US Multilateral Trade Policy Developments

Japan External Trade Organization

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US Trade Agreements

US Customs and Border Protection Clarifies Continued Application of NAFTA Marking Rules Under USMCA

US Customs and Border Protection ("CBP") has issued guidance clarifying that, despite the recent entry into force of the United States-Mexico-Canada Agreement ("USMCA"), importers must continue to use the North American Free Trade Agreement's ("NAFTA") marking rules to determine the country of origin of certain imported goods for marking purposes. At the same time, the USMCA has eliminated a NAFTA rule that made goods eligible for preferential tariff treatment only if they qualified as goods of a NAFTA country for marking purposes, in addition to satisfying the agreement's rules of origin. These changes might make it easier for goods to receive preferential tariff treatment under the USMCA, but will require some importers to conduct multiple country of origin analyses to ensure compliance. Such analyses can be complicated further by the recent proliferation of special trade remedies under Section 232 of the Trade Expansion Act and Section 301 of the Trade Act, under which country of origin is determined pursuant to a "substantial transformation" test that is distinct from the USMCA and NAFTA rules. This alert provides an overview of these developments and their implications.

USMCA Implementing Instructions

According to CBP's final implementing instructions for the USMCA, the NAFTA marking rules at 19 C.F.R. pt. 102 will determine how to *mark* many products processed in USMCA countries from non-USMCA inputs and will determine *non*-preferential duties, if applicable. CBP could therefore analyze country of origin using at least three distinct analytical frameworks: (1) country of origin for purposes of determining whether a good is eligible for preferential tariff treatment under the USMCA or NAFTA rules of origin (depending on whether the good entered after or before the USMCA's entry into force); (2) country of origin for marking purposes under 19 C.F.R. pt. 102, which sometimes sets forth tariff-shift tests differing from the tariff-shift tests that eligibility for the USMCA duty preference imposes; and (3) country of origin for purposes of assessing Section 232 and Section 301 duties under the "substantial transformation" test. This list does not include, as well: (4) different US Department of Commerce country-of-origin rules for purposes of antidumping and countervailing duties; (5) Buy America and Buy American Act rules applicable to certain federal government procurements; and (6) rules governing "Made in USA" claims administered by the US Federal Trade Commission.

Before the USMCA entered into force on July 1, 2020, there were differing interpretations of which marking and non-preferential-duty rules USMCA would utilize. Many thought that USMCA would shift away from the NAFTA marking rules in 19 C.F.R. pt. 102 and instead utilize the substantial transformation test that 19 C.F.R. § 134.1(b) requires CBP to use in other contexts to determine country of origin. However, CBP's final implementing instructions now clarify that it will continue to apply the NAFTA marking rules at 19 C.F.R. pt. 102, even if in a slightly different way.

USMCA Preferential Duties and Country of Origin Overview

To receive preferential treatment under the USMCA, a product must meet the rule-of-origin requirements set forth in Chapter 4 of the Agreement and statutorily codified in HTSUS General Note 11. The general requirements are that the product (1) be wholly obtained or produced entirely in the territory of a party, (2) satisfy the product-specific rules of origin in Annex 4-B of the USMCA, (3) be produced in the territory of a party exclusively from originating materials, *or* (4) satisfy the applicable regional-value-content requirement. The rules in Chapter 4, however, are separate and often different from the rules used to determine country of origin for marking purposes, located in 19 C.F.R. pt. 102. In other words, even if Chapter 4 determines that the product originates from a USMCA country for purposes of preferential tariff treatment, the importer must conduct a separate analysis to determine how to mark the product under 19 C.F.R. pt. 102, which may result in a different country of origin than Chapter 4 alone would mandate. Duty-preference rules of origin thus tell an importer only whether merchandise may benefit from the lower USMCA duties, not which one of three potential countries in North America produced the goods for marking purposes.

Under the NAFTA, a good was eligible for preferential tariff treatment only if it qualified as originating under the NAFTA rules of origin *and* qualified to be marked as a product of a NAFTA country under the NAFTA marking rules. When different analyses of the same goods resulted in different countries of origin, NAFTA often previously applied the "NAFTA preference override" in 19 C.F.R. § 102.19, which allowed preferential tariff treatment to be granted to certain goods that otherwise would be ineligible for such treatment due to the requirement that originating goods also qualify as products of a NAFTA country under the marking rules. However, the USMCA revoked the requirement that any good receiving preferential tariff treatment also qualify to be marked as a good of a NAFTA/USMCA country, and thus rendered the NAFTA preference override unnecessary.[1] Until CBP issued its recent guidance, the changes had made it unclear whether the NAFTA marking rules from 19 C.F.R. pt. 102 would remain in place, and some commentators reasonably but prematurely inferred that CBP's "substantial transformation" test would replace them.

Marking and Country of Origin

All foreign-origin goods imported into the United States must be marked with their country of origin unless an exception applies.[2][2]

Without NAFTA's requirement that any good receiving preferential duties also qualify to be marked as a good of Canada or Mexico, it is now presumably easier for goods to receive preferential treatment under USMCA. However, a product's country of origin might therefore not be the same for purposes of preferential duties and marking, and the imported products must still be marked correctly. Although a prudent importer might seek from CBP a country-of-origin ruling in case of uncertainty, the general rule appears to require country-of-origin marking as follows: (1) under 19 C.F.R. pt. 102 if application of those rules results in a USMCA country; and (2) under the "substantial transformation" test if application of 19 C.F.R. pt. 102 results in a non-USMCA country. Future CBP rulings will need to confirm or counter this assumption.

Section 232 and Section 301 Duties and Country of Origin

Another complication in the country-of-origin analysis is that duties under Section 232 of the Trade Expansion Act of 1962 and Section 301 of the Trade Act of 1974—which may apply regardless of whether the goods qualify for a USMCA duty preference—utilize the "substantial transformation" test to determine country of origin. In the "substantial transformation" test, applicable only when goods incorporate materials from more than one country, CBP asks case by case whether incorporation and any further processing have altered the inputs' "name," "character," and "use," and thereby changed them into "a new and different article of commerce."

Just as the rules of origin and marking rules under USMCA can lead to unexpected results, the Section 232 or 301 "substantial transformation" analysis might determine that the country of origin for purposes of these duties differs from the country of origin for purposes of USMCA tariff treatment. In such circumstances, an imported good may be eligible for preferential tariff treatment under the USMCA but also be subject to Section 301 duties on China-origin goods. Importantly, the country of origin of a product under USMCA does not determine the country of origin for Section 232 and Section 301 duties. Importers may therefore need to conduct multiple country of origin analyses to ensure that goods are appropriately marked and classified.

CBP's guidance on USMCA implementation is available **here**.

[1] "Except for certain agricultural goods, a good does not need to first qualify to be marked as a good of Canada or Mexico (as was the case in NAFTA) in order to receive preferential tariff treatment under USMCA; Therefore, section 19 CFR 102.19 (NAFTA preference override) provisions are no longer necessary and will not be applicable under the USMCA." CBP Pub. No. 1118-0620, "United States-Mexico-Canada Agreement (USMCA): Implementing Instructions" at 9 (June 30, 2020).

[2] 19 U.S.C. § 1304.

US Trade Actions

Section 201

US Trade Representative to Request Initiation of Global Safeguard Investigation of Blueberry Imports

On September 1, 2020, the Office of the US Trade Representative (USTR) announced that it will submit a request to the US International Trade Commission (ITC) for the initiation of a global safeguard investigation of blueberry imports, pursuant to Section 201 of the Trade Act of 1974 ("Section 201"). This is the first time in nearly twenty years that USTR will use its authority to request the initiation of an investigation under Section 201. USTR's decision was announced as part of a broader plan to address alleged "threats that increased imports pose to American producers of seasonal and perishable fruits and vegetables." US Trade Representative Robert Lighthizer promised to release such a plan in a **letter** sent to members of the Florida congressional delegation earlier this year, after certain US producers of seasonal agricultural products expressed dissatisfaction with the outcome of the US-Mexico-Canada Agreement ("USMCA") negotiations.

In a new report published on September 1, USTR claims that a Section 201 investigation is warranted because US imports of blueberries "have greatly increased in recent years." The report states that US imports of blueberries "have increased significantly over the last 15 years, from roughly 50 million pounds in 2005 to almost 400 million pounds in 2018."[3] Section 201 permits the imposition of trade remedies only where the ITC identifies an increase in imports that is a "substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article." *See* 19 U.S.C. § 2252(b)(1)(A).

The projected timeline for the Section 201 investigation of blueberries depends on whether USTR claims in its formal petition, and the ITC ultimately finds, that "critical circumstances" exist. Normally, the ITC's investigation must be completed within 120 days of receipt of the petition or request. *See* 19 U.S.C. § 2252(b)(2)(A). If, however, the petitioner claims that critical circumstances exist, the ITC must make a critical circumstances determination within 60 days of the filing of the petition. *See* 19 U.S.C. § 2252(d)(2)(A). If the ITC makes an affirmative decision on critical circumstances, the President has 30 days to impose "provisional measures," which include tariffs, tariff-rate quotas, or quotas but may not remain in effect for more than 200 days. *See* 19 U.S.C. § 2252(d)(2)(D).

In addition to requesting the initiation of a Section 201 investigation on blueberry imports, USTR's report indicates that the agency intends to work with domestic producers to request that the ITC commence an investigation under Section 332(g) of the Tariff Act of 1930 ("Section 332") to monitor imports of strawberries and bell peppers. An entity "representing a domestic industry that produces perishable product" must first file a request with USTR to initiate the monitoring of imports under Section 332. *See* 19 U.S.C. § 2252(d)(1)(A). USTR's report therefore signals its willingness to work with producers of strawberries and bell peppers should a domestic producer file a request for the monitoring of imports of such products.

USTR's complete report is available **here**.

Section 232

US Department of Commerce Issues Final Rule Modifying "Steel Import Monitoring and Analysis" System

On September 11, 2020, the US Department of Commerce (DOC) issued a final rule modifying its existing Steel Import Monitoring and Analysis (SIMA) system in order to "allow for the effective and timely monitoring of import surges of specific steel products" and "aid in the prevention of transshipment[.]" The final rule, which largely mirrors DOC's proposed rule of March 30, 2020, will: (1) newly require steel import license applicants to identify the country

[3] USTR, Report on Seasonal and Perishable Products in U.S. Commerce, (2020) at 10.

where the steel used in the manufacture of the imported steel product was "melted and poured"; (2) expand the scope of SIMA's licensing requirement so that it covers all steel products subject to Section 232 tariffs; (3) extend the SIMA licensing system indefinitely; and (4) codify the existing low-value license requirement for certain steel entries valued at up to $5,000 (*please refer to the W&C US Trade Alert dated March 31, 2020*.) The rule will take effect on **October 13, 2020**.

Though the final rule generally follows DOC's proposed rule of March 2020, the agency has made some modifications to the rule, and has announced certain "sub-regulatory" changes to the public SIMA monitor, in response to public comments from interested parties. In addition, DOC has announced that it will launch a new SIMA system website on October 13, concurrent with the implementation of the rule, and that importers will be required to use the new system beginning on that date. We provide an overview of these changes below.

New Definition of "Country of Melt and Pour"

In response to public comments on the proposed rule, DOC's final rule adopts a definition of the "country of melt and pour," which the proposed rule had left undefined. The country of melt and pour must be identified on steel import license applications beginning on October 13, 2020, and is now defined in revised 19 C.F.R. § 360.103(c)(3) as follows:

> (3)(i) The field in the license application requiring identification of the country where the steel used in the manufacture of the product was melted and poured…applies to the original location where the raw steel is:
>
> (A) First produced in a steel-making furnace in a liquid state; and then
>
> (B) Poured into its first solid shape.

(ii) The first solid state can take the form of either a semi-finished product (slab, billets or ingots) or a finished steel mill product. The location of melt and pour is customarily identified on mill test certificates that are commonplace in steel production, generated at each stage of the production process, and maintained in the ordinary course of business.

The final rule further clarifies that the requirement to report the country of melt and pour on the import license application "will not apply to raw materials used in the steel manufacturing process (i.e., steel scrap; iron ore; pig iron; reduced, processed, or pelletized iron ore; or raw alloys)." DOC states that the final rule's definition of the country of melt and pour was informed by, and is consistent with, provisions of the US-Mexico-Canada Agreement (USMCA) that will prohibit certain vehicles from receiving preferential tariff treatment unless a specified percentage of the vehicle producer's steel purchases were melted and poured in North America.[4]

According to DOC, requiring importers to disclose the country of melt and pour "is consistent with the United States' joint understandings with the governments of Canada and Mexico" that eliminated the Section 232 tariff on steel imports from these countries and allowed the re-imposition of tariffs in response to import "surges." In its press release on the new rule, DOC noted that the joint understandings "provided that in monitoring for steel import surges, the United States may treat products made with steel that is melted and poured in North America separately from products that are not."

[4] Specifically, DOC cites Article 6, Footnote 73 of the Appendix to Annex 4-B of the USMCA, which reads in the relevant part as follows:

> Notwithstanding any other provision of this Agreement, beginning seven years after entry into force of this Agreement, for steel to be considered as originating under this Article, all steel manufacturing processes must occur in one or more of the Parties, except for metallurgical processes involving the refinement of steel additives. Such processes include the initial melting and mixing and continues through the coating stage. This requirement does not apply to raw materials used in the steel manufacturing process, including steel scrap; iron ore; pig iron; reduced, processed, or pelletized iron ore; or raw alloys.

Amendments to Existing Product Groups on the Public SIMA Monitor

Currently, the public SIMA monitor reports steel trade data for 53 different steel "product groups" (*e.g.*, "Stainless Pipe & Tubing" and "Wire Rods"). In response to public comments, DOC is making the following changes to the steel product groupings:

- DOC will split the "carbon and alloy blooms, billets, and slabs" product group into into two product groups: (1) "slab (rectangular cross-section with width greater than 4 times the thickness)"; and (2) "other semi-finished". DOC will make the same change for the "stainless blooms, billets, and slabs" product group. According to DOC, certain commenters suggested that these changes "will allow a better understanding of import trends for these two distinct products."

- DOC will separate "line pipe" into three more specific product groups: (1) line pipe greater than 16 inches in diameter; (2) line pipe less than or equal to 16 inches in diameter; and (3) line pipe not specified. According to DOC, these changes "will help the U.S. industry observe potential evasion or circumvention of [anti-dumping and countervailing duty] orders, which the U.S. domestic producers raised as an underlying concern in their comments."

Effective Date and New SIMA System Website

All import licenses requested on or after October 13, 2020, must meet the requirements of DOC's final rule and utilize the online license application platform on the new SIMA system website.[5] Licenses requested on or before October 9, 2020, must meet the requirements of the existing SIMA system and utilize the online license application platform on the existing SIMA system website. The existing SIMA system website will no longer be operational beginning on October 10, 2020, and the new SIMA system website will not be operational until October 13, 2020. Therefore, no licenses can be obtained via the online license application platform from October 10 through October 12, 2020 (though DOC will accept manual applications during this period in "emergency situations".)

Outlook

Information generated from the new rule could be used in a variety of ways to reinforce the monitoring of international trade in steel products and suspected unfair trade practices. As the rule indicates, DOC intends to use the data concerning the "country of melt and pour" to monitor steel imports from Canada and Mexico and identify potential import surges that could lead the United States to re-impose Section 232 tariffs on certain steel product categories (as it has recently done for certain aluminum products from Canada). In addition, and as noted above, information generated from the rule could be used to support allegations of evasion or circumvention of antidumping and countervailing duty orders. The changes to the SIMA system follow other recent efforts by the United States to address alleged import surges and unfair trade practices, including its recent agreement with Mexico to establish an export monitoring system in response to alleged "surges" in imports of standard pipe, mechanical tubing, and semi-finished products, as well as DOC's recent proposed rule aimed at strengthening enforcement of the antidumping and countervailing duty laws.[6] This heightened focus on trade enforcement is likely to continue, regardless of the outcome of the 2020 election.

DOC's final rule can be viewed **here**.

Trump Administration to Rescind Section 232 Tariff on Canadian Aluminum; Canada Calls Off Retaliatory Measures

On September 15, 2020, the Office of the US Trade Representative (USTR) announced that President Trump has reversed his August 6 decision to re-impose a 10 percent tariff on non-alloyed, unwrought aluminum imports from Canada pursuant to Section 232 of the Trade Expansion Act. USTR stated that, following consultations with the

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[5] The new SIMA system website that will be operational on October 13, 2020 is **https://www.trade.gov/steel**.

[6] Please refer to the W&C US Trade Alert dated August 20, 2020.

Canadian government, the United States “has determined that trade in non-alloyed, unwrought aluminum is likely to normalize in the last four months of 2020, with imports declining sharply from the surges experienced earlier in the year.” Based on those expectations, the United States will resume duty-free treatment of non-alloyed, unwrought aluminum products from Canada “retrospective to September 1, 2020.” USTR’s announcement came just hours before Canada was expected to announce the imposition of retaliatory tariffs on approximately $2.7 billion worth of annual imports of aluminum and aluminum-containing products from the United States.

USTR’s statement indicates that the United States will continue to monitor imports of non-alloyed, unwrought aluminum from Canada and will re-impose the 10 percent tariff if imports exceed “expected” levels. Specifically, the United States “expects that shipments of non-alloyed, unwrought aluminum from Canada for the remainder of 2020 will be no greater than the following monthly volumes”:

Month	Import Volume
September	83,000 tons
October	70,000 tons
November	83,000 tons
December	70,000 tons

USTR states that, six weeks after the end of any month during this period, the United States will determine “whether actual shipments met expectations.” If shipments in any month exceed the expected volume, the United States “expects that shipments in the next month will decline by a corresponding amount.” If actual shipments exceeded 105 percent of the expected volume for any month during the four-month period, the United States will impose the 10 percent tariff retroactively on all shipments made in that month. In addition, if imports exceed 105 percent of the expected volume in any month, the United States “may re-impose the 10 percent tariff going forward.” The United States will consult with the Canadian government at the end of the year “to review the state of the aluminum trade in light of trade patterns during the four-month period and expected market conditions in 2021.”

Following USTR’s announcement, Canadian Deputy Prime Minister Chrystia Freeland emphasized that the import levels announced by USTR are not quotas and are not the result of any negotiated agreement between the United States and Canada. She stated that “[w]e have not agreed to anything. We have not negotiated an agreement with the U.S. on quotas…What has happened today is that the United States has chosen to unilaterally lift its tariffs on Canadian aluminum exports to the United States[.]” Canadian Trade Minister Mary Ng confirmed that, as a result of the United States’ decision, Canada will not implement its threatened retaliatory tariffs on US goods.

The United States’ decision in August to re-impose of tariffs on non-alloyed, unwrought aluminum from Canada, and Canada’s planned retaliation thereto, stemmed from the May 2019 bilateral agreement that exempted Canadian aluminum from the Section 232 tariffs, but allowed the re-imposition of tariffs in response to import “surges.” The same agreement provides that, where a party re-imposes tariffs in response to an import surge, the exporting party may retaliate only in the affected sector (*i.e.*, “aluminum and aluminum-containing products.”) Canada’s planned retaliatory tariffs, which were expected to be implemented on September 16, covered upstream aluminum products and certain downstream goods such as household washing machines and refrigerators, and some observers noted that the measures appeared to target US “swing states” that will play an important role in the upcoming presidential election. Given the timing of USTR’s announcement, Canada’s proposed retaliatory tariffs might have played a role in the United States’ decision to rescind the 10 percent tariff on non-alloyed, unwrought aluminum from Canada. Nevertheless, the United States is likely to continue monitoring imports of steel and aluminum from Canada and Mexico closely, as it has suggested with its recent decision to expand its “Steel Import Monitoring and Analysis” system and its recent proposal to establish a similar system for aluminum imports.

President Trump has not yet issued a formal proclamation effectuating the removal of the 10 percent tariff on non-alloyed, unwrought aluminum from Canada, but he is expected to do so in the coming days.

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

Section 301

USTR Extends Certain Section 301 Tariff Exclusions for "List 1" and "List 2" Goods Through December 31, 2020

On September 22, 2020, the Office of the US Trade Representative (USTR) published two Federal Register notices extending certain product-specific exclusions from the United States' Section 301 tariffs on China-origin goods through December 31, 2020. The exclusions extended by the two notices cover certain "List 1" and "List 2" goods, and originally were scheduled to expire on September 20, 2020. Though USTR had requested public comments on the possible extension of the covered exclusions "for up to 12 months," it has decided to extend the covered 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 exclusions being extended cover 62 products on "List 1" and 17 products on "List 2," and are described in the Annexes to USTR's Federal Register notices.

USTR has not ruled out potential future extensions of the exclusions covered by its September 22 notices. Rather, each 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." In addition, USTR takes into account "advice from advisory committees and any public comments concerning extension of the pertinent exclusion[.]"

USTR's Federal Register notices can be viewed **here** (for List 1 goods) and **here** (for List 2 goods).

Legislative Developments

Senate Finance Committee Chairman Introduces Legislation to Extend Generalized System of Preferences for 16 Months

On September 24, 2020, Senate Finance Committee Chairman Chuck Grassley (R-IA) introduced legislation to extend the Generalized System of Preferences (GSP) program through April 30, 2022. GSP is currently scheduled to expire on December 31, 2020, unless Congress enacts legislation extending the program. Senator Grassley has explained that his proposal to extend GSP for only 16 months is intended as a stopgap measure, ensuring that the program does not expire while Congress debates potential changes to the GSP statute that some lawmakers and Trump administration officials have suggested. By contrast, prior extensions of GSP have typically reauthorized the program for a period of 2 or 3 years.

The Trump administration has expressed interest in reforming the GSP statute this year and has not indicated whether it would support a "clean" reauthorization of the program, such as that proposed by Sen. Grassley. In June of 2020, US Trade Representative Robert Lighthizer declined to take a formal position on GSP reauthorization and stated that the program "is something that has benefits, but needs changes[.]" As an example, he noted that some developing countries benefit from the United States' unilateral extension of trade preferences under GSP but have entered into free trade agreements with other developed economies, such as the European Union, affording them reciprocal market access on better terms than are available to US exporters. Though the GSP statute already appears to contemplate the withdrawal of a country's GSP benefits in such a scenario, Amb. Lighthizer subsequently confirmed that the Trump administration is considering "potential reforms" to the law.[7][1] The administration has not publicly proposed specific reforms, but it is expected that any proposed reforms would relate to the Trump administration's objective to transition to more "reciprocal" trading relationships with advanced developing countries that play a significant role in global trade.

Additionally, some congressional Democrats have proposed changes to the GSP statute aimed at establishing more stringent eligibility criteria related to labor, human rights, and gender discrimination.[8] One such proposal, offered by Sens. Bob Casey (D-PA) and Catherine Cortez Masto (D-NV), would render a country ineligible for GSP where it "does not substantially afford internationally recognized worker rights to workers in the country (including any designated zone in that country)[.]"[9] Further, their proposal would newly render a country ineligible for GSP where it "does not substantially afford equal rights and protection under the law, regardless of gender, in the country (including in any designated zone in that country)," or if it "engages in gross violations of internationally recognized human rights in that country (including any designated zone in that country)."

Given the current congressional schedule, the upcoming November election, and the uncertain legislative agenda during the post-election "lame duck" session, the likelihood that both houses of Congress and the Trump administration will agree on substantive changes to the GSP statute this year appears low. At the same time, the GSP program continues to enjoy broad bipartisan support, and Members of Congress have expressed a desire to reauthorize the program before its expiration on December 31 to ensure that US businesses do not face an additional tariff burden amid the economic slowdown triggered by the COVID-19 pandemic. By extending the program without changes, and for a relatively short duration of 16 months, Sen. Grassley's legislation might offer the best prospects for the renewal of GSP this year. However, given the limited window for congressional action this year and the differing views on potential changes to GSP, the expiration of the program in December remains a significant possibility. Senator Grassley's bill can be viewed **here**.

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[7] Current 19 U.S.C. § 2462(b)(2)(C) renders a country ineligible for GSP where "[s]uch country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce."

[8] See, e.g., S.4007 (Women's Economic Empowerment in Trade Act of 2020).

[9] By contrast, the current GSP statute renders a country ineligible only if it "*has not taken or is not taking steps* to afford internationally recognized worker rights to workers in the country (including any designated zone in that country)" (emphasis added). 19 U.S.C. § 2462(b)(1)(G).

Trade Remedies

US Department of Commerce Issues Affirmative Preliminary Determination in Antidumping Investigation of Certain Corrosion Inhibitors from China

On September 3, 2020, the US Department of Commerce (DOC) announced an affirmative preliminary determination in the antidumping duty (AD) investigation of imports of certain corrosion inhibitors from China. In its investigation, DOC preliminarily determined that exporters from China have sold certain corrosion inhibitors in the United States at dumping margins ranging from 122.11 to 260.92 percent. As a result of the decision, US Customs and Border Protection will collect cash deposits from importers of certain corrosion inhibitors from China based on these preliminary rates.

The petitioner in this investigation is Wincom, Inc. (Blue Ash, Ohio). The merchandise covered by this investigation is tolyltriazole and benzotriazole. This includes tolyltriazole and benzotriazole of all grades and forms, including their sodium salt forms. Tolyltriazole is technically known as Tolyltriazole IUPAC 4,5 methyl benzotriazole. It can also be identified as 4,5 methyl benzotriazole, tolutriazole, TTA, and TTZ. Benzotriazole is technically known as IUPAC 1,2,3-Benzotriazole. It can also be identified as 1,2,3-Benzotriazole, 1,2-Aminozophenylene, IH-Benzotriazole, and BTA. Tolyltriazole has the Chemical Abstracts Service (CAS) registry number 299385-43-1. Tolyltriazole is classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2933.99.8220. Sodium Tolyltriazole has the CAS registry number 64665-57-2 and is classified under HTSUS subheading 2933.99.8290. Benzotriazole has the CAS registry number 95-14-7 and is classified under HTSUS subheading 2933.99.8210. Sodium Benzotriazole has the CAS registry number 15217-42-2. Sodium Benzotriazole is classified under HTSUS subheading 2933.99.8290.

DOC is scheduled to announce its final determination on or about January 20, 2021. If DOC's final determination is affirmative, the US International Trade Commission (ITC) will be scheduled to make its final injury determination on or about March 5, 2021. If DOC makes an affirmative final determination of dumping and the ITC makes an affirmative final injury determination, DOC will issue an AD order. If DOC makes a negative final determination of dumping or the ITC makes a negative final determination of injury, the investigation will be terminated and no orders will be issued.

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

US Department of Commerce Issues Affirmative Final Determination in Antidumping Investigation of Certain Glass Containers from China

On September 14, 2020, the US Department of Commerce (DOC) announced its affirmative final determination in the antidumping duty (AD) investigation of imports of certain glass containers from China. In its investigation, DOC determined that exporters from China have sold certain glass containers in the United States at dumping margins ranging from 31.07 to 255.68 percent.

The petitioner in this investigation is the American Glass Packaging Coalition, whose members are Anchor Glass Container Corporation (Tampa, Fla.) and Ardagh Glass, Inc. (Chicago). The merchandise covered by this investigation is certain glass containers with a nominal capacity of 0.059 liters (2.0 fluid ounces) up to and including 4.0 liters (135.256 fluid ounces) and an opening or mouth with a nominal outer diameter of 14 millimeters up to and including 120 millimeters. The scope includes glass jars, bottles, flasks and similar containers; with or without their closures; whether clear or colored; and with or without design or functional enhancements (including, but not limited to, handles, embossing, labeling, or etching). Glass containers subject to the investigation are specified within the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7010.90.5005, 7010.90.5009, 7010.90.5015, 7010.90.5019, 7010.90.5025, 7010.90.5029, 7010.90.5035, 7010.90.5039, 7010.90.5045, 7010.90.5049, and 7010.90.5055.

The US International Trade Commission (ITC) is currently scheduled to make its final injury determination on or about October 26. If the ITC makes an affirmative final injury determination, DOC will issue an AD order. If the ITC makes a negative final determination of injury, the investigation will be terminated, and no order will be issued.

In 2019, US imports of certain glass containers from China were valued at $293 million, according to DOC.

US Department of Commerce Issues Affirmative Preliminary Determination in Antidumping Investigation of Prestressed Concrete Steel Wire Strand from Turkey

On September 15, 2020, the US Department of Commerce (DOC) announced an affirmative preliminary determination in the antidumping duty (AD) investigation of imports of prestressed concrete steel wire strand from Turkey. In its investigation, DOC preliminarily determined that exporters of the subject merchandise received countervailable subsidies at rates that range from 14.44 to 135.06 percent. As a result of the decision, US Customs and Border Protection will collect cash deposits from importers of prestressed concrete steel wire strand from Turkey based on these preliminary rates.

The petitioners in the investigation are Insteel Wire Products Company (Mount Airy, NC), Sumiden Wire Products Corporation (Dickson, TN), and Wire Mesh Corporation (Houston). The merchandise covered by the investigation is prestressed concrete steel wire strand (PC strand), produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pretensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand. The PC strand subject to this investigation is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS).

DOC is currently scheduled to announce its final CVD determination on or about December 1. If DOC makes an affirmative final determination, the US International Trade Commission (ITC) will be scheduled to make its final injury determination on or about January 14, 2021. If DOC makes an affirmative final determination in this investigation and the ITC makes an affirmative final injury determination, DOC will issue a CVD order. If either agency makes a negative final determination, the investigation will be terminated, and no order will be issued.

According to the petitioners, imports of prestressed concrete steel wire strand from Turkey in 2019 were valued at approximately $13.1 million.

US Department of Commerce Issues Affirmative Preliminary Determinations in Antidumping Investigations of Prestressed Concrete Steel Wire Strand from Eight Countries

On September 24, 2020, the US Department of Commerce (DOC) announced its affirmative preliminary determinations in the antidumping duty (AD) investigations of imports of prestressed concrete steel wire strand from Argentina, Colombia, Egypt, the Netherlands, Saudi Arabia, Taiwan, Turkey, and the United Arab Emirates. In its investigations, DOC preliminarily determined that imports of the subject merchandise were sold in the United States at the following dumping margins:

- 60.40 percent for Argentina
- 86.09 percent for Colombia
- 29.72 percent for Egypt
- 30.86 percent for the Netherlands
- 194.40 percent for Saudi Arabia
- 23.89 percent for Taiwan
- 53.65 percent for Turkey

- 170.65 percent for the United Arab Emirates

As a result of the decision, US Customs and Border Protection will collect cash deposits from importers of PC strand from these eight countries based on the preliminary rates shown above.

The petitioners in the investigation are Insteel Wire Products Company (Mount Airy, NC), Sumiden Wire Products Corporation (Dickson, TN), and Wire Mesh Corporation (Houston). The merchandise covered by the investigation is prestressed concrete steel wire strand (PC strand), produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pretensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand. The PC strand subject to this investigation is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS).

DOC is scheduled to announce its final determinations in these investigations on or about December 8, 2020. If DOC's final determinations are affirmative, the US International Trade Commission (ITC) will be scheduled to make its final injury determinations on or about January 21, 2021. If DOC makes affirmative final determinations of dumping and the ITC makes affirmative final injury determinations, DOC will issue AD orders. If DOC makes a negative final determination of dumping or the ITC makes a negative final determination of injury, the investigation will be terminated and no order will be issued.

According to DOC, imports of PC strand in 2019 from the countries under investigation were approximately valued as follows:

- $2.3 million for Argentina
- $9.6 million for Colombia
- $345.9 thousand for Egypt
- $1.6 million for the Netherlands
- $1.4 million for Saudi Arabia
- $3.0 million for Taiwan
- $13.1 million for Turkey
- $2.3 million for the United Arab Emirates

US Department of Commerce Issues Final Ruling in Anticircumvention Inquiry Concerning Hydrofluorocarbon (HFC) Blends from China

On September 28, 2020, the US Department of Commerce (DOC) announced its final determination in the anti-circumvention inquiry concerning imports of hydrofluorocarbon (HFC) blends containing HFC components from China (R-404A, R-407A, R-407C, R-410A, R-507A/R-507) that are processed in India. In its inquiry, DOC determined that Chinese components that are blended with Indian components and/or components from other countries, and then exported to the United States, are circumventing the existing antidumping duty (AD) order on imports of HFC blends from China. DOC initiated this inquiry in response to allegations of circumvention from the American HFC Coalition.

As a result of DOC's affirmative final circumvention determination, DOC will instruct US Customs and Border Protection to continue to collect AD cash deposits on imports of HFC blends containing HFC components from China that are processed in India. These duties apply to any unliquidated entries since June 18, 2019 (the date on which Commerce initiated the circumvention inquiry).

WTO Developments

WTO Panel Rules in Favor of China in Dispute Concerning US “Section 301” Tariffs on Chinese Goods

On September 15, 2020, the World Trade Organization (WTO) released the report of the panel in *United States — Tariff Measures on Certain Goods from China* (DS543). This dispute concerned the United States’ imposition of additional tariffs on approximately $234 billion in annual imports from China pursuant to Section 301 of the Trade Act of 1974. The panel found that the imposition of the Section 301 tariffs violated the United States’ WTO commitments, particularly the Most-Favoured Nation (“MFN”) requirement and the tariff bindings set forth in the United States’ tariff schedule. The panel also rejected the United States’ argument that the measure was justified under the “public morals” exception set forth in Article XX(a) of the General Agreement on Tariffs and Trade (“GATT”) 1994. Following the circulation of the panel report, United States Trade Representative (“USTR”) Robert Lighthizer expressed his disappointment in the institution and urged the reform of the WTO. We provide an overview of the panel’s ruling and its implications below.

Background

In March 2018, USTR determined that China’s acts, policies, and practices related to technology transfer, intellectual property and innovation are unreasonable or discriminatory and burden or restrict U.S. commerce, based on an investigation conducted pursuant to Section 301 of the Trade Act of 1974. Based on this finding, the United States imposed additional tariffs on four separate lists of Chinese-origin goods. The “List 1” goods have an annual import value of $34 billion, and are subject to an additional duty of 25%. The “List 3” goods have an annual import value of $200 billion, and are also subject to an additional duty of 25%. China requested consultations with the United States concerning these tariffs on April 4, 2018, and a WTO panel was established on January 28, 2019 to hear the dispute. China has initiated a separate dispute settlement proceeding (DS587) concerning the Section 301 tariffs on “List 2” and “List 4” goods, but that dispute remains in the consultation stage.

Panel Findings

As a preliminary matter, the United States argued before the panel that the parties to the dispute had agreed to settle the issue through bilateral negotiations, which led to the “phase one” trade deal. China disagreed. The panel found that the two parties had not reached a “mutually satisfactory solution” of the issue and thereby proceeded to examine the substantive claims in the dispute. China argued that the United States, by imposing the Section 301 tariffs, violated the non-discrimination requirement and the bound tariff rates set forth in its schedule of concessions. The United States did not attempt to rebut these claims. Instead, it argued that the measure was justified under the general exceptions prescribed under GATT Article XX. The panel’s findings may be summarized as follows:

- **MFN Treatment (GATT Article I:1).** The panel considered that the United States imposed additional duties on products from China, but not on identical products from other WTO Members. On this basis, the panel held that the imposition of the Section 301 tariffs in this dispute was inconsistent with GATT Article I:1, under which the United States had an obligation to offer imports from China the best-available treatment offered to any other WTO Member.

- **Schedules of Concessions (GATT Article II:1(a) and (b)).** The panel found that the additional duties imposed by the United States were “in excess” of the bound tariff rates set forth in the country’s schedule of concessions and thereby inconsistent with Article II:1(b). On this basis, the panel also find that the imposition of the Section 301 tariffs constituted “less favourable” treatment, which is inconsistent with Article II:1(a).

- **General Exceptions – Public Morals (Article XX(a)).** Article XX(a) permits the imposition of otherwise GATT-inconsistent measures if it is “necessary to protect public morals,” provided certain conditions are satisfied. Focusing on the meaning of “public morals,” the panel considered that the “standards of right and wrong” invoked by the United States (including norms against theft, misappropriation and unfair competition)

could, at least at a conceptual level, be covered by the term "public morals." The panel, however, ultimately found that the Section 301 tariffs were not "necessary" to protect public morals. This was mainly because, in the panel's view, the United States did not sufficiently demonstrate how the imposition of additional duties on the selected goods from China would contribute to the achievement of the public morals objective. For these reasons, the panel rejected the United States' argument that the imposition of the Section 301 tariffs was justified under Article XX(a).

In an unusual move, the panel also provided concluding comments acknowledging "the wider context in which the WTO system currently operates, which is one reflecting a range of unprecedented global trade tensions," and expressed its "ongoing encouragement" to the parties to continue seeking a mutually satisfactory solution to the matters that were raised in the dispute.

Outlook

The panel's ruling is unlikely to cause the United States to modify its Section 301 measures. Ambassador Lighthizer stated the ruling "confirms what the Trump Administration has been saying for four years: The WTO is completely inadequate to stop China's harmful technology practices[.]" He further indicated that the United States is unlikely to comply with the ruling, stating that "[t]he United States must be allowed to defend itself against unfair trade practices, and the Trump Administration will not let China use the WTO to take advantage of American workers, businesses, farmers, and ranchers." Additionally, according to Ambassador Lighthizer, the ruling "has no effect on the historic Phase One Agreement between the United States and China[.]"

The United States has not indicated whether it will appeal the panel report. Doing so would prevent the DSB from adopting the report and authorizing China to retaliate, and would also send the dispute into legal "limbo" for an indefinite period, given that the Appellate Body currently lacks a sufficient number of members to hear an appeal. While such a move would be controversial, China since 2018 has unilaterally imposed retaliatory tariffs on US goods in response to the Section 301 tariffs at issue in this dispute, without waiting for the DSB's authorization. Thus, the panel's ruling and the United States' reaction thereto appear unlikely to have a significant impact on the ongoing trade dispute between the United States and China. Some observers have expressed concern that these developments represent a decline in the WTO's relevance as a venue for settling trade disputes among member countries.

The report of the WTO panel is available **here**. USTR's statement can be viewed **here**.