US Multilateral Trade Policy Developments

Japan External Trade Organization

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Contents

US Trade Policy Developments

Biden Administration Releases Plans to Address "Supply Chain Risks" for Semiconductors, Batteries, Critical Minerals, and Pharmaceuticals

On June 8, the Biden Administration published the results of its 100-day reviews of "supply chain risks" for four categories of goods: (1) semiconductor manufacturing and advanced packaging;[1] (2) high-capacity batteries, including electric-vehicle batteries;[2] (3) critical minerals and materials; and (4) pharmaceuticals and active pharmaceutical ingredients (APIs). Federal agencies conducted the reviews pursuant to President Biden's Executive Order of February 24, which directed agencies to identify supply chain risks in key sectors and to provide policy recommendations for mitigating such risks.

Trade issues figure prominently in the risk assessments and policy recommendations set forth in the Administration's report. The report takes the broad view that past US policy "prioritized efficiency and low costs over security, sustainability and resilience," and that this approach, combined with other nations' aggressive pursuit of industrial policy, has created significant supply chain risks – including insufficient US manufacturing capacity and the concentration of key supply chains in a few foreign nations. Among the recommendations for mitigating these risks are proposals to expand "Buy American" requirements for public procurement, investigate whether certain imports threaten to impair US national security, and explore unilateral and multilateral actions to address alleged unfair trade practices. This alert provides an overview of the key findings and recommendations set forth in the report and their implications.

Assessment of Supply Chain Risks

The Administration's report identifies a wide range of supply chain risks and vulnerabilities in each of the four product categories and their underlying supply chains. It has grouped these risks and vulnerabilities into five general categories:

1. **"Insufficient U.S. manufacturing capacity."** The report recognizes that "U.S. manufacturing capabilities have declined over the several decades," particularly between 2000 and 2010. It attributes some of this decline to "competition from low wage nations," but asserts that "the United States has also seen productivity growth stagnate internally and compared to economic peers[.]" This trend purportedly has led to a loss of domestic "innovation capacity" as research and development activities and broader supply chains have been outsourced alongside manufacturing capacity.

2. **"Industrial Policies Adopted by Allied, Partner, and Competitor Nations."** The report asserts that "our allies, partners and competitors have adopted strategic programs to advance their own domestic competitiveness," whereas US investment in the domestic industrial base has declined. In the view of the Administration, China "stands out for its aggressive use of measures—many of which are well outside globally accepted fair trading practices—to stimulate domestic production and capture global market share" in all four of the supply chains covered by the reviews. However, the report also highlights several policies pursued by other trading partners. For example, it cites the EU's "investment incentives" and other measures to stimulate domestic production of

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[1] The report describes the scope of the semiconductor supply chain review as follows:

> **Semiconductor manufacturing and advanced packaging:** Semiconductors are an essential component of electronic devices. The packaging, which may contain one or more semiconductors, provides an alternative avenue for innovation in density and size of products. Semiconductors have become ubiquitous in today's world. They enable telecommunications and grid infrastructure, run critical business and government systems, and are prevalent across a vast array of products from fridges to fighter jets. A new car, for example, may require more than semiconductors for touch screens, engine controls, driver assistance cameras, and other systems.

[2] The report describes the scope of the batteries supply chain review as follows:

> **Large capacity batteries:** As the United States transitions away from fossil fuels for power generation and electrifies our automotive and trucking fleets, large capacity batteries for electric vehicles (EVs) and grid storage will be essential to U.S. economic and national security. Global demand for EV batteries is projected to grow from approximately 747 gigawatt hours (GWh) in 2020 to 2,492 gigawatt hours by 2025.5 Absent policy intervention, U.S. production capacity is expected to increase to only 224 GWh during that period, but U.S. annual demand for passenger EVs will exceed that capacity.

electric vehicles and lithium-ion batteries, and incentives provided by Taiwan, Korea, and Singapore to support the establishment of semiconductor fabrication facilities.

3. **"Geographic concentration in global sourcing."** The report contends that "the search for low-cost production, combined with the effective industrial policy of key nations, has led to geographic concentrations of key supply chains in a few nations, increasing vulnerabilities for United States and global producers." Among other examples, the report asserts that (1) the global economy "depends on Taiwanese firms for 92 percent of leading-edge semiconductor production;" (2) China "has over 75 percent of global cell fabrication capacity for advanced batteries;" (3) a significant portion of global production of various "strategic and critical materials" is concentrated in only one or a few countries, such as China and South Africa; and (4) the US pharmaceutical supply chain is "dependent on China's continued supply of API."

4. **"Limited International Coordination."** The report acknowledges that the United States "cannot manufacture all needed products at home," and that it serves US interests for allies and partners to have resilient supply chains. Despite these facts, the US government previously "has not systematically focused on building international cooperative mechanisms to support supply chain resilience," in the view of the Biden Administration.

5. "**Misaligned Incentives and short-termism in private markets."** The report contends that "[a] focus on maximizing short-term capital returns has led to the private sector's underinvestment in long-term resilience," including in areas such as cybersecurity, R&D, new facilities, and "resilient production processes."

In addition to these overarching findings, the report presents detailed assessments of risks that can occur at all stages of the supply chain for each of the four product categories, from the sourcing of raw materials through the manufacture and distribution of finished goods.

Policy Recommendations

The report sets forth numerous recommendations to strengthen the individual product supply chains, as well as several "cross-cutting themes and recommendations." Key trade-related recommendations set forth in the report include the following:

1. **"Using federal procurement to strengthen U.S. supply chains."** The report recommends that the Biden Administration establish a list of designated "critical products" that would receive additional preferences under the Buy American Act (BAA) and Federal Acquisition Regulatory (FAR) Council regulations. This proposal would build on President Biden's Executive Order of January 25, 2021, which directed the FAR Council to "consider" increasing the price preferences for domestic goods above the levels put in place by the Trump administration.[3] The report argues that establishing special, higher thresholds for products deemed "critical" would help create a "stable source of demand for U.S.-made products—thereby providing an incentive for the private sector to invest in U.S. manufacturing." It does not provide specific recommendations concerning the items that should be designated as "critical" for this purpose.

2. **Addressing "unfair trade practices."** The report portrays unfair foreign trade practices as a significant threat to the resilience of US critical supply chains. For example, it asserts that China has carried out a "massive subsidy campaign" in the semiconductor industry, using "government equity 'investments'" to "exploit[] gray areas…in World Trade Organization (WTO) disciplines." In its review of the batteries sector, the report states that "U.S. cell makers have expressed to DOE their surprise at material prices from Chinese suppliers that are below normal market prices," and that this "raises trade questions" in light of alleged Chinese government subsidies for this industry. On critical minerals, the report cites export restrictions, IP theft, export subsidies, and dumping as key

[3] The Buy American Act does not prohibit federal agencies from purchasing foreign end products or using foreign construction materials. Instead, it encourages the use of domestic end products and construction materials by imposing a "price preference" for such goods, applied when the procuring agency assesses the "reasonableness" of the cost of domestic offers. Where a domestic offer is not the "low offer," the price preference is applied by adding a specified percentage to the price of the foreign low offer, inclusive of duty. *See* 48 C.F.R. 25.105. The Trump administration in January 2021 increased the price preference to 20% for large businesses and 30% for small businesses.

concerns, and asserts that while China is “often cited” as engaging in unfair practices, other countries that produce strategic and critical materials have also used them.

To address these issues, the report recommends the establishment of a “trade strike force,” led by the US Trade Representative, to “identify unfair foreign trade practices that have eroded U.S. critical supply chains and to recommend trade actions to address such practices.” The report provides no further details on these potential trade actions, though an accompanying White House document states that the strike force will propose both “unilateral and multilateral” actions. This suggests potential WTO disputes as well as actions under the US trade laws, such as the antidumping and countervailing duty statutes, Section 301 of the Trade Act, and Section 232 of the Trade Expansion Act.

In addition to addressing unfair trade practices, the report recommends that the strike force examine “how existing U.S. trade agreements and future trade agreements and measures can help strengthen the United States and collective supply chain resilience,” though it does not explain what this would entail.

3. **Section 232 investigation of neodymium magnets.** The report recommends that the Secretary of Commerce evaluate whether to initiate an investigation under Section 232 of the Trade Expansion Act of 1962 (“Section 232”) concerning imports of neodymium permanent magnets. Neodymium permanent magnets are used in products such as automotive motors, computer disk drives, and wind turbines. According to the report, neodymium permanent magnets are “important to both defense and civilian industrial uses,” and the United States “is heavily dependent on imports for this critical product.”

   The report claims that “only China has all essential supply chain tiers” for the supply of neodymium permanent magnets, whereas “some nominal capacity exists for each tier in a combination of countries outside China.” Biden Administration officials have stated that the purpose of a Section 232 investigation would be to reduce the United States dependence on imports, “particularly from China,” and that the Administration does not intend to “wage trade wars with our allies and partners.” US import statistics identify China as the largest supplier of neodymium batteries to the United States in 2020, accounting for approximately $106 million in imports, followed by Japan ($10.9 million) and Germany ($6.5 million).

   Section 232 authorizes the President to impose tariffs or other import restrictions if the Secretary of Commerce determines that an article is being imported “in such quantities or under such circumstances as to threaten to impair the national security[.]” President Trump utilized Section 232 to restrict imports of steel and aluminum on national security grounds, though the law previously had not been used for several decades and its use by the Trump administration was controversial. That the Biden administration is also considering the use of this tool, albeit in a more limited context, is a notable development that signals some continuity with the Trump administration’s approach.

4. **Export controls for semiconductors.** The report recommends that the Biden Administration implement export controls on “critical semiconductor equipment and technologies” to address certain supply chain vulnerabilities. Additionally, it proposes that the United States coordinate with key supplier allies and partners on multilateral controls in order to limit advanced semiconductor capabilities “in countries of concern[.]”

5. **International cooperation.** The report recommends that the United States “work with allies and partners to secure supplies of critical goods that [the United States does] not make in sufficient quantities at home.” For example, it proposes that the US Development Finance Corporation identify projects in allied and partner nations that can be funded to create new mining and processing operations for lithium, graphite, and other key metals and materials. Other recommendations are more vague, such as the proposals to “convene a global forum on supply chain resilience” and “expand multilateral diplomatic engagement on supply chain vulnerabilities[.]”

The proposals described above represent only a subset of the policy recommendations presented in the report, most of which pertain to domestic policy initiatives. On semiconductors, for example, the report calls for Congress to provide at least $50 billion in funding to implement the CHIPS for America Act, which authorized the provision of federal financial assistance for the construction, expansion, or modernization of semiconductor-related facilities in the United States. The US Senate recently approved such funding as part of the US Innovation and Competition Act, which has yet to be approved by the House. To promote domestic manufacturing of batteries, the report proposes public funding for R&D and the use of federal purchases and tax incentives to accelerate electric vehicle adoption. For critical minerals, the report proposes the development of new sustainability standards for extraction and processing, as well as the streamlining of permitting processes for projects meeting such standards. For pharmaceuticals, the proposals include federal procurement guarantees and other incentives to promote domestic production, as well congressional action to require greater transparency on the origins of API for pharmaceuticals sold in the United States.

Outlook

The report acknowledges that the United States cannot manufacture all critical products domestically, and that trade and cooperation with allied countries is necessary for supply chain resilience. At the same time, it makes clear that the Biden Administration views trade liberalization as having exacerbated supply chain risks, that establishing domestic production and reducing reliance on certain countries will be the core objectives of the administration, and that the administration will consider using trade restrictions to achieve these objectives. Similar themes animated the Trump Administration's approach, though the report also calls for substantial new government support to promote domestic production – including through financial assistance, tax incentives, and public funding for R&D. If implemented, this combination of trade and domestic policies could entail more extensive government involvement in markets and supply chains than the United States historically has pursued.

At this stage, it is unclear whether (and how) many of the proposed policies will be implemented, or how aggressively the Biden administration will rely on trade enforcement as part of its supply chain strategy. Nevertheless, companies should carefully evaluate the proposals contained in the report, assess the risks and opportunities they may present for supply chains and trade flows, and consider potential strategies for mitigation and adaptation.

The report can be viewed **here**.

US Trade Actions

Section 301

USTR Announces and Immediately Suspends Retaliatory Tariffs on Products of Austria, India, Italy, Spain, Turkey, and the United Kingdom in Response to Digital Services Taxes

On June 2, the Office of the US Trade Representative (USTR) announced the conclusion of its investigations under Section 301 of the Trade Act concerning Digital Service Taxes (DSTs) adopted by Austria, India, Italy, Spain, Turkey, and the United Kingdom. USTR has determined to impose additional tariffs of 25% on certain products from the investigated countries, but will postpone the implementation of the tariffs for up to 180 days "to provide additional time to complete the ongoing multilateral negotiations on international taxation at the OECD and in the G20 process."

USTR first proposed the imposition of retaliatory tariffs on products of Austria, India, Italy, Spain, Turkey, and the United Kingdom in March 2021, based on its findings that the DSTs adopted by these countries are "unreasonable or discriminatory" and are therefore actionable under Section 301. At the time, USTR explained that this was done to "maintain our options under the Section 301 process," but indicated that it is the United States' priority to reach an international consensus through the OECD (thus obviating the need for unilateral DSTs and US retaliatory tariffs).

After holding public hearings and accepting written comments on its proposed retaliation lists, USTR issued final retaliation lists for each country in Federal Register notices published on June 2. These notices impose additional duties of 25% on covered products, effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on November 29, 2021 (which is 180 days after USTR's determination of action). The estimated trade value of each retaliation list is shown below, along with a summary of the products covered by each list.

Country	Import Value (2019 est.)	Covered Products
Austria	$65 million	Glassware, ceramic goods, optical equipment
India	$119 million	Shrimp, rice, jewelry, precious and semiprecious stones, furniture
Italy	$386 million	Caviar, handbags, clothing, footwear, optical equipment
Spain	$325 million	Shrimp, handbags, footwear, hats, glassware
Turkey	$310 million	Carpets, building stone, ceramics, jewelry
United Kingdom	$887 million	Cosmetics, clothing, footwear, jewelry, air conditioning machines, refrigerators and freezers, optical fibers, furniture, toys, gaming consoles and machines

USTR's notice indicates that the retaliatory actions are intended to be proportional, i.e., the level of trade covered by each list "takes into account estimates of the amount of tariffs to be collected" on goods of the targeted country as well as "estimates of the amount of [Digital Services Taxes]" assessed by the targeted country on US-based company groups.

Outlook

In a statement on USTR's determinations, Ambassador Katherine Tai emphasized that the United States "remains committed" to negotiating an agreement on international tax issues through the OECD/G20 "Base Erosion and Profit Shifting" (BEPS) Project. Those negotiations stalled in 2020 but have gained momentum in recent months, following the Biden administration's introduction of proposals that outgoing OECD Secretary-General Angel Gurría described as “a 180-degree change in the position of the U.S.” The Biden administration has dropped the Trump administration’s proposal to implement the rules developed under “Pillar One” of the Project on a “safe harbor” basis (effectively allowing companies to opt out).[4] It also has proposed that Pillar One be applied to no more than 100 of the world’s “largest and most profitable” companies, regardless of their industry classification or business model, so that the new rules would not be “arbitrarily or discriminatorily limited to certain business sectors[.]” With respect to Pillar Two, which is focused on establishing a global minimum tax, the Biden administration has offered to accept a global minimum corporate tax rate of 15%. OECD officials and some participating countries have welcomed these proposals and are hopeful that consensus can be reached by October, though differences remain on important issues including the thresholds for including companies in the scope of Pillar One. USTR will have the ability to cancel the DST-related Section 301 tariffs if an agreement is reached or if it determines that sufficient progress is being made in the multilateral negotiations.

USTR’s statement and the Federal Register notices containing the retaliation lists can be viewed here.

[4] Pillar One “is focused on new nexus and profit allocation rules to ensure that, in an increasingly digital age, the allocation of taxing rights with respect to business profits is no longer exclusively circumscribed by reference to physical presence.” OECD (2020), *Tax Challenges Arising from Digitalisation – Report on Pillar One Blueprint: Inclusive Framework on BEPS*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, https://doi.org/10.1787/beba0634-en.

Petitions and Investigations

US Department of Commerce Issues Affirmative Final Determinations in Antidumping and Countervailing Duty Investigations of Certain Metal Lockers and Parts Thereof from China

On June 29, 2021, the US Department of Commerce (DOC) announced its affirmative final determinations in the antidumping duty (AD) and countervailing duty (CVD) investigations of certain metal lockers and parts thereof (metal lockers) from China. In its investigations, DOC determined that imports of the subject merchandise from China were sold in the United States at dumping margins ranging from 10.71 to 311.71 percent, and received countervailable subsidies ranging from 24.66 to 131.51 percent.

The products subject to these investigations are certain metal lockers, with or without doors, and parts thereof (certain metal lockers). The subject certain metal lockers are metal storage devices less than 27 inches wide and less than 27 inches deep, whether floor standing, installed onto a base or wall-mounted. The subject certain metal lockers are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9403.20.0078. Parts of subject certain metal lockers are classified under HTS subheading 9403.90.8041.

The US International Trade Commission (ITC) is scheduled to issue its final injury determinations by August 12, 2021. If the ITC determines that imports of the subject merchandise from China materially injure or threaten material injury to the domestic industry, DOC will issue AD and CVD orders. If the ITC issues negative determinations of injury, the investigations will be terminated.

According to DOC, imports from China under HTSUS subheadings 9403.20.0078 and 9403.90.8041 were valued at approximately $612 million in 2020.

US Department of Commerce Issues Affirmative Final Determinations in Antidumping and Countervailing Duty Investigations of Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Russia, South Korea, and Ukraine

On June 28, 2021, the US Department of Commerce (DOC) announced its final affirmative final determinations in the antidumping duty (AD) investigations of seamless carbon and alloy steel standard, line, and pressure pipe from Russia, South Korea, and Ukraine. DOC also announced affirmative final determinations in its countervailing duty (CVD) investigations of these products from South Korea and Russia. In its investigations, DOC determined that imports of the subject merchandise were sold in the United States at the following dumping margins and subsidy rates:

Country	Dumping Margin	Subsidy Rate
Russia	209.72%	48.38%
South Korea	4.44%	1.78%
Ukraine	23.75%	NA

The merchandise covered by the scope of these investigations is seamless carbon and alloy steel (other than stainless steel) pipes and redraw hollows, less than or equal to 16 inches (406.4 mm) in nominal outside diameter, regardless of wall-thickness, manufacturing process (*e.g.,* hot-finished or cold-drawn), end finish (*e.g.,* plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish (*e.g.,* bare, lacquered or coated). Subject seamless standard, line, and pressure pipe are normally entered under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7304.19.1020, 7304.19.1030, 7304.19.1045, 7304.19.1060, 7304.19.5020, 7304.19.5050, 7304.31.6050, 7304.39.0016, 7304.39.0020, 7304.39.0024, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.39.0062, 7304.39.0068, 7304.39.0072, 7304.51.5005, 7304.51.5060, 7304.59.6000, 7304.59.8010, 7304.59.8015, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050, 7304.59.8055, 7304.59.8060, 7304.59.8065, and 7304.59.8070.

The US International Trade Commission (ITC) is scheduled to issue its final injury determinations by August 9, 2021. If the ITC determines that imports of the subject merchandise materially injure or threaten material injury to the domestic industry, DOC will issue AD and CVD orders. If the ITC issues negative determinations of injury, the investigations will be terminated.

According to DOC, imports under the above-listed HTSUS subheadings in 2020 were valued at approximately $9.99 million (for Russia), $26.1 million (for Korea), and $25.5 million (for Ukraine).

US Department of Commerce Issues Affirmative Final Determination in Antidumping Investigation of Seamless Refined Copper Pipe and Tube from Vietnam

On June 17, 2021, the US Department of Commerce (DOC) announced its affirmative final determination in the antidumping duty (AD) investigation of seamless refined copper pipe and tube from Vietnam. In its investigation, DOC determined that imports of this product from Vietnam were sold in the United States at a dumping margin of 8.35%.

The products covered by this investigation are all seamless circular refined copper pipes and tubes, including redraw hollows, greater than or equal to 6 inches (152.4 mm) in actual length and measuring less than 12.130 inches (308.102 mm) in actual outside diameter (OD), regardless of wall thickness, bore (*e.g.,* smooth, enhanced with inner grooves or ridges), manufacturing process (*e.g.,* hot finished, cold-drawn, annealed), outer surface (*e.g.,* plain or enhanced with grooves, ridges, fins, or gills), end finish (*e.g.,* plain end, swaged end, flared end, expanded end, crimped end, threaded), coating (*e.g.,* plastic, paint), insulation, attachments (*e.g.,* plain, capped, plugged, with compression or other fitting), or physical configuration (*e.g.,* straight, coiled, bent, wound on spools). The products subject to this investigation are currently classifiable under subheadings 7411.10.1030 and 7411.10.1090 of the Harmonized Tariff Schedule of the United States (HTSUS). Products subject to the investigation may also enter under HTSUS subheadings 7407.10.1500, 7419.99.5050, 8415.90.8065, and 8415.90.8085.

The US International Trade Commission (ITC) is scheduled to issue its final injury determination by August 2, 2021. If the ITC determines that imports of the subject merchandise materially injure or threaten material injury to the domestic industry, DOC will issue an AD order. If the ITC issues a negative determination of injury, the investigation will be terminated.

US Department of Commerce Issues Affirmative Final Determination in Antidumping Investigation of Standard Steel Welded Wire Mesh from Mexico

On June 17, 2021, the US Department of Commerce (DOC) announced its affirmative final determination in the antidumping duty (AD) investigation of standard steel welded wire mesh from Mexico. In its investigation, DOC determined that imports of the subject merchandise from Mexico were sold in the United States at dumping margins ranging from 22.01 to 109.39 percent.

The scope of this investigation covers uncoated standard welded steel reinforcement wire mesh (wire mesh) produced from smooth or deformed wire. Subject wire mesh is produced in square and rectangular grids of uniformly spaced steel wires that are welded at all intersections. Sizes are specified by combining the spacing of the wires in inches or millimeters and the wire cross-sectional area in hundredths of square inch or millimeters squared. Subject wire mesh may be packaged and sold in rolls or in sheets. Merchandise subject to this investigation are classified under Harmonized Tariff Schedule of the United States (HTSUS) categories 7314.20.0000 and 7314.39.0000.

The US International Trade Commission (ITC) is scheduled to issue its final injury determination by August 2, 2021. If the ITC determines that imports of the subject merchandise materially injure or threaten material injury to the domestic industry, DOC will issue an AD order. If the ITC issues a negative determination of injury, the investigation will be terminated.

According to DOC, imports from Mexico under HTSUS subheadings 7314.20.0000 and 7314.39.0000 were valued at approximately $45.27 million in 2020.

US Department of Commerce Issues Affirmative Final Determination in Antidumping Investigation of Silicon Metal from Malaysia

On June 17, 2021, the US Department of Commerce (DOC) announced its affirmative final determination in the antidumping duty (AD) investigation of silicon metal from Malaysia. In its investigation, DOC determined that imports of the subject merchandise from Malaysia were sold in the United States at a dumping margin of 12.27 percent.

The scope of this investigation covers all forms and sizes of silicon metal, including silicon metal powder. Silicon metal contains at least 85.00 percent but less than 99.99 percent silicon, and less than 4.00 percent iron, by actual weight. Semiconductor grade silicon (merchandise containing at least 99.99 percent silicon by actual weight and classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2804.61.0000) is excluded from the scope of these investigations. Silicon metal is currently classifiable under subheadings 2804.69.1000 and 2804.69.5000 of the HTSUS.

The US International Trade Commission (ITC) is scheduled to issue its final injury determination by August 2, 2021. If the ITC determines that imports of the subject merchandise materially injure or threaten material injury to the domestic industry, DOC will issue an AD order. If the ITC issues a negative determination of injury, the investigation will be terminated.

According to DOC, imports from Malaysia under HTSUS subheadings 2804.69.1000 and 2804.69.5000 were valued at approximately $16.38 million in 2020.

US Department of Commerce Issues Affirmative Final Determination in Antidumping Investigation of Utility Scale Wind Towers from Spain

On June 15, 2021, the US Department of Commerce (DOC) announced its affirmative final determination in the antidumping duty (AD) investigation of utility scale wind towers from Spain. In its investigation, DOC determined that imports of the subject merchandise from Spain were sold in the United States at a dumping margin of 73 percent.

The merchandise covered by this investigation 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 this investigation 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).

The US International Trade Commission (ITC) is scheduled to issue its final injury determination by July 29, 2021. If the ITC determines that imports of the subject merchandise materially injure or threaten material injury to the domestic industry, DOC will issue an AD order. If the ITC issues a negative determination of injury, the investigation will be terminated.

According to DOC, imports from Spain under HTSUS subheading 7308.20.0020 were valued at approximately $105.43 million in 2020.

US Department of Commerce Issues Affirmative Final Determination in Countervailing Duty Investigation of Utility Scale Wind Towers from Malaysia

On June 3, 2021, the US Department of Commerce (DOC) announced its affirmative final determination in the countervailing duty (CVD) investigation of utility scale wind towers from Malaysia. In its investigation, DOC determined that imports of the subject merchandise from Malaysia received countervailable subsidies at a rate of 6.42 percent.

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).

The US International Trade Commission (ITC) is scheduled to issue its final injury determination by July 29, 2021. If the ITC determines that imports of the subject merchandise materially injure or threaten material injury to the domestic industry, DOC will issue a CVD order. If the ITC issues a negative determination of injury, the investigation will be terminated.

According to DOC, imports from Malaysia under HTSUS subheading 7308.20.0020 were valued at approximately $144.73 million in 2020.

US International Trade Commission Finds That Imports of Passenger Vehicle and Light Truck Tires from Korea, Taiwan, Thailand, and Vietnam Injure US Industry

On June 23, the US International Trade Commission (ITC) determined that a US industry is materially injured by reason of imports of passenger vehicle and light truck (PVLT) tires from Korea, Taiwan, and Thailand that the US Department of Commerce (DOC) has determined are sold in the United States at less than fair value. The ITC also found that the domestic industry is materially injured by reason of imports of PVLT tires from Vietnam that, according to DOC, received countervailable subsidies. The ITC found that the imports of PVLT tires from Vietnam that DOC found to be sold in the United States at less than fair value are negligible, and therefore voted to terminate the antidumping duty investigation of PVLT tires from Vietnam.

As a result of the ITC's affirmative determinations, DOC will issue antidumping duty orders on imports of these products from Korea, Taiwan, and Thailand, and a countervailing duty order on imports of these products from Vietnam. As a result of the finding of negligibility, the antidumping duty investigation regarding imports of these products from Vietnam will be terminated.

The scope of these investigations is passenger vehicle and light truck tires. Passenger vehicle and light truck tires are new pneumatic tires, of rubber, with a passenger vehicle or light truck size designation. Tires covered by these investigations may be tube-type, tubeless, radial, or non-radial, and they may be intended for sale to original equipment manufacturers or the replacement market. The products covered by these investigations are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.10.10.10, 4011.10.10.20, 4011.10.10.30, 4011.10.10.40, 4011.10.10.50, 4011.10.10.60, 4011.10.10.70, 4011.10.50.00, 4011.20.10.05, and 4011.20.50.10. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.90.10.10, 4011.90.10.50, 4011.90.20.10, 4011.90.20.50, 4011.90.80.10, 4011.90.80.50, 8708.70.45.30, 8708.70.45.46, 8708.70.45.48, 8708.70.45.60, 8708.70.60.30, 8708.70.60.45, and 8708.70.60.60.

In its AD/CVD investigations, DOC determined that imports of these products from Korea, Taiwan, Thailand, and Vietnam were sold in the United States at the following dumping margins and subsidy rates:

Country	Dumping Margin	Subsidy Rate
South Korea	14.72-27.05 percent	NA
Taiwan	20.04-101.84 percent	NA
Thailand	14.62-21.09 percent	NA
Vietnam	0-22.27 percent	6.23-7.89 percent

According to the ITC, imports of the subject merchandise in 2020 were valued at approximately $4.4 billion.

US International Trade Commission Finds that Imports of Chassis and Subassemblies from China Injure US Industry

On June 21, 2021, the US International Trade Commission (ITC) determined that a US industry is materially injured by reason of imports of chassis and subassemblies from China that the US Department of Commerce (DOC) has determined are sold in the United States at less than fair value. As a result of the Commission's affirmative determination, Commerce will issue an antidumping duty order on imports of this product from China.

The merchandise covered by this investigation is chassis and subassemblies thereof, whether finished or unfinished, whether assembled or unassembled, whether coated or uncoated, regardless of the number of axles, for carriage of containers, or other payloads (including self-supporting payloads) for road, marine roll-on/roll-off (RORO) and/or rail transport. Chassis are typically, but are not limited to, rectangular framed trailers with a suspension and axle system, wheels and tires, brakes, a lighting and electrical system, a coupling for towing behind a truck tractor, and a locking system or systems to secure the shipping container or containers to the chassis using twistlocks, slide pins or similar attachment devices to engage the corner fittings on the container or other payload. The finished and unfinished chassis subject to this investigation are typically classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 8716.39.0090 and 8716.90.5060. Imports of finished and unfinished chassis may also enter under HTSUS subheading 8716.90.5010.

In its AD/CVD investigations, DOC determined that imports of the subject merchandise from China were sold in the United States at a dumping margin of 188.05 percent. DOC also found countervailable subsidization of certain chassis and subassemblies thereof from China with a subsidy rate of 39.14 percent. According to DOC, imports from China under HTSUS subheadings 8716.39.0090 and 8716.90.5060 were valued at $361.5 million in 2019.

US International Trade Commission Finds that Imports of Walk-Behind Mowers from China and Vietnam Injure US Industry

On June 16, 2021, the US International Trade Commission (ITC) determined that a US industry is materially injured by reason of imports of walk-behind lawn mowers from China and threatened with material injury by reason of imports of walk-behind lawn mowers from Vietnam 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 China. As a result of the ITC's affirmative determinations, DOC will issue antidumping duty orders on imports of this product from China and Vietnam and a countervailing duty order on imports of this product from China.

The merchandise covered by these investigations consists of certain rotary walk-behind lawn mowers, which are grass-cutting machines that are powered by internal combustion engines. The scope of these investigations covers certain walk-behind lawn mowers, whether self-propelled or non-self-propelled, whether finished or unfinished, whether assembled or unassembled, and whether containing any additional features that provide for functions in addition to mowing. The lawn mowers subject to these investigations are typically classified at Harmonized Tariff Schedule of the United States (HTSUS) subheading 8433.11.0050. Lawn mowers subject to these investigations may also enter under subheadings 8407.90.1010 and 8433.90.1090.

In its AD/CVD investigations, DOC determined that imports of the subject merchandise were sold in the United States at the following dumping margins and subsidy rates:

Country	Dumping Margin	Subsidy Rate
China	88.14-263.75 percent	14.17-20.98 percent
Vietnam	148.35-176.37 percent	NA

According to DOC, imports of certain walk-behind lawn mowers and parts thereof were valued approximately as follows in 2020: $99.5 million (for China) and $18 million (for Vietnam).

US International Trade Commission Finds That Imports of Methionine from France Injure US Industry

On June 10, 2021, the US International Trade Commission (ITC) determined that a US industry is materially injured by reason of imports of methionine from France that the US Department of Commerce (DOC) has determined are sold in the United States at less than fair value. As a result of the ITC's affirmative determination, DOC will issue an antidumping duty order on imports of this product from France.

The merchandise covered by this investigation is methionine and dl-Hydroxy analogue of dl-methionine, also known as 2-Hydroxy 4-(Methylthio) Butanoic acid (HMTBa), regardless of purity, particle size, grade, or physical form. Methionine has the chemical formula $C_5 H_{11} NO_2 S$, liquid HMTBa has the chemical formula $C_5 H_{10} O_3 S$, and dry HMTBa has the chemical formula $(C_5 H_9 O_3 S)_2 Ca$. Methionine is currently classified under subheadings 2930.40.0000 and 2930.90.4600 of the Harmonized Tariff Schedule of the United States (HTSUS). Methionine has the Chemical Abstracts Service (CAS) registry numbers 583-91-5, 4857-44-7, 59-51-8 and 922-50-9.

In its AD investigation, DOC determined that imports of the subject merchandise from France were sold in the United States at dumping margins ranging from 16.17 to 43.82 percent. According to DOC, imports from France under HTSUS subheadings 2930.40.0000 and 2930.90.4600 were valued at approximately $10.6 million in 2020.

WTO Developments

Trade Outcomes from the G7 and United States-European Union Bilateral Summits: WTO Reform, Boeing-Airbus, and Section 232

At the G7 Summit in Cornwall, United Kingdom, the United States joined other G7 Leaders in highlighting its commitment to the multilateral trading system, following several years during the Administration of President Trump when that commitment was left in considerable doubt. However, the G7 Summit did not make any breakthroughs on the substance of the several problems that have been confronting WTO Members, notably the reform of the dispute settlement system and the strengthening of the WTO's negotiating function, both of which lie at the heart of a commitment to the multilateral trading system. Nor did the Summit go beyond setting relatively unambitious objectives for the next WTO Ministerial Conference (MC12) – to reach an agreement on Fisheries Subsidies and advance negotiations on Electronic Commerce. It also restated, but only in general terms, an agenda for the reform of WTO rules to counter "unfair" trade practices stemming from industrial subsidies and state-owned enterprises and to revise the arrangements for special and differential treatment. Overall, the results of the Summit have been welcomed in the WTO but there remains a long and difficult task ahead for the G7 countries to bring other WTO Members, in particular China and India, onto the same reform-oriented path and to confirm whether WTO Members will be able to reach consensus results for MC12. First and foremost, more work is needed to resolve outstanding differences between individual G7 members, in particular the United States and the EU, before they will be able to work effectively with other WTO Members, notably China, to bring about the "shared vision" for the WTO to which they refer in their Communique.

G7 Communique

In 2019, the G7 Leaders failed to agree on a common approach on trade, largely because of the Trump Administration's reservations about the value and effectiveness of the WTO and its preference for pursuing its trade objectives bilaterally, in particular to address its trade frictions with China without the constraints that WTO rules could have imposed on its actions. There was no G7 Summit in 2020. Comparatively speaking, therefore, including agreed language on "Free and Fair Trade" in the 2021 Communique represented an improvement over the past and it provided an affirmation of the importance of the multilateral trading system by all of the G7 Leaders, including the United States.

However, in practical terms the United States has changed few of the Trump Administration's trade policies that have created difficulties for the WTO over the past few years, notably its "national security" (Section 232) restrictions and its opposition to the reinstatement of the Appellate Body. These continue to create serious frictions with other G7 countries, in particular the EU, and as a result to hamper efforts by the G7 to create a united front in dealing with other WTO Members, in particular China and India. A case in point currently is the different approach that has been taken by the United States and the EU in reacting to the proposal of India and South Africa to adopt a waiver under the TRIPS Agreement for vaccines and therapeutics needed to tackle the COVID-19 pandemic in developing countries. That issue could have been tackled head-on by the G7 but instead the Leaders' Communique refers only in general terms to "… their support for open, diversified, secure and resilient supply chains in the manufacture of COVID-19 critical goods and vaccines and their components". The same is true for most of the other WTO issues covered in the Communique.

The Communique calls "… for the world's leading democratic nations to unite behind a shared vision … to ensure the multilateral trading system is reformed, with a modernised rulebook and a reformed WTO at its centre". However, the G7 is short of specifics of what that vision means:

- Regarding the next WTO Ministerial Conference in November/December, the Communique states that the G7 "… will work with other WTO Members to make progress on immediate issues, including reaching a meaningful conclusion to the multilateral negotiation on fisheries subsidies and advancing negotiations on e-commerce". That is an unambitious target after almost 20 years of negotiation on fisheries subsidies and several failed Ministerial Conferences in the recent past, and at a time when other pressing issues could have deserved priority attention at MC12 – not least the increasing paralysis of the WTO's dispute settlement system. WTO rules are significantly less meaningful without effective dispute settlement to enforce them, which brings into question the value of creating new rules at this time.

- On the central issues of the WTO's negotiating function and its dispute settlement system, the G7 Communique notes only that these require "addressing longstanding issues".
- Regarding the "modernisation" of the WTO, the G7 commits to work ahead of MC12 to advance issues that have been included in the WTO reform agenda already for several years and that are largely deadlocked because of deep-seated disagreements with key developing countries, notably China and India. The issues include:
    - "forced technology transfer, intellectual property theft, market-distorting actions of state-owned enterprises, and harmful industrial subsidies". Although China is not mentioned explicitly in the G7 Communique, it is clear that China is the main target for reform in these areas. However, China has not yet indicated its willingness to engage in substance with the United States, the EU, and Japan, which have made proposals on these issues. China is also the main target of the G7 call for better adherence to existing WTO rules on notification and transparency of trade policies and practices.
    - "a fairer approach to countries' different responsibilities under the rulebook, including arrangements for special and differential treatment". This has been an objective of the United States for many years, back at least as far as the Doha Round negotiations, but the United States' proposals for the reform of S&D treatment have been strongly rejected by key developing countries, in particular China, India, and South Africa, and some other developed countries, including the EU, have given the proposals only lukewarm support which has undermined the possibilities for the United States to press for progress on them.
- The G7 Communique introduces new issues that have not figured high on the WTO agenda until now:
    - One is "the use of all forms of forced labour in global supply chains, including state-sponsored forced labour of vulnerable groups and minorities, including in the agricultural, solar and garments sectors". It is unclear what role the WTO might play, but G7 Trade Ministers have been tasked with identifying areas for strengthened cooperation and collective efforts to tackle the problem.
    - A second is the risk of carbon leakage and the lowering of labour and environmental standards to gain competitive advantage, on which the G7 state that they will work collaboratively. Again, it is unclear from the Communique what role the WTO might play in this area, although underlying the issue is the EU proposal to introduce a "Carbon Border Adjustment Mechanism" which could raise numerous questions of its legality under WTO rules.
    - A third is "women's participation in trade and economic empowerment", on which the G7 encourages WTO Members to deliver an ambitious outcome at MC12.

<u>Boeing/Airbus Resolution</u>

On the margins of the G7 meeting, the United States and the EU reached an agreement to suspend for five years the retaliatory tariffs that they have levied on each other in response to the WTO dispute settlement findings that certain of their subsidies to Boeing and Airbus, respectively, were in breach of their obligations under the Agreement on Subsidies and Countervailing Measures. While both the United States and the EU claim that they have now brought their subsidies into line with their obligations, those claims have not been verified by the Dispute Settlement Body. The United States and the EU have reached an "Understanding on a cooperative framework for Large Civil Aircraft" and agreed to set up a Working Group to analyse and resolve any disagreements that may arise on what types of subsidized financing and R&D funding they can continue to use. Their collaboration will focus also on addressing and countering the harm that they view China creating for Boeing and Airbus as China invests in its own aircraft industry, allegedly based upon “non-market practices”. The UK has reached a similar understanding with the United States, although separately from the EU.

Section 232 Tariffs on Steel and Aluminum

In the lead-up to last week’s bilateral meetings between the US and the EU, press sources reported that a draft joint statement from the two governments included a commitment to remove the Section 232 tariffs and EU retaliation by December 1, 2021. However, no such commitment was included in the final Joint Statement issued by the two governments on June 15. In their Joint Statement, the two sides reaffirmed their intention to “engage in discussions to allow the resolution of existing differences on measures regarding steel and aluminium before the end of the year.” These discussions will aim to “resolve tensions arising from the U.S. application of tariffs on imports from the EU under U.S. Section 232,” and will work towards “allowing trade to recover from its 2020 lows and ending the WTO disputes.” These statements essentially repeat commitments that the two sides made in their previous joint statement of May 17, 2021, in which they agreed to pursue “the mutual resolution of concerns” over the Section 232 measures and “chart a path that ends the WTO disputes,” with the goal of finding solutions before the end of the year.

Prospects

The G7 statement of commitment to the multilateral trading system and the WTO has been welcomed, but the Summit did not address in substance any of the problems that have confronted the WTO for the past few years. Above all, the G7 Leaders made no contribution to resolving the impasse over the WTO’s dispute settlement system, which increasingly is undermining and weakening all other functions of the WTO as well. There is at least a tension, and potentially even a contradiction, between expressing support for the multilateral trading system on the one hand and failing to tackle what is arguably its main weakness on the other.

Behind the G7’s united front lie several deep-seated and difficult frictions that divide the individual participants, particularly the United States and the EU, and that will stand in the way of their successful engagement on issues such as WTO reform with other WTO Members, notably China and India. Notwithstanding their expressed support for the WTO, the United States and the EU have decided to address some of their differences bilaterally – such as their agreement to postpone retaliatory actions against each other for five years in the case of the Boeing/Airbus dispute. Other differences, such as over the Section 232 tariffs, are tied up in dispute settlement but without much prospect of legally binding resolutions being achieved. These may prove more difficult and take longer to resolve because of President Biden’s domestic political restraints in removing import protection from the steel and aluminium industries. However, until those bilateral frictions are sorted out it will be more difficult for the United States and the EU, and the G7 more generally, to present a united front in the WTO to negotiate with other WTO Members, in particular with China and India, on the key elements of the reform agenda that is called for in the G7 “vision” for the WTO.