

US Multilateral Trade Policy Developments

Japan External Trade Organization

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US Trade Policy

President Biden Signs Bills to Suspend Permanent Normal Trade Relations with Russia, Codify Import Ban on Russian Oil, and Reauthorize Magnitsky Sanctions Law

On April 7, 2022, the US Congress approved two bills aimed at curtailing trade with Russia and Belarus in response to the situation in Ukraine:

- The Suspending Normal Trade Relations with Russia and Belarus Act (H.R. 7108), which denies “most-favored nation” tariff treatment to products of Russia and Belarus, and extends the President’s authority to impose sanctions under the Global Magnitsky Human Rights Accountability Act; and
- The Ending Importation of Russian Oil Act (H.R. 6968), which codifies into US law a prohibition on the importation of oil, gas, and coal from Russia.

President Biden signed both bills into law on April 8, 2022. These measures are intended to complement the sanctions and trade restrictions the Biden Administration has already imposed on Russia through executive action, which include prohibitions on the importation of Russian oil, gas, seafood, spirits, and non-industrial diamonds, among other measures.

This report provides an overview of H.R. 7108 and H.R. 6968.

Suspending Normal Trade Relations with Russia and Belarus Act (HR 7108)

Suspension of MFN tariff treatment for products of Russia and Belarus

H.R. 7108 suspends normal trade relations with Russia and Belarus. Beginning on April 9, 2022, imports originating from Russia and Belarus are ineligible for the “most-favored nation” (MFN) tariff rates the United States currently applies to imports from all WTO Member countries. Instead, imports originating from Russia and Belarus will be subject to the duty rates set forth in “Column 2” of the Harmonized Tariff Schedule of the United States, which average approximately 32.3% (versus an average MFN rate of 3.3%). H.R. 7108 also authorizes the President to increase the rates of duty on products of Russia and Belarus above the levels set forth in Column 2. The President’s authority to proclaim such duty increases expires on January 1, 2024.

Restoration of MFN tariff treatment

H.R. 7108 authorizes the President to restore MFN tariff treatment to products of Russia or Belarus, for one or more periods not to exceed one year each, after submitting to Congress a “certification” that one or both of these countries:

- (1) “has reached an agreement relating to the respective withdrawal of Russian or Belarusian forces (or both, if applicable) and cessation of military hostilities that is accepted by the free and independent government of Ukraine”;
- (2) “poses no immediate military threat of aggression to any North Atlantic Treaty Organization member”; and
- (3) “recognizes the right of the people of Ukraine to independently and freely choose their own government.”

The restoration of MFN tariff treatment would take effect 90 days after the President submits the certification, unless Congress enacts a joint resolution of disapproval during the 90-day period. Subject to the same certification and

congressional disapproval provisions, the law also authorizes the President to restore Russia's current, "permanent normal trade relations" (PNTR) status, which it has enjoyed since acceding to the WTO in 2012, and which would restore MFN tariff treatment to Russian goods in perpetuity. Belarus is not a WTO Member and does not currently enjoy PNTR with the United States, but has previously received MFN tariff treatment on a temporary basis through Presidential waivers issued in accordance with Title IV of the Trade Act of 1974.

The United States' decision to deny MFN tariff treatment to another WTO Member is a major development without precedent in the WTO era. The impact of this change on the tariff rates applied to Russia-origin goods will depend on the product at issue, since the Column 2 tariff rates vary significantly from product to product. The impact of H.R. 7108 will also depend on whether the President exercises his new authority to increase tariffs on Russia-origin goods above the Column 2 rates, given that the Column 2 rates on several key Russian exports are relatively low and in some cases, zero.

Actions at the WTO

H.R. 7108 directs the United States Trade Representative (USTR) to use "the voice and influence" of the United States at the WTO to:

- (1) "condemn the recent aggression in Ukraine";
- (2) "encourage other WTO members to suspend trade concessions to the Russian Federation and the Republic of Belarus";
- (3) "consider further steps with the view to suspend the Russian Federation's participation in the WTO"; and
- (4) "seek to halt the accession process of the Republic of Belarus at the WTO and cease accession-related work."

The United States already has taken some of these steps in recent weeks. On March 15, the United States and thirteen other WTO Members (counting the EU as one) issued a statement in the WTO that "condemn[s] in the strongest possible terms the Russian Federation's military assault on Ukraine."^[1] The signatories further state:

"We will take any actions, as WTO Members, that we each consider necessary to protect our essential security interests. These may include actions in support of Ukraine, or actions to suspend concessions or other obligations with respect to the Russian Federation, such as the suspension of most-favoured-nation treatment to products and services of the Russian Federation. Furthermore, in light of Belarus' material support to the actions of the Russian Federation, we consider that its accession process is suspended and will not participate in any accession-related work."

The statement does not address the possible suspension of Russia's participation in the WTO. No provision of the WTO Agreement expressly addresses the possible suspension of a WTO Member.

Reauthorization of Global Magnitsky Sanctions authority

H.R. 7108 extends indefinitely the President's existing sanctions authority under the Global Magnitsky Human Rights Accountability Act ("Global Magnitsky Act," 22 U.S.C. 2656 note). The Global Magnitsky Act authorizes the President to impose sanctions on individuals responsible for human rights abuses. This authority was previously scheduled to

^[1] WT/GC/244. The signatories are Albania; Australia; Canada; European Union; Iceland; Japan; Republic of Korea; Republic of Moldova; Montenegro; New Zealand; North Macedonia; Norway; the United Kingdom, and the United States.

expire on December 23, 2022. Unlike previous proposed versions of H.R. 7108, the final version approved by Congress only reauthorizes the Global Magnitsky Act in its current form and does not modify its scope.

Ending Importation of Russian Oil Act (H.R. 6968)

H.R. 6968 codifies into US law a ban on the importation of “[a]ll products of the Russian Federation classified under chapter 27 of the Harmonized Tariff Schedule of the United States[.]” Chapter 27 of the HTSUS covers crude oil, natural gas, and coal, among other products.

Pursuant to President Biden’s Executive Order 14066 of March 8, 2022, the United States already prohibits the importation of Russian-origin “crude oil; petroleum; petroleum fuels, oils, and products of their distillation; liquefied natural gas; coal; and coal products[.]” President Biden took this action pursuant to existing legal authorities, namely the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) and the National Emergencies Act (50 U.S.C. 1601 *et seq.*) H.R. 6968 clarifies that the new statutory import prohibition will apply “in a manner consistent with any implementation actions issued under Executive Order 14066[.]”^[2]

H.R. 6968 is intended to give Congress a role in any future decision to terminate the import prohibition on Russian energy products. Whereas the President may unilaterally terminate the import prohibition established by Executive Order 14066, he cannot terminate the statutory import prohibition established by H.R. 6968 if Congress formally objects by enacting a joint resolution of disapproval. Specifically, in order to terminate the statutory import prohibition under H.R. 6968, the President must submit a certification to Congress that Russia:

- (1) “has reached an agreement to withdraw Russian forces and for the cessation of military hostilities that is accepted by the free and independent government of Ukraine”;
- (2) “poses no immediate military threat of aggression to any North Atlantic Treaty Organization member”; and
- (3) “recognizes the right of the people of Ukraine to independently and freely choose their own government.”

Pursuant to Section 3 of H.R. 6968, the statutory import prohibition would terminate 90 days after Congress receives the certification, unless Congress enacts a joint resolution of disapproval during the 90-day period. This provision would prevent the President from terminating the import prohibition in circumstances where a majority in Congress considers it premature to do so.

^[2] On March 8, 2022, the US Treasury Department’s Office of Foreign Assets Control issued Russia-related General License 16, which authorizes through 12:01 eastern daylight time on April 22, 2022 transactions prohibited by E.O. 14066 that are ordinarily incident and necessary to the importation of crude oil; petroleum; petroleum fuels, oils, and products of their distillation; liquefied natural gas; coal; and coal products of Russian Federation origin pursuant to written contracts or written agreements entered prior to March 8, 2022.

US Trade Actions

United States to Replace Section 232 Tariff on UK Steel with Tariff-Rate Quota; UK to Eliminate Retaliatory Tariffs on US Goods

On March 22, 2022, the United States announced that it will replace its Section 232 tariffs on steel and aluminum from the United Kingdom (UK) with tariff-rate quotas (TRQ) that will allow “historically-based sustainable volumes” of 0.5 million metric tons (MMT) of steel and 21.6 thousand metric tons (TMT) of aluminum to enter the United States free of Section 232 tariffs each year. The TRQs will take effect on June 1, 2022. In exchange, the UK will terminate the retaliatory tariffs it has imposed on approximately \$500 million worth of annual imports from the United States, including distilled spirits, various agriculture products and consumer goods.

In addition to the TRQs and the removal of UK retaliatory tariffs, the United States and the UK have pledged in a Joint Statement to cooperate on trade remedy and customs issues, monitoring of steel and aluminum trade, and “non-market excess capacity and carbon-intensity.” However, the UK will not immediately join the negotiations between the United States and the EU for a “Global Arrangement” addressing carbon intensity and excess capacity in the steel and aluminum industries. The United States and the UK have also announced a series of new “U.S./UK Dialogues on the Future of Atlantic Trade,” but US officials have downplayed the likelihood that they will lead to a bilateral free trade agreement (FTA). We provide an overview of these developments below.

TRQ arrangements for UK steel and aluminum

The US Department of Commerce (DOC) has provided the following details regarding the TRQs for UK steel and aluminum, which will take effect on June 1 2022:^[1]

Steel TRQ

- **TRQ volume and tariff rate.** The aggregate annual import volume of steel under the TRQ “is set at 0.5 million metric tons (MMT) under 54 product categories and allocated in line with the 2018-2019 historical period.” Steel products from the UK that are within-quota will enter free of any Section 232 duty, while all steel products entering above-quota will continue to be subject to a Section 232 duty of 25 percent, provided that they are not subject to an exclusion.
- **Derivative Products.** Imports of “derivative” steel products from the UK will not be subject to Section 232 duties.^[2]
- **Eligible products.** In order to be eligible for duty-free treatment under the quota, steel imports generally must be “melted and poured” in the UK and have a UK country of origin, according to current US requirements and rules implementing the TRQ arrangement. Importers will be required to “provide relevant documentation substantiating compliance with U.S. requirements.”

Additionally, UK steel exports that are melted and poured in the UK, but further processed in the EU, conferring an EU country of origin, and subsequently imported into the United States may be eligible for duty-free treatment under the quota and count against the UK TRQ volume rather than the EU TRQ, provided that such exports are “not to exceed 37.8 thousand metric tons annually under 54 quota product categories and allocated in line with the 2021 historical period.” The United States will develop a mechanism by June 1, 2022 to allow entry of such

^[1] “Announcement of Actions on UK Imports Under Section 232,” US Department of Commerce, March 22, 2022, <https://www.commerce.gov/sites/default/files/2022-03/UK232-US-Statement.pdf>.

^[2] “Derivative” steel products were added to the scope of the Section 232 measures by Proclamation 9980 of January 24, 2020. Derivative steel products included nails, tacks, staples, bumper stampings, and body stampings for tractors listed in the Annex to the proclamation.

imports, and the UK similarly “will work with industry to develop a mechanism by June 1, 2022 to monitor the utilization and compliance in relation to access to the [37.8 TMT] TRQ[.]”

- **“Strategic audit” and attestation for China-affiliated steel producers.** In a Joint Statement, the United States and the UK have expressed their commitment “to ensuring that steel exports from the UK to the United States under the applicable TRQ for steel are not supported by market distorting practices.”^[3] To this end, the UK will provide an annual “attestation” to the United States “in the case of any known UK steel producer that is owned or controlled by a company registered in China or a Chinese entity, and which exports steel to the United States under the applicable TRQ for UK steel[.]”^[4] The attestation will be based on an annual “strategic audit” conducted by an independent third party, “to the effect that there is no evidence of market distorting practices by that producer in the UK that would materially contribute to non-market excess capacity of steel.”^[5] The results of the audit will be made available to the United States upon completion.

According to the Joint Statement, steel from any UK steel producer that is “owned or controlled by a company registered in China or a Chinese entity” will be eligible for entry at the in-quota rate for 6 months from June 1, 2022 (*i.e.*, until December 1, 2022). Within this period, the UK will provide the first annual attestation. If the attestation is not provided by December 1, 2022 and then annually on December 1 thereafter, the United States “reserves the right to temporarily deny access for the UK steel producer to the in-quota rate for the applicable TRQ.” Where at any time access has been denied, and where the UK submits an attestation, the United States will restore the access of the affected producer to the in-quota rate within 8 weeks.

- **Exclusions.** The United States “will maintain its exclusions process, as implemented under Section 232 of the Trade Expansion Act of 1962, available for steel products imported from the UK.” DOC’s statement does not clarify whether imports covered by an exclusion will count against the quota.
- **Administration.** The TRQ will be calculated for each year of the measure and administered on a quarterly basis for each product category. The quota will be allocated on a first come, first served 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; any unused TRQ volume from the second quarter of the year, subject to the same limit, will roll over into the fourth quarter; and any unused TRQ volume from the third quarter, subject to the same limit, will roll over into the first quarter of the following year. DOC’s statement does not discuss the treatment of unused TRQ volumes from the fourth quarter.
- **Adjustment.** The TRQ will be adjusted each year based on the level of US steel demand (apparent consumption) in the previous year. For each 6 percent that this calculated level is above or below US steel demand in 2021, the TRQ volume would increase or decrease, respectively, by 3 percent relative to the initial level of 0.5 MMT in the subsequent twelve-month period. Should the calculated level of US steel demand not be at least 6 percent above or below the US fiscal year 2021 level, then the TRQ volume in the subsequent year would remain at 0.5 MMT.

^[3] “U.S.-UK Joint Statement,” March 22, 2022, <https://www.commerce.gov/sites/default/files/2022-03/UK232-Joint-Statement.pdf>

^[4] DOC’s statement does not mention any specific UK steel producers that would be subject to this provision. However, it has been widely reported that the provision is intended to apply to British Steel Limited (“British Steel”). British Steel is a subsidiary of Jingye Steel, which has its headquarters in Shijiazhuang, China. See “Raimondo says British Steel provision was ‘critical’ to U.K. deal,” Politico, March 23, 2022, <https://subscriber.politicopro.com/article/2022/03/raimondo-says-british-steel-provision-was-critical-to-u-k-deal-00019732>.

^[5] According to the Joint Statement, the audit will include “an assessment of the steel producer’s and its (if any) UK parent company’s financial records including any subsidy provided by any Government controlled or directed entity in China, and any other relevant records to allow the auditor to evaluate whether there are any market distorting practices in the UK by that producer that would materially contribute to non-market excess capacity of steel.”

Aluminum TRQ

- **TRQ volume and tariff rate.** The aggregate annual import volume under the aluminum TRQ is set at 0.9 TMT for unwrought aluminum under 2 product categories and 11.4 TMT for semi-finished (wrought) aluminum, other than foil (HTSUS heading 7607), under 12 product categories. The import volumes for these categories will be allocated “in line with the 2018-19 historical period.” For foil (7607) the annual import volume under the TRQ is set at 9.3 TMT under 2 product categories. The import volumes for foil will be allocated “in line with the 2021 reference period.” Aluminum products from the UK that are within-quota will enter free of any Section 232 duty, while 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.
- **Derivative products.** Imports of derivative articles of aluminum from the UK will not be subject to Section 232 duties.^[6]
- **Eligible products and entry documentation.** In order for semi-finished (wrought) aluminum products to be eligible for duty-free treatment under the quota, “they must not contain primary aluminum from the People’s Republic of China, the Russian Federation or the Republic of Belarus.” Importers will be required to provide a Certificate of Analysis for each aluminum product entered into the United States, “as required by current U.S. law and rules implementing [the TRQ arrangement].” In addition, importers will be required to provide the Certificate of Analysis for the smelted (*i.e.*, unalloyed) primary aluminum used in the manufacturing of the product entered into the United States.
- **Exclusions.** The United States will maintain its exclusion process, as implemented under Section 232 of the Trade Expansion Act of 1962, available for aluminum products imported from the UK.
- **Administration.** The TRQ will be “calculated for each year of the measure and administered on a semi-annual basis.” 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.

The terms of the TRQs for UK steel and aluminum are similar to those of the TRQs that the United States implemented for EU steel and aluminum as of January 1, 2022, as well as the TRQ that will take effect for Japanese steel on April 1, 2022.^[7] However, the United States and the UK were silent on certain key points that were addressed in the US-EU arrangement. Most notably, as part of its TRQ arrangement for the EU, the United States agreed to extend the duration of exclusions granted in US fiscal year 2021 for EU steel products for a period of two calendar years without the need to reapply, *i.e.*, until December 31, 2023. In addition, the United States agreed that it would not count imports of excluded steel products from the EU against the TRQ volumes. DOC’s statement provides no indication that the United States will afford the same treatment to UK steel products that are subject to exclusions.^[8] DOC has also touted certain elements of the UK arrangement that were not included in the arrangements with the EU and Japan, namely the “novel smelt and cast requirements on aluminum” and the requirement for annual audits of UK steel producers that are owned or controlled by Chinese entities.^[9] US labor

^[6] “Derivative” aluminum products were added to the scope of the Section 232 measures by Proclamation 9980 of January 24, 2020. Derivative aluminum products included certain stranded wires, cables, plaited bands, bumper stampings, and body stampings for tractors listed in the Annex to the proclamation.

^[7] For an overview of the EU TRQ arrangement, please refer to the W&C US Trade Alert dated November 2, 2021.

^[8] DOC’s statement on the TRQ arrangement for Japanese steel also omitted such commitments.

^[9] “Raimondo, Tai Statements on 232 Tariff Agreement with United Kingdom,” US Department of Commerce, March 22, 2022, <https://www.commerce.gov/news/press-releases/2022/03/raimondo-tai-statements-232-tariff-agreement-united-kingdom>.

unions and groups representing domestic steel producers have welcomed these provisions and the broader TRQ arrangements with the UK.^[10]

US-UK Joint Statement

In their Joint Statement of March 22, the United States and the UK have pledged to take a series of actions “to address non-market capacity so as to preserve their critical steel and aluminum industries”:

- **Trade Remedy/Customs Cooperation.** Both sides agree “to expand U.S./UK coordination involving customs matters.” The two countries “will also share public information and best practices, as appropriate, on topics including how detection of fraud, evasion and circumvention of duties is approached.” They also will “share publicly available information on trade remedies and best practices, including on possible self-initiation of trade enforcement actions.”
- **Monitoring.** The United States and the UK “will monitor steel and aluminum trade between them.”
- **Cooperation on “Non-Market Excess Capacity and Carbon Intensity.”** In order to establish more “market-oriented conditions” for steel and aluminum, the two governments “will continue to take effective and appropriate domestic measures, such as antidumping, countervailing duty, and safeguard measures or other measures.” The two governments will “confer on non-market excess capacity and on the situation in global steel and aluminum markets,” and will meet regularly to consider additional actions to address non-market excess capacity. Additionally, upon request of either government, the United States and the UK will confer “on market-distorting influence or ownership in their respective steel and aluminum industries[.]”

The UK will not immediately join the negotiations between the United States and the EU for a Global Arrangement addressing excess capacity and carbon intensity in the steel and aluminum industries.^[11] Rather, as an initial step, the United States and the UK “will confer on entering into discussions” on the Global Arrangement. To facilitate these discussions and “seek shared understandings,” the UK and the United States will (1) share publicly available data and analysis on non-market excess capacity and its effects on their respective steel and aluminum industries and (2) confer on methodologies for calculating steel and aluminum carbon-intensity and share relevant data to the extent feasible, including relating to emissions in the steel and aluminum sectors. The United States agreed to hold similar preliminary discussions with Japan when it announced the creation of a TRQ for Japanese steel imports last month.

^[10] “SMA Applauds Section 232 Agreement with the UK,” Steel Manufacturers Association, March 23, 2022, <https://steelnet.org/sma-applauds-section-232-agreement-with-the-uk/>, “USW Supports Section 232 Deal with UK,” United Steelworkers, March 22, 2022, <https://www.usw.org/news/media-center/releases/2022/usw-supports-section-232-deal-with-uk>.

^[11] The proposed “Global Arrangement” would require participants to:

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.

See “Steel and Aluminum U.S.-EU Joint Statement,” October 31, 2021, <https://www.commerce.gov/news/fact-sheets/2021/10/steel-and-aluminum-us-eu-joint-statement>.

- **Review.** The United States and the UK will review the operation of the arrangement and ongoing cooperation “on an annual basis, including in light of changes in the global steel and aluminum markets, U.S. demand, and imports.”

Outlook

The TRQ arrangements will provide significant tariff relief for UK exporters of steel and aluminum to the United States.

The initial TRQ volumes of 0.5 MMT for steel and 21.6 TMT for aluminum are higher than the volumes of US steel and aluminum imports from the UK in recent years. The TRQ volume for steel is roughly equivalent to the average annual import volume from the UK during the three-year period prior to the imposition of the Section 232 duties (2015-2017), and is almost double the 2021 import level.

The TRQ volume for aluminum is nearly double the average annual import volume from the UK during the 2015-2017 period, and is approximately 40 percent above the 2021 import level. However, the UK is a relatively small exporter of these products to the United States, and the TRQ volumes for UK steel and aluminum are equivalent to approximately 1.5 percent and 0.4 percent of total US imports of these products in 2021.

Import Volume of UK Steel and Aluminum Products Subject to Section 232 Measures							
	2015	2016	2017	2018	2019	2020	2021
Steel	0.81 MMT	0.33 MMT	0.35 MMT	0.28 MMT	0.23 MMT	0.19 MMT	0.27 MMT
Aluminum	13.4 TMT	11.9 TMT	9.4 TMT	18.6 TMT	19.3 TMT	12.8 TMT	15.5 TMT

Source: US International Trade Commission DataWeb

The Biden Administration has touted the new agreement with the UK as “another example of President Biden’s focus on strengthening relationships with our vital Allies and partners, and working with them to address unfair practices by countries like China together.”^[12] Secretary of Commerce Gina Raimondo stated that the agreement “will benefit America’s steel and aluminum industries and workers by protecting manufacturing, as well as consumers by easing inflationary pressures in the U.S.”^[13] US industries that have been negatively affected by the UK’s retaliatory tariffs, such as the alcoholic beverage industry, have also welcomed the agreement.^[14]

Like Japan, the UK will not immediately join the US-EU negotiations for a Global Arrangement addressing excess capacity and carbon intensity in the steel and aluminum industries. On March 22, US Trade Representative Katherine Tai emphasized that the United States’ vision for the Global Arrangement “requires that other leading countries and economies participate too.”^[15] However, the United States and the EU have not stated when they will invite additional countries to participate in the negotiations, nor have they outlined specific criteria for

^[12] “Raimondo, Tai Statements on 232 Tariff Agreement with United Kingdom,” US Department of Commerce, March 22, 2022, <https://www.commerce.gov/news/press-releases/2022/03/raimondo-tai-statements-232-tariff-agreement-united-kingdom>.

^[13] Id.

^[14] “Toasts Not Tariffs Coalition Hails the Removal of U.S.-UK Retaliatory Tariffs on the U.S. Beverage Alcohol Sector,” Distilled Spirits Council, March 23, 2022, <https://www.distilledspirits.org/news/toasts-not-tariffs-coalition-hails-the-removal-of-u-s-uk-retaliatory-tariffs-on-the-u-s-beverage-alcohol-sector/>.

^[15] “Tai: Vision for green steel deal with EU ‘requires’ more participants,” Inside US Trade, March 22, 2022, <https://insidetrade.com/daily-news/tai-vision-green-steel-deal-eu-%E2%80%98requires%E2%80%99-more-participants>.

participation. US officials have also suggested that the United States would prefer to negotiate at least some elements of the Global Arrangement bilaterally with the EU to ensure that they reflect “high ambitions.”^[16]

At this stage, the Biden Administration has not expressed interest in negotiating TRQ arrangements with any additional countries subject to the Section 232 measures. South Korea has recently expressed interest in negotiating a TRQ arrangement for its steel exports to the United States, but Secretary Raimondo stated on March 23 that negotiating a TRQ for South Korea is “not a high priority of ours right now,” despite the “extremely strong” bilateral relationship.^[17] The Biden Administration has also downplayed suggestions that the TRQ arrangement with the UK, and the recent launch of “U.S./UK Dialogues on the Future of Atlantic Trade,” will lead to the resumption of FTA negotiations with the UK. When asked about this possibility at a March 22 press conference, Ambassador Tai declined to “prejudge” the outcome of the new bilateral dialogues, but described FTAs as a “very 20th century tool” and warned against spending “years and...a lot of blood, sweat and tears working on something that isn't going to be relevant to the needs of our people and our economies[.]”^[18]

US Trade Representative Reinstates Certain Exclusions from Section 301 Tariffs on Products of China

On March 23, 2022, the Office of the US Trade Representative (USTR) published a Federal Register notice reinstating tariff exclusions for 352 categories of products covered by the United States’ Section 301 tariffs on China-origin goods. The reinstated tariff exclusions cover certain types of machinery, motors, electrical equipment, chemicals, plastics, textiles, bicycles, motorcycles, and automotive parts, among other items. The reinstated tariff exclusions will apply retroactively to October 12, 2021 and will extend through December 31, 2022.

USTR’s decision to reinstate these tariff exclusions is the result of the “targeted tariff exclusion process” that USTR initiated in October 2021.^[1] Under this process, USTR allowed interested parties to request the reinstatement of certain tariff exclusions that USTR had previously granted and then extended, and that later expired between December 31, 2020 and April 18, 2021.^[2] Only 549 expired tariff exclusions were eligible for reinstatement under this process. USTR did not consider requests for the reinstatement of other expired exclusions, nor did it accept requests to establish new product exclusions.

The 352 tariff exclusions that USTR has determined to reinstate are listed in the Annex to USTR’s Federal Register notice. These reinstated exclusions will apply to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on October 12, 2021, that are not liquidated, or to entries that are liquidated, but within the period for protest described in section 514 of the Tariff Act of 1930, as amended.^[3] USTR has determined to extend the reinstated exclusions through December 31, 2022 and “may consider further extensions as appropriate.” As with all Section 301 tariff exclusions, the reinstated exclusions are available for any product that meets the description in the product exclusion, regardless of whether the importer filed an exclusion request with USTR.

^[16] Remarks by Ms. Greta Peisch (General Counsel, Office of the U.S. Trade Representative) on “Leveraging transatlantic cooperation for industrial decarbonization: Pathways for green steel,” December 10, 2021, <https://www.atlanticcouncil.org/event/leveraging-transatlantic-cooperation-for-industrial-decarbonization/>.

^[17] “Raimondo says British Steel provision was 'critical' to U.K. deal,” Politico, March 23, 2022, <https://subscriber.politicopro.com/article/2022/03/raimondo-says-british-steel-provision-was-critical-to-u-k-deal-00019732>.

^[18] “U.S., U.K. Seek to Deepen Ties in Absence of Free-Trade Deal,” Yahoo News, March 22, 2022, <https://www.yahoo.com/now/u-u-k-seek-deepen-210151997.html>.

^[1] For an overview of this process, please refer to the W&C US Trade Alert dated October 6, 2021.

^[2] The list of expired exclusions that were eligible for reinstatement under this process can be viewed here.

^[3] 19 U.S.C. 1514.

Despite pressure from the US business community and some Members of Congress, USTR has given no indication that it intends to initiate a broader Section 301 exclusion process covering other expired exclusions (*i.e.*, those that never received an extension from USTR), or products that have not previously received an exclusion. In June 2021, the US Senate approved legislation that would reinstate all expired Section 301 exclusions and require USTR to consider new exclusion requests for any product covered by the Section 301 tariffs. The Senate approved this legislation as part of a broader bill focused on US economic competitiveness, entitled the US Innovation and Competition Act (S.1260). However, the House of Representatives omitted the Section 301 legislation from its proposed alternative to S.1260 (the America COMPETES Act, H.R. 4521), based on the view that USTR should retain discretion over the Section 301 exclusion process.

In the coming weeks, the House and Senate are expected to form a conference committee that will attempt to reconcile differences between S.1260 and H.R. 4521. The Senate's proposed language regarding Section 301 exclusions is likely to be a subject of debate in conference.

Petitions and Investigations

US Department of Commerce Initiates Circumvention Inquiries Concerning Solar Cells Completed in Cambodia, Malaysia, Thailand, and Vietnam Using Parts and Components from China

On March 25, 2022, the US Department of Commerce (DOC) initiated country-wide circumvention inquiries to determine whether imports of crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells and modules), which are completed in Cambodia, Malaysia, Thailand, or Vietnam using parts and components from China, are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on solar cells and modules from China ("the Orders"). DOC initiated these circumvention inquiries in response to a petition filed by Auxin Solar Inc. on February 8, 2022. The petition alleged that solar cells and modules completed in Cambodia, Malaysia, Thailand, or Vietnam using parts and components manufactured in China are circumventing the Orders and, accordingly, should be included within the scope of the Orders.

The United States has imposed antidumping and countervailing duty orders on solar cells and modules from China since 2012.^[1] The merchandise covered by the Orders is crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels and building integrated materials. Merchandise covered by the Orders is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 8501.71.0000, 8501.72.1000, 8501.72.2000, 8501.72.3000, 8501.72.9000, 8501.80.1000, 8501.80.2000, 8501.80.3000, 8501.80.9000, 8507.20.8010, 8507.20.8031, 8507.20.8041, 8507.20.8061, 8507.20.8091, 8541.42.0010, and 8541.43.0010. A complete description of the scope of the Orders can be found in DOC's Initiation Memorandum.^[2] DOC's circumvention inquiries cover solar cells and modules that have been completed in Cambodia, Malaysia, Thailand, or Vietnam (the "subject countries"), using parts and components from China, that are then subsequently exported from the subject countries to the United States.

^[1] See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 77 FR 73018 (December 7, 2012); and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Countervailing Duty Order*, 77 FR 73017 (December 7, 2012)

^[2] See Memorandum, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Initiation of Circumvention Inquiries," dated March 25, 2022.

The petition alleges circumvention pursuant to section 781(b) of the Tariff Act of 1930, which applies to merchandise completed or assembled in third countries.^[3] According to section 781(b)(1) of the Act, DOC may find merchandise imported into the United States to be covered by the scope of an order if: (A) the merchandise imported in the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an antidumping and/or countervailing duty order; (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country (a third country) from merchandise which is produced in the foreign country to which the order applies; (C) the process of assembly or completion in the third country is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the antidumping and/or countervailing duty order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) DOC determines that action is appropriate to prevent evasion of an order.

DOC's regulations require that each circumvention petition allege "the elements necessary for a circumvention determination" and be "accompanied by information reasonably available to the interested party supporting these allegations."^[4] DOC has determined that Auxin's petition satisfies these requirements, and DOC accordingly has initiated the circumvention inquiries.^[5] Moreover, DOC has determined to initiate the circumvention inquiries on a country-wide basis, based on the petitioner's allegations that "the use of key Chinese inputs including polysilicon, wafers, ingots, framing, glass, wires, EVA, silver paste, backsheets, silicone sealant, junction boxes, and inverters, is widespread."^[6] DOC's reasoning for initiating the circumvention inquiries, and its responses to parties that opposed the initiation of the inquiries, are set forth in its Initiation Memorandum.

DOC must issue its preliminary determinations of circumvention no later than 150 days from the date of publication of the notice of initiation of the circumvention inquiries.^[7] DOC must, "to the maximum extent practicable," issue final determinations no later than 300 days from the date of publication of the notice of initiation.^[8] If DOC concludes that the inquiries are extraordinarily complicated and additional time is necessary to issue final circumvention determinations, it may extend the 300-day deadline by no more than 65 days.^[9]

^[3] 19 U.S.C. § 1677j(b).

^[4] 19 C.F.R. § 351.226(c)(1).

^[5] 19 C.F.R. § 351.226(d) states that if DOC determines that a request for a circumvention inquiry satisfies the requirements of 19 C.F.R. § 351.226(c), then DOC "will accept the request and initiate a circumvention inquiry."

^[6] Initiation Memorandum at p.14-15.

^[7] 19 C.F.R. § 351.226(e)(1).

^[8] 19 C.F.R. § 351.226(e)(2).

^[9] *Id.*