

US & Multilateral Trade Policy Developments

Japan External Trade Organization

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US Trade Reports

Trump Administration Presses Forward with Section 232 Investigation of Automotive Imports, Despite Opposition

The US Department of Commerce's (USDOC) investigation of imported automobiles and automotive parts under Section 232 of the Trade Expansion Act of 1962 has entered a lull in recent weeks, as interested parties have begun preparing their written submissions on the investigation and their oral testimony for the public hearing scheduled for July 19-20 in Washington. USDOC on June 19 announced¹ its decision to extend the deadline for interested parties to file their written submissions and rebuttal comments "in response to requests for additional time", resulting in the following new deadlines for public comment phase of the investigation:

- **June 29, 2018:** Due date for filing comments, for requests to appear at the public hearing, and for submissions of a summary of expected testimony at the public hearing;
- **July 13, 2018:** Due date for rebuttal comments submitted in response to any comments filed on or before June 29, 2018; and
- **July 19 and 20, 2018:** Public hearings will be held in Washington DC from 8:30 a.m. to 5:00 p.m. local time, each day.

Meanwhile, a wide array of US industry associations and elected officials have continued to express opposition to the Section 232 investigation. This includes nearly every major industry association representing US manufacturers of automotive parts and vehicles, as shown below:

The **Motor and Equipment Manufacturers Association** (MEMA), which represents over 1000 American motor vehicle parts manufacturers supplying both the original equipment and aftermarket segments, stated:

Motor vehicle parts manufacturers directly employ more than 871,000 Americans – up 19 percent in the last five years. This growth in jobs has been possible because motor vehicle parts suppliers operate in an integrated, complex global supply chain. Access to worldwide markets is critical for the motor vehicle parts industry to remain competitive. Imposing 232 tariffs on motor vehicle parts and motor vehicles will put American jobs – and national security – at risk....MEMA is disappointed that the Trump administration is investigating the imposition of 232 tariffs on motor vehicle parts and motor vehicles, as these tariffs would adversely impact the success and growth of American manufacturing businesses. In addition, consumers need competitively priced aftermarket parts to repair and maintain their vehicles. Tariffs on imported parts will lead to increased repair costs, forcing U.S. consumers to potentially forgo necessary repairs and routine maintenance. Foregoing maintenance undermines the fundamental operating safety and efficiency of consumers' vehicles.

These concerns about Section 232 import restrictions were echoed by the US vehicle manufacturers that use imported auto parts:

- The **Association of Global Automakers**, which represents the US operations of international motor vehicle manufacturers, original equipment suppliers, and other automotive-related companies and trade associations, stated that "[c]ontrary to the assumption underlying the investigation on import vehicles, the US auto industry is thriving. To our knowledge no one is asking for this protection...This course of action will undermine the health and competitiveness of the US auto industry and invite retaliation by our trading partners."
- The **Alliance of Automobile Manufacturers**, which represents both the Big 3 US automakers and numerous foreign automakers with US manufacturing operations, announced that "[w]e are confident that vehicle imports do not pose a national security risk to the US. Last year, 13 domestic and international automakers manufactured nearly 12 million vehicles in the US. The auto sector remains the leading exporter of manufactured goods in our country."

Finally, the greater US business community has also spoken out against Section 232 measures on automotive imports:

- **US Chamber of Commerce** President and CEO Thomas J. Donohue stated that "[t]he US Chamber strongly opposes the administration's threat to impose tariffs on auto imports in the name of national security. If this proposal is carried out, it would deal a staggering blow to the very industry it purports to protect and would

¹ <https://www.federalregister.gov/documents/2018/06/21/2018-13462/public-hearings-section-232-national-security-investigation-of-imports-of-automobiles-including-cars>

threaten to ignite a global trade war. In fact, the US auto industry is prospering as never before. Production has doubled over the past decade, it exports more than any other industry, and it employs nearly 50 percent more Americans than it did in 2011. These tariffs risk overturning all of this progress.

- **The Business Roundtable** stated that “the Section 232 tariffs on steel and aluminum imports have harmed the US economy, resulting in higher costs on US businesses and consumers, and exposing US exporters to foreign retaliation. Imposing such tariffs on automobile and automotive parts imports would only make things worse. Using ‘national security’ arguments under Section 232 to investigate and potentially impose tariffs on auto imports doubles down on a bad precedent for US trade policy.”
- **The National Association of Manufacturers** stated that “[m]anufacturers in the United States want to give every advantage to American workers. But incorrectly using the 232 statute will create unintended consequences for US manufacturing workers that will limit the chance for Americans to win[.]”

Members of Congress also have continued to express concern about the Section 232 investigation of automotive imports and the Trump administration’s use of Section 232 more broadly, and some Members have endorsed new legislation designed to curtail these actions. On June 6, 2018, a bipartisan group of ten U.S. Senators² introduced legislation to require congressional approval of tariffs imposed under Section 232 of the Trade Expansion Act of 1962. Senator Bob Corker (R-TN), chairman of the Senate Foreign Relations Committee, sponsored the legislation and said that “Making claims regarding national security to justify what is inherently an economic question not only harms the very people we all want to help and impairs relations with our allies but also could invite our competitors to retaliate. If the president truly believes invoking Section 232 is necessary to protect the United States from a genuine threat, he should make the case to Congress and to the American people and do the hard work necessary to secure congressional approval.”³ The bill requires the president to submit to Congress any proposal to adjust imports in the interest of national security under Section 232.⁴ The requirement would apply to all Section 232 actions moving forward as well as investigations undertaken in the past two years.

Though Senator Corker sought to attach the legislation to the Fiscal Year 2019 National Defense Authorization Act, which was approved by the US Senate on June 18, this effort was opposed by the Republican congressional leadership for both procedural and political reasons and ultimately failed. Nonetheless, the Section 232 investigation of automotive imports enjoys virtually no support among Members of Congress, and several Members have openly questioned the national security justification for restricting automotive imports. Even Members that historically have been supportive of import restrictions have expressed opposition to the investigation, including Sen. Sherrod Brown (D-OH), who stated on June 20 that “I think it’s hard to argue that auto production is a national security issue.” Several Senators, including Sen. Brown, expressed such concerns directly to US Secretary of Commerce Wilbur Ross during a June 20 hearing convened by the Senate Finance Committee to examine the Trump administration’s use of Section 232.

Despite these widespread concerns, the Trump administration has continued to defend the Section 232 investigation and may even be seeking to expedite it. Numerous sources have reported recently that President Trump is urging USDOC to conclude the Section 232 investigation in the coming months so that new US tariffs on automotive imports can be announced before the US mid-term elections in November. President Trump reportedly is pursuing this aggressive timetable on the view that new tariffs on automotive imports will improve the image of the White House

² Bob Corker (R-Tenn.), Heidi Heitkamp (D-N.D.), Pat Toomey (R-Pa.), Mark Warner (D-Va.), Lamar Alexander (R-Tenn.), Brian Schatz (D-Hawaii), Ron Johnson (R-Wis.), Chris Van Hollen (D-Md.), Mike Lee (R-Utah), and Jeff Flake (R-Ariz.).

³ United States, Senate, Press Release, “Senators Introduce Legislation to Require Congressional Approval of National Security-Designated Tariffs,” June 6, 2018.

⁴ <https://www.foreign.senate.gov/imo/media/doc/HEY18252.pdf>. For a 60-day period following submission, legislation to approve the proposal will qualify for expedited consideration, guaranteeing the opportunity for debate and a vote.

and the Republican party with certain US voters, and that Congressional Republicans will be less likely to oppose the President's decision in the run-up to the elections. However, the conclusion of the Section 232 investigation could easily be delayed beyond the US mid-term elections due to resource constraints at USDOC, internal disagreements within the Trump administration on the issue of automotive tariffs, and congressional and industry opposition. Similar factors delayed the conclusion of the 2017 Section 232 investigations of steel and aluminum imports, which the Trump administration promised to conclude in just a few months, but which ultimately took almost the full statutory period of 270 days to be completed.

US General Trade Policy

President Trump Signs Proclamations Modifying Section 232 Measures, Allows Exemptions to Expire for Canada, Mexico, and the European Union

On May 31, 2018, President Trump signed Proclamations implementing the following modifications to the tariff measures imposed by the United States on imports of steel and aluminum articles pursuant to Section 232 of the Trade Expansion Act of 1962:

- All steel articles from Argentina, Australia and Brazil will remain exempt from the applicable Section 232 tariffs on a long-term basis; however, imports of such articles from Argentina and Brazil will be subject to annual quotas retroactive to January 1, 2018; and
- All aluminum articles from Argentina and Australia will remain exempt from the applicable Section 232 tariffs on a long-term basis; however, imports of such articles from Argentina will be subject to annual quotas retroactive to January 1, 2018.

The Proclamations do not extend the tariff exemptions previously granted to imports of steel and aluminum articles from Canada, Mexico, or the member countries of the European Union (EU), which are scheduled to expire at 12:01 a.m. eastern daylight time on June 1, 2018. Imports of the covered articles from these countries will therefore be subject to the 25 percent additional duty on steel imports and the 10 percent additional duty on aluminum imports as of June 1, 2018. In addition, the aluminum Proclamation terminates the indefinite exemption previously granted to imports of the covered aluminum articles from Brazil, which therefore will be subject to the 10 percent additional duty on aluminum imports as of June 1, 2018.

We summarize the two Proclamations below and offer our perspective on them.

Proclamation Adjusting Imports of Steel into the United States

Argentina, Australia, and Brazil

The steel Proclamation states that the United States “has agreed on a range of measures” with Argentina, Australia, and Brazil, including measures to reduce excess steel production and excess capacity, increase capacity utilization in the United States, prevent transshipment, and avoid import surges. The President therefore has determined “that steel articles imports from these countries will no longer threaten to impair the national security” and thus has decided to exclude them from the Section 232 tariff “on a long-term basis”.

The Proclamation further states that imports of the covered steel articles from Argentina and Brazil will be subject to quantitative limitations (i.e., quotas), which are set forth in Annex to the Proclamation that is not yet publicly available. US Customs and Border Protection (CBP) also has not yet released the details of the quota arrangements. However, the Proclamation indicates that the quotas for Argentina and Brazil will (1) be product-specific, with a separate quantitative limitation for each of the 54 categories of steel products identified in HTSUS subheadings 9903.80.05 through 9903.80.58; and (2) take into account all steel articles imports from each respective country since January 1, 2018. This approach is consistent with the Section 232 quotas now in place for steel articles from South Korea, which were announced last month (*please refer to the W&C US Trade Alert dated May 1, 2018*).

The Proclamation further specifies that, beginning on July 1, 2018, imports under a particular steel product category from a particular quota country during any one quarter in any year (January through March, April through June, July through September, or October through December) will not be permitted to exceed 500,000 kg (equivalent to 500 metric tons) and 30 percent of the total aggregate quantity provided for a calendar year for such country. This

indicates that a country will be permitted to export more than 30 percent of its total annual quota volume during a particular quarter, provided that the total volume of such exports is less than 500,000 kg (a relatively small amount).

The Proclamation states that the quantitative limitations apply only to goods entered for consumption or withdrawn from warehouse for consumption on the listed dates. This implies that the same customs treatment applied to the South Korean products subject to quantitative limitations will now apply to the additional products subject to quantitative limitations, and similarly, the same customs treatment applied to goods from non-exempt countries subject to the tariff will now apply to goods from those countries no longer exempt from the tariff.

The Proclamation does not implement or mention any quota arrangement for Australia, indicating that the Trump administration has decided to grant Australia a long-term exemption without any quantitative limitations.

Canada, Mexico, and the EU

The Proclamation does not extend the temporary exemptions previously granted to imports of the covered steel articles from Canada, Mexico, and the member countries of the EU. Therefore, pursuant to Proclamation 9740 of April 30, 2018, imports of the covered steel articles from Canada, Mexico, and the member countries of the EU will be subject to the Section 232 tariffs as of 12:01 a.m. eastern daylight time on June 1, 2018.

Proclamation Adjusting Imports of Aluminum into the United States

Argentina and Australia

The Proclamation states that the United States “has agreed on a range of measures” with Argentina and Australia, including measures to reduce aluminum production and excess capacity, increase capacity utilization in the United States, prevent transshipment, and avoid import surges. The President therefore has determined that aluminum articles imports from these countries will no longer threaten to impair the national security, and thus has decided to exclude these countries from Section 232 tariff “on a long-term basis”.

The Proclamation further states that imports of the covered aluminum articles from Argentina will be subject to quantitative limitations (i.e., quotas), which are set forth in Annex to the Proclamation that is not yet publicly available. The quantitative limitations for calendar year 2018 will take into account all aluminum articles imports from Argentina since January 1, 2018. Like the steel Proclamation, the aluminum Proclamation states that the quantitative limitations apply only to goods entered for consumption or withdrawn from warehouse for consumption on the listed dates.

The Proclamation does not implement or mention any quota arrangement for Australia, indicating that the Trump administration has decided to grant Australia a long-term exemption without any quantitative limitations.

Canada, Mexico, the EU, and Brazil

The Proclamation does not extend the temporary exemptions previously granted to imports of the covered steel articles from Canada, Mexico, and the member countries of the EU, and it terminates the indefinite exemption previously granted to Brazil by Proclamation 9740 of April 30, 2018. The Proclamation provides that, on or after 12:01 a.m. eastern daylight time on June 1, 2018, the Section 232 tariff will apply to imports of the covered aluminum articles from all countries except Argentina and Australia.

Outlook

The Federal Register notice containing the Annexes to the Proclamations (and thus, the details of the new quota arrangements with Argentina and Brazil) likely will not be available for several business days. However, CBP will

likely publish new Quota Bulletins in the next business day or two, containing details and instructions regarding these quota arrangements, including the annual quota volumes.

The Trump administration's decision to apply the Section 232 tariffs to imports from Canada, Mexico, and the EU already has been widely criticized by congressional Republicans, including the Chairs of the House Ways and Means and Senate Finance Committees, and immediately prompted threats of retaliation against US exports by the governments of all three jurisdictions. It is expected that Canada and Mexico will soon submit notifications to the World Trade Organization detailing their plans to retaliate against US exports pursuant to Article 12.5 of the Agreement on Safeguards, joining several other governments (namely those of China, the EU, India, Japan, Turkey, and Russia) that have already done so. Though the Trump administration has indicated that it is willing to continue negotiating with Canada, Mexico, and the EU regarding potential Section 232 exemptions, the outlook for such negotiations does not appear promising, given the immediate reactions to the tariff decision and the apparent linkage between the tariffs and other contentious issues, such as the NAFTA negotiations. It appears, therefore, that the Section 232 tariffs on steel and aluminum imports from Canada, Mexico, and the EU will remain in effect for the foreseeable future.

US Trade Representative Releases Final Section 301 Tariff List and Additional List of Proposed Tariffs on Products of China; China Immediately Responds with Tariff Lists of Its Own

On June 15, 2018, the Office of the US Trade Representative (USTR) published two lists of China-origin goods to be subject to additional 25 percent tariffs based on the directions of the President and the results of USTR's investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation, pursuant to Section 301 of the Trade Act of 1974: (1) a final list of products to face the additional tariff on July 6, 2018; and (2) a proposed list of additional products that may also be subject to the 25 percent tariff at an indefinite future time following a public comment period and hearing. Shortly after USTR announced the tariff lists, the Chinese government responded with two tariff lists of its own, to be imposed on US-origin goods at the same times the US tariffs are implemented.

USTR Tariff Lists

The two lists published by USTR cover 1,102 separate US tariff lines with a combined annual import value of approximately USD 50 billion – the same amount covered by USTR's proposed tariff list issued on April 6, 2018, and which USTR stated "is appropriate both in light of the estimated harm to the U.S. economy, and to obtain elimination of China's harmful acts, policies, and practices" (*please refer to the W&C US Trade Alert dated April 3, 2018.*) USTR provided the following information about the two lists:

- **List 1 (final list).** The first list contains 818 tariff lines of the original 1,333 tariff lines that were included on the proposed list published by USTR on April 6. According to USTR, these 818 tariff lines cover approximately USD 34 billion worth of imports from China. USTR has determined to impose an additional duty of 25 percent on these tariff lines after having solicited and received input and advice from the public and US trade advisory committees. US Customs and Border Protection will begin to collect the additional duties on July 6, 2018. Among the 515 products that were on USTR's proposed list but were removed from the final list were various medicines and medical equipment; televisions and other electronic consumer goods; textile machinery; and certain steel and aluminum products. The final list is available [here](#).
- **List 2 (new proposed list).** The second list contains 284 tariff lines that were identified by the interagency Section 301 Committee as "benefiting from Chinese industrial policies, including the 'Made in China 2025' industrial policy." These 284 tariff lines, which cover approximately USD 16 billion worth of imports from China, will undergo further review in a public notice and comment process, including a public hearing. USTR has not

yet announced the details of the public comment and hearing process, but USTR officials have indicated that the public hearing will take place on July 24, 2018. After the completion of the public comment period and hearing, USTR will issue a final determination on the products from this list that will be subject to additional duties and, presumably, the date on which the tariffs will apply. The new proposed list is available [here](#).

- **Exclusion process.** USTR stated that “some U.S. companies may have an interest in importing items from China that are covered by the additional duties. Accordingly, USTR will soon provide an opportunity for the public to request the exclusion of particular products from the additional duties subject to this action.” USTR will issue a notice in the Federal Register with details regarding this process within the next few weeks.

Chinese Response

USTR’s announcement immediately prompted threats of retaliation against US exports by the government of China. Within hours of USTR’s announcement, China’s Ministry of Commerce (MOFCOM) announced its intention to impose tariffs against US exports, publishing two separate tariff lists with trade values and implementation dates mirroring those announced by USTR:

- **List 1.** The first list contains 545 tariff lines covering US agricultural products (e.g., soybeans), vehicles, and fishery products. These tariff lines cover approximately USD 34 billion worth of imports from the United States, according to MOFCOM. China has determined to impose an additional duty of 25 percent on these 545 tariff lines as of **July 6, 2018**. The list is available [here](#) in Chinese.
- **List 2.** The second list contains 114 tariff lines, including chemicals, medical equipment and energy products. These tariff lines cover approximately USD 16 billion worth of imports from the United States. MOFCOM stated that China will impose an additional duty of 25 percent on these 114 tariff lines at a later date to be announced – presumably in response to USTR’s implementation of tariffs on the final “List 2” goods from China. The list is available [here](#) in Chinese.

Outlook

The July 6, 2018 effective dates announced by USTR and MOFCOM provide a window during which the two countries could reach a negotiated settlement to avert the imposition of the tariffs. Although this outcome cannot be ruled out, it now appears unlikely, given the lack of movement during recent bilateral negotiations, the absence of any planned negotiating rounds in the coming days, and the United States’ decision to move forward with publication of the final Section 301 tariff list. Implementation of each country’s planned tariffs on USD 34 billion in imports on July 6, and on an additional USD 16 billion in imports later this year, now appears to be the most likely outcome. Section 301 requires USTR to implement any actions it determines to take under the law “no later than the date that is 30 days after the date on which such determination is made”, though implementation can be delayed by up to 180 days in certain circumstances.⁵

Importantly, the actions announced by USTR and MOFCOM on June 15 could lead to further retaliatory measures affecting trade and investment between the two countries. Indeed, the Trump administration in April stated that it would impose tariffs on an additional USD 100 billion in Chinese imports if China were to retaliate against the first tranche of US tariffs under Section 301, and a June 15 White House statement announcing the final tariff list appeared to reiterate this threat (“[t]he United States will pursue additional tariffs if China engages in retaliatory measures, such as imposing new tariffs on United States goods, services, or agricultural products; raising non-tariff barriers; or taking punitive actions against American exporters or American companies operating in China.”) It is therefore possible that the actions announced by USTR and MOFCOM will begin an extended cycle of tit-for-tat

⁵ 19 U.S.C. § 2415(a)

retaliation between the two countries, thus further affecting US and Chinese export interests and the global trading system.

US Trade Representative Requests Public Comments Regarding Additional Proposed Tariffs on Products of China Under Section 301; White House Threatens Additional Tariffs

On June 18, 2018, the Office of the US Trade Representative (USTR) published a Federal Register notice containing (1) its formal determination to impose 25 percent tariffs on certain products of China with an annual import value of USD 34 billion, beginning on July 6, 2018; and (2) a request for public comments and hearing testimony regarding its proposed determination to impose 25 percent tariffs on a second list of products of China with an annual import value of USD 16 billion. USTR had previously announced these decisions in a statement issued on June 15, 2018 (*please refer to the W&C US Trade Alert dated June 18, 2018*).⁶ In addition, President Trump on June 18 directed USTR to identify “\$200 billion worth of Chinese goods for additional tariffs at a rate of 10 percent”, in response to China’s recently-announced plans to impose equivalent retaliatory tariffs on USD 50 billion in US exports. USTR’s Federal Register notice and President Trump’s statement on potential additional tariff actions are summarized below.

Implementation of Tariffs on “List 1”

The Federal Register notice contains USTR’s formal determination to impose an additional *ad valorem* tariff of 25 percent on certain products of China, effective July 6, 2018. The list of products subject to this additional duty covers 818 tariff lines and approximately USD 34 billion in annual import value.

Products on the list that are entered for consumption or withdrawn from warehouse for consumption on or after 12:01 a.m. eastern daylight time on July 6, 2018, will be subject to the additional duty. The additional 25 percent duty will apply “in addition to all other applicable duties, fees, exactions, and charges.” Any product included on the list, except any product that is eligible for admission under ‘domestic status’ as defined in 19 CFR 146.43, that is subject to the additional duty, and that is admitted into a US foreign trade zone on or after 12:01 am eastern daylight time on July 6, 2018, only may be admitted as ‘privileged foreign status’ as defined in 19 CFR 146.41. Such products will be subject upon entry for consumption to any *ad valorem* rates of duty or quantitative limitations related to the classification under the applicable HTSUS subheading.

Public Comment and Hearing Schedule for Proposed Tariff List

Based on a review of the public comments submitted in the Section 301 investigation and a review of tariff subheadings that cover “industrially significant technology,” USTR has identified 284 additional tariff subheadings that “would be appropriate for action in the form of the imposition of an additional 25 percent *ad valorem* duty.” This list of possible additional products covers approximately USD 16 billion in annual import value, which USTR states “would maintain the effectiveness of a \$50 billion trade action.” USTR is inviting interested parties to submit comments on the proposed list in accordance with the following schedule:

- **June 29, 2018:** Due date for filing requests to appear at the July 24 hearing and a summary of expected testimony at the public hearing, and for filing pre-hearing submissions;
- **July 23, 2018:** Due date for submission of written comments;
- **July 24, 2018:** The Section 301 Committee will convene a public hearing in Washington, DC, beginning at 9:30 a.m.; and
- **July 31, 2018:** Due date for submission of post-hearing rebuttal comments.

⁶ USTR’s Federal Register notice is available [here](#). President Trump’s statement on possible additional tariffs is available [here](#), and USTR’s statement is available [here](#).

USTR has requested that comments be limited to the proposed additional action of imposing additional duties on the 284 tariff subheadings included in the proposed list (i.e., USTR is inviting comments on maintaining or removing a subheading currently included on the list, and not on any other tariff subheadings). USTR has requested that commenters address specifically whether imposing increased duties on a particular tariff subheading on the list would be “practicable or effective to obtain the elimination of China’s acts, policies, and practices”, and whether maintaining or imposing additional duties on a particular product “would cause disproportionate economic harm to U.S. interests, including small- or medium-sized businesses and consumers.”

The Federal Register notice does not specify when any additional tariffs on items on the proposed list will be implemented, stating only that “[a]fter completion of this process, USTR will issue a determination on the additional products subject to additional duties.” If the timing of the “List 1” tariffs is any indication, these additional tariffs would not be implemented until mid-August at the earliest.

Statement from the President on Possible Additional Tariff Actions

On June 18, President Trump issued a statement noting that “China has determined that it will raise tariffs on \$50 billion worth of United States exports. China apparently has no intention of changing its unfair practices related to the acquisition of American intellectual property and technology.” The statement concludes that “[f]urther action must be taken to encourage China to change its unfair practices, open its market to United States goods, and accept a more balanced trade relationship with the United States. Therefore, today, I directed the United States Trade Representative to identify \$200 billion worth of Chinese goods for additional tariffs at a rate of 10 percent. After the legal process is complete, these tariffs will go into effect if China refuses to change its practices, and also if it insists on going forward with the new tariffs that it has recently announced.”

Concurrently, USTR issued a statement in support of the action, stating that “USTR will announce the additional tariffs proposed and provide a similar legal process as the proposed tariffs announced on April 3, 2018 and which are now implemented. No additional tariffs will go into effect until the legal process is complete.” USTR has not indicated when this additional list of proposed tariffs might be published, but the reference to completing the “legal process” indicates that any such tariffs will undergo, at the very least, a notice and comment period similar to the one described above.

WTO Developments

Russia Eliminates Automobile TRIMs; Scrutiny Increases on Alleged Use of TRIMs by Other Members

Russia has announced that it will eliminate elements of its Automobile Investment Programmes on 1 July 2018. These investment programmes (“Auto Investment Programmes 1 and 2”) have allowed automobile investors to import automobile parts free of duty on condition of purchasing or using domestically produced parts and components up to 25 percent of the ex-factory price of the automobiles. That condition has constituted a local content requirement (LCR) that is prohibited under the WTO Agreement on Trade-Related Investment Measures (TRIMs) and is inconsistent with GATT Articles III and XI. Argentina has also come under increased pressure to remove alleged LCRs in its automobile industry and other Members, including China and Turkey, are facing demands that they eliminate LCRs from their regulations in other sectors of their economies.

In Russia’s case, a time-limited continuation of its Auto Investment Programmes was accepted by other WTO Members at the time of Russia’s accession to the WTO in 2012 on the condition that they would be eliminated no later than 1 July 2018 (Paragraph 1090 of the Report of the Working Party on Russia’s Accession to the WTO – WT/ACC/RUS/70). Some observers consider it significant that Russia is respecting its WTO accession commitments, but are skeptical that Russia is committed more generally to the liberalization of its automobile sector or to eliminating the use of LCRs from other sectors of its economy. Russia has announced that it will raise its tariff rates on automobile components up to its bound tariff rates of 5-10% in order to continue to provide protection to its automobile parts industry after the LCR is eliminated. Russia also remains under challenge from the United States and the EU in the TRIMs Committee over its imposition of other LCRs on purchases by its state-owned enterprises (SOEs). Russia has defended those LCRs by claiming that they fall under its government procurement programmes and therefore lie outside the coverage of the TRIMs Agreement, but the United States and the EU have not accepted that as a satisfactory explanation. They are continuing to request more information from Russia on how these LCRs operate, and it is possible that some Members may turn to dispute settlement later this year.

China's draft measures that appear to require the use of local products in the insurance sector have also come under renewed scrutiny by several Members, including Japan, the United States and the EU. At the TRIMs Committee meeting on 1 June, these Members questioned China again about its draft regulation on "Insurance System Informatization" published by the Chinese Insurance Regulation Commission and notified to the WTO as a Technical Barrier to Trade" (TBT) measure, and specifically about Article 53 of China's regulation which states:

"Insurance institutions shall give first priority to the procurement of secure and controllable hardware equipment and software products, steadily introduce the application of secure and controllable products; actively create conditions to raise the indigenous research and development level, and continuously enhance insurance institutions' strength in security and controllability of informatization."

The United States said that in its view this regulation, and other parts of the draft implementation measures for China's one-year old Cybersecurity Law, reflect China's push for more use of Chinese domestic products in information and communication technology (ICT) and other sectors of its economy. The United States requested clarification from China on whether Article 53 of the draft insurance regulation would create a requirement for insurance companies to use indigenous or local hardware equipment and software products, which, the United States said, would be inconsistent with Article 2 of the TRIMs Agreement. Other Members shared the United States' concerns and requested China not to issue or implement a final regulation with this element included until their concerns had been addressed. China declared that the aim of this draft provision was solely to guarantee the security of information in the insurance industry, but it said that it would consult further with Members over their concerns.

The United States, the EU, Japan, and other Members have become increasingly active in raising their concerns about the use of TRIMs in the past two years, after a long period during which they appeared to tolerate the extensive and long-term use of TRIMs by some Members, particularly by Indonesia and Nigeria in several sectors of their economies. Measures applied by Argentina (on automobile parts) and Turkey (on pharmaceutical products) have now attracted questions as well about their consistency with the TRIMs Agreement and GATT Article III and XI. It is expected that these Members will face increased pressure to fully justify their measures or amend them, and if they fail to do so dispute settlement challenges may be made later this year.