US & Multilateral Trade and Policy Developments

Japan External Trade Organization

June 2016

Contents

US General Trade Policy Highlights

United States and China Discuss Steel Overcapacity, Localization Measures, and Biotechnology at 8th Strategic and Economic Dialogue

From June 6 to 7, 2016, US Trade Representative (USTR) Michael Froman and US Treasury Secretary Jack Lew discussed bilateral trade and investment issues with senior Chinese officials at the 8th annual US-China Strategic and Economic Dialogue (S&ED) in Beijing. Among the issues raised by US officials were overcapacity in China's steel sector, China's alleged localization policies for information and communications technology (ICT), and China's regulatory approval process for agricultural biotechnology – all of which were identified by US congressional trade leaders as priorities for discussion at the S&ED.[1] The S&ED appears to have yielded minimal progress towards resolving these issues, as was expected given that the Obama Administration is in its final months, but the issues raised at the meeting will likely remain on the bilateral agenda under the next US President. China also raised as one of its priorities its desire to be treated as a market economy in US antidumping investigations after December 12, 2016, but the US delegation did not offer any official public statement on the issue.

Overcapacity

The parties largely reiterated their existing positions and commitments regarding excess production capacity in China's steel sector, which, along with overcapacity in other Chinese industries, has emerged this year as a major US priority. In a June 3 letter on congressional priorities for the S&ED, the Chairmen and Ranking Members of the Senate Finance and House Ways and Means Committees expressed particular concern about "global overcapacities in steel, aluminum, solar, and other commodities" that "largely result from China's over-investment in its production capacities, which stems from subsidies and other market-distorting measures." US steel and aluminum producers increasingly have made similar claims in recent months and have alleged that the resulting effect on prices has created crises in their respective industries. At the OECD High-Level Meeting on Excess Capacity in April, China declined to sign on to a global communique committing to specific policy steps to reduce its steel production capacity, leading USTR Froman to warn that the United States "will have no alternatives other than trade action" if China does not take such steps in the near future.

The United States and China reported the following outcomes after discussing this topic at the S&ED: (i) both countries are to ensure that "no central government plans, policies, directives, guidelines, lending or subsidization targets the net expansion of steel capacity"; (ii) China is to adopt measures to "strictly contain" steel capacity expansion, reduce net steel capacity, eliminate outdated steel capacity, and "appropriately dispose" of "zombie enterprises"; (iii) both countries are to participate in the global community's actions to address global excess capacity, including through the OECD Steel Committee meeting scheduled for September 89, 2016; and (iv) China is to take "further steps to ensure market forces are not constrained" in its steel industry. However, China made similar commitments at the 2014 S&ED, and at this year's meeting Chinese officials downplayed their ability to control the country's steel production capacity, claiming that half of Chinese steel companies are private enterprises and thus will not take direction from the central government.

Market economy status

Chinese Ministry of Commerce officials at the S&ED urged the United States to begin treating China as a market economy in US antidumping (AD) investigations after December 12, 2016. Section 15 of China's 2001 WTO Accession Protocol has allowed WTO Members to treat China as a non-market economy (NME) in AD investigations, but a portion of these provisions will expire on December 12, 2016, and WTO Members disagree whether China must automatically be treated as a market economy after this date. China has lobbied other WTO Members, including the United States, to accept that they will acknowledge its status as a market economy at the end of this year, but the

[1] Click **here** for the US-China joint statement on the S&ED, **here** for the US statement, and **here** for the statement from US congressional trade leaders.

United States has not stated publicly that it will do so and faces significant domestic political pressure to continue treating China as an NME. The issue was not addressed in official statements on the S&ED, and US Treasury Secretary Jack Lew only commented briefly on the issue to note that the US Department of Commerce will ultimately determine whether China satisfies the criteria to be treated as a market economy under US law.

Localization policies for information and communications technology (ICT)

The parties discussed a draft Chinese measure titled *Provisions on Insurance System Informatization* ("Provisions"), which has been criticized by insurance and technology industry group from the United States, Canada, Japan, and the European Union. Such groups have raised concerns that the Provisions (i) impose data localization requirements on insurance institutions operating in China; (ii) require that insurance institutions give preference in the procurement of ICT products to those that are "secure and controllable" (*i.e.*, Chinese-owned and registered intellectual property); and (iii) require cryptography in insurance institutions to comply with Chinese domestic cryptographic standards rather than international standards. The United States raised similar concerns about the Provisions in a June 2 meeting of the WTO Committee on Technical Barriers to Trade and requested that the China Insurance Regulatory Commission delay their implementation.

The outcomes of the S&ED discussion on this topic include: (i) a commitment that measures to enhance ICT cybersecurity "should be consistent with WTO agreements, be narrowly tailored, take into account international norms, be nondiscriminatory, and not impose nationality-based conditions or restrictions on the purchase, sale or use of ICT products by commercial enterprises unnecessarily"; and (ii) a commitment that such measures are not to unnecessarily limit or prevent commercial sales opportunities for foreign suppliers of ICT products or services. China made similar commitments at the 2015 S&ED in response to US concerns about a similar proposed measure that sought to impose "secure and controllable" requirements in the banking sector.

Approval of agricultural biotechnology products

The parties discussed China's approval process for products of agricultural biotechnology, which US congressional leaders allege to be a "slow, irregular, and unpredictable" process that is responsible for "serious price disruptions in the international market for U.S. agricultural products[.]" US biotechnology firms and agricultural exporters have pressured US officials to raise this issue in recent years due to a backlog of biotechnology products that are awaiting import approvals from China's Ministry of Agriculture.

At the S&ED, China agreed: (i) to revise its Regulations on the Safety Evaluation of Agricultural GMOs (Decree 8) and related measures, in a manner consistent with the outcomes on the administration of agricultural biotechnology agreed in September 2015 at the U.S.-China Leaders' Meeting; and (ii) to review applications of agricultural biotechnology products in a timely, ongoing and science-based manner. These commitments build on prior commitments made during President Xi Jinping's September 2015 state visit with President Obama and at the 2015 Joint Commission on Commerce and Trade (JCCT).

Bilateral Investment Treaty (BIT) negotiations

Regarding the negotiations towards the US-China BIT, the parties announced a commitment to exchange their third revised negative list offers by mid-June and to "push the BIT negotiations forward expeditiously." US Undersecretary of State Catherine Novelli said prior to the S&ED that "huge progress" has been made towards finalizing the rules of the US-China BIT in recent negotiating rounds, and that reaching agreement on the negative lists for market access is the main remaining obstacle to concluding the negotiations. Despite this progress, however, there is little likelihood of the parties reaching agreement on market access within the next several months, and as a result, it will likely be left to the next US President to determine whether continued BIT negotiations with China are a priority.

New US Chemical Safety Law to Affect Regulation of Imported and Domestically Produced Chemicals

On June 22, 2016, President Obama signed into law the *Frank R. Lautenberg Chemical Safety for the 21st Century Act*,[2] which substantially revises the US Environmental Protection Agency's (EPA) risk assessment process for imported and domestically manufactured chemicals. The bill requires the EPA to review at least 30 chemical substances under the revised process to determine whether their importation and domestic manufacture should be prohibited or restricted for public health or environmental reasons. In addition, the EPA will now be required to perform a risk evaluation of all new chemical substances before they may be manufactured or imported into the United States.

The bill requires the EPA to undertake the following actions:

- **Establish risk evaluation process.** Within one year, the EPA must establish by rulemaking a new process for conducting "risk evaluations" of chemical substances. The new process will supplant the EPA's current risk assessment procedure under the *Toxic Substances Control Act* (TSCA), though its objective will be the same: to determine whether a chemical "presents an unreasonable risk of injury to health or the environment" and should therefore be excluded from entry into the United States (among other restrictions). Under the new process, however, the EPA will have greater discretion to make such determinations and to establish the level of restriction that it deems appropriate. In particular, the EPA (i) must make determinations "without consideration of costs or other nonrisk factors"; (ii) must consider risks to "potentially exposed or susceptible subpopulations"; and (iii) is no longer required to choose the "least burdensome requirements" possible when imposing restrictions on the importation or manufacture of a chemical. According to industry analysts and proponents of the new legislation, these changes eliminate aspects of TSCA that made it difficult for the EPA to issue determinations and restrictions that could withstand judicial review. The restrictions that the EPA may impose following a risk evaluation are the same as those previously authorized by TSCA, and include prohibitions or other restrictions on the importation, manufacture, processing, or distribution of a chemical.

- **Undertake risk evaluations.** Within 180 days after the enactment of the bill, the EPA must "ensure that risk evaluations are being conducted" on ten chemical substances drawn from the list contained in the 2014 update of the TSCA Work Plan for Chemical Assessments. In addition, within 3.5 years after the enactment of the bill, the EPA must ensure that risk evaluations are being conducted on at least 20 "high-priority" substances, of which at least half must be drawn from the Work Plan. In designating substances as "high-priority," the EPA must "give preference" to substances listed in the Work Plan that are "known human carcinogens and have high acute and chronic toxicity", or that have a "persistence and Bioaccumulation Score of 3." After the 3.5 year period, the EPA is directed to continue designating priority substances and conducting risk evaluations, but there are no further quantitative targets.

- **Mandatory evaluation of all new chemical substances.** The bill requires the EPA to perform a risk evaluation of all "new chemical substances" before they may be manufactured or imported into the United States. A party that wishes to import or manufacture a new chemical substance (*i.e.*, a substance not on the TSCA Inventory maintained by the EPA pursuant to 15 U.S.C. § 2607(b)) must provide 90 days advance notice to the EPA along with safety information about the chemical. The EPA will not approve the importation or manufacture of a new chemical unless it determines that the chemical does not present "an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation[.]" If the EPA determines that the new substance poses such a risk, it may prohibit or otherwise restrict the importation or manufacture of the new chemical.

[2] Click **here** for the text of the bill and **here** for the EPA Work Plan.

President Obama Issues Proclamation to Implement Expanded Information Technology Agreement

On June 30, 2016, President Obama issued a Presidential Proclamation to implement the World Trade Organization (WTO) Declaration on the Expansion of Trade in Information Technology Products (ITA-II). The first round of US tariff reductions under the ITA-II is scheduled to take effect on July 1, 2016. Of the covered tariff lines on which the United States currently imposes duties, 62 percent are scheduled for full duty elimination as of July 1, 2016, whereas 38 percent will be subject to a three year phase-out ending on July 1, 2019 (please refer to the W&C US Trade Alert dated January 29, 2016). Among the products scheduled for full duty elimination as of July 1, 2016 are certain sound recording and playback devices, monitors, and optical equipment.

President Obama implemented the ITA-II by Presidential Proclamation pursuant to the Uruguay Round Agreements Act (URAA) – as was done by President Bill Clinton with the original ITA – rather than by submitting implementing legislation to Congress for approval. Section 111(b) of the URAA authorizes the President to modify duty rates for certain tariff categories (provided that those tariff categories had been the subject of negotiations during the Uruguay Round) in order to implement agreements such as the ITA whose negotiation had begun but not concluded during the Uruguay Round.

USTR Announces Results of 2015-2016 GSP Annual Review

On June 30, 2016, the Office of the United States Trade Representative (USTR) announced the outcome of the 2015/2016 Annual Product Review under the Generalized System of Preferences (GSP) program.[3] Based on its annual review of various issues and petitions, USTR is making several modifications to the list of articles eligible for duty-free treatment under GSP. These modifications include (i) adding certain products to the list of GSP-eligible articles; (ii) removing certain products from the list of GSP-eligible articles; (iii) announcing that certain articles are subject to competitive need limitations (CNLs); and (iv) granting CNL waivers for certain articles. The effective date for these modifications is July 1, 2016.

Products added to the GSP program

USTR has added 28 tariff lines covering certain travel and luggage products to the list of GSP-eligible articles, provided that such products originate from a least-developed beneficiary developing country (LD-BDC) or an African Growth and Opportunity Act (AGOA) country. In 2015, various travel and luggage goods companies filed petitions requesting that USTR add these products to the GSP program for all GSP-eligible countries; however, USTR has postponed indefinitely its decision to grant such benefits to GSP countries that are not LD-BDCs. USTR also postponed its decision to grant GSP benefits to ferromanganese from the Ukraine, among other items.

Products removed for certain beneficiary developing countries

In response to petitions filed by interested parties, USTR decided to remove the following products from the list of GSP-eligible articles: (i) polyethylene terephthalate (PET) resin from India; and (ii) various fluorescent brightening agents from India. In addition, USTR removed several products that were found to exceed CNLs in 2015. CNLs are exceeded when US imports of a GSP-eligible product from a BDC during a calendar year account for 50 percent or more of the value of total US imports of that product ("percentage-based CNL"), or exceed a specified dollar value (USD 170 million in 2015). Consequently, the following products will be removed from the list of GSP-eligible articles: (i) iron or steel cast grinding balls from India; (ii) certain motor vehicle parts and accessories from India; and (iii) single fruit or vegetable juices from the Philippines. USTR also issued waivers for 114 products that exceeded CNLs in 2015, thereby ensuring continued GSP benefits for those products.

[3] Click **here** for the full results of the 2015/2016 GSP Annual Review.

Petitions and Investigations Highlights

US Department of Commerce Issues Affirmative Preliminary Determinations in AD Investigations of Circular Welded Carbon-Quality Steel Pipe from Pakistan, Oman, the UAE, and Vietnam

On June 1, 2016, the US Department of Commerce (DOC) announced its affirmative preliminary determinations in the antidumping duty (AD) investigations of circular welded carbon-quality steel pipe from Oman, Pakistan, the United Arab Emirates, and Vietnam.[4] DOC initiated the investigations in November 2015 in response to a petition filed by Bull Moose Tube Company, EXLTUBE, Wheatland Tube, and Western Tube & Conduit.

In its investigations, DOC preliminarily determined that imports of the subject merchandise were sold in the United States at the following dumping margins: (i) 11.80 percent (for Pakistan) (ii) 7.86 percent (for Oman); (iii) 6.10 – 9.25 percent (for the UAE); and (iv) 0.38 – 113.18 percent (for Vietnam). Consequently, DOC will instruct US Customs and Border Protection (CBP) to require cash deposits based on these preliminary rates.

DOC is scheduled to issue its final determinations on or around October 16, 2016, unless the statutory deadline is extended. If DOC makes affirmative final determinations, and the US International Trade Commission (ITC) makes affirmative final determinations that imports of the subject merchandise from Pakistan, Oman, the UAE and/or Vietnam materially injure or threaten material injury to the domestic industry, DOC will issue AD orders. The ITC is scheduled to makes its final determinations in November 2016.

US Department of Commerce Issues Affirmative Preliminary Determinations in AD Investigations of Certain Iron Mechanical Transfer Drive Components from Canada and China

On June 1, 2016, the US Department of Commerce (DOC) announced its affirmative preliminary determinations in the antidumping duty (AD) investigations of certain iron mechanical transfer drive components from Canada and China.[5] DOC initiated the investigations in November 2015 in response to a petition filed TB Wood's, Incorporated.

In its investigations, DOC preliminarily determined that imports of the subject merchandise were sold in the United States at the following dumping margins: (i) 191.34 percent (for Baldor Electric Company of Canada); (ii) 100.47 percent (for all other producers and exporters in Canada); (iii) 2.17 percent (for 23 Chinese producers and exporters); and (iv) 401.68 percent (as a China-wide rate based on adverse facts available). Consequently, DOC will instruct US Customs and Border Protection (CBP) to require cash deposits based on these preliminary rates.

DOC is scheduled to issue its final determinations on or around October 21, 2016, unless the statutory deadline is extended. If DOC makes affirmative final determinations, and the US International Trade Commission (ITC) makes affirmative final determinations that imports of the subject merchandise from Canada and/or China materially injure or threaten material injury to the domestic industry, DOC will issue AD orders. The ITC is scheduled to make its final injury determinations in December 2016.

US Department of Commerce Issues Affirmative Preliminary Determinations in CVD Investigations of Off-Road Tires from India and Sri Lanka

On June 14, 2016, the US Department of Commerce (DOC) announced its affirmative preliminary determinations in the countervailing duty (CVD) investigations of certain pneumatic off-the-road tires from India and Sri Lanka.[6] In its investigations, DOC preliminarily determined that imports of the subject merchandise received countervailable subsidies of 4.70 to 6.17 percent (for India) and 2.90 percent (for Sri Lanka). DOC also preliminarily found that

[4] Click **here** for the DOC fact sheet on the investigations.

[5] Click **here** for the DOC fact sheet on the investigations.

[6] Click **here** for the DOC fact sheet on the investigations.

critical circumstances exist with respect to certain exporters from both countries, and thus will instruct CBP to impose provisional measures retroactively on entries of the subject merchandise.

The subject merchandise is currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 4011.20.1025, 4011.20.1035, 4011.20.5030, 4011.20.5050, 4011.61.0000, 4011.62.0000, 4011.63.0000, 4011.69.0050, 4011.92.0000, 4011.93.4000, 4011.93.8000, 4011.94.4000, 4011.94.8000, 8431.49.9038, 8431.49.9090, 8709.90.0020, and 8716.90.1020. The subject merchandise may also enter under subheadings 4011.99.4550, 4011.99.8550, 8424.90.9080, 8431.20.0000, 8431.39.0010, 8431.49.1090, 8431.49.9030, 8432.90.0005, 8432.90.0015, 8432.90.0030, 8432.90.0080, 8433.90.5010, 8503.00.9560, 8708.70.0500, 8708.70.2500, 8708.70.4530, 8716.90.5035 and 8716.90.5055.

DOC is scheduled to announce its final determinations on or around October 28, 2016, unless the statutory deadline is extended. If DOC makes affirmative final determinations, and the US International Trade Commission (ITC) makes affirmative final determinations that imports of the subject merchandise materially injure or threaten material injury to the domestic industry, DOC will issue CVD orders.

US Department of Commerce Initiates AD/CVD Investigations of Ammonium Sulfate From China

On June 15, 2016, the US Department of Commerce announced the initiation of antidumping (AD) and countervailing duty (CVD) investigations of imports of ammonium sulfate from China.[7] DOC initiated the investigations in response to a petition filed by PCI Nitrogen, LLC, a producer of the domestic like product. The dumping margins alleged in the petition range from 250.81 to 493.46 percent.

The merchandise covered by the investigations is ammonium sulfate in all physical forms, with or without additives such as anti-caking agents. Ammonium sulfate is commonly used as a fertilizer and has the chemical formula $(NH_4)_2SO_4$. The subject merchandise includes ammonium sulfate that is combined with other products, including by, for example, blending (*i.e.*, mixing granules of ammonium sulfate with granules of one or more other products), compounding (*i.e.*, when ammonium sulfate is compacted with one or more other products under high pressure), or granulating (incorporating multiple products into granules through, *e.g.*, a slurry process). For such combined products, only the ammonium sulfate component is covered by the investigations. The subject merchandise is classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 3102.21.0000, and has the Chemical Abstracts Service (CAS) registry number 7783-20-2.

The US International Trade Commission (ITC) is scheduled to make its preliminary injury determination on or before July 11, 2016. If the ITC determines that there is a reasonable indication that imports of ammonium sulfate from China materially injure or threaten material injury to the domestic industry, the investigations will continue. DOC will then be scheduled to make its preliminary CVD determination in August 2016 and its preliminary AD determination in November 2016, unless the statutory deadlines are extended.

According to DOC, imports of ammonium sulfate from China were valued at USD 62 million in 2015.

Department of Commerce Issues Affirmative Preliminary Determination in CVD Investigation of Geogrid Products from China

On June 20, 2016, the US Department of Commerce (DOC) announced its affirmative preliminary determination in the countervailing duty (CVD) investigation of certain biaxial integral geogrid products from China.[8] In its investigation, DOC preliminarily determined that imports of the subject merchandise from China received countervailable subsidies ranging from 16.60 to 128.27 percent. Chinese producers BOSTD Geosynthetics and Taian Modern Plastic Co. were assigned subsidy rates of 16.60 and 30.65 percent, respectively, whereas 25 Chinese companies were assigned a

[7] Click **here** for the DOC fact sheet on the investigations.

[8] Click **here** for the DOC fact sheet on the investigation.

separate rate of 128.27 percent based on adverse facts available. DOC assigned a subsidy rate of 23.63 percent to all other producers and exporters of the subject merchandise from China.

The merchandise subject to the investigation is certain biaxial integral geogrid products. Biaxial integral geogrid products are a polymer grid or mesh material (whether or not finished, slit, cut-to length, attached to woven or non-woven fabric or sheet material, or packaged) in which four-sided openings in the form of squares, rectangles, rhomboids, diamonds, or other four-sided figures predominate. Geogrid products are used in civil engineering and construction projects for purposes such as the reinforcement and stabilization of terrain, the base layer under roadways, or the foundation soil under buildings. Imports of the subject merchandise are classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 3926.90.9995, and may also enter under subheadings 3920.20.0050 and 3925.90.0000.

DOC has aligned the final determination of the CVD investigation with the final determination of the concurrent antidumping duty (AD) investigation of certain biaxial integral geogrid products from China. Accordingly, DOC is scheduled to make its final determinations on or around October 31, 2016, unless the statutory deadlines are extended. If DOC makes an affirmative final determination, and the US International Trade Commission (ITC) makes an affirmative final determination that imports of the subject merchandise materially injure or threaten material injury to the domestic industry, DOC will issue a CVD order.

According to DOC, imports of biaxial integral geogrid products from China were valued at approximately USD 1.5 billion in 2014.

Department of Commerce Issues Affirmative Final Determination in AD Investigation of Hydrofluorocarbon Blends and Components Thereof From China

On June 22, 2016, the US Department of Commerce (DOC) announced its affirmative final determination in the antidumping duty (AD) investigation of hydrofluorocarbon blends and components thereof from China. In its investigation, DOC assigned a final dumping margin of 101.82 percent to eighteen Chinese producers who qualified for separate rates, and a final dumping margin of 216.37 percent to all other producers and exporters from China.

The US International Trade Commission (ITC) is scheduled to make its final injury determination on August 1, 2016. If the ITC makes an affirmative final determination that imports of hydrofluorocarbon blends and components thereof from China materially injure or threaten material injury to the domestic industry, DOC will issue an AD order.

International Trade Commission Issues Affirmative Final Determinations in AD/CVD Investigations of Cold-Rolled Steel Flat Products from China and Japan

On June 22, 2016, the US International Trade Commission (ITC) announced its affirmative final determinations in the investigations of certain cold-rolled steel flat products from China and Japan.[9] The US Department of Commerce (DOC) determined in May that imports of the subject merchandise from China and Japan were sold in the United States at dumping margins of 265.79 percent and 71.35 percent, respectively, and that imports of the subject merchandise from China received countervailable subsidies of 256.44 percent.

As a result of the ITC's affirmative determinations, DOC will issue a countervailing duty (CVD) order on imports of the subject merchandise from China and antidumping duty (AD) orders on imports of the subject merchandise from China and Japan. The ITC made negative findings with respect to critical circumstances. As a result, goods that entered the United States from China prior to December 22, 2015, will not be subject to retroactive countervailing duties, and goods that entered the United States from China and Japan prior to March 7, 2016, will not be subject to retroactive antidumping duties.

The ITC's public report in these investigations is scheduled to be published in July 2016.

[9] Click **here** for the ITC press release on the investigations.

International Trade Commission Issues Affirmative Final Determinations in AD/CVD Investigations of Corrosion-Resistant Steel Products From China, India, Italy, Korea, and Taiwan

On June 24, 2016, the US International Trade Commission (ITC) announced its affirmative final injury determinations in the investigations of corrosion-resistant steel products from China, India, Italy, Korea, and Taiwan.[10] The US Department of Commerce (DOC) determined in May that imports of corrosion-resistant steel products from China, India, Italy, Korea, and Taiwan were sold in the United States at less than fair value, and that imports of the same from China, India, Italy, and Korea received countervailable subsidies.

As a result of the ITC's affirmative final determinations, DOC will issue countervailing duty (CVD) orders on imports of the subject merchandise from China, India, Italy, and Korea and antidumping duty (AD) orders on imports of the subject merchandise from China, India, Italy, Korea, and Taiwan. The ITC made negative findings with respect to critical circumstances in the investigations of China, Italy, Korea, and Taiwan. Consequently, products that entered the United States from China, Italy, and Korea prior to November 6, 2015, will not be subject to retroactive countervailing duties, and goods that entered the United States from China, Italy, Korea, and Taiwan prior to January 4, 2016, will not be subject to retroactive antidumping duties.

The ITC's public report on these investigations is scheduled to be published in July 2016.

Department of Commerce Issues Affirmative Preliminary Determination in CVD Investigation of Truck and Bus Tires From China

On June 28, 2016, the US Department of Commerce (DOC) announced its affirmative preliminary determination in the countervailing duty (CVD) investigation of imports of truck and bus tires from China. DOC assigned preliminary subsidy rates of 17.06 percent and 23.38 percent to Double Coin Holdings Ltd. and Guizhou Tyre Co. Ltd., respectively. In addition, DOC assigned a preliminary subsidy rate of 20.22 percent to all other producers and exporters in China.

As a result of its affirmative preliminary determinations, DOC will instruct US Customs and Border Protection (CBP) to require cash deposits based on the preliminary rates listed above. DOC preliminary found that critical circumstances exist with respect to one Chinese exporter of the subject merchandise, and as a result, CBP will impose provisional measures retroactively on entries of truck and bus tires effective 90 days prior to publication of the preliminary determination in the *Federal Register*.

DOC has aligned the final CVD determination with the final determination in the concurrent antidumping investigation of truck and bus tires from China. Thus, DOC is scheduled to announce its final determination on or around November 10, 2016, unless the statutory deadline is extended. If DOC makes an affirmative final determination, and the US International Trade Commission (ITC) makes an affirmative final determination that imports of truck and bus tires from China materially injure or threaten material injury to the domestic industry, DOC will issue a CVD order.

Department of Commerce Issues Affirmative Preliminary Determination in CVD Investigation of Amorphous Silica Fabric from China

On June 28, 2016, the US Department of Commerce (DOC) announced its affirmative preliminary determination in the countervailing duty (CVD) investigation of certain amorphous silica fabric from China.[11] In its investigation, DOC preliminarily determined that imports of the subject merchandise from China received countervailable subsidies ranging from 4.36 to 28.25 percent. As a result of the affirmative preliminary determination, DOC will instruct US Customs and Border Protection to require cash deposits based on these preliminary rates.

[10] Click **here** for the ITC's press release on the investigations.

[11] Click **here** for the DOC fact sheet on the investigation.

The product covered by this investigation is woven (whether from yarns or rovings) industrial grade amorphous silica fabric, which contains a minimum of 90 percent silica by nominal weight, and a nominal width in excess of 8 inches. The investigation covers industrial grade amorphous silica fabric regardless of other materials contained in the fabric, regardless of whether in roll form or cut-to-length, regardless of weight, width (except as noted above), or length. The subject imports are normally classified in subheadings 7019.59.4021, 7019.59.4096, 7019.59.9021, and 7019.59.9096 of the Harmonized Tariff Schedule of the United States (HTSUS), but may also enter under subheadings 7019.40.4030, 7019.40.4060, 7019.40.9030, 7019.40.9060, 7019.51.9010, 7019.51.9090, 7019.52.9010, 7019.52.9021, 7019.52.9096 and 7019.90.1000.

DOC is scheduled to announce its final determination on or around November 8, 2016, unless the statutory deadline is extended. If DOC makes an affirmative final determination, and the US International Trade Commission (ITC) makes an affirmative final determination that imports of the subject merchandise from China materially injure or threaten material injury to the domestic industry, DOC will issue a CVD order.

Multilateral Policy Highlights

Business Leaders Discuss Potential Plurilateral Agreement to Eliminate Tariffs on Chemical Products

A new World Trade Organization (WTO) agreement to eliminate tariffs on trade in chemical products was cited last week as the top priority of international business groups for the WTO's 11th Ministerial Conference (MC11) in December 2017. Trade in chemicals is viewed by some WTO Members as an attractive candidate for results, since negotiations could be modeled on the expanded Information Technology Agreement (ITA-II) and concluded relatively quickly. The United States, the European Union, and China have already expressed their support for eliminating tariffs in this sector.

At a May 30 meeting that business leaders held in the WTO to identify issues that business would actively support for negotiations in the WTO, Director-General Roberto Azevedo said that "..chemicals was mentioned more than anything else". The meeting was convened by DG Azevedo to try to regain business support for the WTO after years of disinterest: stalemate in the Doha Round led business to lobby instead for trade liberalization through regional agreements such as the TPP and TTIP. Three issues that already have been slated as possible candidates for results at MC11 – fisheries subsidies, food security, and transparency of regional trade agreements – hold little interest for business groups. However, broadening the WTO agenda beyond Doha issues through sectoral tariff elimination agreements that could be concluded relatively quickly might reinvigorate business interest in the WTO. DG Azevedo has established informal WTO working groups on two other "new" issues – digital trade and foreign investment – to try to help move WTO negotiations away from Doha. While both of these are well supported by business, they might take far longer to negotiate and they are more complex politically to manage on a multilateral level.

Trade in chemicals is an attractive candidate for sectoral liberalization. It has already been in focus in the Doha negotiations on Non-Agricultural Market Access (NAMA) where it was supported in principle by key delegations, including China and even India in a muted way. However, progress on all sectoral liberalization initiatives, including chemicals, was blocked in the NAMA negotiations by the stalemate over formula cuts and flexibilities for developing countries. The chemicals agreement also struggled amidst concerns on reaching a "critical mass" of commitment from major chemicals exporting countries.

However, treating sectoral liberalization now on a stand-alone basis, outside of NAMA, offers greater possibility of success and the ITA-II approach seems to provide a good model to follow. Trade in chemicals would appear to lend itself well to that model. Product coverage would be relatively straightforward to define. Global production of chemicals is relatively highly concentrated which should simplify the task of achieving the "critical mass" of participants in the negotiations that would allow the eventual agreement to be applied on a most-favored-nation

(MFN) basis to all WTO Members. Some flexibility for developing countries could be built into an agreement through differentiated schedules for implementing tariff cuts.

A sectoral agreement to eliminate tariffs on chemicals would likely build on the Chemical Tariff Harmonization Agreement (CTHA) from the Uruguay Round and the sectoral negotiations from 2010. The CTHA lowered tariffs on chemicals in HS chapters 28-39, which includes organic and inorganic chemicals, pharmaceuticals, plastics, fertilizers, agro-chemicals, paints and dyes, and cosmetics. Coverage of a new tariff elimination agreement would have to be negotiated and might end up being narrower than the CTHA.

China to Re-Engage in EGA Negotiations Ahead of G-20 Leaders' Summit in September

After months of apparent disengagement from negotiations on the Environmental Goods Agreement (EGA), China has signaled its intent to re-engage ahead of the G-20 Leaders' Summit that China will host in September. Until now, China has hesitated to agree to offer most-favored-nation (MFN) access to its market because of its concern that "free riders" would benefit, but China has now indicated its willingness to compromise on this point subject to it being satisfied that participants in the EGA will work to ensure the potential problem is minimized. This breakthrough should allow negotiations to move towards conclusion on the final product coverage and timetables for the elimination of tariffs. Unblocking the EGA negotiations would have the additional benefit of clearing the way to begin other plurilateral negotiations in the WTO to liberalize trade in sectors such as chemicals which has recently been flagged by business groups as a priority sector for them.

China cast doubt over the future of the EGA in April when it demanded a "snap-back" provision to prevent non-participating countries from free-riding on the MFN tariff cuts made by EGA participants. China proposed that EGA participants should be allowed to withdraw the EGA concessions and to reinstate tariffs if the percentage of world trade in products covered by EGA participants were to fall below 70 percent and if any non-participating country were to account for at least 3 percent of world trade in covered products. At the same time, China failed to meet a deadline to submit its offer of product coverage. It also said that it could not abide by the original mandate to eliminate all tariffs on EGA products and proposed instead that developing countries should be allowed to maintain duties of up to 5 percent on up to 5 percent of the products covered. China also demanded much longer periods to phase-out EGA tariffs than the United States and other participants had proposed, including more than seven years for some products and with no deadline at all for some others.

The United States and other EGA participants rejected China's demand for a "snap-back" provision, saying that they would reach out to other non-participating countries with substantial trade in EGA products to try to persuade them to join the agreement and ensure a critical mass of participation, understood to mean around 90 percent. In the meantime, they have continued to forge consensus among themselves without the involvement of China on a final list of 250 to 300 products that will be covered by the EGA, most of which relate to renewable energies, water treatment, soil reclamation and air purification. EGA participants have indicated that they are prepared to negotiate with China and other developing countries on the timing of the elimination of tariffs, perhaps beyond seven years, although they are not willing to compromise on the objective of the total elimination of tariffs.

China has indicated that it will submit its offer on product coverage at the next technical-level negotiating session in late-June. That will allow negotiations to re-start also on timetables for tariff elimination and other elements of the agreement. The United States and others have said that they intend to finalize the EGA in 2016 and that they will use the G-20 Leaders' Summit in China in September to try to overcome remaining obstacles. That may involve them encouraging other advanced economies in the G-20 to join China in participating in the EGA.

"Brexit" to Have Important Trade Effects for the UK and its Trading Partners

The result of the UK referendum to withdraw from the European Union (EU) will have important trade effects for the UK and many of its trading partners. In the short-term (*i.e.*, before the UK's withdrawal agreement from the EU enters into force) the UK's preferential trade arrangements with the EU and the EU's Free Trade Agreement (FTA) partners would remain in place, and the UK would continue trading with the rest of the world on the basis of the Most Favored

Nation (MFN) regime of the EU. However, once the UK's withdrawal agreement enters into force, the UK's preferential trade arrangements would cease to apply and the UK would likely propose negotiations to establish preferential trade arrangements with its main trading partners.

More generally, it is unlikely that the UK's decision will affect work in the WTO in the short-term, either on the Doha Round or on the implementation of any WTO Agreements. The EU Commission will continue to speak in the WTO on behalf of the UK until it ceases to be a member state, and the Commission's position on WTO issues is not likely to change. The longer term trade policy effects can only be speculated.

The effects of UK withdrawal will be more complicated in the case of countries with which it has preferential trade arrangements in place. The "Leave" campaign in the UK proposed that these preferential arrangements, including the EU single market, could be reconstituted without great difficulty or delay on the basis of WTO rules and obligations. There are many who question the ease with which that can be done. The Director-General of the World Trade Organization, Roberto Azevedo, said that after leaving the EU "pretty much all of the UK's trade would somehow have to be renegotiated". He added that this would be an unprecedented situation, involving long negotiations and requiring the rebuilding of a trade negotiating team in the UK.

In the period following the UK's notification of its intention to withdraw from the EU until the entry into force of the withdrawal agreement (a period of two years, unless there is agreement by the EU to extend it), there would be no need for any change in trade policy. The UK, other EU member states, and countries with FTAs with the EU would continue to trade on the basis of current preferential arrangements for goods and services. The rest of the world would continue to trade with the UK on the basis of the MFN regime of the EU. EU trade defense measures that are in place would continue to apply in the UK market.

At the time of the entry into force of the UK's withdrawal agreement, the UK's preferential trade arrangements would cease to apply and it would revert to the MFN trade relationship with all of its trading partners. The UK MFN schedule for goods and services is the same as the EU schedule but it is bound independently by the UK in the WTO and it would therefore apply. This would involve increased trade restriction in goods and services between the UK and all countries (including the EU) with which it previously had preferential trade arrangements. Other countries with which the EU (and the UK) currently trade on an MFN basis would, in principle, see no change.

The UK would lose justification in the WTO to apply EU trade defense measures until it carried out its own investigations to prove unfair trade. However, because the UK is a WTO member as both the UK and a member of the EU (for now), it may have procedural flexibilities for ensuring that duties now in force as a result of EU trade defense measures are promptly superseded by UK measures, as long as it does not run afoul of basic rules like the requirement of an injury finding for UK industry and the prohibition of double-remedies.

The UK could propose adapting elements of its MFN schedule that it inherited from the EU. If adaptation is in the direction of liberalization, it will automatically be acceptable under WTO rules and there is no likelihood of objections from other WTO Members. If adaptation is in the direction of greater restriction, other WTO Members can refuse to accept this or can demand additional concessions from the UK to re-establish the pre-existing balance of benefits.

The UK could, and most probably would, propose negotiations to establish preferential trade arrangements with its main trading partners, including the EU and other countries with which it previously has no such arrangements. Those negotiations could, in principle, begin immediately following the UK's notification to Brussels of its intention to withdraw from the EU, subject to others being willing to negotiate with the UK. The starting point for the negotiation would be the UK MFN schedule for goods and services.

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