US & Multilateral Trade Policy Developments

Japan External Trade Organization

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US Trade Policy

Outlook for US Trade Policy and the World Trade Organization in 2020

The challenges and uncertainty that US trade policy created for businesses, governments, and the multilateral trading system in 2019 should persist in 2020, albeit likely in a more subdued fashion. The US-China trade dispute escalated to unprecedented levels last year, and although the two countries have signed a "Phase One" trade agreement, it is far from clear whether the deal represents an enduring solution that will prevent further escalation.

The US Congress has approved the US-Mexico-Canada Agreement, mitigating some of the uncertainty surrounding NAFTA, but many questions remain about how key elements of the deal – including new rules governing the automotive sector and labor disputes – will operate in practice. In addition, while the Trump administration appears to have shelved its threatened "national security" tariffs on automotive imports, it continues to take an aggressive and increasingly unilateral approach to trade enforcement. A desire to tout the successes of 2019 trade deals and to avoid serious economic turmoil ahead of the 2020 election should discourage the most disruptive actions this year, but the risk of other unilateral actions in 2020 remains high. Moreover, the failure of WTO Members to prevent the Appellate Body from shutting down in December 2019 has introduced new uncertainty as to whether WTO rules can continue to be effectively enforced. Though 2020 begins without many clear answers, this report assesses how these and other important trade issues might develop over the coming year.

1. **Unilateral Trade Actions**

Trade Remedies: Trends and Key Issues for 2020

"Particular Market Situation"

The Department of Commerce (DOC) is expected to continue its use of "particular market situation" (PMS) methodologies to reject respondent exporters' record domestic sales prices and production costs when calculating normal value in US antidumping investigations and reviews. Affirmative PMS determinations can significantly increase dumping margins and subsequent duties based thereon. In 2019, domestic petitioners increased the frequency of PMS allegations and their scope – in terms of countries, products and factors that individually or collectively constitute a PMS. DOC has thus far resisted the most aggressive PMS allegations but did make affirmative PMS determinations (thus increasing dumping margins) for several new countries in 2019, including Thailand and Turkey, and is in the process of completing several other inquiries. Meanwhile, the US Court of International Trade (CIT) in 2019 condoned DOC's general use of PMS under Trade Preferences Extension Act of 2015 (TPEA), but did reject discrete DOC determinations, notably with respect to various Korean steel products and the use of a PMS adjustment when applying the "sales-below-cost test" set out in 19 U.S.C. § 1677(b)(3). The outcome of these cases and others like them in 2020 will further clarify DOC's practice with respect to PMS, which can have significant implications for domestic petitioners and foreign exporters involved in US antidumping proceedings.

Safeguards Implementation

It is unlikely that the United States will initiate a new safeguards investigation in 2020, but the US International Trade Commission (ITC) will continue to monitor the 2018 safeguard measures on solar panels[1] and washing machines[2] as required by law. Based on the ITC's monitoring reports, moreover, the President may determine to modify further these safeguard measures, as was done in June 2019 and January 2020 for solar cells and washing machines,

[1] Crystalline Silicon Photovoltaic Cells, Whether or Not Partially or Fully Assembled Into Other Products, Inv. No. TA-201-75

[2] Large Residential Washers, Inv. No. TA-204-013

respectively. The USITC's mid-term review report in the solar case is scheduled to be released in early February 2020.

Circumvention Investigations

Continuing a trend from 2019, DOC is expected in 2020 to increase circumvention inquiries pursuant to 19 U.S.C. § 1677j, particularly with respect to products manufactured in third-countries. In 2019, DOC initiated several circumvention inquiries at the request of domestic producers and issued several affirmative circumvention determinations. DOC even, for the first time, self-initiated circumvention inquires for corrosion-resistant steel products completed in Costa Rica, Guatemala, Malaysia, South Africa, and the United Arab Emirates to determine whether they used Chinese or Taiwanese-origin substrates. Domestic industries are likely to continue making circumvention allegations, and DOC may self-initiate additional circumvention inquiries in 2020. Affirmative circumvention determinations may lead to disputes and legal challenges regarding the scope of existing antidumping and countervailing duty orders and the effective date of any duties owed.

Adverse Facts Available

DOC is expected to continue its expansive use of adverse facts available (AFA), which is intended to address non-cooperative respondents in AD/CVD cases and can significantly increase final duty rates. In 2019, DOC's use of AFA was challenged in several cases at the CIT. Although the CIT noted DOC's broad discretion to apply AFA, the Court also noted instances where DOC exceeded its discretion. For example, in *Guizhou Tyre Co. v. United States*, the CIT found that there was no basis to apply AFA because respondents had submitted evidence that they did not use an alleged subsidy program. DOC argued that AFA was justified because the government did not provide responses regarding the alleged subsidy program. However, the CIT rejected that argument noting that such information from the government was not necessary in light of evidence that the respondents did not use the alleged subsidy program. DOC maintains that it has broad discretion to apply AFA. Accordingly, DOC's application of AFA and challenges to such applications are expected to remain areas of dispute in 2020.

Currency Undervaluation in CVD Proceedings

It is possible that DOC will finalize regulations this year concerning the treatment of alleged "currency undervaluation" in countervailing duty proceedings. DOC in May 2019 issued proposed regulations under which the agency would treat a foreign country's "currency undervaluation" as a countervailable subsidy for purposes of CVD proceedings, thus potentially subjecting imports from that country to remedial duties. The proposed rule would newly "clarify" that (1) DOC "normally" will consider a benefit to be conferred upon a foreign producer or exporter when the domestic currency of the exporting country is undervalued in relation to the US dollar; and (2) all companies operating "in the traded goods sector of an economy" can constitute a group of enterprises for purposes of determining whether a subsidy is "specific" (and thus countervailable) under US law. If adopted this year as a final rule, these changes could prompt petitioners to include allegations of currency undervaluation in future countervailing duty petitions, potentially leading to higher duties and legal challenges in US courts and the WTO.

Section 232 Actions

Steel and Aluminum

The Trump administration already has taken action in 2020 to expand the scope of the Section 232 duties to certain "derivative" steel and aluminum products, and it is possible that similar, additional actions will be taken this year.

Based on a finding by the Secretary of Commerce that imports of certain downstream products not previously subject to Section 232 (*e.g.*, steel nails and aluminum wire) had increased following the imposition of the Section 232 duties in 2018 (and were "circumventing" such duties), President Trump on January 24 determined to extend the duties to

the downstream products at issue. This action appears to be aimed at mitigating a widely-expected consequence of the Section 232 duties, *i.e.*, that they have placed US manufacturers of downstream products containing steel and aluminum at a competitive disadvantage with respect to their foreign competitors, who are able to purchase steel and aluminum inputs at global prices. The administration's decision to address this issue by expanding the scope of the Section 232 duties to "derivative" products represents a "doubling-down" on its current approach, and may presage similar actions targeting imports of other steel- and aluminum-intensive goods (*e.g.*, those that also qualify under the administration's definition of "derivative" based on new import data). Market participants have already identified steel wire rope and PC strand, as well as aluminum castings, as potential targets for additional Section 232 tariff coverage. On the other hand, significant modifications to the country scope of the Section 232 measures appear unlikely this year. President Trump announced in December 2019 that he intended to expand the Section 232 duties to cover steel and aluminum from Argentina and steel from Brazil (which currently are exempt from the duties pursuant to quota arrangements), but the administration never implemented this change, and Brazilian President Jair Bolsonaro later indicated that he had received an assurance from President Trump that no action would be taken with respect to steel imports from Brazil. Given this statement and the lack of any official action nearly two months after President Trump's initial announcement, it now appears unlikely that the announced changes with respect to Argentina and Brazil will be implemented. Other possible changes to the country scope of the Section 232 measures, including possible country exemptions, might be discussed in the context of current or future bilateral negotiations (*e.g.*, the US-Japan FTA negotiations that are scheduled to begin this year), but such negotiations appear unlikely to conclude or result in material changes to the Section 232 measures in 2020. Meanwhile, steel and aluminum importers are likely to continue to rely heavily on the product exclusion process administered by the US Department of Commerce, Bureau of Industry and Security (BIS). BIS over the past two years has made multiple revisions to the regulations governing the Section 232 exclusion process, in part to address concerns regarding the efficiency and transparency of the process, but further substantive changes are not expected this year.

Automotive Goods

The Trump administration's Section 232 investigation of automotive goods is likely to remain a source of uncertainty in 2020, despite previous indications that the administration had decided to conclude the investigation in November 2019 without imposing measures. Indeed, contrary to past public statements from White House officials that the investigation had been closed, the US Department of Justice (DOJ) in a January 17, 2020 slip opinion confirmed that, in the administration's view, the case remains ongoing and could therefore still result in a future presidential "action" restricting imports. The DOJ slip opinion was used to support a Commerce Department announcement that it would not comply with a new statutory requirement, set forth in the Consolidated Appropriations Act of 2020, to publish the Section 232 report on automotive goods by January 19, 2020. In the opinion, DOJ relies upon an expansive and untested interpretation of the Section 232 statute to argue that, after directing the Office of the US Trade Representative (USTR) in May 2019 to enter into negotiations with foreign countries to address the purported national security threat, the President retains the ability to take "other actions" in the investigation and faces no statutory deadline to do so. Most notably, DOJ states:

> *USTR advises that negotiations remain ongoing, but have not yet produced an agreement that addresses the national-security threat. We are also advised that the President has not yet decided what, if any, "other actions" to take under section 232(c)(3)(A) to adjust imports of automobiles and automobile parts, including whether to impose tariffs or quotas on those imports. In view of pending international negotiations and executive branch deliberations, the Secretary of Commerce has not yet published his report. (pp. 4-5)*
>
> *…*
>
> *The statute continues to authorize the President to take action to adjust imports of automobiles and automobile parts under section 232. Following the Secretary's initial transmission of the report, the President*

had 90 days to decide whether he concurred in the Secretary's findings and to determine what action to take in response. Id. § 1862(c)(1)(A). Once the President decided to address the threat by ordering negotiations, he had 15 days to implement that action. Id. § 1862(c)(1)(B). Because the resulting negotiations did not produce an agreement within 180 days, the President is now authorized to "take such other actions as the President deems necessary to adjust imports of such article so that such imports will not threaten to impair the national security." Id. § 1862(c)(3)(A).

There is, however, no statutory deadline for the President to exercise that power. Congress specifically amended the statute in 1988 to add some specific deadlines for the President to act in response to the Secretary's report—the 90- and 15-day periods noted above. See Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, § 1501(3), 102 Stat. 1107, 1258. But in contrast with the President's initial determination, which must be made "[w]ithin 90 days" and "implement[ed] . . . by no later than" 15 days after the determination, 19 U.S.C. § 1862(c)(1)(A), (B), the statute does not set any further deadline for presidential action after the conclusion of the 180-day negotiation period. In giving the President the discretion to take "such other actions as the President deems necessary" after that period, id. § 1862(c)(3)(A), Congress did not require the President to act within any particular timeframe. It instead provided him with discretion to shape an appropriate action, including with respect to continuing the international negotiations that are the basis for invoking this part of section 232. Here, the decision-making process expressly contemplated by section 232 remains ongoing, giving the Executive Branch a strong confidentiality interest in predecisional, deliberative material relevant to the ongoing process of deciding how to exercise that authority. (p. 11)

Although the DOJ opinion relates to the confidentiality of the report, the administration could employ the same arguments in an attempt to justify a new "action" against certain automotive imports in the future, and President Trump in recent weeks has continued to threaten the European Union with automobile tariffs. On the other hand, any major Section 232 action targeting automotive imports broadly, especially from non-EU countries, seems unlikely this year given the upcoming election, and it would likely face challenges in US courts. Nevertheless, the DOJ opinion remains a clear confirmation from the administration that, in its view, the Section 232 investigation is not closed.

Finally, we expect that the Trump administration, Congress and various private parties will continue to argue over the release of the BIS Section 232 report on automotive goods imports. This may include actions by US courts, particularly with respect to the publication mandate set forth in the Consolidated Appropriations Act of 2020, or pending Freedom of Information Act (FOIA) requests.

Uranium

The Trump administration is expected to announce its final decision in the Section 232 investigation of uranium imports this year, but the decision is not likely to involve new import restrictions. After receiving a report in which the Department of Commerce found that uranium imports threaten to impair US national security, President Trump in July 2019 issued a memorandum in which he (1) declined to concur with the Commerce Department's finding "at this time"; and (2) established a United States Nuclear Fuel Working Group to develop recommendations for "reviving and expanding domestic nuclear fuel production." Though the contents and status of the Working Group's report have not been confirmed publicly at this time, the report is expected to focus on government procurement or financial support for the domestic uranium industry, as opposed to new restrictions on uranium imports.

Titanium Sponge

The Trump administration's Section 232 investigation of titanium sponge imports remains ongoing, with a final decision from President Trump expected early this year. The US Department of Commerce transmitted its final report on the investigation to President Trump in November 2019, but neither the report nor a summary of its findings

have been made public. Assuming that the Commerce Department's determination was affirmative (in line with all other Trump administration Section 232 reports), the President will be required to issue a final determination (including on whether to impose import restrictions) by the end of February.

Legal Challenges

The Trump administration's use of Section 232 has prompted numerous legal challenges, some of which remain ongoing and may be the subject of US court decisions this year. The most prominent such case, *American Institute for International Steel v. United States*, concerns the constitutionality of the Section 232 statute itself. The Petitioners in this case have argued that Section 232 is an improper delegation of legislative authority to the Executive Branch under the US Constitution and the doctrine of separation of powers, and have therefore sought a court order enjoining the enforcement of the current Section 232 restrictions on steel imports on those grounds. The US Court of International Trade in March 2019 rejected these arguments, concluding that the CIT was bound to follow a 1976 Supreme Court ruling that Section 232 is a permissible delegation of legislative power. However, the CIT's decision is currently on appeal before the US Court of Appeals for the Federal Circuit, which is expected to issue a decision this year. It is likely that the case will then be appealed to the Supreme Court, regardless of the outcome.

The CIT also is expected to issue its final ruling this year in *Transpacific Steel LLC v. United States*, which addresses important questions regarding the President's legal authority to modify Section 232 import adjustment actions on an ongoing basis. In November 2019, the CIT issued a preliminary opinion in the case, finding that President Trump's August 2018 Proclamation doubling the Section 232 tariff rate on steel imports from Turkey might be unconstitutional and inconsistent with the Section 232 statute. Though the case concerns the President's Section 232 actions with respect to Turkish steel imports only, it may have broader implications, as the CIT's preliminary opinion casts doubt on the President's legal authority to modify import restrictions imposed under Section 232 once they have been decided and the statutory deadlines for imposing such restrictions have passed. Given the Trump administration's view that it retains the legal authority to modify Section 232 import restrictions on an ongoing basis, as demonstrated by the January 2020 actions on "derivative" steel and aluminum products, the CIT's forthcoming ruling in *Transpacific* is likely to be of particular importance.

Section 301 Actions

China – Intellectual Property Rights, Technology Transfer, and Innovation

The United States' Section 301 tariffs on Chinese-origin goods are unlikely to see further changes in 2020 once modest reductions are implemented in February as part of the "Phase One" US-China agreement. In particular, the United States has determined to (1) reduce the Section 301 tariff rate on approximately $120 billion in annual Chinese imports ("List 4A") to 7.5% (from the current rate of 15%), beginning on February 14, 2020; and (2) suspend indefinitely the imposition of a 15% tariff on $160 billion in imports ("List 4B"). However, the United States has made no commitments to modify the remaining Section 301 tariffs on $250 billion in imports (Lists 1-3), which are currently subject to an additional duty of 25%. The United States has indicated that the removal of the remaining Section 301 tariffs will hinge upon the completion of a "Phase Two" agreement, which purportedly will address additional "structural" issues about which the United States has raised concerns, including China's provision of subsidies to its manufacturing sector and its involvement in the economy through state-owned enterprises (SOEs). Because China has long resisted making concessions on these issues, including in its negotiations with the Trump administration, it appears unlikely that a Phase Two agreement (and further US or Chinese tariff reductions) can be concluded this year, if at all. As such, it is expected that USTR will continue to consider requests to exclude certain products from the tariffs, or to extend granted tariff exclusions. On the other hand, since the deadlines for requesting an exclusion from List 1-4 tariffs have all passed, it is an open question as to whether USTR, assuming the Phase 2 deal does not materialize, might consider new exclusion requests in the future.

Despite the limited impact of the Phase One agreement on tariffs, the agreement is an important development that will significantly shape US-China trade relations this year. In the short term, the agreement is likely to prevent further significant escalation of the trade dispute, particularly as China takes initial, public steps to comply with its obligations and US companies begin to enjoy some of the benefits of the agreement. In the longer term, however, the risk of further escalation remains significant. The United States is likely to scrutinize China's implementation of the Phase One agreement, which could lead to disputes and unilateral measures that re-escalate tensions and potentially result in termination of the agreement. The text of the agreement also raises questions about whether and to what extent China can and will comply with its obligations over the longer term. For example, some traders have reportedly questioned whether certain of the deal's purchase commitments (*e.g.*, oil & gas) are feasible given market conditions in China and the United States. Moreover, given the limited nature of the United States' concessions under the agreement and the structure of the deal's unilateral enforcement mechanism, the agreement itself might not effectively incentivize China to comply fully with its commitments. Thus, while the Phase One agreement will likely avert further escalation of tariffs before the 2020 election, significant trade restrictions, uncertainty, and the possibility for further escalation will persist over the longer term.

France – Digital Services Tax

The United States' Section 301 investigation of France's Digital Services Tax (DST) appears likely to be put on hold this year, given the French government's January 23 announcement that it will postpone the collection of the DST until the end of 2020, and that the United States has agreed to refrain from imposing Section 301 measures while the two countries attempt to reach a multilateral solution on digital services taxation in the context of the OECD.[3] These negotiations will take place under the OECD's Base Erosion and Profit Shifting ("BEPS") project, which has been working towards providing a consensus solution to the taxing of digital services, and has adopted a Programme of Work with a goal of agreement by the end of 2020. Though these discussions at the OECD may ultimately yield a negotiated solution on digital services taxation, this outcome is far from guaranteed and it is uncertain whether agreement will be reached before the end of the year. Indeed, while the United States has been supportive of a multilateral solution to this issue, it has expressed "serious concerns" regarding the OECD Secretariat's proposal as a departure from traditional transfer pricing and nexus standards, and has recently insisted that the proposal be used as a "safe-harbor" regime that would allow companies to opt out. The safe-harbor approach is likely to be a significant sticking point in the negotiations. Thus, while a Section 301 action in response to the French DST appears likely to be avoided in 2020, the prospect could reemerge in 2021 if the OECD discussions do not yield progress by the end of the year.

EU – Subsidies for Large Civil Aircraft

Early this year, the United States will likely expand its Section 301 action targeting imports from the European Union, which it first implemented in October 2019 pursuant to the authorization of the WTO's Dispute Settlement Body (DSB) in *EC and certain member States — Large Civil Aircraft* (DS316). Late last year, after the DSB authorized the United States to impose countermeasures of up to $7.496 billion annually, USTR used Section 301 to impose duties ranging from 10 to 25 percent on large civil aircraft and other products of the EU, but did not utilize the maximum amount of countermeasures authorized by the DSB. At the time, USTR noted that "[a]lthough USTR has the authority to apply a 100 percent tariff on affected products, at this time the tariff increases will be limited to 10 percent on large civil aircraft and 25 percent on agricultural and other products." However, in response to a December 2 WTO compliance panel report on EU subsidies to Airbus, USTR initiated a process to expand the retaliatory tariffs, in

[3] On December 2, 2019, USTR announced its determination that France's Digital Services Tax (DST) is "unreasonable or discriminatory and burdens or restricts U.S. commerce" and is therefore actionable under Section 301 of the Trade Act of 1974. Based on this determination, and in response to the acts, policies, and practices covered by the Section 301 investigation, USTR has proposed to impose tariffs "of up to 100 percent" on a list of French-origin goods with an annual import value of $2.4 billion, and "is considering whether to impose fees or restrictions on services of France."

which it is considering (1) increasing the tariff rates on imports currently subject to US retaliation; and (2) subjecting additional EU products to such tariffs. The public comment process regarding the proposed tariff modifications concluded on January 13, and USTR will likely announce its decision in the coming weeks.

The United States may also face new retaliatory tariffs from the EU this year as a result of a separate WTO dispute concerning the United States' subsidies for its own large civil aircraft sector, which the DSB has found to be inconsistent with WTO rules (see *United States — Measures Affecting Trade in Large Civil Aircraft* (*Second Complaint*) (DS353)). In the coming months, a WTO arbitrator will produce a decision on the magnitude of the adverse effects caused to the EU by the US subsidies at issue in DS353. The level of countermeasures to be authorized in this dispute is expected to be significantly lower than that recently granted to the United States, following the ruling of the Appellate Body that the United States' compliance with 2011 dispute settlement findings was considerably more complete than that of the EU. Nevertheless, the EU already has drawn up a provisional list of US goods valued at $12 billion per year that could be targeted with additional tariffs.

Possible Initiation of New Section 301 Investigations

The Trump administration has shown an increasing propensity to utilize Section 301 investigations to pressure foreign governments to eliminate trading practices that are perceived to harm US interests, and this trend may continue with the initiation of new Section 301 investigations in 2020. Indeed, in its most recent annual "Special 301" report alleging that certain countries do not adequately protect intellectual property rights, USTR warned that it might initiate Section 301 actions against countries that have been on the report's "Priority Watch List" for multiple years – a group that includes Argentina, India, Indonesia, and Russia. Moreover, in December 2019, USTR announced that it is "exploring whether to open Section 301 investigations into the digital services taxes of Austria, Italy, and Turkey." The initiation of new Section 301 investigations in 2020 – which may lead to the unilateral imposition of tariffs or other restrictions – therefore appears to be a significant possibility.

Sanctions and Export Controls

2019 continued preexisting trends in US sanctions and export control enforcement and introduced significant new developments in the application of US sanctions and export controls. These enforcement trends are unlikely to abate in 2020, although how exactly they will manifest themselves remains to be seen.

Sanctions

For the third year in a row, in 2019 the US Department of the Treasury's Office of Foreign Assets Control ("OFAC") designated to the Specially Designated Nationals And Blocked Persons List ("SDN List") more entities on an annual basis than it had in any prior year.[4] This pace of designations to the SDN List appears likely to continue in 2020.

Between 2015 and 2019, OFAC collected more than US$2 billion in 73 civil monetary penalty settlements from both US and non-US companies for violations of US sanctions laws. This sum does not include amounts paid to other US and non-US authorities for overlapping violations of US law (*e.g.*, US export control laws). In 2019 alone, OFAC assessed 26 civil monetary penalty settlements, with fines amounting to close to US$1.3 billion in the aggregate.

This represents a large uptick in the number of enforcement actions and the value of the penalties from 2018, during which OFAC only imposed seven civil monetary penalty settlements, amounting to approximately US$72 million in the aggregate. Given the low number of enforcement actions in 2018, it remains to be seen whether the increased

[4] All property and interests in property of individuals and entities on the SDN List located in the United States or within the possession or control of a US person, wherever located, are considered blocked and may not be dealt in. Any entity in which a blocked person holds a 50 percent or greater ownership interest is itself considered blocked by operation of law. US persons may not engage in any dealings, directly or indirectly, with blocked persons.

levels of enforcement in 2019 represent a clearing of a backlog in enforcement cases or a "new normal," and it is unclear what 2020 will bring.

The United States in recent years also has increased both the scope and frequency of sanctions measures targeting specified "sanctionable activity," which can be imposed on non-US persons even in the absence of any connection to the United States to the activity (so-called "secondary sanctions"). "Sanctionable activities" include activities such as trade with North Korea or dealings with designated Iranian parties. The imposition of these "secondary sanctions" can result in measures that restrict a non-US person's access to the US financial or commercial system, including blocking of assets. In 2019, certain designations to the SDN List – in particular in connection with Iran and Venezuela – reflected an increased use of such sanctions authorities, and the continuation of this trend in 2020 appears likely.

Developments in specific sanctions programs in 2019 largely reflected pre-existing policy priorities, although the manifestations of these policies at times were unprecedented. This trend may continue in 2020. Furthermore, although designations to the SDN List have increased, OFAC also correspondingly has continued its practice of sometimes issuing general licenses that can mitigate the effects of designation.[5] Some highlights from 2019 are as follows:

- **Iran:** Following its withdrawal from the Joint Comprehensive Plan of Action ("JCPOA") in 2018, the United States has stated repeatedly that its "maximum pressure" stance towards Iran involves increased sanctions, which is reflected by actions taken in 2019 in furtherance of this policy objective.[6] Iran-related SDN designations increased, and for the first time the United States designated a part of another government as a Foreign Terrorist Organization ("FTO") by naming Iran's Islamic Revolutionary Guard Corps ("IRGC") as a FTO. This pressure appears likely to continue unabated in 2020.[7]
- **Russia:** The United States imposed a new round of sanctions on Russia pursuant to the Chemical and Biological Weapons and Warfare Elimination Act of 1991 ("CBW Act")[8], and Congress passed legislation mandating sanctions in relation to the Nord Stream 2 project.
- **Venezuela:** The United States sought to increase pressure on President Maduro's regime by designating Petróleos de Venezuela, S.A. ("PdVSA"), Venezuela's central bank, and government officials as SDNs. That said, related general licenses have also been issued, which mitigate the effects of designations in specific circumstances set forth in each General License.[9]
- **Cuba:** The United States continued to increase pressure on Cuba by rolling back some of the embargo easing by the prior administration.[10] For example, general licenses that allowed individual "people-to-people" educational travel to Cuba were revoked. Importantly, the Trump administration allowed cases by US nationals to proceed under Title III of the Helms-Burton Act, which permits the filing of lawsuits in US federal court against any individual or entity that "trafficks" in property "confiscated" by the Cuban government.[11]

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[5] General licenses generally establish that transactions and activity otherwise prohibited by sanctions are permitted under certain circumstances.

[6] For more details, see White & Case's client alert, available **here**.

[7] For more details, see White & Case's client alert, available **here**.

[8] For more details, see White & Case's client alert, available **here**.

[9] For more details, see White & Case's client alert, available **here**.

[10] For more details, see White & Case's client alert, available **here**.

[11] For more details, see White & Case's client alert, available **here**.

- **Global Magnitsky Sanctions:** The pace of SDN designations under the Global Magnitsky program, which targets human rights abuses and corruption, increased in 2019.

Finally, several important sanctions bills are currently pending before Congress. On several notable occasions in 2019, Congress passed sanctions-related bills with veto-proof majorities (such as the bill mandating sanctions in relation to Nord Stream 2, mentioned above). Congress in recent years has demonstrated increased assertiveness in passing sanctions-related legislation. The introduction – and perhaps passage – of more sanctions-related bills is a trend to monitor closely, as is Congress's growing desire and ability to force the President's hand when it comes to using statutory sanctions authorities.

Export Controls

2019 was an eventful year for US export controls, with tensions between the United States and China taking the spotlight. 2020 likely will be a continuation of this trend.

In May 2019, the Department of Commerce's Bureau of Industry and Security ("BIS") added Huawei Technologies Co. Ltd. and its subsidiary and affiliate companies to the BIS Entity List.[12] As a result of the Entity List designation, licenses became required for the export to Huawei and the named affiliates of all items subject to US export controls, including certain foreign-made items with greater than *de minimis* US-origin content. The US government is reportedly considering changes to US export controls to expand the scope of restrictions on foreign-made products intended for Huawei.

BIS is also expected to continue releasing new and proposed rules targeting "emerging" and "foundational" technologies, as required by the Export Control Reform Act of 2018 ("ECRA"). BIS initially solicited public comments on proposed controls on "emerging technology" between November 2018 and January 2019.[13] BIS issued the first "emerging technology" control on artificial intelligence ("AI") related to geospatial imagery on January 6, 2020.[14] BIS has indicated that technologies subject to forthcoming new rules on "emerging technology" will likely include biotechnology, quantum computing, semiconductors, and 3D printing. BIS is also expected to start undertaking a rulemaking process pertaining to "foundational technologies," in a manner similar to which it approached the "emerging technology" rulemaking.

The Commerce Department is also slated to implement a final version of a proposed rule pertaining to information and communications technology and services ("ICTS") sometime in 2020.[15] The proposed rule outlined regulations to implement a May 2019 executive order, prohibiting certain transactions involving telecommunications equipment or services made or supplied by persons that have been determined by the US Government to be "foreign adversaries" when the transactions are deemed to pose an "unacceptable national security risk."[16]

Committee on Foreign Investment in the United States

This year also begins full implementation of reforms to the Committee on Foreign Investment in the United States (CFIUS), the US government's inter-agency committee that reviews certain foreign investments for national security concerns. On February 13, 2020, **new regulations** will take effect that fully implement the CFIUS reform statute, the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA). While these reforms do not change the core

[12] For more details, see White & Case's client alert, available **here**.

[13] For more details, see White & Case's client alert, available **here**.

[14] 85 Fed. Reg. 459, "Addition of Software Specially Designed To Automate the Analysis of Geospatial Imagery to the Export Control Classification Number 0Y521 Series (January 6, 2020), available **here**.

[15] For more details, see White & Case's client alert, available **here**.

[16] For more details, see White & Case's client alert, available **here**.

of the CFIUS process – the process remains largely voluntary and focused exclusively on national security – the reforms significantly expand the types of foreign investments that CFIUS may review, and for the first time in CFIUS's history will make certain filings mandatory. In addition, the reforms provide CFIUS with expanded resources and authority to pursue reviews of investments that have not been voluntarily filed with CFIUS; to more robustly monitor and enforce mitigation measures; and to share information and coordinate with both US state and local governments and foreign allied governments. We expect CFIUS will increasingly assert its new authorities over the coming year, particularly with respect to China-connected investments, as CFIUS continues to increase its scrutiny of Chinese investments involving sensitive technology, infrastructure, data, and real estate.

2. **Preferential Trade Agreements and Negotiations**

US-Mexico-Canada Agreement (USMCA)

Despite Congress's recent approval of the USMCA, much work remains before the Agreement can enter into force and replace the NAFTA, and this preparatory work is likely to intensify during the first half of 2020. During this period, the Parties will begin developing joint regulations that will govern the day-to-day operation of the Agreement, while also evaluating whether each Party is prepared to take the necessary implementing actions to comply with its USMCA commitments upon entry into force. These and other requirements, which are summarized below, will dictate whether (and when) the USMCA enters into force in 2020:

- **Ratification processes.** The Protocol accompanying the USMCA provides that the Agreement cannot enter into force until "the first day of the third month" after all Parties have completed their domestic ratification procedures and notified one another thereof. The United States and Mexico have substantively completed their domestic ratification processes, but Canada has yet to do so. The Canadian Parliament is expected to ratify the USMCA early this year, but this process might not conclude formally until April, potentially delaying the Agreement's entry into force.
- **Evaluation of implementing actions.** The US implementing legislation for the USMCA grants some discretion to the President as to when the United States will formally declare that its ratification process is complete, and this will depend in part on the actions of the other USMCA Parties. Specifically, the legislation authorizes the President to provide written notification to Canada and Mexico that the United States has completed its domestic ratification procedures only *after* the President has determined and notified Congress that Canada and Mexico have taken the measures necessary to comply with those provisions of the USMCA that are to take effect at the time the Agreement enters into force. Thus, the timing of the United States' notification will be subject to the discretion of the Executive Branch, and will depend in part on how quickly Canada and Mexico are able to develop and enact any measures that, in the view of the United States, are necessary to bring them into compliance with their initial obligations under the Agreement. Additional discussions and negotiations among the Parties may be needed before the Executive Branch is willing to assure Congress that Canada and Mexico have taken the necessary actions to comply with their USMCA obligations.
- **Uniform Regulations.** The United States and the other USMCA Parties will need to develop and implement certain measures before the Agreement can enter into force, including the Uniform Regulations envisioned in Article 5.16 of the Agreement. The Uniform Regulations will contain mutually-agreed rules on the interpretation, application, and administration of key USMCA Chapters, including Chapter 5 (Origin Procedures), Chapter 4 (Rules of Origin), Chapter 6 (Textile and Apparel Goods), and Chapter 7 (Customs Administration and Trade Facilitation). These regulations, especially the economically-significant automotive rules of origin, will therefore play an important role in shaping the day-to-day operation of the Agreement.

The Parties already have begun discussions and technical work on the USMCA's implementation, with the goal of completing their work in time for the Agreement to enter into force by July 1, 2020. However, this timeline is

ambitious, and it remains possible that the Agreement's entry into force will be delayed until late this year or even 2021 (*e.g.*, if disagreements arise over the interpretation of the Agreement or whether Parties have taken the necessary implementing actions to comply with their obligations.)

As the Parties work jointly towards the Agreement's entry into force, the Trump administration also is expected to take a number of implementing actions domestically that will have important implications for business in the USMCA region. For example, USTR by the end of April will issue regulations establishing the requirements, procedures, and guidelines for automotive producers to seek temporary exemptions from the USMCA's automotive rules of origin under the Agreement's "alternative staging regime." Given the substantial differences between the USMCA rules of origin and those currently in effect under the NAFTA, these temporary exemptions and the forthcoming rules governing their administration will be crucial in facilitating the transition between the two agreements. The Trump administration also will establish this year an Interagency Labor Committee that will review petitions for action under the Agreement's new "rapid response" mechanism for labor disputes – a key change in the USMCA that could potentially result in severe import restrictions targeting Mexican facilities. These and other USMCA-implementing actions by the United States will merit close attention this year.

US-Japan Bilateral Negotiations

Following the entry into force of a modest, "early harvest" trade agreement between the United States and Japan on January 1, 2020, the two countries are scheduled to hold further consultations over the coming months with the goal of launching formal negotiations thereafter for a comprehensive bilateral trade agreement. This course of action was envisioned in a September 25, 2019 joint statement by President Trump and Prime Minister Abe, which stated that the two countries "intend to conclude consultations within 4 months after the date of entry into force of the [US-Japan Trade Agreement] and enter into negotiations thereafter in the areas of customs duties and other restrictions on trade, barriers to trade in services and investment, and other issues[.]"

Provided that the two sides are able to reach agreement on the scope of the second phase, formal negotiations for a bilateral trade agreement could begin in 2020. However, given the wide range of issues that are likely to be covered by the negotiations, as well as the United States' political calendar, it appears doubtful that an agreement can be concluded this year. Indeed, the United States' negotiating objectives for an agreement with Japan, published in December 2018, envision a comprehensive (and likely lengthy) negotiation covering, among other things, sanitary and phytosanitary (SPS) measures, technical barriers to trade, intellectual property, state-owned enterprises, services, government procurement, and investment. Moreover, concluding the negotiation this year might not be a priority for either government. The Trump administration already has secured concessions from Japan on its top priority (agricultural market access) under the early harvest agreement, and may be reluctant to make politically-sensitive concessions (*e.g.*, on US market access for Japanese automotive goods) ahead of the 2020 election.

Japan might also wish to await the results of the US election before finalizing a bilateral agreement with the United States, given its preference for the United States to re-join the TPP. Thus, while further bilateral negotiations might begin this year, it appears doubtful they will result in a completed agreement in 2020.

US-UK Bilateral Negotiations

The Trump administration has indicated that it is eager to begin negotiations for a US-UK Trade Agreement following the UK's recent departure from the European Union on January 31, 2020. The UK will stay in the EU Customs Union and Single Market and be subject to EU trade law for a transition period until December 2020 (extendable for one or two years until no later than December 2022), during which the UK can negotiate and ratify an FTA with the United States (although the agreement cannot enter into force until the transition period ends). At the same time, the UK will negotiate its new trade agreement with the EU.

The Trump administration has indicated that it hopes to conclude a US-UK trade agreement by the end of 2020, but meeting this ambitious timeline will be difficult. Indeed, for the UK, conducting these important negotiations with the United States and the EU in parallel could prove challenging, particularly where trade-offs between the two need to be made. Moreover, the scope of the agreement as envisioned in the United States' published negotiating objectives is extensive, covering trade in goods, services, and investment and a range of non-tariff issues (including SPS measures, technical barriers to trade, regulatory practices, and intellectual property). While the two countries' interests and negotiating positions are likely to be aligned in many of these areas, some difficulties are expected, particularly with respect to SPS measures governing the importation of poultry and beef products that the UK has insisted it will maintain for food safety purposes, and that the United States considers to represent unjustified barriers to trade that are not based on scientific evidence. Thus, while formal US-UK negotiations are likely to begin soon and might make substantial progress this year, their completion in 2020 is far from guaranteed.

US-EU Bilateral Negotiations

The Trump administration has indicated that securing a trade agreement with the EU this year is a priority, but it is unclear whether the two sides will be able to overcome the disagreements that have prevented them from engaging in substantive negotiations since mid-2018, when Presidents Trump and Juncker first agreed to launch negotiations "toward zero tariffs, zero non-tariff barriers, and zero subsidies on non-auto industrial goods." Since then, the two sides have taken significantly different positions on the scope of the agreement they announced they would pursue. In particular, the United States has insisted that any bilateral agreement must provide, among other things, comprehensive market access for its agricultural exports to the EU market through the elimination of EU tariffs and non-tariff barriers, with a particular focus on changing EU SPS measures that are not based on scientific risk-assessment.

The EU, by contrast, has ruled out negotiating on trade in agriculture, relying on the scope of the original Trump-Juncker agreement, and has instead adopted a negotiating mandate that is limited to the elimination of tariffs for industrial goods and an agreement to facilitate the mutual acceptance of conformity assessment results for industrial goods. At this stage, neither side has shown flexibility on these core positions, raising significant doubts as to whether substantive negotiations will begin, let alone be completed, in 2020. Meanwhile, the Trump administration warned this month that it "expects tangible progress toward a United States-European Union trade deal in the near future," and President Trump in recent weeks has revived his threat to target EU automotive goods and other products with additional tariffs unless such an agreement is reached.

Despite these obstacles, European Commission President Ursula von der Leyen expressed optimism this month that some form of agreement with the United States could be reached in as soon as "a few weeks" – a sentiment echoed by US Secretary of Agriculture Sonny Perdue. However, any such agreement would likely be far more limited in scope than that envisioned in the Trump-Juncker joint statement or in the negotiating objectives and mandates that each side has published. Such an agreement could include modest results on conformity assessment procedures and standards for certain industrial goods (*e.g.*, by providing for mutual recognition of conformity assessment results), as the two sides already have held discussions and exchanged proposals on these issues. EU Trade Commissioner Phil Hogan also has suggested recently that an agreement could address some non-tariff barriers facing US agricultural exports to the EU in the context of "regulatory cooperation," though he declined to provide specifics, and it appears unlikely that the most sensitive issues (*e.g.*, beef and poultry) would be covered.

Moreover, US business groups have expressed skepticism that the two sides are prepared to negotiate reductions of industrial tariffs in the coming months as part of a US-EU "mini-deal." It remains to be seen whether the Trump administration would accept a US-EU agreement with such a limited scope, given the emphasis it has placed on agriculture, tariffs, and curtailing "unfair" EU trade practices. While such an agreement would fall far short of the one envisioned in the Trump-Juncker statement and each side's published negotiating objectives, it could be sufficient to

prevent further escalation of US-EU trade tensions ahead of the 2020 election, and may therefore represent a "best-case" scenario for US-EU trade relations this year.

Other Potential Negotiations and Agreements

The United States might conclude or initiate other trade agreement negotiations in 2020, though the completion of a comprehensive FTA is highly unlikely. For example, ongoing discussions between the United States and India might result in an agreement to restore India's benefits under the US Generalized System of Preferences (GSP) program in exchange for modest Indian market access commitments. USTR suspended India's benefits under the GSP program in May 2019 on the grounds that India had failed to provide "equitable and reasonable access to its markets," but the two countries subsequently have engaged in negotiations aimed at reversing this decision. In particular, the United States and India reportedly are considering an agreement in which India will reduce its most-favored-nation (MFN) duty rates on certain products and the United States in exchange will restore GSP benefits for an equivalent amount of India's GSP-eligible imports (which were valued at approximately $6.3 billion in 2018). The potential agreement might also address certain non-tariff issues about which the United States has raised concerns, including Indian regulations pertaining to medical devices and intellectual property protection. Published reports indicate that such an agreement could be finalized by the end of February.

In addition, the United States and Kenya are expected to announce in the coming weeks that they plan to begin negotiations for a bilateral trade agreement. Though bilateral trade between the United States and Kenya is relatively small (approximately $1 billion per year in two-way goods trade), the potential agreement may nonetheless prove significant, given the Trump administration's objective for it to serve as a "model" FTA that can be replicated with other African countries. Such an agreement would represent a first step towards the Trump administration's broader objective to transition developing countries away from the use of trade preference programs in favor of more reciprocal trading arrangements with the United States. However, significant obstacles to completing a comprehensive US-Kenya trade agreement – including Kenya's participation in the African Continental Free Trade Area – could delay the deal well beyond 2020.

Trade Promotion Authority

Members of Congress might begin discussions this year regarding the upcoming expiration of trade promotion authority (TPA) legislation in 2021 and the possibility of enacting new TPA legislation. Pursuant to the *Bipartisan Congressional Trade Priorities and Accountability Act of 2015* (TPA 2015), TPA will apply only to trade agreements entered into (*i.e.*, signed) before July 1, 2021; agreements entered into after this date therefore will not be covered by TPA unless new legislation is enacted. Some Members of Congress might therefore seek to enact new TPA legislation this year to ensure that negotiations conducted by the Executive Branch continue to be guided by congressional negotiating objectives and consultation requirements, and that any resulting agreements will be eligible for consideration under TPA's expedited legislative procedures. However, securing approval of any new TPA legislation this year would be an uphill battle. TPA in recent years has been the subject of heated debate, and approving any such legislation this year would require cooperation between the Republican-led Senate and the Democratic majority in the House of Representatives. Notwithstanding the recent bipartisan votes in favor of the USMCA, strong disagreements between the parties persist on key issues addressed in TPA (*e.g.*, negotiating objectives on intellectual property rights protection), and some members of Congress might also seek to use TPA as a vehicle for reforming presidential trade powers. Moreover, the 2020 election will likely compound the difficulty of reaching agreement on major legislation such as TPA. As a result, efforts to renew TPA probably will not gain momentum until 2021.

3. **Impact of the 2020 Election on the US Trade Agenda**

Election-year politics undoubtedly will shape the United States' trade agenda in 2020, but the precise implications for governments, businesses, and global supply chains remain uncertain. On one hand, the election may discourage the Trump administration from implementing the most disruptive trade actions it has threatened, such as further, significant escalation of the US-China dispute, major Section 232 actions targeting automotive imports, or the withdrawal of the United States from the WTO. Indeed, President Trump likely needs a strong economy to win re-election this year, providing a strong incentive to avoid trade actions that would jeopardize US growth and roil markets. Moreover, the administration's desire to notch political "wins" ahead of the election might motivate it to settle for quick "mini-deals" with certain US trading partners, such as the EU and India, that may reduce bilateral tensions and uncertainty despite having limited commercial benefits.

On the other hand, some in the administration view President Trump's "economic nationalist" approach to trade policy as having been critical to his electoral victory in 2016, and will likely seek to highlight this approach – possibly through new unilateral actions – as the 2020 election nears. These same advisors might also seek to implement new tariffs or other trade measures to compensate key US stakeholders for the harms of previous trade actions, similar to the January Section 232 tariffs on "derivative" steel and aluminum products. Due to the aforementioned economic concerns, however, any such measures are expected to be limited.

Finally, the President's Democratic opponent will likely not provide a major check on the administration's trade policy. While some Democratic presidential candidates and party leaders have questioned elements of the administration's trade agenda and its execution, few have directly criticized its overall departure from the free-trade consensus that previously guided US trade policy, and some have appeared to advocate an even more aggressive approach. This dynamic likely will discourage the administration from backing off its approach to trade enforcement and unilateralism. As a result of these competing political pressures, US trade policy in 2020 appears likely to avoid the most disruptive measures, but the risk of unilateral trade actions remains high and will be a continued source of uncertainty for business this year.

4. **WTO Dispute Settlement, Reform, and Negotiations**

Although the World Trade Organization suffered major setbacks in 2019, there is some hope that the multilateral trade body will fare better this year. For example, WTO Director-General Roberto Azevêdo has struck an upbeat note on the WTO's work programme for 2020, including prospects for the WTO's 12th Ministerial Conference (MC12) in June. Azevêdo anticipates that plurilateral negotiations on investment facilitation, on the domestic regulation of services industries, and on E-Commerce can make substantive progress and in some cases deliver new rules this year. He referred to these plurilateral initiatives, involving less than the full Membership, as the "experimentation" of the negotiating arm of the WTO. Azevêdo has acknowledged the considerable setbacks that the WTO suffered in 2019, most importantly the collapse of the Appellate Body, the increase in unilateral and retaliatory (and arguably WTO-inconsistent) trade restrictions, particularly the United States' Section 232 and Section 301 tariffs, and the failure to conclude an agreement on Fisheries Subsidies. Nonetheless, according to Azevêdo there is "quiet dynamism in the WTO's corridors": WTO Members know they "must" conclude a fisheries agreement at MC12, the agricultural negotiations have been invigorated, and he is aiming to resolve the Appellate Body "setback" through high-level political consultations.

In the view of most trade officials, the key to unlock meaningful progress in the WTO this year along the lines that Azevêdo has described lies in Washington rather than Geneva. The question is whether the United States will adopt a more conciliatory position and re-engage on multilateral issues in the WTO before the Presidential election. Many consider that to be unlikely. The United States is dissatisfied with the lack of progress since 2017 to correct what it contends are fundamental weaknesses of the WTO, in particular: over-reach by the Appellate Body; the poor record of transparency and notifications; inadequate WTO disciplines, notably on industrial subsidies and state-controlled enterprises; and out-of-date rules on development that provide advanced developing countries, particularly China and

India, with excessive flexibility in trade negotiations. There are few signs that any of these issues is ripe for resolution in 2020. China, India, South Africa, and other like-minded developing countries are blocking WTO reforms in all areas of interest to the United States. Traditional allies of the United States in the WTO, particularly the EU and Japan, are sympathetic to the United States' concerns but their willingness to work with the United States in the WTO has been strained by their criticism of the United States' justification of its Section 232 tariffs as a national security issue. Furthermore, the bilateral US-EU trade relationship is at risk of deteriorating in 2020 over several issues, including retaliation for non-compliance with Appellate Body rulings on civil aircraft subsidies, lack of progress on bilateral trade negotiations, the possibility of US Section 232 tariffs on automobile imports, and the Section 301 investigation into France's digital services tax which could be extended to other EU member states and the UK.

Compensating for the Loss of the Appellate Body

The WTO dispute settlement system has entered a potentially long period of uncertainty as a result of the failure of WTO Members to prevent the Appellate Body (AB) from shutting down in December 2019. Dispute settlement panels will continue their work as usual, but they alone may not provide a sufficient basis for the Dispute Settlement Body (DSB) to settle disputes conclusively. For as long as this situation lasts, it could threaten the ability of WTO Members to defend their commercial interests and to obtain clarity on their systemic rights and obligations under the WTO Agreements. It could also open the door for more WTO-inconsistent measures, or reduce the likelihood of concluding new WTO Agreements in areas such as fisheries subsidies and E-Commerce because of uncertainty about the legally binding value of the results.

The extent to which the shutdown of the AB will disrupt dispute settlement and the work of the DSB in 2020 will depend upon the actions of WTO Members.

- The AB will conclude 3 of 13 appeals that have been sent to it already and are close to finalization. However, 10 others, where the AB hearings have not yet taken place, cannot be concluded until new AB members are appointed to deal with them. These cases will remain in legal limbo unless the parties involved agree to revoke the appeals and submit the disputes to the DSB for finalization on the basis of the panel findings alone or to seek a bilateral resolution of the dispute.

- Around 50 active dispute panels are in the pipeline and as many as 20 more are expected to accumulate each year on the basis of recent past practice. Their findings, once issued, could be submitted by the parties directly to the DSB for adoption, without appeal. That could be the most desirable course of action since it would preserve the binding nature of the dispute settlement system. However, if any party to a dispute appeals the findings, the panel report will enter a legal void with no AB to conduct the appeal and no means for the DSB to finalize the case. New appeals will be added to the existing backlog and the disputes will remain unresolved.

- Suggestions have been made that parties to a dispute could renounce their right to appeal panel findings under Article 16.4 of the Dispute Settlement Understanding (DSU) as long as the AB is inactive. It remains to be seen whether some do, but for a party that expects to lose a dispute at the panel stage there may be no incentive to do so.

- The EU has agreed with Canada and Norway to use an alternative to the AB – an "Interim Appeal Arbitration Arrangement" – for any disputes that arise between them as long as the AB remains inactive. Fourteen other WTO Members have now announced their intention to adopt this Arrangement, including China as well as Australia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, South Korea, Mexico, New Zealand, Norway, Panama, Singapore, Switzerland and Uruguay. It will therefore cover around half of the WTO Members that are regular users of the WTO dispute settlement system. However, the United States is not expected to follow suit, which will limit the extent to which this Arrangement can compensate for the absence of

the AB given the large number of WTO disputes in which the United States is typically involved. Also, certain other key Members, such as Japan and India, have not signaled their intentions yet on this Arrangement.

- The first indication of how the United States might handle appeals of its disputes was an agreement reached with India in mid-January 2020 not to appeal a compliance panel report on US countervailing duty measures (DS436) nor to request adoption of the report by the DSB until "… after an Appellate Body Division can be established to hear and complete any appeal in this matter," and in the meantime "… to engage in good faith discussions to seek a positive solution to this dispute." As such, the dispute did not technically enter the aforementioned "legal limbo," but faces essentially the same fate: the unadopted panel report will have no legal force until the AB situation is resolved.

The shutdown of the AB comes at a sensitive time when the DSB is handling a number of high-profile disputes that are not only contentious for the parties involved but also could have wider ramifications for the interpretation of WTO rules. Of particular note are:

- China's complaint against the United States (DS515) over its determination of normal value for "non-market economy" countries in antidumping proceedings (at China's request, panel proceedings have been suspended in its complaint against the EU on the same issue (DS516));
- China's complaints against the United States (DS543, DS565, and DS587) over its imposition of Section 301 tariffs and other tariff measures;
- Complaints against the United States' Section 232 tariffs for national security purposes on steel and aluminum by China (DS544), India (DS547), the EU (DS548), Norway (DS552), Russia (DS554), Switzerland (DS556) and Turkey (DS564). Related to those disputes are United States' complaints about retaliation through the imposition of tariffs on certain US products by China (DS558), the EU (DS559), Turkey (DS561), Russia (DS566) and India (DS585).
- Complaints by Brazil (DS579), Australia (DS580) and Guatemala (DS581) against India over its alleged agricultural domestic support and export subsidies for sugar and sugarcane.
- Arbitration over compliance in the EU complaint against the United States (DS353) over its measures affecting trade in large civil aircraft.

The priority for DG Azevêdo and WTO Members in 2020 is to find a permanent solution for the Appellate Body that can attract the support of the United States. Senior trade officials do not expect that the impasse can be overcome quickly because of the difficulty of resolving a fundamental difference of opinion among some WTO Members, in particular between the United States and the EU, over the limits to the authority of the AB and its independence from oversight by WTO Members.

WTO Reforms

The need to update WTO rules and improve its procedures, particularly to secure results from multilateral negotiations after the failure of the Doha Round, has been acknowledged by many WTO Members and was endorsed by the G20 in 2018. However, practically no progress has been made on agreeing which reforms should be prioritized. The debate in the WTO has become polarized over competing and conflicting proposals from the United States, the EU and Japan on the one hand, and advanced developing countries, led by China and India, on the other hand.

The United States, the EU and Japan have collaborated to propose reforms to WTO rules which they contend are needed to discipline non-market economies' policies and practices, most importantly those of China although the

proposed reforms would apply to all WTO Members. At the start of 2020 they announced a joint proposal to amend the WTO Agreement on Subsidies and Countervailing Measures so as to strengthen disciplines on industrial subsidies, including those granted by state enterprises (SOEs). Previously, they tabled a proposal for more effective and stronger enforcement of WTO transparency and notification requirements, including as a last resort punitive measures for persistent non-compliance. Also, in 2019 the United States tabled a proposal (and issued a White House Memorandum on "Reforming Developing Country Status in the WTO") to strip advanced developing countries17 of special development flexibilities in WTO Agreements and negotiations which, the United States contended, had been used by these countries to avoid WTO rules and escape commitments. Many developing countries, led by China and India, have opposed all of these proposals. China has stated that its economic model of "state capitalism" and the role played by its SOEs are not negotiable in the WTO. China did agree in mid-2018 to work with the EU on WTO reform but so far there has been nothing to show from that initiative.

China and India have tabled their own reform proposals, built largely around unfinished business from the collapse of the Doha Round, including: (1) stopping the "abuse" of trade remedy measures, especially in antidumping investigations; (2) correcting long-term distortions in agricultural trade caused by "excessive" farm subsidies of some developed Members; and (3) eliminating discrimination against state enterprises in investment security and anti-monopoly reviews. None of these proposals is acceptable to the United States, the EU, or Japan.

Any reform of WTO rules and procedures would require consensus agreement if all WTO Members were to be legally bound by the change. It would be possible for like-minded WTO Members to accept new and additional obligations in areas such as industrial subsidies and state-owned enterprises – as was the case in the Tokyo Round codes on non-tariff measures – but Members that did not accept those obligations would not be bound by them, thus rendering the new rules ineffective in disciplining many of the Members that the rules target.

WTO reform is expected to be an important item of discussion at the next WTO Ministerial Conference but there is no indication yet of the emergence of a consensual agenda for negotiations that can be agreed on there.

WTO Negotiations

Since the collapse of the Doha Round in 2015, WTO negotiations have been scaled down and limited to a few specific issues.

The only multilateral negotiation that is well enough advanced to offer the prospect of a result in 2020 is on Fisheries Subsidies, which has more of an environmental than a pure trade objective. WTO Members missed their end-year target in 2019 to conclude the negotiations and have extended the deadline to MC12 in June 2020. Some, including the United States, are skeptical that this new objective is achievable. Two key issues that must be resolved early in 2020 are (1) the approach that should be used to discipline fisheries subsidies (one based on a "national budget cap" or one based on a "green box" of permitted subsidies); and (2) what development flexibilities, if any, should be provided to advanced developing countries such as China, India, Indonesia, South Africa and Vietnam, which are among the world's top fish producers and exporters, to allow them to continue subsidizing their fishing fleets because of their developing country status. Neither of those issues was resolved by negotiations in 2019.

Groups of like-minded WTO Members have been negotiating on three issues – services domestic regulation, investment facilitation and electronic commerce – with the prospect of concluding plurilateral agreements that would be binding for only those WTO Members that sign on to them. By far the most significant of these is negotiations on an electronic commerce (E-Commerce) agreement in which about 80 WTO Members (about half the Membership) are involved. These negotiations have made substantive progress and the aim is to conclude at least the framework of an agreement in time for the WTO Ministerial Conference in June 2020. There are many areas of commonality in proposals that have been tabled by most participants, including the United States, Japan, and the EU, which could allow rapid progress to be made. Also, most participants have undertaken commitments already, unilaterally or through trade agreements such as the CPTPP, to open up their E-commerce markets to international competition and for them the objective of a high standard agreement is fully attainable. There are also

areas of deep disagreement among some participants, however, notably between the United States and China over the level of ambition that should be sought in the negotiations and on specific issues such as cross-border data flows, data localisation requirements, and the inclusion of flexibilities for developing countries. The EU has proposed a middle ground by calling for "a commercially meaningful set of WTO rules and obligations" on the one hand and on the other hand for "these negotiations to be supported by as many WTO Members as possible." However, trade officials consider it improbable that the United States or China will compromise sufficiently to allow them both to sign on to a final agreement.

US Trade Actions

Section 301

USTR Issues Section 301 Tariff Exclusions for 119 "List 3" Goods, Requests Comments on Possible One-Year Extension of "List 1" Tariff Exclusions Set to Expire in April 2020

On February 5, 2020, the Office of the US Trade Representative (USTR) published two *Federal Register* notices regarding Chinese-origin products excluded from the 25% tariffs that the United States imposed on these goods pursuant to Section 301 of the Trade Act of 1974. In the first notice, USTR announced new tariff exclusions for 119 products on "List 3," which covers approximately $200 billion in annual Chinese imports. In the second notice, USTR announced that it will initiate a process for considering whether to extend for up to twelve months certain Section 301 tariff exclusions that USTR granted in April 2019 for Chinese goods on "List 1," which covers $34 billion in annual imports, and that are scheduled to expire in April 2020. The two Federal Register Notices are summarized below.

List 3 Exclusion Notice

In the List 3 *Federal Register* notice, USTR announced its determination to grant product exclusions for the goods set forth in the notice's Annex. The listed exclusions cover two 10-digit HTSUS subheadings in full – 8425.31.0100 (winches and capstans powered by an electric motor) and 8708.93.7500 (automotive clutches) – and 117 specially prepared product descriptions, covering a wide range of goods and HTSUS numbers. In accordance with USTR's June 24, 2019 notice establishing the List 3 exclusion process, the new exclusions are available for any product that meets the description in the Annex, regardless of whether the importer filed an exclusion request. Exclusions apply to only the product descriptions in the Annex, as opposed to product descriptions found in any particular request for exclusion that USTR granted. The product exclusions announced in the notice will be retroactive to September 24, 2018, (the effective date of the List 3 action) and will apply until August 7, 2020.

According to USTR's Section 301 exclusion portal for List 3, hundreds of List 3 exclusion requests are still pending and dozens are now in "Stage 3" (*i.e.*, the request has survived initial substantive review and is being further reviewed to determine whether an exclusion would be administrable). This indicates that USTR may issue additional List 3 exclusions in the future. Although the firm August 2020 deadline for all List 3 exclusions diminishes the prospective value of future List 3 exclusions, approval would provide importers with retroactive tariff relief, which could be substantial. USTR might also establish an extension process for List 3 exclusions, similar to that established for List 1 (see below).

The Federal Register notice is available **here**.

List 1 Exclusion Extension Notice

The *Federal Register* notice on extending List 1 tariff exclusions contains the following instructions, which are essentially the same as those issued for previous batches of expiring List 1 exclusions.

Key Dates

Beginning on February 16, 2020 at 12:01 a.m. ET, USTR will open a docket (Docket Number USTR-2020-0002) for public comments on the possible extension of particular exclusions granted to List 1 goods. (USTR will not be using the new Section 301 Exclusion Portal that the agency opened for List 3 and List 4A tariff exclusions.) To be assured of consideration, written comments must be submitted by March 16, 2020.

Exclusions Eligible for Extension

USTR is requesting comments regarding the possible extension of particular product exclusions granted in USTR's *Federal Register* notice of April 18, 2019 (84 FR 16310). On that date, USTR granted exclusions from the List 1 tariff (initially imposed on July 6, 2018) for 21 different products, which are listed in the Annex to the *Federal Register* notice (available **here**). These product exclusions are currently scheduled to expire on April 18, 2020. USTR's new *Federal Register* notice states that, "[a]t this time, USTR is not considering comments concerning possible extensions of exclusions granted under any other product exclusion notice."

Criteria for Granting Extensions

USTR is inviting public comments on whether to extend particular exclusions granted in the April 2019 notice "for up to 12 months." USTR will evaluate the possible extension of each exclusion "on a case-by-case basis." According to USTR, the focus of the evaluation will be whether, despite the first imposition of the additional duties in July 2018, the particular product remains available only from China. In addressing this factor, USTR states that commenters should address specifically:

- Whether the particular product and/or a comparable product is available from sources in the United States and/or in third countries.
- Any changes in the global supply chain since July 2018 with respect to the particular product, or any other relevant industry developments.
- The efforts, if any, the importers or U.S. purchasers have undertaken since July 2018 to source the product from the United States or third countries.

In addition, USTR will continue to consider "whether the imposition of additional duties on the products covered by the exclusion will result in severe economic harm to the commenter or other U.S. interests."

Procedures for Submitting Requests

USTR "strongly encourages" parties submitting comments to do so using Form A, which is attached to the *Federal Register* notice and requests information regarding (1) the organization submitting comments; (2) the exclusion request and product at issue; (3) whether the party supports extending the exclusion; (4) whether the products covered by the exclusion "or comparable products" are available from non-Chinese sources.

In addition, USTR states that "commenters who are importers and/or purchasers of the products covered by the exclusion should complete Form B," which also is attached to the notice. Form B requests business confidential information (BCI), and will not be posted on the public docket. Form B requires commenters who are importers and/or purchasers of the products covered by the exclusion to provide the following information:

- Efforts undertaken since July 2018 to source the product from the United States or third countries.
- The value and quantity of the Chinese-origin product covered by the specific exclusion request purchased in 2018, the first half of 2018, and the first half of 2019, and whether these purchases are from a related company (and, if so, the name of and relationship to the related company.)

- Whether Chinese suppliers have lowered their prices for products covered by the exclusion following the imposition of duties.
- The value and quantity of the product covered by the exclusion purchased from domestic and third country sources in 2018, the first half of 2018 and the first half of 2019.
- If applicable, the commenter's gross revenue for 2018, the first half of 2018, and the first half of 2019.
- Whether the Chinese-origin product of concern is sold as a final product or as an input.
- Whether the imposition of duties on the products covered by the exclusion will result in severe economic harm to the commenter or other U.S. interests.
- Any additional information in support or in opposition of the extending the exclusion.

Forms A and B are also available electronically **here**. Form A must be submitted at regulations.gov (docket USTR-2020-0002). Form B should be submitted along with a copy of Form A via email at **301bcisubmissions@ustr.eop.gov**.

Given the relatively short timeframe for submitting comments and the volume of information requested by USTR, parties seeking to comment on the extension of exclusions expiring on April 18, 2020 should begin preparing to do so as soon as possible.

Outlook

The tariff exclusions at issue are the third set of List 1 exclusions that USTR has subjected to an extension proceeding. These exclusions, however, represent a relatively small share of the exclusions that USTR has granted for List 1. Additional List 1 exclusions were granted and are set to expire on the following dates:

Exclusion Round	Expiration
Exclusions Granted May 14, 2019	May 14, 2020
Exclusions Granted June 4, 2019	June 4, 2020
Exclusions Granted July 9, 2019	July 9, 2020
Exclusions Granted September 20, 2019	September 20, 2020
Exclusions Granted October 2, 2019	October 2, 2020

USTR has not confirmed whether it will establish similar processes allowing parties to request the extension of the above exclusions (or the exclusions that USTR has granted for other Section 301 tariff lists) before they expire. However, this third USTR notice strongly indicates that USTR will establish similar processes as the other exclusions' expiration dates approach – particularly given that the "Phase One" US-China agreement signed on January 15 will not eliminate the Section 301 tariffs on Lists 1-3, and that a potential "Phase Two" agreement appears unlikely to be completed in the near future. Given that the Section 301 tariffs on Lists 1-3 appear likely to remain in place for the foreseeable future, parties interested in the extension of product exclusions that are not covered by the new process should monitor future announcements by USTR.

USTR's *Federal Register* notice is available **here**.

Section 232

US Importer Challenges Expansion of Section 232 Duties to "Derivative" Products at US Court of International Trade

On February 4, 2020, PrimeSource Building Products, Inc., a US importer of steel nails, filed a complaint with the US Court of International Trade (CIT) challenging the Trump administration's recent expansion of Section 232 duties to "derivative" steel and aluminum products and requesting that the court enjoin the new tariffs' implementation later this week.

The "derivative" steel and aluminium products listed in President Trump's January 24, 2020 Proclamation – which include certain steel nails, aluminum wire and cable, and motor vehicle components – will be subject to Section 232 duties of 25 and 10 percent, respectively, when entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on February 8, 2020. Blanket exemptions apply to "derivatives" imports that originate from a country that already is exempt from Section 232 duties (*i.e.*, Argentina, Australia, Brazil, Canada, Mexico, and South Korea).

PrimeSource's CIT complaint alleges that:

(1) The US Department of Commerce bypassed required investigative and consultative steps under the Administrative Procedures Act, and failed to provide a reasoned explanation for its action;

(2) Section 232 mandates a 90-day window within which the President must determine whether to take action against "imports of the {subject} article and its derivatives"; because the Proclamation was issued 653 days after the window closed, the timing of the Proclamation violates the statute;

(3) By failing to provide parties with notice and an opportunity to comment before issuing the Proclamation, the President violated PrimeSource's due process rights protected under the Fifth Amendment; and

(4) Section 232 is itself unconstitutional because it represents an unlawful delegation of legislative authority from Congress to the President.

PrimeSource requests that the CIT (1) enjoin the implementation or enforcement of the Proclamation; (2) find the Proclamation to be unlawful; and (3) refund any duties paid by PrimeSource under the Proclamation.

In addition to the complaint, PrimeSource filed a motion for a temporary restraining order (TRO) to prevent the Proclamation from taking effect while the case proceeds. The CIT is likely to set an expedited schedule to hear arguments regarding the TRO. The standard for issuing a TRO is high, and while Courts are typically disinclined to grant them, an initial determination one way or the other should be made soon.

Outlook

As noted in our January 28 alert, it was likely that an interested party such as a US importer of derivative steel and aluminum products would bring a legal challenge to the Proclamation, particularly given the CIT's recent preliminary opinion in *Transpacific Steel LLC v. United States*. The CIT in *Transpacific* cast doubt on the President's legal authority to modify significantly import restrictions imposed under Section 232 once they have been decided and the statutory deadlines for imposing such restrictions have passed. Given this preliminary opinion, the CIT could enjoin implementation of the new Proclamation, thus preventing the new duties from being collected. However, the timing of any CIT action in this case is unclear at this time.

PrimeSource's CIT complaint is attached. The Proclamation can be viewed **here**.

Update on Section 232 Action Concerning "Derivative" Steel and Aluminum Products

There have been two noteworthy developments in the past week concerning the Section 232 tariffs imposed on imports of "derivative" steel and aluminum products as of February 8, 2020, pursuant to President Trump's January 24 Proclamation on Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles into the United States:

Temporary Restraining Order Issued by CIT

The US Court of International Trade (CIT) on February 13 issued a temporary restraining order (TRO) enjoining US Customs and Border Protection (CBP) from collecting the additional tariffs imposed by the Proclamation on entries filed by plaintiff PrimeSource Building Products Inc. ("PrimeSource"), a US importer of steel nails. PrimeSource on February 4 filed a complaint with the CIT alleging that the Proclamation's expansion of the Section 232 duties to derivative products is unlawful, and on the same day the company filed a motion for a TRO to prevent the Proclamation from taking effect during the pendency of the case. However, following discussions with the Trump administration, PrimeSource agreed to narrow its request, and instead sought a TRO to prohibit the collection of the duties only with respect to the company's own imports of the covered derivative products. The CIT approved this narrower request, and CBP therefore will continue to collect Section 232 duties on all imports of the covered derivative products except for those entered by PrimeSource. This outcome, however, may prompt other importers of the covered derivative products to file similar requests at the CIT. A copy of the order is attached.

HTSUS Modifications Announced by CBP

CBP on February 14 announced modifications to the Harmonized Tariff Schedule of the United States (HTSUS) that further clarify the scope of the Section 232 measures on "derivative" goods. Specifically, CBP announced that the Interagency Committee for Statistical Annotation of Tariff Schedules has created new 10-digit statistical reporting numbers within two of the HTSUS subheadings referenced in the Proclamation (8708.10.30 and 8708.29.21) "in order to assist [CBP] with the administration" of the new duties. Previously, the January 24 Proclamation indicated, but did not expressly state, that only certain products classified within these 8-digit subheadings would be subject to the additional duties. The Proclamation described the covered products as follows:

- "Bumper stampings of steel, the foregoing comprising parts and accessories of the motor vehicles of headings 8701 to 8705 (described in subheading 8708.10.30)";
- "Bumper stampings of aluminum, the foregoing comprising parts and accessories of the motor vehicles of headings 8701 to 8705 (described in subheading 8708.10.30)";
- "Body stampings of steel, for tractors suitable for agricultural use (described in subheading 8708.29.21)";
- "Body stampings of aluminum, for tractors suitable for agricultural use (described in subheading 8708.29.21)"

The above language created some confusion as to whether the duties would apply only to the described products, or to the wider range of products covered by HTSUS subheadings 8708.10.30 ("Bumpers") and 8708.29.21 ("Body stampings for tractors suitable for agricultural use"). However, subsequent revisions to Chapter 99 of the HTSUS indicated that only the former would be covered, and the new 10-digit statistical reporting numbers within Chapter 87 (shown below) distinguish between the derivative products described in the Proclamation and all other products classified within the relevant 8-digit subheadings. The creation of new statistical reporting numbers specifically for steel and aluminum products provides further confirmation that the new Section 232 duties on derivative goods apply only to the product descriptions set forth in the Proclamation, and not to the broader 8-digit subheadings referenced therein.

Changes to the HTS for February 8, 2020

HTS Heading/ Subheading	Stat Suffix	Article description	Unit of Quantity
[8708		Parts and accessories of the motor vehicles of headings 8701 to 8705:	
8708.10		Bumpers and parts thereof:	
8708.10.30		Bumpers..]	
		"Stampings:	
	20	Of steel	No.
	30	Of aluminum..	No.
	40	Other	No."
	[50	Other..	No.
		* * *	
		Other parts and accessories of bodies (including cabs):	
		* * *	
8708.29		Other:	
		* * *	
		Body stampings:	
8708.29.21		For tractors suitable for agricultural use..................................]	
	"20	Of steel	No.
	30	Of aluminum..	No.
	40	Other	No."

Note: Changes are indicated in this table by the use of quotation marks (" "); brackets ([]) denote unchanged tariff nomenclature.

The ITC's announcement concerning the above HTSUS modifications is available **here**.

US Court of International Trade Cases Concerning Section 232 "Derivatives" Tariffs

The Trump administration's Section 232 action on "derivative" steel and aluminum products has drawn several new legal challenges in recent weeks, some of which may result in additional importers being excluded from the new duties pursuant to temporary restraining orders (TROs) while the cases proceed. As we have reported to you previously, plaintiff PrimeSource Building Products Inc. ("PrimeSource"), a US importer of steel nails, challenged the Section 232 action on derivative goods at the US Court of International Trade (CIT) in early February, and the CIT issued a TRO enjoining US Customs and Border Protection (CBP) from collecting the additional tariffs on derivative goods imported by PrimeSource during the pendency of the case. Subsequently, additional importers and foreign manufacturers of covered derivative products have brought similar cases, and the CIT has granted additional TROs, as shown below:

Case	Plaintiff	TRO
PrimeSource Building Products, Inc. v. United States et al, Docket No. 1:20-cv-00032	US importer of steel nails	TRO granted on February 13
Oman Fasteners, LLC v. United States, Docket No. 1:20-cv-00037	Omani producer/exporter of steel nails	TRO granted on February 21
Huttig Building Products, Inc. et al v. United States et al, Docket No. 1:20-cv-00045	US importer of steel nails and staples	Not yet granted
Trinity Steel Private Limited v. United States et al, Docket No. 1:20-cv-00047	Sri Lankan producer/exporter of steel nails	Not yet granted

Astrotech Steels Private Limited v. United States et al, Docket No. 1:20-cv-00046	Indian producer/exporter of steel nails	Not yet granted
New Supplies Co., Inc et al v. United States, Docket No. 1:20-cv-00048	US importers of steel nails and staples	Not yet granted
Aslanbas Nail and Wire Co. et al v. United States et al, Docket No. 1:20-cv-00049	Turkish and Lithuanian producers/exporters of steel nails	Not yet granted

The legal arguments presented by the above plaintiffs generally mirror those presented by PrimeSource, i.e., (1) that the Proclamation is unlawful because it was issued long after the 90-day deadline for the President's decision in the investigation, and because the Commerce Department and the President bypassed required investigative and consultative steps; and (2) that the Section 232 statute itself is an unconstitutional delegation of legislative authority from Congress to the Executive Branch. In each case, the plaintiffs cited to the CIT's recent preliminary opinion in *Transpacific LLC v. United States* to argue that Section 232 does not permit the President to significantly modify import restrictions imposed thereunder once they have been decided and the statutory deadlines have passed, and that the Proclamation on derivative goods is therefore unlawful. A group representing US producers of steel nails (the American Steel Nail Coalition) has filed motions to intervene in several of the pending cases, defending the Proclamation and urging the CIT not to grant TROs while the cases proceed. However, in at least one case (Oman Fasteners LLC v. United States), the CIT has granted a TRO to the plaintiff despite the Coalition's objections.

It appears likely that the CIT will grant additional TROs to some or all of the plaintiffs listed above, and that new complaints will continue to be filed by US importers or foreign producers of derivative products subject to the new duties. It is therefore possible that the Section 232 duties on derivative products will be scaled back significantly while litigation concerning their legality proceeds.

Trade Remedies

US Department of Commerce Publishes Final Rule on Treatment of Alleged "Currency Undervaluation" in Countervailing Duty Proceedings

On February 4, 2020, the US Department of Commerce (DOC) published a final rule establishing a process by which DOC may treat a foreign country's "currency undervaluation" as a countervailable subsidy for purposes of US countervailing duty (CVD) proceedings, thus potentially subjecting imports from that country to remedial duties. The final rule retains the key elements of DOC's proposed rule issued in May 2019 but makes several important changes, some of which may broaden the rule's applicability. The new rule will apply to all segments of countervailing duty proceedings initiated on or after April 6, 2020, and will likely prompt domestic petitioners to include new subsidy allegations of currency undervaluation in future CVD petitions or administrative reviews. Although China has historically been a target of US currency/CVD proposals, the yuan has lately been considered fairly-valued, and the new DOC rule could result in increased duties on imports from several countries. Regardless of the target country, however, any such measures would likely face legal challenges both in US courts and at the World Trade Organization. An overview of the final rule is provided below.

Background and Overview of the Final Rule

Under both US law and the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement), a subsidy is defined as (1) a financial contribution (*e.g.*, a grant or loan) (2) by a government or "public body," or by a private body entrusted or directed by the government; (3) that confers a benefit on the recipient. A subsidy is countervailable where it is "specific" (*i.e.*, where it is limited to an enterprise or industry, group of enterprises/industries, or a region; or where it is a prohibited export subsidy or import substitution subsidy). An affirmative DOC final determination on countervailable subsidies will result in CVDs on subject imports where those goods are also found by the US International Trade Commission (ITC) to have caused (or threatened to cause) material injury to the domestic industry producing the same product.

DOC's final rule acknowledges that neither US law nor DOC's existing regulations specify how to determine the existence of a benefit or specificity when DOC is examining a potential subsidy resulting from the exchange of currency. DOC therefore has determined to address this issue by modifying two of its regulations pertaining to the determination of benefit and specificity in US CVD proceedings. However, the final rule does not specify the types of actions that DOC would find to constitute the requisite financial contribution, and DOC has declined to elaborate on this issue in its response to public comments on the proposed rule. We discuss these issues in greater detail below.

Financial Contribution

The final rule does not specify the circumstances in which DOC would find that currency undervaluation constitutes a financial contribution, nor does it explain how DOC will determine whether such a financial contribution has been provided by an "authority" (*i.e.*, a government or public body) or by a private entity "entrusted or directed" by the government. However, DOC's responses to various comments on the final rule do provide some guidance:

- First, DOC's statements indicate that the agency's financial contribution determination will be based on an investigated exporter's receipt of domestic currency in exchange for US dollars earned on export transactions. In particular, DOC reiterated the view it expressed in the preamble to the proposed rule that "[t]he receipt of domestic currency from an authority (or an entity entrusted or directed by an authority) in exchange for U.S. dollars could constitute the financial contribution under section 771(5)(D) of the Act." DOC further indicated that it would treat such an exchange as a "direct transfer of funds" under Section 771(5)(D)(i).
- Second, DOC also explained that it would only determine in subsequent proceedings whether an entity that is not a "government" (*e.g.*, a private bank) has provided a currency-related financial contribution. In this regard,

commenters had requested official interpretations of the statutory terms "authority" (public body) and "entrusts or directs," but DOC expressly declined to elaborate and instead stated that "that these issues are more appropriately raised in the context of an actual CVD proceeding." DOC did emphasize, however, that it will "examine entrustment or direction on a case-by-case basis" and "enforce this provision vigorously," and that the statutory language could encompass a "broad range of meanings." This suggests that DOC could find a financial contribution even where the currency exchanges under investigation are carried out by two private parties in a market economy country.

Benefit

DOC in the final rule elaborated on the methodology it will "normally" use to determine whether a currency undervaluation confers a "benefit" on the exporter under investigation, as well as the amount of any such benefit. The proposed rule stated only that, in determining whether a benefit is conferred when a firm exchanges US dollars for the domestic currency of a country under a unified exchange rate system, DOC (1) "normally will consider a benefit to be conferred when the domestic currency of the country is undervalued in relation to the United States dollar"; and (2) will request that the Treasury Department evaluate whether the currency of a country is undervalued. The final rule expands on DOC's new methodology and adopts a "two-step approach" for determining benefit:

- First, the final rule specifies that, in determining whether a country's currency is undervalued, DOC "*normally* will take into account the gap between the country's real effective exchange rate (REER) and the real effective exchange rate that achieves an external balance over the medium term that reflects appropriate policies (equilibrium REER)" (emphasis added). In addition, the rule now states that DOC (1) "*normally*" will find the existence of a benefit "only if there has been government action on the exchange rate that contributes to an undervaluation of the currency"; and (2) will not "*normally*" include monetary and related credit policy of an independent central bank or monetary authority in assessing whether there has been such government action (emphasis added).
- Second, the rule now specifies that, where DOC has found a country's currency to be undervalued, it "*normally*" will determine the existence of a benefit "after examining the difference between" (1) the nominal, bilateral United States dollar rate consistent with the equilibrium REER; and (2) the actual nominal, bilateral United States dollar rate during the relevant time period, taking into account any information regarding the impact of government action on the exchange rate (emphasis added). Where such a difference exists, the amount of the benefit from a currency exchange "*normally*" will be based on the difference between the amount of currency the firm received in exchange for United States dollars and the amount of currency that firm would have received absent the difference (emphasis added).

DOC's responses to public comments on the proposed rule provide limited insight into its likely approach to determining a currency undervaluation benefit. For example, in expressly rejecting claims that, under its methodology, "X percent undervaluation" will necessarily lead to "X percent duty", DOC made clear that the calculation of benefit to a particular firm will "be firm specific" and based on exporters' questionnaire responses. Thus, final CVD rates may be less than the rate of a currency's overall undervaluation and could vary substantially among exporters depending on their reported currency exchange transactions during the period of investigation. DOC also established that it will not consider whether and to what extent an undervalued exchange rate increases a respondent exporter's costs (*e.g.*, for imported raw materials and equipment), thereby reducing the total benefit that the exporter allegedly received on its export transactions. According to DOC, such an "offset" is not contemplated by the CVD statute, and thus was not included in the rule.

Finally, DOC elaborated on the process by which the US Treasury will provide its input in any future CVD proceeding on currency undervaluation, as required under the new rule (19 C.F.R. § 351.528(c)). In particular, DOC will (1)

request and expect to receive Treasury's evaluation and conclusion as to undervaluation, government action and the bilateral U.S. dollar rate gap; and (2) place Treasury's evaluation and conclusion on the record and allow the submission of factual information to rebut, clarify or correct Treasury's evaluation and conclusion, as required by 19 C.F.R. § 351.301(c)(4).

These comments provide some additional clarity on DOC's likely approach to identifying currency undervaluation and calculating any resulting benefit to exporters, but significant ambiguities remain. For example—

- As shown above and noted by DOC in response to public comments, because the final rule provides only that DOC "normally" will follow the stated methodologies, DOC has retained discretion to use alternative methodologies and evidence that might be less advantageous towards exporters or contradict the views of the IMF or other widely-accepted currency assessments;
- While DOC states that it normally will find a benefit only where "government action on the exchange rate" has occurred, the agency has provided no further guidance on this term, stating instead that "the scope of government action under this final rule will necessarily become more clear as Commerce considers a range of government actions over time and the institutional settings in which they are undertaken";
- Relatedly, DOC has not clarified whether the type of devaluation matters. The agency recognizes that Treasury is charged with examining whether a country manipulates its exchange rate "for purposes of preventing effective balance of payments adjustments or granting unfair competitive advantage in international trade," implying a requirement of intentionality. DOC, on the other hand, expressly states that "a determination that the foreign subsidizing government is intending to provide... a competitive advantage... or to otherwise manipulate the playing field, is not a required element of a CVD determination under US law." Thus, there would seem to be an unresolved tension between the agencies' respective currency mandates and when government intent should be considered. This issue is far from abstract: for example, would DOC's final rule treat a country that devalues its currency in response to an economic crisis the same as one that engages in intentional, competitive devaluation?
- The rule does not specify whether DOC's calculations will take into account an exporter's US-based exchange transactions only or, alternatively, all of the exporter's exchange transactions (which could increase the amount of any benefit found to exist);
- DOC in response to public comments also held out the possibility that it will expand its approach to calculating benefit in the future by taking into account conversions of all currencies (not just the U.S. dollar) into the domestic currency. DOC states that it does not plan to take this approach "at this time", given the agency's lack of experience with determining the benefit from exchanges of currency, but also notes that "[o]nce Commerce gains more experience in investigating and analyzing this type of subsidy, there may come a time to adopt" such an approach;
- Although DOC stated that it will "defer to Treasury's expertise with respect to currency undervaluation," DOC "will not delegate to Treasury the ultimate determination of whether currency undervaluation involves a countervailable subsidy in a given case." As such, the agency "will normally follow Treasury's evaluation and conclusion regarding undervaluation," but can depart from Treasury's evaluation and conclusion based on substantial evidence on the administrative record. DOC expressly refused to describe in detail when such a "departure" will occur.

DOC's decision on each of these issues could have a substantial effect on the agency's benefit determinations and the magnitude of final duty rates based thereon.

Specificity

The final rule amends DOC's regulations regarding the specificity of domestic subsides (19 C.F.R. § 351.502) to provide that "[i]n determining whether a subsidy is being provided to a 'group' of enterprises or industries within the meaning of section 771(5A)(D) of the [the Tariff Act], the Secretary normally will consider enterprises that buy or sell goods internationally to comprise such a group." In defending its approach, DOC indicated that its determination of whether a currency subsidy is specific would occur pursuant to section 771(5A)(D)(iii) of the Act, which addresses *de facto* specificity. In response to public comments, DOC explained that "under this regulation, if a subsidy is limited to enterprises that buy or sell goods internationally, or if enterprises that buy or sell goods internationally are the predominant users or receive disproportionately large amounts of a subsidy, then that subsidy may be specific."

This change arguably represents an expansion of the number of sectors and subsidy recipients that would permit DOC to find *de facto* specificity, *i.e.*, that it may consider to constitute a "group" under the specificity provisions of US CVD law (section 771(5A)(D)). For example, some commenters cited to previous CVD investigations of aluminum extrusions and coated paper to illustrate that treating all exporters as a "group" for purposes of specificity for domestic subsidies (as opposed to export subsidies, which are *per se* specific) is contrary to DOC's past practice. A "group" that includes all exporters *and* importers would arguably be even broader. While DOC appears to acknowledge this shift in practice (by noting that "it is a fundamental principle of administrative law that an agency is allowed to change its practice, provided the change is reasonable and explained"), the agency maintains that (1) its new approach is consistent with US law; and (2) "because U.S. law is consistent with our international obligations", the new approach is also consistent with WTO rules.

Notably, the final rule adopts an even broader interpretation of the term "group" than that which DOC included in its proposed rule. DOC initially proposed that it would consider "enterprises that *primarily* buy or sell goods internationally" to comprise a group (emphasis added), but has omitted the term "primarily" from the final rule in response to public comments. Thus, under the final rule, DOC potentially could find a subsidy resulting from currency undervaluation to be specific to the traded goods sector of an economy even where it is available to enterprises that engage in international trade to a lesser degree.

Outlook

DOC's final rule will apply to all segments of CVD cases initiated on or after April 6, 2020, and it is likely that US petitioners will begin to utilize the rule shortly thereafter in both new CVD investigations and administrative reviews of CVD orders now in force. Given the significant ambiguities in DOC's final rule, particularly with respect to the agency's determination of financial contribution and benefit, these initial proceedings will be critical in terms of clarifying DOC's practice with respect to treating currency undervaluation as a countervailable subsidy.

These early cases will also likely indicate the range of countries potentially subject to future currency/CVD allegations. Under one approach, for example, DOC could limit its inquiries to "non-market economy" countries or those with a substantial state-owned banking sector. On the other hand, DOC's reach could be much broader. For example, the IMF's most recent annual assessment found multiple countries to have negative REER gaps in 2018, which, according to the IMF, implies an undervalued exchange rate (as shown in the table below).[17] The Treasury

[17] See *2019 External Sector Report,* International Monetary Fund (July 2019) at p.1. Available at **https://www.imf.org/~/media/Files/Publications/ESR/2019/English/text.ashx?la=en**. The External Sector Report provides two separate assessments of a country's REER gap: one based on IMF staff assessments, and another based on the IMF's External Balance Approach (EBA). We present here the figures resulting from the IMF staff assessments, which are the figures cited by the US Treasury Department in its most recent annual report to Congress on the foreign exchange practices of US trading partners.

Department has relied on these IMF assessments of currency undervaluation in its recent annual reports to Congress on the Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States.[18]

Country	IMF Staff-Assessed REER Gap, 2018 (%)[19]
Argentina	-12.5
China	-1.5
Euro Area	-3.0
Germany	-13.0
Indonesia	-4.0
Japan	-1.5
Korea	-4.0
Malaysia	-5.0
Mexico	-6.0
Netherlands	-8.6
Poland	-2.5
Russia	-6.0
Singapore	-8.2
Sweden	-10.0
Switzerland	-2.8
Thailand	-8.5
Turkey	-15.0

Source: IMF External Sector Report, July 2019, Table 1.7

DOC's treatment of ambiguous provisions – for example on "entrustment or direction" or "government action" – will likely determine whether exporters in these countries have received countervailable subsidies under the final rule.

Finally, it is highly likely that one or more of DOC's initial currency undervaluation determinations, as well as the final rule itself, will face legal challenge before the US Court of International Trade or the WTO's Dispute Settlement Body. For example, DOC's final rule expands upon or changes outright past agency practice on the treatment of currency policy under US CVD law, and Congress repeatedly considered and rejected legislation to amend the law so that DOC could act. Plaintiffs might therefore argue, as some public comments did, that DOC lacked the statutory authority to alter its approach without congressional action. Furthermore, the final rule could permit interpretations of financial contribution, benefit and *de facto* specificity that many legal experts have long argued are inconsistent with the SCM Agreement. However, whether and to what extent such legal challenges – as well as diplomatic complaints from US trading partners – emerge may depend on the countries targeted by future currency undervaluation allegations and any CVDs resulting therefrom.

[18] See *Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States*, US Department of the Treasury, Office of International Affairs (January 2020) at p.17. Available at **https://home.treasury.gov/system/files/136/20200113-Jan-2020-FX-Report-FINAL.pdf**.

[19] The figures shown above represent the midpoint of the IMF's staff-assessed REER gaps (which are presented in ranges). The Treasury Department similarly used the midpoint figures in its biannual report to Congress.

The final rule is available **here**.

USTR Revises List of Developing Countries Eligible for Special De Minimis and Negligibility Thresholds Under US Countervailing Duty Law

On February 10, 2020, the Office of the US Trade Representative (USTR) published a notice in the Federal Register modifying the list of developing countries that are entitled to special *de minimis* and "negligibility" thresholds under the US countervailing duty (CVD) statute. Among other modifications, USTR has removed from the list several WTO Member countries, including Brazil, India, and Indonesia, that frequently have been the subject of US CVD petitions and proceedings. USTR's stated rationale for removing these and other countries from the list reflects the Trump administration's broader position, emphasized in recent WTO proposals, that Members should not benefit from developing country treatment under WTO rules if they account for a significant share of world trade or participate in international organizations such as the OECD or the G20, even if such Members do not qualify as "high-income" countries under the World Bank's criteria. However, USTR's latest policy change does not have any direct legal effect beyond the specific *de minimis* and negligibility provisions of US CVD law.

We provide an overview of the changes and their implications below.

Background

Under the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement), WTO Members that have not yet reached the status of a developed country are entitled to special treatment for purposes of countervailing duty proceedings. Specifically, imports from such Members are subject to more generous thresholds for purposes of determining whether countervailable subsidies are *de minimis* and whether import volumes are negligible. Where an investigating authority determines that countervailable subsidies provided by a country are *de minimis* or that import volumes from a country are negligible, it is required to terminate the CVD investigation with respect to such country. The specific standards set forth in the SCM Agreement are as follows:

- ***De minimis* thresholds.** Article 11.9 of the SCM Agreement provides that a CVD investigation must be terminated immediately in cases where the amount of a subsidy is *de minimis,* defined as less than 1 percent *ad valorem*. However, Article 27.10(a) provides that a CVD investigation of a product originating in a developing country Member must be terminated where the overall level of subsidies granted upon the product in question does not exceed 2 percent of its value, calculated on a per unit basis. (WTO Members identified as least-developed countries (LDCs) previously were subject to a higher *de minimis* threshold of 3 percent pursuant to Article 27.11, but this provision expired eight years after the entry into force of the WTO Agreement, and LDCs are now subject to the same 2 percent threshold as other developing countries.) These *de minimis* standards were incorporated into US law in Section 703(b)(4)(B)-(D) of the Tariff Act (19 U.S.C. 1671b(b)(4)(B)-(D)).

- **Negligibility.** Under Article 11.9 of the SCM Agreement, a CVD investigation must be terminated immediately in cases where "the volume of subsidized imports, actual or potential, or the injury, is negligible." Article 27.10(b) specifies that that a CVD investigation of a product originating in a developing country Member must be terminated where the volume of the subsidized imports represents less than 4 percent of the total imports of the like product in the importing Member (unless imports from developing country Members whose individual shares of total imports represent less than 4 percent collectively account for more than 9 percent of the total imports of the like product in the importing Member). The SCM Agreement does not establish a specific negligibility threshold for CVD investigations involving developed country Members, but US law applies the same negligibility threshold to such investigations as is provided for in Article 5.8 of the Anti-Dumping Agreement (*i.e.*, imports from a country are negligible where they account for less than 3 percent of total imports of the product in question, unless the countries that individually account for less than 3 percent of

imports collectively account for more than 7 percent of total imports of the product in question). The negligibility thresholds for developed and developing country Members were incorporated into US law in section 771(24)(B) of the Tariff Act (19 U.S.C. 1677(24)(B)).

Though these provisions of the SCM Agreement afford special treatment to "developing country Members," the WTO does not define or maintain an official list of such countries. The common practice has been for WTO Members to self-declare their developing country status, but that practice is not enshrined in any WTO rule or Agreement. Moreover, in the Uruguay Round Agreements Act (URAA), which implemented the WTO Agreements into US law, Congress incorporated the above standards into the US CVD statute but delegated to USTR the responsibility for designating those WTO Members whose imports are subject to the special standards for developing countries.[20] Accordingly, USTR in 1998 published an interim final rule identifying the countries that would be eligible for the special *de minimis* and negligibility standards under the CVD law.[21] In making the designations, USTR relied on data on per capita gross national product (GNP), certain social development indicators monitored by the World Bank, and on global trade data.

Modification of Developing and Least-Developed Countries Lists

In its Federal Register notice, USTR states that it is revising the lists of developing and least-developed countries set forth in the 1998 rule, and is removing the 1998 rule, "because it is now obsolete." In revising the lists, USTR took into account the following factors: (1) per capita gross national income (GNI), (2) share of world trade, and (3) other factors such as Organization for Economic Co-operation and Development (OECD) membership or application for membership, European Union (EU) membership, and Group of Twenty (G20) membership. These criteria generally mirror a WTO proposal tabled by the United States in February 2019, which argued that any country should relinquish its developing country status in current and future WTO negotiations if it is an OECD or G20 member, is classified as a "high income" country by the World Bank, or has a share of no less than 0.5% of global merchandise trade.

With respect to GNI, USTR has relied on the World Bank threshold separating "high income" countries from those with lower per capita GNIs. Thus, WTO Members with a per capita GNI below $12,375 were generally treated as eligible for the 2 percent *de minimis* standard. However, USTR determined to revoke the eligibility of certain Members based on additional factors described below, notwithstanding the fact that their per capita GNI fell below $12,375:

- **Share of world trade.** Whereas USTR in the 1998 rule considered Members to be developed countries if they accounted for 2 percent or more of world trade, USTR "now considers 0.5 percent to be a more appropriate indicator of a 'significant' share of world trade," and will consider any country exceeding this threshold to be "developed" for purposes of the CVD law. Thus, Brazil, India, Indonesia, Malaysia, Thailand, and Vietnam are ineligible for the 2 percent *de minimis* standard.

- **OECD status.** Although the 1998 rule considered OECD membership only, USTR now considers that "the act of applying to the OECD, in addition to joining," indicates that a country is developed. Thus, Colombia and Costa Rica are ineligible for the 2 percent *de minimis* standard.

- **G20 membership.** USTR's 1998 rule predated the formation of the G20, and USTR therefore did not consider G20 membership in forming the initial lists of developing countries. However, "[g]iven the global economic

[20] See Section 771(36) of the Tariff Act of 1930, as amended (19 U.S.C. 1677(36)).

[21] See 63 FR 29945.

significance of the G20," USTR now considers that G20 membership indicates that a country is developed. Thus, Argentina, Brazil, India, Indonesia, and South Africa are ineligible for the 2 percent *de minimis* standard.

- **Self-declarations.** USTR also now considers that "if a country considers itself a developed country, or has not declared itself a developing country in its accession to the WTO, it should not be considered a developing country for purposes of the SCM Agreement." Therefore, Albania, Armenia, Georgia, Kazakhstan, the Kyrgyz Republic, Moldova, Montenegro, North Macedonia, and Ukraine are ineligible for the 2 percent *de minimis* standard.
- **EU membership.** USTR now considers that "[b]ecause the EU is ineligible for the 2 percent *de minimis* standard, it would be anomalous to treat an individual EU Member as eligible for that standard." Accordingly, for purposes of US CVD law, USTR now considers all EU Member States to be developed countries. Thus, Bulgaria and Romania are ineligible for the 2 percent *de minimis* standard.

As a result of these and other modifications to the lists, only the WTO Members listed below will eligible for a *de minimis* standard of 2 percent and a negligible import standard of 4 percent under the US CVD law as of February 10, 2020. As noted above, the distinction between developing and least-developed countries no longer matters for purposes of the *de minimis* threshold, as both are eligible for the same 2 percent rate, but USTR has continued to identify them separately "for clarity and consistent with section 771(36) of [the Tariff Act.]"

Least-Developed Countries	Developing Countries
Afghanistan	Bolivia
Angola	Botswana
Bangladesh	Cabo Verde
Benin	Cameroon
Burkina Faso	Cuba
Burundi	Dominica
Cambodia	Dominican Republic
Central African Republic	Ecuador
Chad	Egypt
Côte d'Ivoire	El Salvador
Democratic Republic of the Congo	Eswatini
Djibouti	Fiji
Gambia	Gabón
Ghana	Grenada
Guinea	Guatemala
Guinea-Bissau	Guyana
Haiti	Jamaica
Honduras	Jordan
Kenya	Maldives
Lao People's Democratic Republic	Mauritius
Lesotho	Mongolia
Liberia	Morocco
Madagascar	Namibia
Malawi	Papua New Guinea
Mali	Paraguay
Mauritania	Peru
Mozambique	Philippines
Myanmar	St. Lucia
Nepal	St. Vincent & Grenadines
Nicaragua	Samoa
Niger	Sri Lanka
Nigeria	Suriname
Pakistan	Tajikistan
Rwanda	Tonga
Senegal	Tunisia
Sierra Leone	Venezuela
Solomon Islands	
Tanzania	
Togo	
Uganda	
Vanuatu	
Yemen	
Zambia	
Zimbabwe	

Outlook

The changes announced by USTR will make certain WTO Members more susceptible to US CVD investigations and final measures on their imports. However, the practical effect of these changes may not be significant given that (1) relatively few CVD proceedings are terminated on the basis of *de minimis* subsidies or negligible imports; and (2) the differences between the developed and developing country thresholds for *de minimis* subsidies and negligibility are relatively small. Moreover, as USTR has emphasized in its Federal Register notice, the revised country designations are relevant only for purposes of the US CVD law, and the URAA expressly states that such designations "shall not affect the determination of a country's status as a developing or least developed country with respect to any other law" (*e.g.*, those pertaining to the Generalized System of Preferences and other trade preference programs). On the other hand, USTR's latest decision is part of the Trump administration's broader effort to seek more "reciprocal" trading arrangements with developing countries that account for a significant share of global trade, including by pressuring such countries to relinquish their developing country status under the WTO Agreements and in ongoing negotiations, and by partially or fully restricting their access to US trade preference programs. These broader efforts are likely to continue, and may even intensify, in the lead up to the 2020 election.

USTR's Federal Register notice is available **here**.

Petitions and Investigations

US Department of Commerce Issues Affirmative Preliminary Determinations in Antidumping Investigations of Utility Scale Wind Towers from Canada, Indonesia, Korea, and Vietnam

On February 5, 2020, the US Department of Commerce (DOC) announced its affirmative preliminary determinations in the antidumping duty (AD) investigations of imports of Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam. In its investigations, DOC preliminarily determined that imports of the subject merchandise were sold in the United States at the following dumping margins:

Country	Dumping Margin
Canada	5.04%
Indonesia	6.38%
Korea	5.98%
Vietnam	65.96%

The merchandise covered by the scope of these investigations consists of certain wind towers, whether or not tapered, and sections thereof. 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).

DOC is scheduled to announce its final determination for Vietnam on or about April 21, 2020. DOC is scheduled to announce its final determinations for Canada, Indonesia, and Korea on June 26, 2020. If DOC makes an affirmative final determination, and the US International Trade Commission (ITC) makes an affirmative final determination that imports of utility scale wind towers from Canada, Indonesia, Korea, and/or Vietnam materially injure, or threaten material injury to, the domestic industry, DOC will issue an AD order. If either DOC or the ITC issues a negative final determination, no AD order will be issued. The ITC is scheduled to make its final injury determination approximately 45 days after DOC issues its final determination, if affirmative.

In 2018, imports of utility scale wind towers from Canada, Indonesia, Korea, and Vietnam were valued at an estimated $60.2 million, $37.4 million, $50.0 million, and $21.4 million, respectively, according to DOC.

US Department of Commerce Initiates Antidumping Duty and Countervailing Duty Investigations of Imports of Vertical Shaft Engines Between 225cc and 999cc and Parts Thereof from China

On February 5, 2020, the US Department of Commerce (DOC) announced the initiation of antidumping duty (AD) and countervailing duty (CVD) investigations of imports of vertical shaft engines between 225cc and 999cc and parts thereof (vertical shaft engines) from China. The petitioner is the Coalition of American Vertical Engine Producers, whose members are Kohler Co. (Kohler, WI) and Briggs & Stratton Corporation (Wauwatosa, WI). The dumping margins alleged in the petition range from 324.73 to 637.73 percent.

The merchandise covered by this investigation consists of spark-ignited, non-road, vertical shaft engines, whether finished or unfinished, whether assembled or unassembled, primarily for riding lawn mowers and zero-tum radius lawn mowers. The engines subject to this investigation are typically classified in the Harmonized Tariff Schedule of

the United States (HTSUS) at subheadings: 8407.90.1020, 8407.90.1060, and 8407.90.1080. The engine subassemblies that are subject to this investigation enter under HTSUS 8409.91.9990. Engines subject to this investigation may also enter under HTSUS 8407.90.9060 and 8407.90.9080.

The US International Trade Commission (ITC) on February 28 determined that there is a reasonable indication that a US industry is materially injured by reason of imports of vertical shaft engines from China. As a result of the ITC's affirmative determinations, DOC will continue with its antidumping and countervailing duty investigations concerning imports of these products from China, with its preliminary countervailing duty determination due on or about April 9, 2020, and its preliminary antidumping duty determination due on or about June 23, 2020.

In 2018, imports of vertical shaft engines from China were valued at an estimated $53 million, according to DOC.

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

On February 10, 2020, the US Department of Commerce (DOC) announced its affirmative final determinations in the antidumping duty (AD) and countervailing duty (CVD) investigations of imports of carbon and alloy steel threaded rod from China and India. In its investigations, DOC determined that imports of the subject merchandise from China have been sold in the United States at the following dumping margins and subsidy rates:

Country	Dumping Margin	Subsidy Rate
China	4.26-59.45%	31.02-66.81%
India	2.47-28.34%	6.07-211.72%

The merchandise covered by 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.

The US International Trade Commission (ITC) is scheduled to make its final determinations in these investigations on or about March 23, 2020. If the ITC makes affirmative final determinations that imports of carbon and alloy steel threaded rod from China and India materially injure, or threaten material injury to, the domestic industry, DOC will issue AD and CVD orders. If the ITC makes negative determinations of injury, the investigations will be terminated.

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

US Department of Commerce Issues Affirmative Final Determinations in Antidumping and Countervailing Duty Investigations of Wooden Cabinets and Vanities from China

On February 24, 2020, the US Department of Commerce (DOC) announced its affirmative final determinations in the antidumping duty (AD) and countervailing duty (CVD) investigations of imports of wooden cabinets and vanities from China. In its investigations, DOC determined that imports of the subject merchandise from China (1) were sold in the United States at dumping margins ranging from 4.37 to 262.18 percent; and (2) received countervailable subsidies ranging from 13.33 to 293.45 percent.

The scope of these investigations covers wooden cabinets and vanities that are for permanent installation (including floor mounted, wall mounted, ceiling hung or by attachment of plumbing), and wooden components thereof. Imports of subject merchandise are classified under Harmonized Tariff Schedule of the United States (HTSUS) statistical

numbers 9403.40.9060 and 9403.60.8081. The subject component parts of wooden cabinets and vanities may be entered into the United States under HTSUS statistical number 9403.90.7080.

The US International Trade Commission (ITC) is scheduled to make its final determinations on or about April 6, 2020. If the ITC makes affirmative final determinations that imports of wooden cabinets and vanities from China materially injure, or threaten material injury to, the domestic industry, DOC will issue AD and CVD orders. If the ITC makes negative determinations of injury, the investigations will be terminated.

In 2018, imports of wooden cabinets and vanities from China were valued at an estimated $4.4 billion, according to DOC.

US Department of Commerce Issues Affirmative Preliminary Determination in the Countervailing Duty Investigation of Imports of Certain Glass Containers from the People's Republic of China

On February 25, 2020, the US Department of Commerce (DOC) announced its affirmative preliminary determination in the countervailing duty (CVD) investigation of imports of certain glass containers (glass containers) from China. In its investigations, DOC preliminarily determined that imports of the subject merchandise from China received countervailable subsidies ranging from 22.93 to 315.73 percent. As a result of the decision, US Customs and Border Protection (CBP) will collect cash deposits from importers of glass containers from China based on these preliminary rates.

The merchandise covered by these investigations is certain glass containers with a nominal capacity of 0.059 liters (2.0 fluid ounces) up to and including 4.0 liters (135.256 fluid ounces) and an opening or mouth with a nominal outer diameter of 14 millimeters up to and including 120 millimeters. Glass containers subject to this investigation are specified within the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7010.90.5005, 7010.90.5009, 7010.90.5015, 7010.90.5019, 7010.90.5025, 7010.90.5029, 7010.90.5035, 7010.90.5039, 7010.90.5045, 7010.90.5049, and 7010.90.5055.

DOC is scheduled to announce its final determination on or about May 12, 2020, unless the deadline is extended. If DOC makes an affirmative final determination, and the US International Trade Commission (ITC) makes an affirmative final determination that imports of glass containers from China materially injure, or threaten material injury to, the domestic industry, DOC will issue a CVD order. If either determination is negative, no CVD order will be issued. The ITC is scheduled to make its final injury determination approximately 45 days after DOC issues its final determination, if affirmative.

According to DOC, imports of glass containers from China in 2018 were valued at an estimated $370.8 million.

US Department of Commerce Initiates Antidumping and Countervailing Duty Investigations of Imports of Corrosion Inhibitors from China

On February 26, 2020, the US Department of Commerce (Commerce) announced the initiation of antidumping duty (AD) and countervailing duty (CVD) investigations of imports of corrosion inhibitors from China. The petitioner in this investigation is Wincom, Incorporated (Blue Ash, OH), and the dumping margins alleged in the petition range from 384.97 to 420.32 percent.

The merchandise covered by this petition is tolyltriazole and benzotriazole. This includes tolyltriazole and benzotriazole of all grades and forms, including their sodium salt forms. Tolyltriazole is technically known as Tolyltriazole IUPAC 4,5 methyl benzotriazole. It can also be identified as 4, 5 methyl benzotriazole, tolutriazole, TTA, and TTZ. Benzotriazole is technically known as IUPAC 1,2,3-Benzotriazole. It can also be identified as 1,2,3-

Benzotriazole, 1,2-Aminozophenylene, IH-Benzotriazole, and BTA. Sodium Tolyltriazole has the CAS registry number 64665-57-2 and is classified under HTSUS subheading 2933.99.82.90. Benzotriazole has the CAS registry number #95-14-7 and is classified under HTSUS subheading 2933.99.82.10. Sodium Benzotriazole has the CAS registry number 15217-42-2 and is classified under HTSUS subheading 2933.99.82.90.

The US International Trade Commission (ITC) is scheduled to make its preliminary injury determinations on or before March 23, 2020. If the ITC determines that there is a reasonable indication that imports of corrosion inhibitors from China materially injure, or threaten material injury to, the domestic industry, the investigations will continue. DOC will then be scheduled to announce its preliminary CVD determination on May 1, 2020 and its preliminary AD determination on July 15, 2020, although these dates may be extended. If the ITC's determinations are negative, the investigations will be terminated.

In 2019, imports of corrosion inhibitors from China were valued at an estimated $16.3 million, according to DOC.

US Department of Commerce Issues Affirmative Preliminary Determination in Antidumping Investigation of Polyethylene Terephthalate Sheet from Korea and Oman

On February 26, 2020, the US Department of Commerce (DOC) announced its affirmative preliminary determinations in the antidumping duty (AD) investigations of imports of polyethylene terephthalate sheet (PET Sheet) from Korea and Oman. In its investigations, DOC preliminarily determined that imports of the subject merchandise from Korea and Oman were sold in the United States at dumping margins of 8.02 to 52.01 percent and 2.78 percent, respectively. As a result of the preliminary affirmative determinations, US Customs and Border Protection (CBP) will require cash deposits for imports of PET sheet from Korea and Oman based on these preliminary rates.

The merchandise covered by these investigations is raw, pretreated, or primed polyethylene terephthalate sheet, whether extruded or coextruded, in nominal thicknesses of equal to or greater than 7 mil (0.007 inches or 177.8 μm) and not exceeding 45 mil (0.045 inches or 1143 μm) (PET sheet). The merchandise subject to these investigations is classified under statistical reporting number 3920.62.0090 of the Harmonized Tariff Schedule of the United States (HTSUS).

DOC is scheduled to announce its final determinations by July 16, 2020. If DOC makes affirmative final determinations, and the US International Trade Commission (ITC) makes affirmative final determinations that imports of PET sheet from Korea and Oman materially injure, or threaten material injury to, the domestic industry, Commerce will issue AD orders. If either determination is negative, no AD order will be issued. The ITC is scheduled to make its final injury determinations approximately 45 days after DOC issues its final determinations, if affirmative.

According to DOC, imports of PET sheet from Korea and Oman in 2018 were valued at an estimated $90.0 million and $208.3 million, respectively.