

US Multilateral Trade Policy Developments

Japan External Trade Organization

October 2021

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US Trade Policy

US Trade Representative Outlines Biden Administration's Approach to the US-China Trade Relationship

On October 4, US Trade Representative Katherine Tai gave a speech outlining the Biden Administration's "new approach to the US-China trade relationship," based on USTR's months-long review of existing US trade policy towards China. Among other topics, Ambassador Tai addressed the resumption of the product exclusion process for Chinese goods subject to the Section 301 tariffs, future discussions with China regarding industrial subsidies and compliance with the "Phase One" trade agreement, and the role of the WTO and plurilateral agreements in the Biden administration's trade strategy.

Though Ambassador Tai provided few specifics regarding the Biden administration's plans, her remarks indicate that the administration intends to refine and build on the core policies put in place by the Trump administration, including the Section 301 tariffs and the Phase One trade agreement. At the same time, Ambassador Tai indicated that seeking new market access in China is unlikely to be a priority for the Biden administration – an important contrast from the Trump administration's approach. She also downplayed the likelihood that the Biden administration will seek to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) in response to China's recent request to accede to that Agreement.

This alert discusses the key takeaways from Ambassador Tai's speech and the current outlook for US-China trade relations.

Section 301 product exclusions

Ambassador Tai announced that the Biden administration will establish a new product exclusion process for certain China-origin goods that are subject to the United States' Section 301 tariffs. This has been a high priority for the US business community and many Members of Congress, who have argued that product exclusions remain necessary to mitigate the tariffs' adverse effects on the US economy. However, Ambassador Tai implied that the new exclusion process will be limited in scope, at least initially (*i.e.*, it will be a "targeted tariff exclusion process," and USTR "will keep open the potential for additional exclusion processes, as warranted.") Moreover, Ambassador Tai did not indicate whether USTR plans to reinstate product exclusions that have previously expired, as some business groups and Members of Congress have demanded.

Potential Section 301 investigation on industrial subsidies

Ambassador Tai declined to confirm recent press reports that USTR plans to initiate a new Section 301 investigation targeting China's industrial subsidies. However, she emphasized her view that Section 301 is a "very important tool" and pledged to use "the full range of tools" available to address China's "harmful policies and practices." As discussed in more detail below, Ambassador Tai's remarks regarding the role of the WTO also implied a willingness to take unilateral action where necessary to address China's trade practices.

Future discussions with China

Ambassador Tai did not lay out a specific, long-term plan for future negotiations with China. She indicated that, as a starting point, the administration will seek a two-track discussion with China concerning: (1) China's compliance with the Phase One trade agreement; and (2) US concerns about China's industrial subsidies.

- **"Phase One" compliance.** Ambassador Tai emphasized that the Biden administration wants to ensure China adheres to its commitments under the Phase One agreement, including its commitments to increase purchases of US goods. She also indicated that, in USTR's view, China has not fulfilled certain of its Phase One commitments, though she did not specify which. Ambassador Tai stated that she wants to have "frank conversations" on this topic with her Chinese counterpart "in the coming days."

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- **Industrial subsidies.** Ambassador Tai also made clear that, outside of securing compliance with the Phase One agreement, addressing China's industrial subsidies will be a core objective of the administration's trade policy towards China. Among other examples, she stated that China's subsidies for its steel, solar, and semiconductor industries have adversely impacted US businesses and workers. Ambassador Tai stated that the Biden administration wants to discuss this issue with China in parallel with the discussions regarding the Phase One commitments, and that the administration's next steps will depend on how these discussions unfold. However, Biden administration officials have separately clarified that they are "not seeking a phase-two negotiation" with China on industrial subsidies. This may indicate that the administration will prioritize plurilateral or multilateral approaches, or that it is simply cautious about entering into formal negotiations with China at this time.

Importantly, Ambassador Tai indicated that the Biden administration is open to pursuing a plurilateral agreement with Japan and the EU to establish stronger disciplines on industrial subsidies than exist under WTO rules, with the long-term goal of pressuring China to adhere to such disciplines. She indicated that this concept aligns with the Biden administration's objectives to work closely with US allies and develop new tools for addressing unfair trade practices.

The role of the WTO

Ambassador Tai stated that the Biden administration supports the WTO, will continue to support WTO reform efforts, and believes the WTO has a "very important role to play" in addressing US concerns regarding China's trade practices. At the same time, she emphasized that the Biden administration wants to be "agile" and "think outside of the box" with respect to how the United States can more effectively address China's trade practices. Moreover, she argued that WTO dispute settlement has generally failed to produce "meaningful reforms" of China's policies, stating that "even when China changed the specific practices [the United States] challenged, it did not change the underlying policies[.]" These comments suggest that, much like the Trump administration, the Biden administration views WTO rules as insufficient to address China's trade practices, and therefore considers that unilateral action might be warranted.

Rejoining the CPTPP

Ambassador Tai declined to explain in detail how the Biden administration will respond to China's recent request to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), including whether the United States will seek to join the Agreement. She stated that the administration wants to "fully engage" with partners in Asia to address "the realities and challenges that we see today," but implied that the CPTPP is outdated and thus is ill-suited for this task, at least in its current form. Other Biden administration officials have also downplayed the likelihood that the United States will seek to join the CPTPP in the near term in response to China's accession bid. For the time being, the Biden administration might wish to avoid the domestic political challenges that US accession to the CPTPP would create, preferring to remain outside the Agreement and discourage the current Parties from approving China's accession.

Outlook

Ambassador Tai highlighted some ways in which the Biden administration's approach to China is likely to differ from that of its predecessor. She indicated, for example, that securing new market access for US exports to China is unlikely to be a priority for the Biden administration going forward (whereas market access, particularly for agriculture, was a key US priority during the Phase One negotiation). Ambassador Tai suggested that the Biden administration will seek "smarter and more resilient trade" with China, rather than aiming to increase the overall volume of trade through liberalization. She also indicated that the Biden administration intends to work more closely with allies such as the EU and the UK on issues related to China, emphasizing the need to work "through bilateral and multilateral channels."

Despite these subtle differences, however, Ambassador Tai's remarks are a strong signal that the core elements of the Trump administration's China trade policy are likely to remain in place for the foreseeable future. They also indicate that the Biden administration's future engagement with China is likely to be guided by similar views and

concerns (including the perceived shortcomings of the WTO and the merits of unilateral mechanisms, such as Section 301, for addressing China's industrial policies.) This posture, and China's recent confirmation that it is unwilling to engage in substantive negotiations on the reform of its industrial subsidies, sets the stage for continued friction and the possible escalation of trade tensions.

A copy of Ambassador Tai's remarks can be viewed [here](#).

US Trade Actions

US Trade Representative Launches “Targeted Tariff Exclusion Process” for Certain Products from China

On October 5, the Office of the US Trade Representative (USTR) issued a Federal Register notice establishing a “targeted tariff exclusion process” for certain products subject to the United States’ Section 301 tariffs on China-origin goods. The notice follows Ambassador Katherine Tai’s October 4 announcement that the Biden administration has decided to reopen a limited exclusion tariff exclusion process as part of its broader China trade strategy. The new exclusion process has a very limited scope, as it will only permit parties to request the reinstatement of certain previously-granted exclusions that were extended by USTR and expired between December 31, 2020 and April 18, 2021. We provide an overview of the new exclusion process below.

Background

During the Trump administration, USTR allowed interested parties to request the exclusion of particular products from each of the four tranches of tariffs it imposed on China-origin goods, and it approved more than 2,200 such exclusions. These exclusions were limited in duration, with the first tranche of exclusions expiring in December 2019 and the final tranche of exclusions expiring in October 2020. Starting in November 2019, USTR established processes that allowed interested parties to request the extension of particular exclusions, and USTR subsequently determined to extend 137 exclusions covered under List 1, 59 exclusions on List 2, 266 exclusions on List 3, and 87 exclusions on List 4 (a total of 549 exclusions). With the exception of certain medical product exclusions related to COVID-19, all 549 of these exclusions expired between December 31, 2020 and April 18, 2021.

This year, the US business community and many Members of Congress have urged the Biden administration to reinstate expired exclusions and establish a new exclusion process so that US businesses and consumers can obtain tariff relief. The US Innovation and Competition Act (USICA) approved by the Senate in June reflects these priorities, as it would reinstate all previously-granted product exclusions for China-origin goods and require USTR to begin accepting new exclusion requests. However, the House of Representatives has not approved the USICA, and USTR has determined to reinstate a limited exclusion process on its own initiative.

New “targeted tariff exclusion process”

Scope

USTR’s new exclusion process permits parties to request the reinstatement of any of the 549 exclusions that USTR previously extended, and that subsequently expired between December 31, 2020 and April 18, 2021. USTR is not accepting requests for the reinstatement of other expired exclusions, nor is it accepting requests for new product exclusions. USTR has not explained this decision in detail, stating only that the new process is limited to the 549 previously-extended exclusions because “these exclusions were previously found to warrant additional time[.]”

Public comment process

USTR is inviting public comments on the possible reinstatement of each of the 549 covered exclusions, and on the duration for which such exclusions should be reinstated. The focus of USTR’s evaluation will be “whether, despite the imposition of additional duties beginning in September 2018, the particular product remains available only from China.” In addressing this factor, USTR requests that commenters address specifically:

- Whether the particular product and/or a comparable product is available from sources in the United States and/or in third countries.
- Any changes in the global supply chain since September 2018 with respect to the particular product or any other relevant industry developments.

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- The efforts, if any, the importers or US purchasers have undertaken since September 2018 to source the product from the United States or third countries.
 - Domestic capacity for producing the product in the United States.

In addition, USTR has stated that it will consider whether reinstating the exclusion “will impact or result in severe economic harm to the commenter or other U.S. interests, including the impact on small businesses, employment, manufacturing output, and critical supply chains in the United States, as well as the overall impact of the exclusions on the goal of obtaining the elimination of China’s acts, policies, and practices covered in the Section 301 investigation.” These are generally the same criteria that the Trump administration considered in evaluating exclusions, though the reference to potential impacts on “critical supply chains” is new and reflects the Biden administration’s emphasis on this area.

Beginning on **October 12, 2021**, USTR will open a public docket at <https://comments.USTR.gov> for parties to submit comments on the possible reinstatement of particular exclusions. To be assured of consideration, parties must submit written comments by **December 1, 2021** at 11:59 PM EST. Any exclusions reinstated under the new process would be retroactive with respect to merchandise entered, or withdrawn from warehouse, for consumption on or after the opening of the docket on October 12, 2021, for which the entries are not liquidated at the time the claim to apply the reinstated exclusion is made to US Customs and Border Protection in accordance with CBP’s procedures.

The new Section 301 exclusion process is more limited in scope than some in the US business community had sought, and compared to the changes and processes that the US Senate approved in the USICA. In her October 4 speech, Ambassador Tai indicated that USTR “will keep open the potential for additional exclusion processes, as warranted,” but it is unclear when or in what circumstances USTR might decide to establish additional processes.

USTR’s Federal Register notice can be viewed [here](#). The list of the 549 product exclusions that are eligible for reinstatement under the new process can be viewed [here](#).

US Trade Representative Resolves Section 301 Investigation of Vietnam Concerning Illegal Logging; Members of Congress Introduce Trade Bill to Combat Illegal Logging and Deforestation

On October 6, the Office of the US Trade Representative (USTR) published a Federal Register notice announcing its determination that no trade action is warranted in the Section 301 investigation concerning Vietnam’s acts, policies, and practices related to the import and use of illegal timber. The investigation, which USTR initiated during the Trump administration, focused on allegations that Vietnam’s wood processing industry relies upon imported timber that may have been illegally harvested or traded. USTR has reached an agreement with Vietnam’s Ministry of Agriculture and Rural Development that, in USTR’s view, satisfactorily resolves the matter subject to the investigation and obviates the need for retaliatory action. This outcome, according to USTR, demonstrates that Section 301 can be an effective tool for addressing environmental risks and inadequate environmental enforcement in foreign countries, which the Biden administration has identified as an objective of its trade policy.

USTR’s announcement coincides with the introduction of new trade legislation in the US Congress that also seeks to combat illegal logging and deforestation in foreign countries. The bill, entitled the *Fostering Overseas Rule of Law and Environmentally Sound Trade (FOREST) Act*, would prohibit the importation of products made “wholly or in part” of certain commodities such as soybeans, cattle, cocoa, and rubber that are produced on illegally deforested land. This legislation is another example of US policymakers’ increasing interest in using trade policy to address environmental concerns.

This alert provides an overview of USTR’s determination in the Section 301 investigation of Vietnam as well as the key trade-related provisions of the FOREST Act.

New agreement with Vietnam and resolution of Section 301 investigation

According to USTR, the new US-Vietnam Agreement on Illegal Logging and Timber Trade includes commitments “that will help keep illegally harvested or traded timber out of the supply chain and protect the environment and natural resources.” The Agreement contains multiple commitments on issues related to illegal timber, including Vietnam’s treatment of confiscated timber, financial incentives related to illegal timber, customs inspections and clearance, entities covered by Vietnam’s timber legality assurance system, the verification of domestically harvested timber, the implementation of certain licensing schemes, and verification and enforcement measures. Additionally, the agreement provides for the creation of a timber working group under the US-Vietnam Trade and Investment Framework Agreement Council.

USTR has determined that the acts, policies, and practices covered by its Section 301 investigation “are not actionable in light of the Agreement,” and that no action is appropriate at this time. However, USTR’s Federal Register notice explains that the agency “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 Vietnam is not satisfactorily implementing the Agreement or associated measures.

This is the second Section 301 investigation involving Vietnam that the Biden administration has resolved without the imposition of duties. Earlier this year, the US Treasury Department reached an agreement with Vietnam that, in USTR’s view, provided a “satisfactory resolution” of the Section 301 investigation concerning Vietnam’s currency practices, which the Trump administration initiated in 2020 based on concerns that Vietnam’s exchange rate policies provide an unfair competitive advantage in international trade.

In its statement on the conclusion of the Section 301 investigation of Vietnam’s timber practices, USTR noted that “[t]his is the first 301 investigation to address environmental concerns.” Ambassador Katherine Tai stated that “USTR’s first use of Section 301 in this investigation shows the strength of using this tool to address concerns regarding environmental risks or the enforcement of environmental laws,” and that the new Agreement with Vietnam “will provide a model – both for the Indo-Pacific region and globally – for comprehensive enforcement against illegal timber.” Ambassador Tai has indicated in other contexts that addressing illegal logging will be a focus of the Biden administration’s trade and environmental agenda, and that the administration considers Section 301 to be an important enforcement tool. Given these statements, it is possible that USTR will seek to use Section 301 again to address illegal logging or other environmental concerns.

USTR’s determination can be viewed [here](#).

FOREST Act

On October 6, Senator Brian Schatz (D-HI) and US Representatives Earl Blumenauer (D-OR) and Brian Fitzpatrick (R-PA) introduced the FOREST Act, which “restricts access to U.S. markets for commodities originating from illegally deforested land, reducing the incentive to sacrifice forests for agriculture use and using this market leverage to improve laws, monitoring, and enforcement in countries experiencing illegal deforestation.” The key trade-related provisions of the bill include the following:

- **Import prohibition and covered products.** The bill would amend the Tariff Act of 1930 to make it unlawful “for any person to import any product made wholly or in part of a covered commodity produced from land that undergoes illegal deforestation on or after the date of the enactment[.]” Within 30 days after the bill’s enactment, USTR would be required to publish (1) an initial list of “covered commodities” that includes palm oil; soybeans; cocoa; cattle; rubber; and wood pulp; and (2) an initial list of “covered products” that are made “wholly or in part” of the covered commodities. USTR would be required to review these lists annually.

The FOREST Act defines “illegal deforestation” as deforestation conducted “in violation of the law (or any action that has the force and effect of law) of the country in which the deforestation is occurring,” including anti-corruption laws, laws relating to land tenure rights, and laws relating to the consent of indigenous peoples and local communities.

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- **Import declarations.** The bill would prohibit, beginning one year after its enactment, the importation of a “covered product” unless the importer files upon entry a declaration stating that the importer “has exercised reasonable care to assess and mitigate the risks that any covered commodity used to make the covered product was produced from land subject to illegal deforestation on or after [the date of enactment of the FOREST Act].” The bill would require a more extensive declaration where the covered product to be imported contains a covered commodity that (1) is produced in a country that USTR has identified as lacking adequate and effective protection against deforestation; and (2) is one of the covered commodities that USTR’s “action plan” for that country identified as at risk of being produced on illegally deforested land (see below). For such products, the importer’s declaration must show:
 - The supply chain and the point of origin of the covered commodity; and steps taken to assess and mitigate the risks that the point of origin was subject to illegal deforestation on or after the date of the enactment of the FOREST Act; or
 - All possible points of origin that could have contributed to the supply chain of the covered commodity, if mixing or points of aggregation exist within the supply chain; and steps taken to assess and mitigate the risks that any possible points of origin were subject to illegal deforestation on or after the date of enactment.
 - **Identification of high-risk countries and “action plans.”** The FOREST Act would require USTR to identify, within 180 days after enactment, foreign countries “without adequate and effective protection against illegal deforestation caused by the production of commodities likely to enter the United States[.]” Additionally, the bill would require USTR, within 3 years after enactment, to finalize an “action plan” with respect to each identified country. Such action plans must aim to achieve new laws, regulations, enforcement procedures, or agreements to prevent illegal deforestation, as well as enforcement capacity, monitoring, and transparency measures, among other requirements. Additionally, the action plans must identify the specific covered commodities that are “at risk” of being produced on illegally deforested land in the country at issue.
 - **Enforcement.** The bill would require US Customs and Border Protection (CBP) to publish final regulations for implementing the new import prohibition within one year after enactment. Additionally, it would require CBP to establish, within 180 days after enactment, a process for receiving information from outside sources “indicating that a covered commodity may be being imported in violation” of the FOREST Act. The administrator of the Animal and Plant Health Inspection Service (APHIS) would be required to conduct “random audits” of importers filing the required declarations to ensure that they are retaining the supporting documentation demonstrating the exercise of “reasonable care.”

In addition to the above trade-related provisions, the FOREST Act would provide financial and technical assistance to foreign countries to help combat deforestation, incorporate deforestation into US financial crime statutes, and establish a Federal procurement preference for “deforestation-free” products. The bill sponsors have indicated that they hope to pass the FOREST Act by the time of the United Nations Climate Change Conference in Glasgow this November.

The text of the FOREST Act can be viewed [here](#).

United States and European Union Agree to De-Escalate Section 232 Tariff Dispute, Pursue New “Global Arrangements” on Excess Capacity and Carbon Emissions

On October 31, the United States (US) and the European Union (EU) reached an agreement to de-escalate their bilateral dispute over steel and aluminum tariffs and pursue new “global arrangements” governing steel and aluminum trade. As an initial step, the EU will suspend retaliatory tariffs it imposed on US goods that were scheduled to increase on December 1, and the US will replace its Section 232 tariffs on EU steel and aluminum products with tariff-rate quotas (TRQs) that will allow “historically-based” volumes of those products to enter the US market free of Section 232 tariffs. In addition, the two governments intend to negotiate new global arrangements by 2024 to address excess capacity and carbon emissions in the steel and aluminum sectors, with the goal of persuading like-

mind ed economies to join the arrangements. These initiatives are intended to shift the focus of the US and EU governments from trade disputes between them to shared concerns about the industrial and environmental policies of third countries, particularly China. This alert provides an overview of the new outcomes announced by the US and the EU.

Section 232 tariff-rate quota, suspension of EU retaliatory tariffs, and enforcement initiatives

Beginning on January 1, 2021, the US will replace its existing Section 232 tariffs on EU steel and aluminum products with TRQs, which will allow “historically-based” volumes of those products to enter the US free of Section 232 duties. The details of each TRQ are as follows:

- **Steel.** The aggregate annual import volume under the TRQ will be set at 3.3 million metric tons (MMT), split among 54 product categories and allocated on an EU member state basis “in line with the 2015-2017 historical period.” In order to be eligible for duty-free treatment under the TRQ, steel imports must be “melted and poured” in the EU. The interaction between the TRQ and the US tariff exclusion process for steel products will be as follows: (1) the US will maintain its Section 232 tariff exclusion process for steel products imported from the EU, but will not count imports of excluded steel products from the EU against the TRQ; and (2) the US will extend the application of exclusions granted in US fiscal year 2021 for steel products imported from the EU for a period of two calendar years without the need to reapply, *i.e.*, until December 31, 2023.^[1] Published sources estimate that these exclusions will allow an additional 1.1 MMT of EU steel to enter the US free of Section 232 duties in 2022 and 2023, on top of the 3.3 MMT quota contemplated in the agreement. EU steel products that enter the US in excess of the quota will continue to be subject to a Section 232 duty of 25 percent, provided that they are not subject to an exclusion.

The steel TRQ will be calculated for each calendar year and administered on a quarterly basis. Any unused TRQ volume from the first quarter of the year, up to 4 percent of the allocated quota for that quarter, will roll over to the third quarter; up to 4 percent of any unused TRQ volume from the second quarter of the year will roll over into the fourth quarter; and up to 4 percent of any unused TRQ volume from the third quarter will roll over into the first quarter of the following year. The US also will review and adjust the TRQ annually to account for the level of US steel demand (apparent consumption) in the previous year. Specifically, for each 6 percent that US steel demand is above or below US steel demand in 2021, the TRQ volume for the next year would increase or decrease, respectively, by 3 percent relative to the initial level of 3.3 MMT.

- **Aluminum.** The aggregate annual import volume under the aluminum TRQ will be set at 18 thousand metric tons (TMT) for unwrought aluminum under two product categories, and 366 TMT for semi-finished (wrought) aluminum under 14 product categories. The import volumes will be allocated on an EU member state basis in line with the 2018-19 historical period, with the exception of aluminum foil (HS 7607), for which 2021 annualized data will be utilized. The US “will maintain its exclusions process” for EU aluminum products, and exclusions will not be counted against the quota, but the US will not extend granted exclusions for EU aluminum products through 2023 as it has agreed to do for granted steel exclusions. EU aluminum products entering above-quota will continue to be subject to a Section 232 duty of 10 percent, provided that they are not subject to an exclusion.

The aluminum TRQ will be calculated for each year and administered on a semi-annual basis, with no more than 60 percent of the TRQ to be filled in the first half of the year. The parties have not provided a specific formula that will determine the annual adjustment of the aluminum TRQ, as they have done for the steel TRQ.

In addition to the TRQ arrangement, the two governments have pledged in a Joint Statement to monitor steel and aluminum trade between them, to expand their cooperation on trade remedies and customs matters, and to develop “additional actions in order to contribute to adjustments and solutions and address non-market excess capacity in the global steel and aluminum sectors.” The two governments will meet annually to review their efforts in these areas.

^[1] The statement defines the US fiscal year 2021 as corresponding to “the period October 1, 2020 to September 30, 2021.”

Based on the United States' decision to ease its Section 232 restrictions on EU steel and aluminum, the EU has agreed to "suspend" its retaliatory tariffs on US goods, which were scheduled to increase substantially on December 1, 2021. As a result of the suspension, the existing retaliatory duties that the EU applied to US goods will be removed while the agreement is in effect. The two governments have also agreed to suspend, by November 5, 2021, the WTO disputes they have initiated against each other regarding the US Section 232 measures (DS548) and the EU's retaliatory tariffs (DS559).

The document setting forth the details of the TRQ arrangements, including the product categories, is available [here](#). The Joint Statement concerning monitoring, cooperation on customs and trade remedies, and the suspension of the WTO disputes can be viewed [here](#). The EU statement regarding the suspension of its retaliatory tariffs can be viewed [here](#).

New "global arrangements" on excess capacity and carbon intensity

Alongside the TRQ arrangement, the US and the EU have jointly announced their intention to negotiate "global arrangements" to address carbon intensity and excess production capacity in the steel and aluminum sectors. The two governments "will invite like-minded economies to participate in the arrangements," which "will be open to any interested country that shares our commitment to achieving the goals of restoring market-orientation and reducing trade in carbon intensive steel and aluminium products." Each participant in the arrangements would be required to undertake the following actions:

1. Restrict market access for non-participants that do not meet conditions of market orientation and that contribute to non-market excess capacity, through application of appropriate measures including trade defense instruments;
2. Restrict market access for non-participants that do not meet standards for low-carbon intensity;
3. Ensure that domestic policies support the objectives of the arrangements and support lowering carbon intensity across all modes of production;
4. Refrain from non-market practices that contribute to carbon-intensive, non-market oriented capacity;
5. Consult on government investment in decarbonisation; and
6. Screen inward investments from non-market-oriented actors in accordance with their respective domestic legal frameworks.

The EU and the US will seek to conclude the negotiations on these arrangements within two years. The two governments intend for the new arrangements to be "[c]ompatible with international obligations and the multilateral rules, including potential rules to be jointly developed in the coming years," and they will consult with respect to bringing these matters "into relevant international fora for discussion[.]" As an initial step, the US and the EU have agreed to form a technical working group that will share relevant data and confer on methodologies for calculating the carbon-intensity of steel and aluminum production.

On October 31, the US Department of Commerce (DOC) signaled that the US may invite Japan and the United Kingdom (UK) to participate in the global arrangements. DOC issued a statement noting that the US and Japan "are consulting closely" on excess capacity and the climate impacts of the steel and aluminum sectors, and that the US "looks forward to working with Japan and other partners to restore market-orientation and tackle carbon-emissions across all types of production in the steel and aluminum industry." DOC made a similar statement regarding the UK. However, neither statement mentions the possibility of easing Section 232 restrictions on Japan or the UK (e.g., through TRQs) while the global arrangements are negotiated, as the US has done for the EU.

The Joint Statements addressing the proposed global arrangements on excess capacity and carbon intensity can be viewed [here](#) and [here](#). DOC's statements regarding Japan and the UK can be viewed [here](#), and [here](#), respectively.

Outlook

US steel producers have welcomed the new outcomes agreed with the EU, and have urged “proper implementation and enforcement of the TRQ[.]”^[2] US labor unions have also welcomed the TRQ arrangement, emphasizing that the initial TRQ volume is set below the level of steel imports supplied by the EU prior to the imposition of the Section 232 duties.^[3] Indeed, the initial TRQ volume of 3.3 MMT is significantly lower than the level of imports supplied by the EU in 2015 (4.9 MMT), 2016 (4.1 MMT) and 2017 (4.9 MMT). The EU has emphasized that it continues to consider the Section 232 measures to be incompatible with WTO rules, and that it will continue to seek the complete removal of Section 232 measures on EU goods over the long term.^[4] Nevertheless, the TRQ arrangement will provide important tariff relief for EU exporters, and the EU has welcomed it as a “major step forward” in the “renewed” trans-Atlantic relationship under the administration of President Biden.^[5] Similarly, US exporters whose goods are currently subject to the EU retaliatory tariffs have expressed relief that an agreement has been reached.^[6] This de-escalation of the Section 232 dispute will provide momentum for the proposed initiatives on excess capacity and carbon emissions, but achieving consensus on effective measures in these areas will be difficult in light of political obstacles at the domestic and international levels. In addition, it is not yet clear whether the Biden administration will conclude agreements that ease the Section 232 restrictions for other like-minded countries while the global arrangements are negotiated.

The proposed global arrangement on carbon intensity may signal shifts in the trans-Atlantic relationship and the Biden administration’s trade policy, but it is too early to judge. The European Commission has issued a formal proposal for a carbon border adjustment mechanism (CBAM), which will impose a levy on imports of steel, aluminum, and other carbon intensive goods that corresponds to the carbon costs imposed on EU producers by the EU Emissions Trading System. The Biden administration, by contrast, has not issued or endorsed a formal proposal for a US carbon border adjustment, and it did not ask Congress to include such a measure in President Biden’s signature legislative initiative, the *Build Back Better Act*, which is close to being finalized. The administration’s pledge to negotiate a new global arrangement in which participants will “restrict market access” for carbon-intensive goods is an important signal that it intends to implement some form of carbon border adjustment eventually – and that it may be interested in doing so using the President’s unilateral authority under Section 232, as some Members of Congress have recently suggested.

^[2] “AISI Comments On Administration Announcement On U.S.-EU Steel Trade Agreement,” American Iron and Steel Institute, October 30, 2021, <https://www.steel.org/2021/10/aisi-comments-on-administration-announcement-on-u-s-eu-steel-trade-agreement/>.

^[3] “USW Supports Interim Arrangement with EU on Section 232,” United Steelworkers Union, October 30, 2021, <https://www.usw.org/news/media-center/releases/2021/usw-supports-interim-arrangement-with-eu-on-section-232>.

^[4] “EU-US Trade Relations on Steel and Aluminium: European Union Announcement,” European Commission, October 30, 2021, <https://trade.ec.europa.eu/doclib/html/159891.htm>.

^[5] “Remarks by President Biden and European Commission President Ursula von der Leyen on U.S.-EU Agreement on Steel and Aluminum Trade,” The White House, October 31, 2021, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/10/31/remarks-by-president-biden-and-european-commission-president-ursula-von-der-leyen-on-u-s-eu-agreement-on-steel-and-aluminum-trade/>.

^[6] “WHAT THEY ARE SAYING: Historic U.S.-EU Steel and Aluminum Trade Arrangement Is a Win for American Workers, Businesses, and the Environment,” US Department of Commerce, October 31, 2021, <https://www.commerce.gov/news/press-releases/2021/11/what-they-are-saying-historic-us-eu-steel-and-aluminum-trade>.

Trade Remedies

US International Trade Commission Determines Imports of Thermal Paper from Germany, Japan, Korea, and Spain Injure US Industry

On October 26, 2021, the US International Trade Commission (ITC) determined that a US industry is materially injured by reason of imports of thermal paper from Germany, Japan, Korea, and Spain 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 determinations, DOC will issue antidumping duty orders on imports of this product from Germany, Japan, Korea, and Spain. Chair Jason E. Kearns, Vice Chair Randolph J. Stayin, and Commissioners David S. Johanson, Rhonda K. Schmidlein, and Amy A. Karpel voted in the affirmative.

The Commission made negative critical circumstances findings with regard to imports of this thermal paper from Germany and Korea. As a result, these imports will not be subject to retroactive antidumping duties.

The scope of these investigations covers thermal paper in the form of "jumbo rolls" and certain "converted rolls." The scope covers jumbo rolls and converted rolls of thermal paper with or without a base coat (typically made of clay, latex, and/or plastic pigments, and/or like materials) on one or both sides; with thermal active coating(s) (typically made of sensitizer, dye, and co-reactant, and/or like materials) on one or both sides; with or without a top coat (typically made of pigments, polyvinyl alcohol, and/or like materials), and without an adhesive backing. Jumbo rolls are defined as rolls with an actual width of 4.5 inches or more, an actual weight of 65 pounds or more, and an actual diameter of 20 inches or more (jumbo rolls). The merchandise subject to these investigations may be classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 4811.90.8030 and 4811.90.9030.

In its antidumping investigations, DOC determined that imports of the subject merchandise were sold in the United States at the following dumping margins:

Country	Dumping Margin
Germany	2.90%
Japan	135.06 to 140.25%
South Korea	6.19%
Spain	37.07 to 41.45%

The ITC's public report on this investigation will be made available by November 29, 2021.

US International Trade Commission Determines Imports of Aluminum Foil from Armenia, Brazil, Oman, Russia, and Turkey Injures US Industry

On October 19, the US International Trade Commission (ITC) determined that a US industry is materially injured by reason of imports of aluminum foil from Armenia, Brazil, Oman, Russia, and Turkey that the U.S. Department of Commerce (DOC) has determined are sold in the United States at less than fair value and subsidized by the governments of Oman and Turkey. As a result of the ITC's affirmative determinations, DOC will issue countervailing duty orders on imports of this product from Oman and Turkey and antidumping duty orders on imports of this product from Armenia, Brazil, Oman, Russia, and Turkey. Chair Jason E. Kearns, Vice Chair Randolph J. Stayin, and Commissioners David S. Johanson, Rhonda K. Schmidlein, and Amy A. Karpel voted in the affirmative.

The merchandise covered by these investigations is aluminum foil having a thickness of 0.2 mm or less, in reels exceeding 25 pounds, regardless of width. Aluminum foil is made from an aluminum alloy that contains more than 92 percent aluminum. The subject products are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7607.11.3000, 7607.11.6090, 7607.11.9030, 7607.11.9060, 7607.11.9090, and 7607.19.6000. Further, subject merchandise may also be entered into the United States under HTSUS subheadings

7606.11.3060, 7606.11.6000, 7606.12.3045, 7606.12.3055, 7606.12.3091, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095.

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
Armenia	29.11%	NA
Brazil	13.93-63.05%	NA
Oman	3.89%	1.93%
Russia	62.18%	NA
Turkey	2.28%	2.60%

US Department of Commerce Initiates Antidumping and Countervailing Duty Investigations of Oil Country Tubular Goods from Argentina, Mexico, Russia, and South Korea

On October 27, 2021, the US Department of Commerce (DOC) announced the initiation of antidumping duty (AD) investigations of oil country tubular goods (OCTG) from Argentina, Mexico, and Russia, and countervailing duty (CVD) investigations of OCTG from Russia and South Korea. DOC initiated these investigations in response to petitions filed by Borusan Mannesmann Pipe U.S., Inc. (Baytown, TX); PTC Liberty Tubulars LLC (Liberty, TX); U.S. Steel Tubular Products, Inc. (Pittsburgh, PA); United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (Pittsburgh, PA); and Welded Tube USA, Inc. (Lackawanna, NY).

The merchandise covered by the investigations is certain oil country tubular goods (OCTG), which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than case iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (e.g., whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The merchandise subject to these investigations is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers:

7304.29.1010, 7304.29.1020, 7304.29.1030, 7304.29.1040, 7304.29.1050, 7304.29.1060, 7304.29.1080, 7304.29.2010, 7304.29.2020, 7304.29.2030, 7304.29.2040, 7304.29.2050, Start Printed Page 60210 7304.29.2060, 7304.29.2080, 7304.29.3110, 7304.29.3120, 7304.29.3130, 7304.29.3140, 7304.29.3150, 7304.29.3160, 7304.29.3180, 7304.29.4110, 7304.29.4120, 7304.29.4130, 7304.29.4140, 7304.29.4150, 7304.29.4160, 7304.29.4180, 7304.29.5015, 7304.29.5030, 7304.29.5045, 7304.29.5060, 7304.29.5075, 7304.29.6115, 7304.29.6130, 7304.29.6145, 7304.29.6160, 7304.29.6175, 7305.20.2000, 7305.20.4000, 7305.20.6000, 7305.20.8000, 7306.29.1030, 7306.29.1090, 7306.29.2000, 7306.29.3100, 7306.29.4100, 7306.29.6010, 7306.29.6050, 7306.29.8110, and 7306.29.8150.

The merchandise subject to the investigations may also enter under the following HTSUS item numbers: 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, 7304.39.0076, 7304.39.0080, 7304.59.6000, 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, 7304.59.8070, 7304.59.8080, 7305.31.4000, 7305.31.6090, 7306.30.5055, 7306.30.5090, 7306.50.5050, and 7306.50.5070.

Petitioners allege that imports of the subject merchandise were sold in the United States at dumping margins of 168.49 percent (for Argentina), 59.75 percent (for Mexico), and 139.6 percent (for Russia). In the Russia CVD investigation, there are 12 alleged subsidy programs, including numerous tax and grant programs, the provision of

goods and services for less than adequate remuneration, and lending programs. In the South Korea CVD investigation, there are 49 alleged subsidy programs, including numerous tax and grant programs, the provision of electricity for less than adequate remuneration, an equity infusion program, an export insurance program, and preferential lending programs.

The US International Trade Commission (ITC) is scheduled to issue its preliminary injury determinations by November 22, 2021. If the ITC makes negative preliminary determinations of injury, the investigations will be terminated. If the ITC makes affirmative preliminary determinations of injury, the investigations will continue and DOC will be scheduled to issue its preliminary AD determinations by March 15, 2022 and its preliminary CVD determinations by December 30, 2021.

US Department of Commerce to Initiate Antidumping and Countervailing Duty Investigations of Freight Rail Coupler Systems and Certain Components Thereof from the People's Republic of China

On October 20, 2021, the US Department of Commerce (DOC) announced the initiation of antidumping duty (AD) and countervailing duty (CVD) investigations of freight rail coupler systems and certain components thereof from the People's Republic of China. DOC initiated the investigations in response to petitions filed by the Coalition of Freight Coupler Producers, the members of which are McConway and Torley, LLC (M&T) (Pittsburgh, PA) and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (the USW) (Washington, DC).

The scope of these investigations covers freight rail car coupler systems and certain components thereof. Freight rail car coupler systems are composed of, at minimum, four main components (knuckles, coupler bodies, coupler yokes, and follower blocks, as specified below) but may also include other items (e.g., coupler locks, lock lift assemblies, knuckle pins, knuckle throwers, and rotors). The coupler systems that are the subject of this investigation are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting number 8607.30.1000. Unfinished subject merchandise may also enter under HTSUS statistical reporting number 7326.90.8688. Subject merchandise attached to finished rail cars may also enter under HTSUS statistical reporting numbers 8606.10.0000, 8606.30.0000, 8606.91.0000, 8606.92.0000, 8606.99.0130, 8606.99.0160, or under subheading 9803.00.5000 if imported as an Instrument of International Traffic.

The petitioners allege that imports of the subject merchandise from China were sold in the United States at dumping margins ranging from 142.98 to 147.11 percent. In the CVD investigation, there are 36 alleged subsidy programs, including numerous tax and grant programs, the provision of numerous goods and services for less than adequate remuneration, preferential lending and financing, capital injections, currency undervaluation, and a price support program alleged for more than adequate remuneration.

The US International Trade Commission (ITC) is scheduled to issue its preliminary determinations by November 15, 2021. If the ITC makes negative preliminary determinations of injury, the investigations will be terminated. If the ITC makes affirmative preliminary determinations of injury, the investigations will continue and DOC will be scheduled to issue its preliminary AD determination by March 8, 2022 and its preliminary CVD determination by December 23, 2021.

US Department of Commerce Issues Affirmative Final Determinations in Antidumping Duty Investigations of Polyester Textured Yarn from Indonesia, Malaysia, Thailand and Vietnam

On October 19, 2021, the US Department of Commerce (DOC) announced its affirmative final determinations in the antidumping duty (AD) investigations of polyester textured yarn from Indonesia, Malaysia, Thailand and Vietnam. 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
Indonesia	7.47-26.07
Malaysia	8.50
Thailand	14.47-56.80
Vietnam	2.58-22.36

The merchandise covered by these investigations, polyester textured yarn, is synthetic multifilament yarn that is manufactured from polyester (polyethylene terephthalate). Polyester textured yarn is produced through a texturing process, which imparts special properties to the filaments of the yarn, including stretch, bulk, strength, moisture absorption, insulation, and the appearance of a natural fiber. The scope includes all forms of polyester textured yarn, regardless of surface texture or appearance, yarn density and thickness (as measured in denier), number of filaments, number of plies, finish (luster), cross section, color, dye method, texturing method, or packaging method (such as spindles, tubes, or beams). The merchandise subject to these investigations is classified under subheadings 5402.33.3000 and 5402.33.6000 of the Harmonized Tariff Schedule of the United States (HTSUS).

The US International Trade Commission (ITC) is scheduled to issue its final injury determinations by December 2, 2021. If the ITC makes negative final determinations of injury, the investigations will be terminated. If the ITC makes affirmative final determinations of injury, DOC will impose antidumping orders.

US International Trade Commission Issues Affirmative Final Determination in the Countervailing Duty Investigation of Mobile Access Equipment and Subassemblies Thereof from China

On October 13, 2021, the US Department of Commerce (DOC) announced its affirmative final determination in the countervailing duty (CVD) investigation of mobile access equipment and subassemblies thereof (mobile access equipment) from China. In its investigation, DOC determined that imports of the subject merchandise from China received countervailable subsidies valued at 11.95 to 448.70 percent.

The merchandise covered by these investigations 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. Certain mobile access equipment subject to these investigations 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.

The US International Trade Commission (ITC) is scheduled to issue its final injury determinations by November 26, 2021. If the ITC makes negative final determinations of injury, the investigation will be terminated. If the ITC makes affirmative final determinations of injury, DOC will impose a countervailing duty order.

US Department of Commerce Issues Affirmative Final Determinations in the Antidumping and Countervailing Duty Investigations of Utility Scale Wind Towers from India and Malaysia

On October 7, 2021, the US Department of Commerce (DOC) announced its affirmative final determinations in the antidumping duty (AD) investigations of utility scale wind towers from India and Malaysia and the countervailing duty (CVD) investigation of utility scale wind towers from India. 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
India	54.03	2.25-397.70
Malaysia	3.20	NA

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 determinations by November 22, 2021. If the ITC makes negative final determinations of injury, the investigations will be terminated. If the ITC makes affirmative final determinations of injury, DOC will impose antidumping and countervailing duty orders.