

US & Multilateral Trade and Policy Developments

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US General Trade Policy Highlights

US Congress Approves Legislation to Reform Duty Suspension Process

On May 10, 2016, the US Congress approved the *American Manufacturing Competitiveness Act of 2016* (AMCA)¹, which will modify congressional procedures for developing miscellaneous tariff bills (MTBs) in an effort to revive the long-stalled MTB process. President Obama is expected to sign the measure into law in the coming days. The enactment of the AMCA will set the stage for US importers to begin submitting duty suspension petitions to the US International Trade Commission (ITC) by October of 2016, and could result in congressional consideration of an MTB in 2017.

Background

Since the 1980s, the US Congress periodically has approved MTBs, which temporarily suspend import duties on certain goods such as chemicals, raw materials, and other manufacturing inputs in response to requests from the private sector. Goods are eligible for duty suspensions under the MTB if, *inter alia*: (i) they are not produced in the United States; or (ii) the producer(s) of the domestic like product do not object to the duty suspension. Congress has also required that each duty suspension included in the MTB must not cause an estimated loss in US tariff revenues of more than USD 500,000 per calendar year.

The objective of the MTB is to reduce input costs for domestic manufacturers of downstream products, thereby improving their competitiveness. However, due to the aforementioned limitations on product coverage and the revenue requirements, the overall tariff relief provided by the MTB is typically small relative to total US tariff revenues. The most recent MTB, which expired at the end of 2012, provided an estimated total USD 748 million in annual tariff relief.

Although MTBs historically have enjoyed strong bipartisan support, Congress has not approved an MTB since it enacted the *Manufacturing Enhancement Act of 2010*, which put in place duty suspensions that expired on December 31, 2012. The subsequent delay in approving a new MTB is primarily the result of disagreement among congressional Republicans as to whether the duty suspensions constitute “earmarks” (*i.e.*, congressionally-directed spending that benefits a very limited number of entities), potentially violating an earmark ban put in place by congressional Republicans in 2010.

New MTB Process

The AMCA modifies the MTB process in a manner designed to ensure that the duty suspensions do not violate congressional earmark rules. The most significant change to the process is a requirement that companies submit their duty suspension requests directly to the ITC for review. By contrast, under prior congressional practice, companies petitioned members of Congress to introduce stand-alone duty suspension bills which were then combined into a package and reviewed by the ITC. The AMCA otherwise retains most features of the prior MTB process, such as the limitations on product coverage, the USD 500,000 limit on annual tariff relief for each duty suspension, and the three-year time limit on duty suspensions.

The new MTB process as set forth in the AMCA may be summarized as follows:

- **Submission of petitions.** Before October 15, 2016 (and again before October 15, 2019) the ITC must publish a *Federal Register* notice initiating a 60-day period during which it will accept petitions for duty suspensions. The ITC must publish these petitions on its website within 30 days after the expiration of the 60-day petition window. The ITC will then accept public comments on the petitions for 45 days after the date on which the petitions are made public.

¹ Click [here](#) for a copy of the AMCA.

- **ITC analysis.** Within 150 days after publishing the petitions on its website, the ITC must submit a preliminary report on the petitions to the House Ways and Means and Senate Finance Committees. The report will assess whether each proposed duty suspension meets certain statutory requirements, including whether they involve products that are produced in the United States and whether producers of the domestic like products object to the duty suspensions. Based on these assessments the ITC report will recommend whether Congress should include each proposed duty suspension in the MTB. The ITC will then have an additional 60 days to provide a final report that takes into account congressional feedback and determines, *inter alia*, whether each proposed duty suspension would reduce US tariff revenues by more than USD 500,000 per year.
- **Congressional review.** The appropriate congressional committees will examine the ITC's recommendations and draft an MTB proposal. In so doing, the committees may exclude certain duty suspensions from the MTB for various reasons (e.g., if a Member of Congress objects or if the relevant article is produced domestically). Congress also must adjust the amount of any proposed duty suspension so that the estimated loss in tariff revenues from any single duty suspension does not exceed USD 500,000 per calendar year. The resulting MTB will then be considered under normal legislative procedures.

Given that the Senate and the House of Representatives approved the AMCA by unanimous and near-unanimous votes, respectively, the bill appears to have resolved the earmark-related concerns that have delayed the MTB process for several years. Pursuant to the AMCA timelines, the ITC is scheduled to provide Congress with its final recommendations for the MTB no later than mid-August of 2017, providing an opportunity for a congressional vote on an MTB in late 2017. This process and the resulting vote on an MTB could occur sooner, however, if the ITC completes one or all of the above procedures before the statutory deadlines.

United States Further Liberalizes Burma Sanctions

On May 17, 2016, the US Department of Treasury's Office of Foreign Assets Control (OFAC) further eased the US sanctions on Burma by issuing and expanding general licenses and removing certain parties from the Specially Designated Nationals and Blocked Persons List (SDN List).

The general licenses are included as amendments to the Burmese Sanctions Regulations (BSR) and took effect on May 18, 2016. The authorizations in the general licenses are intended to support trade, facilitate the movement of goods, allow certain transactions related to US individuals and allow most transactions involving designated financial institutions. The delisting of seven state-owned enterprises and three state-owned banks from the SDN List is effective as of May 17, 2016. Certain sanctions remain in place to incentivize further democratic reforms and maintain pressure on targeted Burmese parties and the military. Consistent with the objective of these remaining sanctions, on May 17, 2016, OFAC identified as blocked and added to the SDN List six companies due to their ownership by SDNs.

Amendments to OFAC's Burmese Sanctions Regulations

Financial Institutions

Effective May 18, 2016, OFAC revised an existing general license that authorizes US persons to engage in most transactions involving designated financial institutions in Burma, including opening and maintaining accounts and conducting a range of other financial services, subject to certain limitations. This authorization, which previously existed for Asia Green Development Bank and Ayeyarwady Bank, has been extended to two other designated financial institutions in Burma, Innwa Bank and Myawaddy Bank. However, unless specifically unblocked, all property and interests in property blocked as of May 17, 2016 remain blocked.

US persons are not prohibited from engaging in transactions with unblocked Burmese banks. This includes transferring funds to or from, opening and maintaining an account at and entering into new investment with, an unblocked Burmese bank. As a result of the delisting actions on May 17, 2016, Myanma Economic Bank, Myanma Foreign Trade Bank and Myanma Investment and Commercial Bank are no longer blocked. Myanma Economic Bank

and Myanma Investment and Commercial Bank were previously included on the general license authorizing transactions with certain designated Burmese financial institutions.

Trade-Related Authorizations

Effective May 18, 2016, OFAC has incorporated previously-issued General License 20 into the BSR. This authorization permits transactions involving blocked parties ordinarily incident to the exportation to or from Burma of goods, technology or non-financial services, provided the exportation is not to, from, or on behalf of a blocked party. This authorization was intended to address issues where certain infrastructure, such as ports and toll roads, were owned by blocked parties and were therefore off limits for otherwise authorized activity.

As part of the incorporation into the BSR, OFAC also expanded this authorization, which now further permits transactions involving blocked parties that are ordinarily incident to the movement of goods within Burma, provided the goods are not being sent to, from or on behalf of a blocked party. This includes transactions such as transporting goods from a warehouse in Burma for further distribution to retail outlets in Burma.

Personal Transactions for US Persons

In the BSR, effective May 18, 2016, OFAC further authorized personal transactions related to US persons residing in Burma. This authorization permits US persons to undertake transactions otherwise prohibited under the BSR that are ordinarily incident to US person individuals residing in Burma (such as paying rent and other living expenses and buying goods and services for personal use). This complements the existing exemption in the BSR for travel to or from Burma and should increase opportunities for direct engagement between US and Burmese persons.

Changes to SDN List

SDN List Removals

As of May 17, 2016, OFAC removed seven state-owned enterprises and three state-owned banks from the SDN List, as follows:

State-Owned Enterprises	State-Owned Financial Institutions
Myanmar Timber Enterprise	Myanmar Economic Bank
Myanmar Pearl Enterprise	Myanmar Foreign Trade Bank
Myanmar Gem Enterprise	Myanmar Investment and Commercial Bank
No. 1 Mining Enterprise	
No. 2 Mining Enterprise	
No. 3 Mining Enterprise	
Co-Operative Export-Import Enterprise	

SDN List Additions

OFAC identified as blocked and added to the SDN List six companies that it determined are owned 50 percent or more by Steven Law or Asia World Co. Ltd., as follows: (i) Asia Mega Link Co., Ltd.; (ii) Asia Mega Link Services Co., Ltd.; (iii) Pioneer Aerodrome Services Co., Ltd.; (iv) Green Asia Services Co., Ltd.; (v) Global World Insurance Company Limited; and (vi) Shwe Nar Wah Company Limited.

Remaining Sanctions Targeting Burma

As a result of the May 17, 2016 actions, the remaining sanctions targeting Burma have been significantly reduced.

Generally, unless authorized or exempt, US persons remain prohibited from dealing with blocked persons, including persons on the SDN List, as well as any entity owned in the aggregate, directly or indirectly, 50 percent or more by one or more blocked parties. Despite the May 17 actions, a number of Burmese parties remain on the SDN List.

The BSR continue to prohibit the importation into the United States of any jadeite or rubies mined or extracted from Burma and any articles of jewelry containing jadeite or rubies mined or extracted from Burma.

Limited OFAC restrictions remain on dealings with the designated Burmese financial institutions covered by the partial authorization described above. First, transactions with such financial institutions still may not involve other blocked parties not included in the general license. US persons also remain prohibited from engaging in new investment with or in such designated financial institutions. Finally, a prohibition remains on the exportation or reexportation of financial services in connection with the provision of security services, directly or indirectly, to the Burmese Ministry of Defense, any state or non-state armed group or any entity 50 percent or greater owned by such parties.

The reporting requirement also remains in effect for US persons engaging in investment in Burma, which currently applies to new investment exceeding USD 500,000. The Department of State is proposing to change the reporting threshold from USD 500,000 to USD 5,000,000. The proposed change is currently undergoing administrative review. In addition, US persons undertaking any new investment pursuant to an agreement, or pursuant to the exercise of rights under such an agreement, that is entered into with Myanma Oil and Gas Enterprise (MOGE) will continue to have an obligation to notify the Department of State of such investment.

Petitions and Investigations Highlights

US Department of Commerce Initiates AD/CVD Investigations of Carbon and Alloy Steel Cut-to-Length Plate from Twelve Countries

On April 29, 2016, the US Department of Commerce (DOC) announced the initiation of (i) antidumping duty (AD) investigations of carbon and alloy steel cut-to-length (CTL) plate from Austria, Belgium, Brazil, China, France, Germany, Italy, Japan, Korea, South Africa, Taiwan, and Turkey; and (ii) countervailing duty (CVD) investigations of imports of the same from Brazil, China, and Korea. DOC initiated the investigations in response to a petition filed by ArcelorMittal USA LLC (IL), Nucor Corporation (NC) and SSAB Enterprises, LLC (IL).²

The dumping margins alleged in the petition are as follows:

Country	Dumping Margin
Austria	35.50 to 121.90 percent
Belgium	51.78 percent
Brazil	74.52 percent
China	67.93 – 68.27 percent
France	28.43 – 148.02 percent
Germany	42.59 – 174.03 percent
Italy	130.63 percent
Japan	179.2 percent
Korea	44.70 – 248.64 percent
South Africa	81.29 – 94.14 percent

² Click [here](#) for the DOC fact sheet on the investigations.

Country	Dumping Margin
Taiwan	8.30 – 77.13 percent
Turkey	34.03 – 50.00 percent

The products covered by these investigations are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other nonmetallic substances (cut-to-length plate). Subject merchandise includes plate that is produced by being cut-to-length from coils or from other discrete length plate and plate that is rolled or forged into a discrete length. The products subject to the investigations are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, 7226.91.5000.

Imports of the subject merchandise may also enter the United States under the following HTSUS item numbers: 7208.40.6060, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.19.1500, 7211.19.2000, 7211.19.4500, 7211.19.6000, 7211.19.7590, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.10.0000, 7214.30.0010, 7214.30.0080, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7225.11.0000, 7225.19.0000, 7225.40.5110, 7225.40.5130, 7225.40.5160, 7225.40.7000, 7225.99.0010, 7225.99.0090, 7206.11.1000, 7226.11.9060, 7229.19.1000, 7226.19.9000, 7226.91.0500, 7226.91.1530, 7226.91.1560, 7226.91.2530, 7226.91.2560, 7226.91.7000, 7226.91.8000, and 7226.99.0180.

The US International Trade Commission (ITC) is scheduled to make its preliminary injury determination on or before May 23, 2016. If the ITC determines that there is a reasonable indication that imports of CTL plate from the investigated countries materially injure or threaten material injury to the domestic industry, the investigations will continue. DOC will then be scheduled to make its preliminary CVD determinations in July 2016 and its preliminary AD determinations in September 2016, unless the statutory deadlines are extended.

According to DOC, imports of CTL plate from Austria, Belgium, Brazil, China, France, Germany, Italy, Japan, Korea, South Africa, Taiwan, and Turkey were valued at an estimated USD 14.2 million, 19.8 million, 26.7 million, 70.3 million, 179 million, 196.2 million, 37 million, 54.9 million, 210 million, 9.9 million, 21 million, and 12.2 million in 2015, respectively.

US Department of Commerce Issues Affirmative Preliminary Determination in AD Investigation of Welded Stainless Pressure Pipe from India

On May 4, 2016, the US Department of Commerce (DOC) announced its affirmative preliminary determination in the antidumping duty (AD) investigation of welded stainless pressure pipe from India. DOC initiated the investigation in October 2015 in response to a petition filed by Bristol Metals, LLC; Felker Brothers Corporation; Outokumpu Stainless Pipe, Inc.; and Marcegaglia USA Inc.³

In its investigation, DOC preliminarily determined that imports of the subject merchandise from India were sold in the United States at dumping margins ranging from 1.91 to 18.90 percent. The subject imports are normally classified in subheadings 7306.40.5005, 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085 of the Harmonized Tariff Schedule of the United States (HTSUS), and may also enter under HTSUS subheadings 7306.40.1010, 7306.40.1015, 7306.40.5042, 7306.40.5044, 7306.40.5080, and 7306.40.5090.

DOC is scheduled to announce its final determination on September 17, 2016, unless the statutory deadline is extended. If DOC makes an affirmative final determination, and the US International Trade Commission (ITC) makes an affirmative final determination that imports of the subject merchandise materially injure or threaten material injury to the domestic industry, DOC will issue an AD order.

³ Click [here](#) for the DOC fact sheet on the investigation.

US Department of Commerce Issues Affirmative Final Determinations in AD/CVD Investigations of Corrosion-Resistant Steel Products

On May 25, 2016, the US Department of Commerce (DOC) announced (i) its affirmative final determinations in the antidumping duty (AD) investigations of certain corrosion-resistant steel products (CORE) from China, India, Italy, Korea, and Taiwan; (ii) its affirmative final determinations in the countervailing duty (CVD) investigations concerning imports of the same from China, India, Italy, and Korea; and (iii) its negative final determinations in the CVD investigation of imports of the same from Taiwan.⁴

The products subject to the investigations are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. In its investigations of the subject merchandise from China, India, Italy, Korea, and Taiwan, DOC assigned final dumping margins and subsidy rates in the following amounts:

Country	Dumping Margin
China	209.97 percent
India	3.05 – 4.44 percent
Italy	12.63 – 92.12 percent
Korea	8.75 – 47.80 percent
Taiwan	3.77 percent

Country	Subsidy Rate
China	39.05 – 241.07 percent
India	8.00 – 29.46 percent
Italy	0.07 – 38.51 percent
Korea	0.72 – 1.19 percent
Taiwan	0.00 percent

The US International Trade Commission (ITC) is scheduled to make its final injury determinations by July 8, 2016. If the ITC makes affirmative final determinations that imports of the CORE from China, India, Italy, Korea, and/or Taiwan materially injure or threaten material injury to the domestic industry, DOC will issue AD and CVD orders.

US International Trade Commission Institutes Section 337 Investigation of Certain Carbon and Alloy Steel Products from China

On May 26, 2016, the US International Trade Commission (ITC) voted to institute an investigation under Section 337 of the *Tariff Act of 1930*, 19 U.S.C. § 1337, in the matter of carbon and alloy steel products from China. The ITC instituted the investigation in response to a complaint filed by the United States Steel Corporation ("US Steel") on April 26, 2016. The ITC's decision to institute an investigation in this case is significant due to the large number of respondents (which include most of China's major steel producers), the severity of the remedy sought by the complaint, and US Steel's allegations of antitrust violations and duty evasion – issues not typically of focus in the ITC's investigations under Section 337.

The complaint – which is unusual but not unprecedented – alleges that Chinese companies have engaged in the following "unfair" practices: (i) a conspiracy to fix prices and control output and export volumes; (ii) the misappropriation and use of US Steel's trade secrets; and (iii) the false designation of origin or manufacturer for the purpose of evading duties. The remedy sought by US Steel is a general exclusion order prohibiting the entry of all Chinese carbon and alloy steel products into the United States. US Steel also seeks (i) a limited exclusion order (which would only prohibit the entry of steel products supplied by firms that are respondents in the investigation), and (ii) a cease and desist order directing the respondents to cease their allegedly unfair actions. The ITC has identified forty steel producers and exporters as respondents in the investigation (see the ITC press release below for the full list of respondents).

Next Steps

⁴ Click [here](#) for the DOC fact sheet on the investigations.

The ITC's Chief Administrative Law Judge will assign this investigation to one of the ITC's administrative law judges (ALJ), who will schedule and hold an evidentiary hearing. The ALJ will make an initial determination as to whether there is a violation of Section 337. The initial determination will be subject to review by the Commission.

Subsequently, pursuant to Section 337, the ITC will make its final determination "at the earliest practical time." While there is no statutory deadline for the ITC to complete the investigation, the ITC will, within 45 days after instituting the investigation, establish a target date for completing the investigation. The ITC historically has sought to complete most investigations in less than 15 months; however, complex investigations such as the current US Steel case can result in longer target dates.

If the ITC ultimately decides to issue a remedial order, the order will become effective when it is issued, and will become final within 60 days after it is issued unless it is disapproved for policy reasons by the President within that 60-day period. Given the upcoming US elections and the likely timeframe for completion of the ITC's investigation of carbon and alloy steel products from China, the responsibility for reviewing any resulting remedial order will likely fall to the next US President.

Department of Commerce Issues Affirmative Final Determinations in AD/CVD Investigations of Certain Cold-Rolled Steel Flat Products from China and Japan

On May 17, 2016, the US Department of Commerce (DOC) announced its affirmative final determinations in the antidumping duty (AD) investigations of certain cold-rolled steel flat products from China and Japan, and its affirmative final determination in the countervailing duty (CVD) investigation concerning imports of the same from China (please refer to the W&C US Trade Alert dated December 17, 2015.) DOC has postponed its final determinations in (i) the AD investigation of certain cold-rolled steel flat products from the United Kingdom; and (ii) the AD/CVD investigations of imports of the same from Brazil, India, Korea, and Russia. DOC is scheduled to issue its final determinations in these investigations on or around July 13, 2016.

In its investigations of the subject merchandise from China and Japan, DOC assigned final dumping margins and subsidy rates in the following amounts (all of which are based on adverse facts available):

Country	Producer/Exporter	Dumping Margin
China	China-Wide Rate	265.79 percent
Japan	JFE Steel Corporation	71.35 percent
	Nippon Steel & Sumitomo Metal Corporation	71.35 percent
	All Others	71.35 percent

Country	Producer/Exporter	Subsidy Rate
China	Angang Group Hong Kong Co., Ltd	256.44 percent
	Benxi Iron and Steel (Group) Special Steel Co., Ltd.	256.44 percent
	Qian'an Golden Point Trading Co., Ltd.	256.44 percent
	All Others	256.44 percent

The US International Trade Commission (ITC) is scheduled to make its final injury determinations in the AD/CVD investigations of cold-rolled steel from China and Japan by June 30, 2016. If the ITC makes affirmative final determinations that imports of the subject merchandise from China and/or Japan materially injure or threaten material injury to the domestic industry, DOC will issue AD and CVD orders.

Click [here](#) for the DOC fact sheet on the investigations.

Multilateral Policy Highlights

EU Trade Commissioner Announces New EU Negotiating Objectives for the WTO

On April 26, 2016, EU Trade Commissioner Cecilia Malmström provided the first comprehensive statement of the European Union's negotiating objectives for the World Trade Organization (WTO) since the Nairobi Ministerial Conference in December 2015.⁵ The new EU approach opens the door to plurilateral negotiations towards sectoral market access agreements for goods, as well as negotiations on new issues such as state-owned enterprises (SOEs) and local content requirements. This approach brings the EU into closer alignment with the United States, which has expressed interest in negotiating new rules on similar issues and has favored regional and plurilateral solutions (e.g., TPP, TTIP, TiSA and ITA II) when faced with deadlock in the WTO.

The EU sets out three categories of issues that should determine negotiating directions for new rules:

- Three that the EU refers to as "big issues" are (i) domestic support to agriculture, (ii) digital trade, and (iii) investment. According to the EU, these issues "appear to have some support among the WTO membership".
- A second group of eight issues that the EU says "appear to have some support, but are smaller in terms of impact" covers (i) fisheries subsidies, (ii) food security and public stockholding, (iii) domestic regulation for services, (iv) good regulatory practices and transparency for technical barriers to trade, (v) subsidies for manufactured goods, (vi) export restrictions on energy and raw materials, (vii) local content requirements, and (viii) SOEs. Of these, items (i) to (v) are outstanding Doha issues, whereas items (vi) to (viii) are new issues.
- The third group of issues, which the EU says can only be negotiated plurilaterally "since there appears to be no consensus among WTO Members", covers (i) sectoral market access agreements for goods, of which the EU cites specifically an agreement on chemicals, and (ii) more on trade facilitation.

The EU negotiating objectives are designed for a post-Doha world, confirming the EU's position at the Nairobi Conference when it joined some other Members, including the United States, in declaring its refusal to continue WTO negotiations on the basis of the Doha mandate. The EU acknowledges that many of the issues within the Doha Round are as relevant today as they were in 2001, and declares its preference for negotiating multilateral agreements on these "old" issues as well as on "new" ones that have emerged since 2001 as the world economy has changed. However, the EU states: "If it's a choice between making progress with a smaller number of partners or no progress at all, then we will choose to move forward – plurilaterally". Plurilateral solutions that can be applied on the MFN basis to all WTO Members are preferable, it says, since they are open to others to join and they can use WTO dispute settlement, but if that route is blocked within the WTO then the EU does not rule out the possibility of "closed" plurilateral agreements that would operate outside the WTO.

The EU proposes an agenda for negotiations in the WTO that emphasizes rule-making. Enforceable rules are the strength of the WTO, it says, and it points in that regard to dispute settlement cases that it has brought against "protectionist policies in countries like China and Russia". The EU is willing to discuss market access in the WTO if justified, but it says that the immediate attention should be on rulemaking, especially in the new areas where no global rules exist.

The EU acknowledges that there is no consensus among WTO Members to begin negotiations on new issues for the time being. With many WTO Members continuing to insist that the original Doha Mandate is the only legitimate agenda for negotiations, finding consensus to negotiate new issues is likely to be time-consuming and on at least some of the issues listed by the EU it could prove to be impossible. Nonetheless, during this "period of reflection" on the way forward in the WTO, these EU proposals are significant. They will find support among some other WTO Members, including the United States which has indicated its interest at various times in negotiating new rules on all of these issues, although not necessarily in the WTO. It is unclear how much traction the EU will be able to gain with

⁵ Click [here](#) for a copy of Commissioner Malmström's statement.

its new strategy, but the fact that it will now be more closely aligned to the approach of the United States will mean that it cannot easily be dismissed.

China Makes Proposal to Prevent “Free Riding” in Future WTO Plurilateral Agreements

On May 17, 2016, China circulated a proposal to prevent “free riding” in further plurilateral agreements negotiated in the World Trade Organization (WTO). The proposal would limit the scope for “free riding” of non-parties by requiring that any WTO Member that accounts for 1 percent of world trade in products covered by an agreement should either agree to join the agreement or lose its most-favored nation (MFN) rights to share in the benefits. China’s proposal is of particular relevance given that plurilateral initiatives are likely to be the most dynamic area of WTO negotiations in the next few years on market access, and potentially on rule-making as well.

China’s proposal was made at the Asia-Pacific Economic Cooperation (APEC) meeting in Peru. It builds on proposals that China made recently in the negotiations on the Environmental Goods Agreement (EGA) to limit free-riding by incorporating a “snapback” provision that would permit parties to withdraw from the EGA at any point when the share of world trade covered by the agreement falls below a certain threshold, which China provisionally suggested should be at least 70 percent. The “snapback” proposal has been rejected by several other participants in the EGA negotiations, including the United States and the EU. Nonetheless, China introduced it again at the APEC meeting alongside its new proposal to deny MFN benefits to non-parties to a plurilateral agreement, which apparently is aimed at achieving a similar result.

Plurilateral agreements have regained prominence in the WTO and are favored by a significant number of Members as a way of moving forward from the deadlock of the Doha Round. China is a party to the enhanced Information Technology Agreement (ITA II) and has participated in the EGA negotiations, and since the Nairobi Ministerial meeting it has expressed its willingness to participate in other plurilateral initiatives as well, for example on sectoral market access agreements such as chemicals. Key delegations, such as the United States and the EU, have said that their preferred approach is to build each plurilateral agreement within the multilateral framework of the WTO by extending the benefits unconditionally on the MFN basis to all WTO Members, whether or not they are parties to the plurilateral agreement. For example, the EU, in its recent statement on trade negotiating objectives, stated that plurilateral solutions that can be applied on the MFN basis to all WTO Members are preferable since they are open to others to join and they can use WTO dispute settlement.

China’s concern is that if plurilateral agreements start to proliferate, but without the participation of some large producers (such as Brazil, India and Indonesia in the case of the EGA), China would gain only limited reciprocal market access from the negotiations yet it would lose protection for its own producers against imports from non-parties in its domestic market. That concern is probably shared by other Members as well. The EU has stated that if plurilateral agreements applied on the MFN basis were to be blocked, then the EU does not rule out the possibility of “closed” plurilateral agreements that would operate outside the WTO. There is precedent for “closed” agreements under the umbrella of the WTO in the form of the Government Procurement Agreement, whose benefits apply only to signatories, but India and others have said since the Nairobi Ministerial that they would not tolerate any more agreements of that kind being incorporated into the WTO framework, resourced by the WTO Secretariat and sharing other WTO facilities such as the dispute settlement mechanism.

China’s new proposal, to force Members supplying 1 percent or more of world trade to join a plurilateral agreement or to lose their MFN rights, would seem to be very difficult for most Members to accept. Large suppliers would be unlikely to sacrifice their MFN rights voluntarily, and small suppliers from low-income developing countries might view China’s approach as leading to their marginalization in, and potentially their effective exclusion from, further WTO negotiations even if they received MFN benefits from the results. If China does not show flexibility on the issue of free-riders, therefore, it could forestall any further attempts to negotiate at a plurilateral level or allow only for “closed” plurilateral agreements outside the multilateral framework, which the EU said it would not rule out.

China Pulls Back From Environmental Goods Agreement Negotiations

China appears to be pulling back from the negotiations on an Environmental Goods Agreement (EGA), making it less likely that the negotiations will be concluded in 2016. China's actions also could cast doubt over the prospects for starting plurilateral negotiations in the WTO on other sectors such as chemicals. The apparent hardening of China's approach to the EGA might be replicated in other negotiations, particularly its demands for far-reaching flexibilities on the scope of an eventual agreement and the time-scale for implementation, as well as China's approach to dealing with potential "free riders" in plurilateral negotiations.

At the 13th EGA negotiating round held during the week of April 18, China put forward several proposals indicating that it is pulling back from the negotiations. Following the round, the EU negotiator, Ambassador Marc Vanheukelen, publicly encouraged China to participate "actively and constructively" and said that the EU was ready to address whatever concerns China might have. However, the list of those concerns grew longer during the 13th round and it is difficult to see how they can be accommodated without undermining significantly the level of ambition of the EGA and reducing expectations about the worth of starting other sectoral negotiations to liberalize trade in manufactured goods more generally.

- **Product coverage.** An original list of 650 products that were proposed for liberalization when the negotiations were launched in 2014 was reduced to around 350 products earlier this year by the Chairman, Andrew Martin of the UK, for use as the working basis for further negotiations. Most participants submitted offers on the basis of that list of the liberalization that they were prepared to undertake, but China failed to do so and it indicated during the round that it could accept only a much reduced list, possibly of around 200 products, without specifying which products should be removed. It gave no indication of when it expects to submit its own offer.
- **Tariff elimination.** China stated during the round that it could not abide by the original mandate agreed on by participants in Davos in 2014 that all tariffs on EGA products should be eliminated. Instead, China proposed that the aim of the EGA should be to reduce tariffs to 5 percent or less, which is the much-less-ambitious formula that was used in the 2012 APEC environmental goods agreement.
- **Phase-out periods.** The United States had proposed that the EGA should adopt the same phase-out periods that were used for the enhanced Information Technology Agreement (ITA II): tariffs would be eliminated at the time of entry into force, or after three years, after five years and after seven years, with the seven-year period to be reserved only for exceptionally sensitive products. China stated during the round that it would want considerably more flexibility than that, including more than seven years for some products and no deadline at all for some others.
- **Free riders.** China repeated its demand to have a "snap-back" provision incorporated in the EGA to prevent non-participating countries from free-riding on the most-favored nation (MFN) tariff cuts made by EGA participants. China's proposal is that EGA participants should be allowed to withdraw the EGA concessions that they make and to reinstate tariffs if the percentage of world trade in products covered by EGA participants were to fall below 70 percent and any non-participating country were to account for at least 3 percent of world trade in covered products.

The United States and the European Union did not react formally to China's list of concerns during the round; however, they are unlikely to agree to revisit the mandate for the total elimination of tariffs or to consider the introduction of a "snap-back" provision which would undermine the predictability of the EGA. EU Trade Commissioner Cecilia Malmstrom noted this state of affairs in a May 4 statement in which she asserted that China "is not yet fully on board" with the EGA.

The EGA negotiations appear, therefore, to have reached an uncertain stage. EGA participants have agreed that their next round of negotiations will take place during the week of June 20, ahead of the OECD meeting when trade Ministers could review the status of the EGA negotiations. However, that would make it unlikely that the negotiations could be concluded this year, particularly in light of the uncertain effect that the United States presidential election in November might have on them.

OECD Trade Ministers to Discuss Potential Outcomes for 11th WTO Ministerial Conference

On June 1, 2016, a group of OECD Trade Ministers will meet in Paris, France, where they are expected to focus on potential outcomes for the 11th WTO Ministerial Conference (MC11) in December 2017. The United States and other key delegations have abandoned attempts to advance the Doha Round negotiations on a broad front, but they have signaled that they will seek to conclude new deals on fragments of the Doha Round that seem most amenable to being agreed. A strong candidate for MC11 is expected to be an agreement to discipline fisheries subsidies, and another candidate is a potential agreement on stronger transparency rules on Regional Trade Agreements (RTAs).

Australia will chair the OECD meeting of Trade Ministers. In keeping with WTO Director-General Roberto Azevedo's recent exhortation to delegations to "move from reflection to action", it is expected that Australia will try to nail down agreement to move ahead with a small number of deliverables for MC11 and try to rule out attempts to negotiate on issues for which proponents can demonstrate only limited interest or support among WTO Members or on which strong opposition exists. This is likely to rule out further negotiations before MC11 on anti-dumping. Japan is expected to re-submit at the OECD meeting the proposal it tabled before the Nairobi Conference in 2015 to clarify and strengthen the transparency provisions of the Anti-Dumping Agreement. However, some Members are reluctant to open up negotiations in this area, and others, including members of the group of "Friends of Antidumping Negotiations" (FANs), consider it to be a low priority for the time being.

The three strongest candidates for possible agreements at MC11 are as follows:

Fisheries subsidies. The "Friends of Fish" group, led by New Zealand, is expected to re-submit the proposal that it tabled at the Nairobi Ministerial Conference. That proposal had relatively strong support in Nairobi, although not enough at the time to push past opposition from countries such as China, Korea and Taiwan. Since Nairobi, the United States has signaled that it considers this issue a priority for MC11 and the European Union has taken a more pro-active position in favor of an agreement than it did before Nairobi.

Regional Trade Agreements. The Transparency Mechanism on RTAs has been in place on a temporary basis since 2006. In Nairobi, WTO Ministers agreed "... to work towards the transformation of the current provisional Transparency Mechanism into a permanent mechanism in accordance with the General Council Decision of 14 December 2006, without prejudice to questions related to notification requirements". The provisional Transparency Mechanism generally is considered to have functioned well, and only minor changes to the text of the Mechanism are likely to be necessary before it could be confirmed as a permanent WTO instrument. However, an issue that has been undecided since 2006, because of disagreement among key Members, is whether an RTA involving developing countries should be notified, and subsequently examined in the WTO, under the Enabling Clause or under GATT Article XXIV. The United States and the European Union are expected to press for acceptance by advanced developing countries that the stricter provisions of GATT Article XXIV are more appropriate disciplines to apply to RTAs in which they are involved.

Food security. India and the G-33 Group of developing country food importers have pressed for three years to be given a permanent exemption from the Agreement on Agriculture to allow domestic subsidies to be paid to purchase crops from farmers for public stockpiling for food security purposes. The point was conceded in principle already by the United States and the European Union at the Bali Ministerial Conference in 2013, and a temporary exemption has been in place since then. Before agreeing to make the exemption permanent, the United States, the European Union and other food exporting countries are demanding a formal assurance that food stocks procured in this way for security purposes would not be exported where they could weaken food prices on world markets. India and the G-33 have been unwilling, so far, to provide such an assurance but there are high expectations that a formula can be found before MC11 that will satisfy all Members.

Other issues that might be raised at the OECD meeting of Trade Ministers are attempts to complete the Environmental Goods Agreement (EGA), which China appears to be delaying, and the status of the negotiations on the Trade in Services Agreement (TiSA), which has not been proceeding as smoothly as had been hoped. The run-up to the end-of-the-year elections in the United States is casting some confusion over all ongoing negotiations

involving the United States (including TiSA and the Trans-Atlantic Trade and Investment Partnership (TTIP)), and at the OECD the United States is likely to be asked to clarify what it believes to be the prospects for these negotiations.

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