

US & Multilateral Trade Policy Developments

Japan External Trade Organization

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US Trade Actions

Section 301

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 \$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 \$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 \$200 billion in Chinese imports and Chinese retaliatory measures on \$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 \$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 Trade Representative Initiates Section 301 Investigation of France's Digital Services Tax

On July 10, 2019, the Office of the United States Trade Representative (USTR) initiated an investigation under Section 301 of the Trade Act of 1974 to determine whether a Digital Services Tax (DST) recently approved by the French Parliament is "unreasonable or discriminatory" or otherwise actionable under Section 301. If USTR's finding is affirmative, the United States may take unilateral actions against imports of goods and services originating in France (*e.g.*, by imposing retaliatory tariffs), or it may initiate World Trade Organization (WTO) dispute settlement proceedings challenging the WTO-consistency of the DST, among other actions. US digital services companies and Members of Congress of both parties have strongly opposed France's adoption of the DST and have welcomed USTR's decision to initiate the investigation. We provide an overview of Section 301 and the next steps in the investigation below.

Background

Section 301 investigations and recent US practice

Section 301 provides the US executive branch with the authority and procedures to enforce US rights under international trade agreements and to respond to certain "unfair" foreign government practices not covered by trade agreements. Section 301 is the principal statutory mechanism under which the President may impose retaliatory measures against foreign countries that violate existing trade agreements or engage in acts that are "unjustifiable" or "unreasonable" and burden US commerce. USTR makes determinations, initiates and conducts investigations, and implements action under Section 301.

When a Section 301 investigation involves an alleged violation of a trade agreement, US law requires that USTR follow the consultation and dispute settlement procedures set forth in the applicable agreement. For example, if the investigation involves a violation of the WTO Agreements, USTR must follow WTO dispute settlement procedures. However, when USTR determines that a Section 301 investigation does not involve an alleged trade agreement violation, the agency may investigate the foreign practices and retaliate unilaterally in the case of affirmative findings. Remedies authorized by the law include (1) the imposition of duties or other import restrictions on goods; (2) the imposition of fees or restrictions on services; and (3) the negotiation of binding agreements to eliminate the conduct in question or compensate the United States with satisfactory trade benefits.

Prior to 2018, the United States had not taken unilateral action under Section 301 in several decades, having ceased the practice upon the implementation of the WTO Agreements and the creation of the WTO dispute settlement system in 1995. However, the Trump administration has revived the use of Section 301 as a unilateral enforcement mechanism, using the law as the principal means of carrying out its ongoing trade dispute with China. In August 2017, USTR initiated a Section 301 investigation of certain alleged Chinese government practices relating to intellectual property protection. USTR determined in April 2018 that some of the alleged practices involved US rights under the WTO Agreements and accordingly pursued WTO dispute settlement actions; however, USTR also took unilateral action (in the form of increased tariffs on US\$50 billion in annual Chinese imports) in response to other Chinese policies that the agency had found to be “unreasonable or discriminatory.” USTR subsequently has relied on Section 301 to impose duties on an additional US\$200 billion in imports from China, citing China’s failure to eliminate the “unreasonable or discriminatory” practices at issue and its decision to impose retaliatory measures on US goods.

Digital service taxes

In recent months, the US government and US digital services companies have voiced increasing concerns about potential digital services taxes proposed by the European Union and several of its member states. In USTR’s most recent National Trade Estimate (NTE) report published in April 2019, USTR noted that efforts to establish an EU-wide digital services tax had been largely abandoned and that several EU member states (namely France, Italy, Spain, and the United Kingdom) were continuing to pursue such measures unilaterally. USTR took the position that “[s]uch proposals are based on an unprincipled and unsupported distinction between digital companies and non-digital companies” and warned that “[t]he United States opposes proposals by any country to single out digital companies.” Several industry associations representing US technology companies submitted comments to USTR alleging that some of the proposed tax measures would disproportionately affect US companies and appear to violate WTO rules.

Subsequent to the USTR’s announcement, the United States Department of the Treasury (Treasury) also announced that it is continuing to communicate to France its opposition to France’s unilateral DST and is evaluating a range of potential US responses to France’s unilateral adoption of a DST.¹ In addition, Treasury is simultaneously engaging in intensive multilateral discussions with the Organization for Economic Co-operation and Development (OECD) in an effort to reach a comprehensive, multilateral solution.

Initiation of Section 301 Investigation

In a June 10 Federal Register notice, USTR announced that it is initiating a Section 301 investigation into France’s digital services tax and is seeking public comments in connection with the investigation. USTR described the DST measure as follows:

- France will impose a 3 percent levy on revenues that certain companies generate from providing certain digital services to, or aimed at, French users. The tax applies to gross revenues (not income) from providing the covered services to, or aimed at, French individuals. The tax applies retroactively beginning January 1, 2019.
- The DST applies to revenues generated from certain “digital interface” services (e.g., e-marketplaces for goods and services) and certain Internet advertising services. The law excludes certain services that would otherwise be covered, including digital interfaces for the delivery of “digital content.”
- The tax applies only to companies with annual revenues from the covered services of at least €750 million globally and €25 million in France. According to USTR, “[m]any of the companies likely to be covered are not domiciled in France and have no permanent establishment there. Under current international tax rules, these

¹ Treasury’s statement, which took the form of a letter to the leadership of the US Senate Committee on Finance, is available [here](#).

companies do not pay—or expect to pay—taxes to France on the revenue they earn by providing services to, or aimed at, French individuals...Available evidence, including statements by French officials, suggest that France expects the tax to target certain large, US-based tech companies.”

USTR’s description of the DST measure is based on a Joint Committee bill that was pending before the French Senate as of June 10 (the date on which USTR published the notice). The French Senate on June 11 approved the measure.

Possible basis for action under Section 301

As noted above, Section 301 authorizes USTR to take unilateral action where the matter under investigation does not involve a trade agreement, but prohibits USTR from doing so where the matter is covered by a trade agreement (e.g., the WTO Agreements). USTR’s notice does not clearly state whether it believes the DST violates (or may violate) France’s obligations under the WTO Agreements. Instead, the notice merely states that USTR will determine whether the measure is “actionable” under Section 301 and notes that “[a]ctionable matters under section 301 include, *inter alia*, acts, policies, and practices of a foreign country that are unreasonable or discriminatory and burden or restrict U.S. commerce...[a]n act, policy, or practice is unreasonable if the act, policy, or practice, while not necessarily in violation of, or inconsistent with, the international legal rights of the United States, is otherwise unfair and inequitable.” By highlighting only the provisions of Section 301 that pertain to foreign government actions not covered by trade agreements, the notice appears to emphasize the possibility that USTR may take unilateral action in response to the DST.

On the other hand, USTR’s notice (as explained below) requests comments from the public on, *inter alia*, “[w]hether the French DST is inconsistent with France’s obligations under the WTO Agreement or any other international agreement[.]” The notice therefore leaves open the possibility that USTR’s Section 301 investigation will find the DST to be inconsistent with French (EU) commitments under, for example, the WTO’s General Agreement on Trade in Services (GATS) and thus lead to a WTO dispute settlement case, rather than unilateral US action, on the DST.

Focus of the investigation

USTR’s notice states that the investigation “initially will focus on the following concerns with the DST,” as reflected in the joint committee bill that was pending as of July 10:

- **Discrimination:** According to USTR, available evidence, including statements by French officials, indicates that the DST “will amount to de facto discrimination against U.S. companies. For example, the revenue thresholds have the effect of subjecting to the DST larger companies – which, in the covered sectors, tend to be U.S. companies – while exempting smaller companies, particularly those that operate only in France.”
- **Retroactivity:** USTR states that the DST “would be a substantively new tax that applies retroactively to January 1, 2019. This feature calls into question the fairness of the DST. Further, since the tax is retroactive, companies covered by the DST may not track the data necessary to calculate their potential liability back to the beginning of 2019.”
- **Unreasonable tax policy:** USTR claims that the DST “appears to diverge from norms reflected in the U.S. tax system and the international tax system in several respects. These apparent departures include: extraterritoriality; taxing revenue not income; and a purpose of penalizing particular technology companies for their commercial success.”

Request for Comments

USTR is inviting interested persons to submit written comments or oral testimony on any issue covered by the investigation. In particular, USTR invites comments with respect to:

- Concerns with the French digital services tax, as set out in the joint committee bill or as subsequently modified or adopted by the Government of France, including the three specific concerns identified above;
- Whether the French DST is unreasonable or discriminatory;
- The extent to which the French DST burdens or restricts US commerce;
- Whether the French DST is inconsistent with France's obligations under the WTO Agreement or any other international agreement; and
- The determinations USTR is required to make under the law, including what action, if any, should be taken.

USTR has requested that interested parties submit comments in accordance with the following schedule:

- **August 12, 2019 at noon EDT:** Deadline for filing requests to appear at the August 19, 2019 public hearing, and for filing a written version of oral testimony
- **August 19, 2019 at noon EDT:** Deadline for written comments
- **August 19, 2019:** Date of public hearing (convened by the Section 301 Committee at 9:30 a.m. in Rooms 1 and 2, 1724 F Street NW, Washington, DC 20508)
- **August 26, 2019:** Deadline for filing post-hearing submissions

Outlook

USTR's initiation of a Section 301 investigation concerning the DST highlights the widespread and bipartisan opposition to such measures within the US government and the US digital services industry, as well as the Trump administration's willingness to use the threat of unilateral trade actions, namely tariffs, to deter foreign government practices that are perceived to disadvantage US interests. The Chairman and Ranking Member of the Senate Finance Committee, Sens. Chuck Grassley (R-IA) and Ron Wyden (D-OR), have applauded USTR's decision to initiate the investigation, as have numerous groups representing the US internet and information technology sectors.

In response to USTR's initiation of the Section 301 investigation, French officials have reiterated their position that the DST is a "temporary" measure that will be removed once OECD member countries agree to new rules relating to digital services and international taxation. France's Finance Minister, Bruno Le Maire, stated that the DST "is based on the diagnosis that there are new business models based on data...The tax is temporary. As soon as the OECD adopts a credible solution, France will withdraw its national tax." He further emphasized that "France is a sovereign state that makes its own fiscal decisions, and will continue to do so[.]"

Actions taken by USTR as a result of the Section 301 investigation could have implications not only for the digital services industry, but potentially for a wide range of industries unrelated to digital services, particularly if USTR decides to take unilateral action as a result of the investigation. For example, should USTR determine that the DST does not involve a trade agreement violation but is otherwise actionable under Section 301, USTR may impose duties or other import restrictions on goods originating in France, or fees or restrictions on services supplied by France, for a duration to be determined by USTR. Section 301 provides that such retaliation may be taken against any good or economic sector, regardless of whether they are related to the measure under investigation, meaning that USTR may retaliate against goods and sectors unrelated to digital services (e.g., transportation equipment, chemicals, beverages, and food and agricultural products, which are among France's top exports to the United

States). Though such actions would raise serious questions regarding their consistency with the United States' own obligations under the WTO Agreements, such concerns did not deter the Trump administration from taking unilateral action under Section 301 to combat alleged Chinese trade practices. Some US business groups who are otherwise supportive of the new investigation already have discouraged USTR from using tariffs as a remedy, and others may follow suit on the view that new unilateral actions by the United States will undermine the role of the WTO as a venue for resolving trade disputes. Nevertheless, such unilateral actions cannot be ruled out, and interested parties may therefore wish to monitor and provide comments on USTR's investigation.

USTR's initiation notice can be viewed [here](#).

President Trump Announces Decision to Impose 10% Tariff on Additional \$300 Billion in Annual Imports from China under Section 301

On August 1, 2019, President Trump announced that the United States will impose an additional 10% tariff on approximately \$300 billion in annual imports from China beginning on September 1 due to a lack of progress in the ongoing trade negotiations between the two countries. The Office of the US Trade Representative (USTR) has not yet published the final list of goods that will be subject to the additional tariff, but it is expected that the tariff will apply to most if not all goods on the list that USTR proposed for public comments on May 17, 2019 (*i.e.*, "List 4") (*please refer to the W&C US Trade Alert dated May 13, 2019.*) The move represents a significant escalation of the trade dispute between the United States and China, and comes just weeks after a bilateral meeting at the G20 at which Presidents Trump and Xi informally agreed to refrain from escalating the dispute so that negotiations could resume.

In the weeks following the G20 meeting, the United States and China have struggled to resolve the differences that caused their bilateral negotiation to break down in early May. The United States has insisted that the two sides resume negotiations on the basis of text that allegedly had been agreed as of early May, before China (according to the United States) began to "backtrack" on commitments it had made to enact specified reforms to its domestic laws on intellectual property protection and other "structural" issues. China, on the other hand, has continued to indicate that it is unwilling to undertake commitments as extensive as those demanded by the United States. China also has reiterated its position that the United States must remove all of the tariffs it has applied to Chinese goods under Section 301 immediately upon the completion of an agreement, and that China will not commit to purchase US goods (*e.g.*, agricultural products) in quantities that exceed China's domestic demand. The two sides also have accused one another of failing to fulfill minor, "good faith" commitments allegedly made during the G20 meeting, including a commitment by China to purchase US agricultural goods and a commitment by the United States to relax US export controls on the Chinese telecommunications company Huawei.

For the first time since the G20 meeting, the two sides held a negotiating round this week in Shanghai at the ministerial level, but they reportedly made little progress towards resolving these issues. A statement issued by the White House after the meeting noted that the two sides discussed "forced technology transfer, intellectual property rights, services, non-tariff barriers, and agriculture", but reported no progress except for an acknowledgement that "the Chinese side confirmed their commitment to increase purchases of United States agricultural exports[.]" China's own statement on the meeting appeared to qualify even this outcome by stating that China had agreed to increase purchases of US agricultural goods only "according to domestic needs[.]" President Trump's announcement of the forthcoming tariff increase cited the disagreement over agricultural purchases as one justification for the decision, claiming that "recently, China agreed to buy agricultural product from the U.S. in large quantities, but did not do so."

Outlook

The United States' decision to apply tariffs to an additional \$300 billion in Chinese imports just weeks after agreeing to a "truce" at the G20 Summit will likely be viewed by China as a major escalation of the dispute, and could

potentially cause the negotiations to collapse. Prior to President Trump's announcement, the two sides had agreed to hold working-level discussions in Washington this month in preparation for another ministerial-level negotiation in September. Though President Trump's announcement indicates that the United States is willing to continue the negotiations despite the forthcoming tariff increase, China has not yet indicated whether it is willing to do so, and it is possible that the upcoming meetings will be called off. Moreover, the prospects for resolving the dispute in the near-to medium-term appear doubtful even if the negotiations continue. Indeed, even before President Trump's announcement, the impasse over the substance of the agreement and the Trump administration's stance heading into the presidential campaign had created serious doubts as to whether the two countries could reach a negotiated solution before the 2020 election. That prospect seems even more distant now in light of President Trump's announcement, which appears to have significantly increased the likelihood that each side's existing tariffs will remain in place for the foreseeable future.

USTR Approves First Round of Section 301 Exclusion Requests for Chinese Imports on "List 2"

On July 31, 2019, the Office of the US Trade Representative (USTR) published a notice in the Federal Register excluding 69 products from the 25% additional tariff imposed by the United States on approximately \$16 billion worth of Chinese imports (i.e., "List 2" goods) under Section 301 of the Trade Act of 1974. The granted exclusions will apply retroactively as of the August 23, 2018 effective date of the 25% additional tariff, and will be effective for one year after the publication of USTR's exclusion determination in the Federal Register. This is the first round of exclusion requests that USTR has approved for products on List 2. We discuss USTR's exclusion determinations and the status of the Section 301 exclusion process below.

Background

On August 23, 2018, the United States imposed an additional tariff of 25% on approximately \$16 billion worth of annual imports from China ("List 1" goods), pursuant to Section 301 of the Trade Act of 1974. On September 18, 2018, USTR published a Federal Register notice establishing a process for interested parties to request the exclusion of particular products from the additional tariff. USTR stated that exclusion requests should address the following factors:

- Whether the particular product is available only from China;
- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requester or other US interests; and
- Whether the particular product is strategically important or related to "Made in China 2025" or other Chinese industrial programs.

Properly filed exclusion requests are subject to a review process consisting of, *inter alia*, the following steps:

- Public comment period. Interested persons have 14 days from the date a request is posted on Regulations.gov to respond to the request. If a response is submitted, the requester has 7 days to reply to the response.

- Initial substantive review. After the public comment period closes, USTR conducts an “initial substantive review” of whether the exclusion request should be granted, based on the substantive criteria listed above and in the Federal Register notice.
- Administrability review. If a request passes the initial substantive review, USTR consults with US Customs and Border Protection (CBP) to determine whether an exclusion would be administrable. Requests that pass the administrability review are granted.

Exclusion Determinations of July 31, 2019

Scope of Exclusions

USTR announced its decision to exclude additional products from the 25% tariff in a Federal Register notice published on July 31. The exclusions granted by USTR are established in 69 “specially prepared product descriptions” that cover certain products within a specified 10-digit Harmonized Tariff Schedule of the United States (HTSUS) subheading. The full list of newly excluded products is provided below.

“List 2” Goods Granted Section 301 Tariff Exclusions on July 31
(1) Chlorinated polyethylene elastomer, in white or pale yellow powder form, containing 28 to 44 percent by weight of chlorine (described in statistical reporting number 3901.90.1000)
(2) Polytetrafluoroethylene ((C2F4)n), having a particle size of 5 to 500 microns and a melting point of 315 to 329 degrees Celsius (described in statistical reporting number 3904.61.0090)
(3) Expandable plastics beads, 0.30 to 0.50 mm in diameter, consisting of copolymers of methylmethacrylate (62 to 64 percent by weight) and styrene (26 to 28 percent by weight) (described in statistical reporting number 3906.90.2000)
(4) Polyol blends containing 92 percent or more by weight of polyether polyol (CAS number 9049-71-2) and 2.5% or more by weight of N,N-dimethylcyclohexamine (described in statistical reporting number 3907.20.0000)
(5) Hot melt flat shapes of biaxially oriented polypropylene (BOPP) film with an acrylic emulsion (described in statistical reporting number 3919.90.5060)
(6) Polyethylene film, 20.32 to 198.12 cm in width, and 30.5 to 2000.5 m in length, coated on one side with solvent acrylic adhesive, clear or in transparent colors, whether or not printed, in rolls (described in statistical reporting number 3919.90.5060)
(7) Polyvinyl chloride film, coated on one side with pressure sensitive solvent-acrylic adhesive that allows for easy removal from a flat glass or flat, rigid, clear plastics surface, 106.7 cm, 137.2 cm or 152.4 cm in width, and 30.38 m or 49.99 m in length, with regular perforations measuring 1.5 to 1.6 mm in diameter, where the perforations cover 30, 40 or 50 percent of the surface area (described in statistical reporting number 3919.90.5060)
(8) Printed rectangular polyethylene sheets depicting images on one side, with self-adhesive edges protected

with peel-off liners on the other side, measuring 30.5 cm by 45.7 cm or 30.5 cm by 25.4 cm (described in statistical reporting number 3919.90.5060)
(9) Self-adhesive colored or printed polyvinyl chloride film with a peelable liner, in rolls, measuring 30.5 cm or 50.8 cm in width and 3.05 m to 6.10 m in length, of a kind used for lining shelves or drawers (described in statistical reporting number 3919.90.5060)
(10) Printed, nonpermeable plastic film of ethylene designed for use in packaging personal care products such as baby wipes, adult wipes and similar wet stack products (provided for in statistical reporting number 3920.10.0000)
(11) Polyethylene film of a kind used for wrapping perishable foods, in rolls measuring 30.5 cm in width and up to 76.2 m in length, with a starter edge tab, put up in retail packages incorporating a built-in slide cutter and grip strip for holding the film in place until subsequent use (described in statistical reporting number 3920.10.0000)
(12) Rectangular sheets of high-density or low-density polyethylene, 111.75 cm to 215.9 cm in width, and 152.4 cm to 304.8 cm in length, with a sticker attached to mark the center of each sheet, of a kind used in hospital or surgery center operating rooms (described in statistical reporting number 3920.10.0000)
(13) Spark-ignition rotary or reciprocating internal combustion piston engines to be installed in agricultural or horticultural machinery or equipment, 4,476 W or more but not more than 37.6 kW, each valued not over \$180 (described in statistical reporting number 8407.90.1020)
(14) Gasoline or liquid propane (LP) engines each having a displacement of more than 2 liters but not more than 2.5 liters (described in statistical reporting number 8407.90.9010)
(15) Spark-ignition internal combustion piston engines, not elsewhere specified or included, 746 W or greater but not exceeding 4,476 W, with an engine displacement of not more than 430 cc (described in statistical reporting number 8407.90.9040)Start Printed Page 37383
(16) Heat guns (described in statistical reporting number 8419.89.9585)
(17) Heated tissue preparation microscope slide flattening tables (described in statistical reporting number 8419.89.9585)
(18) Tissue sample paraffin floatation baths (described in statistical reporting number 8419.89.9585)
(19) Air amplifiers powered solely by an external source of compressed air, which is routed through the apparatus in such a manner as to draw in ambient air, increase its speed and direct the air through an output port, each such apparatus not exceeding 1 kg in weight (described in statistical reporting number 8424.89.9000)
(20) Apparatus capable of generating and projecting liquid particles of a size that simulates haze, fog or snow (depending on the composition of the liquid or powdered source), whether or not incorporating laser or other lighting apparatus (described in statistical reporting number 8424.89.9000)
(21) Apparatus capable of mechanically generating and projecting bubbles from a liquid source, each apparatus weighing more than 2.5 kg but not more than 6.5 kg (described in statistical reporting number 8424.89.9000)
(22) Aroma-spraying sets, each of which includes a battery-powered aerosol apparatus and a glass bottle containing not more than 25 ml of essential oil solution, each set weighing not more than 300 g (described in statistical reporting number 8424.89.9000)
(23) Collars of a size suitable for dogs or cats, fitted with a means to provide a stimulus to the animal, by means of a sprayer, whether or not combined with a static electric discharge device or sound emitter; and such collars capable of being controlled by an external transmission device, whether or not the controller is presented with

the collar as a set (described in statistical reporting number 8424.89.9000)
(24) Dispensers of hand-cleaning or hand-sanitizing solutions, whether employing a manual pump or a proximity-detecting battery-operated pump, each article weighing not more than 3 kg (described in statistical reporting number 8424.89.9000)
(25) Oral irrigators (dental water-jet machines) (described in statistical reporting number 8424.89.9000)
(26) Parts washers, each consisting of a steel basin having a capacity no greater than 100 liters, steel drain plug, support legs and a shelf, a recirculating centrifugal pump assembly, a power cord incorporating an electrical fusible link, a gooseneck spigot assembly, with a steel lid held by a "piano-type" hinge and by a lid support bracket incorporating a mechanical fusible link (described in statistical reporting number 8424.89.9000)
(27) Rotary surface washers, consisting of a tube, at one end of which is a fitting suitable for connection to an external power washer and a handle for controlling the position of the apparatus, and at the other end of which is an assembly of one or more rotating brushes that receive the output of the external power washer (described in statistical reporting number 8424.89.9000)
(28) Wet- and dry-diffusion apparatus fitted for incorporation into scent-releasing machines (described in statistical reporting number 8424.89.9000)
(29) Walk behind rotary tillers, electric powered, individually weighing less than 14 kg (described in statistical reporting number 8432.29.0060)
(30) Fertilizer distributors with a capacity not exceeding 40 kg (described in statistical reporting number 8432.42.0000)
(31) Benchtop drill presses, each with a power rating of less than 750 watts and valued under \$1,000 each (described in statistical reporting number 8465.95.0055)
(32) Bearing housings each valued over \$2000 (described in statistical reporting number 8483.30.8020)
(33) AC motors, of 18.65 W or more but not exceeding 37.5 W, each with attached actuators, crankshafts or gears (described in statistical reporting number 8501.10.6020)
(34) C-frame 2-pole AC electric motors, of 18.65 W or more but not exceeding 37.5 W, each valued not over \$4 (described in statistical reporting number 8501.10.6020)
(35) Electric motors, of 18.65 W or more but not exceeding 37.5 W, each valued over \$28 but not over \$35 (described in statistical reporting number 8501.10.6080)
(36) Amorphous silicon solar chargers with a power output of 100 W or less (described in statistical reporting number 8501.31.8010)
(37) Electric motors, each with an output rating not exceeding 800 W (described in statistical reporting number 8501.52.4000)
(38) Armature shafts for electric motors of heading 8501 (described in statistical reporting number 8503.00.9520)
(39) Windshield wiper motor covers and shafts (described in statistical reporting number 8503.00.9520)
(40) Leakage current detection and interruption (LCDI) cords (described in statistical reporting number 8536.30.8000)
(41) Control boards for stoves, ranges and ovens of heading 8516 (described in statistical reporting number 8537.10.3000)

(42) Zener diodes, each valued not over \$0.25 (described in statistical reporting number 8541.10.0050)
(43) Position or speed sensors for motor vehicle transmission systems, each valued not over \$12 (described in statistical reporting number 8543.70.4500)
(44) Wheel speed sensors for anti-lock motor vehicle braking systems, each valued not over \$12 (described in statistical reporting number 8543.70.4500)
(45) Antenna amplifiers, each valued not over \$15 (described in statistical reporting number 8543.70.9960)
(46) Antenna noise suppressors, each valued not over \$5 (described in statistical reporting number 8543.70.9960)
(47) Apparatus using passive infrared detection sensors designed for turning lights on and off (described in statistical reporting number 8543.70.9960)
(48) Audio controllers, each valued not over \$100 (described in statistical reporting number 8543.70.9960)
(49) Audio mixers, each valued not over \$75 (described in statistical reporting number 8543.70.9960)
(50) Devices incorporating sensors and monitors for identifying encoded television and radio signal information of survey participants (described in statistical reporting number 8543.70.9960)
(51) Electrically powered cat noise control devices (described in statistical reporting number 8543.70.9960)
(52) Electrically powered combs of a kind used on pets (described in statistical reporting number 8543.70.9960)
(53) Electrically powered dog training, controlling, repelling or locating apparatus whether or not put up in kits, including dog collars fitted with GPS or other transmitting or receiving devices and electrical barrier transmitter devices (described in statistical reporting number 8543.70.9960)
(54) Electrically powered insect control apparatus (described in statistical reporting number 8543.70.9960)
(55) Electrically powered static-emitting plastic strips designed for use in training or controlling pets (described in statistical reporting number 8543.70.9960)
(56) LED lamps for flash curing nail polish (described in statistical reporting number 8543.70.9960)
(57) Liquid leak detectors (described in statistical reporting number 8543.70.9960)
(58) Multiple device remote controls, other than radio remote control, each valued not over \$2 (described in statistical reporting number 8543.70.9960)
(59) Robots, programmable, measuring not more than 40 cm high by 22 cm wide by 27 cm deep, incorporating an LCD display, camera and microphone but without "hands" (described in statistical reporting number 8543.70.9960)
(60) Couplers, knuckles and yokes and parts thereof for vehicles of heading 8605 or 8606 (described in statistical reporting number 8607.30.1000)
(61) Motorcycles (including mopeds), with reciprocating internal combustion piston engine of a cylinder capacity not exceeding 50 cc, valued not over \$500 each (described in statistical reporting number 8711.10.0000)
(62) Polarizing film, of triacetate, with a pressure sensitive adhesive backing (described in statistical reporting number 9001.20.0000)
(63) Digital clinical thermometers, valued not over \$11 each (described in statistical reporting number 9025.19.8040)
(64) Cooking thermometers, including candy and deep-fry thermometers (described in statistical reporting

number 9025.19.8080)
(65) Infrared thermometers (described in statistical reporting number 9025.19.8080)
(66) Combined thermometer and hygrometer devices (described in statistical reporting number 9025.80.1000)
(67) Pulse output gas meters of a kind that can be read remotely (described in statistical reporting number 9028.10.0000)
(68) Pulse output water meters, of cast stainless steel (described in statistical reporting number 9028.20.0000)
(69) Fingertip pulse oximeters (described in statistical reporting number 9029.20.4080)”

According to USTR, the granted exclusions cover 292 separate exclusion requests. USTR has noted that the scope of each exclusion is governed by the scope of the product descriptions in the Annex to the notice, and not by the product descriptions set out in any particular request for exclusion.

Exclusion Procedures

The product exclusions announced in the notice will apply as of the August 23, 2018 effective date of the \$16 billion tariff action, and will extend for one year after the publication of the notice. The exclusions are available for any product that meets the description set forth in the Federal Register notice, regardless of whether the importer filed an exclusion request. USTR has stated that US Customs and Border Protection (CBP) will issue instructions on entry guidance and implementation of the new exclusions.

US Trade Agreements

Trump Administration Delays Submission of USMCA Implementing Legislation to Congress

The Trump administration in recent weeks has held off on submitting legislation to Congress to implement the US-Mexico-Canada Agreement (USMCA), despite being permitted to do so as of July 9 under the timelines set forth in the trade promotion authority (TPA) statute. For the time being, the administration is continuing to delay submission of the implementing bill until House Speaker Nancy Pelosi (D-CA) requests the legislation – a request that appears unlikely to come before the August congressional recess, given widespread Democratic opposition to the USMCA in its current form and the current state of negotiations on potential changes to the Agreement. It therefore appears increasingly unlikely that the House of Representatives will vote on the USMCA implementing legislation before the August recess. It remains possible that Congress will approve the legislation this autumn, but we see only a short window for it do so before the US political climate, driven by the approaching 2020 election, will diminish the USMCA's prospects significantly.

The Trump administration in recent weeks has faced a dilemma as it has sought to secure congressional approval of the USMCA. On one hand, the administration had hoped to submit the implementing legislation this month so that the House of Representatives could vote on the bill before the August recess, given that it will be much more difficult to secure the bill's passage this autumn when the 2020 election intensifies. At the same time, the administration has recognized that submitting the legislation before Speaker Pelosi and other key Democrats have requested it almost certainly would result in its failure. Indeed, with a large segment of the House Democratic caucus opposed to the USMCA in its current form, and without yet having extracted concessions from the Trump administration on Democratic priorities such as labor, the environment, enforcement, and pharmaceuticals, Speaker Pelosi would have

little incentive to bring the Agreement to the House floor for a vote at this stage (and would likely refuse to do so). Moreover, Democrats have signaled that if the Trump administration were to submit the legislation over their objections, they may vote to change House rules so that the expedited legislative procedures set forth in TPA do not apply to the USMCA, allowing the legislation to languish in Congress indefinitely. This has left the administration with little choice but to engage in negotiations with House Democrats with a view to addressing their objections to the Agreement.

Speaker Pelosi has established a process that ostensibly is aimed at resolving Democratic concerns about the USMCA so that the implementing legislation can be brought to a vote. In June, she appointed “working groups” to negotiate with USTR Lighthizer in the four areas of concern that Democrats have identified, with House Ways and Means Committee Chairman Richard Neal (D-MA) leading the overall discussions. The four issue-specific working groups are as follows:

- Pharmaceutical IP: Reps. Earl Blumenauer (D-Ore.) and Jan Schakowsky (D-Ill.)
- Labor: Reps. Jimmy Gomez (D-Calif.) and Mike Thompson (D-Calif.)
- Environment: Reps. Suzanne Bonamici (D-Ore.) and John Larson (D-Conn.)
- Enforcement: Reps. Terri Sewell (D-Ala.) and Rosa DeLauro (D-Conn.)

Members of the working groups have held several rounds of discussions with USTR Lighthizer in recent weeks, but these discussions have been conceptual in nature and appear to have made little progress. To date, neither side has put forward detailed proposals (e.g., proposed side letters, changes to the Agreement text, or implementing legislation language) aimed at addressing the concerns Democrats have identified. Indeed, the leadership of the New Democrat Coalition – a moderate group whose support will be essential if the USMCA is to be approved – sent a letter to USTR Lighthizer last week stating that, despite the recent discussions, “we have not seen any meaningful progress or tangible proposals from you” to address the concerns that Democrats have raised. Congressional Democrats, including Chairman Neal, have acknowledged this week that they too have yet to put forward specific requests detailing the changes that would be necessary to earn their support.

Developing solutions quickly on the issues that Democrats have raised is likely to be difficult:

- On labor, Democrats continue to express skepticism that Mexico will adequately fund and implement the wide-ranging labor reforms it enacted earlier this year to comply with USMCA Annex 23-A – a process that is unlikely to be completed quickly and is largely out of the Trump administration’s control.
- On pharmaceuticals, more than 100 congressional Democrats, including members of the relevant “working group”, have called for the USMCA provision requiring 10 years of regulatory data protection for biologic medicines to be scaled back – a change sure to be opposed by business groups and some Republican members.
- On dispute settlement, elements of the USMCA that allow a responding Party to block the formation of a dispute settlement panel have emerged as a major point of contention. The Trump administration has indicated publicly that it is reluctant to change this aspect of the USMCA, as it wants to retain the ability to block the formation of panels in disputes where the United States’ trade laws may be challenged. However, congressional Democrats have expressed concern that Mexico could rely on the same feature to block the formation of panels in disputes in which its compliance with labor obligations, for example, is challenged. They also have reacted skeptically to the Trump administration’s suggestion that it could rely on

Section 301 to unilaterally enforce US rights in the event that another USMCA party engages in panel blocking.

Even if the Trump administration can come to agreement with congressional Democrats on ways to address these and other issues of concern, some of the changes may require new commitments from Canada and Mexico (and thus, further negotiations). Speaker Pelosi also has indicated repeatedly that adequate dispute settlement mechanisms must, in her view, be incorporated into the core text of the Agreement, rather than side letters – a demand that may prove difficult to satisfy, especially given that Mexico already has ratified the USMCA.

Given these circumstances, it appears very unlikely that the House of Representatives will vote on the USMCA implementing legislation before the August recess, and it seems doubtful that the legislation will be submitted to Congress this month. Rather, the Trump administration is now aiming to continue its discussions with House Democrats over the August recess in the hopes of securing a vote on the USMCA implementing legislation as soon as possible this autumn. While it remains possible that Congress will approve the legislation this autumn, we do not see this as the most likely outcome, given the present difficulties and the additional obstacles that may arise as the 2020 election intensifies. Indeed, nearly all of the major Democratic presidential candidates have expressed opposition to the USMCA in its current form; their opposition may gain heightened attention as the Democratic primary progresses and further discourage congressional Democrats from supporting the Agreement. We therefore see a strong chance that Congress will fail to approve the USMCA this year, potentially delaying action on the Agreement until after the 2020 election and prolonging the current uncertainty in North American trade relations.

Other US trade actions

President Trump Issues Executive Order Proposing Changes to Buy American Act Rules

On July 15, 2019, President Trump issued an Executive Order directing US government agencies to consider proposing changes to federal procurement rules under the Buy American Act (41 USC §§ 8301-8305; not to be confused with the Buy America Act, 49 USC § 5323(j)) with a view to maximizing the US federal government's use of "American-made" goods. In particular, the Order contemplates changes to the definitions of "domestic" merchandise set forth in the Federal Acquisition Regulations (FAR) and to the pricing formula used by procuring agencies to determine whether the bid or offered price of domestic merchandise is "unreasonable." The changes proposed in the Order are intended to further the Trump administration's stated objective of "enforcing the Buy American Act to its maximum lawful extent." We summarize the proposed changes below.

Proposed changes to Federal Acquisition Regulations

The Order contemplates potential revisions to two existing standards that were established by Executive Order 10582 of December 17, 1954 and were adopted by the Federal Acquisition Regulatory Council (FAR Council) for codification in the FAR.^[1] The Order does so by directing the FAR Council to "consider proposing for notice and public comment" the following changes to the applicable provisions of the FAR:

- **Increased domestic content threshold.** Under the FAR, a construction material or end product is generally considered to be of domestic origin for purposes of the Buy American Act if the costs of its components that are "mined, produced, or manufactured in the United States" exceed 50 percent of the cost of all its components.^[2] The Order notes that the FAR Council incorporated the 50 percent standard into the FAR

^[1] See Executive Order 10582 of December 17, 1954 (Prescribing Uniform Procedures for Certain Determinations Under the Buy-American Act).

^[2] See 48 CFR § 25.003.

pursuant to Executive Order 10582. President Trump's Executive Order contemplates increasing the required level of domestic content for end products to be considered of domestic origin. Specifically, the Order provides that, before January 11, 2020, the FAR Council must "consider proposing for notice and public comment" the following changes to the 50 percent threshold:

- "Iron and steel end products" would be considered to be of foreign origin if "the cost of foreign iron and steel used in such iron and steel end products constitutes 5 percent or more of the cost of all the products used in such iron and steel end products".
 - All other end products would be considered to be of foreign origin if "the cost of the foreign products used in such end products constitutes 45 percent or more of the cost of all the products used in such end products." The Order further states that, by January 11, 2020, the Secretary of Commerce in cooperation with other US government officials must submit to the President a report assessing, among other things, "whether and when to further decrease, including incrementally, the threshold percentage... from the proposed 45 percent to 25 percent."
- **Changes to formula for "reasonableness" and public interest determinations.** The Order notes that, pursuant to Executive Order 10582, the bid or offered price of materials of domestic origin shall be deemed to be unreasonable, or the purchase of such materials shall be deemed to be inconsistent with the public interest, if the bid or offered price thereof exceeds the sum of the bid or offered price of like materials of foreign origin plus a "differential" computed by adding: (1) 6 percent to the total bid or offered price of materials of foreign origin; or (2) 10 percent to the total bid or offered price of materials of foreign origin less certain specified costs.^[3] The Buy American Act permits federal agencies to acquire goods of foreign origin for public use in cases where the head of the department concerned determines that the acquisition of domestic origin goods would be inconsistent with the public interest, or that the cost of domestic origin goods is unreasonable.^[4]

President Trump's Executive Order contemplates expanding the price preference afforded to domestic goods under the differential pricing formula described above. It provides that, before January 11, 2020, the FAR Council must "consider proposing for notice and public comment" an amendment to the FAR to require that "the executive agency concerned shall in each instance conduct the reasonableness and public interest determination...on the basis of the following-described differential formula, subject to the terms thereof: the sum determined by computing 20 percent (for other than small businesses), or 30 percent (for small businesses), of the offer or offered price of materials of foreign origin."

The Order instructs the FAR Council to "consider and evaluate public comments" on any regulations proposed in accordance with the above directives, and to "promptly issue a final rule, if appropriate and consistent with applicable law and the national security interests of the United States." It further requires the Secretary of Commerce, in cooperation with other US government officials, to submit to the President by January 11, 2020 a report on any other changes to the FAR that the FAR Council should consider in order better to enforce the Buy American Act.

Outlook

The changes contemplated by the Order could, if adopted, have important implications for companies participating or seeking to participate in federal procurement activities covered by the Buy American Act. At this stage, however, it is

^[3] Executive Order 10582 provides that, where the foreign bid or offer is less than \$25,000, applicable duty is excluded from the calculation. Where the foreign bid or offer is more than \$25,000, both applicable duty, and all costs incurred after arrival in the United States, are excluded from the calculation.

^[4] See 48 USC §§ 8302-8303.

unclear whether the FAR Council, granted significant discretion under the Order, will adopt or even formally propose such changes. As noted above, the Order requires only that the FAR Council “consider” within the next 180 days whether it will propose the described changes, and the Order does not set any deadlines for the publication of proposed rules or the adoption of final rules implementing the changes.

The Order appears to provide additional discretion to the FAR Council by instructing it to implement the changes only if “appropriate and consistent” with applicable law and US national security interests. Applicable law here might include the Trade Agreements Act (19 USC § 2511; 48 CFR §§ 25.400 through 25.408), which in certain circumstances can limit the Buy American Act’s applicability by requiring US government procurements to treat as if they were domestic those materials originating in a country with which the United States has a covered trade agreement. The Order’s precise implications for federal procurement policy therefore are uncertain at this stage. However, the changes contemplated in the Order would represent a significant tightening of Buy American Act requirements, and interested parties may therefore wish to monitor and consider commenting on any proposed rules issued by the FAR Council in connection with the Order.

The Executive Order can be viewed [here](#).

Trade Remedy Actions

US Department of Commerce Issues Affirmative Final Determinations in Antidumping and Countervailing Duty Investigations of Imports of Steel Racks from China

On July 18, 2019, the US Department of Commerce (DOC) announced its affirmative final determinations in the antidumping duty (AD) and countervailing duty (CVD) investigations of imports of steel racks and parts thereof from China. In its investigation, DOC determined that exporters from China have sold steel racks and parts in the United States at dumping margins ranging from 18.06 to 144.50 percent. In addition, DOC determined that exporters from China received countervailable subsidies at rates from 1.50 to 102.23 percent.

The merchandise covered by these investigations is steel racks and parts thereof, assembled, to any extent, or unassembled, including but not limited to, vertical components (e.g., uprights, posts, or columns), horizontal or diagonal components (e.g., arms or beams), braces, frames, locking devices (e.g., end plates and beam connectors), and accessories (including, but not limited to, rails, skid channels, skid rails, drum/coil beds, fork clearance bars, pallet supports, row spacers, and wall ties).

The merchandise covered by the investigations is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheadings: 7326.90.8688, 9403.20.0080, and 9403.90.8041. Subject merchandise may also enter under subheadings 7308.90.3000, 7308.90.6000, and 7308.90.9590.

The US International Trade Commission (ITC) is currently scheduled to make its final injury determinations on or around September 3, 2019. If the ITC makes affirmative final determinations that imports of steel racks and parts thereof from China materially injure, or threaten material injury to, the domestic industry, Commerce will issue AD and CVD orders. If the ITC makes negative determinations of injury, the investigations will be terminated.

According to DOC, imports of steel racks from China in 2017 were valued at an estimated \$200 million.

US Department of Commerce Issues Affirmative Preliminary Determinations in Countervailing Duty Investigations of Imports of Carbon and Alloy Steel Threaded Rod from China and India

On July 23, 2019, US Department of Commerce (DOC) announced its affirmative preliminary determinations in the countervailing duty (CVD) investigations of imports of carbon and alloy steel threaded rod from China and India. In its investigations, DOC determined that exporters of these products from China and India received countervailable subsidies ranging from 23.41 to 24.89 percent and 6.07 to 155.03 percent, respectively. Based on these preliminary determinations, DOC will instruct U.S. Customs and Border Protection to collect cash deposits from importers of carbon and alloy steel threaded rod from China and India based on these preliminary rates.

The merchandise covered by the scope of these investigations is carbon and alloy steel threaded rod. Steel threaded rod is certain threaded rod, bar, or studs, of carbon or alloy steel, having a solid, circular cross section of any diameter, in any straight length. Steel threaded rod is currently classifiable under subheadings 7318.15.5051, 7318.15.5056, and 7318.15.5090 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under subheading 7318.15.2095 and 7318.19.0000 of the HTSUS.

DOC is currently scheduled to announce its final CVD determinations on or around December 4, 2019. If DOC makes affirmative final determinations, the US International Trade Commission (ITC) will be scheduled to make its final injury determinations on or around January 17, 2020. If DOC makes affirmative final determinations and the ITC makes affirmative final injury determinations, DOC will issue CVD orders. If DOC makes negative final determinations, or the ITC makes negative final determinations of injury, the investigations will be terminated and no orders will be issued.

According to DOC, imports of carbon and alloy steel threaded rod from China and India in 2018 were valued at an estimated \$104.7 million and \$35.8 million, respectively.

US Department of Commerce Issues Preliminary Determination in the Antidumping and Countervailing Duty Investigations of Imports of Vertical Metal File Cabinets from China

On July 25, 2019, the US Department of Commerce announced its affirmative preliminary determinations in the antidumping (AD) and countervailing duty (CVD) investigations of imports of vertical metal file cabinets from China. In its investigations, DOC preliminarily determined that imports of these products from China were sold in the United States at a dumping margin of 198.50 percent. In addition, DOC preliminarily determined that exporters of the subject merchandise received countervailable subsidies of 227.10 percent. Based on these preliminary determinations, DOC will instruct US Customs and Border Protection to collect cash deposits from importers of vertical metal file cabinets from China based on these preliminary rates.

The scope of these investigations covers freestanding vertical metal file cabinets containing two or more extendable file storage elements and having an actual width of 25 inches or less. The subject vertical metal file cabinets have bodies made of carbon and/or alloy steel and or other metals, regardless of whether painted, powder coated, or galvanized or otherwise coated for corrosion protection or aesthetic appearance. The subject vertical metal file cabinets must have two or more extendable elements for file storage (e.g., file drawers) of a height that permits hanging files of either letter (8.5" x 11") or legal (8.5" x 14") sized documents. The merchandise subject to the investigations is classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9403.10.0020. The subject merchandise may also enter under HTSUS subheadings 9403.10.0040, 9403.20.0080, and 9403.20.0090.

DOC is currently scheduled to announce its final AD and CVD determinations on or around October 8, 2019. If DOC makes affirmative final determinations, the US International Trade Commission (ITC) will be scheduled to make its

final injury determinations on or around November 21, 2019. If DOC makes affirmative final determinations in these investigations, and the ITC makes affirmative final injury determinations, DOC will issue AD and CVD orders. If DOC makes negative final determinations, or the ITC makes negative final determinations of injury, the investigations will be terminated and no orders will be issued.

According to DOC, imports of vertical metal file cabinets from China in 2018 were valued at an estimated \$45.2 million.

US Department of Commerce Initiates Antidumping Duty and Countervailing Duty Investigations of Imports of Utility Scale Wind Towers from Canada, Indonesia, and Vietnam

On July 30, 2019, the US Department of Commerce DOC announced the initiation of new antidumping duty (AD) and countervailing duty (CVD) investigations to determine whether utility scale wind towers from Canada, Indonesia, Korea, and Vietnam are being dumped in the United States, and to find if producers in Canada, Indonesia, and Vietnam are receiving countervailable subsidies. Although there is already an existing AD order on utility scale wind towers from Vietnam, the petition was filed with respect to one company that was excluded from the current order.

These investigations were initiated based on petitions filed by the Wind Tower Trade Coalition, the members of which are Arcosa Wind Towers Inc. (Dallas, TX) and Broadwind Towers, Inc. (Manitowoc, WI). The dumping margins alleged in the petition are as follows:

- Canada – 53.63 to 61.59 percent
- Indonesia – 26.00 to 47.19 percent
- Korea – 280.69 to 331.26 percent
- Vietnam – 39.97 to 65.96 percent

There are 30 subsidy programs alleged for Canada, 8 subsidy programs alleged for Indonesia, and 24 subsidy programs alleged for Vietnam.

The merchandise covered by the scope of these investigations consists of certain wind towers, whether or not tapered, and sections thereof. Certain wind towers support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (i.e., where the top of the tower and nacelle are joined) when fully assembled. According to DOC, merchandise covered by these investigations is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS 7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (i.e., accompanying nacelles and/or rotor blades).

The US International Trade Commission (ITC) is scheduled to make its preliminary injury determinations on or before August 23, 2019. If the ITC determines that there is a reasonable indication that imports of utility scale wind towers from Canada, Indonesia, Korea, and/or Vietnam materially injure, or threaten material injury to, the domestic industry in the United States, the investigations will continue, and DOC will be scheduled to announce its preliminary CVD determinations on October 3, 2019, and its preliminary AD determinations on December 17, 2019, although these dates may be extended. If the ITC's determinations are negative, the investigations will be terminated.

According to DOC imports of utility scale wind towers from Canada, Indonesia, Korea, and Vietnam in 2018 were valued at an estimated \$60.2 million, \$37.4 million, \$50 million, and \$21.4 million, respectively.

US Department of Commerce Issues Preliminary Determinations in the Countervailing Duty Investigations of Imports of Fabricated Structural Steel from China, Canada, and Mexico

On July 9, 2019, the US Department of Commerce (DOC) announced its preliminary determinations in the countervailing duty (CVD) investigations of imports of fabricated structural steel from Canada, China, and Mexico. In the China and Mexico investigations, DOC made affirmative preliminary determinations, finding that exporters received countervailable subsidies at rates ranging from 30.30 to 177.43 percent, and 0.01 (*de minimis*) to 74.01 percent, respectively. In the Canada investigation, DOC made a negative determination, finding that exporters received countervailable subsidies at *de minimis* levels ranging from 0.12 to 0.45 percent. Based on these preliminary determinations, DOC will instruct U.S. Customs and Border Protection to collect cash deposits from importers of fabricated structural steel from China and Mexico.

The merchandise covered by this investigation is carbon and alloy fabricated structural steel. Fabricated structural steel is made from steel in which: (1) iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is two percent or less by weight. According to DOC, The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings: 7308.90.3000, 7308.90.6000, and 7308.90.9590. The products subject to the investigation may also enter under the following HTSUS subheadings: 7216.91.0010, 7216.91.0090, 7216.99.0010, 7216.99.0090, 7222.40.6000, 7228.70.6000, 7301.10.0000, 7301.20.1000, 7301.20.5000, 7308.40.0000, 7308.90.9530, and 9406.90.0030

DOC is currently scheduled to announce its final CVD determinations on or around November 19, 2019. If DOC makes affirmative final determinations, the US International Trade Commission (ITC) will be scheduled to make its final injury determinations on or around January 2, 2020. If DOC makes affirmative final determinations in these investigations, and the ITC makes affirmative final injury determinations, DOC will issue CVD orders. If DOC makes negative final determinations, or the ITC makes negative final determinations of injury, the investigations will be terminated and no orders will be issued.

According to DOC, imports of fabricated structural steel from Canada, China, and Mexico in 2018 were valued at an estimated \$722.5 million, \$897.5 million, and \$622.4 million, respectively.

US Department of Commerce Issues Affirmative Final Determinations in Antidumping and Countervailing Duty Investigations of Imports of Certain Steel Wheels from China

On July 3, 2019, the US Department of Commerce announced its affirmative final determinations in the antidumping duty (AD) and countervailing duty (CVD) investigations of imports of certain steel wheels 12 to 16.5 inches in diameter from China. In its investigations, DOC determined that exporters from China have sold certain steel wheels 12 to 16.5 inches in diameter at less than fair value in the United States at rates of 38.27 to 44.35 percent. In addition, DOC determined that exporters from China received countervailable subsidies at rates from 386.45 to 388.31 percent.

The merchandise covered by these investigations is certain on-the-road steel wheels, discs, and rims for tubeless tires with a nominal wheel diameter of 12 inches to 16.5 inches, regardless of width. Certain on-the-road steel wheels with a nominal wheel diameter of 12 inches to 16.5 inches within the scope are generally for road and highway trailers and other towable equipment, including, inter alia, utility trailers, cargo trailers, horse trailers, boat trailers, recreational trailers, and towable mobile homes. The standard widths of certain on-the-road steel wheels are 4 inches,

4.5 inches, 5 inches, 5.5 inches, 6 inches, and 6.5 inches, but all certain on-the-road certain steel wheels, regardless of width, are covered by the scope.

According to DOC, certain on-the-road steel wheels subject to this investigation are properly classifiable under Harmonized Tariff Schedule of the United States (HTSUS) category 8716.90.5035, which “covers the exact product covered by the scope whether entered as an assembled wheel or in components.” Certain on the-road steel wheels entered with a tire mounted on them may be entered under HTSUS 8716.90.5059 (Trailers and semi-trailers; other vehicles, not mechanically propelled, parts, wheels, other, wheels with other tires) (a category that, according to DOC will be broader than what is covered by the scope).

The US International Trade Commission (ITC) is currently scheduled to make its final injury determinations on or around August 15, 2019. If the ITC makes affirmative final injury determinations, DOC will issue AD and CVD orders. If the ITC makes negative final determinations of injury, the investigations will be terminated and no orders will be issued.

According to DOC. US imports of certain steel wheels 12 to 16.5 inches in diameter from China in 2017 were valued at an estimated \$73.8 million.