US Multilateral Trade Policy Developments

Japan External Trade Organization

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Contents

US Trade Policy Developments

US Customs and Border Protection Publishes Notice on Country of Origin Marking for Products of Hong Kong, Implementing Executive Order on Hong Kong Normalization

On August 11, 2020, US Customs and Border Protection (CBP) published a *Federal Register* notice informing the public that, in light of President Trump's recent Executive Order on Hong Kong Normalization, imported goods produced in Hong Kong may no longer be marked to indicate "Hong Kong" as their origin, but must instead be marked to indicate "China" for purposes of the origin marking provisions of the Tariff Act of 1930. CBP has confirmed in a separate statement that this change does not affect country of origin determinations for purposes of assessing ordinary duties, or for assessing certain "temporary or additional" duties such as those that the United States has imposed on China-origin goods pursuant to Section 301 of the Trade Act of 1974. CBP has provided a transitional period for importers to implement country of origin marking consistent with the notice, giving importers until **September 25, 2020** to make the required changes. We provide an overview of the notice below.

Background

Section 304 of the Tariff Act of 1930 as amended (19 U.S.C. 1304) provides that, unless excepted, every article of foreign origin (or its container) imported into the United States must be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. In June of 1997, the US Customs Service (CBP's predecessor agency) issued a *Federal Register* notice providing that goods produced in Hong Kong should continue to be marked to indicate their origin as "Hong Kong" under 19 U.S.C. 1304 after Hong Kong's reversion to the sovereignty of the People's Republic of China on July 1, 1997.

President Trump's July 14, 2020 Executive Order on Hong Kong Normalization suspended the application of Section 201(a) of the United States-Hong Kong Policy Act of 1992, as amended (22 U.S.C. 5721(a)), to certain statutes, including 19 U.S.C. 1304, based on a determination that Hong Kong is no longer sufficiently autonomous to justify differential treatment in relation to China.[1] The Executive Order further directed the heads of agencies to commence, by July 29, 2020, "all appropriate actions to further the purposes of this order, consistent with applicable law[.]" CBP's notice modifying the country of origin marking rules with respect to goods produced in Hong Kong implements this requirement.

Country of Origin Marking of Products of Hong Kong; Relationship to Section 301

CBP's notice states that, in light of the Executive Order, imported goods produced in Hong Kong "may no longer be marked to indicate 'Hong Kong' as their origin, but must be marked to indicate 'China.'" CBP states that "[t]he position set forth in this document is applicable as of July 29, 2020." However, "[g]iven the commercial realities," CBP will provide a transition period for importers to implement marking consistent with the notice. Accordingly, "goods produced in Hong Kong, which are entered or withdrawn from warehouse for consumption into the United States after September 25, 2020, must be marked to indicate that their origin is 'China' for purposes of 19 U.S.C. 1304[,]" unless the goods are excepted from marking.

In a separate frequently-asked questions (FAQ) document posted on its website, CBP states that the change in marking requirements set forth in the August 11 notice "does not affect country of origin determinations for purposes of assessing ordinary duties under Chapters 1-97 of the HTSUS or temporary or additional duties under Chapter 99

[1] 22 U.S.C. 5721(a) provides that, "[n]otwithstanding any change in the exercise of sovereignty over Hong Kong, the laws of the United States shall continue to apply with respect to Hong Kong, on and after July 1, 1997, in the same manner as the laws of the United States were applied with respect to Hong Kong before such date[,]" unless otherwise expressly provided by law or by Executive Order.

of the HTSUS."[2] "Temporary or additional duties" under Chapter 99 include those that the United States has imposed on certain China-origin goods pursuant to Section 301 of the Trade Act of 1974, based on an investigation conducted by the Office of the US Trade Representative (USTR) concerning "China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation." Thus, CBP's statement confirms that its August 11 notice on marking requirements has no effect on whether imported goods produced in Hong Kong are considered to be of Chinese origin for purposes of assessing Section 301 duties.[3] Moreover, the Trump administration to date has not stated that it intends to begin treating goods produced in Hong Kong as China-origin goods for purposes of Section 301 – an action that would subject such goods to significant additional duties. Nevertheless, importers may wish to monitor future announcements by USTR and CBP concerning the tariff treatment of goods produced in Hong Kong, in light of the President's Executive Order.

CBP's notice can be viewed **here**. The FAQ document can be viewed **here**.

US Senators Introduce Legislation Aimed at Countering China's Economic Influence in Latin America and the Caribbean

On August 13, 2020, a bipartisan group of US Senators introduced the "Advancing Competitiveness, Transparency, and Security in the Americas (ACTSA) Act" (S.4528). The bill is meant to counter China's economic influence – such as through its trillion-dollar Belt and Road infrastructure financing initiative – in Latin America and the Caribbean, by bolstering the United States' economic and diplomatic engagement in the region.

The bill aims to direct additional economic resources to Latin America and to shore up existing diplomatic and technical support initiatives, focusing specifically on the infrastructure, information and communications technology, and energy sectors. Key elements of the bill include the following:

- **Technical support.** The bill (1) authorizes $10 million to provide technical assistance to partner governments to help establish investment review mechanisms similar to the Committee on Foreign Investment in the United States (CFIUS); (2) authorizes $10 million to provide technical assistance to partner governments to help establish mechanisms similar to the Foreign Corrupt Practices Act (FCPA); (3) creates programs to support partner governments' capacity to develop sustainable infrastructure projects and improve technical management of procurement processes; and (4) provides technical assistance to protect telecom, data networks, and critical digital infrastructure.
- **Anti-corruption.** The bill directs that the visas of individuals involved in significant acts of corruption with representatives of the Government of China and Chinese state-owned entities be denied or revoked.
- **Access to financing.** The bill authorizes eligibility of Caribbean countries for U.S. International Development Finance Corporation (USIDFC) programs, and requires that 35 percent of the USIDFC budget be dedicated to Latin America and the Caribbean for a 10-year period.
- **Sector-specific engagement.** The bill (1) supports efforts to develop and secure digital infrastructure, protect technology and data privacy, and facilitate broad internet access for societies; and (2) requires the State Department to develop a strategy to decrease Caribbean reliance on imported fuels, grow domestic production, and increase energy efficiency and conservation.

[2] CBP further states that goods that are products of Hong Kong "should continue to report International Organization for Standardization (ISO) country code 'HK' as the country of origin when required."

[3] CBP further states that the August 11 notice "only applies to marking requirements under 19 U.S.C. 1304. Entry summary procedures have not changed. Filers should continue to file their entry summaries and duty payments according to current regulation and policy."

- **Cybercrime.** The bill (1) encourages partner governments to adopt international standards to address cybercrimes; and (2) compels the development of an interagency strategy to help partner governments defend the integrity of digital infrastructure and investigate and prosecute cybercrimes.
- **Support for civil society.** The bill (1) authorizes $10 million to support civil society internet freedom and investigative journalism programs; and (2) mandates a 4 percent increase in funding for educational, professional, and cultural exchange programs.

The bill was introduced by Senators Bob Menendez (D-N.J.), Marco Rubio (R-Fla.), Ben Cardin (D-Md.), Ted Cruz (R-Texas), and Tim Kaine (D-Va.), who have described it as "the first comprehensive effort to date to improve U.S. economic engagement and diplomatic presence, and address the Government of China's economic, political, security, and intelligence activities in the region." Sen. Rubio described the bill as a response to "the Chinese Communist Party's ultimate goal…to use economic power to displace the U.S. and the role our nation plays," and Sen. Cruz accused China of "engaging in economic blackmail and coercion" in the region.

Outlook

Chinese trade with, and investment in, Latin America and the Caribbean have increased significantly over the past decade, and are projected to continue to grow. China's trade with Latin America increased from $17 billion in 2002 to $306 billion in 2018, and the Chinese government expects that Chinese companies will invest the equivalent of $250 billion in Latin America and the Caribbean by 2025. The ACTSA's authors allege that China wields its economic influence for political ends (claiming, for example, that China has used its increasing economic influence to encourage countries, including El Salvador, Panama, and the Dominican Republic, to sever diplomatic relations with Taiwan), and that China's growing position in the region threatens to displace the United States' key economic and security relationships.

As Chinese economic activity in the Western Hemisphere continues to increase, the United States is attempting to sharpen its "soft power" influence in Latin America and the Caribbean, so as to maintain an economic and political foothold in the region. As a result, legislative initiatives such as the ACTSA may garner bipartisan support. There is a parallel to the United States' counterapproach in Southeast Asia, where the United States recently **pledged** an additional $113 million to support the digital economy, energy, and infrastructure in the region, in part to counter China's investments.

The ACTSA has been referred to the Senate Foreign Relations Committee, which has not yet held or scheduled a hearing on the bill. The bill has garnered little public attention thus far, and it is unclear whether the Senate will consider the bill this year, particularly given that Congress is expected to prioritize federal appropriations legislation and the response to the COVID-19 pandemic during the remainder of the 2020 legislative session. Nevertheless, legislative efforts to bolster US economic and diplomatic engagement in Latin America and the Carribean are likely to continue, given the growing US concerns regarding China's activities in the region.

The text of the ACTSA is available **here**.

US Trade Actions

Section 232

President Trump Re-Imposes Section 232 Tariff on Certain Aluminum Products from Canada, Citing Import "Surge"

On August 6, 2020, President Trump issued a Proclamation re-imposing an additional 10 percent tariff on certain aluminum products from Canada, pursuant to Section 232 of the Trade Expansion Act of 1962. The products covered by the Proclamation are non-alloyed unwrought aluminum articles provided for in subheading 7601.10 of the Harmonized Tariff Schedule of the United States (HTSUS), and the additional 10 percent tariff on such articles will take effect on August 16, 2020. President Trump determined to re-impose the tariff on non-alloyed unwrought aluminum products because imports of these products from Canada "increased substantially" following his May 2019 decision to exempt Canadian aluminum from the Section 232 measures on a long-term basis. These products account for approximately 59 percent of total aluminum imports from Canada, according to the Proclamation.

An agreement reached by the United States and Canada in May 2019 provided for the elimination of the Section 232 tariffs on Canadian aluminum, but allows the re-imposition of such tariffs on individual products in the event of import surges. Specifically, the agreement provides that, where imports of aluminum products "surge meaningfully beyond historic volumes of trade over a period of time, with consideration of market share", the importing country may request consultations with the exporting country. After such consultations, the importing party "may impose duties of…10 percent for aluminum in respect to the individual product(s) where the surge took place[.]" If the importing party takes such action, the exporting country agrees to retaliate only in the affected sector (*i.e.*, aluminum and aluminum-containing products), thus ruling out "cross-retaliation" targeting other sectors. The agreement does not define the period of review or what would constitute a "meaningful" surge.

Certain US producers of primary aluminum have recently urged the Trump administration to re-impose the Section 232 tariff on non-alloyed, unwrought aluminum from Canada, alleging that imports of such products from Canada have increased significantly following the May 2019 agreement. Other segments of the US aluminum industry have opposed the re-imposition of tariffs, arguing that US primary aluminum smelters currently are not capable of satisfying US demand, even at full capacity. President Trump's Proclamation states that imports of non-alloyed, unwrought aluminum from Canada from June 2019 to May 2020 "increased 87 percent compared to the prior twelve-month period and exceeded the volume of any full calendar year in the previous decade," and that this "surge" in imports "threatens to harm domestic aluminum production and capacity utilization." Accordingly, the President determined that the measures agreed between the United States and Canada "are not providing an effective alternative means to address the threatened impairment to our national security from imports of aluminum from Canada." Canadian officials have disputed this characterization, arguing that the import trends observed reflect a decision by aluminum producers to shift production from alloyed aluminum to non-alloyed aluminum, and that exports of alloyed aluminum from Canada to the United States have recently decreased.

The additional 10 percent tariff on non-alloyed unwrought aluminum from Canada, provided for in HTSUS subheading 7601.10, will take effect with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on August 16, 2020. As noted above, the May 2019 agreement permits Canada to impose retaliatory tariffs on US exports in response to this action, though the retaliation may only target "aluminum and aluminum-containing products." Canadian trade officials have stated in recent weeks that Canada intends to retaliate, and that they view "aluminum-containing products" as "a very broad category" that provides Canada with some flexibility in determining which US goods to target. They also have indicated that Canada is evaluating potential legal challenges to the new measure, both at the WTO and in US courts.

President Trump's Proclamation can be viewed **here**.

Canada Plans Retaliatory Tariffs on US Exports of Aluminum and Aluminum-Containing Products in Response to Re-Imposition of Section 232 Tariffs on Canadian Aluminum

On August 7, 2020, Canada's Department of Finance announced that Canada intends to impose an additional 10 percent tariff on certain aluminum and aluminum-containing products from the United States in response to President Trump's recent decision to re-impose Section 232 tariffs on certain aluminum from Canada. The Department has published an initial list of 68 products against which it might retaliate, and has requested public comments on the initial list by September 6. The final list of products that will be subject to Canada's retaliatory tariff will be drawn from this initial list, and the retaliatory tariff will take effect by September 16. Canadian officials have indicated that the initial list is "necessarily broader than our ultimate retaliation will be," and that the final list will be proportional to the recent US action under Section 232, covering approximately $2.7 billion in annual imports.

Pursuant to the May 2019 Joint Statement by Canada and the United States on Section 232 Duties on Steel and Aluminum, Canada has limited the scope of its proposed retaliatory measure to "aluminum and aluminum-containing products." The initial list includes non-alloyed, unwrought aluminum (the same product on which the United States has re-imposed Section 232 duties), as well as aluminum ore, aluminum wire, aluminum bars, rods, and profiles, and aluminum plate, sheet, and strip. The list also includes certain consumer goods that contain aluminum, such as household refrigerators, washing machines and washer-dryers, furniture, and sporting equipment. Canada's Deputy Prime Minister, Chrystia Freeland, stated that the list was designed "to inflict a minimal amount of damage on Canada and to have, frankly, the strongest possible impact in the United States[.]" Observers have noted that Canada's initial list targets numerous products made in US "swing states" that will play an important role in the United States' upcoming presidential election.

President Trump's decision to re-impose Section 232 tariffs on Canadian aluminum has drawn sharp criticism from the Canadian government, as well as the US business community and Members of Congress. Senate Finance Committee Chairman Chuck Grassley (R-IA) stated that the Trump administration's purported national security justification for re-imposing tariffs on Canadian aluminum is "ridiculous," and the US Chamber of Commerce warned that the US tariffs "will raise costs for American manufacturers, are opposed by most U.S. aluminum producers, and will draw retaliation against U.S. exports[.]" The Aluminum Association also criticized the Trump administration for "fail[ing] to listen to the vast majority of domestic aluminum companies and users" that had opposed the tariffs, and argued that the renewed dispute between the United States and Canada "makes U.S. aluminum companies less competitive when trying to sell their goods to industrial customers across North America." The Association indicated that it will continue to advocate the removal of the Section 232 aluminum tariffs "on all market economy countries."

The Department of Finance notice on Canada's retaliatory action can be viewed **here**.

US Court of International Trade Orders Commerce Department to Reconsider Certain Section 232 Exclusion Determinations

On August 5, 2020, the US Court of International Trade (CIT) issued its opinion in *JSW Steel (USA) Inc. v. United States*, finding that the US Department of Commerce (DOC) failed to sufficiently explain its reasoning for denying a US steel importer's requests to exclude certain steel products from the Section 232 tariff on steel imports. Based on its finding that DOC's decisions to deny certain exclusion requests were "devoid of explanation and frustrate judicial review," the CIT has remanded the decisions to DOC for further explanation and reconsideration. This is the first time that a US court has ordered DOC to reconsider or further explain the basis for its denial or approval of a Section 232 exclusion request. This alert provides an overview of the CIT's ruling and its implications.

Background

In 2018, Plaintiff JSW Steel (USA) Inc. (JSW) filed 12 separate requests with the US Department of Commerce, Bureau of Industry and Security (BIS) seeking exclusions from the Section 232 tariff for certain alloy and non-alloy steel slabs from India and Mexico. JSW stated in the requests that it required the imported steel slabs to manufacture steel plate, because the slabs were not available in the United States. Three US steel producers objected to JSW's requests and disagreed with JSW's characterization of the domestic non-availability of steel slab.

In 2019, BIS denied all 12 of JSW's requests, concluding in standard-form decision memoranda that the requested steel slab is produced domestically "in a sufficient and reasonably available amount and of a satisfactory quality," and that "no overriding national security concerns" required that the requests be granted notwithstanding the domestic availability. In addition, BIS found half of the requests to be incomplete because "the product description is inconsistent with the claimed classification under the [HTSUS]."

In July 2019, JSW filed a complaint with the CIT challenging DOC's denials of the exclusion requests. JSW argued in its complaint that (1) applying the standards set forth in the agency's regulations (15 C.F.R. pt. 705, supp. 1) the only reasonable conclusion that DOC could properly have reached was that JSW cannot obtain the required slabs in sufficient quantity or quality in the US market; and (2) DOC denied the requests "without any evidentiary basis and without any expressed, reasoned basis for doing so[.]" JSW therefore contended that the denials were "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and were rendered "without observance of procedure required by law," in violation of the Administrative Procedure Act. In addition, JSW argued that DOC's administrative record of the exclusion request proceeding was missing information about certain *ex parte* meetings between DOC and the objectors to JSW's exclusion requests. JSW therefore requested that the CIT order discovery to uncover information about the meetings, as well as for DOC to furnish a privilege log for redactions in the administrative record.

CIT Opinion and Order

In its August 5 opinion, the CIT concluded that DOC's denials of the 12 exclusion requests at issue "are devoid of explanation and frustrate judicial review." The CIT stated that each of BIS's decision memoranda, and the accompanying memoranda from the International Trade Administration (ITA) recommending whether to grant the exclusion requests, "do not explain what information the sub-agencies considered, how it was weighed, or why the evidence compelled denial." Specifically, the CIT pointed to the following:

- Each BIS decision memorandum begins with the same statement that "BIS has considered the evidence provided . . . and taken into account analysis provided by the [ITA]"; and, each memorandum ends with the same conclusion that "BIS accepts ITA's recommended findings as to the domestic availability of the product, and finds that no overriding national security concerns require that this exclusion request be granted[.]" However, the CIT noted that "nowhere does BIS refer to any record evidence in its decision memoranda, be it the exclusion requests themselves or the applicable objections."
- For six of JSW's exclusion requests, the BIS decision memoranda conclude that JSW supplied the incorrect 10-digit HTSUS number, stating that Customs and Border Protection (CBP) advised BIS that the claimed classification is inconsistent with the product description. However, the CIT noted that the memoranda do not explain why the HTSUS number was incorrect, or how CBP reached that finding.
- In the CIT's view, the ITA recommendation memoranda "suffer from the same paucity of analysis as the BIS decision memoranda." The CIT noted that, although DOC's regulations provide that the agency's response to an exclusion request will "be responsive to any of the objection(s), rebuttal(s), and surrebuttal(s) for that submitted exclusion request[,]" the ITA recommendation memoranda "merely catalogue a brief selection of evidence on the record," and "neither address detracting evidence nor provide any analysis of the evidence[.]"

- In addition, the ITA recommendation memoranda conclude that "[b]ecause there is *indication* of sufficient U.S. production availability" the ITA recommends denying JSW's requests (emphasis added). However, the CIT noted that the relevant regulations simply state that "[a]n exclusion will only be granted if an article is not produced in the United States in a sufficient and reasonably available amount, is not produced in the United States in a satisfactory quality, or for specific national security considerations." The regulations, in the CIT's view, "do not provide for the denial of an exclusion request upon the showing of an 'indication' of sufficient U.S. production." Moreover, "[i]t is unclear what constitutes an 'indication' of sufficient U.S. production[.]"

Based on these findings, the CIT remanded all 12 exclusion determinations to DOC, ordering the agency to "fully reconsider or provide further explanation of the denials." DOC must file its remand redeterminations with the CIT by November 3, 2020. The CIT denied JSW's request for discovery "at this juncture" concerning *ex parte* communications between DOC and objectors. However, it ordered DOC to "certify" steps taken to identify and correct deficiencies in the administrative record, including steps taken to ascertain if any of the *ex parte* meetings were directly or indirectly considered by DOC in its determinations and, if not, how it determined that the discussions at these meetings were not directly or indirectly considered in its decisions.

Outlook

Since DOC began administering the Section 232 exclusion process in 2018, DOC has faced criticisms that the agency does not disclose sufficient explanation or analysis in granting or denying exclusion requests. However, the CIT's ruling is the first time that a US court has found DOC's decision memoranda to lack sufficient explanation or analysis to allow for judicial review. The CIT's decision may have implications beyond JSW's exclusion requests because DOC's standard-form decision memoranda for Section 232 exclusions typically provide the same level of explanation and analysis as those that the CIT found deficient. Thus, the ruling might prompt other US parties whose exclusion requests have been denied to bring similar legal challenges, and might prompt DOC to consider the level of explanation or analysis the agency typically discloses in granting or denying exclusion requests.

The CIT's opinion in *JSW Steel (USA) Inc. v. United States* can be viewed **here**.

Mexico Establishes Export Permit Requirement for Certain Steel Products to Combat Potential Transshipment Following Consultations With United States

On August 28, 2020, Mexico's Ministry of Economy announced that it is establishing an automatic export permitting scheme for certain steel products in order to combat the potential transshipment of steel products made outside of Mexico to the United States, among other unfair trade practices. The export permit requirement will apply to certain steel pipes, tubes, and semi-finished products, and will take effect on September 2, 2020. Companies seeking an export permit will be required to submit an application containing information about any imported inputs used in the production of the steel product meant for export, among other information. Export permits will be granted automatically to companies that provide the required documentation.

In a statement, the Office of the US Trade Representative (USTR) indicated that Mexico is establishing the export permit requirement as a result of recent bilateral consultations held pursuant to the US-Mexico Joint Statement of May 17, 2019, in which the United States agreed to exempt Mexican steel products from its Section 232 tariff on a long-term basis. The Joint Statement also provided that the Parties would: (1) establish a process for monitoring steel trade between them; (2) implement "effective measures" to prevent the transshipment of steel made outside of Mexico or the United States to the other country; and (3) permit the re-imposition of tariffs in the event that imports of steel products "surge meaningfully" beyond historic volumes of trade. According to USTR, the recent consultations that led to the creation of Mexico's export permit requirement were held "to address recent surges in imports from Mexico of three steel products: standard pipe, mechanical tubing, and semi-finished products." An overview of the new export permit requirement is provided below.

Covered Products and Effective Dates

The export permit requirement will apply to 63 categories of steel products, identified at the 8-digit level of Mexico's Harmonized Tariff Schedule (HTS). The list of subject products includes:

- Certain semi-finished steel products classified within subheadings 7207.11, 7207.12, 7207.19, 7207.20, and 7224.90 of Mexico's Harmonized Tariff Schedule (HTS);
- Certain seamless steel tubes, pipes, and hollow profiles classified within subheadings 7304.31, 7304.39, 7304.51, and 7304.59; and
- Certain other steel tubes, pipes and hollow profiles classified within subheadings 7306.30, 7306.50, 7306.61, and 7306.69.

The complete list of products covered by the export permit requirement is set forth in the Annex to the Ministry's notice of August 28, 2020. Companies seeking to export the covered products will be required to obtain an export permit regardless of whether the product is intended for export to the United States or to another destination, though certain additional information will be required where the product is intended for export to the United States (see below). The export permit requirement will remain in effect until June 30, 2021 for most of the covered steel products, but will expire on December 31, 2020 for semi-finished products.

Export Permit Applications and Approvals

Companies seeking an export permit must submit an application to the Ministry's Directorate-General for Trade Facilitation and Foreign Trade (DGFCCE) using the forms available at the Ministry's Foreign Trade Data Service Engine (**https://www.snice.gob.mx/**). The information required of applicants will vary depending on the country to which the product is being exported and the type of product being exported, as follows:

- For merchandise exported to countries other than the United States: The applicant must provide, among other information: (1) commercial invoices for the inputs used to manufacture the product intended for export; (2) the sales invoice for the product intended for export; (3) the Customs entry forms, if applicable, for the inputs used to manufacture the product intended for export; (4) the steel mill certificates (for products classified under headings 7207 and 7224); and (5) steel mill and quality certificates (for products classified under headings 7304 and 7306). Once the application is submitted, DGFCCE will issue the permit within five business days. DGFCCE will issue a permit for each tariff heading, and the permit will be valid for 15 calendar days.
- For merchandise exported to the United States: In addition to providing the information listed above, the applicant must provide monthly projections of the quantity to be exported from August to December of 2020, or from January to June of 2021. Once the application is submitted, DGFCCE will issue the permit within three business days. DGFCCE will issue a permit for each tariff heading, and the permit will be valid for 15 calendar days.
- For merchandise that (1) is listed in Section A of the Annex to the Ministry's notice; and (2) is produced with inputs manufactured under the Sector-Specific Alternative Steel Mill Regime: The applicant must provide the same information that is required for exports to the United States, as well as an up-to-date database of steel mill certificates issued since January 2019. This database must be filed by the 5th calendar day of each month. Once the application is submitted, DGFCCE will issue the permit within three business days, and the permit will be valid for one calendar month.

In a statement, USTR has praised the Mexican government for agreeing to establish a "strict export monitoring regime" and committing to "closely monitor shipments" of the covered products through June 1, 2021. USTR also stated that the United States "will maintain the Section 232 duty exemption for imports of these products and will

consult with Mexico in December of 2020 to discuss the state of trade in the relevant products in light of market conditions at that time."

The Ministry's notice can be viewed **here** (in Spanish). USTR's statement can be viewed **here**.

President Trump Issues Proclamation Reducing Section 232 Quota Limit on Semi-Finished Steel Products from Brazil

On August 28, 2020, President Trump issued a Proclamation lowering, for the remainder of 2020, the absolute quota imposed by the United States on certain semi-finished steel products from Brazil pursuant to Section 232 of the Trade Expansion Act. According to the Proclamation, the United States is taking this action following consultations with Brazil and in light of "significant changes in the United States steel market" since the initial quota volumes were established in 2018. The quotas applicable to other imported steel products from Brazil will remain unchanged, and the US Department of Commerce will establish a special process to provide relief from the reduced quota on semi-finished steel "on an expedited basis" where certain criteria are met. We provide an overview of the Proclamation below.

Rationale for Reduced Quota

On May 31, 2018, President Trump issued a Proclamation announcing that the United States would exempt Brazil from the Section 232 tariff on steel imports on a long-term basis, because the United States had agreed on measures with Brazil that would provide "effective, long-term alternative means" to address the perceived threat to national security resulting from Brazilian steel imports. These measures included quantitative limitations (*i.e.*, absolute quotas) that restrict the volume of steel articles imported into the United States from Brazil on an annual and quarterly basis.[4] The quotas are applied on a product-specific basis to 54 separate categories of steel products.

President Trump's August 31 Proclamation states that "there have been significant changes in the United States steel market" since the time that Brazil was excluded from the tariff and the initial quota limits were established. Specifically:

- Steel shipments by domestic producers through June of this year "are approximately 15 percent lower than shipments for the same time period in 2019, with shipments in April and May of this year more than 30 percent lower than the shipments in the same months in 2019"; and
- Domestic producers' adjusted year-to-date capacity utilization rate through August 15, 2020, "is below 70 percent" and the current rate "has been near or below 60 percent since the second week of April."

In explaining why the administration has chosen to respond to these changes by further limiting imports from Brazil alone, the Proclamation states that Brazil is "the second largest source of steel imports to the United States and the largest source of imports of semi-finished steel products. Moreover, imports from most countries have declined this year in a manner commensurate with [the contraction in the US steel market], whereas imports from Brazil have decreased only slightly." Accordingly, the President has determined that the current measures applicable to steel imports from Brazil, "without any modifications, will be ineffective in eliminating the threat to the national security posed by imports of such articles, in the current environment." As a result, and following consultations with Brazil, the President has determined to "lower, for the remainder of 2020, one of the quantitative limitations…applicable to certain steel articles imported from Brazil."

[4] *See* Quota Bulletin 20-601, which specified the annual aggregate and first-quarter quota limits for steel products from Brazil for 2020, prior to the modifications made by the President's Proclamation of August 28, 2020. Available at https://www.cbp.gov/trade/quota/bulletins/qb-20-601-absolute-steel-mill-articles-ar-br-kr-1st-qtr.

Reduction of Quota on Semi-Finished Steel from Brazil

The Proclamation reduces the annual aggregate limit on steel imports from Brazil that are classified under subheading 9903.80.57 of the HTSUS, which covers "Blooms, billets and slabs, semi-finished, provided for in subheading 7207.11.00, 7207.12.00, 7207.19.00, 7207.20.00 or 7224.90.00 (except for statistical reporting numbers 7224.90.0015, 7224.90.0025, and 7224.90.0035)[.]" The revised annual aggregate limit applicable to these products is set forth in an Annex to the Proclamation, which has not yet been published and likely will not be available until the Proclamation appears in the Federal Register in the coming days. A press release issued by the Office of the US Trade Representative (USTR) states that the Proclamation "reduce[s] the remaining quota for Brazilian semi-finished steel products for the remainder of 2020 to 60,000 metric tons, down from 350,000," but provides no further details. The specific revisions to the quota will be provided in the Annex to the Proclamation, and US Customs and Border Protection (CBP) is expected to issue guidance on the changes in the coming days.

The Proclamation provides that the revised annual aggregate limit on semi-finished steel from Brazil "shall apply for calendar year 2020" and "shall be effective for steel articles entered for consumption, or withdrawn from warehouse for consumption…between August 28, 2020 and December 31, 2020." For calendar year 2021 and for subsequent years, the annual aggregate limit for Brazil will revert to the previously-established level "unless that limit is further modified or terminated." USTR has indicated that "the United States will hold consultations with Brazil about the semi-finished steel quota for 2021 in December, by which time we hope market conditions will have improved." The Brazilian Foreign Affairs and Economy ministries stated on August 29 that "[t]he Brazilian government maintains the firm expectation that the recovery of the U.S. steel sector, the frank and constructive dialogue on the matter, to be resumed next December, and the exceptional quality of bilateral relations will allow the full restoration and even the raising of levels trade in semi-finished steel[.]"

Exclusion Process

The Proclamation acknowledges that the reduced quota on semi-finished steel from Brazil "may delay or disrupt specific production activities in the United States for which imports of the steel articles covered by the [quota] have already been contracted for delivery in the fourth quarter of this year." Accordingly, the Proclamation directs the Department of Commerce (DOC) "to provide relief from the quantitative limitation set forth in this proclamation in certain limited circumstances," in addition to the relief that DOC is already authorized to provide under the current Section 232 exclusion process. Specifically, DOC must, "on an expedited basis," grant relief from the reduced quota on semi-finished steel articles from Brazil where:

- The party requesting relief entered into a contract or other written agreement for the production and shipment of such steel article before August 28, 2020;
- Such agreement specifies the quantity of such steel article that is to be produced and shipped to the United States prior to December 31, 2020;
- Such steel article is to be used in production activities in the United States and such steel article cannot be procured from another supplier to meet the delivery schedule and specifications contained in such agreement; and
- Lack of relief from the quantitative limitation on such steel article would significantly disrupt the production activity in the United States for which the steel article specified in such agreement is intended.

DOC is required to issue procedures for requesting relief under the new process "as soon as practicable." The volume of imports for which the DOC may grant relief under the new exclusion process may not exceed 60,000,000 kilograms in the aggregate.

The Proclamation can be viewed **here**. USTR's statement can be viewed **here**.

Section 301

USTR Extends Certain Section 301 Tariff Exclusions for "List 3" Goods Through December 31, 2020

On August 6, 2020, the Office of the US Trade Representative (USTR) announced that it will extend certain product-specific exclusions from the United States' Section 301 tariffs on China-origin goods through December 31, 2020. The exclusions at issue cover certain "List 3" goods, and originally were set to expire on August 7, 2020 (the "uniform" expiration date that USTR has adopted for all List 3 exclusions, regardless of the date of their approval). Earlier this year, USTR requested public comments on the possible extension of the covered exclusions "for up to 12 months." However, USTR has decided to extend the granted exclusions only through December 31, 2020, citing "the cumulative effect of current and possible future exclusions or extensions of exclusions on the effectiveness of the action taken in this investigation[.]" The decision covers 266 separate product exclusions, which are set forth in the Annex to USTR's Federal Register notice announcing the extension.

USTR has not ruled out potential future extensions of the exclusions covered by its August 6 notice. Rather, the notice clarifies that USTR "may consider further extensions of exclusions" and "will take account of the cumulative effect of exclusions in considering the possible further extension of the exclusions covered by this notice, as well as possible extensions of exclusions of other products covered by the action in this investigation." However, USTR has rejected recent requests from certain Members of Congress to extend Section 301 exclusions automatically in order to provide greater certainty and tariff relief for US importers in light of the COVID-19 crisis. In response to such requests, USTR has stated that it is "not considering automatic extension of previously approved exclusions," and has emphasized its objectives to promote domestic manufacturing and combat the alleged Chinese trade practices at issue in the Section 301 investigation.

USTR's August 6, 2020 notice can be viewed **here**. It is scheduled to be published in the Federal Register on August 11, 2020.

USTR Announces "Modest" Revisions to List of EU Products Subject to Retaliatory Tariffs in Airbus WTO Dispute

On August 12, 2020, the Office of the US Trade Representative (USTR) announced that it will revise the list of EU products that are subject to the United States' retaliatory tariffs in the long-running WTO dispute over subsidies provided to the European aircraft manufacturer Airbus (*European Communities and Certain member States — Measures Affecting Trade in Large Civil Aircraft* – DS316). USTR has described the revisions as "modest," as the annual import value of the covered products remains unchanged at approximately $7.5 billion, and the tariff rates remain unchanged at 15% for aircraft and 25% for non-aircraft products. However, USTR has modified the list of non-aircraft products by removing certain goods from Greece and the United Kingdom and adding certain goods from France and Germany, effective September 1, 2020. USTR is required to review and revise the retaliation list periodically pursuant to the "carousel" provisions of the Trade Act of 1974, and the agency faced an August 12 deadline to adopt the latest revision.

USTR's announcement follows a July 24 statement from the European Commission claiming that the EU and its Member States "are in full compliance" with the WTO's rulings in DS316, because the governments of France and Spain have agreed with Airbus to modify the terms of the launch investment programs at issue in the WTO dispute "to reflect market conditions." In USTR's August 12 statement, Ambassador Robert Lighthizer disputed that characterization, but indicated that the United States intends to engage in "a new process with the EU" to obtain a long-term resolution to the dispute, suggesting that the parties will continue to seek a negotiated solution. We provide an overview of these developments below.

Background

On October 18, 2019, following nearly 15 years of litigation at the WTO, the United States imposed additional tariffs of 10 to 25 percent on $7.5 billion worth of annual imports from the EU, pursuant to Section 301 of the Trade Act of 1974. The United States took this action pursuant to the authorization of the WTO Dispute Settlement Body (DSB), following an Appellate Body finding that certain subsidies provided by the EU and some of its member states to Airbus were inconsistent with the WTO Agreement on Subsidies and Countervailing Measures. A WTO arbitrator determined in October 2019 that the level of countermeasures "commensurate with the degree and nature of the adverse effects determined to exist" due to the EU subsidies at issue amounts to $7.496 billion per year.

Where USTR imposes retaliatory action under Section 301, it is required by law to "periodically revise the [retaliation] list or action to affect other goods of the country or countries that have failed to implement the [WTO Dispute Settlement Body] recommendation," unless USTR determines that implementation of the DSB's recommendations is imminent, or agrees with the affected industry concerned that revision of the list is not necessary. In February 2020, USTR announced its first revision of the retaliation list, including an increase of tariff rates on certain large civil aircraft from 10% to 15%. On June 26, 2020, USTR issued a notice announcing another review of the action and a request for comments.

August 12 Action

USTR's Federal Register notice asserts that the EU still has not fully complied with the DSB's recommendations and rulings, because it "has not taken any action on six of the launch aid measures found in the WTO compliance proceedings to continue to be WTO-inconsistent." Furthermore, although the European Commission recently announced amendments to the French and Spanish launch aid contracts for the Airbus A350 XWB aircraft, these actions allegedly "do not implement the DSB's recommendations by withdrawing the subsidies received by Airbus." USTR also indicated that it has not agreed with the affected industry concerned "that revision of the list is not necessary," and accordingly has determined to revise the retaliation list.

As indicated above, USTR's modifications to the retaliation list are relatively modest. USTR has made no changes to the list of covered aircraft products, which will remain subject to a 15% tariff. The changes to the list of non-aircraft products subject to the 25% tariff include (1) the removal of certain cheeses from Greece and other Member States; (2) the addition of certain fruit jams from France and Germany; (3) the removal of certain sweet biscuits from the UK; and (4) the addition of certain sweet biscuits from Germany. These modifications are applicable with respect to products that are entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight savings time on September 1, 2020.

Outlook

Though the United States continues to reject the EU's claim of "full compliance" with the WTO's ruling, it is notable that USTR has once again declined to impose the maximum amount of countermeasures authorized by the WTO by increasing tariff rates on the covered products. The European Commission has welcomed that decision in a statement "acknowledg[ing[the decision of the U.S. not to exacerbate the ongoing aircraft dispute by increasing tariffs on European products[.]" Moreover, Ambassador Lighthizer has announced that the United States "is committed to obtaining a long-term resolution to this dispute" and "will begin a new process with the EU in an effort to reach an agreement[.]" Following the announcement, EU Trade Commissioner Phil Hogan similarly stated that the EU "will intensify … efforts with the US to find a negotiated solution[.]" Nevertheless, the prospects for a negotiated solution remain uncertain, and it is unclear how they will be impacted by the WTO's forthcoming decision on the magnitude of the adverse effects caused to the EU by 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*). That decision is expected next month, and the EU has indicated that it plans to impose retaliatory measures absent a settlement.

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

Trade Remedies

US Department of Commerce Initiates Antidumping and Countervailing Duty Investigations of Imports of Certain Chassis and Subassemblies Thereof from China

On August 20, 2020, the US Department of Commerce (DOC) announced the initiation of antidumping (AD) and countervailing duty (CVD) investigations concerning imports of certain chassis and subassemblies thereof (chassis) from China. The petitions were filed by the Coalition of American Chassis Manufacturers, whose members are Cheetah Chassis Corporation (Fairless Hills, Pa.), Hercules Enterprises, LLC (Hillsborough, N.J.), Pitts Enterprises, Inc. (Pittsview, Ala.), Pratt Industries, Inc. (Bridgman, Mich.), and Stoughton Trailers, LLC (Stoughton, Wisc.).

The merchandise subject to the investigations is chassis and subassemblies thereof, whether finished or unfinished, whether assembled or unassembled, whether coated or uncoated, regardless of the number of axles, for carriage of containers, or other payloads (including self-supporting payloads) for road, marine roll-on/roll-off (RORO) and/or rail transport. The finished and unfinished chassis subject to this investigation are typically classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 8716.39.0090 and 8716.90.5060. Imports of finished and unfinished chassis may also enter under HTSUS subheading 8716.90.5010.

The US International Trade Commission (ITC) will make its preliminary injury determinations in these investigations by September 14, 2020. If the ITC preliminarily determines that there is a reasonable indication of material injury or threat of material injury, DOC's investigations will continue, with the preliminary CVD determination scheduled for October 23, and the preliminary AD determination scheduled for January 6, 2021, unless these deadlines are extended.

Final determinations by DOC are scheduled for January 6, 2021, for the CVD investigation, and March 22, 2021, for the AD investigation, although these dates may be extended. If DOC makes affirmative findings in these investigations, and if the ITC determines that dumped and/or subsidized US imports of chassis from China materially injure or threaten material injury to the US industry, DOC will impose duties on those imports in the amount of dumping and/or countervailable subsidization found to exist.

The petitioner alleges that U.S. imports of chassis from China were valued at approximately $250 million in 2019.

US Department of Commerce Initiates Antidumping Duty Investigations of Imports of Methionine from France, Japan, and Spain

On August 19, 2020, the US Department of Commerce (DOC) announced the initiation of new antidumping duty (AD) investigations concerning imports of methionine from France, Japan, and Spain. The alleged dumping margins are 16.17 percent, 104.23 percent, and 36.22 percent, respectively. The petitions were filed by Novus International, Inc. (St. Charles, Mo.).

The merchandise covered by these investigations is methionine and dl-Hydroxy analogue of dl-methionine, also known as 2-Hydroxy 4-(Methylthio) Butanoic acid (HMTBa), regardless of purity, particle size, grade, or physical form. Methionine has the chemical formula $C_5 H_{11} NO_2 S$, liquid HMTBa has the chemical formula $C_5 H_{10} O_3 S$, and dry HMTBa has the chemical formula $(C_5 H_9 O_3 S)_2 Ca$. Methionine is currently classified under subheadings 2930.40.0000 and 2930.90.4600 of the Harmonized Tariff Schedule of the United States (HTSUS).

The US International Trade Commission (ITC) will make its preliminary determinations in these investigations by September 14, 2020. If the ITC preliminarily determines that there is a reasonable indication of material injury or threat of material injury, DOC's investigations will continue, with the preliminary AD determinations scheduled for January 5, 2021, unless this deadline is extended.

Final determinations by DOC in these cases are scheduled for March 22, 2021, but this date may be extended. If DOC makes affirmative findings in these investigations, and if the ITC determines that dumped US imports of methionine from France, Japan, and Spain materially injure, or threaten material injury to, the US industry, DOC will impose duties on those imports in the amount of dumping found to exist.

According to DOC, imports of methionine from France, Japan, and Spain in 2019 were valued at approximately $10.7 million, $31.9 million, and $56.9 million, respectively.