US & Multilateral Trade Policy Developments

Japan External Trade Organization

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US Trade Actions

Section 301

USTR Establishes Product Exclusion Process for Third List of Chinese Goods Subject to Section 301 Tariffs

On June 20, 2019, the Office of the US Trade Representative (USTR) issued a draft Federal Register notice inviting US stakeholders to request the exclusion of particular products from the 25% *ad valorem* tariff imposed on "List 3" goods (USD $200 billion) originating in China, pursuant to Section 301 of the Trade Act of 1974. The notice establishes the schedule and requirements for requesting product exclusions for List 3 goods and describes the criteria that USTR may consider when determining whether to exclude products. Notably, the List 3 exclusion process will utilize a new online portal established by USTR and will require more information from parties seeking an exclusion than the processes established for Lists 1 and 2. This report provides an overview of the List 3 exclusion process and the ways in which it differs from the previous Section 301 exclusion processes.

Product Exclusion Requests

USTR is inviting "interested persons," including trade associations, to submit requests for the exclusion of particular products from the additional duties imposed by the United States on approximately USD$200 billion worth of annual China-origin imports since September 2018. The products currently subject to such duties are set forth in Annex A to USTR's Federal Register notice of September 21, 2018 (83 FR 47974) as amended and modified by USTR's Federal Register notice of September 28, 2018 (83 FR 49153) (see Appendix A). The notice does not define "interested persons," but the relevant section ("requestor's relationship to the product") of the accompanying exclusion request form allows for only US Producer; Importer; Industry Association; Purchaser; and Other. It thus appears that, consistent with the List 1 and 2 exclusion processes, only US parties may seek an exclusion for products on List 3.

The schedule for the List 3 exclusion process is as follows:

- USTR began accepting exclusion requests for List 3 goods on June 30, 2019 at noon EDT.
- The deadline for submitting exclusion requests is September 30, 2019.
- Responses to individual exclusion requests are due 14 days after the request is posted on USTR's online portal.
- Any replies to responses to an exclusion request are due the later of 7 days after the close of the 14-day response period, or 7 days after the posting of a response.

Unlike the previous Section 301 exclusion processes, which utilized the standard Federal rulemaking portal at Regulations.gov, the List 3 exclusion process will utilize a new online portal established by USTR at http://exclusions.USTR.gov. The web portal opened on June 30, 2019 at noon EDT, and must be used to submit exclusion requests, responses to exclusion requests, and replies to responses.

Exclusion Request Form and Information Requirements

USTR's notice and the sample exclusion request form attached thereto indicate that parties seeking an exclusion will be required to provide the following information:

Product identification

With regard to product identification, requests "must include" the following information:

- The 10-digit subheading of the HTSUS applicable to the particular product requested for exclusion. If no 10-digit subheading is available (*i.e.,* the 8-digit subheading does not contain breakouts at the 10-digit level), requesters should use the 8-digit subheading and add "00". USTR states that "[d]ifferent models classified under different 8-digit or 10-digit subheadings are considered different products and require separate exclusion requests."
- The product name and a detailed description of the product. A detailed description of the product includes, but is not limited to, its physical characteristics (*e.g.*, dimensions, weight, material composition, etc.). Requesters may submit "a range of comparable goods within the product definition set out in an exclusion request. Thus, a product request may include two or more goods with similar product characteristics or attributes." USTR further states that "[g]oods with different SKUs, model numbers, or sizes are not necessarily different products."
- The product's function, application (whether the product is designed to function in or with a particular machine or other device), principal use, and any unique physical features that distinguish it from other products within the covered 8-digit HTSUS subheading. Requesters may submit attachments that help distinguish the product (*e.g.*, CBP rulings, photos and specification sheets, and previous import documentation). Documents submitted to support a requester's product description must be made available for public inspection and contain no business confidential information (BCI). USTR will not consider requests that identify the product using criteria that cannot be made available for public inspection.

Company-specific information

- Requesters must provide (i) their relationship to the product (Importer, US Producer, Purchaser, Industry Association, Other); and (ii) specific data on the annual quantity and value of the Chinese-origin product, domestic product, and third-country product that the requester purchased in 2017, 2018, and the first quarter of 2019.
- Requesters must provide information regarding their company's gross revenues for 2018, the first quarter of 2018, and the first quarter of 2019.
- Requesters must state whether their business meets the size standards for a small business as established by the Small Business Administration.
- For imports sold as final products, requesters must provide the percentage of their total gross 2018 sales, for which sales of the Chinese-origin product accounted.
- For imports used in the production of final products, requesters must provide (i) the Chinese-origin input's share (%) of the total cost of producing the final product(s); and (ii) the final product(s)' share (%) of the requester's total gross 2018 sales.

The notice states that the required information regarding the requester's purchases and gross sales and revenue is BCI, and that the information entered will not be publicly available.

Rationale for exclusion

With regard to the rationale for the requested exclusion, each requester will be asked to address the following:

- Whether the particular product is available only from China and whether the particular product and/or a comparable product is available from sources in the United States and/or in third countries. The requester's responses will be made public. The requester also "must provide an explanation if the product is not available

outside of China or the requester is not sure of the product availability", and can determine whether this information is BCI or public.

- Whether the requester has attempted to source the product from the United States or third countries. The requester's response will be made public.
- Whether the imposition of additional duties (since September 2018) on the particular product has or will cause severe economic harm to the requester or other US interests. The requester's response will be treated as BCI.
- Whether the particular product is strategically important or related to "Made in China 2025" or other Chinese industrial programs. The requester's response will be made public.

Requesters also must submit information about any exclusion requests they have submitted for products covered by the initial USD$34 billion tariff action (List 1) or the additional USD$16 billion tariff action (List 2).

Notably, some of the information listed above was not required of parties seeking an exclusion for goods on Lists 1 and 2. For example, requesters previously were not required to disclose their gross revenue, whether they qualify as a small business as defined by the SBA, the value of their purchases of the product of concern from third country or domestic sources, or the efforts they have made to source the product from third-country or domestic sources.

Responses to Requests for Exclusions and Replies Thereto

After a request for exclusion of a particular product is posted on USTR's online portal, interested persons will have 14 days to respond to the request, indicating support or opposition and providing reasons for their view. After a response is posted on USTR's online portal, the requester will have the opportunity to reply to the response using the same portal. Any reply must be submitted within the later of 7 days after the close of the 14-day response period, or 7 days after the posting of a response. All responses and replies to responses will be publicly available.

Exclusion Determinations' Retroactivity and Applicability

USTR will evaluate each request "on a case-by-case basis, taking into account the asserted rationale for the exclusion, whether the exclusion would undermine the objective of the Section 301 investigation, and whether the request defines the product with sufficient precision." Any exclusions granted will be retroactive from the September 24, 2018 effective date of the additional duties and will extend for one year after the publication of the exclusion determination in the Federal Register. USTR will periodically announce decisions on pending requests, but is under no set timeframe to do so.

Notably, USTR has not stated whether exclusions granted for List 3 will be party-specific. In announcing the List 1 exclusion process, USTR stated that any exclusions granted would "apply to all imports of the product, regardless of whether the importer filed a request." However, the List 3 exclusion notice contains no such language.

Outlook

USTR has estimated that it will receive approximately 60,000 requests to exclude particular products on List 3; 7,000 responses to product exclusion requests; and 3,000 replies to such responses. Given the high volume of requests expected, the amount of information sought by USTR in connection with exclusion requests, and the significant delays experienced in the List 1 and 2 exclusion processes, it is expected that obtaining a decision on List 3 exclusion requests will be a lengthy process. Interested persons may therefore wish to begin preparing now to submit exclusion requests as soon as the process opens on June 30.

Section 232

US Supreme Court Declines to Hear Steel Importers' Challenge to Section 232 Statute

On June 24, 2019, the US Supreme Court denied the petition for certiorari before judgment, filed by the American Institute for International Steel, Inc., (AIIS) and two of its members, concerning the constitutionality of Section 232 of the Trade Expansion Act of 1962. The Petitioners sought to enjoin tariffs imposed by President Trump on imported steel products under Section 232. The AIIS had petitioned the Court to hear the case directly after a three-judge panel at the US Court of International Trade (USCIT) rejected the constitutional challenge in March; the Court's denial of that request now returns the case to the US Court of Appeals for the Federal Circuit (CAFC). The AIIS has already stated that it expects the case to return to the Supreme Court eventually. This report explains the issues at stake and the next steps in the case.

Background

On March 8, 2018, President Trump issued a Proclamation imposing tariffs on steel imports on national security grounds under Section 232. Within months, Petitioners filed a complaint at the USCIT, arguing that Section 232 was facially unconstitutional because it violates the non-delegation doctrine. On March 25, 2019, the USCIT ruled in the Government's favor, holding that Fed. Energy Admin. v. Algonquin SNG, Inc., 426 US 548, 559-60 (1976), a Supreme Court case ruling that Section 232 did not violate the non-delegation doctrine, controlled.

Petition for Certiorari

On April 15, 2019, AIIS argued in its petition for certiorari that the Supreme Court should hear the case now, rather than wait for a decision by the CAFC, for three reasons.

- First, "[h]aving a second three-judge panel hear the same case is a waste of judicial resources," when the questions at issue in the case can only be decided by the Supreme Court.
- Further, under the current law, "there are no meaningful limits on what the President can do under section 232."
- Finally, the steel tariffs at issue had already collected USD$4.5 billion as of March 28, 2019, and had caused "irreparable and ongoing harm" to both companies and individuals affected by the tariffs.

The AIIS further petitioned the Supreme Court on two substantive grounds:

- Whether Algonquin controlled this case; and
- Whether Section 232 is facially unconstitutional under the non-delegation doctrine.

The non-delegation doctrine states that Congress may not grant legislative power to other branches of government and thus violate the Constitution's separation of powers. Though the Court has rejected every challenge to a statute under the doctrine since 1935, some have speculated that the Supreme Court's newest justices could cause the Court to revive the doctrine in the coming years. AIIS argued that under Section 232, "[t]he President is, in effect, empowered to make the kinds of distributional and policy choices that the Constitution assigns to Congress," and that "Section 232 also lacks procedural protections that might limit the unbridled discretion that it confers on the president," including judicial review.[1]

Despite the Court's denial of certiorari, a recent Supreme Court decision has raised the possibility that AIIS may be successful the next time the Court considers its case. In Gundy v. United States, No. 17-6086 (June 20, 2019), the

[1] The AIIS petition is available here: https://www.supremecourt.gov/DocketPDF/18/18-1317/96436/20190415115419700_Petition%20for%20Writ%20of%20Certiorari.pdf

Supreme Court upheld the retroactive application of a sex offender registration law that was similarly challenged under the non-delegation doctrine. Although the Court upheld the law, a dissent by Justices Roberts, Gorsuch, and Thomas as well as Justice Alito's concurrence indicated that those Justices, with the possible addition of Justice Kavanaugh, might side with a non-delegation challenge to a different law. The non-delegation issues in Gundy have drawn comparisons to the AIIS petition, and Gundy may signal that AIIS has an eventual path forward if the case returns to the Supreme Court.

Next Steps

The Supreme Court's refusal to hear the case directly from the USCIT was generally expected. The USCIT decision permitting the steel tariffs still stands (as do the tariffs themselves), and the case will now go before the CAFC. The AIIS issued the following statement in response:

> The American Institute for International Steel is disappointed that the Supreme Court did not agree to hear this case at this time. It is rare for the Supreme Court to agree to hear a case before a ruling by the Court of Appeals, and our appeal will now heard by the US Court of Appeals for Federal Circuit. We continue to believe that we have a strong legal case that section 232 is unconstitutional. Once the Federal Circuit has spoken, we expect that the losing party will ask the Supreme Court to review that decision.

A decision from the CAFC is expected to take at least a year. The AIIS must file its brief within 60 days of docketing, and the government will have 40 days to respond. The CAFC often takes over a year to issue a decision, with a median wait time of 14 months in Fiscal Year 2018. As the AIIS indicated, the case will then likely be appealed to the Supreme Court regardless of the outcome, and the Court may then choose to take the case or deny certiorari once again.

BIS Announces New 232 Exclusion Request Portal

On June 10, 2019, the US Department of Commerce, Bureau of Industry and Security (BIS) published an interim final rule implementing the agency's new online portal for submitting Section 232 exclusion requests for steel and aluminum products.[2] The new "232 Exclusions Portal" will replace the current system for submitting Section 232 product exclusion requests, which utilizes the standard Federal rulemaking portal at www.regulations.gov. BIS first announced that it was developing the new 232 Exclusions Portal in a Federal Register notice dated November 26, 2018.[3]

In the new interim final rule, BIS outlined its transition to the new 232 Exclusions Portal in accordance with the following schedule:

- The Department began accepting new exclusion requests on the 232 Exclusions Portal on June 13, 2019, and will no longer accept new exclusion requests on regulations.gov.
- The last day on which an exclusion request may be initiated through regulations.gov was June 12, 2019.
- Objections, rebuttals, and surrebuttals must always be filed on the system where the exclusion request was submitted, whether in www.regulations.gov or in the 232 Exclusions Portal.

The interim final rule amends the regulations that govern the Section 232 product exclusion process (set forth in Supplements 1 and 2 to 15 C.F.R. Part 705) to reflect the above changes. BIS states that the interim final rule "only

[2] The interim final rule is available here: https://www.federalregister.gov/documents/2019/06/10/2019-12254/implementation-of-new-commerce-section-232-exclusions-portal.
[3] The Notice is available here: https://www.federalregister.gov/documents/2018/11/26/2018-25680/procedures-for-participating-in-user-testing-of-the-new-commerce-232-exclusion-process-portal

makes changes to the 232 exclusions process needed for the implementation of a new 232 Exclusions Portal" and does not address other issues. Also on June 10, BIS also published a user guide (See Appendix B) that explains how users can file submissions on the new system. As noted in the user guide and the rule itself, submitters must register to use the new system by completing a web-based registration prior to submitting any documents.

In the preamble to the interim final rule, BIS states that the new portal "allows 232 submitters to easily view all exclusion request, objection, rebuttal, and surrebuttal documents in one, web-based system…In addition, external parties will now be able to track submission deadlines in this same system." BIS claims that this process will allow for better collaboration between government agencies processing Section 232 exclusion requests and will "streamline the exclusions process for external parties, including importers and domestic manufacturers, by replacing the data collection point with web-based forms, which will enhance data integrity and quality controls."

BIS also is seeking public comments on whether the specific changes made by the interim final rule have "addressed earlier concerns with the use of regulations.gov for the 232 exclusions process, as well as comments on the 232 Exclusions Portal and the transition related provisions." Specifically, Commerce encourages comments on the 232 Exclusions Portal "as to which features are an improvement, as well [as] highlighting any areas of concern or suggestions for improvement."

Comments on the interim final rule must be received by BIS no later than August 9, 2019.

Other Trade Actions

President Trump Indefinitely Suspends Imposition of Proposed Tariffs on Mexican Goods

On June 7, 2019, President Trump announced that the United States has reached a "signed agreement" with Mexico on immigration issues, and that the additional 5% tariff previously scheduled to be imposed on Mexican goods on Monday, June 10 is "hereby indefinitely suspended." The move averts, for the time being, a significant escalation of US tariffs and possible retaliatory measures by Mexico.

In a brief statement released by the State Department on June 7, Secretary of State Mike Pompeo said that "[w]e would like to thank Mexican Foreign Minister Marcelo Ebrard for his hard work to negotiate a set of joint obligations that benefit both the United States and Mexico. The United States looks forward to working alongside Mexico to fulfill these commitments so that we can stem the tide of illegal migration across our southern border and to make our border strong and secure."

Details on the US-Mexico Joint Declaration and the "Supplementary Agreement" are below.

US-Mexico Negotiations and Joint Declaration

President Trump's decision followed a week of negotiations during which, according to Trump administration officials, the United States sought commitments from Mexico to:

(1) Enhance the Mexican government's efforts to secure Mexico's southern border with Guatemala;

(2) Suppress "transnational criminal organizations" that help migrants travel through Mexico to the United States; and

(3) Sign a "safe third country" agreement with the United States, pursuant to which certain categories of migrants that travel through Mexico to the United States would no longer be eligible to claim asylum in the United States, and would instead be returned to Mexico to seek asylum there.[4] Published reports indicate that Mexico has long

[4] The US Immigration and Nationality Act (INA) at 8 U.S.C. § 1158(a)(2)(A) contemplates such agreements, and the United States currently has such an agreement in place with Canada. The law provides that "[a]ny alien who is physically present in the United States or who arrives in the

resisted entering into such an agreement with the United States given the financial and logistical challenges that would result. Nevertheless, Trump administration officials emphasized last week that securing a safe third country agreement with Mexico was the United States' top priority in the negotiation.

The Joint Declaration[5] issued by the United States and Mexico on June 7 contains commitments aimed at addressing the first two issues listed above, as well as commitments related to asylum claims, but it is not (and does not expressly reference) a safe third country agreement. Rather, the two sides undertook the following commitments:

- Mexican Enforcement Surge

  Mexico will take unprecedented steps to increase enforcement to curb irregular migration, to include the deployment of its National Guard throughout Mexico, giving priority to its southern border. Mexico is also taking decisive action to dismantle human smuggling and trafficking organizations as well as their illicit financial and transportation networks. Additionally, the United States and Mexico commit to strengthen bilateral cooperation, including information sharing and coordinated actions to better protect and secure our common border.

- Migrant Protection Protocols

  The United States will immediately expand the implementation of the existing Migrant Protection Protocols across its entire Southern Border. This means that those crossing the US Southern Border to seek asylum will be rapidly returned to Mexico where they may await the adjudication of their asylum claims.

  In response, Mexico will authorize the entrance of all of those individuals for humanitarian reasons, in compliance with its international obligations, while they await the adjudication of their asylum claims. Mexico will also offer jobs, healthcare and education according to its principles.

  The United States commits to work to accelerate the adjudication of asylum claims and to conclude removal proceedings as expeditiously as possible.

Importantly, however, the Joint Declaration also provides that "in the event the measures adopted do not have the expected results, [the parties] will take further actions. Therefore, the United States and Mexico will continue their discussions on the terms of additional understandings to address irregular migrant flows and asylum issues, to be completed and announced within 90 days, if necessary." The Joint Declaration does not elaborate on the "additional understandings" that will guide such discussions or what further actions might be taken.

Additional agreement on further negotiations

Following the issuance of the Joint Declaration, President Trump claimed publicly that the United States had secured additional "fully signed and documented" commitments from Mexico that "will be revealed in the not too distant future and will need a vote by Mexico's Legislative body[.]" He further stated that "[w]e do not anticipate a problem with the vote but, if for any reason the approval is not forthcoming, Tariffs will be reinstated" on goods from Mexico. Subsequent developments, which we summarize below, indicate that the two sides have agreed to begin negotiations for a safe third country agreement in 45 days if the United States unilaterally determines that the

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United States" may apply for asylum, unless the Attorney General determines that "the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection[.]

[5] The Joint Declaration is available here: https://www.state.gov/u-s-mexico-joint-declaration/

measures taken pursuant to the Joint Declaration are not effective in addressing the flow of migrants to the United States' southern border.

Supplemental Agreement

The Mexican press on June 15 published the full text of the "Supplementary Agreement" between the United States and Mexico regarding immigration measures (attached). This agreement supplements the US-Mexico Joint Declaration of June 7 that temporarily averted the imposition of tariffs on US imports from Mexico. As expected, the Supplementary Agreement provides that Mexico (i) will begin negotiating a "safe third country" agreement with the United States; and (ii) will take "all necessary steps under domestic law" to bring that agreement into force if the United States unilaterally determines after a 45-day period that the measures adopted by Mexico pursuant to the initial Joint Declaration have been ineffective. The relevant provisions of the Supplementary Agreement may be summarized as follows:

- The United States and Mexico will "immediately" begin discussions on a binding bilateral agreement "under which each party would accept the return, and process refugee status claims, of third-party nationals who have crossed that party's territory to arrive at a port of entry of between ports of entry of the other party."
- Mexico will "immediately" begin examining its domestic laws and regulations to identify any legal changes that may be necessary to bring into force and implement such an agreement.
- If the United States determines, "at its discretion and after consultation with Mexico, after 45 calendar days from the date of the issuance of the Joint Declaration, that the measures adopted by the Government of Mexico pursuant to the Joint Declaration have not sufficiently achieved results in addressing the flow of migrants to the southern border of the United States, the Government of Mexico will take all necessary steps under domestic law to bring the agreement into force with a view to ensuring that the agreement will enter into force within 45 days."

The Supplementary Agreement, like the Joint Declaration itself, contains no metrics for determining whether the measures taken by Mexico have "sufficiently achieved results." Mexican officials claimed today that the new measures already have resulted in a reduction in border crossings, but they acknowledged that no specific metrics were agreed with the United States. Moreover, the use of qualifiers and ambiguous language in the Supplementary Agreement raises questions about what specific commitments the parties have undertaken. For example, rather than stating that Mexico must bring a safe third country agreement into force by a specific date if the initial measures are ineffective, it states that Mexico must "take all necessary steps" to bring such an agreement into force, "with a view to ensuring" that it enters into force by the end of the second 45-day period. It therefore is unclear what specific actions Mexico has committed to take by the end of the 90-day window. Nevertheless, we continue to see a significant risk that the United States will reintroduce the threat of tariffs on Mexican goods in the coming months in order to pressure Mexico to negotiate and implement a safe third country agreement with the United States. For example, the United States might announce on or around the initial 45-day deadline (July 22) that it intends to impose tariffs on Mexican goods upon the expiration of the 90-day period envisioned in the agreements (*i.e.*, September 5), unless a safe third country agreement between the United States and Mexico enters into force before that date.

For your reference, we have set out below the key timeframes and action items referenced in the Joint Declaration and Supplementary Agreement:

- **June 7, 2019:** United States and Mexico sign Joint Declaration and Supplementary Agreement; United States "indefinitely suspends" tariff threat
- **July 22, 2019** (45 days after issuance of Joint Declaration): United States to determine whether measures taken by Mexico under the Joint Declaration have "sufficiently achieved results"

- **September 5, 2019** (90 days after issuance of Joint Declaration): Apparent deadline for Mexico to bring a "safe third country agreement" into force, if the United States determines (pursuant to the Supplementary Agreement) that one is necessary

United States and China Agree to Resume Bilateral Negotiations, Temporarily Refrain from Further Escalation

On June 29, 2019, the United States and China separately announced that they have agreed to resume their bilateral trade negotiations and will refrain from further escalation of their trade dispute while the negotiations take place. The decision, announced after a meeting between Presidents Trump and Xi on the sidelines of the G20 Summit in Japan, temporarily averts the United States' threatened imposition of additional tariffs on approximately USD$300 billion in annual Chinese imports under Section 301 of the Trade Act of 1974. Though the decision reduces the likelihood that the dispute will escalate in the near term, it has done little to reduce the uncertainty about the long term prospects for resolution of the dispute, particularly given the lack of any joint statement (or even a formal US statement) indicating agreement on the terms of the new "cease fire" arrangement, or on how the two sides intend to bridge the considerable gaps that have emerged in the negotiation in recent months. We discuss the results of the meeting and the outlook for the US-China trade dispute below.

G20 Outcomes

Neither side has released a detailed statement on the decisions taken by Presidents Trump and Xi during their meeting on June 29. President Trump briefly summarized the outcome of the meeting in a June 29 press conference, stating that "[w]e agreed today that we were going to continue the negotiation — which I ended a while back — and we're going to continue the negotiation. We agreed that I would not be putting tariffs on the USD$325 billion that I would have the ability to put on if I wanted[.]" He did not provide any specific deadline for completing the negotiation (as the United States did when announcing the last "cease fire" agreement reached in December 2018), and National Economic Council Director Larry Kudlow later emphasized that "[t]here's no timetable" for completing the negotiations. President Trump provided few other details on the outcome of the discussion with President Xi (for example, he stated that China "is going to be buying a tremendous amount of [US] food and agricultural product…almost immediately" but did not elaborate; he further suggested that the United States might consider relaxing its restrictions on companies doing business with the Chinese telecommunications firm Huawei depending on "where we go with the trade agreement.")

A statement issued by China's Foreign Ministry on June 29 generally tracks President Trump's account of the meeting, but also provides few details. It states that the two sides have agreed to resume negotiations and that the United States has agreed to refrain from further tariff increases, but does not reference any specific timeframe for concluding the negotiation, nor does it mention agricultural purchases or Huawei. It further emphasizes China's view that the negotiations must resume "on the basis of equality and mutual respect", and that "[o]n issues involving China's sovereignty and dignity, China must safeguard its core interests[.]" Like President Trump's statement, it does not directly address the substantive areas of disagreement that caused the talks to break down in early May, resulting in an increase in US tariffs on USD$200 billion in Chinese imports and Chinese retaliatory measures on USD$60 billion in US goods.

Outlook

To date, neither side has indicated when negotiations between the two countries will resume. The Office of the US Trade Representative (USTR) also has not made any formal announcement regarding the Section 301 tariffs it has proposed on approximately USD$300 billion worth of Chinese imports (*i.e.*, "List 4"). The public comment process on the proposed List 4 tariffs will conclude on July 2, and it is expected that USTR will delay a final decision on List 4 pending further developments in the negotiation with China.

The US business community has welcomed the announcement that the United States and China will resume negotiations and temporarily refrain from further escalation, and has urged both governments to reach an agreement that addresses US concerns about China's trade and industrial policies and eliminates each party's tariffs. Despite agreeing to a temporary "cease fire", however, the two sides currently appear no closer to bridging the gaps that have emerged in the negotiation in recent months. As noted above, China's statement on the meeting emphasizes its insistence on safeguarding its "core interests" and "sovereignty", echoing recent Chinese government statements that have described the following three "prerequisites" for an agreement with the United States:

(1) The United States must remove all additional tariffs imposed on Chinese goods immediately upon signing an agreement;

(2) China's commitments to purchase US goods should be set at "realistic" levels (*i.e.,* based on domestic Chinese demand, rather than requiring China to divert purchases from other countries); and

(3) The text of the agreement must be properly "balanced" to ensure the "dignity" of both countries.

Chinese officials have emphasized these three demands in recent weeks – including in a "white paper" released by China's State Council Information Office – and President Xi reportedly planned to raise them with President Trump during the recent G20 meeting. Meanwhile, there has been no apparent change in the United States' position on these issues, and USTR Lighthizer last month emphasized the United States' continued "insistence on detailed and enforceable commitments from the Chinese" – a position that is "necessitated by China's history of making commitments that it fails to keep" and that, in the view of the United States, "in no way constitutes a threat to Chinese sovereignty." Thus, while the recent "cease fire" agreement provides some assurance that the dispute will not escalate in the near term, it has provided little clarity as to how the two sides can overcome the impasse that caused the negotiation to break down earlier this year.

US International Trade Commission Determines Imports of Quartz Surface Products from China Materially Injure US Industry

On June 11, 2019, the US International Trade Commission (ITC) determined that a US industry is materially injured by reason of imports of quartz surface products from China that the US Department of Commerce (DOC) has determined are subsidized and sold in the United States at less than fair value. As a result of the ITC's affirmative final determinations, DOC will issue antidumping and countervailing duty orders on imports of this product from China. DOC determined in May 2019 that imports of the subject merchandise from China received countervailable subsidies ranging from 45.32 to 190.99 percent and were sold in the United States at dumping margins ranging from 255.27 to 336.69 percent.

In its investigation, the ITC also made a negative finding concerning critical circumstances with regard to imports of quartz surface products from China. As a result, imports of the subject merchandise from China will not be subject to retroactive antidumping or countervailing duties.

The products covered by these investigations are certain quartz surface products, which consist of slabs and other surfaces created from a mixture of materials that includes predominately silica (e.g., quartz, quartz powder, cristobalite) as well as a resin binder (e.g., an unsaturated polyester). According to DOC, the subject merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 6810.99.0010, and may also enter under subheadings 6810.11.0010, 6810.11.0070, 6810.19.1200, 6810.19.1400, 6810.19.5000, 6810.91.0000, 6810.99.0080, 6815.99.4070, 2506.10.0010, 2506.10.0050, 2506.20.0010, 2506.20.0080, and 7016.90.10.

According to the ITC, imports of the subject merchandise in 2017 were valued at $547.6 million. The ITC is scheduled to release its public report on the investigation by July 18, 2019.

GSP Developments

United States Revokes India's GSP Benefits Effective June 5

On May 31, 2019, President Trump issued a Proclamation[6] terminating India's beneficiary developing country status under the Generalized System of Preferences (GSP) program, ending duty-free treatment of thousands of products from India. The termination took effect on June 5. President Trump had previously notified Congress of his intention to terminate India's GSP benefits on March 4, but bilateral trade discussions had continued, and stakeholders in the United States and India lobbied against the revocation. India was the largest GSP beneficiary in 2018, with exports under the program valued at USD$6.3 billion. India's top exports under GSP included chemicals, fabricated metal products, transportation equipment, electrical equipment, and primary metals.

According to the Proclamation, "India has not assured the United States that India will provide equitable and reasonable access to its markets." Pursuant to Section 502(c)(4) of the Trade Act of 1974, "equitable and reasonable" market access is one factor to be considered by the President in determining whether to grant GSP privileges. The Proclamation also removed India from the list of developing country WTO Members exempt from the application of US safeguard measures on certain crystalline silicon photovoltaic (CSPV) cells and large residential washers, effective June 5. In response, the Indian Ministry of Commerce and Industry stated that "India…had offered resolution on significant US requests in an effort to find a mutually acceptable way forward. It is unfortunate that this did not find acceptance by the US."

The change to India's GSP status comes at a time of heightened tension the bilateral trade relationship: the USTR's 2019 National Trade Estimate report pointed to a litany of market access concerns, and its Special 301 report on Intellectual Property Protection again listed India on its Priority Watch List. USTR warned in the Special 301 report that countries that have been on the Priority Watch List for multiple years (such as India) may soon be subject to unilateral enforcement actions under Section 301. Recent reports also indicate that the US may launch a Section 301 investigation into Indian trade practices – a move that would represent a significant escalation in trade tensions, potentially resulting in tariffs on goods originating in India.

In its discussions with India, the United States has sought to address concerns raised by the US dairy and medical device industries and other issues, including market access for other agricultural products (*e.g.*, alfalfa, cherries, and pork), testing and conformity assessment procedures in the telecommunications sector, and India's tariffs on information and communications technology goods.

India's Department of Revenue under the Ministry of Finance published Notification No. 17/2019-Customs ("Notification 17")[7] dated June 15, 2019, to impose retaliatory tariffs on 28 types of goods[8] from the United States in response to the termination of GSP benefits. The higher tariffs, effective from June 16, target key agricultural goods, such as almonds, apples and walnuts, as well as certain medical devices and 18 types of iron and steel products. The Indian government has increased the basic customs duty (BCD) rates on the targeted products, while keeping the effective duty rates unchanged and specifying that the effective rates are not applicable to the United States. India framed its retaliatory actions as a 'suspension of concessions' under Article 8 of the WTO Agreement on Safeguards. India first proposed the retaliatory tariffs back in June 2018 following the refusal by the United States to

[6] The Presidential Proclamation is available here: https://www.whitehouse.gov/presidential-actions/proclamation-modify-list-beneficiary-developing-countries-trade-act-1974-2/

[7] Notification 17 is available here: http://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-tarr2019/cs17-2019.pdf;jsessionid=5FE29C59D628405F14DC86E5909A27A6

[8] The target products include 07132000 (chickpeas), 07134000 (lentils), 08021100 (fresh almonds), 08021200 (shelled almonds), 08023100 (walnuts), 08081000 (apples), 23092010 (phosphoric acid), 28100020 (boric acid), 38220090 (certain diagnostic reagents used in blood tests), 38249990 (other binders for foundry moulds), and 18 types of iron and steel products under tariff headings 7210, 7219, 7225, 7307, 7308, 7310, 7318, 7320, 7325, and 7326. Notification 17 does not include one item that was in the earlier list, namely Artemia shrimp (05119911).

exempt India from increased duties on certain steel and aluminum products implemented by the United States on March 23, 2018.[9] However, India repeatedly delayed their imposition, hoping to come to a negotiated solution with the Trump administration seeking increased market access in India for US agriculture and manufacturing sectors, specifically medical devices.

India's decision to impose retaliatory tariffs is expected to heighten trade tensions between the two countries, and will likely be a key point of discussion in the forthcoming meeting between Prime Minister Narendra Modi and President Trump on the sidelines of the G20 Summit in Japan on June 28 and 29.

On May 16, President Trump also issued a Proclamation terminating Turkey's designation as a beneficiary developing country under the GSP program "based on its level of economic development[.]" Accordingly, the termination of Turkey's status as a beneficiary developing country took effect on May 17.

[9] President Trump signed two proclamations containing his determinations in the investigations of imports of steel and aluminum into the United States, pursuant to Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862).