US & Multilateral Trade Policy Developments

Japan External Trade Organization

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Contents

US Trade Actions

President Trump Issues Memorandum on Allocating Certain Scarce or Threatened Health and Medical Resources to Domestic Use

On April 3, 2020, President Trump issued a Memorandum on "Allocating Certain Scarce or Threatened Health and Medical Resources to Domestic Use" and an accompanying statement on the implementation of the Memorandum. The Memorandum directs the Secretary of Homeland Security to use authorities under the Defense Production Act to "allocate to domestic use" certain medical supplies, namely personal protective equipment (PPE), as part of a broader policy "[t]o ensure that these scarce or threatened PPE materials remain in the United States for use in responding to the spread of COVID-19." The accompanying statement indicates that the Trump administration will continue to allow exports of PPE where such exports are "in the national interest," but provides little clarity on the specific circumstances in which exports will be permitted. We provide an overview of the Memorandum and the accompanying statement below.

Memorandum on "Scarce or Threatened" Resources

The Memorandum applies to certain PPE materials that the US Department of Health and Human Services has previously designated as "scarce or threatened materials" under Section 102 of the DPA.[1] These materials include the following:

- N-95 Filtering Facepiece Respirators, including devices that are disposable half-face-piece non-powered air-purifying particulate respirators intended for use to cover the nose and mouth of the wearer to help reduce wearer exposure to pathogenic biological airborne particulates;
- Other Filtering Facepiece Respirators (*e.g.,* those designated as N99, N100, R95, R99, R100, or P95, P99, P100), including single-use, disposable half-mask respiratory protective devices that cover the user's airway (nose and mouth) and offer protection from particulate materials at an N95 filtration efficiency level per 42 CFR 84.181;
- Elastomeric, air-purifying respirators and appropriate particulate filters/cartridges;
- PPE surgical masks, including masks that cover the user's nose and mouth and provide a physical barrier to fluids and particulate materials; and
- PPE gloves or surgical gloves, including those defined at 21 CFR 880.6250 (exam gloves) and 878.4460 (surgical gloves) and such gloves intended for the same purposes.

The Memorandum explains that, "to ensure that these scarce or threatened PPE materials remain in the United States for use in responding to the spread of COVID-19, it is the policy of the United States to prevent domestic brokers, distributors, and other intermediaries from diverting such material overseas." Accordingly, the Memorandum directs the Secretary of Homeland Security to "use any and all authority available under section 101 of [the DPA] to allocate to domestic use, as appropriate," the above materials. Section 101 of the DPA (50 U.S.C. 4511) authorizes the President to:

Require that performance under contracts or orders which he deems necessary or appropriate to promote the national defense shall take priority over performance under any other contract or order, and, for the purpose of assuring such priority, to require acceptance and performance of such contracts or orders in preference to other contracts or orders; and

Allocate materials, services, and facilities in such manner, upon such conditions, and to such extent as he shall deem necessary or appropriate to promote the national defense.

The Memorandum does not address the circumstances in which it would be "appropriate" to allocate the covered PPE materials to domestic use, nor does it address the United States' policy with respect to exports of PPE by entities, including the original manufacturers of such items, that do not qualify as "domestic brokers, distributors, and

[1] See US Department of Health and Human Services, *Notice of Designation of Scarce Materials or Threatened Materials Subject to COVID-19 Hoarding Prevention Measures* (85 Fed. Reg. 17592).

other intermediaries." However, the Presidential statement issued alongside the Memorandum indicates that the administration is concerned primarily with the export of PPE by entities other than the original manufacturers. It indicates that the Memorandum is aimed at combating "wartime profiteering by unscrupulous brokers, distributors, and other intermediaries operating in secondary markets," including "a large army of speculators and warehouse operators" and "some well-established PPE distributors with the ability to unscrupulously divert PPE inventories from domestic customers[.]" The statement further claims that, "[n]othing in this order will interfere with the ability of PPE manufacturers to export when doing so is consistent with United States policy and in the national interest of the United States." However, the neither the statement nor the Memorandum elaborate on the circumstances in which exports of PPE will be deemed consistent with US policy and the "national interest."

Outlook

The Memorandum and accompanying statement have generated some uncertainty about whether, and to what extent, the United States intends to restrict exports of the covered PPE materials. For example, the Memorandum suggests that the Trump administration is concerned primarily with the export of PPE by intermediaries operating in secondary markets, but the administration recently has indicated that it will continue to allow certain domestic PPE manufacturers to export supplies to Canada and Latin America – implying that they are covered by the Memorandum. Nevertheless, the administration is likely to continue monitoring the PPE market closely and evaluating on a case-by-case basis whether to exercise its authority under the DPA with respect to particular exports of PPE. As a result, the Memorandum might have the effect of discouraging exports of PPE by US parties. Moreover, the Memorandum might presage broader, more formal restrictions on the export of PPE (which some Members of Congress have proposed) or the extension of the current policy to other medical products that may be in short supply due to the COVID-19 pandemic.

The Memorandum can be viewed **here**, and the accompanying statement can be viewed **here**.

Federal Emergency Management Agency Issues Temporary Final Rule Governing Exports of Personal Protective Equipment

On April 7, 2020, the US Department of Homeland Security, Federal Emergency Management Agency (FEMA) published a temporary final rule to allocate certain "scarce or threatened materials," namely personal protective equipment (PPE), for domestic use, so that these materials "may not be exported from the United States without explicit approval by FEMA." The temporary rule implements President Trump's April 3 Memorandum directing the Secretary of Homeland Security to allocate certain PPE materials for domestic use by exercising the authorities provided in Section 101 of the Defense Production Act (DPA). As President Trump's April 3 statement foreshadowed, the temporary rule exempts export shipments by certain domestic PPE manufacturers and allows FEMA to permit other exports in certain circumstances, though FEMA will have significant discretion in this regard. We provide an overview of the rule and its implications below.

Provisions of the Temporary Final Rule

The temporary final rule contains the following substantive provisions:

- **Scope and duration.** The rule sets forth the FEMA Administrator's determination that the "scarce or threatened" PPE materials identified in the April 3, 2020 Presidential Memorandum "shall be allocated for domestic use, and may not be exported from the United States without explicit approval by FEMA," pursuant to the authorities set forth in the DPA as delegated by the President to FEMA.[2] The rule will take effect on the

[2] The covered materials are as follows:

- N-95 Filtering Facepiece Respirators, including devices that are disposable half-face-piece non-powered air-purifying particulate respirators intended for use to cover the nose and mouth of the wearer to help reduce wearer exposure to pathogenic biological airborne particulates;

date of its publication in the Federal Register and will remain in effect for 120 days. The rule currently is scheduled to be published in the Federal Register on April 10, and thus would remain in effect through August 8, 2020, unless it is modified or extended.

- **Detention of export shipments prior to FEMA determination.** Under the rule, US Customs and Border Protection (CBP) "will notify FEMA of an intended export of covered materials" and "must temporarily detain any shipment of such covered materials," pending the FEMA Administrator's determination whether to (1) return part or all of the shipment for domestic use; (2) issue a "rated order" for part or all of the shipment pursuant to Section 101(a) of the DPA;[3] or (3) allow the export of part or all of the shipment. The rule states that the FEMA Administrator "will make such a determination within a reasonable timeframe," but does not establish any specific deadline for these determinations.

- **Determinations by FEMA.** In determining whether to permit an export shipment, FEMA "will consider the totality of the circumstances, including the following factors":

  1. the need to ensure that scarce or threatened items are appropriately allocated for domestic use;
  2. minimization of disruption to the supply chain, both domestically and abroad;
  3. the circumstances surrounding the distribution of the materials and potential hoarding or price-gouging concerns;
  4. the quantity and quality of the materials;
  5. humanitarian considerations; and
  6. international relations and diplomatic considerations.

- **Exemption for manufacturers with continuous export agreements**. The rule contains an exemption that will "generally allow" the export of covered materials from shipments made by or on behalf of US manufacturers with "continuous export agreements with customers in other countries since at least January 1, 2020, so long as at least 80 percent of such manufacturer's domestic production of such covered materials, on a per item basis, was distributed in the United States in the preceding 12 months." If FEMA determines that a shipment of covered materials falls within this exemption, such materials "may be exported without further review by FEMA," provided that the Administrator may waive the exemption and fully review shipments if necessary or appropriate to promote the national defense. FEMA has indicated that it may develop additional guidance regarding which exports are covered by this exemption, and has encouraged manufacturers to contact FEMA with specific information regarding their status under this exemption.

- Other Filtering Facepiece Respirators (*e.g.,* those designated as N99, N100, R95, R99, R100, or P95, P99, P100), including single-use, disposable half-mask respiratory protective devices that cover the user's airway (nose and mouth) and offer protection from particulate materials at an N95 filtration efficiency level per 42 CFR 84.181;
- Elastomeric, air-purifying respirators and appropriate particulate filters/cartridges;
- PPE surgical masks, including masks that cover the user's nose and mouth and provide a physical barrier to fluids and particulate materials; and
- PPE gloves or surgical gloves, including those defined at 21 CFR 880.6250 (exam gloves) and 878.4460 (surgical gloves) and such gloves intended for the same purposes.

[3] Section 101(a) of the DPA authorizes the President "to require that performance under contracts or orders… which he deems necessary or appropriate to promote the national defense shall take priority over performance under any other contract or order, and, for the purpose of assuring such priority, to require acceptance and performance of such contracts or orders in preference to other contracts or orders by any person he finds to be capable of their performance[.]" A "rated order" is a contract or order placed pursuant to Section 101(a). Pursuant to Section 101(a) and its implementing regulations at 15 C.F.R. Part 700, rated orders "take preference over all unrated orders as necessary to meet required delivery dates" and persons "must accept and fill a rated order for items that the person normally supplies[.]" (15 C.F.R. 700.3(a)-(b)).

- **Investigations, injunctions, and penalties.** The rule provides that the Administrator may exercise the authorities set forth in Section 705 of the DPA to conduct investigations, request information, and perform inspections in order to enforce and administer the new regulations. Where the Administrator determines that any person has engaged or is about to engage in any acts or practices that constitute or will constitute a violation of the rule, the Administrator may exercise the authorities set forth in Section 706 of the DPA, including "applying for a preliminary, permanent, or temporary injunction, restraining order, or other order to enforce compliance[.]" Any person who "willfully engages in violations" of the rule is subject to the penalties available under Section 103 of the DPA, including fines of up to $10,000 or imprisonment for up to one year, or both. The preamble to the rule also cites the penalties available under 18 U.S.C. 554, including up to 10 years' imprisonment and fines, for individuals who engage in export transactions in contravention of US laws and regulations.
- **Possible modifications.** The temporary rule contemplates the potential expansion of the allocation order to include "additional materials," upon a determination under Section 101(b) of the DPA that an additional material is a scarce and critical material essential for national defense, and that being allocated to domestic use is the only way to meet national defense requirements without significant disruption to the domestic markets. The rule also states that the FEMA Administrator may establish, in his discretion, additional exemptions to the temporary rule that he determines are necessary or appropriate to promote the national defense. Any modifications to the rule will be announced in the Federal Register.

Outlook

The temporary final rule provides the general framework that will govern exports of the covered PPE materials from the United States, but leaves FEMA significant discretion to determine on a case-by-case basis whether specific export shipments will be permitted. Though the rule exempts shipments by certain US manufacturers and expressly permits FEMA to weigh countervailing factors when determining whether to restrict exports (including the humanitarian, diplomatic, and economic consequences of such restrictions), the rule's primary objective is clearly to combat domestic shortages of PPE materials, which have been a major concern among US public health officials since the emergence of the COVID-19 pandemic. Thus, while the rule does not amount to a blanket ban on PPE exports from the United States, considerations regarding domestic availability are likely to take precedence over the other factors referenced in the rule, and the rule may therefore have the effect of significantly curtailing PPE exports.

The temporary final rule can be viewed **here**.

US Customs and Border Protection Issues Temporary Final Rule Postponing Deadline for Certain Duty Payments for 90 Days

On April 19, 2020, US Customs and Border Protection (CBP) and the Department of the Treasury published a temporary final rule postponing for 90 days the deadline for importers of record "with a significant financial hardship" to deposit certain estimated duties, taxes, and fees on merchandise entered in March or April 2020. CBP and Treasury issued the rule pursuant to President Trump's Executive Order of April 19, which authorized the Treasury Secretary to take action under Section 318(a) of the Tariff Act to temporarily extend payment deadlines for importers suffering significant financial hardship because of COVID-19. As expected, the postponement of payment deadlines will not apply to antidumping and countervailing duties, or to duties assessed pursuant to Section 232, Section 201, and Section 301 of US trade law. We provide an overview of the temporary final rule below.

Eligibility for Postponement of Payment Deadlines

To qualify for the temporary postponement, an importer must have a "significant financial hardship." An importer will be considered to have a significant financial hardship if it meets the following criteria:

- The operation of such importer "is fully or partially suspended during March or April 2020 due to orders from a competent governmental authority limiting commerce, travel, or group meetings because of COVID-19"; and
- As a result of such suspension, the gross receipts of such importer for March 13-31, 2020 or April 2020 "are less than 60 percent of the gross receipts for the comparable period in 2019."

The temporary final rule states that an eligible importer "need not file additional documentation with CBP to be eligible for this relief but must maintain documentation as part of its books and records establishing that it meets the requirements for relief."

Postponement of Certain Payment Deadlines

CBP's rule temporarily postpones the deadline for importers of record to deposit certain estimated duties, taxes, and fees that they would ordinarily be obligated to pay as of the date of entry, or withdrawal from warehouse, for consumption, for merchandise entered in March or April 2020, for a period of 90 days from the date that the deposit would otherwise have been due. In addition, no interest that would otherwise accrue upon such estimated duties, taxes, and fees will accrue during the 90-day postponement period. This temporary postponement does not permit the return of any deposits of estimated duties, taxes, and/or fees that have been paid.

The temporary postponement also does not apply to deadlines for the payment of other debts to CBP, including but not limited to deadlines for the payment of bills for duties, taxes, fees, and interest determined to be due upon liquidation or reliquidation, deadlines for the payment of fees authorized pursuant to 19 U.S.C. 58c (except for merchandise processing fees and dutiable mail fees), or deadlines for the payment of any penalty or liquidated damages due to CBP.

CBP's rule notes that for some types of entries, the time of entry is contingent (in part) upon the deposit of estimated duties, taxes, and fees (see, *e.g.*, 19 CFR 141.68(b)). In order to "ensure clarity in the application of the temporary postponement vis-à-vis the time of entry," CBP's temporary final rule includes a waiver of the regulatory requirement to deposit estimated duties, taxes, and fees for the purpose of establishing the time of entry in those instances where it would otherwise be required under 19 CFR 141.68. The time of entry can thus be established in the absence of the deposit of estimated duties, taxes, and fees postponed pursuant to the temporary final rule.

Exclusion of Entries Subject to Trade Remedies, Section 232, and Section 301

The temporary postponement does not apply to any entry, or withdrawal from warehouse, for consumption, or any deposit of estimated duties, taxes, or fees for the entry, or withdrawal from warehouse, for consumption, where the entry summary includes any merchandise subject to one or more of the following:

- Antidumping duties (assessed pursuant to 19 U.S.C. 1673 *et seq.*),
- Countervailing duties (assessed pursuant to 19 U.S.C. 1671 *et seq.*),
- Duties assessed pursuant to Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862),
- Duties assessed pursuant to Section 201 of the Trade Act of 1974 (19 U.S.C. 2251 *et seq.*), and
- Duties assessed pursuant to Section 301 of the Trade Act of 1974 (19 U.S.C. 2411 *et seq.*).

Accordingly, CBP "anticipates that importers will file separate entries" when a shipment contains both merchandise that is eligible for temporary postponement and merchandise that is ineligible because of the above-specified trade remedies.

Outlook

US business groups have welcomed the Trump administration's decision to defer the collection of certain import duties as part of its economic response to COVID-19, while some labor unions have denounced the move. However, the relief falls short of what some business groups and Members of Congress have requested, as it does not apply to the duties of up to 25 percent that the United States has imposed on steel and aluminum imports and a wide range of products from China since 2018. CBP to date has assessed nearly $60 billion in import duties pursuant to these programs, which have become a significant burden for importers in the affected sectors. Moreover, the rule applies only to goods entered in March or April, and CBP has provided no indication that the rule will be extended to cover goods entered in subsequent months. Given these restrictions and the United States' relatively low most-favored nation duty rates, some importers may see only limited relief as a result of the new rule.

The temporary final rule can be viewed **here**.

Free Trade Agreements

USTR Publishes Requirements for Vehicle Producers to Request Use of Alternative Staging Regime for USMCA Automotive Rules of Origin

On April 21, 2020, the Office of the US Trade Representative (USTR) published a Federal Register notice establishing the procedures for North American producers of passenger vehicles and light trucks to request an alternative to the standard "staging regime" (*i.e.*, phase-in period) for the rules of origin for automotive goods under the United States-Mexico-Canada Agreement (USMCA). Where USTR approves a producer's request to use an "alternative" staging regime, envisioned in Article 8 of the USMCA Automotive Appendix, covered vehicles made by that producer will be subject to less-stringent regional value content (RVC) requirements and other rules of origin than would otherwise apply during the five-year period following the USMCA's entry into force. USTR's notice requires vehicle producers who wish to use an alternative staging regime to submit a petition with a draft alternative staging plan no later than July 1, 2020, and a petition with a final alternative staging plan no later than August 31, 2020. We provide an overview of the alternative staging regime, the requirements for submitting a petition, and USTR's criteria for approving petitions below.

Overview of the Alternative Staging Regime

The USMCA's alternative staging regime differs from the standard staging regime by providing longer phase-in periods for the rules of origin applicable to passenger vehicles and light trucks. The USMCA and USTR's procedures generally will permit vehicles to qualify under the alternative staging regime for a period of five years after the Agreement's entry into force, though they allow for the possibility of extensions on a case-by-case basis, as discussed below. The key differences between the USMCA's standard and alternative staging regimes are as follows:

- **RVC for passenger vehicles and light trucks**. Under the standard staging regime, passenger vehicles and light trucks must contain 66% RVC under the net cost method in order to qualify as originating when the USMCA enters into force, and this threshold will increase (by 3 percentage points annually) to 75% three years after entry into force.[4] Under the alternative staging regime, the RVC requirement will be 62.5% for the period ending five years after the Agreement's entry into force, and 75% thereafter.
- **RVC for "core" parts of passenger vehicles and light trucks.** Under the standard staging regime, "core" parts listed in Table A.1 of the Automotive Appendix must contain 66% RVC (net cost) or 76% RVC (transaction value) in order to qualify as originating when the USMCA enters into force.[5] These thresholds will increase by 3

[4] Under the net cost method, RVC is calculated by subtracting the value of non-originating materials from the total net cost to produce the vehicle and dividing this figure by the vehicle's total net cost.

[5] Under the transaction value method, RVC is calculated as follows:

$$RVC = \frac{TV - VNM}{TV} \times 100$$

TV = Transaction value (amount actually paid or payable for a good)
VNM = Value of Non-Originating Material

percentage points annually to 75% and 85%, respectively, three years after the Agreement enters into force. Under the alternative staging regime, the RVC requirement will be 62.5% under the net cost method and 72.5% under the transaction value method for the period ending five years after the Agreement's entry into force, and will increase to 75% and 85%, respectively, thereafter.

- **Steel and aluminum purchases.** Under both the standard and alternative staging regimes, vehicles will be considered originating only where 70% or more of the producer's North American purchases of steel and aluminum are originating per the methodology described in Article 6 of the Automotive Appendix. However, under USTR's rules for the alternative staging regime, if a producer's petition "demonstrates the existence of contracts, MOUs, or other similar types of business agreements or information to meet this requirement during the alternative staging period, that producer will be exempt from having to certify to this requirement during the alternative staging period." Otherwise, pursuant to Section 202A(c)(2) of the US implementing law for the USMCA, vehicle producers claiming preferential treatment will be required to provide a certification to CBP that their production during the preceding fiscal or calendar year meets the steel and aluminum purchase requirements, though the regulations governing the certification process have not yet been published.

- **Labor value content.**[6] Under the standard staging regime, passenger vehicles must satisfy a labor value content (LVC) requirement of 30% in order to qualify as originating when the USMCA enters into force, and this threshold will increase gradually to 40% three years after entry into force. For light trucks, the LVC requirement will be 45% upon entry into force, with no further increases. Under the alternative staging regime, the LVC requirement for both passenger vehicles and light trucks will be 25% for the period ending five years after the Agreement's entry into force.

USTR's notice, summarized below, establishes a process for vehicle producers to request the use of the alternative staging regime with respect to their imports into the United States. Any resulting authorization by USTR to use an alternative staging regime will apply only to the producer's eligibility to use the regime for imports into the United States. A vehicle producer seeking to use the alternative staging regime for its imports into Canada and/or Mexico will need to provide a similar petition to Canada and/or Mexico under their respective procedures for the alternative staging regime. At this time, neither Canada nor Mexico have published such procedures, though they are expected to do so before the USMCA enters into force.

Eligibility of Producers and Vehicles for the Alternative Staging Regime

A vehicle producer may file a petition with USTR to use an alternative staging regime if (1) the importer of the vehicles intends to make a claim of preferential treatment under the USMCA; and (2) the producer has determined that it will be "unable or unlikely to be able" to meet the rules of origin under the standard staging regime or the standard USMCA rules of origin for automotive goods for such claims upon entry into force.

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[6] Article 7 of the USMCA Automotive Appendix provides that a passenger vehicle will be considered originating only if the vehicle producer certifies, on an annual basis, that its production meets a specified "labor value content" (LVC) threshold. A vehicle's LVC is calculated by summing the following percentage point values (though certain limitations apply):

- **High-wage material and manufacturing expenditures**: This expenditure is calculated as the Annual Purchase Value (APV) of purchased parts or materials produced in a plant or facility, and any labor costs in the vehicle assembly plant or facility, located in North America with a production wage rate that is at least US$16/hour as a percentage of the net cost of the vehicle, or the total vehicle plant assembly APV, including any labor costs in the vehicle assembly plant or facility.
- **High-wage technology expenditures**. This expenditure is calculated as the annual vehicle producer expenditures in North America on wages for research and development (R&D) or information technology (IT) as a percentage of total annual vehicle producer expenditures on production wages in North America.
- **High-wage assembly expenditures**. A producer will receive a credit of no more than 5 percentage points if the producer demonstrates that it has an engine assembly, transmission assembly, or advanced battery assembly plant, or has long-term contracts with such a plant, located in North America with an average production wage of at least USD $16/hour.

For more information on the LVC requirement, please see the W&C US Trade Alert dated October 4, 2018.

The quantity of passenger vehicles or light trucks eligible for the alternative staging regime is generally limited to 10 percent of a vehicle producer's total passenger vehicle or light truck production during the 12 month period prior to entry into force of the Agreement, or the average of such production during the complete 36 month period prior to entry into force of the Agreement, whichever is greater. However, a vehicle producer may request quantities above this limit if it provides a "detailed and credible plan" that ensures that these vehicles "will meet all the requirements during the alternative staging regime period and the requirements under the Automotive Appendix after the expiration of the alternative staging period." The required components of such a "detailed and credible plan" are described below.

Information Required in All Petitions for the Alternative Staging Regime

All petitions for the use of the alternative staging regime must include the following information:

- **Scope of the Request.** Petitions must identify (1) the vehicle models that would be subject to the alternative staging regime and the share these vehicles represent of the producer's North American production; and (2) the period of alternative staging the company is requesting for each vehicle model, noting in particular the introduction date of each model and the period of each model cycle. For specific vehicle models with a model cycle that extends beyond five years from the date of entry into force of the Agreement, the petition must include a specific request to extend the applicability of the alternative staging plan beyond five years to those specific vehicle models.
- **Commitment to Meet the Rule of Origin Requirements "During and After" Expiration of the Alternative Staging Regime.** A petitioner must certify that it will meet the requirements for the alternative staging regime for requested vehicle models claiming USMCA preferential treatment during the entirety of the alternative staging period. Additionally, petitioners must certify that vehicle models for which USTR grants an alternative staging regime will meet the standard USMCA rule of origin requirements upon expiration of the alternative staging regime, and confirm thereafter for all vehicles claiming USMCA preferential treatment.
- **Commitment to Notify USTR of Modifications to Plan.** A vehicle producer must state that it will notify USTR and the Interagency Committee on Trade in Automotive Goods, as soon as practicable, of any material changes to the information contained in the petition that will affect the producer's ability to meet any of the requirements set forth in Articles 2 through 7 of the USMCA Automotive Appendix after the alternative staging period has expired. A vehicle producer may submit a request for modification of its plan with respect to such changes and provide a list of the material changes to the information contained in the petition, and USTR will respond to the request for modification within 90 days.
- **Statement of Confidentiality of Information.** USTR requests that any electronic submission that contains business confidential information begin with the characters 'BC'. Any page containing business confidential information must also be clearly marked "BUSINESS CONFIDENTIAL" on the top of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that the petitioner contends is business confidential. If business confidential treatment is requested, a petitioner must certify in writing that it is private commercial or financial information that would not customarily be released to the public. USTR will treat properly marked business confidential information as private.

Information Required in Petitions Covering More than 10 Percent of the Petitioner's Production

Where a producer seeks the use of the alternative staging regime for more than 10 percent of its production, the petition must also contain the following information:

<u>Vehicle Model Information</u>

For the vehicle models for which alternative staging is requested, petitioners must provide the following information:

- Describe the company's sourcing timelines with respect to new vehicle model introductions, next-generation vehicle model introductions, and mid-cycle vehicle updates.
- Dates (month and year) of (1) the start of each current vehicle model's production; (2) the mid-cycle refresh of each current vehicle model's production; and (3) the planned start of the next generation of each vehicle model's production.
- For vehicles for which production began prior to entry into force of the USMCA, identify the actual or estimated RVC for those vehicle models under both the NAFTA rules of origin and the USMCA rules of origin. Also, provide the estimated RVC for core parts for each of these vehicle models.
- For vehicles for which production begins after entry into force of the USMCA, identify the estimated RVC for those vehicle models under the USMCA rules of origin. Also, provide the estimated RVC for core parts for each of these vehicle models. Provide the date (month and year) when each current or new vehicle model will be fully compliant with the USMCA rules of origin.

Steel and Aluminum

Petitioners must provide:

- The value of corporate purchases of steel and aluminum in North America in calendar year 2019 (by country and total), including direct purchases, directed-buy purchases, and the estimated value of steel and aluminum used in the production of purchased major body stampings and chassis frames; and
- The estimated percentages of the total North American steel and aluminum purchases that are originating in North America according to the product-specific rules identified in Chapter 4 of the USMCA. For this percentage, the vehicle producer need only estimate purchases of flat-rolled steel or aluminums in coils; tubes, pipes or hollow profiles of steel or aluminum; and any other structural steel or aluminum used in the production of major body stampings or chassis frames for passenger vehicles or light trucks.

"Detailed and Credible Plan" to Meet Rule of Origin Requirements

The petitioner must submit a "detailed and credible plan" that contains the following information:

- A description of how the requested alternative staging vehicle models meet each of the necessary requirements for acceptance into the alternative staging regime;
- A description of the changes the company plans to make to its operations, sourcing, and vehicle content to meet the USMCA rules of origin for each of the alternative staging vehicle models, as well as the company's ability to meet the requirements for steel, aluminum, and LVC. The petition must (1) contain detailed information regarding investments, sourcing changes, jobs, and other procurement or operational changes that demonstrate that these plans are detailed and credible; and (2) address each of the requirements for RVC, core parts, steel and aluminum, and LVC, and how such changes will allow each vehicle model to comply with the USMCA rules of origin.
- An annual calendar of new investments, sourcing changes, jobs, and other changes to operations, beginning with changes that occurred in calendar year 2019, and plans for 2020-2025.
- A description of the corporate approval process for investments, sourcing changes, and other operational changes identified in the company's plans.

Other Information

Petitioners must also provide detailed information regarding their assembly capacity for vehicles, engines, transmissions, and advanced batteries; historical and projected sales and production data; data on sourcing of automotive parts; and information on wage expenditures for research and development, information technology, and production workers.

Petition Deadlines

A vehicle producer must submit a petition with a draft alternative staging plan by July 1, 2020. If USTR and the Committee identify any deficiencies in a vehicle producer's draft alternative staging plan, the vehicle producer must submit a petition with a final draft alternative staging plan correcting those deficiencies no later than August 31, 2020. If USTR and the Committee do not identify any deficiencies in a vehicle producer's draft alternative staging plan, the vehicle producer must submit a petition with a final draft alternative staging plan with any modifications, or a statement requesting that its draft alternative staging plan be considered final, no later than August 31, 2020.

Determinations by USTR

The notice provides few details on the criteria USTR will use to determine whether to approve requests for the alternative staging regime, aside from stating that such determinations will be "based on the information contained in a vehicle producer's petition," and that USTR will seek the advice of the Interagency Committee on Trade in Automotive Goods. With respect to petitions covering more than 10 percent of the petitioner's production, USTR has emphasized that determinations "will be based on the level of detail and credibility of the information supplied," and has provided some examples of what may constitute "insufficient detail" or information that is "not credible". For example, USTR may decide that a petition is insufficiently detailed if it fails to describe how the covered vehicles are not compliant with the standard USMCA rules of origin, or that the petition is "not credible" if the producer "provides investment or sourcing plans the company's management has not approved, or does not include any supplemental information that supports the plan, such as location of planned additional investments or parts sourcing."

USTR's notice does not provide a specific deadline for determinations, stating only that USTR "will promptly determine whether to authorize use of the alternative staging regime." However, the US implementing law for the USMCA requires USTR to make determinations and notify the petitioner thereof within 120 days after receiving the petition. As required by the implementing law, USTR will maintain a public list of the names of vehicle producers it has authorized to use the alternative staging regime.

Failure to Meet Requirements for Use of the Alternative Staging Regime

An importer will not be permitted to make a claim for preferential tariff treatment under the alternative staging regime if USTR determines that:

- The producer has failed to take the steps outlined in its request and, as a result, no longer will be able to meet the requirements set forth in the Automotive Appendix after the alternative staging regime has expired;
- The producer has provided false or misleading information in its request; or
- A producer authorized to use the alternative staging regime for more than 10 percent of its production has failed to notify USTR of material changes to circumstances that will prevent the producer from meeting any of the requirements set forth in the Automotive Appendix after the alternative staging regime has expired.

USTR will provide its determinations to the producer in writing and will "provide the producer with a reasonable opportunity to respond to the determination."

Outlook

Given the complexity of the USMCA's automotive rules of origin and the extent to which they differ from those currently in place under the NAFTA, the delayed phase-in periods offered by the alternative staging regime will be valuable for vehicle producers seeking to smooth the transition between the two agreements. However, the requirements set forth in USTR's notice present some challenges. At this stage, the USMCA Parties have not yet published, even in draft form, the Uniform Regulations that will clarify the interpretation, application, and administration of the USMCA's rules of origin, including the novel provisions related to "labor value content" and steel and aluminum purchases. Yet, USTR's procedures require producers to "certify" that their vehicles will be able to comply with such requirements, both during and after the alternative staging period. They also require petitioners to provide detailed, long-term plans regarding, among other things, new investments in production capacity, product sourcing patterns, and employment, at a time when global supply chains and business plans are being disrupted by the COVID-19 crisis. Thus, while the alternative staging regime will help facilitate the automotive sector's transition to the USMCA, the requirements for producers seeking to qualify will add a layer of complexity to the process.

USTR's notice can be viewed **here**.

Thai Commerce Minister Withdraws Thailand's Proposal to Join CPTPP from Cabinet Consideration

Thai Commerce Minister Jurin Laksanawisit has decided to withdraw a proposal prepared by the Ministry of Commerce (MOC) with respect to Thailand's accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). The withdrawal decision comes last minute after the Thai government received strong public opposition. Specifically, social activists and certain groups in the business community voiced their concerns that the timing for joining the CPTPP was not right, asserting that the government's focus should be on restoring the domestic economy and mitigating the economic impacts of the COVID-19 pandemic. Business operators are concerned that trade liberalization will adversely result in an influx of cheap products from other countries.

The MOC had previously planned for Thailand to submit a formal letter of intent to accede to the CPTPP prior to the third CPTPP Commission meeting scheduled for August 2020 in Mexico. With this immediate withdrawal, however, the possibility of Thailand joining the CPTPP has greatly diminished. It is very unlikely that the MOC can obtain both Cabinet and Parliamentary approval, which marks the final stage of domestic procedures required for officially joining the CPTPP by August 2020.

According to the MOC, Thailand's participation in the CPTPP would enhance the country's GDP by 0.12% or THB 13.3 billion in revenue per year. Without the CPTPP participation, however, Thailand is estimated to lose THB 26.6 billion in revenue, resulting in a contraction of GDP by 0.25% per year. It remains to be seen how the MOC will address the opportunity costs of not joining the CPTPP. Nevertheless, besides Canada and Mexico, Thailand has already implemented a range of multilateral and bilateral free trade agreements (FTA) with most of the CPTPP member countries.

The CPTPP entered into effect on December 30, 2018 for Japan, Australia, Canada, New Zealand, Mexico, and Singapore, and on January 14, 2019 for Vietnam. Brunei, Chile and Peru are reportedly at various stages of their domestic ratification processes, while Malaysia is still evaluating the costs and benefits of joining the CPTPP.

Trade Remedies

US Department of Commerce Tolls Deadlines for Antidumping and Countervailing Duty Administrative Reviews by 50 Days Due to COVID-19

On April 24, 2020, the US Department of Commerce (DOC) announced that it has determined to uniformly toll deadlines for all antidumping duty (AD) and countervailing duty (CVD) administrative reviews by 50 days "[i]n response to operational adjustments due to COVID-19[.]" This determination applies to every AD/CVD administrative review segment before DOC as of the date of the announcement (April 24). It does not apply to any segment of a proceeding other than administrative reviews, such as original AD/CVD investigations, scope inquiries, anti-circumvention proceedings, changed circumstances reviews, sunset reviews, or deadlines for court ordered redeterminations and the associated administrative (remand) proceedings.

DOC's determination to toll deadlines in AD/CVD administrative reviews will apply to deadlines for actions by DOC (such as preliminary and final determinations) and also to pending deadlines for actions by parties to such reviews (such as the submission of AD/CVD questionnaire responses, supplemental questionnaire responses, and case and rebuttal briefs). It applies to administrative reviews of AD/CVD orders as well as administrative reviews of suspension agreements. It does not apply to new shipper reviews, unless a pending new shipper review has been aligned with an administrative review pursuant to 19 C.F.R. § 351.214(j). If the new deadline after tolling falls on a weekend or a Federal holiday, the deadline will be moved to the next business day, in accordance with DOC's regulations.

DOC's memorandum announcing the tolling of deadlines states that the decision "makes available resources and personnel needed to continue performing [DOC's] other functions, such as initiating and conducting AD/CVD investigations in accordance with statutory deadlines, as well as conducting remand proceedings in accordance with deadlines established by the courts." DOC determined to uniformly toll deadlines, rather than making case-by-case

determinations, because the former approach will permit parties to administrative reviews "to know immediately the status of applicable deadlines, thus reducing the overall disruption" and the burden on DOC staff.

US Department of Commerce Initiates Antidumping and Countervailing Duty Investigations of Certain Vertical Shaft Engines Between 99cc and up to 225cc, and Parts thereof, from China

On April 8, 2020, the US Department of Commerce (DOC) announced the initiation of antidumping duty (AD) and countervailing duty (CVD) investigations of imports of certain vertical shaft engines between 99cc and up to 225cc, and parts thereof (small vertical engines), from China. The petitioner in these investigations is Briggs and Stratton Corporation (Wauwatosa, WI). The petitioner alleges that imports of these products from China were sold in the United States at dumping margins ranging from 457.52 to 541.75 percent and received countervailable subsidies above the *de minimis* level.

The merchandise covered by these investigations consists of spark ignited, non-road, vertical shaft engines, whether finished or unfinished, whether assembled or unassembled, whether mounted or unmounted, primarily for walk-behind lawn mowers. Engines meeting this physical description may also be for other non-handheld outdoor power equipment, including but not limited to, pressure washers. The subject engines are spark ignition, single cylinder, air cooled, internal combustion engines with vertical power take off shafts with a minimum displacement of 99 cubic centimeters (cc) and a maximum displacement of up to, but not including, 225cc. The engines subject to these investigations are predominantly classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 8407.90.1010. The engine subassemblies that are subject to these investigations enter under HTSUS 8409.91.9990. The mounted engines that are subject to these investigations enter under HTSUS 8433.11.0050, 8433.11.0060, and 8424.30.9000. Engines subject to these investigations may also enter under HTSUS 8407.90.1020, 8407.90.9040, and 8407.90.9060.

The US International Trade Commission (ITC) on May 1 determined that there is a reasonable indication that a US industry is materially injured by reason of imports of small vertical shaft engines from China. As a result, the investigations will continue, and DOC will be scheduled to announce its preliminary CVD determinations on June 12, 2020, and its preliminary AD determinations on August 26, 2020, although these dates may be extended.

According to DOC, imports of vertical shaft engines from China in 2019 were valued at $43.6 million.

US Department of Commerce Finds Dumping and Countervailable Subsidization of Imports of Quartz Surface Products from India and Turkey

On April 28, 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 quartz surface products from India and Turkey. In its investigations, DOC determined that imports of the subject merchandise from India were sold in the United States at dumping margins ranging from 2.67 to 5.15 percent and received countervailable subsidies valued at 1.57 to 2.34 percent. DOC determined that imports of the subject merchandise from Turkey were sold in the United States at a dumping margin of 5.17 percent and received countervailable subsidies valued at 2.43 percent.

The merchandise covered by the investigations is certain quartz surface products. Quartz surface products consist of slabs and other surfaces created from a mixture of materials that includes predominately silica (e.g., quartz, quartz powder, cristobalite, glass powder) as well as a resin binder (e.g., an unsaturated polyester). The incorporation of other materials, including, but not limited to, pigments, cement, or other additives does not remove the merchandise from the scope of the investigations. However, the scope of the investigations only includes products where the silica content is greater than any other single material, by actual weight. Quartz surface products are typically sold as rectangular slabs with a total surface area of approximately 45 to 60 square feet and a nominal thickness of one, two,

or three centimeters. However, the scope of these investigations includes surface products of all other sizes, thicknesses, and shapes. The products subject to the scope are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheading: 6810.99.0010. Subject merchandise may also enter under subheadings 6810.11.0010, 6810.11.0070, 6810.19.1200, 6810.19.1400, 6810.19.5000, 6810.91.0000, 6810.99.0080, 6815.99.4070, 2506.10.0010, 2506.10.0050, 2506.20.0010, 2506.20.0080, and 7016.90.1050.

The ITC is scheduled to make its final determinations in these investigations on or about June 11, 2020. If the ITC makes affirmative final determinations that imports of quartz surface products from India and/or Turkey materially injure, or threaten material injury to, the domestic industry, Commerce will issue AD and CVD orders. If the ITC makes negative determinations of injury, the investigations will be terminated.

US Department of Commerce Initiates Antidumping Duty and Countervailing Duty Investigations of Imports of Non-Refillable Steel Cylinders from China

On April 17, 2020, the US Department of Commerce (DOC) announced the initiation of antidumping (AD) and countervailing duty (CVD) investigations on imports of non-refillable steel cylinders from China. The petitioner in these investigations is Worthington Industries (Columbus, OH). The petitioner alleges that imports of the subject merchandise from China were sold in the United States at a dumping margin of 53.76 percent and received countervailable subsidies above the *de minimis* level.

The merchandise covered by this investigation is certain seamed (welded or brazed), non-refillable steel cylinders meeting the requirements of, or produced to meet the requirements of, U.S. Department of Transportation (USDOT) Specification 39, TransportCanada Specification 39M, or United Nations pressure receptacle standard ISO 11118 and otherwise meeting the description provided below (nonrefillable steel cylinders). The subject non-refillable steel cylinders are portable and range from 300- cubic inch (4.9 liter) water capacity to 1,526-cubic inch (25 liter) water capacity. Subject non-refillable steel cylinders may be imported with or without a valve and/or pressure release device and unfilled at the time of importation. Specifically excluded are seamless non-refillable steel cylinders. The merchandise subject to this investigation is classified under statistical reporting numbers 7311.00.0060 and 7311.00.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). The merchandise may also enter under HTSUS statistical reporting numbers 7310.29.0025 and 7310.29.0050.

DOC is scheduled to announce its preliminary CVD determination on June 23, 2020, and its preliminary AD determination on September 4, 2020, although these dates may be extended. According to DOC, imports of non-refillable steel cylinders from China in 2019 were valued at $71.7 million.

US International Trade Commission Issues Affirmative Final Determinations in Antidumping and Countervailing Duty Investigations of Ceramic Tile from China

On April 30, 2020, the US International Trade Commission (ITC) determined that a US industry is materially injured by reason of imports of ceramic tile from China that the US Department of Commerce (DOC) has determined are subsidized and sold in the United States at less than fair value. Commissioners Rhonda K. Schmidtlein, Jason E. Kearns, and Amy A. Karpel voted in the affirmative. Chairman David S. Johanson voted in the negative. Commissioner Randolph J. Stayin did not participate in these investigations.

As a result of the ITC's affirmative determinations, DOC will issue antidumping and countervailing duty orders on imports of this product from China. DOC in March determined that imports of the subject merchandise were sold in the United States at dumping margins ranging from 229.04 percent to 356.02 percent, and received countervailable subsidies valued at 358.81 percent.

The ITC also made a negative finding concerning critical circumstances with regard to imports of this product from China. As a result, imports of ceramic tile from China will not be subject to retroactive antidumping duties.

The merchandise covered by these investigations is ceramic flooring tile, wall tile, paving tile, hearth tile, porcelain tile, mosaic tile, flags, finishing tile, and the like (hereinafter ceramic tile). Ceramic tiles are articles containing a mixture of minerals including clay (generally hydrous silicates of alumina or magnesium) that are fired so the raw materials are fused to produce a finished good that is less than 3.2 cm. in actual thickness. Subject merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheadings of heading 6907: 6901.21.1005, 6907.21.1011, 6907.21.1051, 6907.21.2000, 6907.21.3000, 6907.21.4000, 6907.21.9011, 6907.21.9051, 6907.22.1005, 6907.22.1011, 6907.22.1051, 6907.22.2000, 6907.22.3000, 6907.22.4000, 6907.22.9011, 6907.22.9051, 6907.23.1005, 6907.23.1011, 6907.23.1051, 6907.23.2000, 6907.23.3000, 6907.23.4000, 6907.23.9011, 6907.23.9051, 6907.30.1005, 6907.30.1011, 6907.30.1051, 6907.30.2000, 6907.30.3000, 6907.30.4000, 6907.30.9011, 6907.30.9051, 6907.40.1005, 6907.40.1011, 6907.40.1051, 6907.40.2000, 6907.40.3000, 6907.40.4000, 6907.40.9011, and 6907.40.9051. Subject merchandise may also enter under subheadings of headings 6914 and 6905: 6914.10.8000, 6914.90.8000, 6905.10.0000, and 6905.90.0050.

According to DOC, imports of this product from China were valued at $481 million in 2018. The ITC's public report on this investigation will be available by June 2, 2020.