

# US & Multilateral Trade Policy Developments

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**Japan External Trade Organization**

July 2018

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# US General Trade Policy

## US Section 301 Tariffs and Chinese Retaliation to Take Effect on July 6

On July 6, 2018, the United States will begin imposing additional tariffs of 25 percent *ad valorem* on certain products of China with a combined annual import value of USD 34 billion, based on the US Trade Representative's (USTR) final determination in its investigation of China's intellectual property rights practices pursuant to Section 301 of the Trade Act of 1974. The additional import duties for Chinese goods covered by the Section 301 action will be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 AM Eastern Standard Time on July 6, 2018. On the same date, China is scheduled to impose additional tariffs of 25 percent *ad valorem* on certain products of the United States, with an equivalent annual import value of USD 34 billion. This alert summarizes the relevant information for each set of tariffs and provides an outlook on likely next steps in the burgeoning US-China trade dispute. Links to the relevant tariff lists are provided below.

### US Section 301 Tariffs, Customs Instructions and Exclusions

The Section 301 tariffs scheduled to take effect on July 6 will apply to the 818 Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in Annex A to USTR's Federal Register notice of June 20, 2018. US Customs and Border Protection (CBP) on July 3 issued a CSMS message containing the following information and instructions regarding the Section 301 tariffs on the "Annex A" product list:<sup>1</sup>

- Any article classified in a subheading covered by the list that is a product of China will be subject to a 25 percent *ad valorem* duty rate, in addition to the general ("Column 1") rate of duty for that particular subheading. The Section 301 duties currently only apply to products of China, and are based on the country of origin, not the country of export.
- In addition to reporting the Chapters 1-97 HTSUS classification of the imported merchandise, importers must also report subheading 9903.88.01 (the special tariff number for goods subject to the additional duty 25 percent as a result of the Section 301 remedy).
- Products covered by the Section 301 action that are eligible for special tariff treatment under a trade preference program listed in General Note 3(c)(i) to the HTSUS will be subject to the additional 25 percent tariff.
- Any product on the list, except any product that is eligible for admission under 'domestic status' as defined in 19 CFR 146.43, which is subject to the additional Section 301 duty, and that is admitted into a U.S. 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.
- The Section 301 tariff will not apply to products for which entry is properly claimed under a heading or subheading in Chapter 98. When submitting an entry in which a heading or subheading in Chapter 98 is claimed on merchandise covered by the Section 301 remedy, a filer must first report subheading 9903.88.01, followed by the applicable Chapter 98 subheading, and the Chapter 1-97 HTSUS classification for the commodity being imported.
- Section 301 duties are eligible for duty drawback.

CBP's message also states that it will provide additional guidance regarding the Section 301 product exclusion process as it becomes available. USTR's June 20 Federal Register Notice stated that USTR will establish a process by which US stakeholders may request that particular products classified within an HTSUS subheading listed in Annex A be excluded from the additional Section 301 duties. However, USTR has not yet published this Federal Register notice.

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<sup>1</sup> CBP's notice on the Section 301 tariffs is available [here](#).

### **Chinese Tariffs on Products of the United States**

China is scheduled to impose additional tariffs of 25 percent *ad valorem* on certain products of the United States as of July 6, 2018, pursuant to a June 16 announcement by China's Ministry of Commerce (MOFCOM). The duties scheduled to take effect on July 6 will apply to 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.

### **Next Steps: Additional Tariffs?**

The United States may soon impose tariffs on additional products of China pursuant to Section 301. In its Federal Register notice of June 20, USTR proposed to apply tariffs of 25 percent to a second list of Chinese products, covering 284 tariff subheadings and approximately USD 16 billion in annual import value, at an unspecified future date. This list of products is set forth in Annex C to the Federal Register notice. USTR has invited interested parties to submit comments and has scheduled a public hearing on its proposed determination to impose tariffs on the 284 additional products, and this process is ongoing. The public comment process will conclude on July 31, 2018, and USTR could announce its final determination to impose tariffs on the second list of products shortly thereafter.

If USTR proceeds to impose tariffs on an additional USD 16 billion in Chinese imports, China is likely to retaliate with equivalent tariffs on US exports. In response to USTR's publication of the second list, MOFCOM on June 16 published its own proposed tariff list covering USD 16 billion in imports from the United States, and stated that these tariffs would take effect at a later date to be announced (likely at the same time as any US tariffs on an additional USD 16 billion in Chinese imports). Implementation of each country's second list of proposed tariffs, which appears likely at this stage, would bring the total amount of trade covered by the tariffs to USD 100 billion (*i.e.*, USD 50 billion from each country).

These actions could prompt further escalation of trade barriers between the United States and China. On June 18, following China's announcement that it would retaliate against any US tariffs imposed under Section 301, President Trump said in a statement 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... 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." USTR subsequently stated 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." To date, USTR has not announced any additional proposed tariffs, and it is unclear whether it will do so. However, these statements highlight the risk that the initial Section 301 action and China's retaliation lead to a series of additional tit-for-tat trade actions that further affect US and Chinese economic interests and the global trading system.

### **Source Documents**

The lists of US and Chinese products referenced above, with product description in English, can be found at the following links:

List	Effective Date of Tariffs	Link
US Section 301 Tariff List #1	July 6, 2018	<a href="#">USTR FR Notice</a> , Annexes A-B
US Section 301 Tariff List #2	Unspecified	<a href="#">USTR FR Notice</a> , Annex C
China's Tariff List #1	July 6, 2018	<a href="#">China Tariff List</a> , p.2
China's Tariff List #2	Unspecified	<a href="#">China Tariff List</a> , p. 26

## USTR Establishes Product Exclusion Process for Section 301 Tariffs on Products of China

On July 6, 2018, the Office of the U.S. Trade Representative (USTR) published a Federal Register notice inviting interested parties to request the exclusion of particular products from the 25 percent *ad valorem* tariff imposed on certain products of China on July 6, 2018, pursuant to Section 301 of the Trade Act of 1974<sup>2</sup>. The notice, which is scheduled for formal publication in the Federal Register on July 11, establishes procedures for requesting product exclusions and describes the criteria that USTR may consider when determining whether to exclude products. The notice also establishes a process for interested parties to respond to any pending requests for product exclusions. This alert summarizes the Section 301 product exclusion process and the ways in which it differs from the product exclusion process established by the US Department of Commerce (DOC) for steel and aluminum products that are currently subject to additional duties under Section 232 of the Trade Expansion Act of 1962.

### Product Exclusion Requests

USTR is inviting "interested persons," including trade associations, to submit requests for exclusion from the additional duties of a particular product classified within a Harmonized Tariff Schedule of the United States (HTSUS) subheading that is currently subject to the Section 301 measure (*i.e.*, a subheading listed in "Annex A" to USTR's Federal Register notice of June 20, 2018). Interested persons seeking to exclude two or more products must submit a separate request for each product, *i.e.*, one product per request. The procedures do not define "interested persons," but the relevant section ("requestor's relationship to the product") of the accompanying exclusion request form allows for only U.S. Producer; Importer; Industry Association; Purchaser; and Other. It thus appears that only U.S. parties may seek an exclusion.

Exclusion requests must be submitted by October 9, 2018 and include the following information:

- The 10 digit subheading of the HTSUS applicable to the particular product requested for exclusion.
- Identification of the particular product in terms of the physical characteristics (e.g., dimensions, material composition, or other characteristics) that distinguish it from other products within the covered 8-digit subheading. USTR will not consider requests that identify the product at issue in terms of the identity of the producer, importer, ultimate consumer, actual use or chief use, or trademarks or tradenames. USTR will not consider requests that identify the product using criteria that cannot be made available to the public.
- Requesters also may submit information on the ability of U.S. Customs and Border Protection to administer the exclusion.
- Requesters must provide the annual quantity and value of the Chinese-origin product that the requester purchased in each of the last three years. Trade associations must provide this information based on their members' data.

<sup>2</sup> The Federal Register notice is available [here](#). USTR's statement on the exclusion process is available [here](#). The form for submitting exclusion requests is available [here](#).

With regard to the rationale for the requested exclusion, USTR states that requesters should address the following factors:

- Whether the particular product is available only from China. In addressing this factor, requesters should address specifically whether the particular product and/or a comparable product is available from sources in the United States and/or in third countries.
- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requester or other U.S. interests.
- Whether the particular product is strategically important or related to “Made in China 2025” or other Chinese industrial programs.

USTR will post all exclusion requests for public inspection on [www.regulations.gov](http://www.regulations.gov) at docket number USTR-2018-0025, except for business confidential information. As noted above, USTR has posted a standard exclusion request form that may be used to file exclusion requests. USTR “strongly encourages” interested persons to use the form, but it is not required.

#### **Responses to Requests for Exclusions and Replies Thereto**

After a request for exclusion of a particular product is posted on docket number USTR 2018-0025, interested persons will have 14 days to respond to the request, indicating support or opposition and providing reasons for their view. All responses must clearly identify the specific request for exclusion being addressed.

After a response is posted on docket number USTR 2018-0025, interested persons will have the opportunity to reply to the response. Any reply must be posted within 7 days after the close of the 14 day response period. All replies must clearly identify the specific responses being addressed.

#### **Exclusion Determinations and Retroactivity**

USTR will evaluate each exclusion request “on a case-by-case basis, taking into account whether the exclusion would undermine the objective of the Section 301 investigation.” The notice does not specify when USTR will begin issuing exclusion determinations or specify a deadline for making them, stating only that “USTR will periodically announce decisions on pending requests”. Any exclusions granted will be retroactive from the July 6, 2018 effective date of the additional duties, and extend for one year after the publication of the exclusion determination in the Federal Register.

The exclusions will be product-specific, not party-specific. A USTR statement issued alongside the Federal Register notice states that “[b]ecause exclusions will be made on a product basis, a particular exclusion will apply to all imports of the product, regardless of whether the importer filed a request. The U.S. Customs and Border Protection will apply the tariff exclusions based on the product.”

#### **Differences from Section 232 Exclusion Process**

Though the new Section 301 exclusion process announced by USTR is broadly similar to DOC’s product exclusion process for steel and aluminum products, it differs in several important respects. For example, the Section 301 process expressly permits trade associations to submit requests on behalf of their members, whereas the Section 232 process is limited to individuals or organizations using steel or aluminum in business activities in the United States. In addition, Section 301 exclusions will be fully retroactive to the date on which the additional duties took effect, whereas Section 232 exclusions are retroactive only to the date on which the exclusion request is posted in the relevant online docket. Finally, USTR’s statement indicates that any granted Section 301 exclusions will be available to all US importers of the relevant product, whereas Section 232 exclusions are limited to the individual or

organization that submitted the specific exclusion request unless DOC approves a broader application of the exclusion to apply to additional importers. These differences could potentially make the Section 301 exclusion process less burdensome for requesters and USTR, and provide for broader relief from the tariffs than the Section 232 exclusion process.

## **USTR Proposes 10 Percent Tariff on an Additional USD 200 Billion in Imports from China under Section 301**

On July 10, 2018, the Office of the US Trade Representative (USTR) published a draft Federal Register notice proposing the imposition of a 10 percent *ad valorem* tariff on certain products of China with a combined annual import value of approximately USD 200 billion, pursuant to Section 301 of the Trade Act of 1974.<sup>3</sup> USTR stated that it is proposing this action based on the results of its Section 301 investigation of China's intellectual property rights practices, and "[i]n light of China's decision to respond to the investigation by imposing duties on U.S. goods[.]"

The United States already has imposed an additional tariff of 25 percent on USD 34 billion in Chinese imports and has requested public comments on a second proposed tariff list covering USD 16 billion in imports, based on the results of the same Section 301 investigation. A final decision on the proposed USD 16 billion action is expected after the public comment period concludes on July 31, 2018. USTR's new Federal Register notice states that, in light of China's recent decision to impose equivalent retaliatory tariffs on U.S. goods, USTR is now proposing "to maintain the original \$34 billion action and the proposed \$16 billion action, and to take further action in the form of an additional 10 percent *ad valorem* duty on products of China with an annual trade value of approximately \$200 billion." This additional action, if implemented, would represent a major escalation of the ongoing US-China trade dispute.

USTR is now seeking public comments and will hold a public hearing on the proposed additional list of tariffs on USD 200 billion in imports. This alert provides an overview of the proposed action, its potential implications, and the process for interested parties to comment on the proposed tariffs.

### **Basis for Proposed "Supplemental Action"**

USTR argues that the proposed 10 percent tariff on an additional USD 200 billion in Chinese imports is justified in light of the Government of China's response to the Section 301 investigation, and by the text of Section 301 of the Trade Act. This comes despite USTR's previous determination, set forth in its Federal Register notices of April 6 and June 20, 2018, to impose tariffs on only USD 50 billion in Chinese imports because USTR had determined that this amount was "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." USTR has amended that view by first summarizing China's response to the Section 301 investigation:

On Saturday, June 16, 2018, the Government of China specified that it would impose an additional 25 percent tariff on U.S. goods with a value of \$50 billion (State Council Customs 5 Tariff Commission 2018 Public Notice No. 5). China's announcement sets out two lists. The first list contains 545 tariff subheadings that supposedly corresponds to the initial U.S. \$34 billion action, and had an effective date of July 6, 2018. The second list contains 114 tariff subheadings that supposedly corresponds to the additional proposed \$16 billion U.S. action, and will be effective on a date to be determined. On July 6, 2018, the day the initial \$34 billion action in the investigation became effective, the Government of China confirmed that it is going forward with the new tariffs it announced on June 16. China also has not changed the acts, policies, and practices identified in the investigation.

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<sup>3</sup> USTR's Federal Register notice is available [here](#).

USTR then notes that Section 301(b) of the Trade Act provides that “the Trade Representative shall take all appropriate and feasible action authorized under [Section 301(c)], subject to the specific direction, if any, of the President regarding any such action . . . to obtain the elimination of [the] act, policy, or practice” covered in the investigation. USTR further notes that Section 307 of the Trade Act provides that “The Trade Representative may modify or terminate any action, subject to the specific direction, if any, of the President with respect to such action, that is being taken under [Section 301] if . . . such action is being taken under section 301(b) of this title and is no longer appropriate.” According to USTR, “[m]odification of the action in this investigation by taking a supplemental \$200 billion action is appropriate in light of the statutory goal of obtaining the elimination of the acts, policies, and practices covered in the investigation”, and because China “has shown that it will not respond to action at a \$50 billion level by addressing U.S. concerns with China’s acts, policies, and practices involving technology transfer, intellectual property, and innovation.”

USTR also argues that the proposed retaliation level of USD 200 billion “is appropriate in light of the level of China’s announced retaliatory action (\$50 billion) and the level of Chinese goods imported into the United States (\$505 billion in 2017).” USTR notes that China’s retaliatory action “covers a substantial percentage of U.S. goods exported to China (\$130 billion in 2017)” and claims that “[i]n order to enhance effectiveness, the level of the U.S. supplemental action must cover a substantial percentage of Chinese imports.” USTR further notes that the proposed retaliation level of USD 200 billion “is in accord with the President’s direction”, citing President Trump’s statement of June 18, 2018, which directed USTR to identify USD 200 billion worth of Chinese goods for additional tariffs at a rate of 10 percent.

### **Proposed Supplemental Action and Public Comment Process**

USTR is proposing to modify the action taken in the Section 301 investigation by maintaining the original USD 34 billion action and the proposed USD 16 billion action, and by taking a further, supplemental action in the form of an additional 10 percent *ad valorem duty* on certain products of China, which are listed in the Annex to the Federal Register notice. The list covers 6,031 tariff subheadings. According to USTR, the list was compiled based on the following methodology:

In developing the list of tariff subheadings included in this proposed supplemental action, trade analysts considered products from across all sectors of the Chinese economy. The tariff subheadings considered by the analysts included subheadings that commenters suggested for inclusion in response to [USTR’s Federal Register notice of April 6, 2018]. The selection process took account of likely impacts on U.S. consumers, and involved the removal of subheadings identified by analysts as likely to cause disruptions to the U.S. economy, as well as tariff lines subject to legal or administrative constraints.

USTR is inviting comments from interested persons and has scheduled a public hearing regarding the proposed supplemental action to be taken in the investigation. The schedule for the public comment process is as follows:

- **July 27, 2018:** Due date for filing requests to appear and a summary of expected testimony at the public hearing, and for filing pre-hearing submissions.
- **August 17, 2018:** Due date for submission of written comments.
- **August 20-23, 2018:** The Section 301 Committee will convene a public hearing in Washington, DC.
- **August 30, 2018:** Due date for submission of post-hearing rebuttal comments.

USTR is requesting comments with respect to any aspect of the proposed supplemental action, including:



- The specific tariff subheadings to be subject to increased duties, including whether the subheadings listed in the Annex should be retained or removed, or whether subheadings not currently on the list should be added.
- The level of the increase, if any, in the rate of duty.
- The appropriate aggregate level of trade to be covered by additional duties.

In commenting on the inclusion or removal of particular tariff subheadings listed in the Annex, USTR requests that commenters address specifically whether imposing increased duties on a particular product 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-size businesses and consumers.

### **Implications**

Given the aforementioned notice and comment schedule and recent practice, the earliest practicable date for publication of a final USD 200 billion tariff list would be mid- to late-September, with implementation of those tariffs approximately two weeks thereafter. Any such action would represent a major escalation of the ongoing U.S.-China trade dispute. Assuming that USTR's pending proposed action covering USD 16 billion in imports is also implemented, the supplemental action would bring the total amount of Chinese imports covered by the Section 301 tariffs to USD 250 billion – about half of all Chinese imports into the United States in 2017. Moreover, the Government of China already has promised to take “necessary counter-measures” if the United States implements the new proposed tariffs. Given that US exports to China totaled only USD 130 billion in 2017, China's retaliation may involve a combination of tariffs on U.S. goods exported to China and other actions (e.g., measures targeting US investors in China) that are designed to have an effect equivalent to that of the U.S. tariffs. U.S. tariffs and Chinese retaliation on this scale would have serious ramifications for U.S. and Chinese businesses, their suppliers and customers, and the global trading system.

For these reasons, Members of Congress and the U.S. business community have condemned USTR's proposed action and urged the Trump administration to reach a negotiated solution with China that would avoid the imposition of tariffs. For example, House Ways and Means Committee Chairman Kevin Brady (R-TX) noted that “[d]espite the serious economic consequences of ever-increasing tariffs, today there are no serious trade discussions occurring between the U.S. and China, no plans for trade negotiations anytime soon, and seemingly little action toward a solution...I strongly urge President Trump and President Xi to meet soon face-to-face to craft a solution to establish fair and lasting trade between our two countries.” At this stage, however, it is unclear whether further substantive negotiations will occur, or whether they could succeed in breaking the cycle of tit-for-tat retaliation that is now underway as a result of the U.S. actions under Section 301.

### **United States and European Union Establish Executive Working Group to Explore Bilateral Trade Negotiations**

On July 25, 2018, President Trump and European Commission President Jean-Claude Juncker agreed to begin preliminary discussions on a “joint agenda” of potential bilateral trade initiatives, including a potential negotiation to liberalize US-EU trade in non-automotive industrial goods and services. In a joint statement issued on July 25, the two leaders announced that an Executive Working Group will convene immediately to discuss the new agenda. EU officials have stated that the United States will refrain from imposing additional tariffs on automotive imports from the European Union under Section 232 of the Trade Expansion Act while the bilateral discussions are underway, though this is not confirmed by the joint statement and the Trump administration has said that its Section 232 investigation of automotive imports will continue. We provide an overview of the joint statement and its potential implications below.

## Joint Statement on US-EU Trade Initiatives

The document states that President Trump and President Juncker have agreed to undertake the following initiatives:

- **Trade liberalization.** The leaders agreed “to work together toward zero tariffs, zero non-tariff barriers, and zero subsidies on non-auto industrial goods”; and to “work to reduce barriers and increase trade in services, chemicals, pharmaceuticals, medical products, as well as soybeans.”
- **Standards dialogue.** The leaders agreed “to launch a close dialogue on standards in order to ease trade, reduce bureaucratic obstacles, and slash costs.”
- **Energy cooperation.** The leaders agreed “to strengthen our strategic cooperation with respect to energy”, noting that “[t]he European Union wants to import more liquefied natural gas (LNG) from the United States to diversify its energy supply.”
- **Addressing unfair trade practices.** The leaders agreed “to join forces to protect American and European companies better from unfair global trade practices”, and “will therefore work closely together with like-minded partners to reform the WTO and to address unfair trading practices, including intellectual property theft, forced technology transfer, industrial subsidies, distortions created by state owned enterprises, and overcapacity.”

President Trump and President Juncker “decided to set up immediately an Executive Working Group of our closest advisors to carry [the above] joint agenda forward.” In addition, the Executive Working Group “will identify short-term measures to facilitate commercial exchanges and assess existing tariff measures.” A White House fact sheet issued alongside the joint statement claims that “[t]his is just the start of the conversation. Many other products and issues will be addressed.”

The joint statement also notes that both leaders “want to resolve the [Section 232] steel and aluminum tariff issues and retaliatory tariffs”, and the White House fact sheet states that the bilateral discussions “will include topics such as the United States steel and aluminum tariffs and EU retaliatory tariffs.” Though the joint statement does not expressly reference the United States’ ongoing Section 232 investigation of automotive imports, it contains a general commitment that “[w]hile we are working on [the joint agenda], we will not go against the spirit of this agreement, unless either party terminates the negotiations.” EU officials have stated that they now expect that the United States will not impose additional tariffs on EU automotive goods under Section 232, and that each party’s tariffs on one another’s automotive goods will remain at their current levels.

## Next steps

Though the joint statement discusses the scope of a potential US-EU trade negotiation covering tariffs, non-tariff barriers, and services, it does so only in general terms and does not constitute a formal launch of negotiations. Before formal negotiations can begin, both sides will need to agree on the precise scope of the negotiation, which will likely be discussed by the Executive Working Group in the coming months and, if agreement is reached, detailed in a formal working group report. The Executive Working Group is expected to be led by US Trade Representative Robert Lighthizer and EU Trade Commissioner Cecilia Malmstrom. The two sides reportedly are aiming to reach agreement on the scope of the negotiation within the next three months, but these discussions could prove contentious. For example, following the issuance of the joint statement, Trump administration officials repeatedly have stated that they expect agricultural issues to be included in the scope of the negotiations, whereas EU officials have stated that agriculture must be excluded. This and other disagreements over the scope could impede the launch of formal negotiations.

In addition, both sides must complete their respective domestic legal procedures before negotiations formally begin. For the United States, in order to benefit from the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA 2015) (which commits Congress to vote on bills implementing trade agreements within a fixed period, with limited debate, without amendment, and subject to an up-or-down vote, once the president submits an implementing bill), the President is required to adhere to statutory requirements before formal negotiations can begin. These procedures are set forth in TPA 2015, and require the Trump administration to (1) consult with the relevant congressional committees and advisory groups before initiating negotiations; (2) provide, at least 90 days before initiating negotiations, a written notice to Congress of its intent to enter into the negotiations and the specific US objectives for the negotiations; and (3) publish, at least 30 days before initiating negotiations, a detailed summary of the specific negotiating objectives. For the European Union, the European Commission cannot formally initiate negotiations until the European Council approves a negotiating mandate authorizing it do so and setting forth negotiating directives, including the objectives, scope and possible time limits of the negotiations. Neither party has indicated when it will begin taking the necessary actions to satisfy its domestic legal requirements for the launch of negotiations.

The Trump administration has confirmed that its Section 232 investigation of automotive imports will continue while bilateral discussions with the European Union are underway. Secretary of Commerce Wilbur Ross stated on July 25 that "[w]e've been directed by the president to continue the investigation, get our material together, but not actually implement anything pending the outcome of the negotiation[.]" Secretary Ross further stated that the US Department of Commerce may issue its report on the investigation in August. He also alluded to a possible exemption for the European Union, stating that "[d]epending on where we are with the EU, it might have an impact" on the Department's findings in the investigation.

## Implications

Members of Congress and the US business community have welcomed the Trump administration's decision to explore possible trade negotiations with the European Union to eliminate tariffs and other trade barriers. They also have praised the administration's apparent decision to refrain from imposing Section 232 tariffs on EU automotive goods. However, these outcomes are far from guaranteed. The bilateral discussions could collapse in their early stages due to disagreements over the scope of the negotiation, or the Trump administration could at any point reverse course and seek to apply Section 232 tariffs to EU automotive goods as a means of gaining "leverage" in the negotiation. Such policy reversals would not be unprecedented. For example, although the Trump administration initially excluded Canada and Mexico from the Section 232 tariffs on steel and aluminum imports due to the ongoing renegotiation of NAFTA, it ultimately reversed course and imposed the Section 232 tariffs on both countries' steel and aluminum exports as of June 1, 2018. Similarly, the Trump administration in May announced that its plan to impose tariffs on certain products of China pursuant Section 301 of the Trade Act of 1974 had been placed "on hold" because it had reached agreement with China on a new framework to increase US exports and address intellectual property rights issues. However, the Trump administration subsequently reversed course and implemented the Section 301 tariffs on July 6, 2018. Given the volatility of the Trump administration's trade policies and negotiating tactics, it is difficult to predict how the new dialogue announced by Presidents Trump and Juncker will ultimately affect US-EU trade relations or the outcome of the Section 232 investigation of automotive imports.

Click [here](#) to view the joint statement.

## US Congress Allows Extension of Trade Promotion Authority Through 2021

The US Congress this month allowed the expedited legislative procedures provided for in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 ("TPA 2015") to be extended through June 30, 2021. Commonly known as trade promotion authority ("TPA") or "fast-track", these legislative procedures facilitate

the negotiation and congressional consideration of trade agreements by ensuring a timely vote on their implementing legislation and prohibiting amendments to the legislation.<sup>4</sup> As a result of the extension of TPA, trade agreements signed by the President before June 30, 2021 will be eligible for congressional consideration under TPA legislative procedures. TPA therefore could apply to legislation to implement a renegotiated version of the North American Free Trade Agreement (NAFTA), or to other trade agreements that might be negotiated by the Trump administration.

The extension of TPA through 2021 was not unexpected, given the text of the TPA law and the current makeup of Congress. TPA 2015 authorized the extension of TPA procedures through June 30, 2021, provided that the President requested the extension and neither House of Congress approved a resolution before July 1, 2018 disapproving of the extension. Thus, Members of Congress would have had to proactively vote – first in the House Ways and Means or Senate Finance Committees, and subsequently in the full House or Senate – to prevent the extension from occurring. Given these requirements and the current Republican majorities in both Houses of Congress, it was widely expected that Congress would allow TPA to be extended.

President Trump formally requested the extension of TPA on March 20, 2018. As required by TPA 2015, the request was accompanied by a report to Congress outlining the administration's progress in ongoing trade negotiations and its reasons for seeking the extension. The Trump administration's report argues that "[e]xtending trade promotion authorities for agreements entered into before July 1, 2021 is critical for this Administration to be able to carry out its transformative trade agenda[.]" The report highlights in particular the following current and "potential future" negotiations on the administration's agenda:

- **NAFTA.** The report discusses the status of the ongoing NAFTA negotiations and the Trump administration's published objectives for those negotiations, which it states are "consistent with the negotiating objectives set out in [TPA]". With regard to timing, the report states that "[t]he Administration does not want to set artificial deadlines for conclusion. A renegotiated NAFTA and an implementation bill will be sent to Congress for approval at an appropriate time."
- **WTO.** The report acknowledges that negotiations at the WTO have largely stalled, but states that "[t]he United States seeks to work with other WTO Members to begin the process of identifying opportunities to achieve accomplishments, even if incremental ones", and that "[i]n particular, the United States is looking forward to discussions on agriculture, fisheries subsidies, and digital trade among other issues." It further states that "[w]hile it is unclear what kinds of outcomes these efforts will result in, extension of trade authorities procedures will send a positive signal that the United States is serious about our engagement in these and other areas."
- **US-UK FTA.** The report reiterates the Trump administration's interest in beginning FTA negotiations with the UK, but acknowledges that the UK is currently unable to engage in such negotiations while it remains a member of the EU. The report notes that, in the current "Brexit" negotiations, "the UK is discussing a transitional arrangement for their future relationship outside of the EU, which is expected to start in March 2019, and last at

<sup>4</sup> Under the expedited legislative procedures provided for by TPA 2015, congressional consideration of the implementing legislation for an FTA may last for up to 90 "in-session" days before a final floor vote must be taken.

First, after the FTA has been signed, the Executive Branch must deliver the required implementing legislation to Congress on an in-session day. Upon receipt of the implementing legislation, identical versions of the bill must be introduced in the House of Representatives and the Senate, and then referred to the House Ways and Means and Senate Finance Committees. The implementing bills cannot be amended by either chamber at any point in the process.

Next, the House Ways and Means Committee will have 45 in-session days to report the bill; otherwise, it will be discharged and placed on the House calendar. The House then will have 15 in-session days to vote on the bill, during which debate will be limited to 20 hours, and the bill can be approved by a simple majority. If approved, the House bill will be sent to the Senate.

Once received by the Senate, the Senate Finance Committee will have 15 in-session days to report the bill; otherwise, it will be discharged and placed on the Senate calendar. The Senate then will have 15 in-session days to hold a floor vote on the bill, during which debate will be limited to 20 hours. If passed by the Senate, the bill will be sent to the President to be signed into law. Cumulatively, the entire process from introduction of the implementing legislation to a floor vote in the Senate can take up to 90 in-session days assuming that Congress makes full use of its statutorily allotted time. Alternatively, if the Senate votes on the implementing legislation prior to or concurrently with the House, the maximum duration of this process would be shortened to 60 in-session days under the expedited legislative procedures. However, Congress is not required to proceed in this manner.

least through 2020. We anticipate that during the transition period, the UK would be out of the EU and free to negotiate trade agreements with other countries, but it would remain unable to implement any agreements until the end of the transition period.” The report then argues that “[b]ecause the UK is constrained in starting negotiations before its formal exit from the EU in March 2019, it is imperative that trade authorities procedures be extended.”

- **TPP countries.** The report claims that “[t]he U.S. withdrawal from the Trans-Pacific Partnership Agreement (TPP) allows the United States to pursue better and fairer trade relationships with the 11 other countries in the TPP”. The report expresses particular interest in Japan, noting that “Japan is by far the largest” of the TPP countries with which the United States does not already have a free trade agreement, and that “the United States has made clear that it seeks a closer trade relationship with Japan.” It further notes that “President Trump has also indicated a willingness to engage with the other TPP countries – either individually or collectively – on terms that will lead to significantly improved market outcomes.” However, it provides no timeframe or specific plans to pursue negotiations with any of the TPP countries.
- **Other negotiations.** With respect to other potential negotiations, the report states that “President Trump and his Administration are committed to undertake bilateral trade agreements with nations that want to be our partners and that will abide by the principles of fair and reciprocal trade....The Administration is exploring numerous potential trade agreement partners, including in Africa and Southeast Asia.” However, the report does not identify any specific countries with which the administration is exploring possible negotiations or a timeframe for beginning them.

US Trade Representative Robert Lighthizer reiterated the administration’s intention to pursue new bilateral trade agreements in a July 2, 2018 statement welcoming the extension of TPA, stating that “[e]xtension of TPA is critical to negotiating accountable, enforceable and reciprocal trade deals that will benefit American workers, farmers and ranchers. The Trump Administration is pursuing a number of potential bilateral free trade agreements, and TPA extension means we may continue to aggressively pursue these opportunities.”

## Outlook

Though the Trump administration’s statements suggest that it is pursuing new bilateral negotiations with several potential partners, it appears doubtful that many new bilateral negotiations will be initiated during the remainder of President Trump’s first term in office, despite the recent extension of TPA. US trading partners have thus far been reluctant to commit to formal trade agreement negotiations with the Trump administration, likely because of the extreme positions it has taken in other trade agreement negotiations (e.g., NAFTA), the aggressive unilateral trade actions it has taken and continues to threaten against its trading partners (e.g., the imposition of tariffs on “national security” grounds under Section 232 of the Trade Expansion Act), its insistence on bilateral negotiations, and the overall volatility and unpredictability of the administration’s views and positions on trade issues. For these reasons, many foreign governments may choose to await the results of the next US Presidential election in 2020 and reassess their options thereafter before committing to any formal trade agreement negotiations with the United States. Thus, while the extension of TPA through June 30, 2021 might facilitate U.S. congressional approval of a renegotiated NAFTA agreement (assuming such an agreement is reached), it is questionable whether any other agreements will be negotiated or approved under the current TPA law.

## Petitions and Investigations Highlights

### **US Department of Commerce Issues Affirmative Preliminary Determination in Countervailing Duty Investigation of Cast Iron Soil Pipe from China**

On June 26, 2018, the US Department of Commerce (DOC) announced its affirmative preliminary determination in the countervailing duty (CVD) investigation concerning imports of cast iron soil pipe from China.<sup>5</sup> In its investigation, DOC preliminarily determined that imports of the subject merchandise from China received countervailable subsidies ranging from 13.11 percent to 111.20 percent.

The product covered by this investigation is cast iron soil pipe, whether finished or unfinished, regardless of industry or proprietary specifications, and regardless of wall thickness, length, diameter, surface finish, end finish, or stenciling. The scope of these investigations includes, but is not limited to, both hubless and hub and spigot cast iron soil pipe.

The merchandise covered by the scope of this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7303.00.0030.

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<sup>5</sup> Click [here](#) to view the DOC fact sheet on the investigation.

DOC is scheduled to announce its final determination on or around November 7, 2018. If DOC makes an affirmative final determination, and the US International Trade Commission (ITC) makes an affirmative final determination that imports of cast iron soil pipe from China materially injure, or threaten material injury to, the domestic industry, DOC will issue a CVD order. If either agency's final determination is negative, no CVD order will be issued.

According to DOC, imports of cast iron soil pipe from China were valued at USD 11.5 million in 2017.

### **US International Trade Commission Issues Affirmative Final Determinations in Anti-Dumping Duty Investigations of Fine Denier Polyester Staple Fiber from China, India, Korea, and Taiwan**

On June 28, 2018, the US International Trade Commission (ITC) determined that a US industry is materially injured by reason of imports of fine denier polyester staple fiber from China, India, Korea, and Taiwan that the US Department of Commerce (DOC) has determined are sold in the United States at less than fair value.<sup>6</sup> As a result of these affirmative determinations, DOC will issue anti-dumping duty orders on imports of this product from China, India, Korea, and Taiwan.

The product subject to these investigations is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 5503.20.0025. According to DOC, imports of fine denier polyester staple fiber from China, India, Korea, and Taiwan were valued at an estimated USD 79.4 million, 14.7 million, 10.6 million, and 9.6 million, respectively, in 2016.

The ITC will publish its report on the investigation by August 3, 2018.

### **US International Trade Commission Issues Negative Final Determination in Anti-Dumping Duty Investigation of Tapered Roller Bearings from Korea**

On July 13, 2018, the US International Trade Commission (ITC) determined that a US industry is not materially injured by reason of imports of tapered roller bearings from Korea that the US Department of Commerce has determined are sold in the United States at less than fair value.<sup>7</sup> ITC Chairman David S. Johanson and Commissioners Irving A. Williamson and Meredith M. Broadbent voted in the negative, while Commissioner Rhonda K. Schmidlein voted in the affirmative and found that the domestic industry is threatened with material injury.

As a result of the ITC's negative final determination, no anti-dumping duty order will be issued. The ITC's public report on the investigation will contain the views of the Commission and will be published by August 22, 2018. According to the ITC, imports of tapered roller bearings from Korea were valued at USD 78.3 million in 2017.

### **US International Trade Commission Issues Affirmative Final Determination in Anti-Dumping Duty Investigation of Stainless Steel Flanges from China**

On July 13, 2018, the US International Trade Commission (ITC) determined that a US industry is materially injured by reason of imports of stainless steel flanges from China that the US Department of Commerce (DOC) has determined are sold in the United States at less than fair value.<sup>8</sup> DOC on June 5 announced its affirmative final determination that imports of stainless steel flanges from China were sold in the United States at a dumping margin of 257.11 percent.

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<sup>6</sup> Click [here](#) to view the ITC's press release on the investigation.

<sup>7</sup> Click [here](#) to view the ITC's press release on the investigation.

<sup>8</sup> Click [here](#) to view the ITC's press release on the investigation.

As a result of these affirmative final determinations, DOC will issue an anti-dumping duty order on imports of this product from China. The product subject to the investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under headings 7307.21.1000 and 7307.21.5000. According to DOC, imports of stainless steel flanges from China were valued at an estimated USD 21.8 million in 2017.

The ITC will publish its report on the investigation by August 16, 2018.