

# US & Multilateral Trade Policy Developments

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**Japan External Trade Organization**

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## US General Trade Policy Highlights

### Legislation to Reauthorize Generalized System of Preferences Introduced in House of Representatives

On February 8, 2018, Members of the House Ways and Means Committee introduced legislation (H.R. 4979) to reauthorize the Generalized System of Preferences (GSP) program.<sup>1</sup> The legislation would reauthorize GSP through December 31, 2020 and would apply GSP benefits retroactively to articles imported during the program's lapse, which began on January 1, 2018. The bill also would modify the process by which the US Trade Representative (USTR) considers "competitive need limitations" for GSP-eligible articles, and would require USTR to report annually on its efforts to enforce the GSP eligibility criteria. An overview of the legislation is provided below.

#### Reauthorization and retroactivity

The bill would reauthorize GSP through December 31, 2020. The reauthorization would take effect with respect to articles entered on or after the 30<sup>th</sup> day after the date of enactment of the bill (*i.e.*, the "effective date" of the reauthorization). The bill also would apply GSP benefits retroactively to any entry of a covered article (i) to which GSP benefits would have applied if the entry had been made on December 31, 2017, that (ii) was made after December 31, 2017 and before the effective date of the reauthorization.<sup>2</sup> Such entries would be eligible to be liquidated or reliquidated as though they occurred on the effective date of the reauthorization of GSP. A liquidation or reliquidation may be made only in response to a request filed with U.S. Customs and Border Protection (CBP) within 180 days after the date of the enactment of the bill. Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry would be paid, without interest, within 90 days after the date of the liquidation or reliquidation.

#### Modifications to competitive need limitation process

The bill would make two modifications to the process by which USTR considers competitive need limitations (CNLs) for GSP-eligible articles. CNLs are quantitative ceilings on GSP benefits for each product and beneficiary developing country. When the President determines that a beneficiary developing country exported to the United States during a calendar year either: (i) a quantity of a GSP-eligible article having a value in excess of the applicable amount for that year (USD 180 million for 2017), or (ii) a quantity of a GSP-eligible article having a value equal to or greater than 50 percent of the value of total U.S. imports of the article from all countries (the "50 percent" CNL), the President must terminate GSP treatment for that article from that country by July 1 of the next calendar year, unless a waiver is granted.

The bill would make the following modifications to the CNL provisions of the GSP statute:

- Under current law, the 50 percent CNL does not apply to an eligible article if a "like or directly competitive" article was not produced in the United States on January 1, 1995. The new bill would amend this provision so that the exemption applies where a like or directly competitive article was not produced in the United States in any of the preceding three calendar years. Supporters of this change argue that it will ensure that the CNL process accurately accounts for current domestic production.
- Under current law, if the President determines that imports of an article exceeded a CNL during a calendar year, the President must terminate duty-free treatment for the article by July 1 of the following calendar year, unless a waiver is granted before the termination takes effect. H.R. 4979 would extend the annual deadline for termination and granting of waivers to November 1. Supporters of this change argue that it will ensure that the CNL review process is based on trade data covering the full calendar year.

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<sup>1</sup> Click [here](#) to view a copy of the House bill.

<sup>2</sup> The term "covered article" is defined in the bill as an article from a country that is a GSP beneficiary developing country as of the effective date of the reauthorization.

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## New reporting requirement on GSP enforcement efforts

The bill would require USTR to submit a new annual report to Congress describing USTR's efforts to ensure that countries designated as beneficiary developing countries are meeting the eligibility criteria set forth in the GSP statute. The eligibility criteria require USTR to take into account certain factors, such as a country's efforts to protect intellectual property rights, in determining whether the country should be designated as a GSP beneficiary. USTR in October 2017 established a new triennial process for assessing whether beneficiary developing countries are complying with the statutory eligibility criteria.

## Outlook

The House of Representatives is expected to vote on H.R. 4979 next week. The bill is likely to be approved, should it receive a vote in the House. However, the path forward for GSP reauthorization in the Senate remains unclear. Though GSP enjoys broad bipartisan support, it is expected that legislation to reauthorize GSP will have to be attached to another, more urgent piece of legislation (e.g., government spending measures that might be considered in late March) in order to receive consideration on the Senate floor. Senate Finance Committee Chairman Orrin Hatch (R-UT) stated on February 8 that he is consulting with Members on how best to move forward and ensure that GSP is renewed "as soon as possible".

## US Trade Representative Solicits Requests for Exclusion of Products from Solar Safeguard Measure

On February 14, 2018, the Office of the US Trade Representative (USTR) published a notice in the *Federal Register* soliciting requests for the exclusion of particular products from the U.S. global safeguard measure on imports of crystalline silicon photovoltaic (CSPV) cells, whether or not partially or fully assembled into other products.<sup>3</sup> The notice establishes the procedures for requesting the exclusion of a particular product from the safeguard measure, the criteria for describing a particular product for which an exclusion is sought, and the factors that USTR may consider when determining whether to exclude a particular product. The notice also establishes a "responsive comment period" during which interested persons may submit public comments expressing support for, or opposition to, any product exclusions that are requested.

## Background

Presidential Proclamation 9693 of January 23, 2018 imposed a safeguard measure on imports of CSPV cells, whether or not partially or fully assembled into other products such as modules ("other CSPV products"). The safeguard measure consists of (1) a tariff-rate quota on imports of CSPV cells not partially or fully assembled into other products; and (2) an increase in the rate of duty on imports of other CSPV products.

Several products described in the Annex to the Proclamation are excluded from the safeguard measure.<sup>4</sup> In addition, the Proclamation directed USTR to publish a *Federal Register* notice establishing procedures for requests for the

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<sup>3</sup> Click [here](#) to view the Federal Register notice.

<sup>4</sup> The following CSPV products were excluded from the safeguard measure:

- 10 to 60 watt, inclusive, rectangular solar panels, where the panels have the following characteristics: (A) length of 250 mm or more but not over 482 mm or width of 400 mm or more but not over 635 mm, and (B) surface area of 1000 cm<sup>2</sup> or more but not over 3,061 cm<sup>2</sup>, provided that no such panel with those characteristics shall contain an internal battery or external computer peripheral ports at the time of entry;
- 1 watt solar panels incorporated into nightlights that use rechargeable batteries and have the following dimensions: 58 mm or more but not over 64 mm by 126 mm or more but not over 140 mm;
- 2 watt solar panels incorporated into daylight dimmers, that may use rechargeable batteries, such panels with the following dimensions: 75 mm or more but not over 82 mm by 139 mm or more but not over 143 mm;
- Off-grid and portable CSPV panels, whether in a foldable case or in rigid form containing a glass cover, where the panels have the following characteristics: (a) a total power output of 100 watts or less per panel; (b) a maximum surface area of 8,000 cm<sup>2</sup> per panel; (c) does not include a built-in inverter; and where the panels have glass covers, such panels must be in individual retail packaging (in this context, retail packaging typically includes graphics, the product name, its description and/or features, and foam for transport);

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exclusion of particular products from the safeguard measure. The Proclamation provides that if USTR determines, after consultation with the Secretaries of Commerce and Energy (the interagency group), that a particular product should be excluded, USTR can modify the Harmonized Tariff Schedule of the United States (HTS) to exclude that particular product from the safeguard measure.

### **Requests for product exclusions**

The *Federal Register* notice invites interested persons to submit comments requesting the exclusion of a particular product from the safeguard measure and providing reasons why the product should be excluded. The deadline for submitting exclusion requests is 11:59 p.m. EST on March 16, 2018. According to the notice, USTR will evaluate each request on a case-by-case basis and will grant only those exclusions “that do not undermine the objectives of the safeguard.”

The notice states that any exclusion request clearly should identify the particular product in terms of the physical characteristics (e.g., dimensions, wattage, material composition, or other characteristics) that distinguish it from products that are subject to the safeguard measure. USTR will not consider requests that identify the product at issue in terms of the identity of the producer, importer, or ultimate consumer; the country of origin; or trademarks or tradenames. In addition, USTR will not consider requests that identify the product using criteria that cannot be made available to the public.

At this time, USTR will not consider exclusion requests received after March 16, 2018. However, the notice states that USTR will monitor developments in the U.S. market for CSPV products and, “if warranted,” provide for additional requests for exclusion at a later date.

### **Factors to be considered by USTR**

In evaluating exclusion requests, USTR may consider the following factors or information:

- The names and locations of any producers, in the United States and foreign countries, of the particular product;
  - Total U.S. consumption of the particular product, if any, by quantity and value for each year from 2014 to 2017, the projected annual consumption for each year from 2018 to 2022, and any related information about the types of consumers;
  - Details concerning the typical use or application of the particular product;
  - Total U.S. production of the particular product for each year from 2014 to 2017, if any;
  - The identity of any U.S.-produced substitute for the particular product, total U.S. production of the substitute for each year from 2014 to 2017, and the names of any U.S. producers of the substitute;
  - Whether the particular product or substitute for the particular product may be obtained from a U.S. producer;
  - Whether qualification requirements affect the requestor’s ability to use domestic products;
  - Whether the particular product is under development by a U.S. producer who will imminently be able to produce it in marketable quantities;
  - Inventories of the particular product in the United States;
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- 3.19 watt or less solar panels, each with length of 75 mm or more but not over 266 mm and width of 46 mm or more but not over 127 mm, with surface area of 338 cm<sup>2</sup> or less, with one black wire and one red wire (each of type 22 AWG or 24 AWG) not more than 206 mm in length when measured from panel edge, provided that no such panel shall contain an internal battery or external computer peripheral ports;
  - 27.1 watt or less solar panels, each with surface area less than 3,000 cm<sup>2</sup> and coated across the entire surface with a polyurethane doming resin, the foregoing joined to a battery charging and maintaining unit, such unit which is an acrylonitrile butadiene styrene (“ABS”) box that incorporates a light emitting diode (“LED”) by coated wires that include a connector to permit the incorporation of an extension cable.

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- Whether excluding the particular product from the safeguard measure would result in a benefit or advantage to the long-term competitiveness of the solar manufacturing supply chain in the United States, including by fostering research and development, supporting manufacturing innovation, or by leading to the development of differentiated products that command higher prices;
  - The ability of U.S. Customs and Border Protection to administer the exclusion; and
  - Any other information or data that interested persons consider relevant to an evaluation of the request.

### **Comments on exclusion requests**

After the submission of requests for exclusion of a particular product, interested persons will have an opportunity to comment on the requests, indicate whether they support or oppose any of them, and provide reasons for their view. The deadline for interested persons to provide comments in response to exclusion requests is 11:59 pm EST on April 16, 2018. According to the notice, if an exclusion request is submitted and no objection to that request is received during the responsive comment period, “USTR may conclude there are no reasons to prevent a determination that the particular product should be excluded from the safeguard measure, and may conclude, based on the interagency group’s review of the request, any comments on the requests, and other relevant information, that the product should be excluded.”

### **Implementation of exclusions**

The notice states that any exclusion granted by USTR will take effect upon publication of an exclusion determination in the *Federal Register*. However, the notice does not specify a date by which USTR will issue its exclusion determinations.

## **US Department of Commerce Issues Reports on Section 232 Investigations of Steel and Aluminum**

On February 16, 2018, the U.S. Department of Commerce (DOC) released its reports to the President on the Section 232 investigations concerning the effects of imports of steel and aluminum on U.S. national security.<sup>5</sup> The reports include: (i) affirmative findings by the Secretary of Commerce that steel and aluminum imports “threaten to impair” U.S. national security; (ii) determinations that the President should “adjust imports” of steel and aluminum to remedy the threatened impairments; (iii) potential measures that the President could adopt to adjust steel and aluminum imports; (iv) the Department’s views on country and product exclusions; and (v) a description of the product scope of each investigation.

The findings and recommendations set forth in the reports are not binding on the President, who may take a range of actions, or no action, under the law. For example, instead of taking the actions recommended by DOC, the President could impose milder or more aggressive remedies, or determine that no actions are needed to adjust imports. The President is required to make a determination by April 11, 2018 in the steel investigation and by April 19, 2018 in the aluminum investigation.

An overview of the reports, their potential implications, and the next steps in the investigations is provided below.

### **□ Investigation of Steel Imports**

#### **Findings**

In the Section 232 investigation of steel imports, the Secretary of Commerce reached the following conclusions (all emphases added):

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<sup>5</sup> Click [here](#) to view the steel report and [here](#) to view the aluminum report. DOC’s fact sheet on the reports is available [here](#).

- **Import penetration, defense needs, and “critical infrastructure” needs.** DOC found that imports of finished steel products (*i.e.* not including semi-finished steel) currently represent over 25 percent of U.S. consumption, and that, when imports of semi-finished products are included, the import penetration level “has been above 30 percent for the first ten months of 2017.” Meanwhile, the report notes that the U.S. Department of Defense (DOD) currently requires “about three percent” of U.S. steel production for national defense purposes. The report also states that the steel requirements of 16 industries designated by the U.S. government as “critical infrastructure” sectors are relevant to U.S. national security, and that “when steel needs for critical infrastructure are included with defense needs, overall steel requirements are significantly higher.”<sup>6</sup> The report does not include a detailed analysis of the steel requirements of the 16 “critical infrastructure” sectors, though it does state that “using 2007 data (the latest available)...54 million metric tons of steel is being consumed in critical industries[.]”
- **Threat of impairment.** The Secretary determined that “the displacement of domestic steel by excessive imports and the consequent adverse impact of those quantities of steel imports on the economic welfare of the domestic steel industry, along with the circumstance of global excess capacity in steel, are ‘weakening our internal economy’ and therefore ‘threaten to impair’ the national security as defined in Section 232.” The Secretary further determined that “the only effective means of removing the threat of impairment is to reduce imports to a level that should, in combination with good management, enable U.S. steel mills to operate at 80 percent or more of their rated production capacity.” The report does not explain how DOC arrived at the 80 percent target for capacity utilization or how it reached the conclusion that import restrictions are “the only effective means” of achieving that objective.
- **Import adjustment.** The Secretary recommends that the President “take immediate action by adjusting the level of imports through quotas or tariffs on steel imported into the United States, as well as direct additional actions to keep the U.S. steel industry financially viable and able to meet U.S. national security needs.” The quota or tariff imposed “should be sufficient, after accounting for any exclusions, to enable the U.S. steel producers to be able to operate at about an 80 percent or better of the industry’s capacity utilization rate based on available capacity in 2017.”

### Recommendations for import adjustment

The report presents three alternative options to the President for adjusting imports, each of which would apply to all steel products covered by the investigation: (i) a global quota; (ii) a global tariff; or (iii) tariffs on a subset on countries, combined with quotas on the remaining countries. For each of these alternatives, the report proposes a specific quota level and/or tariff rate that is “expected” reduce steel imports to a level that would enable the domestic industry to achieve 80 percent capacity utilization. However, the report does not propose any specific duration for these measures. The three alternatives are as follows:

- **Alternative 1 - Global Quota:** “Impose quotas on all imported steel products at a specified percent of the 2017 import level, applied on a country and steel product basis.”

The report proposes that “a 63 percent quota would be expected to reduce steel imports by 37 percent (13.3 million metric tons) from 2017 levels...The quotas, adjusted as necessary, would result in imports equaling about 22.7 million metric tons, which will enable an 80 percent capacity utilization rate at 2017 demand levels (including exports). Application of an annual quota will reduce the impact of the surge in steel imports that has occurred since the beginning of 2017.”

- **Alternative 2 - Global Tariff:** “Apply a tariff rate on all imported steel products, in addition to any antidumping or countervailing duty collections applicable to any imported steel product.”

<sup>6</sup> The 16 critical infrastructure sectors are those identified by the U.S. Government in the 2013 Presidential Policy Directive 21 (PPD-21): (1) chemical production; (2) commercial facilities; (3) communications; (4) critical manufacturing; (5) dams; (6) defense industrial base; (7) emergency services; (8) energy; (9) financial services; (10) food and agriculture; (11) government facilities; (12) health care; (13) information technology; (14) nuclear reactors, materials, and waste; (15) transportation systems; and (16) water and waste water systems.

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The report proposes that “a 24 percent tariff on all steel imports would be expected to reduce imports by 37 percent (i.e., a reduction of 13.3 million metric tons from 2017 levels of 36.0 million metric tons). This tariff rate would thus result in imports equaling about 22.7 million metric tons, which will enable an 80 percent capacity utilization rate at 2017 demand levels (including exports).”

- **Alternative 3 – Tariffs and Quotas on Subsets of Countries:** “Apply a tariff rate on all imported steel products from Brazil, South Korea, Russia, Turkey, India, Vietnam, China, Thailand, South Africa, Egypt, Malaysia and Costa Rica, in addition to any antidumping or countervailing duty collections applicable to any steel products from those countries. All other countries would be limited to 100 percent of their 2017 import level.”

The report proposes that “a 53 percent tariff on all steel imports from this subset of countries would be expected to reduce imports by 13.3 million metric tons from 2017 import levels from the targeted countries. This action would enable an increase in domestic production to achieve an 80 percent capacity utilization rate at 2017 demand levels (including exports).”

### Country exemptions

The report does not propose any country-specific exemptions. However, the report states that “[i]n selecting an alternative, the President could determine that specific countries should be exempted from the proposed 63 percent quota or 24 percent tariff by granting those specific countries 100 percent of their prior imports in 2017, based on an overriding economic or security interest of the United States.” According to the report, “the limitation to 100 percent of each exempted country’s 2017 imports is necessary to prevent exempted countries from producing additional steel for export to the United States or encouraging other countries to seek to trans-ship steel to the United States through the exempted countries.”

The Secretary recommends that any determinations on country exemptions “should be made at the outset and a corresponding adjustment be made to the final quota or tariff imposed on the remaining countries. This would ensure that overall imports of steel to the United States remain at or below the level needed to enable the domestic steel industry to operate as a whole at an 80 percent or greater capacity utilization rate.”

### Product exclusions

The Secretary recommends an appeal process by which affected U.S. parties could seek an exclusion from the tariff or quota imposed. The Secretary would grant exclusions based on a demonstrated: (1) lack of sufficient U.S. production capacity of comparable products; or (2) specific national security based considerations. This appeal process would include a public comment period on each exclusion request, and in general, would be completed within 90 days of a completed application being filed with the Secretary.

An exclusion may be granted “for a period to be determined by the Secretary and may be terminated if the conditions that gave rise to the exclusion change.” The U.S. Department of Commerce will lead the appeal process in coordination with the Department of Defense and other agencies as appropriate. Should exclusions be granted, the Secretary would consider at the time whether the quota or tariff for the remaining products needs to be adjusted to increase U.S. steel capacity utilization to 80 percent.

### Product scope of the investigation

The product scope covers steel mill products (“steel”) which are defined at the Harmonized System (“HS”) 6-digit level as: 720610 through 721650, 721699 through 730110, 730210, 730240 through 730290, and 730410 through 730690, including any subsequent revisions to these HS codes. Generally, these products fall into one of the following five product categories (including but not limited to):

- 1) **Carbon and Alloy Flat Product (Flat Products):** Produced by rolling semi-finished steel through varying sets of rolls. Includes sheets, strips, and plates. Flat products are covered under the following 6-digit HS codes: 720810, 720825, 720826, 720827, 720836, 720837, 720838, 720839, 720840, 720851, 720852,

720853, 720854, 720890, 720915, 720916, 720917, 720918, 720925, 720926, 720927, 720928, 720990, 721011, 721012, 721020, 721030, 721041, 721049, 721050, 721061, 721069, 721070, 721090, 721113, 721114, 721119, 721123, 721129, 721190, 721210, 721220, 721230, 721240, 721250, 721260, 722511, 722519, 722530, 722540, 722550, 722591, 722592, 722599, 722611, 722619, 722691, 722692, 722693, 722694, 722699.

- 2) **Carbon and Alloy Long Products (Long Products):** Steel products that fall outside the flat products category. Includes bars, rails, rods, and beams. Long products are covered under the following 6-digit HS codes: 721310, 721320, 721391, 721399, 721410, 721420, 721430, 721491, 721499, 721510, 721550, 721590, 721610, 721621, 721622, 721631, 721632, 721633, 721640, 721650, 721699, 721710, 721720, 721730, 721790, 722520, 722620, 722710, 722720, 722790, 722810, 722820, 722830, 722840, 722850, 722860, 722870, 722880, 722910, 722920, 722990, 730110, 730210, 730240, 730290.
- 3) **Carbon and Alloy Pipe and Tube Products (Pipe and Tube Products):** Either seamless or welded pipe and tube products. Some of these products may include stainless as well as alloy other than stainless. Pipe and Tube products are covered under the following 6-digit HS codes: 730410, 730419, 730421, 730423, 730429, 730431, 730439, 730451, 730459, 730490, 730511, 730512, 730519, 730520, 730531, 730539, 730590, 730610, 730619, 730620, 730629, 730630, 730650, 730660, 730661, 730669, 730690.
- 4) **Carbon and Alloy Semi-finished Products (Semi-finished Products):** The initial, intermediate solid forms of molten steel, to be re-heated and further forged, rolled, shaped, or otherwise worked into finished steel products. Includes blooms, billets, slabs, ingots, and steel for castings. Semi-finished products are covered under the following 6-digit HS codes: 720610, 720690, 720711, 720712, 720719, 720720, 722410, 722490.
- 5) **Stainless Products:** Steel products, in flat-rolled, long, pipe and tube, and semi-finished forms, containing at minimum 10.5 percent chromium and, by weight, 1.2 percent or less of carbon, offering better corrosion resistance than other steel. Stainless steel products are covered under the following 6-digit HS codes: 721810, 721891, 721899, 721911, 721912, 721913, 721914, 721921, 721922, 721923, 721924, 721931, 721932, 721933, 721934, 721935, 721990, 722011, 722012, 722020, 722090, 722100, 722211, 722219, 722220, 722230, 722240, 722300, 730411, 730422, 730424, 730441, 730449, 730611, 730621, 730640.

#### □ Investigation of Aluminum Imports

##### Findings

In the Section 232 investigation of aluminum imports, the Secretary of Commerce reached the following conclusions (all emphases added):

- **Import penetration, defense needs, and “critical infrastructure” needs.** DOC found that imports of aluminum accounted for 64 percent of U.S. consumption of aluminum (primary and downstream mill products combined) in 2016. The report notes that DOD and its contractors use “a small percentage” of U.S. aluminum production for national defense purposes, but the precise figure is redacted in the public version of the report. The report also states that the aluminum needs of the 16 “critical infrastructure” sectors are relevant to national security, and that “virtually all” of the critical infrastructure sectors “rely on aluminum products as a part of their principal missions.” The report provides several examples of aluminum’s uses in critical infrastructure applications, but it does not include a detailed analysis of the aluminum requirements of the 16 critical infrastructure sectors.
- **Threat of impairment.** The Secretary determined that “the present quantities and circumstance of aluminum imports (wrought and unwrought) are ‘weakening our internal economy’ and threaten to impair the national security as defined in Section 232.” The Secretary further determined that “to remove the threat of impairment, it is necessary to reduce imports to a level that will provide the opportunity for U.S. primary aluminum producers to restart idled capacity.”
- **Import adjustment.** The Secretary recommends that the President “take immediate action by adjusting the level of [aluminum] imports.” The import adjustment would be designed, even after any exemptions (if granted), “to enable U.S. aluminum producers to utilize an average of 80 percent of their production capacity.” The report does not explain how DOC arrived at the 80 percent target for capacity utilization.

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## Recommendations for import adjustment

The report presents three alternative options to the President for adjusting imports: (i) a worldwide quota; (ii) a worldwide tariff; and (iii) tariffs on a subset of countries, combined with quotas for the remaining countries. In each alternative, quotas or tariffs would be imposed on imports of the following products, based on 2017 annualized imports in those categories:

- 1) Unwrought aluminum (HTS Code 7601);
- 2) Aluminum castings and forgings (HTS Codes 7616.99.51.60 and 7616.99.51.70);
- 3) Aluminum plate, sheet, strip, and foil (flat rolled products) (HTS Codes 7606 and 7607);
- 4) Aluminum wire (HTS Code 7605);
- 5) Aluminum bars, rods and profiles (HTS Code 7604);
- 6) Aluminum tubes and pipes (HTS Code 7608); and
- 7) Aluminum tube and pipe fittings (HTS Code 7609).

For each alternative, the report proposes a specific quota level and/or tariff rate that DOC claims would restrict aluminum imports sufficiently to allow U.S. aluminum producers to utilize an average of 80 percent of their capacity. The three alternatives are as follows:

- **Alternative 1 – Worldwide Quota:** “A worldwide quota of 86.7 percent on imports described above would restrict aluminum imports sufficiently to allow U.S. primary aluminum producers to increase production by about 669,000 metric tons, bringing total production to about 1.45 million metric tons, or about 80 percent of existing U.S. primary aluminum production capacity. This quota would also be applied to the five other aluminum product categories listed above and would help ensure the viability of those U.S. producers to meet national security needs.”<sup>7</sup>
- **Alternative 2 – Worldwide Tariff:** “A tariff rate of 7.7 percent on imports of unwrought aluminum and the other aluminum product categories listed above should have the same impact as the 86.7 percent quota. This tariff rate would be in addition to any antidumping or countervailing duty collections applicable to any product. This tariff rate also will adequately adjust for the price distortions in downstream aluminum product sectors that are caused by global overcapacity and overproduction being exported in the form of downstream products.”
- **Alternative 3 – Tariffs on a Subset of Countries:** “A tariff rate of 23.6 percent on imports of aluminum products from China, Hong Kong, Russia, Venezuela, and Vietnam should also restrict aluminum imports sufficiently to allow U.S. aluminum producers to utilize an average of 80 percent of their capacity. These five countries are the source of substantial imports due to significant overcapacity and potential unreliable suppliers or likely sources of transshipped aluminum from China... This tariff rate would be in addition to any antidumping or countervailing duty collections applicable to any product. For the targeted tariff, all other countries would be limited to 100 percent of their 2017 import volumes.”

The report does not propose any specific duration for the measures described above. However, the report states that, in each alternative, “the Secretary recommends that the action taken to adjust the level of imports must be in effect for a duration sufficient to allow sufficient time and assurances to stabilize the U.S. industry. It takes up to nine months to restart idled smelting capacity. Market certainty is needed to build case flow to pay down debt and to raise capital for plant modernization to improve manufacturing efficiency.” The report also states that DOC, in

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<sup>7</sup> The reference to “five other aluminum product categories” appears to be an error, as there are seven aluminum product categories listed in total. The preceding sentence in the report appears to confirm that the worldwide quota would apply to all seven aluminum product categories.

consultation with other appropriate departments and agencies, “will monitor the status of the U.S. aluminum industry and the effectiveness of the remedies to determine if the remedies should be terminated or extended.”

### Country exemptions

The report does not propose any country-specific exemptions. However, the report states that “[i]n selecting an alternative, the President could determine that specific countries should be exempted from the proposed quota by granting those specific countries 100 percent of their prior imports in 2017 or exempting them entirely, based on an overriding economic or security interest of the United States, which could include their willingness to work with the United States to address global excess capacity and other challenges facing the U.S. aluminum industry.”

The Secretary recommends that any determinations on country exemptions “should be made at the outset and a corresponding adjustment be made to the final quota or tariff imposed on the remaining countries. This would ensure that overall imports of aluminum to the United States remain at or below the level needed to enable the domestic aluminum industry to return to 2012 production and import penetration levels.”

### Product exclusions

The Secretary recommends an appeal process by which affected U.S. parties could seek an exclusion from the tariff or quota imposed. The Secretary would grant exclusions based on a demonstrated: (1) lack of sufficient U.S. production capacity of comparable products; or (2) specific national security based considerations. This appeal process would include a public comment period on each exclusion request, and in general, would be completed within 90 days of a completed application being filed with the Secretary.

An exclusion may be granted “for a period to be determined by the Secretary and may be terminated if the conditions that gave rise to the exclusion change.” The U.S. Department of Commerce will lead the appeal process in coordination with the Department of Defense and other agencies as appropriate. Should exclusions be granted the Secretary would consider at the time whether the quota or tariff for the remaining products needs to be adjusted to ensure that U.S. aluminum production meets “targeted levels.”

### Product scope of the investigation

Aluminum is defined in the report at the HTS 4-digit level. The HTS codes covered by the report are listed in the table below. In addition, two HTS codes at the ten-digit level are included, covering aluminum castings and forgings.

HTS Code	Description
7601	Unwrought aluminum
7604	Aluminum bars, rods and profiles
7605	Aluminum wire
7606	Aluminum plates, sheets, and strip, of a thickness exceeding 0.2mm
7607	Aluminum foil <sup>8</sup> (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2mm
7608	Aluminum tubes and pipes
7609	Aluminum tube and pipe fittings
7616.99.51.60	Other articles of aluminum: castings
7616.99.51.70	Other articles of aluminum: forgings

<sup>8</sup> Note: This category includes can sheet for aluminum can packaging.

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The scope of the investigation does not include bauxite or alumina, which are feedstocks for production of primary (unwrought) aluminum. Also excluded from the analysis are aluminum waste and scrap (HTS 7602) and aluminum powders and flakes (HTS 7603), which, according to the report, represent different industrial sectors.

#### □ Implications

A decision by the President to implement any of the measures recommended in the steel and aluminum reports would have significant economic and legal implications, given the breadth, severity, and purported national security justification of the proposed measures. For example, the measures would have a significant impact on steel and aluminum prices and, consequently, on the business operations of a wide range of downstream industries. Such actions also could result in retaliation by U.S. trading partners, and, if challenged at the WTO, would implicate controversial issues such as the interpretation of the national security exception in Article XXI of the GATT.

It remains possible, however, that the President will decide to take actions that are less severe than those proposed in the reports, given industry and congressional pressure, as well as the views of key Trump administration officials. In particular, U.S. downstream industries are likely to pressure the White House to avoid imposing severe import restrictions, as are other U.S. industries, such as agriculture, who have expressed concern that they might be targeted by foreign retaliation. Members of Congress also are likely to discourage broad import restrictions, and some already have criticized the remedies proposed in the DOC reports. For example, House Ways and Means Committee Chairman Kevin Brady (R-TX) stated that “[s]ome of the remedies outlined are too wide-ranging and expansive and could hurt U.S. companies and their workers”, calling instead for “a narrow and targeted remedy”. Secretary of Defense James Mattis also reportedly is opposed to broad import restrictions under Section 232, as are Treasury Secretary Steven Mnuchin, National Economic Council Director Gary Cohn, and Secretary of State Rex Tillerson. Moreover, it is possible that DOC recommended severe import restrictions as part of a deliberate negotiating strategy aimed at extracting concessions from U.S. trading partners in exchange for country- or product-specific exemptions or moderation of the final remedies. Given these circumstances, the outcome of the Section 232 investigations is far from certain.

## **US Trade Representative Requests Verification of Timber Imports Under US-Peru Trade Promotion Agreement**

On February 26, 2018, US Trade Representative (USTR) Robert Lighthizer, on behalf of the US Interagency Committee on Trade in Timber Products from Peru, requested that the Government of Peru verify that three timber shipments exported to the United States from Peru in 2017 complied with all applicable Peruvian laws and regulations. USTR submitted the verification request in accordance with provisions of the US–Peru Trade Promotion Agreement (PTPA) Environment Chapter.<sup>9</sup> USTR has touted the new enforcement action as evidence of the Trump administration’s focus on enforcement of US trade agreements.

The PTPA Environment Chapter includes a “timber verification mechanism”, provided for in the Annex on Forest Sector Governance, that relates to illegal logging and illegal trade in timber products. Article 7 of the Annex requires that, on the written request of the United States, the government of Peru shall verify whether, with respect to a particular shipment of timber products from Peru to the United States, the exporter or producer of those products has complied with applicable laws, regulations, and other measures of Peru governing the harvest of, and trade in, those products. Article 13 of the Annex specifies certain actions that the United States may take after the government of Peru submits the results of its verification, including denial of entry to the shipment that was the subject of the verification.

USTR’s new verification request under Article 7 identifies three shipments of timber products that arrived in the United States in 2017 from Peru, and requests that the government of Peru verify whether “the exporter and the supplying producers complied with applicable laws, regulations, and other measures of Peru.” The letter explains that

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<sup>9</sup> Click [here](#) to view USTR’s verification request.

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that “[t]he United States is making this request as a test of the integrity of the Peruvian timber supply chain and in the context of continued concerns about the practice of illegal logging in Peru.”

The United States first used the verification mechanism in 2016 to request the verification of a timber shipment from the Peruvian company Inversiones Oroza. Following a finding that portions of the shipment were not compliant with Peru’s laws, regulations, and other measures concerning the harvest of, and trade in, timber products, USTR in October 2017 decided to prohibit timber imports from the company for three years or until the Interagency Committee determines that the company has complied with all applicable laws, regulations, and other measures governing the harvest of and trade in Peruvian timber products, whichever is shorter.

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## Petitions and Investigations Highlights

### **US Department of Commerce Issues Affirmative Preliminary Determinations in Antidumping Duty Investigations of Low Melt Polyester Staple Fiber from Korea and Taiwan**

On January 29, 2018, the US Department of Commerce (DOC) announced its affirmative preliminary determinations in the antidumping duty (AD) investigations of low melt polyester staple fiber (PSF) from Korea and Taiwan.<sup>10</sup> In its investigations, DOC preliminarily determined that imports of the subject merchandise from Korea and Taiwan were sold in the United States at dumping margins of 16.48 percent and 52 percent, respectively.

The products subject to these investigations are synthetic staple fibers, not carded or combed, specifically bicomponent polyester fibers having a polyester fiber component that melts at a lower temperature than the other polyester fiber component (low melt PSF). The scope includes bi-component polyester staple fibers of any denier or cut length. The subject merchandise may be coated, usually with a finish or dye, or not coated. Low melt PSF is currently classifiable under subheading 5503.20.0015. Excluded from the scope are any products covered by the existing antidumping duty orders on certain polyester staple fiber from Korea and Taiwan.

DOC is scheduled to announce its final determinations on or around June 19, 2018. If DOC makes affirmative final determinations, and the US International Trade Commission (ITC) makes affirmative final determinations that imports of low melt PSF from Korea and/or Taiwan materially injure or threaten material injury to the domestic industry, DOC will issue AD orders.

According to DOC, imports of low melt PSF from Korea and Taiwan in 2016 were valued at an estimated USD 76.6 million and USD 26.8 million, respectively.

### **US Department of Commerce Issues Affirmative Preliminary Determination in Antidumping Duty Investigation of Certain Tapered Roller Bearings from Korea**

On January 30, 2018, the US Department of Commerce (DOC) announced its affirmative preliminary determination in the antidumping duty (AD) investigation of certain tapered roller bearings from Korea.<sup>11</sup> In its investigation, DOC preliminarily determined that imports of the subject merchandise from Korea were sold in the United States at dumping margins ranging from 21.23 to 45.53 percent.

The products subject to these investigations are tapered roller bearings with a nominal outside cup diameter of eight inches and under, regardless of type of steel used to produce the bearing, whether of inch or metric size, and whether the tapered roller bearing is a thrust bearing or not. Certain products are specifically excluded from the scope. The subject products are primarily classifiable under subheadings 8482.20.0040, 8482.20.0061, 8482.20.0070, 8482.20.0081, 8482.91.0050, 8482.99.1550, and 8482.99.1580 of the Harmonized Tariff Schedule of the United States (HTSUS). Parts may also enter under subheading 8482.99.4500.

DOC is scheduled to announce its final determination on or around April 17, 2018, 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 certain tapered roller bearings from Korea materially injure or threaten material injury to the domestic industry, DOC will issue an AD order.

According to DOC, imports of the subject merchandise from Korea in 2016 were valued at an estimated USD 60 million.

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<sup>10</sup> Click [here](#) to view the DOC fact sheet on the investigations.

<sup>11</sup> Click [here](#) to view the DOC fact sheet on the investigation.

## US Department of Commerce Initiates Antidumping and Countervailing Duty Investigations of Large Diameter Welded Pipe from Canada, China, Greece, India, Korea, and Turkey

On February 12, 2018, the US Department of Commerce (DOC) announced the initiation of antidumping duty (AD) investigations concerning imports of large diameter welded pipe from Canada, China, Greece, India, Korea, and Turkey, and the initiation of countervailing duty (CVD) investigations concerning imports of the same from China, India, Korea, and Turkey.<sup>12</sup> The petitioners, American Cast Iron Pipe Company, Berg Steel Pipe Corp., Dura-Bond Industries, Skyline Steel, and Stupp Corporation, allege that imports of the subject merchandise received above *de minimis* countervailable subsidies from the governments of China, India, Korea, and Turkey and were sold in the United States at the following dumping margins:

Country	Dumping Margin
Canada	50.89 percent
China	120.84 - 132.63 percent
Greece	41.04 percent
India	37.94 percent
Korea	16.18 and 20.39 percent
Turkey	66.09 percent

The product covered by these investigations is welded carbon and alloy steel pipe, more than 406.4 mm (16 inches) in nominal outside diameter (large diameter welded pipe), regardless of wall thickness, length, surface finish, grade, end finish, or stenciling. The large diameter welded pipe that is subject to these investigations is currently classifiable in Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7305.11.1030, 7305.11.1060, 7305.11.5000, 7305.12.1030, 7305.12.1060, 7305.12.5000, 7305.19.1030, 7305.19.1060, 7305.19.5000, 7305.31.4000, 7305.31.6010, 7305.31.6090, 7305.39.1000 and 7305.39.5000.

Excluded from the scope are any products covered by the existing antidumping duty orders on welded line pipe from Korea, welded line pipe from Turkey, and welded ASTM-312 stainless steel pipe from Korea, as well as any products covered by the existing countervailing duty order on welded line pipe from Turkey.

The US International Trade Commission (ITC) is scheduled to make its preliminary injury determinations on or before March 5, 2018. If the ITC determines that there is a reasonable indication that imports of large diameter welded pipe from Canada, China, Greece, India, Korea, and/or Turkey materially injure, or threaten material injury to, the domestic industry, the investigations will continue. DOC will then be scheduled to announce its preliminary CVD determinations on April 17, 2018 and its preliminary AD determinations on July 2, 2018, unless these deadlines are extended.

According to DOC, imports of large diameter welder pipe from Canada, China, Greece, India, Korea, and Turkey were valued at an estimated USD 66 million, 13 million, 70 million, 26 million, 150.3 million, and 116.1 million, respectively, in 2016.

## US Department of Commerce Initiates Antidumping and Countervailing Duty Investigations of Cast Iron Soil Pipe from China

On February 16, 2018, the US Department of Commerce (DOC) announced the initiation of antidumping (AD) and countervailing duty (CVD) investigations of imports of cast iron soil pipe from China.<sup>13</sup> The petitioner in the investigation, the Cast Iron Soil Pipe Institute, alleges that imports of the subject merchandise received above *de*

<sup>12</sup> Click [here](#) to view the DOC fact sheet on the investigations.

<sup>13</sup> Click [here](#) to view the DOC fact sheet on the investigations.

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*minimis* countervailable subsidies from the government of China and were sold in the United States at a dumping margin of 93.32 percent.

The merchandise covered by the investigations is cast iron soil pipe, whether finished or unfinished, regardless of industry or proprietary specifications, and regardless of wall thickness, length, diameter, surface finish, end finish, or stenciling. The subject imports are currently classified in subheading 7303.00.0030 of the Harmonized Tariff Schedule of the United States (HTSUS).

The US International Trade Commission (ITC) is scheduled to make its preliminary injury determination on or before March 12, 2018. If the ITC determines that there is a reasonable indication that imports of cast iron soil pipe from China materially injure or threaten material injury to the domestic industry in the United States, the investigations will continue. DOC will then be scheduled to announce its preliminary CVD determination in April 2018 and its preliminary AD determination in July 2018, unless these deadlines are extended.

According to DOC, imports of cast iron soil pipe from China in 2017 were valued at an estimated USD 11.5 million.

### **US Department of Commerce Issues Affirmative Final Determinations in Antidumping Investigations of Biodiesel from Argentina and Indonesia**

On February 21, 2018, the US Department of Commerce (DOC) announced its affirmative final determinations in the antidumping duty (AD) investigations of imports of biodiesel from Argentina and Indonesia.<sup>14</sup> In its investigations, DOC determined that imports of the subject merchandise were sold in the United States at dumping margins ranging from 60.44 to 86.41 percent (for Argentina) and from 92.52 to 276.65 percent (for Indonesia).

The merchandise covered by the investigations is biodiesel, which is a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, including biologically-based waste oils or greases, and other biologically-based oil or fat sources. The investigations cover biodiesel in pure form (B100) as well as fuel mixtures containing blends above B30 and including 99 percent biodiesel by volume (B99). The B100 product subject to the investigation is currently classifiable under subheading 3826.00.1000 of the HTSUS, while the blends above B30 through B99 product are currently classifiable under HTSUS subheading 3826.00.3000.

The US International Trade Commission (ITC) is scheduled to make its final injury determinations on or around April 6, 2018. If the ITC makes affirmative final determinations that imports of biodiesel from Argentina and/or Indonesia materially injure or threaten material injury to the domestic industry, DOC will issue AD orders.

According to DOC, imports of biodiesel from Argentina and Indonesia in 2016 were valued at an estimated USD 1.2 billion and 268 million, respectively.

### **US Department of Commerce Issues Affirmative Final Determinations in Antidumping and Countervailing Duty Investigations of Aluminum Foil from China**

On February 27, 2018, the US Department of Commerce (DOC) announced its affirmative final determinations in the antidumping duty (AD) and countervailing duty (CVD) investigations of imports of certain aluminum foil from China.<sup>15</sup> In its investigations, DOC determined that imports of the subject merchandise from China were sold in the United States at the following subsidy rates and dumping margins:

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<sup>14</sup> Click [here](#) to view the DOC fact sheet on the investigation.

<sup>15</sup> Click [here](#) to view DOC fact sheet on the investigations.

Country	Exporter/Producer	Subsidy Rate
China	Dingsheng Aluminum Industries (Hong Kong) Trading Co.	19.98%
	Jiangsu Zhongji Lamination Materials Co., Ltd.	17.14%
	Loften Aluminum (Hong Kong) Limited	80.97%
	Manakin Industries LLC and Suzhou Manakin Aluminum Processing Technology Co., Ltd.	80.97%
	All Others	18.56%

Country	Exporter/Producer	Dumping Rate	Cash Deposit
China	Dingsheng	106.09%	94.73%
	Zhongji	48.64%	37.99%
	Separate Rate Companies	84.94%	73.84%
	China-Wide Rate	106.09%	95.44%

The merchandise covered by the investigations is aluminum foil having a thickness of 0.2 mm or less, in reels exceeding 25 pounds, regardless of width. Aluminum foil is made from an aluminum alloy that contains more than 92 percent aluminum. Aluminum foil may be made to ASTM specification ASTM B479, but can also be made to other specifications. Excluded from the scope is aluminum foil that is backed with paper, paperboard, plastics, or similar backing materials on one side or both sides of the aluminum foil, as well as etched capacitor foil and aluminum foil that is cut to shape.

The products under investigation are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7607.11.3000, 7607.11.6000, 7607.11.9030, 7607.11.9060, 7607.11.9090, and 7607.19.6000, and may also be entered under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3045, 7606.12.3055, 7606.12.3090, 7606.12.6000, 7606.91.3090, 7606.91.6080, 7606.92.3090, and 7606.92.6080.

The US International Trade Commission (ITC) is scheduled to make its final determinations on or around April 12, 2018. If the ITC makes affirmative final determinations that imports of certain aluminum foil from China materially injure, or threaten material injury to, the domestic industry, DOC will issue AD and CVD orders. If the ITC makes negative determinations of injury, the investigations will be terminated.

In 2016, imports of certain aluminum foil from China were valued at an estimated USD 389 million.

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## Contact us

### Washington

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**White & Case LLP**

701 Thirteenth Street NW  
Washington  
DC 20005-3807

**Scott Lincicome, Esq**

Counsel

T +1 202 626 3592

E [slincicome@whitecase.com](mailto:slincicome@whitecase.com)

### Singapore

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**White & Case Pte. Ltd.**

8 Marina View #27-01  
Asia Square Tower 1  
Singapore 018960

**Samuel Scoles**

Regional Director Asia, International Trade Advisory Services

T +65 6347 1527

E [sscoles@whitecase.com](mailto:sscoles@whitecase.com)

**whitecase.com**

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