US Multilateral Trade Policy Developments

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US Trade Actions

Update on Section 232 Investigation of Transformers and Transformer Components

On November 2, 2020, Cleveland-Cliffs Inc. (the parent company of AK Steel) issued a press release stating that "President Trump's Administration will be moving forward with a Section 232 action implementing a remedy covering imported laminations and cores of Grain Oriented Electrical Steel (GOES)." In addition, the press release claims, "the Administration will take action to address recently-granted Section 232 product exclusions for more than 40,000 tons of GOES greater than 920 mm wide from South Korea" because "[t]he U.S. market only requires 1,400 tons of GOES in that width or greater." The statement commends "President Trump, U.S. Trade Representative Ambassador Robert Lighthizer, and Secretary of Commerce Wilbur Ross, for taking action under Section 232 to end the circumvention of existing national security tariffs covering GOES," as well as the US Department of Commerce for "tak[ing] action to re-evaluate recently-granted GOES Section 232 product exclusions."

President Trump has not yet issued a Proclamation implementing these actions, and the administration has not publicly confirmed the decision to impose Section 232 measures. However, on November 5, the Office of the US Trade Representative (USTR) announced that Mexico had agreed to establish "a strict monitoring regime for exports of electrical transformer laminations and cores made of non-North American GOES," and that "[i]n light of these measures, imports from Mexico will not be subject to any action to adjust imports of electrical transformers and related parts that may be adopted by the United States under Section 232[.]" This is another indication that the Trump administration is likely to announce Section 232 measures on imports of transformers and transformer components in the near future.

It is expected that Mexico's export monitoring system for transformers and components will mirror the system it established in September to monitor exports of certain steel pipes, tubes, and semi-finished products. According to USTR, the new monitoring system will be effective "[f]rom the fourth quarter of 2020 onward," and the two countries "will consult at regular intervals on the implementation of these agreed measures and on the state of bilateral trade and market conditions relating to these products." In a statement, Mexico welcomed the United States' exclusion of Mexico from the potential Section 232 action, which it said would have resulted in losses of USD 1.2 billion for Mexico's steel industry.

US Department of Commerce Preliminarily Finds "Currency Undervaluation Subsidy" in Countervailing Duty Investigation of Tires from Vietnam

On November 4, 2020, the US Department of Commerce (DOC) announced its preliminary determination that imports of passenger vehicle and light truck tires (PVLT tires) from Vietnam received countervailable subsidies, including subsidies resulting from the Government of Vietnam's alleged undervaluation of its currency. This is the first proceeding in which DOC has investigated an alleged "currency undervaluation subsidy" under new regulations adopted by the agency in February, and the preliminary determination is "the first time that Commerce has ever made an affirmative CVD determination regarding a foreign currency with a unitary exchange rate."[1] Previously, it had been DOC's longstanding practice not to investigate allegations of currency undervaluation in countervailing duty (CVD) proceedings. We provide an overview of the preliminary determination and its implications below.

Background

The United States' countervailing duty law defines a subsidy as (1) a financial contribution; (2) by an "authority" or a private entity "entrusted or directed" by an authority; (3) that confers a benefit on the recipient.[2] A subsidy is

[1] *U.S. Department of Commerce Issues Affirmative Preliminary Countervailing Duty Determination for Passenger Vehicles and Light Truck Tires From Vietnam* (Nov. 4, 2020), available at https://www.commerce.gov/news/press-releases/2020/11/us-department-commerce-issues-affirmative-preliminary-countervailing.

[2] 19 U.S.C. § 1677(5)(B).

countervailable where it is "specific" (i.e., where it is limited to an enterprise or industry, a group of enterprises or industries, or a region; or where it is a prohibited export subsidy or import substitution subsidy).[3]

On February 4, 2020, DOC adopted a Final Rule amending its regulations pertaining to the determination of "benefit" and "specificity" in CVD proceedings, in order to permit potential findings that currency undervaluation constitutes a countervailable subsidy.[4] The Final Rule made the following changes:

- The Final Rule amended DOC's regulations regarding the specificity of domestic subsides (19 C.F.R. § 351.502) to provide that "[i]n determining whether a subsidy is being provided to a 'group' of enterprises or industries within the meaning of section 771(5A)(D) of the [the Tariff Act], [DOC] normally will consider enterprises that buy or sell goods internationally to comprise such a group." DOC indicated that its determination of whether a currency subsidy is specific would occur pursuant to section 771(5A)(D)(iii) of the Act, which addresses *de facto* specificity. In response to public comments, DOC explained that "under this regulation, if a subsidy is limited to enterprises that buy or sell goods internationally, or if enterprises that buy or sell goods internationally are the predominant users or receive disproportionately large amounts of a subsidy, then that subsidy may be specific."
- The Final Rule at new 19 C.F.R. § 351.528 provides that DOC "normally" will determine whether the currency of an investigated country is undervalued by examining "the gap between the country's real effective exchange rate (REER) and the real effective exchange rate that achieves an external balance over the medium term that reflects appropriate policies (equilibrium REER)." DOC "normally" will find a currency to be undervalued "only if there has been government action on the exchange rate that contributes to an undervaluation of the currency." Where DOC finds that a currency is undervalued, it "normally" will determine the existence of a benefit after examining the difference between (1) the nominal, bilateral United States dollar rate consistent with the equilibrium REER; and (2) the actual nominal, bilateral United States dollar rate during the relevant time period. Where there is a difference between these two rates, DOC "normally" will calculate the benefit to a particular firm by finding "the difference between the amount of currency the firm received in exchange for United States dollars and the amount of currency that firm would have received absent the difference" between the actual rate and the rate consistent with the equilibrium REER. The rule provides that DOC will request the Treasury Department's "evaluation and conclusion" as to whether a currency is undervalued, and whether the undervaluation is the result of "government action."

The United States' CVD law does not expressly authorize DOC to treat currency undervaluation as a countervailable subsidy. Nevertheless, DOC in its Final Rule took the position that it possesses the authority under existing law to countervail currency undervaluation. The investigation of PVLT tires from Vietnam represents the first test of these new regulations.

Preliminary Finding of "Currency Undervaluation" Subsidy

The Petitioner in PVLT Tires from Vietnam alleges that the Government of Vietnam "provides countervailable subsidies…by undervaluing its currency through government action on the exchange rate between the U.S. dollar and the Vietnamese dong." DOC made the following preliminary findings in its investigation of the alleged currency undervaluation subsidy:[5]

- **Financial contribution**. DOC found that foreign exchange transactions conducted by state-owned and private banks in Vietnam constitute financial contributions in the form of "direct transfers of funds" under Section 771(5)(D)(i) of the Tariff Act. DOC found that two "state-owned commercial banks" (Vietinbank and

[3] 19 U.S.C. § 1677(5A).

[4] *Modification of Regulations Regarding Benefit and Specificity in Countervailing Duty Proceedings*, International Trade Administration, 85 Fed. Reg. 6031 (Feb. 4, 2020).

[5] *Decision Memorandum for the Preliminary Affirmative Determination: Countervailing Duty Investigation of Passenger Vehicle and Light Truck Tires from the Socialist Republic of Vietnam*, Investigation No. C-552-829 (October 30, 2020).

Vietcombank) were "authorities" capable of providing a financial contribution, citing their majority government ownership and the presence of government officials on each company's board of directors. DOC further found that the Government of Vietnam "entrusts or directs" private banks to exchange the Vietnamese dong (VND) for US dollars through various laws and decrees on foreign exchange, which require private banks "to exchange VND for USD within [a] narrow government regulated band[.]" Specifically, DOC stated that under Vietnamese law: (1) the State Bank of Vietnam (SBV) determines the official exchange rate applicable to the Vietnamese dong; (2) private banks, like state-owned banks, "must exchange USD for dong for any party wishing to do so"; and (3) the rates for such exchanges by private banks must be within a "narrow band" of +/- 3 percent to +/-1 percent established by the SBV. Based on these findings, DOC concluded that "both the exchange of currency by authorities…and the exchange of currency by private Vietnamese and/or foreign owned banks entrusted or directed by the [Government of Vietnam]…constitute financial contributions in the form of direct transfers of funds[.]" DOC did not explain the reasoning behind its conclusion that the exchange of one currency for another constitutes a "direct transfer of funds."

- **Specificity**. DOC found that the alleged subsidy was *de facto* specific because "enterprises that buy or sell goods internationally are the predominant users" of the subsidy. DOC based this determination on IMF data, which it used to estimate the proportion of USD inflows Vietnam had received in the period of investigation (POI) through the following four "major channels of exchange": (a) exports of goods, (b) exports of services, (c) various forms of portfolio and direct investment, and (d) earned income from abroad. DOC then discounted Vietnam's "exports of goods" value by the amount of its intermediary imported inputs "to arrive at a reasonable estimate of exports that earned foreign exchange." After applying this adjustment, DOC concluded that among the four channels, "the vast majority" (71.94 percent) of USD inflows into Vietnam during the POI came from goods exports, purportedly making "the group of enterprises constituting the traded goods sector" the predominant users of the subsidy.

- **Undervaluation and benefit**. DOC adopted the Treasury Department's findings, set forth in an August 2020 memorandum, that Vietnam's currency was undervalued during the POI as result of government action. Treasury conducted the analysis using its Global Exchange Rate Assessment Framework (GERAF), which it describes as a "multilaterally consistent method for assessing the extent of any currency misalignment and the specific economic fundamentals and government policies that contribute to the misalignment." Treasury issued two separate findings in its memorandum (one concerning "undervaluation" and one concerning "government action," as envisioned in 19 C.F.R. § 351.528(a)(1) and (a)(2), respectively):

    - With respect to undervaluation, Treasury found that the VND was undervalued during the relevant period because "there was a gap between Vietnam's real effective exchange rate (REER) and the real effective exchange rate that achieves an external balance over the medium term that reflects appropriate policies (equilibrium REER)."

    - Separately, Treasury found that "Vietnam in 2019 undertook 'government action on the exchange rate' that contributed to the undervaluation of the dong," in the form of "net purchases of foreign exchange" carried out by the State Bank of Vietnam. According to Treasury, the Government of Vietnam's actions "had the effect of undervaluing the dong vis-à-vis the U.S. dollar by 4.7%."

Based on Treasury's findings, DOC determined that the VND "was undervalued during the [POI] by 4.7 percent" and that "all of Vietnam's 4.7 percent undervaluation…was attributable to government action." DOC then used the 4.7 percent figure as the basis for its benefit calculation, as discussed below. Notably, DOC repeatedly emphasized Treasury's finding that the 4.7 percent undervaluation was "exclusively" a result of government action. This likely indicates that DOC believes it is on safer ground countervailing currency undervaluation where it finds clear government action, as opposed to more ambiguous situations in which some or all of the alleged undervaluation can be attributed to other factors.

To determine the benefit conferred on the respondent exporters, DOC examined each mandatory respondent's currency exchange transactions during the POI, including (1) the total value of USD exchanged; (2) the exchange rate used for each transaction; and (3) the authorized credit institution that processed the currency exchange transaction. DOC calculated the benefit conferred by each transaction by finding "the difference between the amount of currency the firm received in exchange for United States dollars and the amount of currency that firm would have received" absent the 4.7 percent undervaluation reported by Treasury. To find the countervailable subsidy rate, DOC aggregated each respondent's total benefits over the POI and divided this figure by the respondent's total sales conducted in USD. On this basis, DOC preliminarily found small countervailable subsidies, ranging from 1.16 to 1.69 percent. DOC is currently scheduled to announce its final determination in the investigation in March of 2021.

Outlook

Though DOC's first preliminary determination under its new regulations resulted in relatively low subsidy rates, it confirms the agency's willingness to countervail foreign currency practices, and therefore represents an important shift in US trade policy. Whereas prior administrations refrained from using the CVD statute to address currency-related concerns, preferring instead for the Treasury Department to manage such issues through bilateral and multilateral engagement, DOC's new approach reflects the US government's increasing propensity to address foreign currency practices through trade measures. The Office of the US Trade Representative's recent initiation of a Section 301 investigation concerning Vietnam's alleged currency practices is another example of this trend. President-elect Biden has not specifically indicated whether his administration will continue these policies, but his campaign has pledged that the Biden administration will "[t]ake aggressive trade enforcement actions against China or any other country seeking to undercut American manufacturing through unfair practices, including currency manipulation[.]"

As the preliminary determination in PVLT Tires from Vietnam indicates, DOC's regulations on currency-related subsidies present new risks for respondents and opportunities for petitioners in US CVD proceedings. However, given the unique circumstances at issue in the investigation, it remains unclear whether the new rules will be applied broadly or, alternatively, only to countries in which there is heavy state involvement in foreign exchange markets. As noted above, DOC's preliminary finding of a financial contribution was based on the presence of state-owned banks in Vietnam and the government's regulation of exchange transactions by private banks (including its regulation of exchange rates using a currency band). Though some governments maintain similar systems, it is unclear whether, or how, DOC will find currency-related financial contributions by governments that do not directly regulate exchange rates or perform currency exchanges through state-owned enterprises. DOC's preliminary determination sheds no light on this question.

Additionally, DOC's preliminary determination relies on interpretations of "financial contribution" and "specificity" that some observers have contended are inconsistent with US law and/or WTO rules. For example, certain governments and other parties argued in public comments on DOC's rule that the types of currency exchanges targeted by the rule do not constitute "direct transfers of funds," and that currency undervaluation cannot be a "specific" subsidy given that domestic currency is generally available to all enterprises and industries. Moreover, some experts have asserted that there is no agreed methodology for precisely measuring equilibrium exchange rates or "under" or "over" valuation, and thus have raised questions about DOC's (and Treasury's) ability to accurately determine the benefits associated with foreign currency practices. Thus, if DOC's approach results in the imposition of substantial, final countervailing duties (either in PVLT Tires from Vietnam or another investigation), it may face legal challenges in US courts or at the WTO.

Trade Remedies

US International Trade Commission Determines Safeguard Relief for Large Residential Washer Industry Continues to be Necessary

On November 25, 2020, the US International Trade Commission (ITC) deermined that global safeguard relief provided to the US large residential washers industry beginning in 2018 continues to be necessary to prevent or remedy serious injury to the US industry, and that the domestic industry is making a positive adjustment to import competition. As a result of the ITC's unaniumous vote, the President will determine whether to extend the safeguard relief, which is scheduled to expire on February 7, 2021 unless extended.

President Trump imposed the global safeguard measure on imports of large residential washers beginning on February 7, 2018. The measure consists of tariff-rate quotas on both washers and parts, and is structured as follows:

Safeguard Tariffs on Large Residential Washers and Parts			
Period	**Year 1** 2/7/2018 – 2/6/2019	**Year 2** 2/7/2019 – 2/6/2020	**Year 3** 2/7/2020 – 2/7/2021
First 1.2 million units of imported finished washers	20%	18%	16%
All subsequent imports of finished washers	50%	45%	40%
Tariff on covered parts	50%	45%	40%
Covered parts excluded from tariff	50,000 units	70,000 units	90,000 units

Pursuant to Section 201 of the Trade Act of 1974, the President may extend the safeguard action where he determines that (1) the action continues to be necessary to prevent or remedy the serious injury; and (2) there is evidence that the domestic industry is making a positive adjustment to import competition. The effective period of a safeguard action, including any extensions thereof, may not, in the aggregate, exceed 8 years.

US Department of Commerce Initiates Antidumping Duty Investigations of Polyester Textured Yarn from Indonesia, Malaysia, Thailand, and Vietnam

On November 18, 2020, the US Department of Commerce (DOC) announced the initiation of new antidumping duty (AD) investigations concerning imports of polyester textured yarn from Indonesia, Malaysia, Thailand, and Vietnam. The petitions were filed by Nan Ya Plastics Corporation, America (Lake City, SC) and Unifi Manufacturing, Inc. (Greensboro, NC).

The dumping margins alleged in the petition are as follows:

- 26.07 percent for Indonesia;
- 75.13 percent for Malaysia;
- 56.80 percent for Thailand; and
- 54.13 percent for Vietnam.

The merchandise covered by these investigations, polyester textured yarn, is synthetic multifilament yarn that is manufactured from polyester (polyethylene terephthalate). Polyester textured yarn is produced through a texturing process, which imparts special properties to the filaments of the yarn, including stretch, bulk, strength, moisture absorption, insulation, and the appearance of a natural fiber. The merchandise subject to these investigations is classified under subheadings 5402.33.3000 and 5402.33.6000 of the Harmonized Tariff Schedule of the United States (HTSUS).

The US International Trade Commission (ITC) will make its preliminary injury determinations on or before December 14, 2020. If the ITC preliminarily determines that there is a reasonable indication of material injury or threat of material injury to the domestic industry, DOC's investigations will continue, with the preliminary determinations scheduled for April 6, 2021. This deadline may be extended.

DOC's final determinations in these cases are scheduled for June 21, 2021, although these deadlines may be extended. If DOC makes affirmative final determinations, and if the ITC determines that dumped polyester textured yarn from Indonesia, Malaysia, Thailand, and/or Vietnam 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 polyester textured yarn from the countries under investigation in 2019 were valued at:

- $12.6 million for Indonesia;
- $8.8 million for Malaysia;
- $7.6 million for Thailand; and
- $4.5 million for Vietnam.

US Department of Commerce Initiates Antidumping and Countervailing Duty Investigations of Utility Scale Wind Towers from India, Malaysia, and Spain

On November 10, 2020, the US Department of Commerce (DOC) announced the initiation of new antidumping (AD) and countervailing duty (CVD) investigations of utility scale wind towers from India, Malaysia, and Spain (AD only). The petitions were filed by the Wind Tower Trade Coalition, whose members are Arcosa Wind Towers, Inc. (Dallas, TX) and Broadwind Towers, Inc. (Manitowoc, WI).

The dumping margins alleged in the petitions are as follows:

- 54.03 percent for India;
- 93.83 percent for Malaysia; and
- 73.00 percent for Spain.

For India, DOC initiated an investigation on 69 subsidy programs, including the provision of goods for and services for less than adequate remuneration (LTAR), direct/indirect tax programs, export subsidies, energy and resource subsidies, loans, and grant programs.

For Malaysia, DOC initiated an investigation on seven subsidy programs, including LTAR programs, direct/indirect tax programs, a preferential lending program, a grant program, and a program relating to subsidies to producers of wind tower inputs.

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

DOC's preliminary CVD determinations are scheduled for January 13, 2021, and the preliminary AD determinations are scheduled for March 29, 2021. Final determinations by DOC are scheduled for March 29, 2021, for the CVD

investigations, and June 14, 2021, for the AD investigations, although these deadlines may be extended. If DOC makes affirmative findings in these investigations, and if the US International Trade Commission (ITC) determines that dumped and/or subsidized utility scale wind towers from India, Malaysia, and/or Spain 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.

According to DOC, imports utility scale wind towers in 2019 were valued at:

- $29 million for India;
- $27 million for Malaysia; and
- $21.7 million for Spain.

US Department of Commerce Self-Initiates Circumvention Inquiries Involving Exports of Oil Country Tubular Goods Made with Chinese Substrate

On November 5, 2020, the US Department of Commerce (DOC) announced the self-initiation of new inquiries into possible circumvention of anti-dumping duty (AD) and countervailing duty (CVD) orders on oil country tubular goods (OCTG) from China. In these inquiries, DOC will examine whether hot-rolled steel sheet and strip (HRS) from China is exported to Brunei and the Philippines for minor processing and then exported to the United States as OCTG. These are the eighth and ninth anti-circumvention inquiries self-initiated by DOC based on its own monitoring of trade patterns.

In its announcement, DOC claims that (1) shipments of welded OCTG from Brunei to the United States increased in value from zero during 2014-2016, to $29 million during 2017-2019; and (2) shipments of welded OCTG from the Philippines to the United States increased in value from $69 million to $105 million, comparing import data from the same periods.

If DOC preliminarily determines that circumvention is occurring, it will instruct Customs and Border Protection to begin collecting cash deposits on imports of OCTG completed in Brunei and the Philippines using Chinese-origin inputs. For products found to be circumventing the AD and CVD orders, duties will be imposed on future imports, and on any unliquidated entries since the date DOC initiated these inquiries.

The scope of the AD/CVD orders on OCTG from China consists of certain OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (e.g., whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the Orders also covers OCTG coupling stock.

US International Trade Commission Issues Affirmative Final Determinations in Antidumping and Countervailing Duty Investigations of Forged Steel Fittings from India and Korea

On November 10, 2020, the US International Trade Commission (ITC) determined that a US industry is materially injured by reason of imports of forged steel fittings from India and Korea that the US Department of Commerce (DOC) has determined are sold in the United States at less than fair value and subsidized by the government of India. DOC determined in October 2020 that imports of these products were sold in the United States and dumping margins ranging from 17.08 percent to 198.38 percent for Korea, and 0.00 percent to 293.40 percent for India. DOC also determined that producers and/or exporters from India received countervailable subsidies at rates ranging from 2.64 percent to 300.77 percent.

As a result of the ITC's affirmative determinations, DOC will issue antidumping duty orders on imports of these products from India and Korea and a countervailing duty order on imports of these products from India. The subject

products are carbon and alloy forged steel fittings, whether unfinished (commonly known as blanks or rough forgings) or finished. Such fittings are made in a variety of shapes including, but not limited to, elbows, tees, crosses, laterals, couplings, reducers, caps, plugs, bushings, unions (including hammer unions), and outlets. Subject carbon and alloy forged steel fittings are normally entered under Harmonized Tariff Schedule of the United States (HTSUS) 7307.92.3010, 7307.92.3030, 7307.92.9000, 7307.99.1000, 7307.99.3000, 7307.99.5045, and 7307.99.5060. They may also be entered under HTSUS 7307.93.3010, 7307.93.3040, 7307.93.6000, 7307.93.9010, 7307.93.9040, 7307.93.9060, and 7326.19.0010.

According to DOC, imports of forged steel fittings from Korea and India in 2019 were valued at an estimated $62.6 million and $104.2 million, respectively.

Free Trade Agreement Highlights

15 Asia-Pacific Countries Sign World's Largest FTA; A Closer Look at RCEP's Key Outcomes and Implications

After eight years of negotiations, Economic Ministers from 15 Asia-Pacific countries signed the Regional Comprehensive Economic Partnership (RCEP) on November 15, 2020 during a virtual signing ceremony on the sidelines of the 37th ASEAN Summit hosted by Vietnam. The RCEP consolidates and builds upon existing ASEAN+1 free trade agreements (FTAs) with five regional trading partners ("dialogue partners") and aims to establish a single, harmonized, predictable set of regional trade rules that incentivize businesses to locate their supply chains within the covered Asia-Pacific region.

Comprised of 20 chapters, the RCEP contains rules governing such topics as market access for goods and services, rules of origin, standards, temporary movement of natural persons, investment, e-commerce, competition, government procurement, and intellectual property, albeit with varying degrees of ambition and substance. Notably absent from the RCEP are chapters that address industrial subsidies, state-owned enterprises, labor rights, and the environment.

The RCEP's 15 members include a diverse mix of high-income economies (Australia, Brunei, Japan, Korea, New Zealand, and Singapore), upper middle-income economies (Indonesia, Malaysia, and Thailand), lower middle-income economies (Cambodia, Laos, Myanmar, the Philippines, and Vietnam), and importantly, the second largest economy in the world (China). India was an original participating economy, but withdrew its membership in November 2019 over market access concerns, primarily with China.

Once implemented, the RCEP will be the world's largest trade agreement, covering approximately 30% of global GDP and one-third of the world's population. It will be larger than other major trading blocs, including the European Union, the United States-Mexico-Canada Agreement (USMCA) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

Key RCEP outcomes

- **Trade in goods:** According to Singapore's Ministry of Trade and Industry (MTI), market access for goods covers tariff elimination of at least 92% of goods traded among RCEP parties within a 20-year timeframe. Notably, the RCEP does not deliver significant new market access for goods in terms of tariff reduction and elimination, as most RCEP parties already have existing FTAs in force with each other through a combination of bilateral and plurilateral agreements, including the ASEAN+1 FTAs and the CPTPP. Only China and Japan, Korea and Japan, and Japan and New Zealand do not have existing FTAs implemented between each other. Still, many of the tariff outcomes under the RCEP are improvements over the status quo under existing FTAs.

- Certain RCEP members including Australia, Brunei, Cambodia, Malaysia, Myanmar, New Zealand, Singapore, and Thailand have just one tariff schedule that applies to all other members. In other words, exports into these countries from any RCEP member will receive the same tariff with some minor exceptions. On the other hand, the remaining countries have some variations in their schedules. For example, Indonesia, Vietnam, China, and Korea have one schedule for ASEAN and separate schedules for the dialogue partners. Meanwhile, Japan has just one tariff schedule, but there are variations possible within the schedule shown in the "remarks" column. While not ideal, this type of flexibility in scheduling of tariff commitments has been a common feature in past ASEAN+1 FTAs. Nevertheless, traders will need to find the associated tariff line and see which rate may apply to which countries.

- **Rules of origin:** The RCEP will provide traders with a single set of rules and procedures for preferential tariff treatment to access tariff preferences for trade with other RCEP parties, which should reduce complexity and compliance costs for participating traders who previously had to navigate origin rules under disparate ASEAN+1 agreements or bilateral FTAs. The RCEP adopts a product-specific-rules of origin (PSR) approach, where the

criteria by which to determine if a product qualifies for preferential tariff treatment will differ from product to product. Under the PSRs, most products adopt co-equal rules, which provide some flexibility for companies to utilize either a change in tariff classification (CTC) or a regional value content (RVC) rule of 40% to meet the rules of origin requirement. Many of the PSRs are already familiar to companies trading in the region under the ASEAN+1 FTAs; however, it remains to be seen how companies will adapt to these PSRs in practice. In addition, regional cumulation rules are permitted to facilitate inputs from the most efficient and cost-effective regional source, whereas third party invoicing and self-declaration by approved exporters and producers will also be available subject to an implementation period.

- **Customs procedures and trade facilitation:** The RCEP provides for simplified customs procedures and enhanced trade facilitation provisions to expedite clearance of goods, including the release of express consignments and perishable goods within six hours of arrival. Certificate of origin arrangements include options for use of self-declaration, while proof of origin can be accepted in electronic format.

- **Trade in services:** The RCEP establishes rules for the supply of services including obligations to provide access to foreign service suppliers (market access), to treat local and foreign suppliers equally (national treatment), and to treat foreign suppliers at least as well as suppliers of any other non-RCEP country (most-favored nation (MFN) treatment). There is, however, some complexity in the scheduling of specific commitments for services (similar to the trade in goods tariff schedules mentioned above). For instance, Cambodia, China, Laos, Myanmar, New Zealand, the Philippines, Thailand, and Vietnam adopt a positive list approach to the scheduling of specific services commitments. However, these countries must transition to the negative list approach, where market access is open to foreign services suppliers, unless exceptions have been applied, within six years after entry into force of the RCEP. In contrast, Australia, Brunei, Indonesia, Japan, Korea, Malaysia, and Singapore adopt the negative list approach for services liberalization immediately.

- At least 65% of services sectors will be fully open with increased foreign shareholding limits including professional services, telecommunications, financial services, computer and related services, distribution, and logistics services. The RCEP will also include a “ratchet-mechanism” whereby future unilateral liberalization for selected sectors is locked in, allowing for the reduction of barriers to services and investment trade over time.

- **Investment:** The RCEP’s investment provisions cover core investment protections including rules requiring payment of compensation where an investment is expropriated, fair and equitable treatment, compensation for losses due to conflict and civil strife, and free transfer of investment-related capital. The RCEP also includes commitments to prohibit performance requirements on investors as conditions for entering, expanding or operating in RCEP parties. However, the RCEP does not provide for investor-state dispute settlement (ISDS), but includes a built-in work program, which will commence no later than two years after the Agreement’s entry into force. This work program must be concluded within the following three years to determine whether to amend RCEP to include ISDS. Any change would require the consent of all RCEP parties.

- **Electronic commerce:** The RCEP covers commitments on cross-border data flows and provides for a more conducive digital trade environment. It also limits the scope for government to impose restrictions including requirements to localize data. There are also provisions concerning the digitalization of trade documentation and the use of electronic signatures and electronic authentication to facilitate cross-border trade. These provisions expand existing rules under the ASEAN-Australia-New Zealand FTA (AANZFTA) as well as other bilateral FTAs. The inclusion of these e-commerce obligations will modernize the trading relationship among RCEP parties, particularly those not party to the CPTPP.

- **Intellectual property (IP):** The RCEP will raise standards of IP protection and enforcement, including non-traditional trademarks such as sound marks, and a wide range of industrial designs. RCEP parties, which have not done so already, commit to accede to IP treaties that will enable companies to file a single patent or trademark application instead of having to file individual applications in each country. RCEP’s outcomes on geographical indications (GIs) take the approach secured under the CPTPP whereby all parties must adopt or

maintain transparency obligations and due process with respect to a regime provided for the protection of GIs. This includes considering whether a term is a commonly used descriptive term in that market, and providing procedures to oppose and cancel GIs.

- **Government procurement:** The RCEP is the first trade agreement where a number of individual parties, as well as ASEAN as a whole, have included rules on government procurement. The parties commit to publish laws, regulations and procedures regarding government procurement, while cooperation provisions set out a mechanism to facilitate consultation and exchange of information on government procurement matters. While the CPTPP contains more ambitious government procurement commitments, the RCEP marks the first time that major ASEAN countries such as Indonesia, Thailand, and the Philippines commit to improved transparency and cooperation on central government procurement.

India's withdrawal

Originally, 16 RCEP member countries, including India, launched the first round of RCEP negotiations in November 2012 and announced the substantive conclusion of negotiations in November 2019 after 31 negotiating rounds. India announced at the final negotiating round that it would abandon the RCEP until its outstanding concerns are resolved. A key area of contention was India's unwillingness to agree to the same level of market access commitments, fearing that vulnerable sectors in India would suffer and find themselves unable to compete with more advanced and efficient producers in other RCEP member countries like China, Australia, and New Zealand. India also raised concern over the threat of circumvention of rules of origin due to tariff differentials between RCEP parties, asserting that this could lead to a serious influx of agricultural and industrial imports and compound India's already large and growing trade deficit with China.

RCEP members continue to encourage India to return to the agreement. During the November 2020 meetings, the other 15 parties agreed on special fast-track accession provisions[3] whereby (i) India can rejoin the RCEP from the date of entry into force as provided in Article 20.9 (Accession); (ii) India may submit a request in writing of its intention to accede to the RCEP any time after the signing of the agreement; and (iii) India may participate in RCEP meetings as an observer and in economic activities undertaken by the RCEP parties. Despite these accommodative efforts, many contend that India is unlikely to rejoin the RCEP in the near term, particularly in light of recent border disputes with China and a shift in India's trade policy towards bilateral engagement with key trading partners.

Entry into force

As next steps, all RCEP parties will begin their respective domestic procedures required for implementation. The agreement will enter into force 60 days after six ASEAN member states and three dialogue partners have submitted their instruments of ratification to the Secretary-General of ASEAN, who acts as the Depositary for the agreement. For ASEAN countries, a source within Thailand's Ministry of Commerce (MOC) indicated that it usually takes up to 6-12 months for six member countries to complete their ratification procedures for each ASEAN FTA. For ASEAN's dialogue partners, it will likely take at least six months for three dialogue partners to complete their ratification procedures. With this in mind, the RCEP is likely to enter into force in late 2021 or early 2022.

The RCEP will be open for accession by other new members 18 months after its entry into force, although the procedures for accession have yet to be adopted by the RCEP Joint Committee. A likely and relatively uncontroversial candidate is Hong Kong, which implemented an FTA with ASEAN in 2019.

Implications

The signing of the RCEP represents a positive step forward for free trade and multilateralism in the Asia-Pacific region, particularly given the uncertainty and economic strain caused by the COVID-19 pandemic and the retreat to protectionism by many countries. While less ambitious than the CPTPP, the RCEP lays the foundation for deeper cooperation in future and is notable as it brings together countries that have yet to conclude trade agreements with

each other, such as Japan and China, as well as those with long-standing and challenging diplomatic relationships, such as Japan and Korea, and Australia and China, respectively.

Although the RCEP was originally an ASEAN-led initiative, many now regard it as a China-backed alternative to the CPTPP, which excludes China but includes various Asia-Pacific countries. The United States is notably absent from both agreements, which over time are likely to strengthen intra-Asian integration around China (in the case of RCEP) and Japan (in the case of the CPTPP). Although never a participant in the RCEP negotiations, the United States withdrew from the CPTPP's former iteration, the Trans-Pacific Partnership (TPP), in January 2017. With the US presidential transition now underway, it remains uncertain how quickly President-elect Joe Biden can develop an Asia trade policy approach to rebalance the economic and strategic interests of the United States, including whether the United States should seek to renegotiate the terms of the CPTPP or join it outright. Such a decision will not happen quickly, particularly owing to staffing challenges at key government posts, a potentially divided Congress, and most importantly, the impending expiry of Trade Promotion Authority (TPA) – also known as fast-track authority whereby the President of the United States can negotiate trade agreements that Congress can approve or deny, but not amend – on July 1, 2021. Thus, US companies may decide to increase their investments in production facilities or relocate more of their operations within RCEP/CPTPP countries to benefit from the agreements' preferences and participate in the Asia-Pacific market, counter to current US policy to re-shore manufacturing activity and boost employment in the United States.

In the decade to come, the RCEP and the CPTPP are set to boost intra-Asian trade, influence the direction of global value chains, and determine the future trajectory of the Asia-Pacific's economic architecture. In the case of the RCEP, while the economic benefits are more modest and may take years to materialize, the symbolic messaging inherent in RCEP being the world's largest trade agreement represents a geopolitical victory for China despite the agreement's shortcomings.