US Multilateral Trade and Policy Developments

Japan External Trade Organization

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Contents

US Trade Policy Developments

US Government Details New Requirements for Electric Vehicle Manufacturers and Dealers under the Inflation Reduction Act

On December 12, 2022, the US Department of the Treasury released a "revenue procedure" document, aimed at manufacturers and sellers of new and pre-owned electric vehicles (EVs) regarding recent revisions to the EV tax credit under the 2022 Inflation Reduction Act (IRA). The IRA introduces new requirements for accessing EV tax credits. This new guidance sets out the scope and procedures by which EV manufactures and dealers shall report information to the Secretary of the Treasury, in order to assist the Internal Revenue Service (IRS) in determining which purchases of new and used EVs are eligible for credits under the new scheme.

Section 13401 of the IRA defines "clean vehicle" as, *inter alia*, those produced by a "qualified manufacturer" – one "which enters into a written agreement with the Secretary under which such manufacturer agrees to make periodic written reports." The guidance clarifies for the first time what information must be contained in these "periodic written reports" to the Secretary, including:

- Information on the qualifying EV, including: make, model, model year, gross vehicle weight rating, battery capacity, and vehicle identification number (VIN);
- For new EVs qualifying under Sec. 30D:
  - Certification that the motor vehicle is propelled to a significant extent by an electric motor that draws electricity from a battery that has a capacity of not less than 7 kilowatt hours and the battery is capable of being recharged from an external source of electricity, or is a new qualified fuel cell motor vehicle;
  - Certification that the final assembly of the motor vehicle occurred within North America;
  - Certification of the percentage of the value of the applicable critical minerals contained in the battery from which the electric motor of the vehicle draws electricity that were (i) extracted or processed in the United States, or in any country with which the United States has a free trade agreement (FTA) in effect, or (ii) recycled in North America; and
  - Certification of the percentage of the value of the components contained in the battery from which the electric motor of the vehicle draws electricity that were manufactured or assembled in North America.
- Information to be provided regarding pre-owned EVs qualifying under Secs. 25E:
  - Certification that the motor vehicle is either: propelled to a significant extent by an electric motor that draws electricity from a battery that has a capacity of not less than 7 kilowatt hours and the battery is capable of being recharged from an external source of electricity, or is a new qualified fuel cell motor vehicle that satisfies the requirements under § 30B(b)(3)(A) and (B) and has a gross vehicle weight rating of less than 14,000 pounds; and
  - Certification that the motor vehicle is manufactured primarily for use on public streets, roads and highways (not including a vehicle operated exclusively on a rail or rails) and has at least four wheels.
- And for commercial vehicles qualifying under Sec. 45W:
  - Certification that the vehicle is manufactured primarily for use on public streets, roads, and highways (not including a vehicle operated exclusively on a rail or rails), and is either: a motor vehicle that is propelled to a

significant extent by an electric motor that draws electricity from a battery that has a capacity of not less than 15 kilowatt hours (or, in the case of a vehicle that has a gross vehicle weight rating of less than 14,000 pounds, 7 kilowatt hours) and is capable of being recharged from an external source of electricity, or is a new qualified fuel cell motor vehicle; and

- For mobile machinery, certification that the machinery is not designed to perform a function of transporting a load over the public highways, and that the machinery is either: propelled to a significant extent by an electric motor that draws electricity from a battery that has a capacity of not less than 15 kilowatt hours (or, in the case of a vehicle that has a gross vehicle weight rating of less than 14,000 pounds, 7 kilowatt hours) and is capable of being recharged from an external source of electricity, or is a new qualified fuel cell motor vehicle.

In addition, sellers of new and pre-owned EV's must file "Seller's Reports" containing much of the same information.

Manufacturers' reports must be submitted via email to the IRS on a monthly basis (by the 15th of each month). Sellers' reports must be filed annually, "within fifteen days after the end of the calendar year." Thus, the first sellers' reports will be due by January 15, 2024.

Some guidance has already been issued regarding the EV tax credit. For example, in order to assist buyers in determining whether their EV purchase is eligible for the tax credit, the US Department of Energy compiled a list of Model Year 2022 and 2023 electric vehicles that likely meet the North America final assembly requirement. Additionally, dealers and consumers may enter an EV's Vehicle Identification Number (VIN) into the National Highway Traffic Safety Administration's "VIN Decoder" tool for more information on the vehicle's place of assembly.

Upon enactment of the Inflation Reduction Act (IRA) on August 16, 2022, certain changes took immediate effect. Specifically, the EV tax credit – worth up to $7,500 – is now only available for qualifying electric vehicles for which final assembly occurred in North America. However, the remaining requirements will be phased in starting January 1, 2023, including those relating to critical mineral and battery provenance. Significant questions remain as to the US Government's enforcement of these provisions, and additional guidance may not be released as early as expected. The Treasury Department reportedly will issue a notice of proposed rulemaking in March 2023 after which there would be a public comment period (30-60 days) and review of that feedback. A longer implementation period could allow some automakers to adjust their supply chains or make additional investments in the United States.

The Treasury Department's guidance is here: https://www.irs.gov/pub/irs-drop/rp-22-42.pdf?source=email

United States Seeks Enhanced Trade Ties with Africa

The US-Africa Leaders Summit took place from December 13-15, 2022 in Washington DC,[1] and featured top-level government-to-government talks, private sector engagements, and resulted in a number of trade-related outcomes pointing to enhanced trade and investment ties between the United States and African countries. While not explicitly addressed in the public portions of the meetings, China's massive investment in African industrial and digital infrastructure provided pointed subtext to the United States' economic overtures.

The private sector-focused segment of the Summit – the US-Africa Business Forum – was marked by announcements of new investments and initiatives totaling US $15.7 billion. Other trade- and investment-related announcements at the Summit included:

[1] "U.S.-Africa Leaders Summit: Strengthening Partnerships to Meet Shared Priorities," White House, December 15, 2022, available at https://www.whitehouse.gov/briefing-room/statements-releases/2022/12/15/u-s-africa-leaders-summit-strengthening-partnerships-to-meet-shared-priorities/

- The United States will lend up to $21 billion via the International Monetary Fund to low and middle-income countries, to "support African resilience and recovery efforts";
- Execution of a memorandum of understanding (MOU) between the United States and the African Continental Free Trade Area (AfCFTA) Secretariat (*discussed below*);
- New Millennium Challenge Corporation compacts – large, five-year grants – to support regional economic integration and trade;
- $369 million in new investments by the US International Development Finance Corporation, including related to renewable energy infrastructure;
- New financing commitments by the Export-Import Bank of the United States, including to support the export of US goods and services related to infrastructure, transportation, digital technology, and renewable energy projects;
- The launch of the Clean Tech Energy Network, which will accelerate new power generation investments; and
- New initiatives from the U.S. Trade and Development Agency to include $1 billion in financing for Africa's clean energy, digital, and healthcare infrastructure.

It was also announced that President Biden, US Trade Representative Tai, and other top US officials would travel to Africa in 2023, in order to sustain the momentum of the Summit.

African Continental Free Trade Area

On December 14, USTR Tai signed a MOU with the AfCFTA Secretariat. The three-year MOU establishes an annual high-level engagement between the United States and the AfCFTA Secretariat, as well as regular meetings of technical working groups "to exchange information on best practices and have an open dialogue to enhance the relationship between the United States and the AfCFTA Secretariat, the AfCFTA member states, and related stakeholders." The MOU states that areas of cooperation "may include" trade facilitation, digital trade, and regional value chain development.

The AfCFTA officially commenced at the beginning of 2021, as participating member states established a single market covering both trade and investment with a combined GDP of $3.4 trillion. The AfCFTA aims to eliminate tariffs on 90% of intra-African trade in goods, reduce non-tariff barriers, liberalize trade in services, develop mutual recognition of standards, promote inclusive and sustainable development, and facilitate the movement of capital and people between countries. The agreement is structured in stages, meaning it will evolve over time (more negotiations are planned in areas such as competition policy, investment, intellectual property rights and e-commerce). The AfCFTA incorporates and builds upon WTO agreements and disciplines, which is important, because 11 African Union members are not yet WTO members. Once fully implemented, the AfCFTA has the potential over time to increase intra-African trade by 52.3%, according to the UN Economic Commission for Africa (UNECA).

Fifty-four of the 55 African Union member states have signed the AfCFTA (Eritrea is not a signatory). As at October 2022, 44 of the 54 signatories (81.5%) have deposited their instruments of AfCFTA ratification (ordered by date): Ghana, Kenya, Rwanda, Niger, Chad, Eswatini, Guinea, Côte d'Ivoire, Mali, Namibia, South Africa, Congo, Republic, Djibouti, Mauritania, Uganda, Senegal, Togo, Egypt, Ethiopia, Gambia, Sahrawi Arab Democratic Republic., Sierra Leone, Zimbabwe, Burkina Faso, São Tomé & Príncipe, Equatorial Guinea, Gabon, Mauritius, Central African

Republic, Angola, Lesotho, Tunisia, Cameroon, Nigeria, Malawi, Zambia, Algeria, Burundi, Seychelles, Tanzania, Cabo Verde, Democratic Republic of the Congo, Morocco, and Guinea-Bissau.[2]

The real test of AfCFTA will be its success in creating trade and investment flows that raise living standards. For that to happen, the Agreement will require meaningful implementation and enforcement, and member states will have to overcome classic enemies of increased trade: insufficient infrastructure, excessive or ineffective bureaucracy, foreign-currency restrictions, lack of reliable power supplies, creditworthiness, and old-fashioned fear and protectionism. Time can also be an enemy. The credit rating agency Fitch Ratings downgraded the creditworthiness of many African economies in 2020, citing the economic impact of the COVID-19 pandemic. In a report issued at the start of 2021, the agency noted "the impact of trade liberalisation [from the AfCFTA] should be positive for the region's economic potential, but the scale of the impact is likely to be small… and materialise only in the long term."

Africa is not alone in facing these challenges, nor does the integration process happen in a vacuum, isolated from other economic, political and social forces. Africa's attempt to create economic progress through increased trade among its nations and with the world coincides with similar efforts in other regions and an overall weakening of the multilateral system.

Outlook

There is recognition amongst US policymakers that the United States is not immediately well positioned to challenge China's economic dominance in Africa. While the commitments announced during the Summit – which, in addition to the private sector-led initiatives, include $55 billion from the US government for a range of initiatives – represent a renewed focus on US-Africa trade and investment, the US government has been careful to not explicitly compare its approach to that of China. For example, in a pre-Summit press conference, National Security Advisor Jake Sullivan responded to a question about China-Africa relations by saying: "This is going to be about what we can offer … It's not going to be about other countries. It's not going to be attempting to compare and contrast." The Chinese government was not as delicate. On December 14, China's Foreign Ministry Spokesperson stated that "Africa is not a wrestling ground for major-country rivalry, still less a target of strong-arm tactic from a certain country or certain people."

Ahead of the Summit, US Deputy Secretary of Commerce Don Graves acknowledged that China was the largest investor in Africa, and that the United States "took our eye off the ball, so to speak, and U.S. investors and companies are having to play catch up." The level of follow-up engagement after the Summit will help determine if that dynamic will change.

The United States has focused its economic muscle towards the Indo-Pacific – another arena with clear implications for the US-China relationship – first through the Trans-Pacific Partnership, and currently through the nascent Indo-Pacific Economic Framework for Prosperity, arguably at the expense of other relationships. Whether or not the United States has indeed taken its "eye off the ball" with respect to Africa, the government used the US-Africa Leaders Summit as an occasion to demonstrate a new level of focus and commitment to shoring up the economic relationship.

[2] Status of AfCFTA ratification, The Trade Law Centre NPC (tralac), October 8, 2022, available at: https://www.tralac.org/resources/infographic/13795-status-of-afcfta-ratification.html

US Trade Actions

Section 301

United States Extends Certain Section 301 Exclusions for Nine Months

On December 16, 2022, the Office of the United States Trade Representative (USTR) announced a nine-month extension of 352 product exclusions, which had been scheduled to expire on December 31, 2022.[3]

The extended exclusions include those previously reinstated under heading 9903.88.67 and U.S. notes 20(ttt)(i), 20(ttt)(ii), 20(ttt)(iii), and 20(ttt)(iv) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS). This list includes pumps, compressors, air and water purifiers, valves, and certain motors.

The exclusions are now set to expire on September 30, 2023.

According to USTR, "will help align further consideration of these exclusions with the ongoing comprehensive four year review" of the Section 301 tariffs, comments on which are due on January 17, 2023.

[3] USTR Extends Exclusions from China Section 301 Tariffs, USTR, December 16, 2022, available at **https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/december/ustr-extends-exclusions-china-section-301-tariffs**

Trade Agreements

RECP

Philippine Department of Trade and Industry Urges Senate to Ratify RCEP

Philippine Department of Trade and Industry (DTI) Secretary Fred Pascual has called for the ratification of the Regional Comprehensive Economic Partnership Agreement (RCEP). During a meeting held on December 12, 2022 with the Senate Committee on Foreign Relations chaired by Senator Imee R. Marcos, Secretary Pascual highlighted the need for the urgent ratification of the RCEP, especially after Indonesia completed its domestic ratification procedures on August 30, 2022. The Philippines is the only RCEP signatory that has not completed the ratification procedures

The Philippines' RCEP ratification has been delayed by the country's election cycle. Former President Rodrigo Duterte endorsed the RCEP in September 2021, but the Senate failed to give its concurrence to the ratification due to concerns about agriculture before the new administration of President Ferdinand Marcos Junior took office in June, 2022. Over 100 agriculture groups have appealed for the Senate to either reject or delay the RCEP ratification citing that the Philippines is not ready to open its market access for agricultural products to the global market. The groups highlighted that the national agricultural deficit has soared to more than US $7 billion since joining the WTO in 1995, while the contribution of the agricultural sector to the country's GDP has fallen from more than 20% to around 10%, resulting in more than 1 million job losses.

To address these concerns, President Marcos decided to reassess the costs and benefits of the RCEP following his inauguration in June 2022. The DTI has offered reassurances to the Cabinet that highly sensitive agricultural products, including swine and poultry meats, potatoes, onions, garlic, cabbage, sugar, carrots, and rice are excluded from the tariff elimination list. The DTI also highlighted that the Philippines is a net importer of fertilizers (with imports accounting for 95% of the total), and that 74% of fertilizer imports come from RCEP members, including China, Korea and Japan. Secretary Pascual indicated that the RCEP review has been completed and the Cabinet has finally requested the concurrence of the Senate.

It remains to be seen whether the Senate Committee on Foreign Relations will approve the RCEP ratification as proposed by the DTI. If approved, the Agreement will then been submitted it to the Senate for ratification, which requires two-thirds vote of the 24-member chamber, or 16 votes in favor. The DTI remains optimistic that the Senate will eventually concur with the country's participation in the RCEP to ensure that the Philippines will not be left out from the benefits of joining the multilateral trade agreement. Following the completion of internal domestic procedures, the RCEP will enter into force 60 days after the Philippines submits its instrument of ratification to the ASEAN Secretariat.

Status of Myanmar

Besides the Philippines, the RCEP has entered into force for all RCEP members except for Myanmar. The status of Myanmar's ratification remains undecided among various RCEP member countries. The ASEAN Secretariat circulated its official notification of Myanmar's instrument of ratification among RCEP member states on January 3, 2022, making the entry into force date for Myanmar on March 4, 2022. Myanmar, however, requested that the Agreement retroactively enter into effect in January citing the submission of its instrument of domestic ratification to the ASEAN Secretariat in October 2021. Nevertheless, the political situation in Myanmar has raised concerns among RCEP member states, which has delayed the official acceptance of the instrument of ratification by the ASEAN Secretariat. According to a source familiar with the RCEP negotiations, Cambodia, Indonesia, Malaysia, and Singapore contend that the RCEP should enter into force for Myanmar on March 4, 2022, while Thailand has agreed with Myanmar that the RCEP should retroactively enter into force on January 1, 2022. Brunei, Laos, the Philippines,

and Vietnam are still in the process of consulting their respective domestic authorities for legal interpretation on the entry into force date for Myanmar. The status of RCEP's effective date for Myanmar with all ASEAN dialogue partners,[4] including Australia, China, Japan, Korea, and New Zealand, remains unclear as well.

[4] India was an original participating economy, but withdrew its membership in November 2019 over market access concerns, primarily with China. However, there is a fast-track accession process in place should India wish to re-join the RCEP in the future.

Petitions and Investigations

US International Trade Commission Determines that US Industry is Materially Injured by Imports of Superabsorbent Polymers from South Korea

On December 8, 2022, the US International Trade Commission (ITC) issued its determination that a US industry is materially injured by reason of imports of superabsorbent polymers (SAP) from South Korea that the DOC has determined are sold in the United States at less than fair value. The affirmative vote took place on November 17, 2022. Chairman David S. Johanson and Commissioners Rhonda K. Schmidtlein, Jason E. Kearns, Randolph J. Stayin, and Amy A. Karpel voted in the affirmative.

As a result of the ITC's affirmative determination, an antidumping duty order will be imposed on imports of SAP from South Korea.[5]

The merchandise covered by this investigation is SAP, which is cross-linked sodium polyacrylate most commonly conforming to Chemical Abstracts Service (CAS) registry number 9003-04-7, where at least 90% of the dry matter, by weight on a nominal basis, corrected for moisture content, is comprised of a polymer with a chemical formula of $(C_3H_3O_2Na_xH_{1-x})_n$, where x is within a range of 0.00-1.00 and there is no limit to n. The subject merchandise also includes merchandise with a chemical formula of $\{(C_2H_3)COONa_yH_{(1-y)}\}_n$, where y is within a range of 0.00-1.00 and there is no limit to n. The subject merchandise includes SAP which is fully neutralized as well as SAP that is not fully neutralized. The subject merchandise may also conform to other CAS numbers. All forms and sizes of SAP, regardless of packaging type, including but not limited to granules, pellets, powder, fibers, flakes, liquid, or gel are within this investigation. It also includes SAP whether or not it incorporates additives for anticaking, anti-odor, anti-yellowing, or similar functions. The investigation also includes SAP that is combined, commingled, or mixed with other products after final sieving. For such combined products, only the SAP component is covered in this investigation.

SAP is classified under the HTSUS subheading 3906.90.5000. SAP may also enter the United States under HTSUS 3906.10.0000.

US International Trade Commission Determines that US Industry is Not Materially Injured by Imports of Emulsion Styrene-butadiene Rubber from Czechia and Russia

On December 8, 2022, the ITC determined that a US industry is not materially injured or threatened with material injury by reason of imports of emulsion styrene-butadiene rubber from Czechia and Russia that the DOC has determined are sold in the United States at less than fair value. Chairman David S. Johanson and Commissioners Rhonda K. Schmidtlein, Jason E. Kearns, and Amy A. Karpel voted in the negative. Commissioner Randolph J. Stayin did not participate.

As a result of the Commission's negative determinations, no antidumping duties will be imposed on imports from Czechia and Russia.[6]

The ITC's public report on the investigation will be made available by January 23, 2023.

[5] "Superabsorbent Polymers from South Korea Injures U.S. Industry, Says USITC," USTIC, December 8, 2022, available at https://www.usitc.gov/press_room/news_release/2022/er1117ll2017.htm#:~:text=The%20United%20States%20International%20Trade,at%20less%20than%20fair%20value.

[6] "Emulsion Styrene-Butadiene Rubber from Czechia and Russia Does Not Injure U.S. Industry, Says USITC," USITC, December 8, 2022, available at https://www.usitc.gov/press_room/news_release/2022/er1208ll2034.htm.

US Department of Commerce Issues Final Affirmative Determination of Sales at Less Than Fair Value in Antidumping Duty Investigations of Certain Lemon Juice from South Africa and Brazil

On December 23, 2022, the DOC published its final affirmative determinations in the antidumping duty (ADD) investigations of certain lemon juice from South Africa and Brazil. DOC determined that imports of the subject merchandise from South Africa were sold in the United States at dumping margins ranging from 47.89% to 73.69%; and imports from Brazil were sold in the United States at dumping margins ranging from 0.00% to 22.31%.[7]

The product covered by this investigation is certain lemon juice. Lemon juice is covered: (i) with or without addition of preservatives, sugar, or other sweeteners; (ii) regardless of the GPL (grams per liter of citric acid) level of concentration, brix level, brix/acid ratio, pulp content, clarity; (iii) regardless of the grade, horticulture method (*e.g.,* organic or not), processed form (*e.g.,* frozen or not-from-concentrate), the size of the container in which packed, or the method of packing; and (iv) regardless of the US Department of Agriculture Food and Drug Administration (FDA) standard of identity (as defined under 19 CFR 146.114 *et seq.*) (*i.e.,* whether or not the lemon juice meets an FDA standard of identity).

Excluded from the scope are: (i) lemon juice at any level of concentration packed in retail-sized containers ready for sale to consumers; and (ii) beverage products, such as lemonade, that contain 20% or less lemon juice as an ingredient by actual volume. “Retail-sized containers” are defined as lemon juice products sold in ready-for-sale packaging (*e.g.,* clearly visible branding, nutritional facts listed, *etc.*) containing up to 128 ounces of lemon juice by actual volume.

The scope also includes certain lemon juice that is blended with certain lemon juice from sources not subject to this investigation. Only the subject lemon juice component of such blended merchandise is covered by the scope of this investigation. Blended lemon juice is defined as certain lemon juice with two distinct component parts of differing country(s) of origin mixed together to form certain lemon juice where the component parts are no longer individually distinguishable.

The product subject to this investigation is currently classifiable under subheadings 2009.31.4000, 2009.31.6020, 2009.31.6040, 2009.39.6020, and 2009.39.6040 of the HTSUS.

If the ITC determines that the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of lemon juice from South Africa and Brazil, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

US Department of Commerce Issues Final Affirmative Determination of Sales at Less Than Fair Value in Antidumping Duty Investigations of Certain Steel Nails From Thailand, Turkey, and India; Final Negative Determination in Investigation of Certain Steel Nails from Sri Lanka

On December 23, 2022, the DOC published its final affirmative determinations in the ADD investigations of certain steel nails from Thailand, Turkey, and India. DOC determined that imports of the subject merchandise from Thailand were sold in the United States at dumping margins ranging from 12.61% to 13.90%; imports from Turkey were sold in

[7] “Certain Lemon Juice From Brazil: Final Affirmative Determination of Sales at Less Than Fair Value,” US Federal Register, December 23, 2022, available at https://www.federalregister.gov/documents/2022/12/23/2022-28009/certain-lemon-juice-from-brazil-final-affirmative-determination-of-sales-at-less-than-fair-value.

the United States at dumping margins ranging from 27.62% to 118.20%; and imports from India were sold in the United States at dumping margins ranging from 2.94% to 3.98%.[8]

Also on December 23, DOC published its negative determination in the ADD investigations of certain steel nails from Sri Lanka.

The merchandise covered by this investigation is certain steel nails having a nominal shaft or shank length not exceeding 12 inches. Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel or long-rolled flat steel bars. Certain steel nails may be of one piece construction or constructed of two or more pieces. Examples of nails constructed of two or more pieces include, but are not limited to, anchors comprised of an anchor body made of zinc or nylon and a steel pin or a steel nail; crimp drive anchors; split-drive anchors, and strike pin anchors. Also included in the scope are anchors of one piece construction.

Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank or shaft styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted.

Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material.

Excluded from the scope are:

- Certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25, unless otherwise excluded based on the other exclusions below;
- Certain steel nails with a nominal shaft or shank length of one inch or less that are a component of an unassembled article, where the total number of nails is sixty (60) or less, and the imported unassembled article falls into one of the following eight groupings: (i) Builders' joinery and carpentry of wood that are classifiable as windows, French-windows and their frames; (ii) builders' joinery and carpentry of wood that are classifiable as doors and their frames and thresholds; (iii) swivel seats with variable height adjustment; (iv) seats that are convertible into beds (with the exception of those classifiable as garden seats or camping equipment); (v) seats of cane, osier, bamboo or similar materials; (vi) other seats with wooden frames (with the exception of seats of a kind used for aircraft or motor vehicles); (vii) furniture (other than seats) of wood (with the exception of (i) medical, surgical, dental or veterinary furniture; and (ii) barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements); or (viii) furniture (other than seats) of materials other than wood, metal, or plastics (*e.g.,* furniture of cane, osier, bamboo or similar materials). The aforementioned imported unassembled articles are currently classified under the following HTSUS subheadings: 4418.10, 4418.20,

[8] "Certain Steel Nails From the Republic of Turkey: Final Affirmative Determination of Sales at Less Than Fair Value," US Federal Register, December 23, 2022, available at https://www.federalregister.gov/documents/2022/12/23/2022-28018/certain-steel-nails-from-the-republic-of-turkey-final-affirmative-determination-of-sales-at-less.

9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403.81 or 9403.89;

- Nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under HTSUS subheadings 7317.00.2000 and 7317.00.3000;
- Nails suitable for use in gas-actuated hand tools. These nails have a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5%, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point;
- Corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side;
- Thumb tacks, which are currently classified under HTSUS subheading 7317.00.1000; and
- Decorative or upholstery tacks.

Certain steel nails subject to this investigation are currently classified under HTSUS subheadings 7317.00.5501, 7317.00.5502, 7317.00.5503, 7317.00.5505, 7317.00.5507, 7317.00.5508, 7317.00.5511, 7317.00.5518, 7317.00.5519, 7317.00.5520, 7317.00.5530, 7317.00.5540, 7317.00.5550, 7317.00.5560, 7317.00.5570, 7317.00.5580, 7317.00.5590, 7317.00.6530, 7317.00.6560, and 7317.00.7500. Certain steel nails subject to this investigation also may be classified under HTSUS subheadings 7318.15.5090, 7907.00.6000, 8206.00.0000, or other HTSUS subheadings.

If the ITC determines that the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of certain steel nails from Thailand, Turkey, and India, Commerce will issue an ADD order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation. Due to the negative DOC determination, imports from Sri Lanka will not be subject to the ADD order, if any.

US Industry Files New AD/CVD Petition Targeting Gas Powered Pressure Washers from China and Vietnam

On December 29, 2022, US producer FNA Group, Inc. filed ADD and countervailing duty (CVD) petitions alleging that certain gas powered pressure washers (GPPW) from China and Vietnam are being, or are likely to be, sold in the United States at less than fair value, and that the US industry is injured as a result. Petitioner further alleges that the Government of China is providing countervailable subsidies with respect to the manufacture, production, and export of GPPW.

Petitioner alleges dumping margins for China ranging from 136.70% to 242.34%; and for Vietnam ranging from ranging from 103.28% to 209.22%.

The merchandise covered by this investigation is cold water GPPW (also commonly known as power washers), which are machines that clean surfaces using water pressure that are powered by an internal combustion engine, air-cooled with a power take-off shaft, in combination with a positive displacement pump. This combination of components (*i.e.*, the internal combustion engine, the power take-off shaft, and the positive displacement pump) is defined as the “power unit." The scope of the investigation covers cold water GPPW, whether finished or unfinished, whether assembled or unassembled, and whether or not containing any additional parts or accessories to assist in the function of the "power unit," including, but not limited to, spray guns, hoses, lances, and nozzles, The scope of the investigation covers cold water gas powered pressure washers, whether or not assembled or packaged with a frame, cart, or trolley, with or without wheels attached.

For purposes of this investigation, an unfinished and/or unassembled cold water GPPW consists of, at a minimum, the power unit or components of the power unit, packaged or imported together. Importation of the power unit whether or not accompanied by, or attached to, additional components including, but not limited to a frame, spray guns, hoses, lances, and nozzles constitutes an unfinished cold water GPPW for purposes of this scope. The inclusion in a third country of any components other than the power unit does not remove the cold water gas powered pressure washer from the scope. A cold water GPPW is within the scope of this investigation regardless of the origin of its engine. Subject merchandise also includes finished and unfinished cold water GPPW that are further processed in a third country or in the United States, including, but not limited to, assembly or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the in-scope cold water GPPW.

Cold water GPPW are easily distinguishable from hot water GPPW and have different physical characteristics. While a hot water pressure washer also includes an engine and a pump, it must also include a boiler to heat the water as it leave the pump. The boiler also includes a heating coil. The boiler needs a separate energy source such as natural gas, butane, propane, kerosene or diesel fuel. In addition, it needs a burner system to ignite the boiler. Hot water pressure washers are generally larger in size than cold water pressure washers due to the need for the boiler. The scope does not include hot water GPPW.

Also specifically excluded from the scope of this investigation is merchandise covered by the scope of the antidumping and countervailing duty orders on certain vertical shaft engines between 99cc and up to 225cc, and parts thereof from the People's Republic of China.

The cold water GPPW subject to this investigation are classified in the HTSUS at subheadings 8424.30.9000 and 8424.90.9040.

WTO Developments

United States' "National Security" Section 232 Tariffs on Steel and Aluminum Deemed Illegal in WTO Dispute Settlement

Four WTO dispute settlement panels (DS544, 552, 556, and 564) have rejected the United States' defense that the Section 232 tariffs imposed by President Trump's Administration in 2018 on imports of steel and aluminum from China,[9] Norway,[10] Switzerland,[11] and Turkey,[12] were justified to protect the United States' "national security" under Article XXI of the GATT. The panels' findings are of considerable significance for the integrity of the WTO's rules-based system. GATT Article XXI allows a WTO Member to override all of its GATT obligations to protect its "national security" interests. The United States has announced already that it rejects the panels' findings, since it has maintained consistently that interests which a Member deems necessary to protect its "national security" are a matter for sovereign interpretation and cannot be challenged through WTO dispute settlement.

Most other WTO Members have taken the opposite view. They have supported a narrow interpretation of GATT Article XXI on the grounds that allowing a unilateral interpretation of what constitutes a Member's "national security" would open a breach in GATT rules through which a flood of protectionist trade restrictions could pass unchallenged. Prior to the United States' Section 232 action, GATT Article XXI had been invoked in only a very limited number of cases (recently involving actions by Russia and Ukraine).

The United States' restrictions and the panels' findings

In 2018, the Administration of President Trump imposed tariffs of 25% and 10%, respectively, under Section 232 of the 1962 Trade Expansion Act on imports of steel and aluminum from a number of WTO Members. Eight of those Members plus the EU and its member states challenged the tariffs through dispute settlement. The United States reached bilateral agreements with Canada and Mexico not to apply the tariffs in the context of the negotiation of the USMCA to replace the NAFTA, and in December 2021 the United States agreed to temporarily pause the tariffs on imports from the EU while the two worked on a "global arrangement on sustainable steel and aluminum" with like-minded countries that would target in particular imports from China. WTO dispute settlement panels requested by Russia and India on the measures have not yet concluded their work.

The four panels that reported last week have concluded that the tariffs violate the United States' obligations under the GATT, specifically by failing to provide Most-Favored-Nation (MFN) treatment under GATT Article I and by breaching the United States' levels of bound tariff in its schedule of concessions under GATT Article II. The panels rejected the claim of the United States that the WTO does not have jurisdiction to rule on measures for which a Member has invoked GATT Article XXI. They did not question *per se* the national security rationale for protecting steel, which the United States had claimed was necessary because of "global excess capacity" in the international metals market. However, the panels did conclude that they did not find "… that the measures at issue were taken in time of war or other emergency in international relations within the meaning of Article XXI(b)(iii) of the GATT 1994." The panels recommended that the United States bring its WTO-inconsistent measures into conformity with its WTO obligations.

[9] DS544, United States - Certain Measures on Steel and Aluminium Products, available at https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds544_e.htm.

[10] DS552, United States - Certain Measures on Steel and Aluminium Products, available at https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds552_e.htm.

[11] DS556, United States - Certain Measures on Steel and Aluminium Products, available at https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds556_e.htm.

[12] DS564, United States - Certain Measures on Steel and Aluminium Products, available at https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds564_e.htm.

Reaction of the United States

Immediately after the panel reports were made public, the US Trade Representative (USTR) issued a statement[13] that it "strongly rejects" the determinations made in the panels' and that it "does not intend" to remove the tariffs. The statement reads:

> The United States strongly rejects the flawed interpretation and conclusions in the World Trade Organization (WTO) Panel reports released today regarding challenges to the United States' Section 232 measures on steel and aluminum brought by China and others. The United States has held the clear and unequivocal position, for over 70 years, that issues of national security cannot be reviewed in WTO dispute settlement and the WTO has no authority to second-guess the ability of a WTO Member to respond to a wide-range of threats to its security.
>
> These WTO panel reports only reinforce the need to fundamentally reform the WTO dispute settlement system. The WTO has proven ineffective at stopping severe and persistent non-market excess capacity from [China] and others that is an existential threat to market-oriented steel and aluminum sectors and a threat to U.S. national security. The WTO now suggests that the United States too must stand idly by. The United States will not cede decision-making over its essential security to WTO panels.
>
> The Biden Administration is committed to preserving U.S. national security by ensuring the long-term viability of our steel and aluminum industries, and we do not intend to remove the Section 232 duties as a result of these disputes.

Outlook

The dispute settlement panels reports were issued after an unusually long, four-year delay caused in part by disruption to the WTO dispute settlement process due to the effects of the COVID-19 pandemic, but also by some key WTO Members advocating privately that time should be allowed for the Biden Administration to reverse the policy of President Trump and withdraw the tariffs before the panels concluded their work. That has not happened, and the Biden Administration's reaction now indicates that it endorses fully President Trump's policy in this case.

Under the WTO Dispute Settlement Understanding, the United States has 60 days to accept the panel findings or to lodge an appeal to challenge them. USTR has already stated that it does not accept the findings and, therefore, will not agree to them going forward for adoption to the Dispute Settlement Body (DSB). If the United States decides to appeal the panels' findings, formal discussion and adoption of the reports will be blocked in the absence of a functioning Appellate Body and the disputes will remain in limbo, adding to the growing list of other appeals that cannot go forward as long as the United States maintains its blockage on the appointment of new Appellate Body members.

In their initial reactions, Norway and Switzerland welcomed the panel findings as a rejection of protectionism and confirmation of the integrity of the WTO rules-based system. The panel findings may help to dissuade other WTO Members from misusing GATT Article XXI. However, while the principle of the rules-based system may have been confirmed, the reality is that this matter demonstrates the WTO no longer has the means to ensure the removal of restrictions that have been deemed to be inconsistent with its rules, at least not those imposed by its largest Member.

China Challenges US Export Restrictions on Computer Chips and Technology

On December 13, 2022, China's Ministry of Commerce announced that it had filed a request with the WTO for consultations with the United States over US controls imposed in October on exports of certain semiconductors and semiconductor manufacturing equipment to China. When introducing the export controls, the United States Commerce Department stated the controls were aimed at preventing "sensitive technologies with military

[13] Statement from USTR Spokesperson Adam Hodge, USTR, December 9, 2022 available at https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/december/statement-ustr-spokesperson-adam-hodge.

applications" from being acquired by China's military, intelligence and security services by restricting China's ability to buy and manufacture high-end chips with military applications and those used in supercomputing as well as stricter controls on the sale of semiconductor manufacturing equipment.

China accuses the United States of "obstructing normal international trade in products including chips and threatening the stability of the global industrial supply chain" and of violating WTO rules and engaging in "protectionist practices." The United States has responded that "… these targeted actions relate to national security and the WTO is not the appropriate forum to discuss issues related to national security." Reportedly, the United States is consulting with Japan and the Netherlands to restrict their own semiconductor trade with China.

The US measures

The precise scope of China's complaints has not yet been filed with the WTO. It could cover two complementary pieces of recent US legislation, both of which address, *inter alia*, US national security and foreign policy concerns:

- Elements of the United States "CHIPS and Science Act" that President Biden signed into law in August. These elements prohibit companies that are beneficiaries of the CHIPS funding and investment tax credit from expanding advanced semiconductor manufacturing in China for a period of ten years; and
- Rules of the US Department of Commerce's Bureau of Industry and Security (BIS) that were finalized in October. These amend the Export Administration Regulations to implement export controls on advanced computing integrated circuits, computer commodities that contain these circuits, certain semiconductor manufacturing items, and items for supercomputer and semiconductor manufacturing end uses destined for certain Chinese firms.

Outlook

China's formal request for consultations with the United States under the WTO's Dispute Settlement Understanding (DSU) is a necessary first step before China can proceed to request dispute settlement proceedings against the United States. The DSU rules provide for a consultation period of 60 days, at the end of which if China is not satisfied with the results, China can request the Dispute Settlement Body (DSB) to establish a dispute panel to examine its complaint. The United States could block the first request for a panel by China, but a dispute panel would be established automatically by the DSB in response to a second request by China.

China's request followed immediately after four WTO panels rejected the "national security" justification of GATT Article XXI used by the United States to defend its Section 232 tariffs on steel and aluminum, and in the process, rejected the argument of the United States that the WTO had no authority to rule on matters of national security. China was the complainant in one of those panels. The United States has said that it "strongly rejects" those panel rulings, which it considers to be flawed, and that it will not remove the Section 232 tariffs.

The outlook at present is unclear. In the event that a dispute panel is established by the DSB, the panel will be asked almost certainly to address the questions of whether it has the authority to adjudicate on matters of national security under GATT Article XXI and whether and how the provisions of that Article apply to this particular case. The recent findings of the Section 232 panels mentioned above do not establish precedent on those issues under WTO case law. Furthermore, an eventual panel finding in favor of China could be rejected out of hand or sent to appeal by the United States, which in the absence of a functioning Appellate Body, would leave this dispute in legal limbo and unresolved, possibly for years.

WTO Rules Against Indonesia's Export Restriction of Nickel

On November 30, 2022, the WTO released the report of the dispute settlement panel that examined the EU legal challenge to Indonesia's measures restricting the export of nickel ore (DS592).[14] The measures have been in place since 2014 in support of Indonesia's policy of diversifying away from the export of primary commodities by developing its own "sustainable" minerals processing industry. The panel rejected Indonesia's legal defense that the measures in question were domestic measures, not border measures, and that they were necessary to address nickel ore shortages and to attain environmental goals by reducing mining activities. The panel concluded by recommending that Indonesia bring its measures into conformity with WTO rules.

Once the panel report has been formally tabled in the DSB, probably in January or February 2023, Indonesia will have 60 days to consider whether it intends to allow the panel report to be adopted by the DSB or to appeal the panel findings. Indonesia has not signed on to an *ad hoc* appeal mechanism with the European Union under Article 25 of the Dispute Settlement Understanding, nor is it party to the alternative appeals mechanism devised by the EU and a number of other WTO Members once the WTO Appellate Body was no longer able to function in December 2019 – the Multi-Party Interim Appeal Arbitration Arrangement (MPIA).

An appeal by Indonesia to the Appellate Body would effectively send this dispute into a legal limbo" where no action could be taken on it by the DSB and it would add to the 10 other appeals "into the void" that have already been made by WTO Members. In such a case, the EU might trigger the new rules of its amended "Enforcement Regulation" that allows it to enact remedial measures (such as customs duties) against countries that it considers are obstructing its legal rights in international disputes at the WTO or in bilateral free trade agreement disputes.

An opportunity to discuss this matter bilaterally will be presented at the next round of talks between the EU and Indonesia on the negotiation of their FTA, which has been scheduled to take place soon. The EU has typically required all of its FTA partners to eliminate export restrictions on raw materials.

The dispute panel findings

The dispute panel examined the EU's complaint that Indonesia's measures violated GATT Article XI ("General Elimination of Quantitative Restrictions") and Indonesia's defense that its measures, even if they did violate Article XI, were permitted under GATT Article XX ("General Exceptions").

With regard to GATT Article XI.1, the panel concurred with the EU that the measures in question constituted a prohibition or restriction on the exportation or sale for export of products from Indonesia and that the prohibition was made effective through "quotas, import or export licenses or other measures." It rejected Indonesia's claim that the measures were domestic measures, not border measures, since Indonesia's legislation referred explicitly to the impact of the measures on exports. The panel concluded that there was insufficient evidence of shortages of nickel ore to support Indonesia's claim that the measures could be justified under GATT Article XI.2(a) as measures that were essential and were applied temporarily to prevent or relieve critical shortages.

With regard to GATT Article XX, the panel examined Indonesia's claim under Article XX(d) that its measures were "necessary to secure compliance with [its environmental] laws or regulations which are not inconsistent with [GATT provisions]". The panel focused on the requirement in Article XX(d) that the measures must be "necessary." It concluded by rejecting Indonesia's claim, because in the panel's view there were "reasonably available" alternative means for Indonesia to achieve its policy goals that were less "less trade restrictive," for example by enforcing environmental standards on its nickel mining industry, notably through the certification of sustainably produced ores.

[14] Indonesia: Measures Relating to Raw Materials, available at https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds592_e.htm