US & Multilateral Trade Policy Developments

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Contents

US General Trade Policy Highlights

Update on US Trade Policy under the Trump Administration

After five months in office, the Trump administration is poised to implement a more defensive, enforcement-oriented trade policy than recent US administrations, but the extent of this shift remains uncertain: although the administration has thus far not pursued the most extreme trade policies that President Trump proposed during the 2016 election campaign, it has initiated several important trade investigations and reviews that could result in significant and aggressive new trade actions. Furthermore, the administration has pursued certain *ad hoc* actions with respect to trade remedies (*i.e.*, anti-dumping and countervailing duty cases) that, if repeated or formalized, would portend more stringent application of US trade remedy laws and higher duties on subject imports.

Trump administration officials also have begun to outline the general principles that guide the administration's trade policies. These include a desire for greater "reciprocity" in trade relations, particularly on tariffs; a view that bilateral trade balances are a reflection of (and should inform) trade policies; and a view that trade remedies are a vital trade policy tool and are to be used aggressively. These views differ in several respects from those espoused by recent US administrations, and provide important insights into the Trump administration's approach to trade policy.

In addition, clear differences of opinion have emerged among President Trump's cabinet officials and senior White House advisors regarding the administration's approach to trade policy. The "economic nationalist" wing of the White House has urged President Trump to take bold trade actions in line with his aggressive campaign rhetoric, whereas business-friendly, "globalist" officials have discouraged such measures and favor a more conventional US trade policy. These dynamics within the Executive Branch have already shaped key decisions on trade policy and should continue to do so.

We provide below a review of these developments, focusing in particular on (i) the major trade actions taken by the Trump administration to date; (ii) developments regarding US trade negotiations; and (iii) the key officials and principles that are shaping the administration's trade policy. We also provide an outlook for US trade policy based on these developments and trends.

Executive Branch Actions

The major trade actions taken by the Trump administration to date fall into three categories: (i) executive actions; (ii) plans or reports; and (iii) agency actions.

- Executive Actions
  - Presidential Memorandum Regarding Withdrawal of the United States from the Trans-Pacific Partnership Negotiations and Agreement. This memorandum directed USTR to notify the TPP depositary that the United States "withdraws as a signatory from the TPP and withdraws from the TPP negotiating process". This explicit instruction to remove the United States "as a signatory", and the fact that the TPP text does not contemplate the withdrawal of a party prior to the entry into force of the agreement, has arguably reduced the United States' negotiating leverage should it seek to rejoin the agreement in the future. For example, as a result of President Trump's memorandum and USTR's subsuqent letter to the TPP depositary, the remaining signatories could determine that the United States is no longer an "original signatory" of the TPP and demand additional concessions from the United States if it seeks to rejoin the agreement.

- Executive Order on Establishment of the Office of Trade and Manufacturing Policy. This order established within the White House Office an "Office of Trade and Manufacturing Policy" (OTMP), which will replace the National Trade Council (NTC) and will be led by former NTC Director Peter Navarro. The OTMP's responsibilities are to: (i) "advise the President on innovative strategies and promote trade policies consistent with the President's stated goals"; (ii) serve as a liaison between the White House and the Department of Commerce and undertake trade-related special projects as requested by the President; and (iii) help improve the performance of the executive branch's domestic procurement and hiring policies, including through the implementation of the policies described in the "Buy American and Hire American" Executive Order.

- Plans or Reports

  - **Memorandum Regarding Construction of American Pipelines.** This memorandum directed the Secretary of Commerce to submit to the President, by July 23, 2017, "a plan under which all new pipelines, as well as retrofitted, repaired, or expanded pipelines, inside the borders of the United States, including portions of pipelines, use materials and equipment produced in the United States, to the maximum extent possible and to the extent permitted by law." Though the memorandum appears to contemplate the application of "Buy American" rules to private pipelines, current US law, including the Buy American Act, does not authorize extending domestic origin requirements to private pipelines.

  - **Executive Order Regarding the Omnibus Report on Significant Trade Deficits.** This order directed the Secretary of Commerce and the United States Trade Represenative (USTR) to submit to the President by June 29, 2017 an "Omnibus Report on Significant Trade Deficits". The report will assess the major causes of the United States' trade deficit with several of its major trading partners, including whether alleged unfair or discriminatory trade practices contribute to US trade deficits. The report also will assess the effects of each trading relationship on the US economy and national security.

    We expect that the Omnibus report will downplay the macroeconomic factors (savings and investment) which, in the mainstream economic view, are the primary drivers of trade balances. Rather, the report will likely emphasize the view – shared by some Trump advisors – that unfair foreign trading practices contribute significantly to US trade deficits. While it is uncertain whether the Trump administration will initiate specific trade actions based on the findings of the report, this is certainly a possibility: the language of the Executive Order mirrors that contained in Section 232 of the Trade Expansion Act and Section 301 of the Trade Act, and the Omnibus Report might be used as a pretext for initiating new actions under these statutes.

  - **Executive Order on Establishing Enhanced Collection and Enforcement of Antidumping and Countervailing Duties and Violations of Trade and Customs Laws.** This order directed the Secretary of Homeland security to develop, by June 29, 2017: (i) a plan that would require certain importers that, based on a risk assessment conducted by CBP, pose a risk to the revenue of the United States, to provide security for anti-dumping and countervailing duty liability through bonds and other legal measures; and (ii) a strategy and plan for combating violations of United States trade and customs laws for goods and for enabling interdiction and disposal, including through methods other than seizure, of inadmissible merchandise.

  - **Executive Order on Buy American and Hire American.** This order directed the Secretary of Commerce to submit to the President, by November 24, 2017, a report that includes "specific recommendations to strengthen implementation of Buy American Laws, including domestic procurement preference policies and programs." These recommendations shall include proposed policies to ensure that "to the extent permitted by law, Federal financial assistance awards and Federal procurements maximize the use of materials produced in the United States, including…materials such as steel, iron, aluminum, and cement." The report also will include an assessment of "the impacts of all United States free trade agreements and the World Trade Organization Agreement on Government Procurement on the operation of Buy American Laws[.]" This assessment will likely draw upon a February 2017 analysis by the Government Accountability Office (GAO) which concluded that "the amount of GPA-covered government procurement that the United States

reported…was more than double the combined amount reported by the five GPA parties with the next largest procurement markets[.]" Given the Trump administration's stated support for Buy American requirements and its emphasis on "reciprocity" in trade relations, it might use GAO's findings to justify renegotiating US commitments under, or withdrawing from, the GPA.

- **Executive Order Addressing Trade Agreement Violations and Abuses.** This order requires the Secretary of Commerce and the USTR to submit to the President, by October 26, 2017, "comprehensive performance reviews" of (i) all bilateral, plurilateral, and multilateral trade agreements and investment agreements to which the United States is a party; and (ii) all trade relations with countries governed by the rules of the WTO with which the United States does not have free trade agreements but with which the United States runs significant trade deficits in goods. The performance reviews are to identify (i) alleged "violations or abuses" of any US trade or investment agreement, trade preference program, or WTO rule; (ii) other instances of "unfair treatment" by US trading partners; (iii) instances where a trade agreement, preference program, or trade relation "has failed with regard to such factors as predicted new jobs created, favorable effects on the trade balance, expanded market access, lowered trade barriers, or increased United States exports"; and (iv) lawful and appropriate actions to remedy or correct the "deficiencies" described in items (i)-(iii).

  We expect that the reviews will criticize existing US trade agreements and the WTO, and will argue that such arrangements have not "lived up to expectations" because (i) US trading partners allegedly have not fully complied with the agreements; (ii) various forms of "unfair treatment" are not covered or prohibited by the agreements; and/or (iii) the agreements have not achieved certain economic objectives (*e.g.*, reducing trade deficits or increasing employment). In the case of the WTO, the reviews also will likely discuss the percieved shortcomings of the WTO Dispute Settlement Body, reflecting the view of some Trump advisers (including Ambassador Lighthizer) that the DSB has routinely overstepped its mandate in adverse rulings against the United States, particularly in the area of trade remedies. The reviews might therefore recommend that the Trump administration seek to renegotiate or withdraw from certain trade agreements, or that it initiate new trade disputes (either at the WTO or under FTAs) to address alleged "violations or abuses".

- Agency Actions

  - **Section 232 Investigations of Steel and Aluminum Imports.** In April 2017, Secretary of Commerce Wilbur Ross initiated investigations into the effects of imports of steel and aluminum on the national security of the United States, pursuant to Section 232 of the Trade Expansion Act of 1962. If DOC determines in these investigations that imports of the subject products "threaten to impair the national security" of the United States, the President will be authorized to take action to "adjust imports" of such products, including through the imposition of tariffs. DOC is expected to issue determinations in both investigations by the end of June.

    Secretary Ross' and President Trump's comments on the investigations, as well the expedited manner in which the investigations were conducted, strongly suggest that DOC will find a threat to national security in both cases and will recommend that the President adjust imports of steel and aluminum. Indeed, President Trump has implied that the investigations will result in new measures, and if DOC concludes the investigations by end-June it will have utilized only about 25 percent of the 270-day investigation period permitted under Section 232.

    In the steel investigation, DOC reportedly is considering recommending three potential remedies (a 25 percent import tariff, a quota system, and a tariff-rate quota system) and also is considering whether certain products and/or exporting countries should be excluded from the scope of these measures. Though DOC is likely to recommend measures in both cases, the scope of the measures remains uncertain. Several senior Trump administration officials, including National Economic Council Director Gary Cohn and Treasury Secretary Steve Mnuchin, have reportedly lobbied against broad import adjustment measures citing concerns about their potential economic effects. Secretary of Defense James Mattis, whom

Secretary Ross is required by law to consult with on the investigation, also reportedly is opposed to broad import adjustment measures. Moreover, Members of Congress in both parties have raised concerns about the potential effect of import adjustment measures on steel-consuming industries, as well as the possibility that the measures will provoke tit-for-tat protectionism by US trading partners under the guise of national security. It is not clear, however, what influence these voices will have on DOC's final determination.

These cases coud have significant implications for the global trading system, as the US imposition of significant import restraints, particularly in the case of steel, would raise questions as to their validity under the "national security" exception of GATT Article XXI. Article XXI is a subjective standard and is very politically sensitive, but it could be difficult to argue that significant US restrictions on steel imports, which constitute only 26 percent of the US market and are mainly supplied by close US allies, qualify under the express text of the national security exception. This raises two problematic scenarios: (i) a WTO Member challenge to the US steel measures causes the United States to refuse to participate on Article XXI grounds, thereby undermining the dispute settlement system; or (ii) a failure to challenge the measures encourages copycat measures from the United States or other Members, thus undermining the WTO Agreements.

- **"Particular Market Situation".** The US Department of Commerce (DOC) on April 10 announced in an "unprecedented" determination that a "particular market situation" exists in the anti-dumping duty administrative review of Oil Country Tubular Goods (OCTG) from Korea. This ruling has significant implications because it establishes precedent under which DOC may reject exporters' domestic sales prices as normal value and adjust record input costs that it finds to be "distorted" by government intervention such as subsidies. Notably, DOC also indicated that it may continue to apply the "particular market situation" provision and even expand it to cover other types of allegedly distorting behavior. This ruling illustrates the Trump administration's aggressive approach to trade remedies and its willingness to use novel interpretations of US trade law to provide import relief to US industries. Petitioners have made similar "particular market situation" allegations in other antidumping investigations, including Softwood Lumber from Canada, but DOC has yet to make final determinations in these cases. In one case (Steel Reinforcing Bar from Taiwan), DOC made a preliminary negative particular market situation determination, but scheduled additional briefing on the issue.

- **Other Trade Remedy Issues.** Compared to prior administrations, DOC under the Trump administration has shown itself more willing to use certain methodologies and practices that are disadvantageous towards foreign respondents in trade remedy proceedings. For example, DOC under the current administration has been more willing to resort to the use of "adverse facts available" (*i.e.*, to determine that a foreign respondent has provided insufficient or inaccurate responses to DOC's requests for information, and to therefore calculate dumping margins or subsidy rates using unfavorable methodologies that generally result in higher duties on subject imports). DOC also has been more reluctant to extend its deadlines for submitting information when such extensions are requested by foreign respondents, making it more burdensome for respondents to comply with DOC's requests. Finally, the Trump administration has made clear that it intends to continue treating China as a non-market economy under US anti-dumping law, despite China's contention that doing so after the December 11, 2016, expiration of certain provisions in China's WTO Accession Protocol is inconsistent with WTO rules.

Trade Negotiations and Agreements

Renegotiation of NAFTA

Despite President Trump's sharp criticisms of NAFTA, his administration has recently indicated that it will pursue "modernization" of the agreement while avoiding outright withdrawal or a reversal of the trade liberalization achieved under the original agreement. The administration's written notifications to Congress on NAFTA lend support to this

view, as do recent statements from key administration officials, though there is a small risk that these plans are derailed at some point in the future.

USTR on March 28 submitted a draft notification to Congress outlining its negotiating objectives for NAFTA, many of which resembled the outcomes negotiated in the TPP (*e.g.*, on state-owned enterprises, digital trade, intellectual property, labor and environment, technical barriers to trade, and sanitary and phytosanitary measures). Though other draft objectives appeared to suggest the possibility of tariffs or other protectionist measures (*e.g.*, those regarding rules of origin, government procurement, a potential "safeguard mechanism", and "leveling the playing field on tax treatment"), these objectives were described in ambiguous terms and notably were not included in the final notification submitted to Congress on May 18. The final notification, submitted shortly after Ambassador Lighthizer's confirmation as USTR, referenced only "modernization" of the agreement through new provisions "to address intellectual property rights, regulatory practices, state-owned enterprises, services, customs procedures, sanitary and phytosanitary measures, labor, environment, and small and medium enterprises." USTR subsequently requested public comments to inform its negotiating objectives, and is expected to publish a detailed and comprehensive summary of its negotiating objectives by July 17.

Notably, both USTR Lighthizer and Secretary Ross have recently emphasized their desire to modernize rather than withdraw from NAFTA and have repeatedly downplayed the possibility that the renegotiation will result in new restrictions on trade among the NAFTA parties. Indeed, Ambassador Lighthizer has stated that he would not support US withdrawal from NAFTA, and both officials have recently reassured Members of Congress that their main guiding principle in the renegotiation is to "first do no harm" – a phrase the US business community has used in arguing that the administration should avoid reinstating trade restrictions under the renegotiated agreement. Moreover, both officials have stated repeatedly that the outcomes achieved in the TPP will serve as the template for the renegotiation, and they have emphasized areas such as digital trade and services as priorities. Pro-trade Members of Congress who initially were skeptical of the administration's NAFTA plans have welcomed these recent stances. For example, Sen. Pat Roberts (R-KS) recently stated that "I think we've gone from maybe termination to renegotiation to improve to fix, I think in that succession…So I think that issue has changed rather dramatically and I'm very happy to see it."

The Trump administration may be adopting a less confrontational approach to the renegotiation of NAFTA as a result of timing and political pressures. Both Mexico and the United States will hold federal elections in 2018 (in July and November, respectively), and as these elections approach it will become more difficult for both parties to conclude and ratify the agreement. Assuming an agreement is reached, a vote on the resulting implementing bill in the US Congress will undoubtedly be close given the controversial nature of NAFTA, free trade agreements generally, and current political dynamics, and these pressures will grow as the 2018 elections approach. Moreover, should the makeup of either House of Congress change significantly as a result of the 2018 midterm elections, securing approval of the implementing bill could become more difficult (or impossible) during the 116th Congress (*i.e.*, from 2019 to 2020), jeopardizing one of President Trump's signature campaign promises. Consequently, the Trump administration is likely aiming to conclude the negotiations as quickly as possible so that the renegotiated agreement can be signed and submitted for ratification before the 2018 elections. These circumstances provide a strong incentive for the Trump administration to avoid making controversial demands that could lead to an impasse in the negotiations, and to instead seek "modernization", using the TPP as a template, to maximize the likelihood of a swift and successful negotiation and ratification process.

Finally, it should be noted that while the administration is currently planning to renegotiate rather than withdraw from NAFTA, there is a small but significant risk that these plans are derailed at some point in the future. This risk was on display in late April when news broke that the "economic nationalist wing" of the White House – led by White House Chief Strategist Stephen Bannon and Peter Navarro – had drafted an executive order officially notifying the United States' intent to withdraw from NAFTA under Article 2205 of the Agreement, and that this order was under final review before being signed by the President. These individuals, it was reported, believed that the order would publicly demonstrate the President's commitment to his anti-NAFTA campaign promises and put pressure on Canada

and Mexico (and Congress) to concede quickly to all of the President's NAFTA demands. President Trump ultimately did not sign the executive order, although he has openly stated that he intended to do so.

We understand that the President reversed course after intense lobbying from cabinet officials (*e.g.*, Agriculture Secretary Sonny Perdue, Commerce Secretary Wilbur Ross and Secretary of State Rex Tillerson) and the "globalist wing" of the White House – led by senior adviser Jared Kushner and National Economic Council Director Gary Cohn – who argued that the withdrawal notification would inject unnecessary and dangerous political risk into the renegotiation process and undermine President Trump's negotiating position, and that NAFTA's actual termination would harm not only critical US allies in Canada and Mexico but also key Trump supporters in the US farm and manufacturing industries who have grown to depend on the agreement. We also understand that the White House heard intense and immediate opposition from senior congressional leadership in both parties – most notably Senate Finance Committee Chair Orrin Hatch (R-UT) and Ranking Member Ron Wyden (D-OR), as well as House Ways & Means Chair Kevin Brady (R-TX) – and influential CEOs and business groups such as the US Chamber of Commerce and American Farm Bureau. It was these voices, not calls with Mexican President Peña Nieto and Canadian Prime Minister Trudeau (as has been reported), which together convinced the President to stay the current course.

The episode, while technically another win for the White House's "globalist wing" and loss for its economic nationalists, demonstrates not only the current tension between the two groups as they vie for the President's attention, but also the volatility of President Trump's opinions and decisions on issues critical to US economic policy. Indeed, while several of President Trump's key advisors were able to act as a critical brake on the President's protectionist impulses, these events nevertheless demonstrate the risks for NAFTA and other international trade policies under the Trump administration.

Transatlantic Trade and Investment Partnership (TTIP)

The Trump administration has yet to take a clear position on the resumption of the TTIP negotiations, but Secretary Ross on May 30 expressed interest in resuming them. Secretary Ross stated that "it makes sense to continue TTIP negotiations", and that "It's no mistake that, while we withdrew from TPP we did not withdraw from TTIP[.]" This is the first time that a cabinet-level official in the Trump administration has expressed a desire to resume TTIP, but neither Ambassador Lighthizer nor President Trump have indicated whether they share this view.

It is expected that a formal decision regarding the resumption of TTIP will not be announced until the autumn of 2017 (after the German elections in September) at the earliest. Ambassador Lighthizer on June 21 indicated that the Trump administration will consult with EU officials following the German elections to discuss the possibility of resuming negotiations on TTIP, which he described as "an important negotiation for a variety of reasons." The negotiations, if resumed, would likely take several years to complete given that the two sides were unable to resolve numerous contentious issues during the first fifteen negotiating rounds (*e.g.*, agricultural market access, market access in government procurement, geographical indications, investor-state dispute settlement, cross-border data flows and data localization, and sanitary and phytosanitary measures).

Trade in Services Agreement (TiSA)

The Trump administration has not taken a position on the TiSA negotiations and has said little about its views regarding the impact of trade agreements on the US services sector. Though many observers have speculated that the Trump administration will decline to participate in the TiSA negotiations due to their plurilateral nature, this is not a foregone conclusion. The Trump administration's official statements (*e.g.*, the 2017 National Trade Policy Agenda) have not expressly ruled out participation in plurilateral negotiations, and Ambassador Lighthizer noted on July 21 that the administration is reviewing the possibility of participating in TiSA. Moreover, Ambassador Lighthizer appeared to suggest that the administration is leaning towards participating. When asked by Sen. Tom Carper (D-DE) whether he would work to ensure that TiSA "doesn't fall by the wayside", Ambassador Lighthizer stated that "I don't expect it to fall by wayside." These comments leave open the possibility that the United States will resume participation in the TiSA negotiations.

Personnel

There is a clear divergence of views among President Trump's cabinet officials and senior advisors regarding the direction of US trade policy and the desirability of protectionist measures. Senior Trump administration officials generally fall into one of three ideological groupings: (i) "economic nationalists" who support aggressive, protectionist policies of the kind discussed by President Trump during the 2016 campaign; (ii) "globalists" who support more conventional trade policies similar to those espoused by recent US administrations; and (iii) officials who hold posititions falling into either camp. As noted above, these groups have already come into conflict as they have sought to influence the administration's trade policy agenda.

Economic nationalists

This group includes Peter Navarro, Director of the White House Office of Trade and Manufacturing Policy; Stephen Bannon, Senior Counselor to the President; and Stephen Miller, Senior Advisor to the President. These officials are skeptical of free trade agreements, trade liberalization generally, and international institutions such as the WTO, and have urged President Trump to fulfill his most extreme campaign promises on trade. For example, and as noted above, these officials in April 2017 drafted and urged President Trump to sign an Executive Order withdrawing the United States from NAFTA. Peter Navarro also reportedly has pushed the President to provide import relief to US industries by imposing broad import tariffs pursuant to the International Emergency Economic Powers Act (IEEPA) – an action that would be even more aggressive than that being contemplated under Section 232, as IEEPA permits the President to impose measures immediately and does not require an investigation by a government agency. These efforts illustrate that, when considering trade actions, the economic nationalists generally are not deterred by potential adverse consequences such as WTO or domestic legal challenges, retaliation by trading partners, or market turmoil.

Though the aforementioned officials lack formal policymaking authority, they nonetheless exert influence over trade policy in their capacities as advisors to the President. However, their influence on trade policy appears to have waned in recent months, particularly as cabinet-level officials with authority over trade policy have taken office. For example, the White House "National Trade Council", which was to be led by Peter Navarro and was expected to be an equal of the National Economic Council, was never formally established and was replaced in April by a lower-level "Office of Trade and Manufacturing Policy". This move was widely percieved as a demotion for Peter Navarro, who was a prominent public voice on trade issues early on in the Trump administration but who has recently kept a far lower profile. That said, the OTMP is still expected to have a voice on trade issues; the economic nationalists remain in a position to influence President Trump's decisionmaking; and the aforementioned reports and investigations create ample opportunity for the President to take more protectionist actions in the coming months.

Globalists

This group includes National Economic Council Director Gary Cohn, Senior Advisor to the President Jared Kushner, Treasury Secretary Steven Mnuchin, Secretary of State Rex Tillerson, and Secretary of Agriculture Sonny Perdue, among others. These officials, most of whom have experience in business and finance, hold mainstream views on US trade and economic policy and are generally supportive of existing US trading arrangements. This group has acted as a check on President Trump's protectionist impulses and reportedly has sought to curtail the influence of the economic nationalists. For example, in addition to lobbying the President against US withdrawal from NAFTA, Gary Cohn and Secretary Mnuchin reportedly have lobbied against the imposition of broad import adjustment measures under Section 232, expressing concern about the economic impact of such measures. Though these officials have little direct authority over trade policy, they nonetheless exert influence over trade policy as advisors to the President, and, in the case of Gary Cohn, as the President's Chief Economic Adviser.

Other officials

Ambassador Lighthizer and Secretary Ross are the two main cabinet officials with direct responsibility for trade policy, and have expressed mixed views. On one hand, both officials have emphasized a desire to reduce the US trade deficit in goods and have advocated aggressive use of trade remedies and other, more controversial measures (*e.g.*,

Section 301 and Section 232 actions) to combat alleged unfair trading practices. Both officials also have criticized the WTO, and in particular percieved "overreach" and bias against US interests in WTO dispute settlement. Ambassador Lighthizer also has argued that the United States should consider derogating from its WTO commitments in some circumstances to address severely "unbalanced" trading relationships – a view shared by some economic nationalists in the White House, namely Peter Navarro.

On the other hand, both officials have expressed opposition to the most radical trade policies discussed during the 2016 campaign. For example, Ambassador Lighthizer stated during his confirmation that he would oppose US withdrawal from NAFTA, and Secretary Ross reportedly was among the officials who in April urged President Trump not to withdraw from the agreement, citing economic concerns. Moreover, while both officials have criticized the WTO, both have indicated that they would oppose US withdrawal from the organization, and have acknowledged that existing US trade agreements have been beneficial to broad segements of the US economy such as the agricultural sector. Thus, while Ambassador Lighthizer and Secretary Ross are likely to pursue a more protectionist trade agenda than recent US administrations, they very likely understand the severe legal and practical implications of the most aggressive trade actions favored by the economic nationalists, and they may dissuade President Trump from taking such actions.

Emergence of the "Trump Trade Doctrine"

Trump administration officials have begun to outline the general principles that will guide the administration's trade policies, and several key themes have emerged:

Reciprocity

The Trump administration has repeatedly argued that trade relations should be governed by a principle of "reciprocity", particularly with respect to tariffs. Secretary Ross has described this view in the following terms: "if we have a country that has big trade barriers against us, we should logically have similar trade barriers against them. And if there's a country that has relatively few barriers against us, we should have relatively few against them." Secretary Ross has argued that an "ideal global trading system" would permit such "reciprocal" trade policies, and would thereby "facilitate adoption of the lowest possible level of tariffs" worldwide because "countries with the lowest tariffs would apply reciprocal tariffs to those with the highest and then automatically lower that reciprocal tariff as the other country lowers theirs." Notably, Secretary Ross has repeatedly identified the WTO's most-favored nation (MFN) principle as an obstacle to implementing such reciprocal tariff policies, because it prohibits Members from applying differentiated (*i.e.*, reciprocal) tariff rates to other Members outside the context of a free trade agreement. He has therefore argued that the MFN principle "impedes free trade, rather than fostering it."

While it is highly unlikely that the Trump administration will negotiate changes to the WTO agreements to remove or modify the MFN principle, these comments on reciprocity nonetheless provide important insights into the administration's approach to trade policy. Namely, they indicate that that, in determining which countries to target in potential trade actions (*e.g.*, Section 301 actions or WTO challenges) the administration will tend to focus on countries that it perceives as having highly protectionist trade policies with respect to US goods, services or investment. As will be discussed next, any such countries that also have large and persistent bilateral trade surpluses with the United States will be even more likely to face new scrutiny.

Trade deficits

The Trump administration also has indicated that it considers gross bilateral trade balances to be a reflection of the trade policies of US trading partners, and that it believes bilateral trade deficits are indicative of unfair or discriminatory trade policies. These views are made clear in the Executive Order on Significant Trade Deficits, which requires USTR to assess various "unfair" trade practices that allegedly contribute to US bilateral trade deficits, but makes no mention of the macroeconomic factors that drive trade balances. Notably, in congressional testimony on June 21, Ambassador Lighthizer appeared to reject the mainstream economic view that trade balances are driven by macroeconomc factors, stating that "the President's view, and mine, is that when you see a trade deficit in the

hundreds of billions of dollars — and that deficit goes on for years and years regardless of changes in the broader economy — one must then be concerned that the deficit represents structural problems in global trade." Ambasador Lighthizer also stated that reduction of the US trade deficit is a "prime objective" of the administration's trade policy. These statements, and the Omibus Review itself, suggest that countries that have significant bilateral trade surpluses with the United States are more likely to be targeted by potential US trade actions under the Trump administration.

Trade Remedies

The Trump administration also has indicated that it views trade remedies as essential to achieving its trade policy objectives, and that it will be reluctant to adopt WTO rulings that constrain its ability to aggressively utilize trade remedies. For example, the President's National Trade Policy agenda expresses the view that "when the WTO adopts interpretations of WTO agreements that undermine the ability of the United States and other WTO Members to respond effectively to…unfair trade practices with remedies expressly allowed under WTO rules, those interpretations undermine confidence in the trading system." The Agenda further emphasizes that WTO rulings are not directly binding on the United States, and states that "the Trump Administration will aggressively defend American sovereignty over matters of trade policy."

These comments appear to reflect the view of some Trump administration officials (and certain import-sensitive US industries, such as steel) that WTO dispute settlement panels have routinely issued improper rulings against US trade remedy measures. Indeed, Ambassador Lighthizer has alleged in the past that "WTO jurists have engaged in an all-out assault on trade remedy measures", and has argued along with current USTR General Counsel Stephen Vaughn that the United States should consider not complying with adverse WTO rulings. Moreover, President Trump recently announced nominees for Deputy USTR (Mr. Jeffrey Gerrish) and Department of Commerce Undersecretary for International Trade (Mr. Gilbert Kaplan) who, like Lighthizer and Vaughn, have worked as trade remedy litigators on behalf of US steel producers, and are likely to share these persepectives. These developments suggest that, in addition to utilizing trade remedies more aggressively than its predecessors, the Trump administration might also be less concerned with the WTO-consistency of such measures.

Outlook

While the Trump administration has thus far avoided the most extreme trade policies discussed during the campaign, significant risks remain, particularly given the investigations and reviews initiated to date, the prevalence of economic nationalist views in the administration, and the administration's focus on trade deficits and "reciprocity". Over the coming weeks and months, as the administration concludes several key trade investigations and reviews, the nature of these risks will become clearer.

DOC's forthcoming determinations in the Section 232 investigations of steel and aluminum will be important in this regard. New import restrictions resulting from these cases would confirm that the Trump administration is willing to expand its import relief "toolbox" to include more aggressive measures than just the traditional anti-dumping and countervailing duties. Moreover, if the restrictions are broad (*e.g.*, a 25 percent tariff on a wide range of steel products) they would demonstrate that President Trump is willing to take aggressive trade actions over the objections of Members of Congress, key members of his own administration, and various segments of the US business community – and despite the resulting risks to the global trading system and US exporters.

Likewise, the administration's forthcoming reports on trade deficits and trade agreement violations will be instructive. If, as appears likely, these reports contain numerous claims regarding discriminatory trade practices, trade agreement violations, or inadequate or underperforming US trade agreements, there is a strong chance they will be used as a pretext for new trade actions – including, but not limited to, Section 301 investigations, new disputes, or demands to renegotiate existing trade agreements.

Finally, the administration could pursue a nationalist trade policy where it adopts a more aggressive approach to trade remedies - either formalizing certain *ad hoc* actions like "particular market situation" or announcing new

substantive changes to US practice. In the latter case, this could involve the treatment of currency undervaluation as a countervailable subsidy.

These risks are to some extent exacerbated by the fact that President Trump and certain of his advisers clearly view aggressive trade actions as a valuable political tool. Indeed, White House officials have stated that they intend to use trade actions to distract from other developments that are less favorable to the President (*i.e.*, by using trade actions to drive media coverage during otherwise unfavorable news cycles). This strategy appears to have already been implemented in recent months: the Section 232 investigation of steel, for example, was initiated shortly after President Trump suffered a high-profile legislative setback on healthcare. Consequently, while the risk of significant trade actions is higher in general under the Trump administration than recent US administrations, these risks may be heightened further when Trump administration is faced with unfavorable political developments.

Government Accountability Office Releases Report on Customs Trade Enforcement Activities

On June 12, 2017, the US Government Accountability Office (GAO) released a report evaluating US Customs and Border Protection's (CBP) trade enforcement activities. The report, which GAO was required to produce under the Trade Facilitation and Trade Enforcement Act of 2015, identifies several perceived deficiencies in CBP's approach to trade enforcement and recommends corrective actions designed to address these deficiencies. CBP has concurred with GAO's findings, and Members of Congress have urged the agency to adopt the recommendations set forth in the report in order to strengthen US trade enforcement.

The report examines in particular CBP's organizational structure as it relates to trade enforcement, CBP's trade enforcement efforts in "high-risk" issue areas, and the extent to which CBP meets its staffing needs for trade enforcement. GAO identified two main deficiencies that may be weakening CBP's effectiveness in trade enforcement: (i) the agency's strategic and annual plans for "Priority Trade Issues" lack performance targets; and (ii) the agency generally has not reached the optimal or mandated staffing levels for trade enforcement positions.

On the lack of performance targets, GAO notes that CBP uses a layered, risk-based approach to guide its trade enforcement activities across its seven "Priority Trade Issues", which are as follows: (i) antidumping and countervailing duties; (ii) intellectual property rights; (iii) textiles and apparel; (iv) trade agreement and preference programs; (v) revenue; (vi) import safety; and (vii) agricultural programs. CBP follows strategic and annual plans on each Priority Trade Issue to help focus the agency's actions and resources in high-risk areas. However, GAO found that these plans generally lack performance targets, without which CBP cannot assess its actual performance against planned performance or the effectiveness of its trade enforcement activities.

On staffing, GAO notes that the Homeland Security Act of 2002 directed CBP to maintain a minimum level of staff and associated support staff in certain customs revenue functions, including various trade and trade enforcement functions. Subsequent legislation directed CBP to prepare a resource model to determine optimal staffing levels for such positions. Accordingly, CBP has outlined optimal staffing levels for 15 positions that are needed to perform trade functions and to adequately staff enforcement efforts on Priority Trade Issues. Yet, GAO's analysis concluded that CBP has not met the minimum staffing levels set by Congress for several of these positions, nor has it met its own optimal staffing level targets for several of these positions. The understaffed positions include customs auditors, import specialists, and CBP officers. Further, GAO found that CBP has not articulated a plan for reaching its staffing targets over the long term.

As a result of these findings, GAO issued two recommendations in its report: (i) CBP's Office of Trade and Office of Field Operations should develop a long-term hiring plan that articulates how CBP will reach its staffing targets for trade positions; and (ii) CBP's Office of Trade should include performance targets, when applicable and in addition to performance measures, in its Priority Trade Issue strategic and annual plans.

Members of Congress have expressed particular concern about GAO's finding that trade enforcement positions within CBP are understaffed. Following the publication of the report, House Ways and Means Committee Chairman

Kevin Brady (R-TX) stated that the lack of adequate staffing "undermines CBP's ability to enforce our trade laws and process legitimate cargo in a timely way" and urged CBP to comply with its statutory obligations and GAO's recommendations. The Trump administration also has emphasized trade enforcement as a priority, and President Trump on March 31 directed CBP to produce, by June 29, "a strategy and plan for combating violations of United States trade and customs laws for goods". Given GAO's findings, efforts to increase the number of CBP officials dedicated to trade enforcement could figure into these plans.

USTR Holds Debriefing on TIFA Meeting With Indonesia

On June 14, 2017, the Office of the US Trade Representative (USTR) held a debriefing on its recent meetings with Indonesian officials under the US-Indonesia Trade and Investment Framework Agreement (TIFA).[1] Barbara Weisel, Assistant USTR for Southeast Asia and the Pacific, and Christine Brown, Director for Southeast Asia and Pacific Affairs at USTR, attended the debriefing and discussed the recent round of meetings.

The officials stated that USTR has formed working groups on five priority trade issues relating to Indonesia: intellectual property rights protection, data localization, local content requirements, Indonesia's "national payment gateway", and dairy products. USTR raised these issues with Indonesian officials during the meetings, and also discussed the fact that Indonesia is among the countries with which the United States has a "significant" bilateral trade deficit in goods. The officials also noted that USTR will follow any directives contained in the forthcoming "Omnibus Report on Significant Trade Deficits."

The USTR officials expressed particular frustration with Indonesia's alleged use of data localization and local content requirements, and expressed concern that these measures appear to be inconsistent with Indonesia's WTO obligations. According to USTR, Indonesia argued that it has made "compromises" on both issues to address trade concerns, and that these measures are supporting investment in Indonesia (as evidenced by the example of Alibaba Group, which recently built a data center in Indonesia). According to USTR, Indonesian officials also indicated that, as a developing country, Indonesia believes it is justified in utilizing such measures to promote economic development. USTR stated that it does not consider these responses to be acceptable and intends to continue pressing the issue with the Indonesian government.

Regarding the national payment gateway, USTR stated that it had productive discussions with high-ranking officials from the Bank of Indonesia. USTR and other US stakeholders have raised concerns, however, that the national payment gateway discriminates against foreign service provides (such as payment providers) in an attempt to promote local financial activity in e-commerce and other sectors in Indonesia.

On intellectual property, USTR noted that Indonesia is among the countries on the Special 301 "priority watch list" – a designation it received due to alleged deficiencies such as (i) widespread piracy and counterfeiting; (ii) lack an effective system for protecting data generated to obtain marketing approval for pharmaceutical and agricultural chemical products; and (iii) market access barriers such as technology transfer requirements.

Finally, on dairy products, USTR noted that Indonesia is planning to promulgate a number of requirements related to import licensing and local purchasing. However, USTR stated that Indonesia will allow the United States to review the draft measures before putting them into effect.

USTR and Department of Commerce Request Public Comments to Inform Reviews and Report to the President on "Trade Agreement Violations and Abuses"

On June 29, 2017, the US Department of Commerce (DOC) and the Office of the United States Trade Representative (USTR) published a notice in the Federal Register requesting public comments to inform their forthcoming reviews and report to the President on "trade agreement violations and abuses".[2] USTR and DOC are

[1] USTR's press release on the US-Indonesia TIFA meeting is available **here**.

[2] Click **here** to view the Federal Register notice.

preparing the report pursuant to President Trump's Executive Order of April 29, 2017, which requires them to conduct "comprehensive performance reviews" of "all bilateral, plurilateral, and multilateral trade agreements and investment agreements to which the United States is a party" and "all trade relations with countries governed by the rules of the World Trade Organization (WTO) with which the United States does not have free trade agreements but with which the United States runs significant trade deficits in goods." USTR and DOC are required to submit their report to the President no later than October 26, 2017.

Information requested by USTR and DOC

The deadline for submitting written comments to USTR and DOC is 11:59 pm (EDT) on July 31, 2017. USTR and DOC are requesting that written comments pertain to one or more of the "assessments" that will be made in their report to the President. Pursuant to the Executive Order, the report will assess:

- The performance of individual free trade agreements (FTAs) and bilateral investment treaties (BITs) to which the United States is a party;
- The performance of the WTO agreements with regard to US trade relations with those trading partners with which the United States does not have an FTA, but with which the United States runs significant trade deficits in goods. Consistent with USTR's April 17 Federal Register notice regarding the Omnibus Report on Significant Trade Deficits, the trading partners subject to these performance reviews are: China, the European Union, India, Indonesia, Japan, Malaysia, Switzerland, Taiwan, Thailand, and Vietnam.
- The performance of US trade preference programs, including the Generalized System of Preferences, the African Growth and Opportunity Act, the Caribbean Basin Initiative, and the Nepal Preference Program.

USTR states that those submitting written comments "may want to address" the following subjects in their submissions:

- Whether there have been violations or abuses of the agreement, treaty, or program that have harmed American workers or domestic manufacturers, farmers, or ranchers; harmed intellectual property rights held by US companies and US persons; reduced the rate of innovation in the United States; or impaired research and development from occurring in the United States.
- Whether any unfair treatment by trade and investment partners has harmed American workers or domestic manufacturers, farmers, or ranchers; harmed intellectual property rights held by US companies and US persons; reduced the rate of innovation in the United States; or deterred performance of research and development in the United States.
- Whether an agreement, treaty, or preference program listed has not met predictions with regard to new jobs created, favorable effects on the trade balance, expanded market access, lowered trade barriers, or increased United States exports.

USTR also states that "Commenters also may submit information describing benefits or opportunities created as part of these agreements, treaties, programs, and trade relations with respect to, *inter alia*, export opportunities for American workers or domestic manufacturers, farmers, or ranchers; lowered trade barriers; promotion of U.S. intellectual property rights holders; the rate of innovation in the United States; U.S. based research and development; protection of rights of U.S. persons investing abroad; and any other relevant information."

Implications

The notice clarifies the report's scope, although its ultimate conclusions and impact remain uncertain. Notably, the Executive Order requires that the report identify "lawful and appropriate actions to remedy or correct deficiencies" identified in each performance review. The report could, therefore, recommend that the Trump administration initiate new trade disputes (either at the WTO or under FTAs), seek renegotiation of certain agreements, or consider modifications to trade preference programs (*e.g.*, by self-initiating reviews of the eligibility of certain countries to

receive benefits under GSP). Exporters and governments, particularly those in countries that participate in the agreements and preference programs listed above, may therefore find it worthwhile to provide public comments by the July 31 deadline.

USTR Announces Results of 2016-2017 GSP Annual Review; Self-Initiates Country Practices Review of Bolivia

On June 29, 2017, the Office of the United States Trade Representative (USTR) announced the outcome of the 2016/2017 Annual 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 products eligible for duty-free treatment under GSP. These modifications include removing certain products from the list of GSP-eligible articles and adding certain travel goods and other items to the list of GSP-eligible articles. The effective date of these modifications is July 1, 2017.

Notably, USTR's announcement also emphasizes that the Trump administration's focus on trade enforcement extends to trade preference programs. For example, USTR has decided to self-initiate a country practices review of Bolivia's compliance with the GSP eligibility criteria regarding labor practices. The announcement notes that this is the first time USTR has self-initiated a GSP country practices review "in this century", and states that the Trump Administration "is committed to vigorously enforcing the eligibility criteria of our trade preference programs[.]"

The results of the 2016/2017 Annual Review are summarized below.

Self-initiated Country Practices Review of Bolivia

USTR is self-initiating a country practices review of Bolivia to determine whether the country's current labor laws and practices meet the eligibility criteria regarding worker rights and child labor set forth in the GSP statute. The GSP statute provides that a country cannot participate in GSP if it "has not taken or is not taking steps to afford internationally recognized worker rights", or if it "has not implemented its commitments to eliminate the worst forms of child labor."[1] USTR claims that in 2014, "the Government of Bolivia passed a law permitting child labor starting at age 10 years", and that this law raises questions about Bolivia's compliance with the aforementioned eligibility criteria.

Travel goods added to the list of GSP-eligible articles

USTR has added certain travel goods to the list of GSP-eligible articles, including luggage, backpacks, handbags, and pocket goods (such as wallets). Imports of these articles are classified under the following subheadings of the Harmonized Tariff Schedule of the United States: 4202.11.00, 4202.12.21, 4202.12.40, 4202.12.81, 4202.21.60, 4202.21.90, 4202.22.15, 4202.22.45, 4202.22.81, 4202.31.60, 4202.32.40, 4202.32.80, 4202.32.93, 4202.32.99, 4202.91.90, 4202.92.15, 4202.92.20, 4202.92.31, 4202.92.39, 4202.92.45, 4202.92.91, 4202.92.97, and 4202.99.90.

These articles previously were GSP-eligible only if they originated from a least-developed beneficiary developing country (LDBCD) or an African Growth and Opportunity Act (AGOA) country (*please refer to the W&C US Trade Alert dated August 31, 2016*). Effective July 1, however, imports of these articles are GSP-eligible when they originate from any GSP beneficiary developing country. USTR noted that Members of Congress have shown a strong interest in seeing GSP access for travel goods extended to all GSP countries, and that US travel goods brands and retailers have indicated that the expansion would help them broaden their sourcing opportunities for these products. USTR states that this action "is expected to be neutral with respect to overall U.S. import levels, and therefore also to the U.S. trade balance, though this action may shift some of the overseas production of these products from non-GSP countries to GSP countries."

Other modifications to the GSP program

[3] Click **here** for the full results of the 2016/2017 GSP Annual Review.

USTR determined that two products exceeded competitive need limitations (CNLs) for 2016 and will therefore be removed from the list of GSP-eligible articles: (i) other heterocyclic aromatic or modified aromatic pesticides (HTSUS 2933.99.22) from India; and (ii) setts, curbstones, and flagstones of natural stone (HTSUS 6801.00.00) from Turkey. USTR also accepted a petition to remove glycine (HTSUS 2922.49.40.20) from the list of GSP-eligible articles for all beneficiary developing countries.

USTR also accepted several petitions to add products to the list of GSP-eligible articles, including: other rolled or flaked grains (1104.19.90); saturated acyclic monocarboxylic acids (2915.90.18), essential oils of lemon (3301.13.00), finishing agents, dye carriers and other preparations used in leather and like industries (3809.93.50), and cellulose nitrates (including collodions) in primary forms (3912.20.00). Effective July 1, imports of these articles from all beneficiary developing countries will be GSP-eligible.

Petitions and Investigations Highlights

International Trade Commission Initiates Safeguard Investigation of Imports of Large Residential Washers

On June 13, 2017, the US International Trade Commission (ITC) published a notice in the Federal Register announcing the initiation of a safeguard investigation of large residential washers, pursuant to Section 201 of the Trade Act of 1974.[4] The ITC initiated the investigation in response to a petition filed by Whirlpool Corporation (Whirlpool), a producer of large residential washers in the United States. In its investigation, the ITC will determine whether large residential washers are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported articles.

The articles covered by the investigation are large residential washers and certain parts thereof. For purposes of the investigation, the term "large residential washers" denotes automatic clothes washing machines, regardless of the orientation of the rotational axis, with a cabinet width (measured from its widest point) of at least 24.5 inches and no more than 32.0 inches (*please see the Federal Register notice below for a full description of the scope of the investigation*.)

Also covered are certain parts used in large residential washers, namely: (1) all cabinets, or portions thereof, designed for use in large residential washers; (2) all assembled tubs designed for use in large residential washers which incorporate, at a minimum: (a) a tub; and (b) a seal; (3) all assembled baskets designed for use in large residential washers which incorporate, at a minimum: (a) a side wrapper; (b) a base; and (c) a drive hub; and (4) any combination of the foregoing parts or subassemblies.

For Customs purposes, the products covered by the investigation are provided for under Harmonized Tariff Schedule of the United States subheadings 8450.20.00, 8450.11.00, 8450.90.20, and 8450.90.60.

The petitioner is seeking relief in the form of tariff-rate quotas and over-quota tariffs on imports of large residential washers from all countries. Whirlpool alleges that two Korean producers, Samsung and LG, have pursued "predatory behavior," allegedly evading the collection of US antidumping duties on large residential washers by shifting their production from Korea and Mexico to China, and then from China to Vietnam and Thailand.

The ITC has determined that the investigation is "extraordinary complicated", particularly given the existence of antidumping and/or countervailing duty orders on certain imports covered by the investigation. The ITC will therefore make its injury determination by October 5, 2017 and will submit its final report to the President by December 4, 2017.

Department of Commerce Issues Affirmative Final Determination in Anti-Dumping Investigation of DOTP from Korea

On June 20, 2017, the US Department of Commerce (DOC) announced its affirmative final determination in the anti-dumping (AD) investigation concerning imports of dioctyl terephthalate (DOTP) from Korea.[5] In its investigation, DOC determined that imports of the subject merchandise from Korea were sold in the United States at the following dumping margins:

Exporter/Producer	Dumping Margin
Aekyung Petrochemical Co., Ltd.	4.08 percent
LG Chem Ltd.	2.71 percent
All others	3.69 percent

[4] Click **here** to view the ITC's announcement in the Federal Register regarding the investigation.

[5] Click **here** to view the DOC fact sheet on these investigations.

The merchandise subject to the investigation is dioctyl terephthalate (DOTP), regardless of form. DOTP has the general chemical formulation $C_6H_4(C_8H_{17}COO)_2$ and a chemical name of "bis (2-ethylhexyl) terephthalate" and has a Chemical Abstract Service (CAS) registry number of 6422-86-2. The subject merchandise is currently classified under subheading 2917.39.2000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under subheadings 2917.39.7000 or 3812.20.1000 of the HTSUS.

The US International Trade Commission (ITC) is scheduled to announce its final determination on or around August 3, 2017. If the ITC makes affirmative final determinations that imports of DOTP from Korea materially injure or threaten material injury to the domestic industry, DOC will issue an AD order.

According to DOC, imports of DOTP from Korea in 2016 were valued at an estimated USD 32.5 million.

International Trade Commission Issues Affirmative Final Determinations in Anti-Dumping and Countervailing Duty Investigations of Steel Concrete Reinforcing Bar from Japan and Turkey

On June 16, 2017, the US International Trade Commission (ITC) determined that a US industry is materially injured by reason of imports of steel concrete reinforcing bar from Japan and Turkey.[6] The US Department of Commerce (DOC) determined in May 2017 that imports of these products from Japan were sold in the United States at dumping margins ranging from 206.43 to 209.46 percent. DOC also determined that imports of these products from Turkey were sold at dumping margins of 5.39 to 8.17 percent and received countervailable subsidies of 16.21 percent.

As a result of the ITC's affirmative final determinations, DOC will issue an antidumping duty order on imports of steel concrete reinforcing bar from Japan and Turkey and a countervailing duty order on imports of the same from Turkey. According to the ITC, imports of these products from Japan and Turkey were valued at an estimated USD 700.7 million in 2016.

The ITC's public report on this investigation will be available by July 21, 2017.

Department of Commerce Issues Affirmative Final Determination in Anti-Dumping Investigation of Hardwood Plywood Products from China

On June 19, 2017, the US Department of Commerce (DOC) announced its affirmative preliminary determination in the anti-dumping (AD) investigation concerning imports of hardwood plywood products from China.[7] In its investigation, DOC determined that imports of the subject merchandise from China were sold in the United States at the following dumping margins:

Exporter/Producer	Dumping Margin
Shandong Dongfang Bayley Wood Co., Ltd	114.72 percent
Linyi Chengen Import and Export Co., Ltd./Linyi Dongfang Juxin Wood Co., Ltd.	0.00 percent
Separate Rate Companies	57.36 percent
China-Wide Rate	114.72 percent

The merchandise subject to the investigation is hardwood and decorative plywood and certain veneered panels. For purposes of the proceeding, hardwood and decorative plywood is defined as a generally flat, multilayered plywood or other veneered panel, consisting of two or more layers or plies of wood veneers and a core, with the face and/or back

[6] Click **here** to view the ITC's press release on the investigation.

[7] Click **here** to view the DOC fact sheet on these investigations.

veneer made of non-coniferous wood (hardwood) or bamboo. Imports of hardwood plywood are primarily entered under Harmonized Tariff Schedule of the United States (HTSUS) subheading 4412 (see the DOC fact sheet below for a full description of the scope).

DOC is scheduled to announce its final determination on or around August 31, 2017, unless the statutory deadline is extended. According to DOC, imports of hardwood plywood products from China in 2016 were valued at an estimated USD 1.12 billion.

US Department of Commerce Initiates AD/CVD Investigations of Fine Denier Polyester Staple Fiber from China, India, Korea, Taiwan, and Vietnam

On June 21, 2017, the US Department of Commerce (DOC) announced the initiation of anti-dumping (AD) investigations concerning imports of fine denier polyester staple fiber (fine denier PSF) from China, India, Korea, Taiwan, and Vietnam, and countervailing duty (CVD) investigations concerning imports of the same from China and India.[8] The petitioners, DAK Americas LLC, Nan Ya Plastics Corporation, and Auriga Polymers Inc., allege that imports of the subject merchandise are subsidized by the governments of China and India and were sold in the United States at the following dumping margins:

Country	Alleged Dumping Margins
China	88.07 to 103.06 percent
India	21.43 percent
Korea	37.28 to 45.23 percent
Taiwan	31.07 to 56.72 percent
Vietnam	64.73 percent

The merchandise subject to the investigations is fine denier polyester staple fiber, not carded or combed, measuring less than 3.3 decitex (3 denier) in diameter. The scope covers all fine denier PSF, whether coated or uncoated. Fine denier PSF is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 5503.20.0025.

Excluded from the scope are: (1) PSF equal to or greater than 3.3. decitex (more than 3 denier, inclusive) currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 5503.20.0045 and 5503.20.0065, and (2) Low-melt PSF defined as a bi-component fiber with a polyester core and an outer, polyester sheath that melts at a significantly lower temperature than its inner polyester core, currently classified under HTSUS subheading 5503.20.0015.

The US International Trade Commission (ITC) is scheduled to make its preliminary injury determinations on or before July 17, 2017. If the ITC determines that there is a reasonable indication that imports of fine denier polyester staple fiber from China, India, Korea, Taiwan and/or Vietnam materially injure or threaten material injury to the domestic industry in the United States, the investigations will continue. DOC will then announce its preliminary CVD determination in August 2017 and its preliminary AD determination in November 2017, though these dates may be extended.

According to DOC, imports of fine denier PSF from China, India, Korea, Taiwan, and Vietnam in 2016 were valued at USD 79.4 million, USD 14.7 million, USD 10.6 million, USD 9.6 million, and USD 12.4 million, respectively.

[8] Click **here** to view the DOC fact sheet on these investigations.

US Department of Commerce Initiates AD/CVD Investigations of Citric Acid and Certain Citrate Salts from Belgium, Colombia, and Thailand

On June 23, 2017, the US Department of Commerce (DOC) announced the initiation of anti-dumping (AD) investigations concerning imports of citric acid and certain citrate salts from Belgium, Colombia, and Thailand, and a countervailing duty (CVD) investigation concerning imports of the same from Thailand.[9] The petitioners, Archer Daniels Midland Co., Cargill, Inc., and Tate & Lyle Ingredients Americas, LLC, allege that imports of the subject merchandise are subsidized by the government of Thailand and were sold in the United States at the following dumping margins:

Country	Alleged Dumping Margins
Belgium	15.80 to 62.13 percent
Colombia	41.18 to 49.46 percent
Thailand	4.60 to 40.00 percent

The scope of the investigations covers all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend. The scope also includes all forms of crude calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate. The scope includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively.

The scope does not include calcium citrate that satisfies the standards set forth in the United States Pharmacopeia and has been mixed with a functional excipient, such as dextrose or starch, where the excipient constitutes at least 2 percent, by weight, of the product.

Citric acid and sodium citrate are classifiable under subheadings 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), respectively. Potassium citrate and crude calcium citrate are classifiable under subheading 2918.15.5000 and, if included in a mixture or blend, subheading 3824.99.9295 of the HTSUS. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under subheading 3824.99.9295 of the HTSUS.

The US International Trade Commission (ITC) is scheduled to make its preliminary injury determinations on or before July 17, 2017. If the ITC determines that there is a reasonable indication that imports of citric acid and certain citrate salts from Belgium, Colombia, and/or Thailand materially injure or threaten material injury to the domestic industry, the investigations will continue. DOC will then be scheduled to announce its preliminary CVD determination in August 2017 and its preliminary AD determination in November 2017, though these dates may be extended.

According to DOC, imports of citric acid and certain citrate salts from Belgium, Colombia, and Thailand in 2016 were valued at USD 10.2 million, USD 26.5 million, and USD 49.9 million, respectively.

[9] Click **here** to view the DOC fact sheet on these investigations.

Multilateral Highlights

European Union Tables New Proposal on Subsidy Notifications in WTO Rules Negotiating Group

The European Union has tabled a new proposal in the Rules Negotiating Group aimed at stepping up pressure on WTO Members to meet their obligations to notify subsidies under Article 25 of the Agreement on Subsidies and Countervailing Measures (ASCM). The proposal does not refer to the EU's earlier proposals in the Rules negotiations to strengthen disciplines over "horizontal subsidies". However, it is far-reaching in suggesting that compliance with notification obligations should be enforced, *inter alia* through amending the ASCM to create presumptions that non-notified subsidies may be actionable. It could open up a new front for negotiations in the WTO on subsidies, and possibly also the activities of SOEs.

The EU has built on previous proposals that it tabled on this issue in 2015 as well as on a recent proposal from the United States, the EU, Japan and Canada which targeted the role of subsidies in creating industrial overcapacity and called for stronger disciplines over certain subsidies (those that "create and maintain excess capacity"), beginning with improved transparency as a first step to address their concerns. While China was clearly a target of that earlier proposal, the new EU proposal is addressed more generally to the whole WTO membership. The EU states that the record of Members meeting their notification obligations under Article 25 of the ASCM is "dismal and ever deteriorating" and it calls for swift action to correct this.

One of the options that it suggests to improve compliance with notification obligations is streamlined monitoring based on regular factual reports from the WTO Secretariat. That is the same as the proposal that the EU made in 2015. It did not receive a great deal of support at the time, in part because of reluctance from the United States, among others, to envisage a bigger role for the Secretariat. Nonetheless, the EU seems to continue to favor it as the simplest way forward because it would not involve any changes to the ASCM. The EU has offered to explain the practicalities of this element of its proposal at a session of the Rules Negotiating Group.

The EU's more far-reaching options would involve amendments to the ASCM. The first would be to create "a general rebuttable presumption" that all non-notified subsidies would be actionable:

> "This would require an amendment of Article 25.7 of the SCM Agreement in that where a subsidy has not been notified under Article 25, such subsidy would be presumed to be causing serious prejudice to the interest of other Members within the meaning of Article 6 [of the SCM Agreement]. It would then be for the subsidizing Member to demonstrate that the subsidy in question did not cause these effects."

This would fundamentally alter the balance of rights and obligations of the ASCM and by making "serious prejudice" a rebuttable presumption it could open the door to unlimited use of countervailing measures. It seems hardly likely that the EU could expect to achieve consensus on such an approach.

The second option would be "a presumption of actionability that would be based on the mechanism of the current Article 25.10 of the SCM Agreement":

> "Thus, the presumption of actionability would exist only for subsidies that a Member brought to the notice of the SCM Committee because the subsidizing Member had not notified such subsidies despite having been called on to do so beforehand by the other Member. Of course, this would also be a rebuttable presumption of actionability…The subsidizing Member would only have to determine whether such allegedly non-notified subsidies should have been notified. In the affirmative, it would simply…notify them."

This option would be somewhat more measured than the first in that the SCM Committee would be involved in the process, although what role the SCM Committee would play is not spelled out. It would, nonetheless, also alter the

balance of rights and obligations of the ASCM by making actionability a rebuttable presumption, and go well beyond the current limits of Article 25.10 of the ASCM.

It appears unlikely that the EU's proposals have any chance of progressing in the current climate of pre-Ministerial discussions in the Rules Negotiating Group. Tensions have been heightened by China's recent proposal to amend the Anti-Dumping Agreement, which many Members have interpreted as a blocking move to prevent progress on Fisheries Subsidies. Adding the EU's latest proposals to this mix might only make it more difficult still to envisage any result for the Ministerial Conference in December (MC11). Nevertheless, a number of new proposals are now being made under the rubric of the Rules negotiations, which at one stage had become largely dormant, and there may now be an attempt under the time pressure of MC11 to convert these proposals into a new work program for the Rules Negotiating Group after MC11.

A copy of the EU proposal is attached for reference.

Negotiations to Expand Membership of WTO Government Procurement Agreement Show Progress

Negotiations to expand the membership of the WTO's Government Procurement Agreement (GPA) are continuing to show progress. At a time when there are growing doubts about the likelihood of any other area of WTO negotiations producing results in time for the next Ministerial Conference in Buenos Aires in December (MC11), expectations are now high that Australia's accession to the GPA will be completed before the end of this year. Accession negotiations with the Kyrgyz Republic and Tajikistan are also closing in on completion although they will not be concluded before MC11.

However, big gaps in the membership of the GPA remain. China's accession to the GPA remains stuck, Russia's accession seems to have started off on a slow track, and seven other advanced developing countries from the G20 largest economies in the world remain outside the GPA and have not given any indication of when they might initiate their accession processes (*e.g.*, Brazil, India, and Mexico).

- **Australia's** negotiation to accede to the GPA is in its final stage. At the recent meeting of the GPA Committee in Geneva, other Members requested Australia to make a few, relatively minor, improvements to its offer on the coverage of its sub-central governmental entities, the exceptions it wishes to maintain to benefit its small and medium-scale enterprises, and the level of the minimum monetary thresholds it applies before committing its government procurement contracts to tender by other GPA members. Australia has indicated its willingness to review these issues by October. In other respects, Australia's offer is considered to match the expectations of other GPA members about the improved access they will receive to Australia's procurement market.

- **China** initiated its GPA accession process in 2008. For the past 2 years negotiations have stalled on its latest (fifth) revised offer, which several key GPA members, including the United States, Japan and the EU, considered to be insufficient to be acceptable in several respects. China has signaled this year its willingness to extend the obligations of the GPA to the procurement activities of all of its 22 provincial government authorities and to broaden the sectoral coverage of its offer, including to the procurement of non-military equipment for its huge defense sector, which would help to meet part of the criticism of other GPA members. However, China has not given any indication of its willingness to bring procurement by more of its state-owned enterprises (SOEs) under the GPA rules, particularly its oil, gas and electricity SOEs which are of keen interest to other GPA members. This remains a serious sticking point in its accession negotiations.

  At the recent meeting of the GPA Committee China reacted to frustration from some GPA Members over its failure to move forward with a new improved offer of access to its SOE procurement market, stating that it was consulting with its domestic stakeholders but that it was encountering great difficulty in persuading key SOEs to commit to GPA rules. China has maintained that, since it completed its reform of its SOE sector in 2012, most of its SOEs are now "fully competitive", they no longer serve national strategic interests nor

receive any direction from the state and they do not, therefore, belong in China's GPA offer. Other GPA parties may continue to find that difficult to accept; the United States in the past has demanded that China must include coverage of any SOE that is "created, established or otherwise authorized to undertake infrastructure or other construction projects for government purposes". This casts the net far wider than China seems willing to accept. Furthermore, China's insistence in its accession negotiations on two broad exclusions to GPA rules is likely to continue to be rejected by other GPA parties. One exclusion would allow China to deviate from the GPA's non-discrimination rules in certain procurement activity so as not to impair what China has termed "important national policy objectives". The second would allow China to require the incorporation of domestic content, technology transfer and other offset measures for covered procurements. China has not defined the scope of either of these potential exclusions and it remains to be seen whether they will be pursued further by China in a new offer. China has asked other GPA members to give special consideration to its developing country status and to be pragmatic in order that its accession process could be completed, but its request was not given any support at the meeting. For the time being there is no indication of when a new improved offer might be tabled by China that would revive its accession negotiations.

- **Russia** initiated its GPA accession process in August 2016, just before the end of the four-year deadline given to Russia to do so in its WTO Accession agreement, and it tabled its initial offer at the recent meeting of the GPA Committee. The offer covers 30 percent of Russia's total regional government procurement and includes almost all of Russia's public construction services, but in most respects the offer was considered by other GPA members to be inadequate as a basis for negotiations and they requested Russia to make significant improvements including fewer exceptions, expanded coverage of goods, services and government entities, and lower minimum monetary thresholds to qualify procurement activities for coverage by GPA rules. They also asked Russia for more details about its government procurement system, in particular its 2013 law that seeks to increase the efficiency of its procurement process and reduce corruption. The law allows the Russian government to impose restrictions on the purchase of foreign goods, works and services, among other things to protect the domestic market, to develop the national economy and to support Russian producers. Those measures have been under scrutiny and criticism by other WTO Members in the Committee on Trade-Related Investment Measures (TRIMs), and they are likely to create a major obstacle to Russia's GPA accession if they remain in place.

The GPA has been an area of considerable success for the WTO, opening markets worth an estimated USD 1.7 trillion to international competition, lowering costs, improving efficiency and helping GPA member governments to tackle corruption. Improvements to the Agreement and the expansion of GPA membership have been successfully negotiated separately from the Doha Round, and some see the plurilateral model of the GPA as an example that the WTO should make more use of to advance trade liberalization among like-minded countries in other areas. The challenge now is to attract more advanced developing countries to participate in the GPA. The next steps in China's and Russia's GPA accession processes will be closely watched in that regard.

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