tier Review Process

The New FIR Regulation requires all Member States to have a mandatory pre-closing screening regime for foreign investments. This marks a significant change from the 2019 FDI Regulation which only encouraged, but did not require, Member States to have mandatory screening. Until now, the lack of a common minimum standard led Member States to adopt disparate approaches to foreign investment screening, with some having no screening regime at all (though now they virtually all do), some having only voluntary regimes, others having post-close regimes, and yet others operating a hybrid regime (mixing voluntary/mandatory/pre- and/or post-close).

Member States have also taken very different approaches when it comes to the possibility to call in below-thresholds transactions for *ex-officio* review. Presently, only a few Member States have such powers. The New FIR Regulation requires all Member States to have powers to call-in such cases, at least for investments meeting certain requirements.

This will inevitably mean more deal uncertainty, and require investors to think tactically about mitigating that uncertainty, e.g. through voluntary notifications, “springing conditions” (*i.e.*, provisions which elevate a given jurisdiction as a condition precedent where certain circumstances (*e.g.*, a call-in) are met).

B. Harmonised review timelines

The New FIR Regulation introduces greater procedural alignment, notably by requiring that all national regimes have two distinct review phases: an initial assessment (“Phase 1”) and, where appropriate, a more in-depth investigation (“Phase 2”). It sets the duration of the Phase 1 review to 45 calendar days across all Member States. Both the introduction of a two-tier process, as well as the harmonisation of the Phase 1 review timeline, mark a significant change from the 2019 FDI Regulation (currently timing and review processes differ significantly across Member States). The New FIR Regulation introduces an additional timeline alignment of relevance for investors as it requires that investors “shall endeavour” to file transactions subject to filing obligations in multiple Member States on the same day. This softens the approach seen in previous drafts of the New FIR Regulation, which required parallel notifications to be filed the same day, and generated concern from investors.

Although harmonisation is welcome and improves legal certainty for investors facing FIR review in several Member States, some unknowns remain. In particular, the New FIR

Regulation only requires the statutory timeline to begin once the authority has deemed the filing complete, thereby leaving significant discretion to national authorities to issue several rounds of information requests to deem the filing complete and start the clock. The New FIR Regulation also does not specify whether and to what extent Member States may stop the clock in Phase 1 or 2. Together, these subtleties could create meaningful differences between Member States’ reviews in practice, and in turn result in deals filed in several Member States proceeding on different review timelines.

C. Clarified and Expanded Concept of Foreign Investment

The New FIR Regulation both clarifies and broadens the concept of “foreign investments” that will require screening. This increases legal certainty in some respects, whilst expanding filing obligations for prospective investors. These changes also generate additional uncertainty in other respects. Specifically, the New FIR Regulation:

- Makes it clear that Member States must screen investments by EU-based companies controlled by non-EU investors. This clarification seeks to address the uncertainty created by the EU Court of Justice’s *Xella* ruling as to the conditions under which Member States could screen such investments.
- Confirms that FIR screening regimes must cover investments establishing lasting links between a foreign investor and an EU target, including acquisitions conferring decisive influence or meaningful participation in management. The New FIR Regulation, however, does not define these concepts in operational terms (*e.g.*, voting thresholds or shareholding percentages), meaning that their application will continue to vary across Member States.
- Leaves it to each Member State to determine whether to screen: (i) purely financial investments without management influence, (ii) internal restructurings, and (iii) greenfield investments. Investors will therefore continue to face a patchwork of national approaches to these types of investments.

D. Detailed but Narrow Mandatory Screening Scope Complemented by Substantive Assessment Criteria

The New FIR Regulation identifies several core sectors which must be covered by Member States’ mandatory screening frameworks.

These include investments connected to advanced technologies identified in its Annex I (*e.g.*, semiconductor, artificial intelligence, and quantum technologies), as well as investments involving strategic raw materials, dual-use and

military items, certain electoral systems, and key transport, energy, or digital infrastructure.

The New FIR Regulation, however, leaves open the possibility for Member States to include additional sectors in their mandatory screening frameworks. The New FIR Regulation therefore sets a screening floor, but not a ceiling.

E. Stronger EU Cooperation Mechanism

The New FIR Regulation retains the cooperation mechanism between Member States and the Commission and significantly strengthens its operation.

Although national authorities will continue to make the final decisions, the enhanced information-sharing framework increases the practical influence of EU-level scrutiny and reinforces the expectation of coordination among Member States. The New FIR Regulation creates a complex cooperation process to allow Member States and the Commission to comment on investments screened in another Member State, where certain criteria are met. It remains to be seen whether national authorities will have sufficient resources to keep up with the fixed timeframes for this cooperation to take place. Delays in the cooperation process will inevitably translate into longer review periods.

II Outlook and Strategic Considerations

The agreed text received approval from the European Parliament in May 2026, approval from the Council of the European Union in June 2026, with publication in the Official Journal of the EU on 26 June 2026. The new FIR Regulation will therefore enter into force on 17 January 2028. It will then become an integral part of the EU's economic security toolbox, alongside export controls, sanctions, and the Foreign Subsidies Regulation. One remaining area of uncertainty relates to the announced draft Industrial Accelerator Act, which is expected to contain provisions relevant to foreign investment screening in certain sectors such as batteries. Leaked versions have created significant controversy about these provisions, and the Commission has delayed the proposal several times, reportedly due to lack of internal consensus. For companies pursuing acquisitions or strategic investments in Europe, the key takeaway is clear: screening of investments into the EU is becoming more integrated, more structured, and more consequential. In combination with enhanced merger control and Foreign Subsidies Regulation requirements, transaction planning will increasingly need to reflect an EU-wide regulatory perspective rather than a purely national one.

The foreign investment screening regime in the EU is also further expected to evolve based on the upcoming Industrial Accelerator Act which is anticipated to introduce further screening requirements.



Sibel Yilmaz
Regulatory and Public Policy
Partner, Brussels
+32 2 545 7511
SYilmaz@cov.com



Laurie-Anne Grelier
Technology
Of Counsel, Seoul
+82 2 6281 0005
LGrelier@cov.com



Romain Girard
Regulatory and Public Policy
Associate, Brussels
+32 2 545 7510
RGirard@cov.com



Matthieu Coget
Regulatory and Public Policy
Associate, Brussels
+32 2 545 7517
MCoget@cov.com

The European Commission adopts the Foreign Subsidies Regulation Guidelines

On 9 January 2026, the Commission adopted its Guidelines on the application of certain provisions of Regulation (EU) 2022/2560 of the European Parliament and of the Council on foreign subsidies distorting the internal market (the “[FSR Guidelines](#)”). The FSR Guidelines explain how the Commission assesses whether foreign subsidies distort the internal market, and, if so, whether their potential positive effects outweigh their potential negative impacts. They also explain how the Commission may exercise its call-in powers to request the prior notification of any concentration or any foreign financial contributions (“**FFCs**”) in the context of a public procurement procedure that falls below the notification thresholds.

This blogpost describes the FSR Guidelines. The FSR Guidelines were adopted after a little more than two years of application of the FSR, on which the Commission will report in July 2026, potentially leading to its revision. While they crystallize the Commission’s practice thus far, they do not address the frequently voiced concern that they are overbroad and, consequently, too many unproblematic concentrations or tenders must undergo a cumbersome reporting process. For more details on the FSR, please see our previous [blogpost](#).

Assessment of distortions

Under the FSR, a foreign subsidy is distortive if: (i) it is liable to improve the competitive position of its beneficiary in the internal market; and (ii) as a result, it actually or potentially affects competition in the internal market negatively. The FSR Guidelines explain this two-step approach and its specificities depending on whether the Commission examines FFCs granted under a notifiable public procurement procedure or in other situations. In any case, the foreign subsidy does



Key Takeaways

- The FSR Guidelines offer detailed guidance on how the Commission will conduct its assessment of distortions. While the responsibility for this assessment lies with the Commission, companies under investigation may need to demonstrate that the foreign subsidies they have received are not linked to their economic activities in the EU. If they are unable to do this successfully, they must then provide a comprehensive analysis of the impact those foreign subsidies have on the internal market.
- In balancing the potential negative impact of foreign subsidies with their potential positive effects, the FSR Guidelines rely on an approach similar to State aid assessment. However, unlike in State aid, they do not provide any presumption that certain categories of subsidies are on balance positive when defined conditions are met. Instead, they require a case-by-case assessment.
- Regarding the Commission’s approach to requesting notification of concentrations or FFCs in the context of a public procurement procedure, the FSR Guidelines leave the Commission broad discretion when it determines that those activities merit prior review given their impact on the EU. As a result, companies may need to consider their FSR risks even if they do not engage in large concentrations or public procurement procedures in the EU.

not need to be the sole reason for the negative impact on competition; it suffices that it contributes to it.

In concentrations or other market situations than notifiable public procurement procedures

(i) Liable to improve the competitive position of a company in the internal market

The FSR Guidelines distinguish three categories of subsidies:

- “Targeted foreign subsidies”, supporting the company’s economic activities in the internal market (e.g., subsidies for manufacturing or distribution activities in the EU). These subsidies are deemed liable to improve the company’s competitive position.
- “Non-targeted foreign subsidies”, not supporting economic activities in the internal market and whose use is unclear (e.g., subsidies for general purposes that could be used in the EU). The Commission examines whether credible legal or economic factors make cross-subsidizations or use in the EU unlikely. These factors include shareholding structures, loose functional, economic or organic links, or the design and conditions of the subsidy.
- Foreign subsidies “not liable to improve the competitive position”, those not liable to free up transferable resources or where the potential for cross-subsidization is low or insignificant. This category includes subsidies addressing market failures and crowding in private investment, subsidies for non-economic activities or social objectives, subsidies below EUR 4 million or amounts insignificant compared to the beneficiary’s EU activity.

This approach broadly reflects the assessment we typically provide to the Commission to demonstrate that foreign subsidies are not linked to the internal market and therefore not of concern. Although it is for the Commission to assess the existence of a link, investigated companies should demonstrate that foreign subsidies received are not used to cross-subsidize their activity in the internal market.

(ii) Negative effects

If a subsidy is liable to distort competition, the Commission examines:

- How the subsidy affects the company’s behaviour in the EU (e.g., pricing): A subsidy may encourage specific behaviours due to its scope, purpose or conditions. In other instances, the Commission will assess whether the subsidy is linked to the behaviour because of its nature, frequency or characteristics. For example, the FSR Guidelines suggest that changes in pricing are more likely to result from subsidies related to the company’s operating or variable costs.
- Whether it is likely to alter competitive dynamics to the detriment of other operators (including downstream, upstream, or related sectors): Alterations can manifest in

various forms, such as reinforcing the company’s financial strength, facilitating a more aggressive commercial policy, reducing output or investment costs, or maintaining operations at the expense of rivals. In the context of concentrations, alterations may occur when the subsidy influences the outcome of the acquisition process. This might be the case if the subsidy allows the company to offer more attractive terms than it otherwise could under normal market conditions. To assess the extent of these alterations, the Commission may consider indicators like the amount of the subsidy relative to the price offered for acquiring a target or the subsidised company’s ability to invest in additional capacity in a sector characterised by capacity constraints.

The approach may require companies to develop a counterfactual scenario to isolate or exclude the effects of a foreign subsidy. The FSR Guidelines require an examination of any activity in the EU and related sectors. This requirement increases the burden on companies, which may need to gather and submit information and analysis beyond their transaction and potentially beyond their sector.

Public procurement

(i) Liable to improve the competitive position of a company in the internal market

Improvement of the competitive position due to foreign subsidies is assessed through the ability of the recipient to submit an unduly advantageous tender that cannot plausibly be explained by factors other than the subsidy. Although not reportable, foreign subsidies granted to a group entity – although one that is not in the vertical chain of control of the economic operator participating in the tender, its main subcontractors or suppliers – may also improve the tenderer’s competitive position.

(ii) Negative effects

In public procurement, a subsidy has actual or potential negative effects if it influences the outcome of the procedure.

Balancing distortions with positive effects

According to the FSR, the Commission may balance the distortion caused by a foreign subsidy against its positive effects. Positive effects may reduce or eliminate the need for remedies.

If the company submits evidence of positive effects, the FSR Guidelines stipulate that the Commission should consider these effects during the balancing test. The FSR Guidelines acknowledge that positive effects may pertain either to the development of the subsidised economic activity in the internal market (e.g., addressing market failure) or to



relevant policy objectives, particularly those of the Union (e.g., environmental protection, EU's economic security or defence, etc). In public procurement, the absence of alternative sources of supply may be considered a positive effect, provided the tender procedure is not designed in a way that makes non-subsidised bids unlikely to succeed. As in State aid control, the FSR Guidelines entrust the Commission with the responsibility to consider the potential benefits of foreign subsidies, while accepting some distortions. However, unlike State aid law, the FSR Guidelines do not establish categories of subsidies deemed positive on balance. Instead, positive effects are assessed case-by-case.

The Commission call-in powers

The Commission may request the notification of a concentration before its implementation or of foreign subsidies in the context of a public procurement procedure before the contract award, even where the notification thresholds are not met.

The FSR Guidelines specify that the Commission may request notification only where the concentration or FFCs in a public procurement procedure would merit prior review given their impact in the Union. Impact may arise from, for example, the importance of the target in concentrations, or previous FSR decisions finding indications of distortive subsidies. While the Commission must provide evidence justifying the use of call-in powers, the FSR Guidelines allow significant discretion.

The FSR Guidelines introduce limited safe harbours for concentrations or public procurement procedures that cannot be called in, where the foreign subsidies involved:

(i) remain below EUR 4 million over the past three years,

(ii) are aimed at making good the damage caused by natural disasters or exceptional occurrences; or

(iii) are granted in relation to procurement procedures below thresholds set by [Directive 2014/24/EU](#).

The Commission considers that it may call in a public procurement procedure falling below the notification thresholds until the legally binding conclusion of the contract, acknowledging that this moment may occur later than the award decision due to potential challenges. If implemented, this interpretation may impose a de facto suspensory effect on contract conclusion in addition to standard procurement litigation. The Commission reportedly exercised this power for the first time in November 2025 and has indicated that more call-ins can be expected. The FSR Guidelines therefore call on companies operating in the EU to assess their FSR risks even outside large concentrations or tenders.



Carole Maczkovics

Antitrust/Competition
Of Counsel, Brussels
+32 2 545 7515
CMaczkovics@cov.com



Alessandro Cogoni

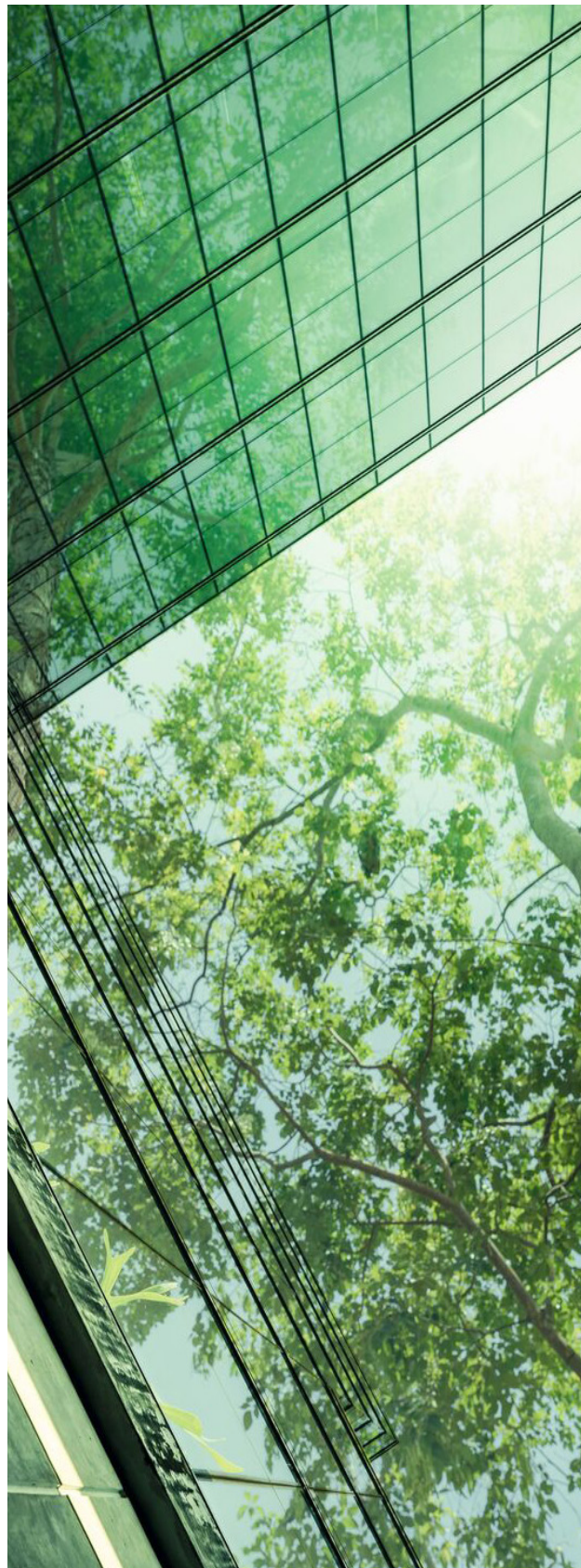
Antitrust / Competition
Associate, Brussels
+32 2 549 5280
ACogoni@cov.com

European Commission Publishes the Proposed Industrial Accelerator Act

On 4 March 2026, the European Commission (the “**Commission**”) published its [proposal](#) for a regulation establishing a framework for the acceleration of its industrial capacity and decarbonisation in strategic sectors (“**Proposed Industrial Accelerator Act**”, or “**Proposed IAA**”), accompanied by [four annexes](#). The initiative is intended to strengthen the EU’s industrial base while accelerating decarbonisation in key manufacturing sectors considered strategically important (i.e., energy-intensive industries, net-zero technology manufacturing, and the automotive manufacturing ecosystem). These sectors currently represent less than 15% of EU GDP, and the Commission’s objective is to increase this share to 20% by 2035. The Proposed IAA was delayed three times before publication and underwent significant rewriting, which reflects both internal debates within the Commission and diverging reactions from Member States. It also reflects the challenges posed by the broader geopolitical context, as the Commission aims to address economic security concerns through industrial policies whilst navigating international trade relationships and commitments.

The Proposed IAA introduces a regulatory framework combining three policy tools. First, it establishes demand-side measures designed to create “lead markets” for low-carbon and “Made in EU” industrial products through public procurement and certain public support schemes. Second, it introduces conditions for allowing certain foreign direct and indirect investments (“**FDI**”) in strategic sectors, aimed at maximising the industrial benefits of such investments within the EU. Third, it includes measures to streamline permitting procedures and facilitate industrial clustering, with the objective of accelerating the deployment of manufacturing projects.

This blog summarises the key aspects of each tool and their potential implications for companies active in the covered industries or looking to invest in the covered industries.



I “Made in Europe” and Low-Carbon Requirements in Public Procurement and Public Support Schemes

A. Scope

The Proposed IAA aims to use demand-side measures to stimulate market demand for European-made and low-carbon industrial products essential for the EU’s industrial resilience and decarbonisation.

These measures would progressively apply to:

- public procurement of works contracts or concessions for buildings and infrastructure as well as the lease and purchase of electric, hybrid or fuel cell vehicles;
- public support schemes to support households or businesses for the construction or renovation of buildings and infrastructures, as well as the lease and purchase of motor, electric, hybrid or fuel cell vehicles;
- public procurement where contracts have net-zero technologies as their subject matter, auctions to deploy renewable energy sources, and public support to the manufacturing of net-zero technologies or schemes supporting demand for net-zero technology final products.

Products used in these instances would have to meet various low-carbon and EU origin content requirements. These relate to:

- Energy-intensive industries, such as steel, cement (concrete and mortar), and aluminium;
- Net-zero technologies manufacturing (including battery

energy storage systems, nuclear technologies, and onshore/offshore wind technologies, as defined in the Net-Zero Industry Act (“NZIA”; see our [blog](#) on that instrument);

- Automotive supply chains, including electric vehicles and key components such as battery cells and e-powertrain systems; and
- Potentially parts of the chemical industry, if the Commission extends the Proposed IAA’s scope through delegated acts.

An earlier draft of the Proposed IAA leaked in the press, included as “strategic sectors” (among others) advanced semiconductor technologies, artificial intelligence technologies, quantum technologies, and robotics and autonomous systems—but these have been dropped from the Proposed IAA published by the Commission.

B. Low-Carbon and Union-Origin Requirements

The Proposed IAA introduces low-carbon requirements for steel, and Union origin and low-carbon requirements for concrete and mortar and aluminium used in specific downstream sectors, namely buildings, infrastructure, and transport, as well as Union origin requirements for vehicles and for net-zero technologies (including for key components).

1. Low-carbon requirements for energy-intensive materials

The Proposed IAA introduces minimum shares of low-carbon products that must be used in public procurement or support schemes involving energy-intensive materials.



The definition of “low-carbon” steel and other industrial products would rely on methodologies established under existing EU product legislation, such as the [Construction Products Regulation](#) and the [Ecodesign for Sustainable Products Regulation](#).

2. Union-origin requirements

“Union origin” is defined by reference to the EU’s rules of origin under the Union Customs Code. Additionally, content from third countries that have concluded a free trade agreement (“FTA”) or customs union with the EU is considered equivalent to Union origin. In public procurement procedures, the same applies to content originating from countries that are parties to the [WTO Government Procurement Agreement](#) (“GPA”), where the EU must grant non-discriminatory access.

In any case, the Commission may exclude a third country, in whole or in part, where it does not in fact offer reciprocal access to its market for EU companies, where its exclusion is justified by the need to avoid dependencies or threats to security of supply, or where another applicable exception applies under the relevant agreements with that country.

C. Access to Public Procurement Procedures, Auctions or Public Support Schemes

The Commission emphasises that the Proposed IAA is intended to remain compatible with EU procurement law and the EU’s international commitments, including its WTO obligations.

Where a third country has not concluded an international agreement with the Union guaranteeing access to its public procurement market for European firms, operators owned or controlled by entities established in that country will be excluded from public procurement procedures in Europe that fall within the scope of the Proposed IAA. This compulsory exclusion could be extended to all sectors with the upcoming revision of the public procurement and concession directives.

To address cybersecurity concerns relating to energy grids, high-risk suppliers (which will be defined in the upcoming Cybersecurity Act 2) would be prevented from supplying critical components for net-zero technologies to bidders of renewable energy auctions, tenderers of public procurement procedures, or final products supported by government intervention.

II Additional conditions on certain Foreign Direct Investment into the EU

The Proposed IAA would condition certain investments on meeting a set of pre-defined requirements designed to bring

and retain industrial value in the EU. This is intended to apply fully to direct investments while for indirect investments, the draft text suggests that the investment authority has some discretion as to which conditions to apply. This new framework would operate in addition to the existing EU FDI screening framework, as recently amended (as to which, see our [blog](#)).

A. Scope of the Framework

The Proposed IAA would require mandatory pre-close screening of certain foreign investments meeting the following cumulative criteria:

- The investment value exceeds EUR 100 million;
- The investment target undertakes manufacturing activities in the EU in one of the following four sectors: (i) battery technologies and their value chain, (ii) electric vehicles and related components, (iii) solar PV technologies, and (iv) extraction, processing or recycling of critical raw materials;
- The investor originates from a non-EU country which holds more than 40% of global manufacturing capacity in the relevant sector; and
- The planned investment results in the investor acquiring 30% or more of share capital, voting rights, or equivalent ownership interests.

To receive clearance, investors would have to commit to bring some industrial added value to the EU by: keeping investment below control, technology transfers to the EU, financing of EU-based R&D, employing 50% of the workforce in the EU, and sourcing 30% of inputs from the EU.

National FDI screening mechanisms would continue to apply, which could result in additional remedies imposed on investors to receive national clearances. Investors from countries that have free trade agreements with the EU might benefit from an exemption from these requirements, though the text maintains room for an *à la carte* application of this exemption.

B. Governance and Enforcement

Responsibility to enforce the framework would not only rest with national “Investment Authorities” designated by Member States. The Commission would also have the power to review, on its own initiative, investments deemed particularly important to the EU’s economic security and have the final say, in addition to a consultative and coordinating role. These roles are expected to be exercised by DG GROW, which is responsible for industrial policy.

This governance model raises several open questions. In particular, it remains unclear whether Member States would rely on existing FDI screening authorities or designate separate bodies responsible for industrial investment policy. The Commission’s involvement and power to overrule Member States would likely trigger debate as the text progresses in

the legislative process, underscoring the blurred line between economic security (an EU competence) and national security (a Member State competence).

C. Procedural Features

The review procedures established under the Proposed IAA could be relatively lengthy. The framework provides for an initial review phase of between 60 and 105 days, with the possibility of an additional second-phase investigation of up to 60 days for more complex cases. The mechanism operates as a pre-closing review framework. Investors would have to await clearance before implementing their investment.

Approved investments would also be subject to ongoing monitoring and reporting obligations.

III Accelerated Permitting and Industrial Manufacturing Clustering

The Proposed IAA's third pillar aims to facilitate industrial investment by accelerating permitting procedures and encouraging the geographic clustering of manufacturing activities.

A. Streamlined Permitting for Industrial Manufacturing Projects

The Proposed IAA seeks to accelerate permitting for industrial manufacturing and decarbonisation projects in covered sectors, addressing lengthy and complex administrative procedures frequently cited as barriers to investment. Building on existing initiatives such as the NZIA, the Proposed IAA promotes more coordinated permit-granting processes, including single contact points, increased digitalisation and improved coordination between authorities. The Proposed IAA also strengthens digital access to permitting information, requiring Member States to make information on relevant procedures available through EU-level digital portals under the Single Digital Gateway Regulation.

B. Industrial Manufacturing Acceleration Areas

Complementing these reforms, the Proposed IAA requires Member States to designate at least one industrial manufacturing acceleration area within their territory. Projects located in these areas may benefit from simplified permitting through an aggregated baseline permit covering multiple authorisations, with individual projects requiring only installation-specific permits.



IV Concluding Remarks

For businesses, the Proposed IAA signals three notable developments. First, public procurement and public support schemes are increasingly likely to become strategic industrial policy tools, with contracting and granting authorities required to integrate carbon-intensity and Union-origin criteria into procurement procedures or support schemes relating to industrial materials, clean technologies, and products used in sectors such as construction, infrastructure, transport and vehicle fleets. Second, large foreign investments in strategic manufacturing sectors in the EU (in particular, energy-intensive industries, net-zero technology manufacturing, and parts of the automotive value chain) may become subject to industrial policy conditions aimed at ensuring that such investments contribute to the development of European industrial capacity. Third, projects located in industrial manufacturing acceleration areas may benefit from simplified permitting procedures intended to facilitate faster deployment of manufacturing capacity.

As the Proposed IAA moves through the legislative process, negotiations are likely to focus on the scope of the demand-side requirements and the design of the investment conditionality framework, particularly in light of existing procurement rules (as well as their upcoming revisions), international trade commitments and the EU's evolving economic security agenda.



Sibel Yilmaz
Regulatory and Public Policy
Partner, Brussels
+32 2 545 7511
SYilmaz@cov.com



Carole Maczkovics
Antitrust/Competition
Of Counsel, Brussels
+32 2 545 7515
CMaczkovics@cov.com



Laurie-Anne Grelier
Technology
Of Counsel, Seoul
+82 2 6281 0005
LGrelier@cov.com



Wolfgang Maschek
Regulatory and Public Policy
Of Counsel, Brussels
+32 2 549 5246
WMaschek@cov.com



Katharina Ewert
Food, Drug and Device
Special Counsel, London
+44 20 7067 2233
KEwert@cov.com



Atli Stannard
Regulatory and Public Policy
Special Counsel, Brussels
+32 2 545 7518
ASTannard@cov.com



Sam Choi
Litigation and Investigations
Associate, Brussels
+32 2 549 5269
JChoi@cov.com



Romain Girard
Regulatory and Public Policy
Associate, Brussels
+32 2 545 7510
RGirard@cov.com



Matthieu Coget
Regulatory and Public Policy
Associate, Brussels
+32 2 545 7517
MCoget@cov.com

AI and Legal Privilege: Key Takeaways from US v. Heppner

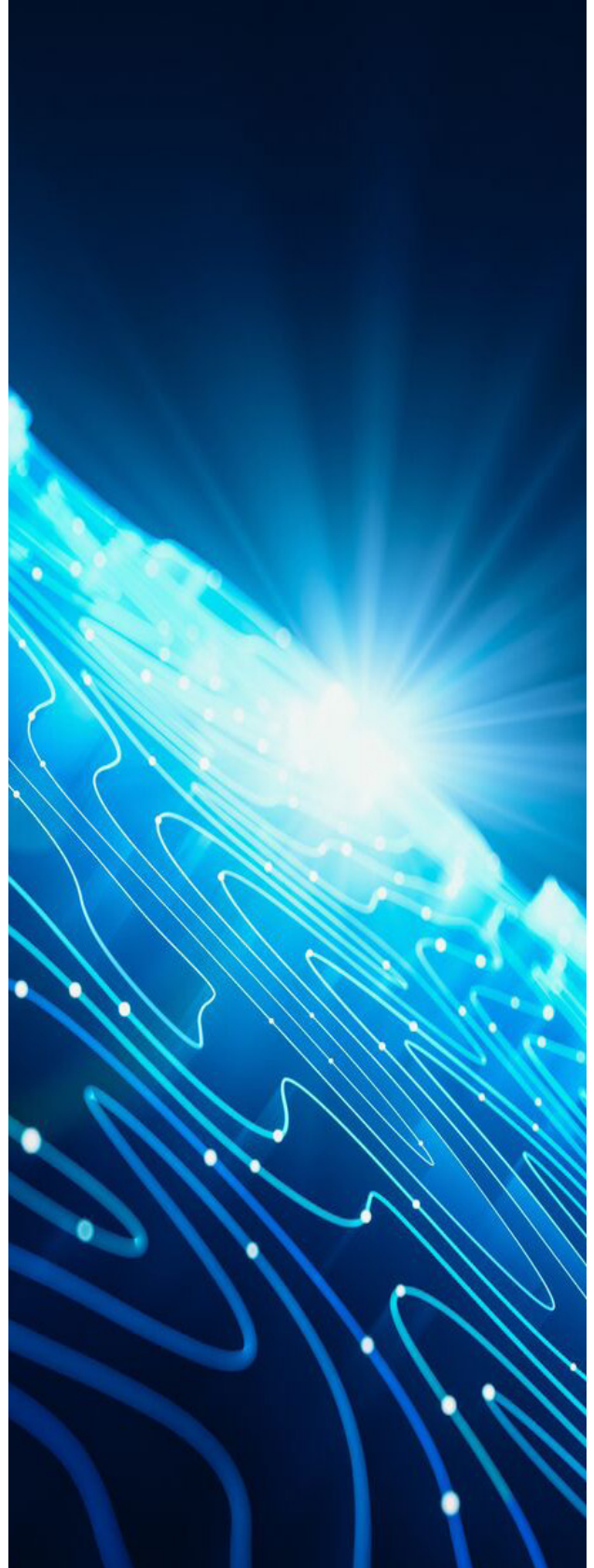
On February 10, 2026, federal district court Judge Jed S. Rakoff ruled from the bench in the Southern District of New York that the attorney-client privilege and the work product doctrine did not protect legal strategy materials that a criminal defendant generated using a generative AI tool, when he used a public version of the tool and was not instructed by his attorney to generate these materials. On February 17, 2026, the court issued a [written memorandum](#) explaining its reasoning.

The question presented – an issue of first impression – was: “whether when a user communicates with a publicly available AI platform in connection with a pending criminal investigation, are the communications protected by attorney-client privilege or the work product doctrine?” The court’s answer was no given the unique circumstances of the case – namely, that no lawyer was involved in the back-and-forth with the AI tool, and the tool itself was a public (i.e., non-confidential) version.

Below, we summarize the background of the case, the decision, and key takeaways on AI and Legal Privilege.

Background

On October 28, 2025, Heppner, the defendant, was indicted and charged with several federal crimes, including securities fraud, arising from his time as an executive at several corporations. When Heppner was arrested, the FBI executed a search warrant and seized a number of documents and electronic devices, which included communications that Heppner had with a publicly available version of a generative AI platform that “prepared reports that outlined defense strategy, [and] outlined what he might argue with respect to the facts and the law” of what the government may charge. Heppner had engaged in these communications with the AI tool after he had received a grand jury subpoena and after it was clear from discussions with the government that he was the target of the investigation. Heppner had not been instructed by his counsel to engage



with the tool. Heppner asserted privilege and attorney work product over the materials, arguing that he had (1) input into the platform information that he had learned from counsel; (2) created the AI communications for the purpose of speaking with counsel to obtain legal advice; and (3) subsequently shared the AI communications with counsel for the purpose of obtaining legal advice.

Attorney-Client Privilege

The court first ruled that the AI-generated materials failed to satisfy the elements of the attorney-client privilege. Attorney-client privilege attaches to (1) communications **between a client and his or her attorney** (2) that are intended to be, and were, kept **confidential** (3) for the purpose of **obtaining or providing legal advice**. The court held that at least two, if not all three, elements were not met.

1. Not Communications with Counsel – The court held that the AI communications were not between Heppner and his counsel because the AI tool was not an attorney, and Heppner was consulting the tool entirely on his own (*i.e.*, not at the direction of counsel).

2. Not Confidential – The AI communications were not confidential because Heppner communicated with a public version of a third-party AI platform, and its privacy policy did not support a reasonable expectation of confidentiality. The court noted that the platform's privacy policy specified that the platform collects data on user inputs and outputs, which it uses to train the tool, and reserved the right to disclose such data to third parties, including governmental regulatory authorities.

3. For Legal Advice – Heppner did not communicate with the AI tool for the purpose of obtaining legal advice because he did not do so at the direction of counsel, rather he did so out of his own initiative. The court added that even if the information inputted into the AI platform was privileged, any such privilege was waived by sharing the information with the platform.

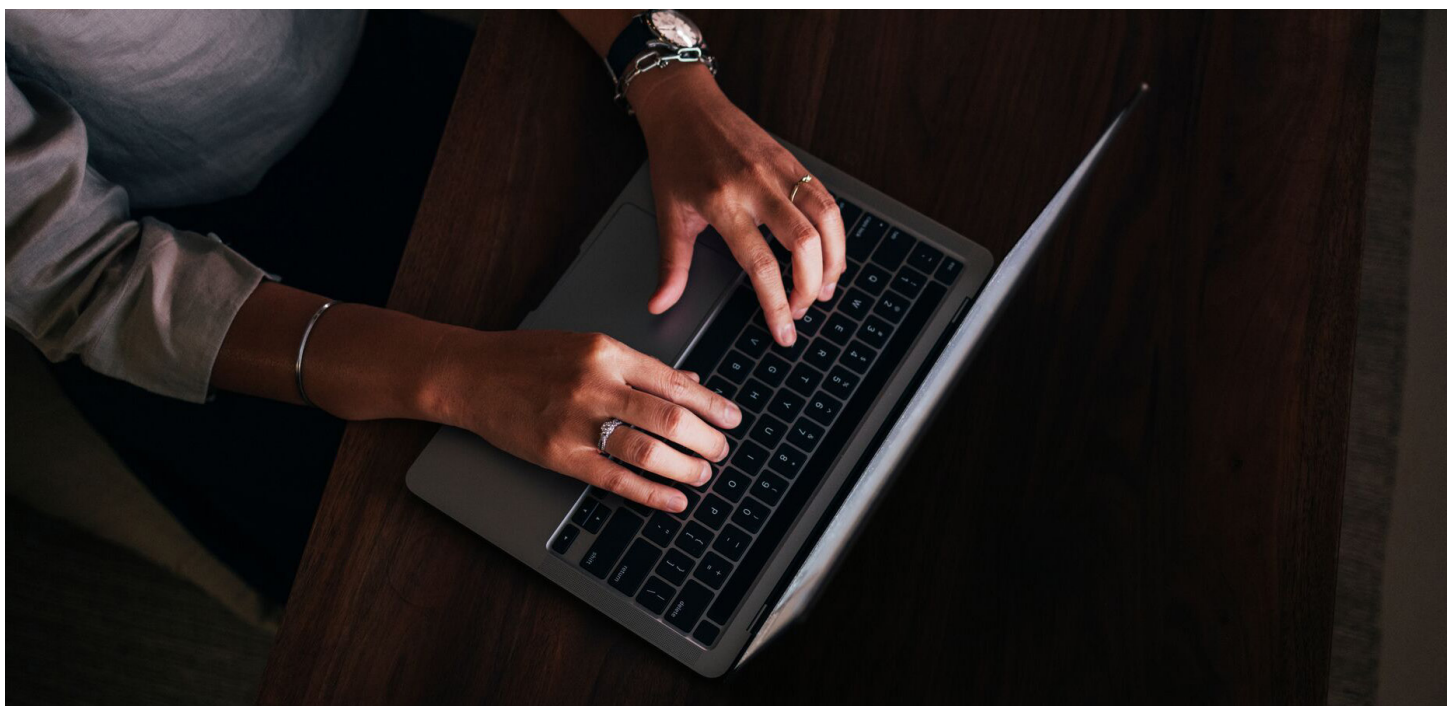
Work Product Doctrine

The court also held that the work product doctrine did not apply to the materials generated from the public, non-proprietary AI tool. The court explained that the work product doctrine “provides qualified protection for materials **prepared by or at the behest of counsel** in anticipation of litigation or for trial.” Even assuming that the AI-generated materials were prepared in anticipation of litigation, the court concluded that they were not prepared by or at the behest of an attorney and did not reflect defense counsel's strategy. As such, the court held that the work product doctrine did not apply.

Because neither the attorney-client privilege nor the work product doctrine applied, the court held that the materials should be disclosed to the prosecution.

Privilege Takeaways

The court's decision is one of what will likely be many decisions analyzing the intersection of AI and legal privileges, but its holdings are confined to its facts, which are quite specific. Of particular note, Heppner was using a publicly available (non-confidential) version of an AI tool and was not operating at the direction of counsel.



As courts continue to address these questions, there are concrete steps that in-house counsel and companies can take to minimize the risks posed by AI in the context of privilege, litigation, and government investigations:

- **Define Acceptable Use of AI** – Implement a policy that defines the acceptable use of AI, including the use of AI in circumstances that may implicate legal considerations, such as the risk of creating discoverable documents. For example, consider limiting use to approved, proprietary enterprise AI tools, providing clear guidelines for the enterprise use of AI, implementing limits on the retention of AI prompts and outputs, and providing special guidance for uses that may implicate legal considerations.
- **User Training & Awareness** – Educate users (including attorneys) on the appropriate use of AI tools and the risks posed by AI, including the potential risk of disclosure of privileged communications and work product. For example, it may be helpful to convey that if a non-lawyer independently consults a public version of an AI tool on legal matters, those communications are not likely to be privileged.
- **Beware of “Third-Party” Risk** – Keep in mind and train others that the use of publicly available AI tools may be viewed as a disclosure to third parties, which may undermine, weaken, or waive claims of privilege. To mitigate the risk of disclosure, consider the availability of proprietary AI tools and train users on the benefits of risks of different kinds of tools.



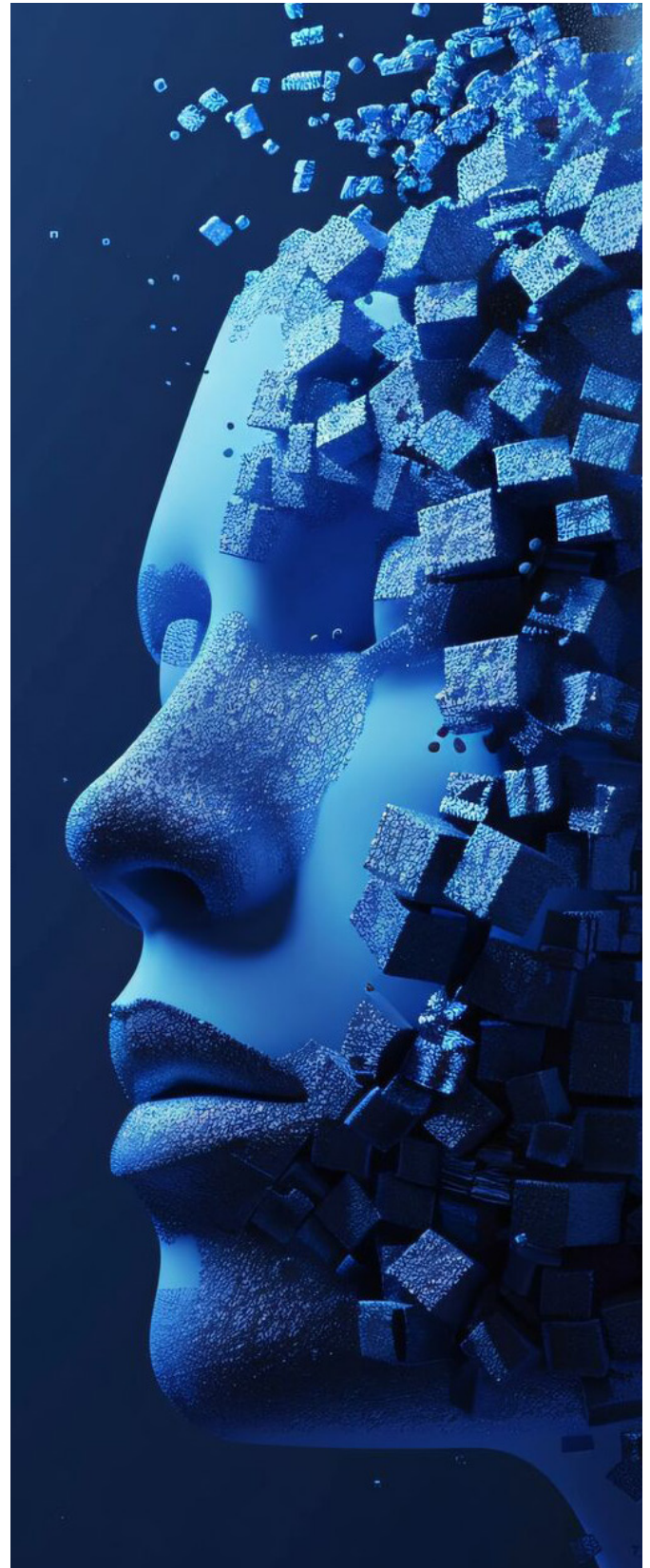
Micaela McMurrrough
Litigation and Investigations
Partner, New York
+1 212 841 1242
MMcmurrough@cov.com



Matthew Harden
Litigation and Investigations
Associate, New York
+1 212 841 1061
MHarden@cov.com



Bryan Ramirez
Regulatory and Public Policy
Associate, San Francisco
+1 415 591 6083
BRamirez@cov.com

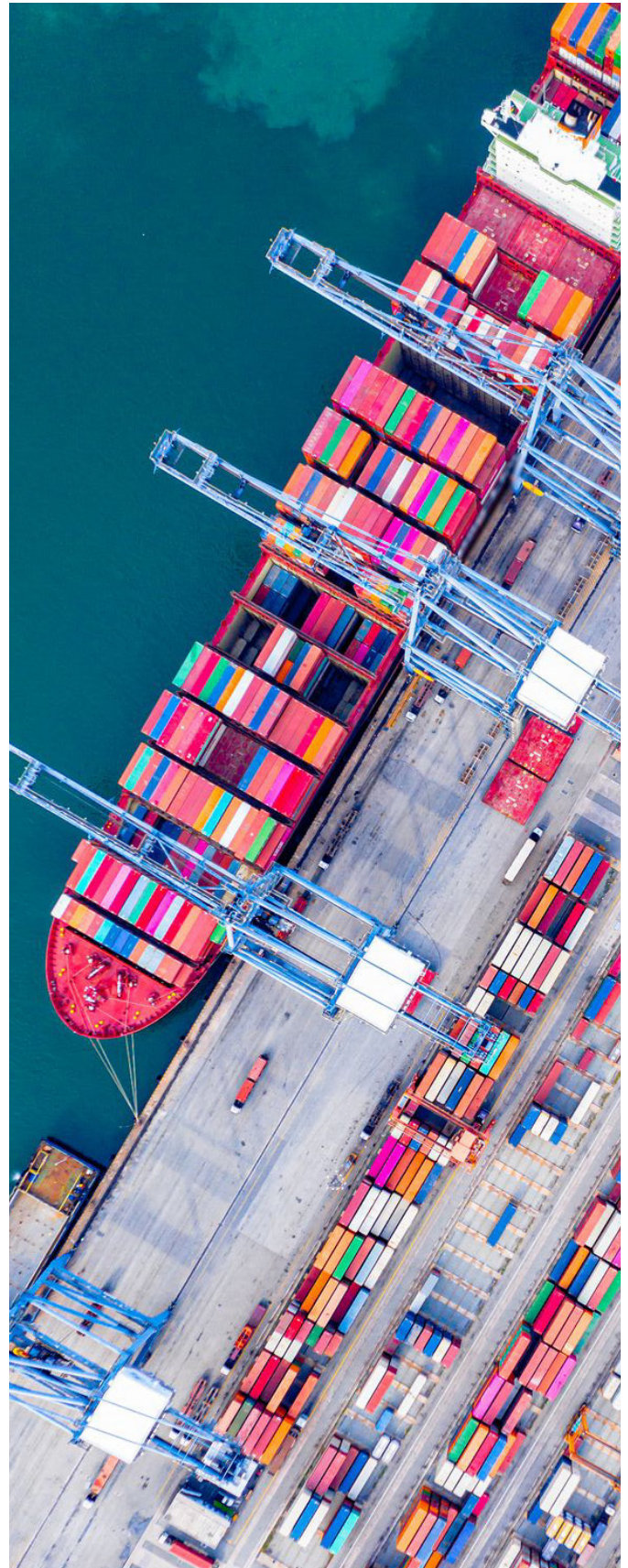


Current and Forthcoming Section 232 Actions by the Trump Administration

Section 232 of the Trade Expansion Act of 1962 (“Section 232”) authorizes the President to “adjust” imports—including through application of tariffs, quotas, tariff rate quotas, and license fees—where the Department of Commerce (“Commerce”) determines imports threaten to impair U.S. national security. Since February 2025, President Trump has invoked Section 232 to impose or modify tariffs on U.S. imports across a range of sectors. These include actions on imports of steel, aluminum, and copper; automobiles and auto parts; timber, lumber, and wood products; trucks, truck parts, and buses; critical minerals; semiconductors; and pharmaceuticals. Potential actions by the Trump administration are pending in six ongoing Section 232 investigations, and new Section 232 investigations are rumored to be forthcoming. This alert provides an overview of the Section 232 actions taken by the second Trump administration as of April 2026 and also addresses upcoming and possible future Section 232 actions.

Section 232 Actions Announced and In Force

Since February 2025, the Trump administration has imposed or expanded tariffs under Section 232 across multiple sectors. These include U.S. imports of steel, aluminum, and copper, as well as associated derivatives (downstream products incorporating these metals); autos and auto parts; medium- and heavy-duty vehicles (“MHDVs”), MHDV parts (“MHDVPs”), and buses; timber, lumber, and certain wood products; semiconductors; and pharmaceuticals. With the exception of the tariffs on [pharmaceuticals](#)—which are scheduled to take effect in stages beginning in July 2026—these Section 232 tariffs are all currently in force.



In addition to imposing tariffs, the Trump administration has also launched international negotiations under Section 232 to address national security concerns regarding certain U.S. imports. For instance, in addition to imposing tariffs on a narrow set of advanced [semiconductors](#), President Trump also directed Commerce and the U.S. Trade Representative (“USTR”) to pursue international negotiations to address national security concerns regarding U.S. imports of semiconductors, semiconductor manufacturing equipment,

and their derivative products. Similarly, after the conclusion of the Section 232 investigation into [processed critical minerals and their derivative products](#), the President deferred imposition of tariffs in favor of international negotiations, while leaving open the option of deploying other tools as needed in the future. An overview of the various Section 232 actions that have been taken by the Trump administration since February 2025 appears in the chart below.

Product	Date Effective or Last Modified	Key Tariff Rates (%) and Related Provisions
Steel, Aluminum, and Copper	April 6, 2026	<p>50% on steel, aluminum, and copper articles, with tariff rates ranging from 25-50% on certain derivatives, 15% (through 2027) on certain metal-intensive industrial and electrical grid equipment, and 10% rate for derivative articles composed entirely of U.S. sourced steel, aluminum, and / or copper</p> <p>Country specific rates / provisions established for the UK and Russia, and for qualifying products of Canada and Mexico, for steel and aluminum products</p>
Autos and Auto Parts	April 3, 2025	<p>25%, with country specific rates / provisions established for the UK, EU, Japan, Korea, and qualifying imports under the U.S.-Mexico-Canada Agreements (“USMCA”)</p> <p>Temporary import adjustment offset program established on auto parts for manufacturers of autos finally assembled in the United States</p>
Medium/Heavy-Duty Vehicles and Parts, and Buses	November 1, 2025	<p>25% on MHDVs and MHDVPs, with country-specific provisions for USMCA-qualified goods</p> <p>10% on buses</p> <p>Temporary import adjustment offset program established on parts for manufacturers of MHDVs assembled in the United States</p>
Timber, Lumber, and Derivatives	October 14, 2025	<p>10% on softwood timber and lumber</p> <p>30% on certain upholstered wooden products and 50% on kitchen cabinets and vanities (effective Jan. 1, 2026)</p> <p>Country-specific rates / provisions established for the UK, EU, Japan, and Korea</p>

Product	Date Effective or Last Modified	Key Tariff Rates (%) and Related Provisions
Semiconductors	January 15, 2026	25% on specified advanced computing chips and derivatives Commerce and USTR to pursue negotiations with respect to all other products (report due April 14, 2026)
Critical Minerals	January 14, 2026	Commerce and USTR directed to pursue negotiations (report due July 13, 2026)
Pharmaceuticals	July 31, 2026	100% on certain patented pharmaceutical products and ingredients, with company-specific exemptions and reductions available, and country-specific rates established for the UK, EU, Switzerland, Liechtenstein, Korea, and Japan

Pending and Upcoming Section 232 Actions

In addition, the Trump administration has initiated six Section 232 investigations that remain pending on a range of other products and sectors, as set out below. While the results of these investigations are expected in the coming weeks or months pursuant to deadlines set out in the statute, the

President retains significant flexibility to announce actions that may effectively preserve his ability to impose trade measures at a later date, including by instructing U.S. agencies to pursue negotiations or conduct supplemental analyses. Where a determination is made that no national security threat exists or the President decides not to take action, it is possible no announcement regarding the outcome of the investigation will be made.

Product	Section 232 Investigation Initiation Date	Announcement of Action (If Any) Expected No Later Than
Commercial Aircraft & Jet Engines	May 1, 2025	Mid-May 2026
Polysilicon & Its Derivatives	July 1, 2025	Mid-July 2026
Unmanned Aircraft Systems (“UAS”) & Parts / Components	July 1, 2025	Mid-July 2026
Wind Turbines & Parts and Components	August 13, 2025	Late August 2026
Personal Protective Equipment, Medical Consumables & Medical Equipment	September 2, 2025	Mid-September 2026
Robotics & Industrial Machinery	September 2, 2025	Mid-September 2026

Media reports suggest that the administration is also considering initiating additional investigations into imports of large-scale batteries, cast iron and iron fittings, plastic piping, and industrial chemicals, as well as power grid and telecommunications equipment.

Key Takeaways from Recent Section 232 Actions

While the structures and frameworks for Section 232 duties differ significantly by sector, there are certain common themes across the various Section 232 actions taken under the second Trump administration. These recurring themes may be of particular importance to importers or companies operating in sectors that may be affected by Section 232 tariffs.

Shifting Tariff Landscape and Unpredictable Implementation Persist

Under several Section 232 tariffs currently in force, the President has repeatedly modified applicable tariff rates, revised implementation frameworks, or—in some cases—created new offset mechanisms or country-specific tariff reductions. All of these changes have given rise to a shifting tariff landscape, often accompanied by uncertainties regarding implementation plans.

Recent changes to Section 232 tariffs on metals (steel,

aluminum, and copper) exemplify these challenges. For instance, in August 2025, the Trump administration added more than 400 downstream derivative products to the scope of tariffs on steel and aluminum imports. At the same time, importers faced significant uncertainty regarding implementation, particularly with respect to how applicable duties on metal derivatives should be calculated. Despite repeated requests for clarification made over the course of several months, no definitive guidance was forthcoming. Then, without prior notice, the administration announced in early April 2026 that it was overhauling Section 232 tariffs on aluminum, steel, and copper, fundamentally changing the structure and framework of these metal tariffs. These changes modified the scope of products subject to the tariffs, revised the applicable tariff rate structures, enacted significant amendments to the process for calculating metal tariffs due, and eliminated the derivative inclusion process that allowed domestic interested parties to request tariff scope expansions.

The Trump administration has also established and periodically adjusted a number of country-specific tariff rates affecting the application of Section 232 tariffs, reflecting deals negotiated with trade partners. Even while importers may welcome some of these adjustments, these changes—which in some instances have been significant—demonstrate that the Trump administration is willing to shift course in ways that create challenges for importers and businesses that rely on international supply chains.



Tariff Stacking Remains Nuanced and Complex

A key consideration for importers has been assessing how tariffs imposed under Section 232 may cumulate (or “stack”) with other tariffs that are already in effect or that may be imposed in the future. At present, all Section 232 tariffs continue to apply on top of tariffs currently in force on imports from China under Section 301 of the Trade Act of 1974 (“Section 301”). Beyond this general rule, tariff stacking quickly becomes a much more complicated exercise that must often be assessed on a sector-by-sector and country-by-country basis.

For instance, while most Section 232 tariffs stack on top of the “standard” tariff rates set out in Column 1 of Chapters 1 through 97 of the Harmonized Tariff Schedule of the United States (“HTSUS”), this is not always the case. The Section 232 tariffs of 100 percent on pharmaceutical products that take effect in July 2026 will be inclusive of duties imposed under Column 1 of the HTSUS. In addition, certain country-specific rates established under various Section 232 actions—particularly country-specific rates for the EU, Japan, Korea, Switzerland, and Liechtenstein—may also be inclusive of Column 1 rates. At present, Section 232 duties generally will not stack with the 10 percent global tariffs imposed under Section 122 of the Trade Act of 1974 (“Section 122”). Importantly, however, prior to April 6, 2026, Section 122 tariffs may have applied to the non-metal content of certain derivative products subject to the Section 232 metal tariffs. In addition, while Section 122 tariffs are scheduled to expire on July 24,

2026, the administration has indicated that it intends to impose additional tariffs under Section 301 that may take effect around the same time. It is not yet clear whether any new Section 301 duties will stack with Section 232 tariffs.

In short, the tariff stacking rules have changed significantly over the past year and remain nuanced and complex. It is likely that stacking rules will continue to change as additional Section 232 actions are rolled out and new tariffs are announced under Section 301 or other authorities. Importers and companies that rely on international supply chains should thus pay close attention to developments in tariff stacking rules.

Covington’s International Trade Practice

Covington’s trade lawyers have been advising a wide range of clients with regard to recent tariff actions, including those imposed under Section 232. Covington can assist with related customs and supply chain questions, as well as with assessing exposure to potential foreign retaliatory trade actions and evaluating options for navigating such measures. If you have any questions concerning this alert, please contact the following members of our Trade Policy practice.

If you have any questions concerning the material discussed in this client alert, please contact the members of our Trade Policy practice.



Shara Aranoff
Regulatory and Public Policy
Partner, Washington
+1 202 662 5997
SAranoff@cov.com



Marney Cheek
International Arbitration
Partner, Washington
+1 202 662 5267
MCheek@cov.com



Alexander Chinoy
Litigation and Investigations
Partner, Washington
+1 202 662 5559
ACHinoy@cov.com



James McCall Smith
Litigation and Investigations
Partner, Washington
+1 202 662 5550
JMsmith@cov.com



Arun Venkataraman
Regulatory and Public Policy
Partner, Washington
+1 202 662 5059
AVenkataraman@cov.com



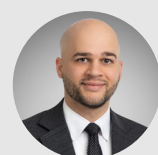
Vivian Choi
Regulatory and Public Policy
Special Counsel, Washington
+1 202 662 5713
VChoi@cov.com



Minwoo Kim
Litigation and Investigations
Special Counsel, Washington
+1 202 662 5779
MKim@cov.com



Kate McNulty
International Trade
Special Counsel, Washington
+1 202 662 5266
KMcnulty@cov.com



Ray LaMotta
Regulatory and Public Policy
Associate, Washington
+1 202 662 5540
RLamotta@cov.com



Julia Shults
Litigation and Investigations
Associate, Washington
+1 202 662 5492
JShults@cov.com

FTC Sweep on “Made in the USA” Claims

On April 14, 2026, the FTC announced three settlements and issued closing letters to two additional companies concerning “Made in America,” “Made in the USA,” and similar U.S.-origin claims (collectively, “MUSA claims”). These actions reflect the [FTC’s continued focus on MUSA claims](#) and, more broadly, the [Trump administration’s focus on American manufacturing and related claims](#). We briefly summarize each of these matters below:

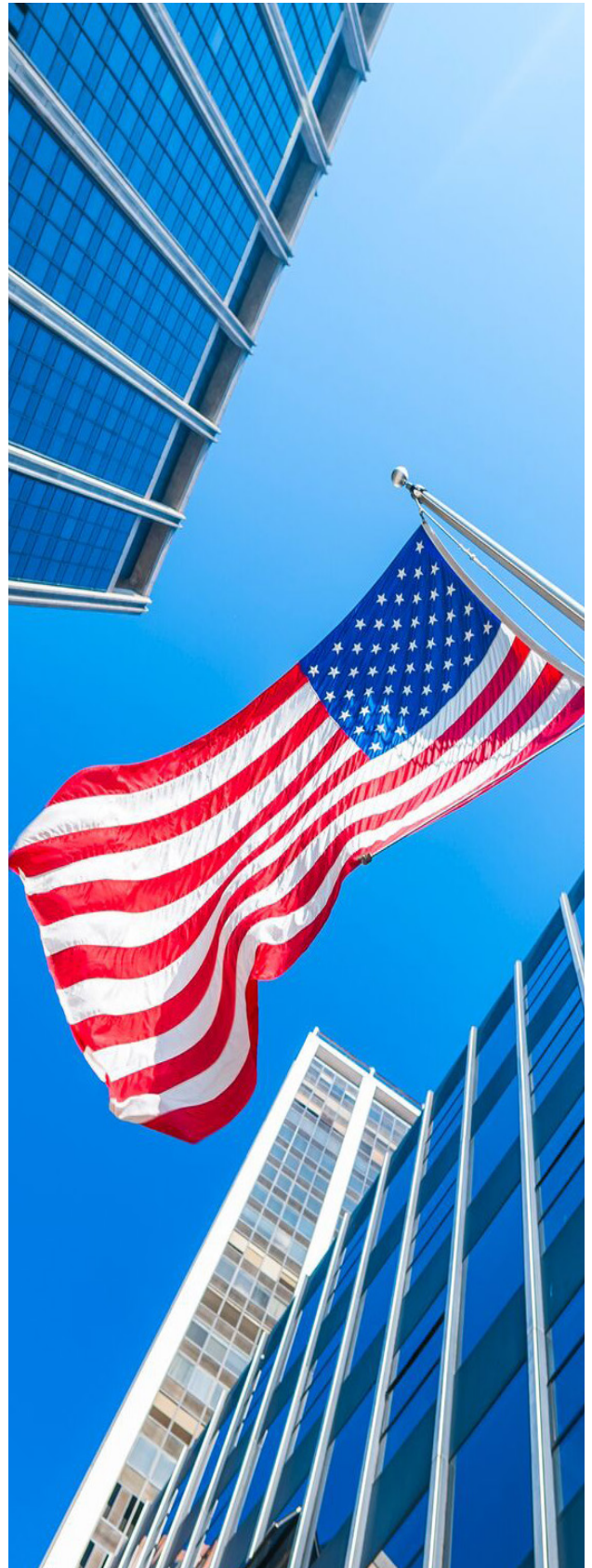
FTC Settlements

Americana Liberty LLC and Related Parties (Americana Liberty)

The FTC alleged that Americana Liberty violated the Made in USA Labeling Rule by repeatedly and prominently claiming that its patriotic flag display products (e.g., flagpole kits, flags, and related parts and accessories) were “Made in the USA,” “All-American Made,” “100% Made in the USA,” “100% American Made Tough,” and “Built by Americans for Americans,” when in fact they were wholly imported and/or comprised significant or essential foreign components. In addition, the FTC alleged that Americana Liberty violated the Textile Act and Rules by failing to include mandatory disclosures on the labeling and advertising for their flags and falsely claiming flags were “Made in the USA” when sellers knew they were made in China. To resolve these allegations, Americana Liberty agreed to a settlement that includes \$167,743 in consumer redress, prohibits misleading country-of-origin claims, and requires Americana Liberty to inform consumers of the settlement and make certain disclosures about textile fiber products.

Oak Street Manufacturing Company, LLC (Oak Street)

The FTC alleged that Oak Street violated the Made in USA Labeling Rule by representing that its footwear products “meet[] the minimum FTC requirements to claim ‘Made in USA[,]’” and that “all components are crafted by hand, not pre-assembled overseas.” Moreover, between approximately 2020 through August 2025, Oak Street allegedly claimed that





its footwear products were “More than Made in USA™,” and that the “entire product . . . from heel-to-toe us[ed] no pre-assembled components from overseas.” Despite these unqualified claims, Oak Street allegedly utilized factories in the Dominican Republic and Brazil to create components and, at times, complete final assembly of its products. To resolve these allegations, Oak Street agreed to a settlement that includes \$75,000 in consumer redress and prohibits misleading or unsubstantiated country-of-origin claims.

TouchTunes Music Company, LLC (TouchTunes)

The FTC announced a settlement resolving allegations that TouchTunes violated the Made in USA Labeling Rule by making unqualified express claims that its Arachnid 360 dartboards were “Made in the USA.”

The FTC alleged that while final assembly of Arachnid 360 electronic dartboards occurred in the United States, many components—including components essential to the function and operation of the product, such as computer chips, cameras, and flatscreen monitors—were made outside the United States. The settlement prohibits TouchTunes from making misrepresentations of U.S. origin claims and requires notice to consumers and \$625,000 in consumer redress.

FTC Closing Letters

Lamar Trailers, Inc. (Lamar Trailers)

The FTC began investigating Lamar Trailers based on alleged concerns that the company overstated the extent to which its trailers are made in the United States. Specifically, the FTC alleged that Lamar Trailers advertised and sold trailers with a “Made in U.S.A.” sticker even though it moved some of its trailer manufacturing operations from Texas to Mexico.

The FTC also expressed concerns with broad, unqualified “Made in U.S.A.” and U.S.-origin claims made by Lamar Trailers’ authorized dealers on their websites and in other promotional materials. On April 14, the FTC issued a formal closing letter publicly announcing the end of this investigation, noting that Lamar Trailers had brought its claims into compliance with FTC laws and rules, and documenting the remedial steps that Lamar Trailers has agreed to take to address its future conduct.

Marketing Holders LLC (Marketing Holders)

The FTC began investigating Marketing Holders—an acrylic product and custom display manufacturer—based on alleged concerns that the company overstated the extent to which its

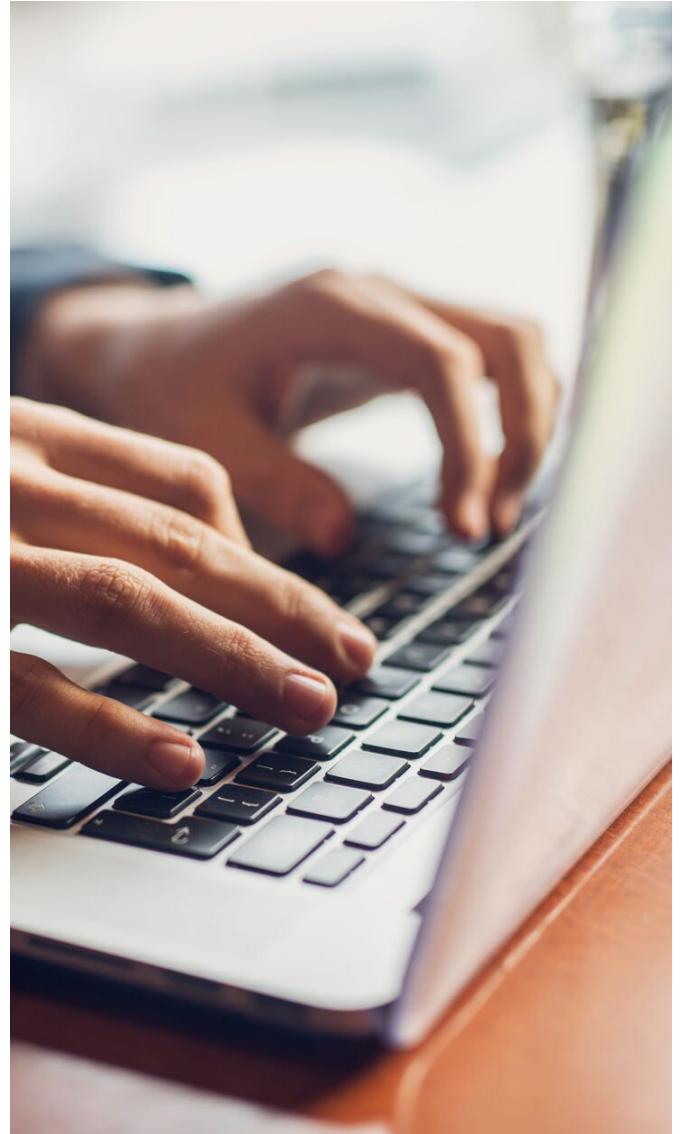
products were made in the United States. Specifically, the FTC alleged that Marketing Holders advertised numerous products on its website using “Made in U.S.A.” claims, as well as broad, unqualified representations that all of its products were “manufactured” and “fabricated” in the United States, even though many of the products were made in China, assembled in the United States using some parts from China, or could be made in either the United States or China.

On April 14, the FTC issued a formal closing letter publicly announcing the end of this investigation, noting that Marketing Holders had brought its claims into compliance with FTC laws and rules, and documenting the remedial steps that Marketing Holders has agreed to take to address its future conduct.

Key Takeaways

These actions reflect an increase in formal enforcement actions and underscore that MUSA claims remain an FTC priority, consistent with the Trump administration’s focus on U.S. manufacturing. Notably, these matters focused on explicit, unqualified claims, which pose higher risks due to the level of substantiation required for such claims. Although these cases send a strong message to industry about the FTC’s priorities, [FTC guidance](#) makes clear that qualified and implied MUSA claims are also subject to scrutiny. Advertisers may benefit from reviewing their claims to ensure compliance with FTC law and guidance.

Covington’s Advertising and Consumer Protection Investigations team regularly advises clients on MUSA compliance, FTC enforcement risk, and supply-chain substantiation issues and is available to discuss questions arising from these developments.



Laura Kim
Advertising & Consumer Protection
Investigations
Partner, Washington
+1 202 662 5333
LKim@cov.com



Jehan Patterson
Litigation and Investigations
Of Counsel, Washington
+1 202 662 5187
JPatterson@cov.com



Ryan Miller
Litigation and Investigations
Associate, Washington
+1 202 662 5862
RMiller@cov.com



Munseong Park
Regulatory and Public Policy
Associate, London
+44 20 7067 2240
MPark@cov.com

COVINGTON

BEIJING BOSTON BRUSSELS DUBAI FRANKFURT JOHANNESBURG LONDON
LOS ANGELES NEW YORK PALO ALTO SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

www.cov.com

© 2026 Covington & Burling LLP. All rights reserved.