US & Multilateral Trade Policy Developments

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Contents

US General Trade Policy Highlights

USTR Takes "Unprecedented" Enforcement Action against Timber Imports from Peru

On October 19, 2017, US Trade Representative (USTR) Robert Lighthizer directed US Customs and Border Protection (CBP) to block future timber imports from a Peruvian exporter after a verification procedure conducted pursuant to the US–Peru Trade Promotion Agreement (PTPA) determined that the company had utilized illegally-harvested timber in its supply chain.[1] The enforcement action was taken by the Interagency Committee on Trade in Timber Products from Peru (Timber Committee) for the first time pursuant to the PTPA Annex on Forest Sector Governance (Forest Annex). USTR has touted the new enforcement action as evidence of the Trump administration's focus on enforcement of US trade agreements.

The Forest Annex to the PTPA Environment Chapter includes governance, verification, and enforcement measures aimed at preventing illegal logging and illegal trade in wildlife. Article 7 of the Forest Annex requires that, on the written request of the United States, the government of Peru shall verify whether, with respect to a particular shipment of timber products from Peru to the United States, the exporter or producer of those products has complied with applicable laws, regulations, and other measures of Peru governing the harvest of, and trade in, those products. Article 13 of the Forest Annex specifies certain actions that the United States may take after the government of Peru submits the results of its verification, including denial of entry to the shipment that was the subject of the verification.

In February 2016, the Timber Committee submitted the first verification request under Article 7 of the Forest Annex, requesting that Peru verify that a 2015 timber shipment from the company Inversiones Oroza complied with all applicable laws, regulations, and other Peruvian measures governing the harvest and trade in timber products. The request was made following public reports that the company allegedly had engaged in illegal logging activities. According to USTR, the verification process conducted by Peru revealed that "significant portions of the Oroza shipment were not compliant with Peru's laws, regulations, and other measures on harvest and trade of timber products." Consequently, the Timber Committee has directed that CBP deny entry to Oroza shipments for three years, or until the Timber Committee determines that Oroza has complied with all applicable laws, regulations, and other measures of Peru governing the harvest of and trade in timber products, whichever is shorter.

The timber verification mechanism is a unique provision included in the PTPA that is designed to address illegal logging and illegal trade in timber products. However, USTR Lighthizer described the new enforcement action as indicative of the Trump administration's broader commitment to stringent enforcement of trade agreements, stating that "this unprecedented enforcement action demonstrates President Trump's strong commitment to enforcing our trade agreements and ensuring that trade is fair to the American people", and that the United States "will continue to closely monitor Peru's compliance with its obligations under our trade agreement."

USTR Announces New Triennial Assessment Process for GSP Countries

On October 24, 2017, the Office of the US Trade Representative (USTR) announced that it will establish a new triennial process for assessing whether beneficiary developing countries are complying with the statutory eligibility criteria of the Generalized System of Preferences (GSP) trade preference program.[2] According to the announcement, the new triennial assessment mechanism will complement, and will not change, USTR's existing GSP annual review process, pursuant to which USTR may conduct formal "country practice reviews" to determine whether countries are in compliance with the eligibility criteria. USTR's decision to establish an additional triennial assessment process, as

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[1] Click **here** to view USTR's announcement.

[2] Click **here** to view USTR's announcement.

well as its stated rationale for the decision, signals a shift toward more proactive enforcement of the GSP eligibility criteria.

Triennial assessment process

USTR's announcement states that the new mechanism will involve "a triennial assessment by USTR and other relevant agencies of each GSP beneficiary country's compliance with the statutory eligibility criteria." The GSP eligibility criteria, which are set forth in the GSP statute, are as follows:[3]

In determining whether to designate any country as a beneficiary developing country, USTR must take into account, among other factors:

- The extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;
- The extent to which such country is providing adequate and effective protection of intellectual property rights;
- The extent to which such country has taken action to (a) reduce trade distorting investment practices and policies (including export performance requirements); and (b) reduce or eliminate barriers to trade in services; and
- Whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.

In addition, USTR may not designate any country as a beneficiary developing country if:[4]

- Such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or companies;
- Such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce;
- Such country has nationalized or expropriated the property of US citizens or companies;
- Such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country);
- Such country has not implemented its commitments to eliminate the worst forms of child labor; or
- Such country is a communist country, a country that aids or abets international terrorism, or participates in international arrangements to withhold supplies of vital commodity resources from international trade.

USTR's announcement states that, if the triennial assessment of a beneficiary country raises concerns regarding the country's compliance with an eligibility criterion, "the Administration may self-initiate a full country practice review of that country's continued eligibility for GSP." USTR's regulations allow for self-initiation of country practice reviews,

[3] 19 U.S.C. § 2462(b).

[4] Pursuant to 19 U.S.C. § 2462(b)(2), the eligibility criteria relating to nationalization and expropriation, arbitral awards, terrorism, worker rights, and child labor "shall not prevent the designation of any country as a beneficiary developing country…if the President determines that such designation will be in the national economic interest of the United States."

but such actions are rare: USTR noted in June 2017 that its decision to self-initiate a country practice review of Bolivia was "the first such self-initiation of a review in this century."[5]

In addition to launching the triennial assessment process, USTR has stated that it plans to heighten its focus on concluding the nine GSP country practice reviews that are currently pending.

Next steps and implications

USTR has not announced the date on which the new assessment process will begin, stating only that "the first assessment period will focus on GSP beneficiary countries in Asia" and that the Trump administration "will assess GSP beneficiary countries in other parts of the world in the second and third years of this process."

Ambassador Robert Lighthizer has described the new triennial mechanism as "a more proactive process to assess beneficiary countries' eligibility" that will "ensure that countries that are not playing by the rules do not receive U.S. trade preferences." Ambassador Lighthizer further stated that "this sets the correct balance for a system that helps incentivize economic reform in developing countries and achieve a level playing field for American businesses." Given these statements, and the Trump administration's stated goal of achieving greater "reciprocity" in trade relations, the announcement may signal a shift toward more aggressive enforcement of the GSP eligibility criteria.

The GSP program is set to expire on December 31, 2017, and there are no active legislative efforts to reauthorize the program. However, on October 25, House Ways and Means Committee Chairman Kevin Brady (R-TX) expressed confidence that Congress will approve legislation this year to reauthorize the program. Some observers have speculated that legislation to reauthorize GSP may be combined with a miscellaneous tariff bill (MTB) that Chairman Brady and other Committee members have said they intend to approve this year.

US Business Community Provides Input on Section 301 Investigation of China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

On October 10, 2017, the Office of the US Trade Representative (USTR) held a public hearing to inform its Section 301 investigation into China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. Several U.S. companies and business groups testified at the hearing, and many more provided written submissions in response to USTR's August 24 Federal Register notice seeking input on the investigation. Their statements reflected the U.S. business community's serious and longstanding concerns about a wide range of Chinese government policies related to intellectual property and technology that allegedly are disadvantageous to U.S. industries. However, they did not reflect a clear consensus as to how USTR should use its authority under Section 301 to address these concerns, as relatively few organizations provided detailed comments on whether the matters under investigation implicate China's WTO commitments, or on what actions USTR should take (whether unilaterally or at the WTO) as a result of the investigation.

Information requested by USTR

USTR requested testimony and written comments on four types of alleged Chinese government conduct relating to intellectual property, technology transfer, and innovation:

- The Chinese government's use of various tools to require or pressure the transfer of technologies and intellectual property to Chinese companies;

[5] 15 C.F.R. § 2007.0(f)

- The Chinese government's acts, policies and practices that reportedly deprive U.S. companies of the ability to set market-based terms in licensing and other technology-related negotiations with Chinese companies;
- The Chinese government's reported direction and/or unfair facilitation of the systematic investment in, and/or acquisition of, U.S. companies in order to obtain technologies and intellectual property; and
- Whether the Chinese government is conducting or supporting unauthorized intrusions into U.S. commercial computer networks or cyber-enabled theft of intellectual property, trade secrets, or confidential business information.

USTR also requested comments on (1) other acts, policies and practices of China relating to technology transfer, intellectual property, and innovation; (2) the extent to which the applicable acts, policies, and practices burden or restrict U.S. commerce; and (3) whether the applicable acts, policies, or practices are actionable under Section 301, and what action, if any, should be taken by USTR.

USTR received more than 50 submissions (testimony and written comments) in response to its Federal Register notice. Nearly half of the submissions were filed by trade associations representing segments of the U.S. business community, including the telecommunications, chemicals, consumer technology, metals, biotechnology, software, computing technology, services, manufacturing, information technology, pharmaceutical, and semiconductor industries. Only a small number of U.S. companies filed submissions. Several think tanks, academics, and trade associations representing Chinese businesses also filed submissions.

Content of the submissions

Nearly all of the submissions filed by U.S. companies and trade associations alleged that the Chinese government has engaged in one or more of the types of conduct described in USTR's notice of initiation. Many organizations also identified additional types of Chinese government conduct that allegedly discriminate against or otherwise disadvantage U.S. companies. However, very few organizations proposed that USTR take unilateral actions as a result of the investigation, and only one organization suggested that the matters under investigation are not covered by China's WTO commitments. The content of the submissions is summarized below.

<u>Alleged acts, policies, and practices</u>

- ***Technology transfer.*** Many organizations claimed that they face challenges in China with respect to technology transfers. Some claimed that China's joint venture requirements in certain sectors, such as telecommunications, provide negotiating leverage for Chinese firms (including SOEs) to demand the inclusion of technology transfer requirements in their joint venture contracts with U.S. companies. Others cited certain Chinese laws and regulations that allegedly require or encourage technology transfers (*e.g.*, the Cybersecurity Law and related regulations, regulations for new energy vehicles (NEVs), various product approval and "security review" requirements, and draft regulations regarding cloud computing services).
- ***Licensing.*** Several organizations claimed that certain Chinese laws and regulations prevent U.S. companies from licensing their intellectual property on market-based terms in China. The Chinese government measures alleged to interfere with market-based licensing include the Technology Import-Export Regulations and anti-trust related regulations prohibiting "Abuse of Intellectual Property Rights to Eliminate or Restrict Competition."
- ***Outbound foreign investment.*** Several organizations alleged that the Chinese government, often acting through SOEs it has established in "critical industries", finances or incentivizes the acquisition of foreign

companies in order to obtain advanced technologies and intellectual property. According to some organizations, the Chinese government supports these outbound foreign investments by SOEs through subsidies and other industrial policies. Several organizations cited the semiconductor industry as an area in which the Chinese government allegedly has pursued this strategy.

- ***Cyber-theft.*** Several organizations claimed that the Chinese government engages in or sponsors cyber-enabled theft of intellectual property from U.S. companies. To support these claims, some organizations cited recent instances in which the U.S. Department of Justice (DOJ) has indicted individuals tied to China or the Chinese government on charges involving cyber-theft of IP from U.S. companies. For example, some organizations noted that DOJ in May 2014 indicted five members of the Chinese military who allegedly engaged in economic espionage directed at U.S. firms in the nuclear power, metals, and solar products industries in order to obtain information that would be useful to their competitors in China (including SOEs). A small number of U.S. companies also filed submissions alleging that they had experienced theft of their intellectual property by persons tied to China or the Chinese government.

- ***Other issues.*** Many organizations identified other alleged Chinese government policies that are disadvantageous to U.S. companies, including: (i) restrictions on cross-border data flows; (ii) server localization requirements; (iii) inadequate IPR protection and enforcement; and (iv) the imposition of "indigenous" technical standards that differ from international standards and undermine market access for foreign products.

Applicability of WTO rules

Relatively few organizations provided detailed comments on whether the matters under investigation implicate China's WTO commitments. Some organizations referenced the issue only in general terms (stating, for example, that China imposes technology transfer and licensing requirements that may be inconsistent with its WTO commitments). Other organizations made more specific allegations, which included the following:

- One U.S. law firm alleged that the Chinese Ministry of Industry and Information Technology's regulations regarding new energy vehicles require technology transfers that violate Article 7.3 of China's Protocol of Accession to the WTO, in which China committed to "ensure that the distribution of import licences, quotas, tariff-rate quotas, or any other means of approval for importation, the right of importation or investment by national and sub-national authorities, is not conditioned on: . . . the transfer of technology";
- The Semiconductor Industry Association suggested that the State Administration for Industry and Commerce's (SAIC) antitrust-related regulations on IP – which allegedly make certain refusals to license IP to third parties an antitrust violation under China's Anti-Monopoly law – are inconsistent with the TRIPS Agreement;
- The American Bar Association Section of Intellectual Property Law stated that China's Technology Import-Export Regulations (which were mentioned in USTR's initiation notice) impose mandatory licensing requirements that may be inconsistent with China's WTO commitments;
- The Consumer Technology Association suggested that China's "invasive approval processes and mandated use of indigenous encryption algorithms" for information and communications technologies appear to violate China's national treatment obligations under the GATT and/or the GATS.
- The U.S. Chamber of Commerce and other groups suggested that (1) China's Telecom Services Catalog incorrectly classifies cloud computing and other computer-related services (CRS) as value-added telecommunications services (VATS), which are subject to joint venture and foreign equity cap restrictions; and

(2) this misclassification facilitates technology transfers in the sector and enables China to circumvent its WTO market access commitments for CRS.

By contrast, several organizations did not take a position on whether China's conduct implicates the WTO Agreements, despite making detailed allegations that China engages in unfair or discriminatory practices.

In addition, an organization entitled the "Commission on the Theft of American Intellectual Property" ("IP Commission") appeared to suggest that some of China's conduct falls outside the scope of the WTO Agreements, stating that "the WTO does not provide for the effective protection of intellectual property from an infringer like China." Consequently, the IP Commission proposed various unilateral measures (described below) that USTR might take as a result of the Section 301 investigation.

Possible Section 301 actions

Relatively few U.S. companies and trade associations commented on what actions USTR should take as a result of the investigation, and several provided only general comments on the issue (*e.g.*, urging USTR to act in a manner consistent with WTO rules, to provide further clarity regarding its strategy for the investigation, or simply to take "all appropriate and feasible actions" to eliminate the alleged Chinese government conduct). However, a small number of organizations urged USTR to take or avoid taking certain specific actions as a result of the investigation:

- **Import restrictions.** Several organizations stated that USTR should avoid imposing tariffs or other import restrictions under Section 301, arguing that such unilateral actions would not be effective in eliminating the alleged Chinese government practices. Some of these organizations also expressed concern that such actions would lead to retaliatory measures by China against U.S. companies, or would disrupt the global supply chains on which many U.S. companies rely.

- By contrast, one U.S. law firm suggested that "restrictions on Chinese goods and services may be a part of USTR's actions", and an organization representing the information technology industry stated that, although unilateral trade actions would not be an "ideal end-scenario", such actions should not be taken off the table while the United States seeks to negotiate agreements with China to eliminate the alleged unfair practices.

- **Unilateral measures.** Some organizations proposed unilateral actions against Chinese companies and their investments in the United States. The unilateral actions proposed included the following:

  - *CFIUS*. Some organizations proposed that the criteria used by the Committee on Foreign Investment in the United States (CFIUS) to review proposed investments should be broadened in ways that would increase scrutiny of proposed acquisitions by Chinese companies. The IP Commission proposed that CFIUS should consider whether acquiring companies have (1) directly benefited from the theft of IP from American companies; (2) been unfairly subsidized by foreign governments; or (3) been engaged in any activities that have damaged U.S. national security. In addition, a U.S. law firm proposed that CFIUS reviews should be expanded to consider the economic implications of proposed investments in the United States, particularly "for any investments by Chinese state-owned enterprises or companies otherwise supported or directed by the Chinese government."

    The US-China Business Council disagreed with these approaches, arguing that expanding the scope of CFIUS reviews might encourage China to maintain and possibly expand its alleged use of national security justifications to discriminate against foreign companies.

  - *Emergency actions.* The IP Commission suggested that the Trump administration should "use the emergency economic powers granted to the president to deny access to the U.S. market and, in particular, use the U.S. banking system to thwart foreign companies found to be directly benefitting from the theft of American IP."

  - *Border measures*. The IP Commission proposed the establishment of a "quick response capability to sequester goods at the border that incorporate stolen or pirated materials or were made with a business practice that includes illegally procured IP", strengthening existing procedures under Section 337 of the Tariff Act.
  - *Reciprocal treatment*. One U.S. law firm suggested that USTR should seek to impose on Chinese companies doing business in the United States "reciprocal regulatory and administrative measures comparable to those faced by U.S. companies in China", including with respect to "the initiation and extent of antitrust review, investment limitations and requirements, and the level of intellectual property rights protection."

- **Dialogue and negotiations.** Several trade associations urged USTR to engage in dialogue with China, including through existing mechanisms such as the U.S.-China Comprehensive Economic Dialogue, in order to address the matters covered by the investigation. Other groups, including the U.S. China-Business Council, the Information Technology Industry Council, and the Pharmaceutical Research and Manufacturers Association, suggested that USTR seek to negotiate enforceable agreements with China that would prohibit the technology and IP policies at issue (*e.g.*, a bilateral investment treaty (BIT) or other "binding agreement" as contemplated by Section 301(c)(1)(D) of the Trade Act).
- **WTO actions.** No organization expressly called for USTR to initiate WTO disputes regarding the Chinese measures under investigation. However, the U.S.-China Business Council indicated support for this approach, stating a preference for "solutions enforceable by international trade rules" rather than domestic enforcement actions, and proposing that the administration lead like-minded countries "in an effort to address China's policies that are inconsistent with both the letter and the spirit of the WTO's rules on national treatment, non-discrimination, IP protection, and technology transfer." The Council also urged USTR during the October 10 public hearing to ensure that any actions it takes as a result of the investigation are consistent with the United States' own WTO commitments.

Implications and next steps

Taken together, the comments reflect the widely-shared view within the U.S. business community that certain of China's acts, policies, and practices related to intellectual property and technology are harmful to U.S. companies. However, very few organizations urged USTR to take unilateral actions as a result of the Section 301 investigation. Moreover, several major trade associations argued that some of the Chinese measures at issue are inconsistent with China's WTO obligations, which is notable given that Section 301 precludes USTR from taking unilateral actions where the matter under investigation is covered by a trade agreement. On the other hand, many organizations did not take a clear position on whether the policies at issue implicate China's WTO commitments, or on what actions USTR should take as a result of the investigation.

It is expected that USTR is currently in the process of identifying possible unilateral remedies that might arguably be consistent with the United States' WTO commitments. Moreover, USTR is likely evaluating which of the acts, policies, and practices under investigation arguably involve (or do not involve) the WTO agreements. The public comments and testimony of the U.S. business community have provided some general input, but few detailed arguments, on these questions.

Petitions and Investigations Highlights

US International Trade Commission Makes Affirmative Injury Determination in Safeguard Investigation of Large Residential Washers

On October 5 2017, the US International Trade Commission (ITC) determined that imports of large residential washers (LRW) are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry in the United States.[6] The ITC made the determination in the context of an investigation initiated on June 5, 2017 under Section 201 of the Trade Act of 1974, in response to a petition filed by Whirlpool Corporation. As a result of the affirmative injury determination, the ITC will proceed to the remedy phase of the investigation. The details of the ITC's determination and the next steps in the investigation are summarized below.

Injury determination

All four sitting Commissioners (Chairman Rhonda K. Schmidtlein, Vice Chairman David S. Johanson, and Commissioners Irving A. Williamson and Meredith M. Broadbent) made affirmative injury determinations, except with respect to the specific findings for FTA countries noted below. Consequently, the investigation will proceed to the remedy phase, and the ITC will hold a public hearing regarding potential remedies on October 19, 2017. The ITC will then submit to the President, by December 4, 2017, a report containing its injury determination, remedy recommendations, and additional findings. The ITC may recommend tariff increases, quantitative import restrictions (quotas), tariff-rate quotas, trade adjustment assistance for workers displaced as a result of imports, or a combination of the above.

Findings relating to FTA countries

When the ITC makes an affirmative injury determination in a Section 201 investigation, it is required to make certain additional findings under the implementing statutes for the North American Free Trade Agreement (NAFTA), the US-Dominican Republic-Central America Free Trade Agreement (CAFTA-DR), and the United States' bilateral trade agreements with Australia, Korea, Colombia, Jordan, Panama, Peru, and Singapore. These implementing statutes generally require the ITC to find whether imports from the relevant FTA country contribute importantly to the serious injury or threat thereof, and to include these findings in its report the President.[7] After receiving the ITC's findings, the President may determine to exclude imports from an FTA country from the scope of the safeguard action. However, a negative finding by the ITC with respect to imports from an FTA country (*i.e.*, a finding that such imports do not contribute importantly to the serious injury) is not binding on the President, who makes the final decision concerning whether to provide relief to the U.S. industry with respect to imports from FTA countries.

All four Commissioners made negative findings with respect to imports from Canada and Mexico and all other FTA countries.

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

[7] The NAFTA Implementation Act requires the ITC to find whether:

(i) Imports of the article from a NAFTA country, considered individually, account for a substantial share of total imports; and

(ii) Imports of the article from a NAFTA country, considered individually or, in exceptional circumstances, imports from NAFTA countries considered collectively, contribute importantly to the serious injury, or threat thereof, caused by imports.

The President is required to make the same determinations before taking a safeguard action. If the President makes a negative determination, the President must exclude from the safeguard action articles from the relevant NAFTA country. See 19 U.S.C. §§ 3371-3372.

The implementing statutes for the other trade agreements listed above generally require the ITC to find whether imports of the article from the FTA partner country "constitute a substantial cause of serious injury or threat thereof." If the ITC's finding is negative, the President may exclude from the safeguard action articles from the relevant FTA partner country. See 19 U.S.C. § 3805 note.

Presidential determination and potential actions

Once the ITC submits its report, the President has 60 days to decide whether to implement the ITC's recommendations, take alternative action, or take no action. The granting and form of import relief are discretionary, but in cases where the ITC has found industries to have suffered serious injury by imports, the President nearly always has granted at least some remedy. Statutory provisions limit the scope of the relief that the President can grant, however:

- In determining what is an appropriate and feasible remedy, the President is required to take into account the effect of remedial actions on consumers.
- The relief must not be more restrictive than is necessary, and the safeguard restrictions (if effective for more than one year) must be phased down at regular intervals during the period in which they are in effect.
- The period of relief may not exceed 4 years (unless subsequently extended by the President up to a maximum period of 8 years).
- No action may be taken that would increase the rate of duty to more than 50 percent ad valorem above the rate (if any) existing at the time the action is taken.
- Any action imposing quantitative restrictions must allow the importation of a quantity or value of the subject article that is not less than the average quantity or value entered during the most recent three years that are representative.

In addition to the remedies described above, the President also may negotiate agreements with the affected foreign countries to reduce imports, negotiate a solution to the underlying problem internationally, or seek new legislation to assist the US industry to adjust.

If the remedy proclaimed by the President is (i) an increase in, or imposition of, any duty on the imported article; (ii) a tariff-rate quota on the article, or (iii) a modification or imposition of any quantitative restriction on the importation of the article, the action will take effect within 15 days after the President proclaims the action. If the action taken by the President differs from the ITC's recommendation or if the President takes no action, the action recommended by the ITC nonetheless could take effect upon the enactment of a joint Congressional resolution within a 90-day period beginning on the date the President's report is transmitted to Congress. In such an event, the President must proclaim the action recommended by the ITC within 30 days of the joint resolution.

Assuming the ITC submits its report and recommendations to the President on December 4, 2017, President Trump will be required to issue a determination in this investigation by February 2, 2018.

US Department of Commerce Initiates AD Investigations of PET Resin from Brazil, Indonesia, Korea, Pakistan, and Taiwan

On October 17, 2017, the US Department of Commerce (DOC) announced the initiation of antidumping (AD) investigations concerning imports of polyethylene terephthalate (PET) resin from Brazil, Indonesia, Korea, Pakistan, and Taiwan.[8] The petitioners, DAK Americas, LLC, Indorama Ventures USA, Inc., M&G Polymers USA, LLC, and Nan Ya Plastics Corporation, allege that imports of PET resin from Brazil, Indonesia, Korea, Pakistan, and Taiwan were sold in the United States at the following dumping margins:

Country	Dumping Margins

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

Country	Dumping Margins
Brazil	18.76 percent to 115.87 percent
Indonesia	8.49 percent to 53.50 percent
Korea	55.74 percent and 101.41 percent
Pakistan	25.03 percent and 43.40 percent
Taiwan	14.67 percent and 45.00 percent

The merchandise subject to the investigations is PET resin having an intrinsic viscosity of at least 70, but not more than 88, milliliters per gram (0.70 to 0.88 deciliters per gram). The scope includes blends of virgin PET resin and recycled PET resin containing 50 percent or more virgin PET resin content by weight, provided such blends meet the intrinsic viscosity requirements above. The scope includes all PET resin meeting the above specifications regardless of additives introduced in the manufacturing process.

The merchandise subject to these investigations is classified under subheadings 3907.61.0000 and 3907.69.0000 of the Harmonized Tariff Schedule of the United States (HTSUS).

The US International Trade Commission (ITC) is scheduled to make its preliminary injury determination on or before November 13, 2017. If the ITC determines that there is a reasonable indication that imports of PET resin from these countries materially injure or threaten material injury to the domestic industry, the investigations will continue. DOC will then be scheduled to announce its preliminary AD determinations in March 2018, unless the statutory deadlines are extended.

According to DOC, imports of PET resin from Brazil, Indonesia, Korea, Pakistan, and Taiwan in 2016 were valued at USD 51.7 million, USD 35.7 million, USD 24 million, USD 34.1 million, and USD 109.8 million, respectively.

US Department of Commerce Initiates AD and CVD Investigations of PTFE Resin from China (AD) and India (AD and CVD)

On October 19, 2017, the US Department of Commerce (DOC) announced the initiation of anti-dumping (AD) and countervailing duty (CVD) investigations concerning imports of polytetrafluoroethylene (PTFE) resin from China and India.[9] The petitioner, the Chemours Company FC, alleges that imports of PTFE resin from China and India were sold in the United States at dumping margins of 23.40 to 408.90 percent, and 15.80 to 128.10 percent, respectively, and that imports of PTFE resin from India received above *de minimis* countervailable subsidies.

The merchandise subject to the investigations is PTFE resin, including but not limited to granular, dispersion, or coagulated dispersion (also known as fine powder). PTFE is covered by the scope of the investigations whether filled or unfilled, whether or not modified, and whether or not containing co-polymer additives, pigments, or other materials. Also included is PTFE wet raw polymer. The chemical formula for PTFE is C2F4, and the Chemical Abstracts Service Registry number is 9002-84-0. PTFE further processed into micropowder, having particle size typically ranging from 1 to 25 microns, and a melt-flow rate no less than 0.1 gram/10 minutes, is excluded from the scope of the investigations.

PTFE resin is classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 3904.61.0010 and 3904.61.0090. Subject merchandise may also be classified under HTSUS subheading 3904.69.5000.

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

The US International Trade Commission (ITC) is scheduled to make its preliminary injury determinations on or before November 13, 2017. If the ITC determines that there is a reasonable indication that imports of PTFE resin from China and India 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 December 2017 and its preliminary AD determinations in March 2018, unless the statutory deadlines are extended.

According to DOC, imports of PTFE resin from China and India were valued at an estimated USD 24.6 million and 14.3 million, respectively.

US Department of Commerce Initiates AD and CVD Investigations of Forged Steel Fittings from Italy, Taiwan and China

On October 26, 2017, the US Department of Commerce (DOC) announced the initiation of antidumping duty (AD) investigations concerning imports of forged steel fittings from China, Italy, and Taiwan, and the initiation of a countervailing duty (CVD) investigation concerning imports of the same from China.[10] The petitioners, the Bonney Forge Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, allege that imports of the subject merchandise received above *de minimis* countervailable subsidies from the government of China and were sold in the United States at the following dumping margins:

Country	Dumping Margin
China	142.72 percent
Italy	18.66 to 80.20 percent
Taiwan	116.17 percent

The products subject to the investigations are carbon and alloy forged steel fittings, whether unfinished (commonly known as blanks or rough forgings) or finished. Such fittings are made in a variety of shapes including, but not limited to, elbows, tees, crosses, laterals, couplings, reducers, caps, plugs, bushings and unions. Forged steel fittings are covered regardless of end finish, whether threaded, socket-weld or other end connections. While these fittings are generally manufactured to specifications ASME B16.11, MSS SP-79, and MSS SP-83, ASTM A105, ASTM A350 and ASTM A182, the scope is not limited to fittings made to these specifications.

Subject carbon and alloy forged steel fittings are normally entered under HTSUS subheadings 7307.99.1000, 7307.99.3000, 7307.99.5045, and 7307.99.5060. They also may be entered under HTSUS subheadings 7307.92.3010, 7307.92.3030, 7307.92.9000, and 7326.19.0010.

The US International Trade Commission (ITC) is scheduled to make its preliminary injury determinations on or before November 20, 2017. If the ITC determines that there is a reasonable indication that imports of forged steel fittings from China, Italy and/or Taiwan materially injure, or threaten material injury to, the domestic industry in the United States, the investigations will continue. DOC will then be scheduled to announce its preliminary CVD determination in January 2018 and its preliminary AD determinations in March 2018, unless these deadlines are extended.

According to DOC, imports of forged steel fittings from China, Italy, and Taiwan in 2016 were valued at an estimated USD 78.4 million, 21.1 million, and 15.1 million, respectively.

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

US Department of Commerce Issues Affirmative Preliminary Determinations in AD Investigations of Carbon and Alloy Steel Wire Rod from Italy, Korea, South Africa, Spain, Turkey, Ukraine, and the United Kingdom

On October 25, 2017, the US Department of Commerce (DOC) announced its affirmative preliminary determinations in the antidumping duty (AD) investigations concerning carbon and alloy steel wire rod from Italy, Korea, South Africa, Spain, Turkey, Ukraine, and the United Kingdom.[11] In its investigations, DOC preliminarily determined that imports of the subject merchandise were sold in the United States at the following dumping margins:

Country	Dumping Margin
Italy	22.06 percent
Korea	10.09 percent
South Africa	135.46 to 142.26 percent
Spain	20.25 to 32.64 percent
Turkey	2.80 to 8.01 percent
Ukraine	34.98 to 44.03 percent
United Kingdom	41.96 to 147.63 percent

As a result of the preliminary affirmative determinations, DOC will instruct US Customs and Border Protection (CBP) to require cash deposits based on these preliminary rates.

The products covered by the investigations are certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, less than 19.00 mm in actual solid cross-sectional diameter. Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high-nickel steel; (d) ball bearing steel; or (e) concrete reinforcing bars and rods. Also excluded are free cutting steel (also known as free machining steel) products.

The products under investigation are currently classifiable under subheadings 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3093, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7227.20.0030, 7227.20.0080, 7227.90.6010, 7227.90.6020, 7227.90.6030, and 7227.90.6035 of the Harmonized Tariff Schedule of the United States (HTSUS). Products entered under subheadings 7213.99.0090 and 7227.90.6090 of the HTSUS also may be included in the scope.

DOC is scheduled to announce its final determinations in January 2018. If DOC makes affirmative final determinations, and the US International Trade Commission (ITC) makes affirmative final determinations that that imports of carbon and alloy steel wire rod from Italy, Korea, South Africa, Spain, Turkey, Ukraine, and/or the United Kingdom materially injure, or threaten material injury to, the domestic industry, DOC will issue AD orders.

In 2016, imports of carbon and alloy steel wire rod from Italy, Korea, South Africa, Spain, Turkey, Ukraine, and the United Kingdom were valued at an estimated USD 12.2 million, 45.6 million, 7.1 million, 40.7 million, 41.4 million, 55 million, and 20.5 million, respectively.

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

US International Trade Commission Announces Remedy Recommendations in Safeguard Investigation of Crystalline Silicon Photovoltaic Cells

On October 31, 2017, the US International Trade Commission (ITC) announced the remedy recommendations that it will forward to the President in the global safeguard investigation regarding imports of crystalline silicon photovoltaic (CSPV) cells (whether or not partially or fully assembled into other products).[12] Three Commissioners recommended the imposition of tariff-rate quotas (TRQ) on imports of CSPV cells and additional tariffs on imports of CSPV modules, whereas one Commissioner recommended a quantitative restriction administered by selling import licenses at public auction. These recommendations are summarized below.

Recommendations of Commissioner Meredith M. Broadbent

- Remedy recommendation. Commissioner Broadbent recommended a quantitative restriction on imports of CSPV products, including cells and modules, for a period of four years, administered on a global basis and by selling import licenses at public auction at a minimum price of USD 0.01 per watt. The quantitative restriction would be set at 8.9 gigawatts (GW) for the first year and would increase by 1.4 GW in each subsequent year.

- Recommendations regarding FTA countries. Having made an affirmative injury finding with respect to imports from Mexico, Commissioner Broadbent recommended that the President allocate no less than 720 megawatts to Mexico during the first year within the global quantitative restriction, which would expand by 115 megawatts each year. Having made a negative injury finding with respect to imports from Australia, Canada, CAFTA-DR countries, Colombia, Israel, Jordan, Panama, Peru, Singapore, and the beneficiary countries under the Caribbean Basin Economic Recovery Act, Commissioner Broadbent recommended that such imports be excluded from the quantitative restriction.

- Other recommendations. Commissioner Broadbent recommended that the President, to the extent permitted by law, authorize the use of funds equal to the amount generated by the import license auctions to provide development assistance to domestic CSPV product manufacturers for the duration of the remedy period. Commissioner Broadbent also recommended that the President implement other appropriate adjustment measures, including the provision of trade adjustment assistance by the United States Department of Labor and the United States Department of Commerce to workers and firms affected by import competition.

Recommendations of Vice Chairman David S. Johanson and Commissioner Irving A. Williamson

- Remedy recommendation. Vice Chairman Johanson and Commissioner Williamson recommended a tariff-rate quota (TRQ) for cells and an additional tariff on modules for a period of four years. The TRQ would begin at 1 GW and increase by 0.2 GW each year. The in-quota tariff would remain unchanged, and the above-quota tariff rate would begin at 30 percent *ad valorem* and decrease by 5 percentage points each year. The additional tariff on modules would begin at 30 percent *ad valorem* and decrease by 5 percentage points each year.

- Recommendations regarding FTA countries. Vice Chairman Johanson and Commissioner Williamson recommended that the above tariff-rate quota and increased rates of duty not apply to imports from the following countries with which the United States has free trade agreements: Australia, Colombia, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Jordan, Nicaragua, Panama, Peru, and Singapore. They also recommended that the tariff-rate quota and increased rates of duty not apply to imports from the beneficiary countries under the Caribbean Basin Economic Recovery Act.

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[12] Click **here** to view the ITC's announcement and **here** to view the remedy recommendations.

- Other recommendations. Vice Chairman Johanson and Commissioner Williamson also recommended that the President direct the United States Department of Labor and the United States Department of Commerce to provide expedited consideration of any application for trade adjustment assistance for workers and/or firms that are affected by subject imports.

Recommendations of Chairman Rhonda K. Schmidtlein

- Remedy recommendation. Chairman Schmidtlein recommended a TRQ for cells and an additional tariff on modules for a period of four years. The TRQ would begin at 0.5 GW and increase by 0.1 GW each year. The in-quota tariff would be set at 10 percent and would decrease by 0.5 percentage points each year. The above-quota tariff rate would begin at 30 percent *ad valorem* and decrease by 1 percentage point each year. The additional tariff on modules would begin at 35 percent *ad valorem* and decrease by 1 percentage point each year.

- Recommendations regarding FTA countries. Having made findings that U.S. imports from Australia, the CAFTA-DR countries, Colombia, Israel, Jordan, Panama, Peru, Singapore, and the beneficiary countries under the Caribbean Basin Economic Recovery Act were not a substantial cause of the serious injury experienced by the domestic industry, Chairman Schmidtlein recommended that U.S. imports from these countries be excluded from the remedy.

- Other recommendations. Chairman Schmidtlein also recommended that the President initiate international negotiations to address the underlying cause of the increase in imports of CSPV products and alleviate the serious injury.

The Commission will forward its report, which will contain its injury determination, remedy recommendations, certain additional findings, and the basis for them, to the President by November 13, 2017. Once the ITC submits its report, the President will have 60 days to decide whether to implement the ITC's recommendations, take alternative action, or take no action.