US Multilateral Trade Policy Developments

Japan External Trade Organization

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US Trade Actions

Update on Four-Year Review of Section 301 Tariffs on Products of China

On Friday, September 2, the Office of the US Trade Representative (USTR) published a Federal Register **notice** concluding the first phase of its four-year review of the Section 301 tariffs on China-origin goods. As expected, the notice acknowledges that the Section 301 actions (*i.e.*, Lists 1 and 2 "as modified" by Lists 3 and 4A) "did not terminate on their four-year anniversary dates (July 6, 2022 and August 23, 2022)," and will remain in effect "because at least one representative of a domestic industry which benefits from each action" submitted a request for continuation within the timeframe prescribed by the statute (19 U.S.C. 2417(c)(1)(B)).

USTR indicated previously that it would provide a public summary of the requests for continuation. However, the summary contained in USTR's Federal Register notice is extremely limited and does not list the names of the entities that filed the requests. In the case of List 1, for example, the notice merely states that "requests were submitted by a range of domestic industries, including 244 requests from domestic producers and 44 requests from trade associations," and that these entities claim to have benefited from the action (because the action "provides an incentive for the Chinese government to stop the harmful policies and practices that are the target of the tariff action," and has allowed the requesters "to compete against Chinese imports, invest in new technologies, expand domestic production, and hire additional workers.")

USTR's notice states that, in accordance with Section 307(c)(3) of the Trade Act (19 U.S.C. 2417(c)(3)), USTR will proceed with the second phase of the four-year review process. However, the notice provides no information on when the second phase will commence. Instead, the notice simply states that USTR "will publish a separate notice or separate notices describing the review process," and reiterates USTR's previous statement that the process "will include opening a docket for interested persons to submit comments on, among other matters, the effectiveness of the actions in achieving the objectives of the investigation, other actions that could be taken, and the effects of such actions on the United States economy, including consumers." The statute does not provide a deadline for USTR to begin or conclude the second phase of the review.

US Customs and Border Protection (CBP) Publishes Estimated Fourth-Quarter Tariff-Rate Quota Volumes for Steel Imports from Japan

On September 19, 2022, US Customs and Border Protection (CBP) published a document listing the estimated fourth quarter tariff-rate quota (TRQ) volumes for steel imports from Japan. Steel products from Japan that are within-quota enter the United States free of Section 232 duties, while steel products entering above-quota are subject to a Section 232 duty of 25 percent, provided that they are not subject to an exclusion.[1]

The annual TRQ on steel imports from Japan is administered on a quarterly basis. The initial TRQ limit for each quarter is equivalent to 25% of the annual limit for each of the 54 product categories subject to the TRQ. 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.[2]

The document published by CBP sets forth estimates of: (1) the final quantities of imports of steel products from Japan during the second quarter of 2022, organized by product category; (2) the unused TRQ allocations for the second quarter (the "carry forward" amount); and (3) the TRQ volumes for the fourth quarter (which are equal to 25% of the annual TRQ limit plus any "carry forward" amount from the second quarter. In a quota bulletin published on September 22, CBP explained that the quantities listed for the fourth quarter "are estimates as of September 10,

[1] For an overview of the TRQ regime, please refer to the W&C US Trade Alert dated February 7, 2022.

[2] See CBP Quota Bulletin 22-622 2022, available at **https://www.cbp.gov/trade/quota/bulletins/qb-22-622-2022-tariff-rate-quota-trq-steel-articles-japan**. See also "Announcement of Actions on Japanese Imports Under Section 232," US Department of Commerce, February 7, 2022, https://www.commerce.gov/sites/default/files/2022-02/US-Statement-on-Japan-232.pdf.

2022," and that "[a]ctual amounts will be posted in the October 3, 2022 Quota Weekly Commodity Status Report found at **/trade/quota/tariff-rate-quotas**."[3]

The CBP document containing the estimated fourth-quarter TRQ limits can be viewed **here**.

Trade Agreements

IPEF Ministers Outline Negotiating Objectives, Setting Stage for Formal Negotiations

On September 9, 2022, trade ministers from the United States and thirteen other countries adopted joint Ministerial Statements on their negotiating objectives for the four "pillars" of the Indo-Pacific Economic Framework (IPEF): (1) Trade; (2) Supply Chains; (3) "Clean Economy;" and (4) "Fair Economy."[1] The Ministerial Statements are an important milestone in the IPEF process, marking the conclusion of the initial scoping exercise launched by the participants earlier this year. The participants finalized the Ministerial Statements at their first in-person Ministerial meeting in Los Angeles, which followed a series of virtual meetings this summer. Now that the participants have agreed on the general scope and objectives of the IPEF, they will begin formal negotiations on the text of the agreement.

The Ministerial Statements set out broad political commitments regarding the scope and objectives of the IPEF, while largely avoiding discussion of specific trade rules and commitments. However, the statements provide important clarifications regarding the scope and structure of the four pillars, as well as the roster of participants for each pillar. Key themes and takeaways from the Ministerial Statements include the following:

- **Negotiating objectives.** Though the United States has described the Ministerial Statements as outlining "negotiating objectives" for the IPEF, the statements read more like scoping documents, stating that parties will pursue "provisions and initiatives that relate to" various subjects. Most of the proposed provisions and initiatives are described in very general terms, particularly in sensitive areas such as digital trade: for example, the parties will pursue unspecified provisions to "facilitate digital trade" and "promote. . .trusted and secure cross-border data flows[.]" The ambiguity of the statements raises questions about the level of ambition and coherence among the participants.

- **Incentives.** Throughout the IPEF process, some developing countries have questioned whether the Framework offers sufficient incentives for participation, given the United States' decision to exclude market access commitments from the Framework. The United States appears to have made progress toward assuaging this concern, given the better-than-expected country participation across all four pillars (discussed below). The Ministerial Statements discuss a range of potential incentives, including various forms of development financing for clean energy projects in the Indo-Pacific region. However, the statements provide few details on these proposals, and it remains to be seen whether they will provide sufficient incentive for countries to undertake high-standard trade commitments.

[3] CBP Quota Bulletin QB 22-624 2022, available at **https://www.cbp.gov/trade/quota/bulletins/qb-22-624-2022**.

[1] The countries participating the IPEF discussion are Australia, Brunei Darussalam, Fiji, India, Indonesia, Japan, Republic of Korea, Malaysia, New Zealand, Philippines, Singapore, Thailand, the United States, and Viet Nam. The Ministerial Statements can be viewed **here**.

- **Country participation.** With the exception of India, which declined to join the Ministerial Statement on the trade pillar, all fourteen countries have indicated that they will participate in negotiations for all four pillars, at least initially. Given the varying levels of development and divergent policy approaches of the IPEF countries, this level of participation was not expected, especially in the trade pillar. However, it remains to be seen whether all countries participating in the negotiations will sign on to the resulting agreements.

- **Emphasis on labor and environment.** The Ministerial Statements reflect the Biden Administration's prioritization of labor and environmental issues. This is evident across all four pillars, including trade, where the scope language on labor rules is more ambitious than expected. The United States' demands in this area may require difficult tradeoffs, both in terms of country participation and the level of ambition that can be achieved in other sensitive areas. India has cited the discussions around labor and environment as a factor in its decision to abstain from the trade pillar.

- **Enforcement.** Throughout the IPEF process, US stakeholders have questioned how the IPEF's trade commitments can be enforced effectively. This concern stems from the Framework's lack of market access commitments, which historically have played an essential role in binding dispute settlement under free trade agreements (FTAs) and the WTO Agreements. The Ministerial Statements are silent on this question, and US officials have indicated that the issue of enforcement will require further discussion among the parties. The lack of clarity around this issue will raise questions about the IPEF's commercial significance and durability.

We summarize the key elements of the four Ministerial Statements below.

Pillar I – Trade

The participants in the trade pillar "seek to craft high-standard, inclusive, free, fair, and open trade commitments that build upon the rules-based multilateral trading system." As expected, the participants will not seek to negotiate market access commitments, and instead will pursue "provisions and initiatives related to labor, environment, digital economy, agriculture, competition policy, transparency and good regulatory practices, trade facilitation, inclusivity, and technical assistance and economic cooperation." Notable objectives in this pillar are as follows:

- **Labor.** The labor objectives include "adopting and maintaining, and enforcing, national laws based on internationally-recognized labor rights, based on the ILO Declaration on Fundamental Principles and Rights at Work[.]" Such obligations have been a core component of US FTAs for the past fifteen years, dating back to the so-called "May 10 agreement" between the Bush Administration and congressional Democrats. However, the IPEF participants have established additional objectives, namely "encouraging corporate accountability in cases of national labor law violations" and establishing "cooperative mechanisms on emerging labor issues." This suggests the possible inclusion of a facility-specific enforcement mechanism modeled on the novel "Rapid Response Labor Mechanism" included in the US-Mexico-Canada Agreement (USMCA).

- **Environment.** The environmental objectives include "effective enforcement of our respective environmental laws and strengthening environmental protection; protection of the marine environment; biodiversity conservation; combatting wildlife trafficking and illegal logging and associated trade;" as well as "implementation of our respective obligations under multilateral environmental agreements[.]" These objectives align with the core environmental obligations included in recent FTAs, such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the USMCA. The IPEF participants also intend to cover issues not commonly addressed in FTAs, namely: (1) "climate change solutions that build on existing commitments, including facilitating trade and investment in relevant clean technologies and environmental goods and services, and enhancing renewable energy, energy efficiency, and zero and low carbon sourcing"; (2) "green investment and finance;" (3) "circular economy approaches;" and (4) "promoting an environmentally sustainable digital economy." The statement does not elaborate on these proposed commitments.

- **Digital economy.** The Ministerial Statement describes the objectives for the digital economy in very broad terms, as follows: (1) "building an environment of trust and confidence in the digital economy;" (2) "enhancing access to online information and use of the Internet;" (3) "facilitating digital trade;" (4) "addressing discriminatory practices;" and (5) advancing "resilient and secure" digital infrastructure and platforms. The statement does not elaborate on the digital trade objectives, except to state that participants "will work to promote and support. . .trusted and secure cross-border data flows," while recognizing "the need for flexibilities to achieve public policy objectives[.]" The statement avoids clear references to the core digital trade disciplines found in the USMCA and similar agreements (*e.g.*, prohibitions on data localization measures, restrictions on cross-border data flows, and customs duties on electronic transmissions). While this likely reflects the sensitives that some IPEF partners have in this area, the inclusion of such disciplines is a top priority for the US business community.
- **Agriculture.** Objectives for agriculture include avoiding "unjustified" measures that restrict food and agricultural imports and exports, advancing "science- and risk-based decision-making," and improving processes and cooperation regarding regulatory and administrative requirements. Additional objectives include "advancing food security and sustainable agriculture practices," including by promoting the use of "appropriate technologies." The statement does not elaborate on how the participants intend to achieve these objectives.
- **Other issues.** The objectives regarding transparency and regulatory practices, competition policy, and trade facilitation generally align with recent FTA practice (*e.g.*, allowing opportunities for public comment on proposed regulations, maintaining competition laws, and simplifying customs procedures). The statement also includes an objective to support trade-related technical assistance and capacity building, in order to facilitate "the full implementation of high-standard trade provisions."

Importantly, the statement expressly recognizes the "different levels of economic development and capacity constraints" among the IPEF participants. Accordingly, the participants pledge to consider "flexibilities, where appropriate," when negotiating the trade pillar. Among other flexibilities, some IPEF partners have called for the trade pillar to include transition periods that allow developing countries additional time to implement their commitments.

Pillar II – Supply Chains

Through the supply chain pillar, the participants intend to make supply chains "more resilient, robust, and well-integrated," while also minimizing "market distortions" and respecting WTO obligations. Among other provisions and initiatives, the parties intend to:

- Establish criteria and processes for identifying "critical sectors and goods," as well as related inputs, capabilities, and "sole sources or chokepoints" within supply chains;
- Establish mechanisms for government-to-government coordination on supply chain disruptions and crisis response measures;
- Facilitate the development of unspecified "tools and measures" to advance transparency in critical supply chains;
- Facilitate "investments" in a wide range of areas, including physical and digital infrastructure, supply chain logistics, and "advanced manufacturing techniques and other modernization efforts" to strengthen and develop

potential suppliers. The statement does not provide details about these proposed investments or how the IPEF will facilitate them.

Pillar III – Clean Economy

Through the clean economy pillar, the participants will seek to "accelerate our efforts in pursuit of greenhouse gas emissions mitigation and elimination, enhanced energy security, and climate resilience and adaptation, as well as sustainable livelihoods and quality jobs[.]" The Ministerial Statement contemplates a wide range of commitments in this area, including the following:

- Unspecified provisions and initiatives to "promote," "support," or "encourage": (1) sustainable agricultural practices, (2) "demand and supply" for carbon capture, utilization, transport, and storage, and (3) "policies, incentive frameworks, and infrastructure investment" to scale up low- and zero-emissions goods, services, and fuels; and (4) adoption of demand-side measures that contribute to the development of markets for low- and zero-emissions goods and services (including government and private sector procurement).
- "Enhanced cooperation" on mobilizing investment and sustainable finance for low- and zero emissions projects, as well as projects transitioning existing assets to low- and zero-emissions futures. This will include "mobilizing resources including private and institutional capital through public private partnerships and international blended finance instruments, with a focus on investments in developing countries in the region."

Pillar IV – Fair Economy

The proposed "fair economy" pillar will focus on "preventing and combating corruption, curbing tax evasion, and improving domestic resource mobilization." The Ministerial Statement emphasizes that the parties will undertake the proposed initiatives "within our domestic legal frameworks, consistent with international agreements and standards applicable to each IPEF member based on its respective commitments." Among other initiatives, the parties intend to "effectively implement and accelerate progress on the United Nations Convention against Corruption (UNCAC), standards of the Financial Action Task Force (FATF), and as applicable, the OECD Anti-Bribery Convention." Tax provisions will focus on supporting information exchanges between governments "pursuant to existing international agreements and standards," as well as supporting the work of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting's Two Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, as applicable.

Next Steps

The IPEF participants are expected to begin formal negotiations on the four pillars this autumn. The participants have not announced a date for their first negotiating round, but have indicated that they intend to hold negotiating rounds on a monthly basis. IPEF Ministers also plan to hold a virtual Ministerial meeting in November.

The participants have not announced a target date for concluding their negotiations. The Asia-Pacific Economic Cooperation (APEC) Leaders' Meeting, which the United States will host in November 2023, has been discussed as an informal deadline for finalizing the IPEF. However, this would be an ambitious target given the number and diversity of participants, the novel elements of the IPEF, and the pace of the discussions thus far.

Outlook

The decision to launch formal negotiations for the IPEF is an important development, but it remains unclear whether the Framework will produce commercially significant trade outcomes. Given the near-unanimous participation in the four pillars, the United States appears to have persuaded developing countries that the IPEF has the potential to deliver tangible benefits in exchange for trade concessions – particularly in the form of developed country support for decarbonization efforts in the region. However, it is unclear what level of support the United States and other developed partners are prepared to commit, and development financing is untested as a means of incentivizing countries to undertake and comply with trade commitments.

The US business community's reaction to the recent ministerial has focused on two core concerns: the implications of excluding market access from the IPEF, and the importance of including high-standard digital trade rules in the Framework. US business groups have expressed concern that the exclusion of market access will not only limit the IPEF's commercial value, but will also make any trade rules in the IPEF difficult to enforce.[2] They have also emphasized that the IPEF's digital trade rules should follow the approach taken in the USMCA and similar agreements by prohibiting data localization mandates, restrictions on cross-border data flows, forced technology transfers, and customs duties on electronic transmissions.[3] The recent statements from IPEF participants provide little clarity regarding enforcement or the level of ambition on digital trade, which are likely to be among the most challenging issues for US negotiators to address.

Petitions and Investigations

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

On September 26, 2022, the US Department of Commerce (DOC) announced its affirmative final determinations in the antidumping duty (AD) investigations of oil country tubular goods (OCTG) from Argentina, Mexico, and Russia; and the countervailing duty (CVD) investigations of OCTG from Russia and South Korea. In its investigations, DOC determined that imports of the subject merchandise from these countries were sold in the United States at the following dumping margins and subsidy rates:

Country	Dumping Margin	Subsidy Rate
Argentina	78.30 percent	NA
Mexico	44.93 percent	NA
Russia	12.84 to 184.21 percent	1.30 to 1.59 percent
South Korea	NA	1.33 percent

The petitioners in these investigations are 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 these investigations is certain 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)

[2] "Indo-Pacific Economic Flourishing? Making a Success of IPEF," US Chamber of Commerce, September 13, 2022, https://www.uschamber.com/international/trade-agreements/indo-pacific-economic-flourishing-making-a-success-of-ipef.

[3] Id. *See also* "BSA Welcomes Indo-Pacific Economic Framework Ministerial Statement; Urges All Parties to Seek Strong Digital Economy Commitments," Business Software Alliance, September 9, 2022, https://www.bsa.org/news-events/news/bsa-welcomes-indo-pacific-economic-framework-ministerial-statement-urges-all-parties-to-seek-strong-digital-economy-commitments.

or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of these investigation also covers OCTG coupling stock. A full description of the scope can be found in DOC's Federal Register notices on its final determinations.

The merchandise subject to this investigation 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, 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 this investigation 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.

The US International Trade Commission (ITC) is scheduled to issue its final determinations in these investigations by November 7, 2022. If the ITC determines that imports of the subject merchandise materially injure or threaten material injury to the domestic industry, DOC will issue AD and CVD orders.

US Department of Commerce Issues Affirmative Final Determination in the Antidumping Duty Investigation of Sodium Nitrite from Russia

On September 7, 2022, the US Department of Commerce (DOC) annouced its affirmative final determination in the antidumping duty (AD) investigation of sodium nitrite from Russia. In its investigation, DOC determined that imports of the subject merchandise from Rusia were sold in the United States at a dumping margin of 207.17 percent. The cash deposit rate adjusted for export subsidy offsets is 25.73 percent.

The petitioner in this investigation is Chemtrade Chemicals US LLC (Parsippany, NJ). The product covered by this investigation is sodium nitrite in any form, at any purity level. In addition, the sodium nitrite covered by this investigation may or may not contain an anti-caking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti-rust, diazotizing salts, erinitrit, and filmerine. Sodium nitrite's chemical composition is $NaNO_2$, and it is generally classified under subheading 2834.10.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). The American Chemical Society Chemical Abstract Service (CAS) has assigned the name "sodium nitrite" to sodium nitrite. The CAS registry number is 7632-00-0.

The US International Trade Commission (ITC) is scheduled to issue its final determination in this investigation by October 21, 2022. If the ITC determines that imports of the subject merchandise materially injure or threaten material injury to the domestic industry, DOC will issue an AD order.

US International Trade Commission Issues Negative Injury Determination in CVD Investigations of Steel Nails from India, Oman, and Turkey

On September 16, 2022, the US International Trade Commission (ITC) determined that a US industry is not materially injured or threatened with material injury by reason of imports of steel nails from India, Oman, and Turkey that the US Department of Commerce (DOC) determined have received countervailable subsidies. The ITC further determined that imports of these products from Sri Lanka are negligible, and therefore voted to terminate the countervailing duty investigation concerning Sri Lanka.

As a result of the ITC's negative determinations, no countervailing duty orders will be imposed on imports for India, Oman, and Turkey. As a result of the finding of negligibility, the countervailing duty investigation regarding imports from Sri Lanka will be terminated. Chairman David S. Johanson and Commissioners Rhonda K. Schmidtlein, Jason E. Kearns, Randolph J. Stayin, and Amy A. Karpel voted in the negative with respect to the countervailing duty investigations for India, Oman, and Turkey. They made a finding of negligibility with respect to the countervailing duty investigation involving Sri Lanka.

The ITC's public report on the investigation will be made available by October 14, 2022.