

US & Multilateral Trade Policy Developments

Japan External Trade Organization

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US General Trade Policy Highlights

Public Comments Reveal Divergent Views on Causes of U.S. Bilateral Trade Deficits

From April 17 to May 18, 2017, the Office of the U.S. Trade Representative (USTR) and the U.S. Department of Commerce gathered public comments to inform the Trump Administration's forthcoming "Omnibus Report on Significant Trade Deficits".¹ Pursuant to President Trump's Executive Order of March 31, 2017, USTR and Commerce identified thirteen countries with which the United States had a significant trade deficit in goods in 2016 (Canada, China, the European Union, India, Indonesia, Japan, Korea, Malaysia, Mexico, Switzerland, Taiwan, Thailand, and Vietnam) and sought information on the causes of these bilateral trade deficits – including whether trading partners directly or indirectly discriminate against U.S. products or producers, and how deficits affect the defense industrial base, employment and wage growth, and national security.

In total, 156 public comments were submitted to USTR and Commerce to inform the Omnibus Report. Among the commentators were U.S. companies and industry groups, foreign industries and governments, think tanks, and economists. The positions taken in the comments varied widely, reflecting the diverse range of viewpoints among U.S. companies and industries regarding the "status quo" in U.S. trade policy. Indeed, while many commentators applauded President Trump's efforts to address the trade deficit and unfair trading practices, others were more supportive of existing trading arrangements and questioned whether deficits truly indicate unhealthy trade relationships. One common theme, however, was widespread support for removing foreign barriers to trade and negotiating improved free trade agreements. We summarize the main issues raised in the comments below.

U.S. Industry Groups

Sixty-one industry groups submitted comments. Most represented industries in the agriculture or manufacturing sectors, ranging from producers of steel and soybeans to clothing and wine. These industry groups held sharply divergent opinions on both the scope of the Report and the drivers and effects of the trade deficit. However, there was a general consensus that barriers to trade imposed by foreign governments are a major challenge for domestic producers.

At least fourteen comments raised concerns about the scope of the Report, arguing that services, as well as investment, consumption, and savings should be included. Some suggested that bilateral trade deficits are not inherently problematic, but are a "sign of a perfectly functioning trade relationship," reflecting the fact that the U.S. is a consumption-driven market economy, that the U.S. dollar serves as a global reserve currency, and that the U.S. contributes to global value chains in ways not reflected in trade data. Others disagreed, arguing that persistent trade deficits are an indication of dysfunctional trade policy.

Whether or not they agreed with the framing, almost all groups argued that barriers to trade are a major challenge for their industries, and not just where the U.S. currently has a trade deficit. For instance, some industry groups representing agricultural sectors that run large trade surpluses nonetheless complained of persistent trade barriers abroad. Others highlighted hostile regulatory environments overseas as a challenge for exporters. China attracted the most criticism followed closely by Mexico, and none of the countries in the scope of the report escaped notice.

The diverse positions taken by industry groups may reflect the disparate impact that trade has had on different sectors. Producers who enjoy a trade surplus (in the soybean industry, for example) described the current regime as "an American success story." Others, such as fresh tomato producers who have lost market share to imports, were more likely to seek aggressive reform. Indeed, many groups argued the trade deficit causes loss of U.S. jobs, while some defense suppliers predicted national security threats due to loss of knowledge, innovation, and production capacity. However, some also feared that if the United States does not lead efforts to liberalize trade, other nations

¹ An archive of the public comments may be viewed [here](#).

will form agreements that disadvantage U.S. producers. Some industries, such as the poultry industry, also warned that aggressive use of trade restrictions could spark retaliation from foreign governments, arguing that “a rules-based trading system and free trade agreements, while not always perfect, are highly preferable because they result more often in cooperative and predictable trade relations.”

Business Councils and Chambers of Commerce

Eight organizations representing U.S. businesses with interests in foreign countries examined foreign government policies that allegedly have an adverse impact on U.S. businesses. Many asked the Administration to broaden its review of trade to include U.S. exports of services, while others challenged the focus on deficits. For example, the U.S. Council for International Business requested a holistic look at macroeconomic forces, far beyond the Executive Order’s focus on deficits. The U.S. Chamber of Commerce agreed, discussing the positive impact of imports on the U.S. economy.

Each had suggestions for improving trade relations with foreign countries, with the overall goal of leveling the playing field. Many advocated new trade agreements, including the TPP. All commentators sought reduced trade barriers in partner countries, such as decreased tariffs, elimination of forced localization policies, and increased intellectual property rights protection. Organizations also discussed the challenges of complying with local regulatory frameworks. Other suggestions included increasing and supporting U.S. business engagement abroad and making U.S. companies more competitive via tax and regulatory reforms.

U.S. Companies

Twenty-three U.S. companies submitted comments, representing sectors such as manufacturing, energy, textiles, and financial services. Many of these commentators alleged that unfair practices of foreign governments are the primary driver of trade deficits.

China received the most criticism from U.S. companies, with fifteen comments highlighting alleged Chinese government practices such as providing subsidies, encouraging overcapacity and dumping, erecting technical barriers to trade, manipulating the renminbi, employing state-owned enterprises to distort markets, and using transshipment to evade duties. Also attracting criticism were Canada, Korea, Mexico, Vietnam, India, Japan, Taiwan, and Thailand. Commentators alleged that these countries also unfairly intervene in their domestic markets, sometimes directly discriminating against U.S. interests. Some commentators also mentioned value-added taxes (VAT) and corporate taxation as factors driving U.S. trade deficits with the examined countries. On the other hand, many companies also acknowledged the significant benefits of trade.

Despite many companies’ dissatisfaction with the status quo, few offered novel solutions. Some requested aggressive enforcement of trade remedies, while others advocated negotiation of improved free trade agreements. Other firms encouraged the Trump administration to expand “Buy American” initiatives to stimulate domestic industries.

Foreign Governments

The governments of Taiwan, Switzerland, the European Union, Canada, Mexico, Thailand, Australia, Japan, South Korea and Indonesia all highlighted the positives of their trade relationships with the United States, and in particular the mutually beneficial nature of these relationships. Several governments also stated that trade deficits were not caused by trade barriers, and instead reflected macroeconomic factors. Some went into greater detail on the specific economic factors affecting their trade balances, such as the slow and ongoing economic recovery in countries such as South Korea. Several countries also reported data on the number of Americans employed by their companies and the amount of investment flowing between their country and the United States. Many commenters also noted their industries’ role in global value chains that further benefit the United States.

Foreign and Global Industry

Groups representing foreign industries emphasized the importance of global value chains in trade. These comments varied, focusing on issues such as foreign direct investment, trade agreements, and currency valuation. Some organizations explained the nature of their country's trade deficit with the United States, examining policies, tariffs, and differences in economic structures. Many looked specifically at the industries in which their country has a comparative advantage and emphasized the resulting mutual benefits.

Global industry groups, which also represent U.S. businesses, each focused on niche issues relevant to their sectors. The National Retail Foundation, for example, was largely supportive of trade, emphasizing the importance of global value chains, the benefits of trade for consumers, and the harmful retaliation that might result from cancelling trade agreements. Other groups focused on the challenges of divergent regulatory regimes and standards for products, particularly between the European Union and the United States, while others described the importance of strong intellectual property rights protection.

Economists, Academics and Think Tanks

An overwhelming majority of analysts focused on the economic causes of trade deficits, stating that deficits were caused by national savings and investment levels, not trade barriers. Many stressed that exports should not be considered “wins” or imports “losses.” Some saw advantages to the deficit, since it reflected high levels of foreign investment. On the other hand, some commentators such as the Economic Policy Institute expressed concern about the effects of currency manipulation and other mercantilist policies.

Global value chains and countries' respective comparative advantages were viewed as crucial to understanding trade. Most commenters were of the view that trade deficits do not harm U.S. workers, noting that goods are often imported into the U.S. for use in factories and production. Some viewed comparative advantage among countries as a sign of a healthy trade system, and pointed to technology and automation as greater contributors to unemployment than trade. However, the Economic Policy Institute argued that trade agreements encouraged outsourcing, increasing trade deficits and unemployment.

There were numerous recommendations for the Administration. Some groups supported increasing U.S. involvement in trade agreements, including the TPP. Other recommendations included creating more harmony and transparency in global standards and regulations, easing regulatory compliance burdens, increasing intellectual property rights protection, and enforcing U.S. trade remedy laws.

Department of Commerce Initiates Section 232 Investigation of Imported Aluminum

On April 26, 2017, Secretary of Commerce Wilbur Ross initiated an investigation into the effects of imports of aluminum on the national security of the United States, pursuant to Section 232 of the Trade Expansion Act of 1962.² The Department of Commerce (DOC) has indicated that the investigation will cover a wide range of aluminum products, regardless of country of origin. If DOC determines in its investigation that imports of the subject aluminum products “threaten to impair the national security” of the United States, the President will be authorized to take action to “adjust imports” of such products, including through the imposition of tariffs. This is the first time that DOC has initiated an investigation of aluminum imports under Section 232.

Section 232 requires DOC to conclude its investigation and submit its findings to the President within 270 days. Notably, President Trump on April 27 signed a Presidential Memorandum directing DOC to “proceed expeditiously in conducting the investigation”, and to consider when making its determination certain factors, such as the employment and “economic welfare” effects of imports.³ The presidential memorandum reiterates prior claims that the market for aluminum imports is “distorted” by “large volumes of excess capacity” which are a result of “foreign government subsidies and other unfair practices.”

² Secretary Ross's announcement of the new investigation is available [here](#).

³ President Trump's April 27 memorandum is available [here](#).

Overview of Section 232

Section 232 authorizes the Secretary of Commerce to investigate the effects of imports on the national security of the United States. Section 232 investigations are conducted by Bureau of Industry and Security (BIS) within DOC, and are subject to the following statutory requirements:

- **Initiation.** DOC is required to initiate an investigation to determine the effects of imports on national security: (i) upon the request of the head of any department or agency; (ii) upon application of an interested party; or (iii) on the Secretary's own motion. Though Section 232 investigations typically have been initiated at the request of a specific industry, the new investigation of imported aluminum products was initiated by Secretary of Commerce Wilbur Ross (as was the recently-initiated Section 232 investigation of steel imports). Section 232 mandates that the Secretary provide notice to the Secretary of Defense that an investigation has been initiated.
- **Conduct of the investigation.** During the investigation, the Secretary of Commerce must: (i) consult with the Secretary of Defense regarding the methodological and policy questions raised in the investigation; (ii) seek information and advice from, and consult with, appropriate officers of the United States; and (iii) "if it is appropriate," hold public hearings or otherwise afford interested parties an opportunity to present information and advice relevant to the investigation. In its most recent [Section 232 investigation](#) conducted in 2001 (on imports of iron ore and semi-finished steel), BIS took the following steps:
 - Request for comments: DOC published a Federal Register notice within one week after the initiation of the investigation, requesting "written comments, opinions, data, information, or advice" relevant to the investigation. Written comments were accepted for a period of 3 months.
 - Public hearings: After the expiration of the public comment period, DOC held two public hearings to elicit further information concerning the investigation. Written submissions were accepted for approximately one month after the date of the hearings. In all, DOC received over 3000 written submissions from major stakeholders, including domestic producers and consumers, foreign exporters and governments, unions and US government officials.
 - Industry surveys and site visits: DOC sent surveys to US producers and potential consumers of the products subject to the investigation, and visited sites associated with "the production, shipment, and consumption" of such products.
 - Interagency consultations: DOC consulted with the Department of Defense, which provided an assessment of its projected national defense requirements for the articles in question. DOC also consulted with other agencies, such as the Department of Labor, the US International Trade Commission, and the Office of the US Trade Representative.
- **Submission of report.** Within 270 days after the date of initiation, DOC must submit a report to the President describing the findings of the investigation, including whether DOC finds that the subject merchandise "is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security[.]" Based on these findings, the report must also include DOC's recommendations for "action or inaction" under Section 232.
- **Presidential determination.** Within 90 days after receiving a report in which DOC has found that imports threaten to impair the national security, the President must (i) determine whether the President concurs with the finding; and (ii) "If the President concurs, determine the nature and duration of the action that...must be taken to adjust imports of the article and its derivatives so that such imports will not threaten to impair the national security." The statute places no limit on the nature of the restrictions that the President may impose or the scope or magnitude of any tariffs.

Criteria for determinations

As noted above, the key requirement for action under Section 232 is a finding of a threat or impairment of “national security,” which is not defined in the law or in its implementing regulations. BIS in the most recent Section 232 investigation of iron and steel found, based on the statutory language and congressional intent, that the standard would be met where imports of the product at issue threaten to impair US national security either: (i) “by fostering US dependence on unreliable or unsafe imports”; or (ii) “by fundamentally threatening the ability of US domestic industries to satisfy national security needs.” President Trump’s April 27 memorandum appears to expand the previous BIS standard, as it directs DOC to do the following as it conducts its investigation of aluminum “as appropriate and consistent with law”:

“(a) consider the domestic production of aluminum needed for projected national defense requirements; the capacity of domestic industries to meet such requirements; the existing and anticipated availabilities of the human resources, products, raw materials, and other supplies and services essential to the national defense; the requirements of growth of such industries and such supplies and services, including the investment, exploration, and development necessary to assure such growth; and the importation of goods in terms of their quantities, availabilities, character, and use as those affect such industries and the capacity of the United States to meet national security requirements;

“(b) recognize the close relation of the Nation’s economic welfare to our national security, and consider the effect of foreign competition in the aluminum industry on the economic welfare of domestic industries;

“(c) consider any substantial unemployment, decrease in government revenues, loss of skills or investment, or other serious effects resulting from the displacement of any domestic products by excessive aluminum imports; and

“(d) consider the status and likely effectiveness of efforts of the United States to negotiate a reduction in the levels of excess aluminum capacity worldwide.”

With the exception of item (d), each of the above factors are among those that DOC is required to “consider” or “recognize” in making its determination pursuant to Section 232(d). Notably, a White House fact sheet issued alongside the Presidential Memorandum emphasizes the factors relating to “economic welfare”, employment, and government revenues. The fact sheet and the Presidential Memorandum also emphasize the economic challenges facing the US aluminum industry. In this regard, the Trump administration’s public statements on the new investigation are similar to those it released in connection with the Section 232 investigation of steel imports initiated by Secretary Ross on April 19, 2016. These statements suggest that, in both investigations, DOC may give greater weight to economic and employment-related factors than it has in prior Section 232 investigations.

Outlook

Though DOC has not yet published documents describing the precise scope of the investigation, it appears that the investigation will cover a wide range of aluminum products and will not be limited to any particular country. The Trump administration’s public statements have emphasized China as a target of the new investigation, though the investigation arguably could have more severe implications for countries Canada, the United Arab Emirates, and Russia, who in recent years have exported steel to the United States in far greater quantities than has China. According to the US Geological Survey’s (USGS) latest report, the top ten sources of aluminum imported into the United States in January 2017 were as follows (from largest to smallest): Canada (279,000 MT); Russia (83,000 MT); the United Arab Emirates (70,100 MT); China (31,000 MT); Mexico (21,700 MT); Argentina (15,900 MT); Venezuela (13,500 MT); Oman (13,300 MT); Bahrain (12,800 MT); and Qatar (10,600 MT).

Notably, according to USGS, between 2012 and 2016 US imports of aluminum for consumption were valued at 96 to 124 percent of apparent US aluminum consumption. By contrast, during the same period, US imports of steel mill products for consumption were valued at only 30 to 36 percent of apparent US steel consumption, according to USGS. Moreover, during the same period, total US aluminum production contracted significantly, declining by 39 percent (this decline was driven primarily by a 59 percent decrease in production of primary aluminum). By contrast, US raw steel production declined by only 10 percent between 2012 and 2016, according to USGS.

At this stage, it is far from certain that the new Section 232 investigation will result in the actual imposition of high tariffs on a broad range of aluminum imports. Even if BIS makes an affirmative finding and recommends import restrictions, the Trump administration may seek to use the final BIS report as merely a bargaining chip in future negotiations. That said, new import restrictions are certainly possible, as the administration has in recent trade remedy proceedings already proven willing to use novel interpretations of US trade law to provide import relief to US industries. In that case, such measures would provide precedent for new Section 232 investigations and indicate that the Trump administration intends to expand its import relief “toolbox” to include more aggressive measures than just the traditional anti-dumping and countervailing duties. Notably, President Trump’s April 26 memorandum states that, in addition to steel and aluminum, “Core industries such as...aircraft, shipbuilding, and semiconductors are critical elements of our manufacturing and defense industrial bases, which we must defend against unfair trade practices and other abuses.” This statement suggests that the Trump administration may initiate Section 232 investigations in the future regarding these industries.

In the coming days, DOC will publish a Federal Register notice requesting written comments on the investigation and scheduling a public hearing, at which interested parties will be invited to provide testimony. Foreign producers and exporters of aluminum may find it worthwhile to participate in these proceedings.

Free Trade Agreement Highlights

US Trade Representative Formally Notifies Congress of Intention to Renegotiate NAFTA

On May 18, 2017, US Trade Representative (USTR) Robert Lighthizer formally notified Congress of President Trump's intention to renegotiate the North American Free Trade Agreement (NAFTA). President Trump may therefore initiate formal negotiations with Canada and Mexico on August 16, 2017 or thereafter (*i.e.*, 90 days after submitting the notice) pursuant to Section 105(a)(1)(A) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA). The final notice is far less detailed with respect to negotiating objectives than the draft version circulated on March 28, but the administration has stated that it will publish a more detailed list of objectives before the negotiations begin, in accordance with TPA requirements.

Negotiating objectives

Unlike the draft version of the notice circulated by USTR on March 28, the final version does not contain a detailed list of the Trump administration's objectives for the negotiation. Rather, the notice describes the objectives in general terms, stating only that "Our specific objectives for this negotiation will comply with the specific objectives set forth by Congress in section 102 of the Trade Priorities and Accountability Act", and that "our aim is that NAFTA be modernized to include new provisions to address intellectual property rights, regulatory practices, state-owned enterprises, services, customs procedures, sanitary and phytosanitary measures, labor, environment, and small and medium enterprises".

Ambassador Lighthizer stated on May 18 that the administration will provide a more detailed list of negotiating objectives at least 30 days before the negotiations begin, pursuant to the requirement under Section 105(a)(1)(D) of TPA that USTR must publish "a detailed and comprehensive summary of the specific objectives" by that time. Should the Trump administration wish to initiate negotiations as soon as permitted under TPA (*i.e.*, August 16), it would be required to publish the "detailed and comprehensive summary" of its objectives by July 17.

Ambassador Lighthizer on May 18 suggested that issues relating to US-Mexico trade in the manufacturing sector would be the focus of the negotiations, stating that "NAFTA has been relatively successful for Americans across several sectors, including agriculture, investment, services and energy. However, other sectors like manufacturing — particularly with regards to Mexico — have fallen behind."

Notably, Senate Finance Committee Ranking Member Ron Wyden (D-OR) stated on May 17 that Ambassador Lighthizer during a recent congressional consultation expressed interest in negotiating a "NAFTA discipline" on currency — an issue that was not mentioned in the draft or final versions of the notice. Sen. Wyden further indicated that such a provision could serve as a template for future agreements. However, he did not specify whether the administration plans to seek enforceable commitments on currency or merely aspirational measures such as those included in the Trans-Pacific Partnership.

Congressional reactions

The Republican leaders of the House Ways and Means and Senate Finance Committees have reacted positively to the notice, expressing support for the "modernization" of NAFTA, but also have emphasized their view — contrary to that of President Trump — that NAFTA has been beneficial to the US economy. Similarly, 18 Republican Senators sent a letter to Ambassador Lighthizer on May 15 expressing support for modernization of NAFTA, but warning that "efforts to abandon the agreement or impose unnecessary restrictions on trade with our North American partners will have devastating economic consequences." Other Members of Congress have expressed similar views, and Sen. Tom Udall (D-NM) on May 12 claimed to have secured "a commitment from Mr. Lighthizer that he will oppose the unilateral withdrawal from NAFTA proposed by the president."

Several Democratic Members have been critical of the notice submitted by Ambassador Lighthizer due its lack of detail on negotiating objectives. Sen. Wyden, for example, described the notice as "disappointingly vague" and stated that "consultations with Congress have been rushed". However, he expressed hope that Ambassador

Lighthizer would engage further with Congress before publishing the “detailed and comprehensive summary” of the administration’s negotiating objectives in 60 days.

A copy of the notice is attached for reference.

USTR Requests Public Comments, ITC Assessment to Inform NAFTA Renegotiation Priorities

On May 23, 2017, the Office of the United States Trade Representative (USTR) published a notice in the Federal Register requesting public comments and scheduling a public hearing to inform the United States’ negotiating objectives for the renegotiation of the North American Free Trade Agreement (NAFTA).⁴ USTR has also requested that the US International Trade Commission (ITC) conduct an assessment of the probable economic effects of providing duty-free treatment for imports of currently dutiable products from Canada and Mexico. We summarize these developments below.

Federal Register notice

To assist in its development of US negotiating objectives and positions, USTR is requesting comments on a wide range of NAFTA-related issues. With respect to market access for goods, USTR is requesting information on the following:

- Economic costs and benefits to US producers and consumers of removal of any remaining tariffs and removal or reduction of non-tariff barriers on articles;
- Treatment of specific goods, including (i) product-specific import or export interests or barriers; (ii) experience with particular measures that should be addressed in negotiations; and (iii) comments on “addressing any remaining tariffs on articles traded with Canada, including ways to address export priorities and import sensitivities related to Canada and Mexico in the context of the NAFTA”; and
- Appropriate modifications to rules of origin or origin procedures for NAFTA qualifying goods.

Furthermore, USTR is seeking input on other issues related to the potential “modernization” of NAFTA. These issues include: customs and trade facilitation, sanitary and phytosanitary measures, barriers to trade in services, digital trade, trade-related intellectual property rights, investment, competition-related matters, government procurement, environmental or labor issues, issues particularly relevant to small and medium-sized businesses, trade remedies, and state-owned enterprises.

USTR will hold a public hearing to discuss these issues on June 27, 2017. Interested parties who wish to submit written comments or a notification of intent to testify at the hearing must do so by Monday, June 12, 2017.

Request for ITC economic assessment

USTR has requested that the ITC produce a report assessing the probable economic effect of providing duty-free treatment for imports of currently dutiable products from Canada and Mexico on (i) industries in the United States producing like or directly competitive products, and (ii) U.S. consumers. This analysis will be product-specific, covering all 97 chapters of the United States’ Harmonized Tariff Schedule. Furthermore, pursuant to Section 105 of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (“TPA”), USTR has requested a separate assessment of the probable economic effects of eliminating tariffs on certain “import sensitive” agricultural products.

USTR has requested that the ITC deliver the report as soon as possible, and no later than August 16, 2017 – the date on which the United States may formally initiate negotiations with Canada and Mexico pursuant to TPA.

A copy of USTR Lighthizer’s letter to the ITC is attached for reference.

⁴ The Federal Register notice concerning NAFTA negotiating objectives may be viewed [here](#).

TPP-11 Countries Examine Options for Implementation of TPP Without United States; Set November Deadline to Complete Final Assessment

Trade Ministers from the 11 remaining signatories to the Trans-Pacific Partnership (TPP) met in Hanoi, Vietnam on May 21, 2017 to discuss their respective stances on the TPP following the official withdrawal of the United States early in the year. The Ministerial meeting, which was held on the sidelines of the Asia Pacific Economic Cooperation (APEC) Ministers Responsible for Trade Meeting, follows a series of consultations among TPP-11 member states over the past few months whereby the Parties were unable to agree on a path forward.

According to a joint declaration issued by the signatories, Ministers have agreed “to launch a process to assess options to bring the comprehensive, high quality Agreement into force expeditiously, including how to facilitate membership for the original signatories.” The Ministers have asked their senior trade officials to begin the preparation of this assessment, and to complete it before they meet on the margins of the APEC Economic Leaders Meeting scheduled to take place from November 10-11, 2017 in Da Nang, Vietnam.

In the joint declaration, the Ministers also “underlined the possibility of expanding TPP membership to include other economies that can accept the high standards of the TPP.” This reference to the potential expansion of membership may reflect an effort to compensate for the economic losses resulting from the withdrawal of the United States.

Although all of the remaining signatories have expressed a willingness to work on a path forward for the TPP, differing views among the Ministers over the content of the Agreement have emerged. In particular, Australia, Japan and New Zealand are reportedly willing to adopt the existing TPP text and create another name for the TPP without the United States. In other words, they would not renegotiate the concluded Agreement and would only omit the United States’ annexes, schedules and bilateral side letters. Their concessions on contentious issues including pharmaceuticals, investment and state-owned enterprises would remain unchanged.

Meanwhile, other signatories such as Malaysia and Vietnam are reportedly willing to renegotiate various areas of the Agreement to fine tune negotiating balances without the United States. Malaysian Trade Minister Mustapa Mohamed indicated that Malaysia will deliberate every aspect of the TPP without the United States to ensure that the TPP’s benefits still outweigh the costs. Brunei and Singapore have indicated their continued support for the implementation of TPP; however, they have so far not disclosed publicly where they stand on the issue of substantive renegotiation.

In a related development, US Trade Representative (USTR) Robert Lighthizer reaffirmed on May 22, 2017 that the United States will not reconsider its decision to withdraw from the TPP and will instead focus on bilateral negotiations with individual TPP member states instead.

Petitions and Investigations Highlights

International Trade Commission Votes to Extend AD Orders on Frozen Warmwater Shrimp from China, India, Thailand, and Vietnam

On May 2, 2017, the US International Trade Commission (ITC) determined that revoking the existing anti-dumping duty (AD) orders on imports of frozen warmwater shrimp from China, India, Thailand, and Vietnam would be likely to lead to the continuation or recurrence of material injury to a US industry.⁵ The ITC further determined that revoking the AD order on imports of frozen warmwater shrimp from Brazil would not be likely to lead to continuance or recurrence of material injury.

As a result of the ITC's determinations, the AD orders on imports of frozen warmwater shrimp from China, India, Thailand and Vietnam will remain in place, whereas the AD order on imports of the same from Brazil will be revoked. This is the second time that the ITC has extended the AD orders on frozen warmwater shrimp from China, India, Thailand, and Vietnam.

The ITC's public report on this investigation will be available by June 15, 2017.

International Trade Commission Issues Affirmative Final Determinations in AD/CVD Investigations of Cut-to-Length Plate from Austria, Belgium, France, Germany, Italy, Japan, Korea, and Taiwan

On May 5, 2017, the US International Trade Commission (ITC) determined that a US industry is materially injured by reason of imports of carbon and alloy steel cut-to-length plate (CTL plate) from Austria, Belgium, France, Germany, Italy, Japan, Korea, and Taiwan.⁶ The US Department of Commerce (DOC) determined in March 2017 that imports of CTL plate from these countries were sold in the United States at the following dumping margins and subsidy rates:

Country	Dumping Margin
Austria	53.72 percent
Belgium	5.40 – 51.78 percent
France	8.62 – 148.02 percent
Germany	5.38 – 22.90 percent
Italy	6.08 – 22.19 percent
Japan	14.79 – 48.67 percent
Korea	7.39 percent
Taiwan	3.62 – 6.95 percent

Country	Subsidy Rate
Korea	4.31 percent

As a result of the ITC's affirmative final determinations, DOC will issue anti-dumping duty orders on imports of CTL plate from the countries listed above, and a countervailing duty order on imports of CTL plate from Korea. According to the ITC, imports of this product from Austria, Belgium, China, France, Germany, Italy, Japan, and Taiwan were valued at an estimated USD 594.6 million in 2015.

⁵ Click [here](#) to view the ITC's press release on the investigation.

⁶ Click [here](#) to view the ITC's press release on the investigation.

The ITC made negative findings with respect to critical circumstances with regard to imports of this product from Austria, Belgium, and Italy. As a result, goods allegedly sold at less than fair value that entered the United States from these three countries prior to November 14, 2016 will not be subject to retroactive anti-dumping duties.

The ITC’s public report on this investigation will be made available by June 7, 2017.

US Department of Commerce Initiates AD/CVD Investigations of Large Civil Aircraft From Canada

On May 18, 2017, the US Department of Commerce (DOC) announced the initiation of anti-dumping (AD) and countervailing duty (CVD) investigations concerning imports of 100- to 150-seat large civil aircraft (civil aircraft) from Canada.⁷ The petitioner, the Boeing Company, alleges that the subject merchandise from Canada has received countervailable subsidies of 79.41 percent and is being sold in the United States at a dumping margin of 79.82 percent.

The merchandise subject to the investigations is aircraft, regardless of seating configuration, that have a standard 100- to 150-seat two-class seating capacity and a minimum 2,900 nautical mile range. The merchandise covered by these investigations is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8802.40.0040, and may also be classifiable under HTSUS subheading 8802.40.0090.

The petition specifically targets imports of the “C Series” aircraft produced by Bombardier, Inc. of Canada. DOC’s fact sheet on the investigations notes that “Although Canadian civil aircraft subject to these investigations have not yet been imported, an April 2016 press release announcing the sale of Canadian civil aircraft to a U.S. airline valued the order to be in excess of \$5 billion.”

The US International Trade Commission (ITC) is scheduled to make its preliminary injury determinations on or before June 12, 2017. If the ITC determines that there is a reasonable indication that imports of civil aircraft from Canada materially injure or threaten material injury to the domestic industry, the investigations will continue. DOC will then be scheduled to announce its preliminary CVD determination in July 2017 and its preliminary AD determination in October 2017, unless the statutory deadlines are extended.

US Department of Commerce Issues Affirmative Final Determinations in AD and CVD Investigations of Steel Concrete Reinforcing Bar from Japan and Turkey

On May 16, 2017, the US Department of Commerce (DOC) announced its affirmative final determinations in the anti-dumping (AD) and countervailing duty (CVD) investigations concerning imports of steel concrete reinforcing bar from Japan and Turkey.⁸ In its investigations, DOC determined that imports of the subject merchandise from were sold in the United States at the following dumping margins and subsidy rates:

Country	Exporter/Producer	Dumping Margin
Japan	Jonan Steel Corporation	209.46 percent
	Kyoei Steel Ltd.	209.46 percent
	All others	206.43 percent
Turkey	Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S.	5.39 percent
	Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.	8.17 percent
	All others	6.94 percent

Country	Exporter/Producer	Subsidy Rate
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⁷ Click [here](#) to view the DOC fact sheet on this investigation.

⁸ Click [here](#) to view the DOC fact sheet on this investigation.

Turkey	Habaş Sinai ve Tibbi Gazlar İstihsal Endüstrisi A.Ş.	16.21 percent
	All others	16.21 percent

The merchandise subject to these investigations is steel concrete reinforcing bar imported in either straight length or coil form (rebar) regardless of metallurgy, length, diameter, or grade or lack thereof. Subject merchandise includes deformed steel wire with bar markings (e.g., mill mark, size, or grade) and which has been subjected to an elongation test. The subject merchandise is classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) primarily under item numbers 7213.10.0000, 7214.20.0000, and 7228.30.8010. The subject merchandise may also enter under other HTSUS numbers including 7215.90.1000, 7215.90.5000, 7221.00.0017, 7221.00.0018, 7221.00.0030, 7221.00.0045, 7222.11.0001, 7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6030, 7227.90.6035, 7227.90.6040, 7228.20.1000, and 7228.60.6000.

The US International Trade Commission (ITC) is scheduled to announce its final determinations in these investigations on or around June 29, 2017. If the ITC makes affirmative final determinations that imports of steel concrete reinforcing bar from Japan and/or Turkey materially injure or threaten material injury to the domestic industry, DOC will issue AD and CVD orders.

According to DOC, imports of steel concrete reinforcing bar from Japan and Turkey in 2016 were valued at an estimated USD 96.1 million and USD 511.9 million, respectively.

International Trade Commission Initiates Safeguard Investigation of Imports of Crystalline Silicon Photovoltaic Cells

On May 23, 2017, the US International Trade Commission (ITC) announced that it has initiated a safeguard investigation on imports of crystalline silicon photovoltaic (CSPV) cells pursuant to Section 201 of the Trade Act of 1974.⁹ In its investigation, the ITC will determine whether CSPV cells are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported articles.

The articles covered by the investigation are CSPV cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels, and building-integrated materials. The investigation covers crystalline silicon photovoltaic cells of a thickness equal to or greater than 20 micrometers, having a p/n junction (or variant thereof) formed by any means, whether or not the cell has undergone other processing, including, but not limited to cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell. Included in the scope of the investigation are photovoltaic cells that contain crystalline silicon in addition to other photovoltaic materials. This includes, but is not limited to, passivated emitter rear contact (“PERC”) cells, heterojunction with intrinsic thin-layer (“HIT”) cells, and other so-called “hybrid” cells. Articles under consideration also may be described at the time of importation as components for final finished products that are assembled after importation, including, but not limited to, modules, laminates, panels, and building-integrated materials.

Excluded from the investigation are CSPV cells, whether or not partially or fully assembled into other products, if the CSPV cells were manufactured in the United States. Also excluded from the investigation are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS). Also excluded from the scope of the investigation are crystalline silicon photovoltaic cells, not exceeding 10,000mm² in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cell. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

⁹ Click [here](#) to view the ITC’s announcement regarding the investigation.

The CSPV cells covered by the investigation are provided for under Harmonized Tariff Schedule of the United States (“HTSUS”) subheading 8541.40.60. Within that 8-digit subheading, CSPV cells that are assembled into modules or panels are imported under HTSUS statistical reporting number 8541.40.6020, while CSPV cells that are not assembled into modules and are presented separately are imported under statistical reporting number 8541.40.6030. Inverters or batteries with CSPV cells attached can be imported under HTSUS subheadings 8501.61.00 and 8507.20.80, respectively. In addition, CSPV cells covered by the investigation may also be classifiable as DC generators of subheading 8501.31.80, when such generators are imported with CSPV cells attached.

The ITC initiated the investigation in response to a petition filed by Suniva Inc. (Suniva), a producer of CSPV cells and CSPV modules in the United States, on April 26, 2017. The petitioner seeks relief in the form of a tariff and a price floor on imports of CSPV cells from all countries. It has been reported that Suniva filed the petition in exchange for an additional line of credit in its ongoing bankruptcy proceeding, and that the U.S. arm of Germany’s SolarWorld AG is supporting Suniva’s petition.

The ITC has determined that this investigation is “extraordinary complicated”, particularly given the existence of antidumping and/or countervailing duty orders on certain imports covered by the investigation and the global supply chains for the imported articles under investigation. The ITC will therefore make its injury determination by September 22, 2017 and will submit its final report to the President by November 13, 2017.

Whirlpool Corporation Files Safeguard Petition on Large Residential Washers

On May 31, 2017, Whirlpool Corporation (“Whirlpool”) filed a petition with the US International Trade Commission (ITC) under Section 201 of the Trade Act of 1974 seeking global safeguard relief from imports of large residential washers. The petitioner seeks relief in the form of tariff-rate quotas on imports of large residential washers from all countries. Should the ITC decide to institute an investigation of large residential washers under Section 201, its injury determination will be due within 120 days and its final report to the President (including any recommendations for import restrictions) will be due within 180 days, unless the ITC extends these deadlines.

This is the second Section 201 petition filed by a US company this year. The ITC recently instituted an investigation in response to the first petition, which concerned imports of crystalline silicon photovoltaic cells. The United States has not imposed a safeguard measure under Section 201 since 2002, when President George W. Bush instituted tariffs on certain steel products.

Scope of the petition

The imported products covered by the petition are “all large residential washers and certain parts thereof[.]” Whirlpool notes that this is the same product scope as that covered by the recently-completed anti-dumping investigation of *Large Residential Washers From China*. In addition to large residential washers, the products covered by the petition include (1) all cabinets, or portions thereof, designed for use in large residential washers; (2) all assembled tubs designed for use in large residential washers which incorporate, at a minimum: (a) a tub; and (b) a seal; (3) all assembled baskets designed for use in large residential washers which incorporate, at a minimum: (a) a side wrapper; (b) a base; and (c) a drive hub; and (4) any combination of the foregoing parts or subassemblies. A full description of the product scope can be found on page 5 of the petition, which is attached for reference.

The products covered by the petition are classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 8450.20.0040 and 8450.20.0080. Covered parts and subassemblies enter under HTSUS subheadings 8450.90.2000 and 8450.90.6000.

Main differences between safeguard and AD/CVD investigations

Unlike anti-dumping (AD) and countervailing duty (CVD) investigations, which target imports of the covered merchandise from select countries, safeguard investigations such as that requested by Whirlpool are global, targeting imports of the covered merchandise from all countries. The safeguard petition alleges that two Korean producers,

Samsung and LG, have pursued “predatory behavior,” allegedly evading the collection of US anti-dumping duties on large residential washers by shifting their production from Korea and Mexico to China, and then from China to Vietnam and Thailand.

Pursuant to the NAFTA Implementation Act, the ITC may recommend that the President exclude imports from a NAFTA country from a safeguard measure, provided that the imports do not account for a substantial share of total imports and do not contribute significantly to the injury of the domestic industry. The Whirlpool petition states that imports of large residential washers from Canada and Mexico “do not account for a substantial share of total imports and do not contribute importantly to the serious injury suffered by the domestic industry.”

Safeguard investigations also differ from AD/CVD investigations in that (i) they do not require findings of dumping or subsidization; and (ii) they require a finding of “serious injury” to the domestic industry (as opposed to the lower “material injury” standard in AD/CVD cases). The Whirlpool petition alleges that imports of large residential washers doubled from 2012 to 2016, have seriously injured the domestic industry, and are threatening further serious injury.

Relief sought by the petitioner

The petitioner seeks relief in the form of tariff-rate quotas on imports of the subject merchandise. The petitioner proposes that the tariff-rate quota volumes may be allocated by country based on import levels during an historical period (e.g., 2012 –2016. For over-quota volumes, the petitioner suggests that a tariff rate of 47.90 percent (which is the simple average of the final dumping margins assigned to Samsung and LG in *Large Residential Washers from China*) “could serve as an appropriate over-quota tariff for the first year of the remedy, with such over-quota tariff rates expected to decline in each subsequent year[.]” The petitioner seeks the remedy for a three-year period.

Investigation process and timeline

- **Initiation.** The ITC currently is evaluating the petition “for legal sufficiency and compliance with its rules”. When that review is completed, the ITC will decide whether to institute the investigation and will publish a notice of its decision in the Federal Register. Section 201 and the ITC’s regulations provide that safeguard petitions may be filed by a firm that is “representative of an industry”; however, they do not specify a percentage threshold (e.g., a minimum percentage of total domestic production) that is required to establish the petitioner’s representativeness of the industry. The petitioner claims it represents a substantial proportion of domestic large residential washers production, citing the US Department of Commerce’s finding in *Large Residential Washers from China* that Whirlpool accounted for more than 50 percent of the production of the domestic like product.
- **Injury determination.** The ITC must make its injury determination within 120 days after receiving the petition (or within 150 days, if it determines that the investigation is extraordinarily complicated). If the injury determination is negative, the investigation will be terminated. If the injury determination is affirmative, the investigation will proceed to the remedy phase.
- **Remedy phase.** In the event of an affirmative injury determination, the ITC must recommend to the President actions that would address the serious injury or threat thereof (such as tariffs, tariff-rate quotas, or quantitative restrictions). The ITC must submit to the President a report including its recommendations within 180 days after receiving the petition.
- **Presidential determination.** Within 60 days after receiving a report from the ITC that includes an affirmative injury determination, the President must take “all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition[.]” In determining what actions to take, the President must “take into account” the ITC’s recommendations, though he is free to take actions that differ from those recommended by the ITC. Section 201 authorizes the President to impose import restrictions (e.g., tariffs, tariff-rate quotas, or quantitative restrictions), or to take other actions that do not involve import restrictions (e.g., providing trade adjustment assistance or

initiating international negotiations). The deadline for the Presidential determination can be extended by an additional 15 days if the President requests supplemental information from the ITC.

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