US Multilateral Trade Policy Developments

Japan External Trade Organization

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US Trade Policy

Legislation to Impose "Border Carbon Adjustment" Fee on Imported Steel and Other "Carbon-Intensive" Goods Introduced in US Congress

On July 19, Senator Chris Coons (D-DE) and Representative Scott Peters (D-CA) introduced companion bills in the Senate and the House of Representatives that would impose a "border carbon adjustment" ("BCA") fee on imports of carbon-intensive goods into the United States, including steel, aluminum, cement, and fossil fuels. The stated goals of S. 2378 and H.R. 4534, entitled the *FAIR Transition and Competition Act* (FTCA), are to "protect US jobs" and prevent "carbon leakage" that might occur where US policies to limit carbon emissions encourage the outsourcing of production to countries with less ambitious climate policies. The legislation would amend the Internal Revenue Code to create the BCA fee, which would apply to covered imports beginning on January 1, 2024. S. 2378 has been referred to the Senate Committee on Finance and H.R. 4534 to the Committee on Ways and Means in the House.

The introduction of the FTCA follows the European Commission's introduction of a proposed "Carbon Border Adjustment Mechanism" ("CBAM") on July 14. Though both measures aim to address carbon leakage, the FTCA differs from the CBAM in significant ways. Most importantly, the import fee imposed by the FTCA would not be accompanied by an equivalent domestic tax or price on carbon emissions, but rather would be based on "the cost incurred by US businesses to comply with [US] laws and regulations limiting greenhouse gas emissions." This approach reflects current political realities in the United States – namely the lack of congressional support for a domestic carbon tax, and President Biden's prioritization of regulatory approaches to combat climate change – but it is sure to generate controversy and methodological challenges if implemented.

Like the CBAM, any US carbon border adjustment will be scrutinized closely by US trading partners, both in terms of its impact on trade flows and its consistency with World Trade Organization (WTO) rules. If the FTCA is enacted, much will depend on how the Executive Branch interprets and implements the legislation, as the bill provides only the general framework for the proposed border adjustment and leaves key details to be determined through implementing regulations.

This alert provides an overview of the FTCA and the prospects for the legislation in the current Congress.

Product scope of the proposed border carbon adjustment fee

The BCA fee would apply to imports of the following products into the United States:

- Iron, steel, aluminum, and cement;
- Any other product for which the Secretary of the Treasury determines that (1) there is "reliable data" for determining the quantity of greenhouse gas emissions resulting from the production of the product; and (2) it is "in the interest of the United States" to include such product within the scope of the BCA;
- Any product for which "greater than 50 percent of the composition of such product" consists of a product described above; and
- "Covered fuel," defined as "natural gas, petroleum, coal, or any other product derived from natural gas, petroleum, or coal that is used or may be used so as to emit greenhouse gases to the atmosphere[.]"

As indicated above, the legislation would authorize the Executive Branch to expand the product scope of the BCA at its own discretion. The bills' sponsors have stated that they intend for the list of covered products to expand "as the United States improves processes for determining the carbon intensity of different types of goods."

Key factors for determining the BCA fee

The legislation seeks to impose a cost on the greenhouse gas emissions associated with imported goods "to account for the cost incurred by US businesses to comply with laws and regulations limiting greenhouse gas emissions."

Accordingly, the bills would require the Treasury Department to determine (1) the costs that US companies in the covered sectors incur to comply with US environmental policies; and (2) the quantity of greenhouse gas emissions associated with the production of each covered good. The legislation provides general guidelines that Treasury must follow when making these determinations, but largely defers to Treasury regarding the details of the calculations, as described below.

"Domestic environmental costs incurred" by US businesses

Treasury must calculate the "domestic environmental costs incurred" by US firms on an annual basis for each of the covered sectors (e.g., iron, steel, aluminum, cement) and for the production of each covered fuel. Treasury's determination must be based on "the average cost incurred by companies within such sector" (or, in the case of a covered fuel, the average cost incurred to produce such fuel) to comply with any US Federal, State, regional, or local law, regulation, policy or program that is in effect at the time of the determination and is "designed to limit or reduce greenhouse gas emissions." The legislation provides an illustrative list of examples of such policies, including the Clean Air Act (42 U.S.C. 7401), emissions standards for passenger cars and light trucks, and State and local carbon taxes and cap-and-trade systems. However, the legislation provides no further guidance on how Treasury is to determine the costs of compliance with such policies.

"Production greenhouse gas emissions"

In order to calculate the BCA fee applicable to an imported product, Treasury must determine the "production greenhouse gas emissions" associated with the product, *i.e.*, the "quantity of greenhouse gases, expressed in metric tons of CO_2-e, emitted to the atmosphere resulting from the production, manufacture, or assembly of a product." The bill requires Treasury to determine the production greenhouse gas emissions using "reliable methodologies" that (1) ensure that no covered good has the BCA imposed upon it more than once; and (2) are consistent with international treaties and agreements, including FTAs. However, the legislation provides few additional guidelines and, as discussed below, does not specify whether the determination must be based on actual emissions at the facility that produced the imported good (as is the case under the EU's CBAM proposal).

Calculation of the BCA fee on imported goods

The legislation would require Treasury to calculate the BCA fee on imported goods using the following general methodologies:

Non-fuel products

For covered products other than covered fuels, the BCA fee must be equal to the product of (A) "the domestic environmental cost incurred" for the sector in which the product was produced; multiplied by (B) the "production greenhouse gas emissions of the product[.]" A simplified example of how this calculation might work in practice is as follows:

(A) Domestic environmental costs incurred. Treasury determines that, on average, the cost that US cement producers incur to comply with US laws limiting greenhouse gas emissions amounts to $5 per ton of cement produced.

(B) Production greenhouse gas emissions. Treasury determines that the greenhouse gas emissions associated with the production of one ton of cement are 0.5 MT of CO_2-e.

(C) BCA fee. The BCA fee applicable to imported cement would be $2.50 per ton ($5.00 x 0.5).

The legislation does not specify whether Treasury must calculate production greenhouse gas emissions on a facility-specific basis (*i.e.*, based on an importer's documentation of actual emissions at the facilities that produced the imported good), or based on broader data such as industry averages within the country of origin. The legislation requires Treasury to establish a process by which the importer of a covered good "may petition the Secretary to

revise the Secretary's determination of the production greenhouse gas emissions of that importer's covered good," but does not elaborate.

In the event that there is no "reliable data" concerning the production greenhouse gas emissions of an imported product, the legislation directs Treasury to calculate the BCA fee using "benchmark emissions" for the sector that produced the product. Treasury will calculate the benchmark emissions by determining "the production greenhouse gas emissions for the top 1 percent of the emitting production sites within each sector in the United States during the prior calendar year." The proposed CBAM would take a similar approach where actual emissions at the facility that produced the good cannot be verified. In this situation, the CBAM would use "default values" based on the average emissions intensity of the industry in the exporting country or the 10 percent worst-performing EU facilities.

Covered Fuel

In the case of a covered fuel, the BCA fee will be equal to the product of: (1) the domestic environmental costs incurred in the production of such fuel, multiplied by (2) the "upstream greenhouse gas emissions" of such fuel, i.e., "the quantity of greenhouse gases, expressed in metric tons of CO_2-e, emitted to the atmosphere resulting from the extraction, processing, transportation, financing, or other preparation of a covered fuel for use[.]" Like the bill's provisions concerning production greenhouse gas emissions, the provisions concerning upstream greenhouse gas emissions do not specify whether determinations must be made on a facility-specific basis.

Country Exemptions

The legislation would exempt imports from the BCA fee if they originate from a country that the OECD considers to be a Least Developed Country. It also would exempt imports from any country that does not impose a border carbon adjustment on US goods and enforces laws and regulations "that are at least as ambitious as [United States] Federal laws and regulations" designed to limit or reduce greenhouse gas emissions.

The FTCA's approach to country exemptions may prove controversial. The legislation contemplates full exemptions for countries with emissions regulations that are "at least as ambitious" as the United States, but provides no partial exemption or offset for countries with less ambitious regulations than the United States. Thus, a country with emissions regulations that are almost as ambitious as those of the United States could be treated the same as a country with no emissions regulations at all, for purposes of the FTCA.

The FTCA also appears to reflect concerns that US exports will not be exempted from the EU's proposed CBAM, even if the United States implements the core components of President Biden's climate agenda. The CBAM would allow importers to claim a reduction in the number of required "CBAM certificates" (and thus, import fees) to account for a carbon price paid in the country of origin, and would provide country-wide exemptions for nations with an emissions trading system linked to the EU's. However, the CBAM provides no such offsets or exemptions to account for non-price policies in the country of origin that limit carbon emissions, such as regulations and subsidies. The Biden administration has taken issue with that approach, urging that the CBAM and similar measures should take into account "the degree to which a country's climate policies reduce emissions (and hence carbon content), rather than focus only on explicit carbon pricing." The FTCA might be intended to pressure the EU to revisit its current approach, as the legislation ensures that EU goods would be subject to the US carbon border fee for as long as US exports are subject to the CBAM.

Outlook

The sponsors of the FTCA are seeking to include the legislation in a forthcoming budget resolution, which Senate Democrats intend to pass on a party-line vote using reconciliation procedures. Democrats on the Senate Budget Committee reached agreement on the broad outlines of the resolution last week and are currently developing the legislative text. A summary of their agreement indicates that the resolution will include new climate regulations proposed by President Biden – most notably a Clean Electricity Standard aimed at achieving 100% carbon-free power by 2035 – as well as a "polluter import fee," which Senators have confirmed is a reference to border carbon

adjustments. The summary does not mention a domestic carbon tax to accompany the import fee, indicating that the proposed border carbon adjustment might be similar, if not identical, to the FTCA.

Proponents of the budget resolution strategy acknowledge that they have not yet secured the necessary votes for its passage, and that the details of the reconciliation package remain unsettled. It remains to be seen whether any Democratic Senators will object to the inclusion of the FTCA or a similar measure in the reconciliation package.

The Biden administration has not publicly taken a position on the FTCA, but the legislation reportedly was developed in consultation with USTR and the Treasury Department, and President Biden has expressed support for border carbon adjustments on several occasions. Though the FTCA would likely generate frictions with US trading partners, Democratic Senators have argued in recent days that such measures will be necessary to protect US industry from "unfair" competition, particularly with China, if Congress approves the new climate initiatives envisioned in the budget resolution. Thus, the enactment of the FTCA or a similar measure this year cannot be ruled out.

The text of the FTCA can be viewed here.

US Trade Actions

Section 232

US Court of Appeals for the Federal Circuit Upholds Presidential Proclamation Doubling Section 232 Tariffs on Steel from Turkey, Reversing Decision by US Court of International Trade

On July 13, the US Court of Appeals for the Federal Circuit (CAFC) reversed the US Court of International Trade's (CIT) July 2020 ruling in *Transpacific Steel LLC v. United States (Transpacific Steel*).[1] The CIT held in *Transpacific Steel* that President Donald Trump's Proclamation 9772 of August 10, 2018, which doubled the Section 232 tariff rate on steel imports from Turkey, violated the timing requirements of the Section 232 statute as well as the equal protection guarantees of the US Constitution.[2] The CAFC disagreed, finding that (1) Section 232 authorized the President to increase the tariff rate on Turkish steel as part of a plan of action adopted within the relevant statutory deadlines; and (2) the President articulated a rational basis for targeting Turkish steel products alone, and thus did not violate the equal protection guarantees of the Constitution. We provide an overview of the CAFC's decision below.

Timeliness of the Turkey Steel Proclamation

Section 232 permits the President to "adjust imports" of an article if the Secretary of Commerce determines in the course of a Section 232 investigation that such imports "threaten to impair" national security and reports this finding to the President.[3] The President, "[w]ithin 90 days" of receiving such a report, must determine whether he concurs with the Secretary and, if so, "determine the nature and duration of the action" to "adjust the imports of the article and its derivatives so that such imports will not threaten to impair the national security."[4] The President "shall implement that action" no later than 15 days from his decision to take such action.[5] In March 2018 (within 90 days after receiving the required report from the Secretary of Commerce), President Trump issued Proclamation 9705, imposing a 25% tariff on steel imports from most countries pursuant to Section 232 with the tariffs taking effect within 15 days of the proclamation.[6] After issuing several additional proclamations adjusting the tariffs (proclamations not at issue in the case), President Trump in August 2018 issued Proclamation 9772 (the Turkey Steel Proclamation) doubling the Section 232 tariff rate on steel imports from Turkey.[7]

In *Transpacific Steel*, the CIT held that the Turkey Steel Proclamation was unlawful because, unlike the initial Proclamation 9705, it was issued outside the 90- and 15-day time periods set out in Section 232(c)(1) for presidential action after the Secretary's finding. In the CIT's view, "the temporal restrictions on the President's power to take action pursuant to a report and recommendation by the Secretary is not a mere directory guideline, but a restriction that requires strict adherence." The CIT found nothing in the statute to support the continuing authority to modify Proclamations outside of the stated timelines, holding that "'modifications' of existing Proclamations under the current statutory scheme, without following the procedures in the statute, are not permitted."

For the following reasons, the CAFC disagreed with the CIT's interpretation of the Section 232 statute, concluding instead that "the best reading of the statutory text…is that the authority of the President includes authority to adopt

[1] *Transpacific Steel LLC v. United States*, No. 20-2157 (Fed. Cir. 2021).

[2] *Transpacific Steel LLC v. United States*, 466 F. Supp. 3d 1246, 1249 (Ct. Int'l Trade 2020).

[3] 19 U.S.C. 1862.

[4] 19 U.S.C. 1862(c).

[5] 19 U.S.C. 1862(c)(1)(B).

[6] Proclamation 9705, *Adjusting Imports of Steel Into the United States* (March 8, 2018).

[7] Proclamation 9772, *Adjusting Imports of Steel Into the United States* (August 15, 2018).

and carry out a plan of action that allows adjustments of specific measures, including by increasing import restrictions, in carrying out the plan over time":[8]

- According to the CAFC, Supreme Court precedent in cases involving "statutory commands to executive officers to take action within a specified time…has made clear that such a command does not, without more, entail lack of authority, or of obligation, to take the action after that date has passed, even though the obligation to act by the specified time has been violated."[9]
- The statutory terms "action" and "take action" can be used to refer to "a process or launch of a series of steps over time."[10] Thus, the authorization for the President to determine the "nature and duration of the action," § 1862(c)(1)(A)(ii), "supports, rather than excludes, coverage of a plan implemented over time, including options for contingency-dependent choices that are a commonplace feature of plans of action."[11] The time directive in the statute "applies to the announcement and adoption of the plan of action rather than each act following the adopted plan."[12]
- The "manifest purpose" of Section 232 is "to enable and obligate the President…to effectively alleviate the threat to national security identified in a finding by the Secretary[.]"[13] Reading the statute to permit "the announcement of a plan within the specified 15 days, followed by implementation decisions reflecting contingencies affecting achievement of the goal defined by the Secretary's finding, furthers that evident purpose."[14] In the CAFC's view:

  > The threat to national security was tied to an excess of imports overall, from numerous countries, that left domestic capacity utilized less than an identified, plant-sustaining level. As the President struck deals with some countries as contemplated by Proclamation 9705, the agreed-to imports from those countries would logically affect—most relevantly, could *reduce*—the volume of imports from other countries, lacking agreements with the United States, that could be allowed if the stated goal of overall-imports reduction was still to be met…To prevent the President from increasing the impositions on non-agreement countries after the initial plan announcement would be to impede the President's ability to be effective in solving the specific problem found by the Secretary.

- The "legal and historical backdrop" against which Section 232(c)(1) was enacted indicates that Congress intended for the President to have the authority to pursue a continuing course of action, including by making adjustments.[15]

Equal Protection

Unlike the CIT, the CAFC found that Proclamation 9772 did not violate the equal protection guarantees of the Fifth Amendment of the US Constitution. Both the CIT and the CAFC evaluated Plaintiffs' equal protection claim under the "rational basis" standard. Under the rational basis standard, a classification that does not implicate a fundamental right or a suspect class does not violate the equal protection clause if "there is a rational relationship between the disparity of treatment and some legitimate governmental purpose."[16] The CAFC found that Proclamation 9772 is

[8] *Transpacific Steel LLC v. United States*, No. 20-2157 (Fed. Cir. 2021) at p.20-21.

[9] Id at p.23.

[10] Id at p.25.

[11] Id at p.25-26.

[12] Id at p.26.

[13] Id at p.28.

[14] Id at p.29.

[15] Id at p.30.

[16] Id at p.48.

"plausibly related" to the government's stated objective of safeguarding national security.[17] Whereas the CIT found that Proclamation 9772 violated the equal protection clause by singling out steel products from Turkey, the CAFC considered it "rational for the President to try a steep increase on tariffs for only one major exporter to see if that strategy helps to achieve the legitimate objective of improving domestic capacity utilization without extending the increase more widely."[18]

Outlook

Transpacific Steel was the first successful challenge to the Section 232 steel duties before the CIT. There are few other examples of successful legal challenges to Section 232 actions. The only other recent one is *Prime Source Bldg. Products Inc. v. United States*, No. 20-00032, Slip Op. 21-36 (Ct. Int'l Trade Apr. 5, 2021) (invalidating Proclamation 9980 expanding the scope of Section 232 tariffs imposed under Proclamations 9704 and 9705 to "derivative" aluminum and steel products), in which the President's action was enjoined by the Court. The challengers succeeded before the CIT in these two instances by alleging that Proclamations imposing Section 232 duties failed to comply with statutorily-mandated procedural requirements. By contrast, broader challenges to the initial Section 232 tariffs on steel and aluminum and the constitutionality of the statute itself have consistently failed.

The CAFC's decision in *Transpacific Steel* removes one of the few limits the courts had found on the President's authority to impose and modify import restrictions under Section 232. The CAFC decision may presage a similar outcome in *Prime Source Bldg. Products*, which is currently on appeal before the CAFC, though the court emphasized in *Transpacific Steel* that its decision was limited to the circumstances surrounding the Turkey Steel Proclamation and did not address "other circumstances that would present other issues about presidential authority to adjust initially taken actions without securing a new report with a new threat finding from the Secretary."[19] Plaintiffs in *Transpacific Steel* can still appeal the CAFC's decision to the US Supreme Court, though they have given no indication that they intend to do so.

The CAFC's opinion in *Transpacific Steel* can be viewed here.

[17] Id at p.49.

[18] Id at p.49.

[19] Id at p.5.

Section 301

US Trade Representative Announces "Satisfactory Resolution" of Section 301 Investigation Concerning Vietnam's Currency Practices; Timber Investigation Remains Ongoing

On July 23, the Office of the US Trade Representative (USTR) announced its finding that no trade action is warranted in the Section 301 investigation concerning Vietnam's acts, policies, and practices related to currency valuation. USTR's investigation focused on concerns that Vietnam's exchange rate policies, including "excessive foreign exchange market interventions," were intended to provide an unfair competitive advantage in international trade. USTR has determined that a recent agreement between the US Treasury Department (Treasury) and the State Bank of Vietnam (SBV) concerning Vietnam's currency practices "provides a satisfactory resolution" of the matter under investigation, and thus obviates the need for retaliatory tariffs. However, USTR has yet to issue a determination in its parallel Section 301 investigation of Vietnam's policies related to the import and use of illegally harvested timber, which could still result in retaliatory action. This alert provides an update on both Section 301 investigations.

Background

USTR initiated a Section 301 investigation of Vietnam's acts, policies, and practices related to the valuation of its currency on October 2, 2020. On the same day, USTR initiated a separate Section 301 investigation concerning Vietnam's acts, policies, and practices related to the import and use of illegally harvested timber. USTR held consultations with the Government of Vietnam and accepted public comments on both investigations.

In January 2021, during the final days of the Trump administration, USTR announced its determination that Vietnam's currency practices were actionable under Section 301. In a report setting out USTR's findings, which were developed in consultation with Treasury, USTR asserted that (1) the SBV "tightly manages" the value of the Vietnamese Dong, particularly against the US dollar; (2) the SBV has been undervalued "for several years," and (3) Vietnam took "concrete steps in [Foreign Exchange] markets that have contributed to the undervaluation[.]" However, USTR deferred its decision on whether to take action based on these findings, allowing the Biden administration to determine how to proceed with the investigation. USTR has yet to issue a determination on whether Vietnam's policies related to the import and use of illegal timber are actionable under Section 301.

Currency Investigation and Treasury-SBV Agreement

On July 19, Treasury and the SBV announced that they had reached an agreement "to address Treasury's concerns about Vietnam's currency practices[.]"[20] Treasury and the SBV had held consultations on this issue since December 2020, pursuant to a separate statutory process that requires Treasury to initiate "enhanced bilateral engagement" with any major US trading partner that: (i) has a significant bilateral trade surplus with the United States; (ii) has a material current account surplus; and (iii) has engaged in "persistent one-sided intervention in the foreign exchange market."[21] A Joint Statement on the new Treasury-SBV agreement provides, *inter alia*, that:

> Treasury and the SBV have had constructive discussions in recent months through the enhanced engagement process, and reached agreement to address Treasury's concerns about Vietnam's currency practices as described in Treasury's Report to Congress on the Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States.
>
> . . . Vietnam confirms that it is bound under the Articles of Agreement of the IMF to avoid manipulating its exchange rate in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage and will refrain from any competitive devaluation of the Vietnamese dong. The SBV is also

[20] Available at https://home.treasury.gov/news/press-releases/jy0280

[21] These criteria are set forth in Section 701 of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA). In its December 2020 and April 2021 reports to Congress on the foreign exchange practices of US trading partners, Treasury determined that Vietnam satisfied the three criteria set forth in Section 701 of the TFTEA, which triggered the requirement for "enhanced bilateral engagement" with Vietnam.

making ongoing efforts to further modernize and make more transparent its monetary policy and exchange rate framework. In support of these efforts, the SBV will continue to improve exchange rate flexibility over time, allowing the Vietnamese dong to move in line with the stage of development of the financial and foreign exchange markets and with economic fundamentals, while maintaining macroeconomic and financial market stability.

The SBV will continue to provide necessary information for Treasury to conduct thorough analysis and reporting on the SBV's activities in the foreign exchange market[.]

In a Federal Register notice issued on July 23, USTR announced that it has determined, in consultation with Treasury, that the Treasury-SBV agreement provides "a satisfactory resolution" of the matter subject to the Section 301 investigation, and that "no action at this time is appropriate in this investigation." However, USTR noted that it will monitor Vietnam's implementation of its commitments under the agreement and associated measures, and that it will "consider further action under Section 301" if it determines, in coordination with Treasury, that Vietnam is not satisfactorily implementing the agreement or associated measures.

Outlook

The Treasury-SBV agreement averts, at least for the time being, the threat of Section 301 tariffs on Vietnamese goods in response to alleged currency manipulation. A broad coalition of US business groups advocated a negotiated settlement in this case, arguing that the application of Section 301 tariffs would expose US exporters to retaliation, undermine the Biden administration's efforts to strengthen alliances in the Indo-Pacific, and contradict Treasury's recent statement that there is "insufficient evidence" that Vietnam meets the statutory criteria for currency "manipulation."[22] The same coalition has urged USTR to avoid imposing tariffs in its parallel investigation of Vietnam's timber policies, and has expressed concern about recent reports that USTR is preparing a proposed list of Vietnamese goods that could be subject to Section 301 tariffs. The coalition has suggested instead that an investigation by the US Animal and Plant Health Inspection Service under the Lacey Act would be a more appropriate means of addressing the United States' concerns than a Section 301 investigation.[23]

USTR reportedly has held consultations with Vietnam in recent weeks regarding the timber investigation, though it has not indicated whether progress has been made. Separately, Ambassador Tai has indicated that combatting illegal logging will be among USTR's top priorities as it seeks to integrate environmental objectives more fully into the US trade agenda, stating that the United States "should use trade policies and trade enforcement actions" to address the issue.[24] At the same time, she expressed a preference for multilateral action, rather than unilateral measures such as Section 301, arguing that "we will only truly address the global scale of this problem through global rules." USTR's determination in the timber investigation is due by October 2, 2021, leaving only a short window for USTR to propose and consider comments on any potential tariff list if it seeks to take action in the investigation.

USTR's Federal Register notice on the Section 301 investigation of Vietnam's currency practices can be viewed here.

[22] Available at http://image.uschamber.com/lib/fe3911727164047d731673/m/13/95d28b8d-1bd6-4b03-a0ba-b62aae195dc2.pdf

[23] The Lacey Act (16 U.S.C. 3371 *et seq*.) prohibits the importation and exportation of plants and plant products that are taken, possessed, transported or sold in violation of Federal, State, or foreign environmental conservation laws.

[24] Remarks from Ambassador Katherine Tai on Trade Policy, the Environment and Climate Change, April 15, 2021.

Petitions and Investigations

US Department of Commerce Initiates Antidumping Investigations of Acrylonitrile-Butadiene Rubber from France, Mexico, and South Korea

On July 20, 2021, the Department of Commerce (DOC) initiated antidumping duty (AD) investigations of acrylonitrile-butadiene rubber from France, Mexico, and South Korea. DOC initiated these investigations in response to petitions filed by Zeon Chemicals L.P. and Zeon GP, LLC (Louisville, KY).

The product covered by these investigations is commonly referred to as acrylonitrile butadiene rubber or nitrile rubber (AB Rubber). AB Rubber is a synthetic rubber produced by the emulsion polymerization of butadiene and acrylonitrile with or without the incorporation of a third component selected from methacrylic acid or isoprene. This scope covers AB Rubber in solid or non-aqueous liquid form. The scope also includes carboxylated AB Rubber. The merchandise subject to these investigations is classified in the HTSUS at subheading 4002.59.0000.

The dumping margins alleged in the petitions are as follows:

Country	Dumping Margin
France	41.73 percent
Mexico	92.70 percent
South Korea	105.38 percent

The US International Trade Commission (ITC) is scheduled to issue its preliminary injury determinations by August 16, 2021. If the ITC makes affirmative preliminary determinations of injury, the investigations will continue, and DOC's preliminary determinations will be due by December 7, 2021, unless the deadline is extended.

According to DOC, imports under HTSUS subheading 4002.59.00.00 were valued as follows in 2020: $28.2 million (for France); $10.9 million (for Mexico); and $13.2 million (for Korea).

US Department of Commerce Initiates Antidumping and Countervailing Duty Investigations of Urea Ammonium Nitrate Solutions from Russia and Trinidad and Tobago

On July 20, 2021, the US Department of Commerce (DOC) initiated antidumping duty (AD) and countervailing duty (CVD) investigations of urea ammonium nitrate from Russia, and Trinidad and Tobago. DOC initiated these investigations in response to petitions filed by CF Industries Nitrogen, LLC (Deerfield, IL) and its subsidiaries, Terra Nitrogen, Limited Partnership and Terra International (Oklahoma).

The merchandise covered by these investigations is all mixtures of urea and ammonium nitrate in aqueous or ammonia solution, regardless of nitrogen concentration by weight, and regardless of the presence of additives, such as corrosion inhibiters and soluble micro or macronutrients (UAN). Subject merchandise includes merchandise matching the above description that has been processed in a third country, including by commingling, diluting, adding or removing additives, or performing any other processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the subject country. The scope also includes UAN that is commingled with UAN from sources not subject to these investigations. Only the subject component of such commingled products is covered by the scope of these investigations. The covered merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 3102.80.0000.

The dumping margins alleged in the petitions are as follows:

Country	Dumping Margin
Russia	169.96 to 433.37 percent
Trinidad and Tobago	158.81 percent

In the Russia investigation, there are 11 alleged subsidy programs, which include numerous tax programs, preferential lending, and the provision of natural gas, natural gas extraction rights, and phosphate mining rights for less than adequate remuneration. In the Trinidad and Tobago investigation, there are three alleged subsidy programs, which include multiple tax programs and a provision of natural gas for less than adequate remuneration program.

The US International Trade Commission (ITC) is scheduled to issue its preliminary injury determinations by August 16, 2021. If the ITC makes affirmative preliminary determinations of injury, the investigations will continue, and DOC's preliminary determinations will be due by December 7, 2021 in the AD investigations and September 23, 2021 in the CVD investigations, unless these deadlines are extended.

According to DOC, imports under HTSUS subheading 3102.80.0000 in 2020 were valued as follows: $137.8 million (for Russia) and $99.7 million (for Trinidad and Tobago).

US Department of Commerce Issues Affirmative Final Determinations in Antidumping Investigations of Methionine from Japan and Spain

On July 19, 2021, the US Department of Commerce (DOC) issued affirmative final determinations in the antidumping duty (AD) investigations of Methionine from Japan and Spain. In its investigations, DOC determined that imports of the subject merchandise were sold in the United States at the following dumping margins:

Country	Dumping Margin
Japan	76.50 percent
Spain	37.53 percent

The US International Trade Commission (ITC) is scheduled to issue its final injury determinations by September 2, 2021. If the ITC finds that imports of the subject merchandise from Japan and Spain materially injure or threaten material injury to the domestic industry, DOC will issue antidumping orders.

The merchandise covered by these investigations is methionine and dl-Hydroxy analogue of dl-methionine, also known as 2-Hydroxy 4-(Methylthio) Butanoic acid (HMTBa), regardless of purity, particle size, grade, or physical form. Methionine has the chemical formula $C_5 H_{11} NO_2 S$, liquid HMTBa has the chemical formula $C_5 H_{10} O_3 S$, and dry HMTBa has the chemical formula $(C_5 H_9 O_3 S)_2 Ca$. Subject merchandise also includes methionine processed in a third country including, but not limited to, refining, converting from liquid to dry or dry to liquid form, or any other processing that would not otherwise remove the merchandise from the scope of these investigations if performed in the country of manufacture of the in-scope methionine or dl-Hydroxy analogue of dl-methionine.

The scope also includes methionine that is commingled (*i.e.,* mixed or combined) with methionine from sources not subject to these investigations. Only the subject component of such commingled products is covered by the scope of these investigations. Excluded from these investigations is United States Pharmacopoeia (USP) grade methionine.

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 Start Printed Page 52329Chemical Abstracts Service (CAS) registry numbers 583-91-5, 4857-44-7, 59-51-8 and 922-50-9.

According to DOC, imports under HTSUS subheadings 2930.40.0000 and 2930.90.4600 were valued as follows in 2020: $52.1 million (for Japan) and $57 million (for Spain).

US Department of Commerce Issues Affirmative Preliminary Determination in Countervailing Duty Investigation of Mobile Access Equipment and Subassemblies Thereof from China

On July 27, 2021, the US Department of Commerce (DOC) announced its affirmative preliminary determination in the countervailing duty (CVD) investigation of mobile access equipment and subassemblies thereof (Mobile Access Equipment) from China. In its investigation, DOC preliminarily determined that imports of the subject merchandise from China received countervailable subsidies ranging from 4.09 to 435.06 percent.

The merchandise covered by this investigation consists of certain mobile access equipment, which consists primarily of boom lifts, scissor lifts, and material telehandlers, and subassemblies thereof. Mobile access equipment combines a mobile (self-propelled or towed) chassis, with a lifting device (e.g., scissor arms, boom assemblies) for mechanically lifting persons, tools and/or materials capable of reaching a working height of ten feet or more, and a coupler that provides an attachment point for the lifting device, in addition to other components. The scope of this investigation covers mobile access equipment and subassemblies thereof whether finished or unfinished, whether assembled or unassembled, and whether the equipment contains any additional features that provide for functions beyond the primary lifting function.

Certain mobile access equipment subject to this investigation is typically classifiable under subheadings 8427.10.8020, 8427.10.8030, 8427.10.8070, 8427.10.8095, 8427.20.8020, 8427.20.8090, 8427.90.0020 and 8427.90.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). Parts of certain mobile access equipment are typically classifiable under subheading 8431.20.0000 of the HTSUS.

DOC is scheduled to issue its final determination in this investigation by October 12, 2021. If DOC issues an affirmative final determination, and the US International Trade Commission (ITC) issues an affirmative final determination that imports of the subject merchandise from China materially injure or threaten material injury to the domestic industry, DOC will issue an antidumping order.

According to DOC, the United States imported approximately $195.4 million worth of goods from China in 2020 under HTSUS subheadings 8427.10.8030, 8427.10.8070, 8427.10.8095, 8427.20.8020, 8427.20.8090, 8427.10.8010, 8427.10.8020, 8427.10.8090, 8427.20.8000.

US International Trade Commision Finds Imports of Seamless Refined Copper Pipe and Tube from Vietnam Injure US Industry

On July 19, 2021, the US International Trade Commission (ITC) determined that a US industry is materially injured by reason of imports of seamless refined copper pipe and tube from Vietnam that the US Department of Commerce (DOC) has determined are sold in the United States at less than fair value. Chair Jason E. Kearns, Vice Chair Randolph J. Stayin, and Commissioners David S. Johanson, Rhonda K. Schmidtlein, and Amy A. Karpel voted in the affirmative. As a result of the ITC's affirmative determination, DOC will issue an antidumping duty order on imports of these products from Vietnam.

In its antidumping investigation, DOC determined that imports of these products from Vietnam were sold in the United States at 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.

US International Trade Commission Finds Imports of Standard Steel Welded Wire Mesh from Mexico Injure US Industry

On July 20, 2021, the US International Trade Commission (ITC) determined that a US industry is materially injured by reason of imports of standard steel welded wire mesh from Mexico that the US Department of Commerce (DOC) has determined are sold in the United States at less than fair value. Chair Jason E. Kearns, Vice Chair Randolph J. Stayin, and Commissioners David S. Johanson, Rhonda K. Schmidtlein, and Amy A. Karpel voted in the affirmative. As a result of the ITC's affirmative determination, DOC will issue an antidumping duty order on imports of these products 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. 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 International Trade Commission Finds Imports of Utility Scale Wind Towers from Spain Injure US Industry

On July 27, 2021, the the US International Trade Commission (ITC) determined that a US industry is materially injured by reason of imports of utility scale wind towers from Spain that the US Department of Commerce (DOC) has determined are sold in the United States at less than fair value. Chair Jason E. Kearns, Vice Chair Randolph J. Stayin, and Commissioners David S. Johanson, Rhonda K. Schmidtlein, and Amy A. Karpel voted in the affirmative. As a result of the ITC's affirmative determination, DOC will issue an antidumping duty order on imports of this product from Spain.

In its antidumping 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).

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

US International Trade Commission Finds Imports of Metal Lockers from China Injure US Industry

On July 27, 2021, the the US International Trade Commission (ITC) determined that a US industry is materially injured by reason of imports of metal lockers from China that the US Department of Commerce (DOC) has determined are subsidized by the government of China and sold in the United States at less than fair value.

Vice Chair Randolph J. Stayin and Commissioners Rhonda K. Schmidtlein and Amy A. Karpel voted in the affirmative. Chair Jason E. Kearns and Commissioner David S. Johanson voted in the negative. As a result of the ITC's affirmative determinations, DOC will issue antidumping and countervailing duty orders on imports of this product 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.

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 International Trade Commission Finds Imports of Silicon Metal from Malaysia Injure US Industry

On July 28, 2021, the US International Trade Commission (ITC) determined that a US industry is materially injured by reason of imports of silicon metal from Malaysia that the US Department of Commerce (DOC) has determined are sold in the United States at less than fair value. Chair Jason E. Kearns, Vice Chair Randolph J. Stayin, and Commissioners David S. Johanson, Rhonda K. Schmidtlein and Amy A. Karpel voted in the affirmative. As a result of the ITC's affirmative determination, DOC will issue an antidumping duty order on imports of this product 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.

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.

Trade Agreements

Peru Ratifies the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP)

On July 14, the Peruvian Congress overwhelmingly approved the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) trade agreement with 97 votes in favour and 9 abstentions during its plenary session, making it the eighth (after Mexico, Japan, Singapore, New Zealand, Canada, Australia, Vietnam) of 11 countries to do so. Peru's Minister of Foreign Trade and Tourism, Claudia Cornejo, revealed that the government would sign a supreme decree "in the next few days" to put into effect the ratification process. This paves the way for entry into force of the agreement 60 days after notification in writing to New Zealand (the official depository for the CPTPP) of the completion of Peru's applicable domestic legal procedures.

The CPTPP entered into effect on December 30, 2018 for Japan, Australia, Canada, New Zealand, Mexico, and Singapore, and on January 14, 2019 for Vietnam. With respect to the other three signatories, Chile is reportedly close to finalizing its domestic ratification process, while the timing for Brunei and Malaysia remains uncertain. The United Kingdom formally submitted its request to begin the formal CPTPP accession process on February 1, 2021 and commenced negotiations on June 22, 2021 with the aim of acceding to the CPTPP in 2022. China, Korea, the Philippines, Taiwan, and Thailand have expressed their interest in joining the CPTPP; however, these economies have reportedly not yet submitted the required formal request to the CPTPP depository.

Click here for the press release of the Ministry of Foreign Trade and Tourism (in Spanish).

Cambodia Ratifies RCEP Agreement; Participating Members Target January 2022 Implementation

Cambodia's National Assembly unanimously approved the Regional Comprehensive Economic Partnership (RCEP)1 on June 21, 2021 following the completion of its domestic approval procedures. Cambodia is the fifth RCEP member country to approve the Agreement after Singapore, Thailand, China, and Japan. RCEP members include the ten ASEAN member states and five ASEAN free trade agreement (FTA) partners (or dialogue partners), namely Australia, China, Japan, Korea, and New Zealand. India withdrew its membership from the RCEP in November 2019.

The RCEP will enter into force 60 days after six ASEAN member states and three ASEAN dialogue partners have submitted their instrument of ratification to the Secretary-General of ASEAN, who acts as the Depositary for the Agreement. Notably, Singapore was the first country to complete the formal ratification process by depositing its instrument of ratification on April 9, 2021 (please refer to the W&C Asia-Pacific Trade Alert dated April 15, 2021).

RCEP members are targeting implementation of the Agreement by January 1, 2022. Cambodia will take over as ASEAN Chair in 2022 and thus have significant responsibilities for managing the implementation of the RCEP commitments. Once implemented, the RCEP will be the world's largest trade agreement, covering approximately 29% 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).