US & Multilateral Trade Policy Developments

Japan External Trade Organization

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Contents

US Trade Agreements

United States and Japan Reach "Agreement in Principle," but Questions and Obstacles Remain

On August 25, 2019, President Donald Trump and Japanese Prime Minister Shinzo Abe jointly announced that the United States and Japan have reached an agreement on core principles of a bilateral trade agreement covering agricultural market access, industrial tariffs, and digital trade. At this time, the two countries have provided few details regarding the core principles to which they have agreed, and it is expected that further negotiations and technical work will be required in order to finalize an agreement. However, the two countries have indicated that they intend to finalize and sign the agreement around the time of the United Nations General Assembly at the end of September. This report provides an overview of the announced agreement and the prospects and timing for its completion and entry into force.

Scope of the Agreement

As noted above, the United States and Japan have released few details regarding the "core principles" on which they have agreed. They have indicated, however, that the agreement covers the following issues:

- **Agriculture.** According to the White House, the United States has secured new market access for U.S. agricultural goods such as beef, pork, wheat, dairy products, wine, ethanol, and a variety of other products, which will lead to a "substantial reduction in tariffs and non-tariff barriers" affecting these products. At this stage, it is unclear how the level of market access the United States has secured from Japan compares to that which it secured from Japan in prior negotiations for the Trans-Pacific Partnership (TPP), from which the United States withdrew in 2017.

  According to US Trade Representative Robert Lighthizer, the bilateral trade agreement "will open markets to over $7 billion" of the United States' $14 billion in annual agricultural exports to Japan. Separately, Senate Finance Committee Chairman Chuck Grassley (R-IA) has stated that the new agreement with Japan on agriculture "will make up for about 90 percent of what [the United States] lost when the president pulled us out of TPP, except in dairy", though the basis for this statement is unclear. The Trump administration has faced pressure from the U.S. agricultural sector to secure market access in Japan at a level comparable to that negotiated under TPP, given increasing competition from agricultural exporters in countries that are parties to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the EU-Japan Economic Partnership Agreement, which have entered into force over the past year.

- **Industrial goods.** According to the White House, the United States "will reduce or eliminate tariffs on select industrial products, excluding autos and auto parts." The parties have provided no further information regarding the scope of the United States' commitments to reduce industrial tariffs, and press reports have provided conflicting information regarding the coverage of automotive goods. For example, Japanese news media have reported that the United States has agreed to "abolish tariffs on some of 400 auto parts[.]" Some sources have indicated that the United States has agreed to reduce tariffs on certain parts that are utilized in vehicles, but also are used in other types of transportation and industrial equipment, and thus are not considered by the United States to be automotive parts.

- **Digital trade.** According to the White House, the United States and Japan "have made good progress on the core elements of a high-standard digital trade agreement". It is expected that the agreement will include commitments similar to those contained in the CPTPP and the recently-completed US-Mexico-Canada Agreement (USMCA), but this has not been confirmed.

Neither side has confirmed whether the United States has agreed to exclude Japan from any potential restrictions on automotive imports that the United States might impose on "national security" grounds pursuant to Section 232 of the Trade Expansion Act of 1962. The threat of Section 232 measures on Japanese automotive goods was a key impetus for the bilateral negotiations, which Japan had previously resisted, and it is expected that Japan will insist on such an exemption as part of a final agreement. President Trump implied on August 26 that Japan would likely be excluded from any Section 232 measures on automotive goods if a bilateral agreement is reached, but this has not been confirmed. Neither party has indicated whether a bilateral agreement between them would result in the removal of the United States' Section 232 tariffs on steel and aluminium products from Japan.

Following the joint announcement, the White House indicated that the Trump administration views the agreement that is expected to be signed next month as "the first stage" of a more comprehensive trade agreement with Japan, negotiations for which will address other core issues such as trade in services and will proceed after the signing of the first stage agreement. Japan so far has not made any official comments in response to its counterparty's recent suggestions of a "staged" approach.

Outlook

Several procedural and political obstacles remain before a bilateral agreement between the United States and Japan can enter into force. We summarize the main obstacles below.

- **Finalization of legal text.** The parties will need to convert the "agreement in principle" to final agreement text – a process that requires technical-level talks, drafting, and legal "scrubbing" before the signing of the final agreement. Although the announced agreement is relatively narrow in scope, this process could take time. In the case of the EU-Japan EPA, for example, official signing did not occur until about one year after Japan reached an agreement in principle with the EU.

- **Possible pushback from CPTPP parties.** Once the text of the bilateral agreement is signed and published, Japan may face certain complaints from other parties to the CPTPP. CPTPP sets forth tariff rate quotas (TRQs) for several sensitive goods including wheat and dairy products. Depending on the level of market access including TRQs that Japan will extend to the United States, CPTPP parties may raise concerns regarding dilution of their expected market access. Japan may take this potential issue into account before and after signing the bilateral trade agreement with the United States.

- **Ratification and implementation.** Each country will need to take steps to ratify and implement the agreement after it is signed. In Japan, a September signing would allow the bilateral trade agreement to be brought before Japan's parliament as early as this fall for ratification. The process could slow down if Japan faces complaints from CPTPP parties, as mentioned above. In the United States, it is expected that the Trump administration will seek to implement the agreement without congressional approval pursuant to provisions of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA) that may permit the President to unilaterally implement certain trade agreements that cover only tariff barriers. Specifically, the Trump administration might claim that the agreement qualifies as an "agreement regarding tariff barriers" under Section 103(a) of TPA, and that the President may therefore enact the tariff reductions necessary to implement the agreement by Proclamation (*i.e.*, without the need to seek congressional approval or satisfy certain notification and consultation requirements that apply to "agreements regarding tariff and non-tariff barriers" under Section 103(b) of TPA). Section 103(a) authorizes the President to:

  - "Enter into" trade agreements regarding tariff barriers "whenever the President determines that one or more existing duties or other import restrictions of any foreign country…are unduly burdening and restricting the foreign trade of the United States"; and

- Proclaim "such modification or continuance of any existing duty…as the President determines to be required or appropriate to carry out any such trade agreement", subject to certain limitations. For example, the President may not reduce any rate of duty (other than a rate of duty that does not exceed 5 percent) to a rate that is less than 50 percent of the rate that applied on the date of TPA's enactment. The President also may not reduce the rate of duty on any "import sensitive agricultural product" below the rate applicable under the Uruguay Round Agreements or a successor agreement. Any tariff reductions exceeding these limitations may take effect "only if a provision authorizing such reduction is included within an implementing bill provided for under section 106 [of TPA] and that bill is enacted into law."

TPA also imposes fewer notification and consultation requirements with respect to tariff-only agreements, as opposed to comprehensive FTAs. For example, TPA requires the President to notify Congress of his intention to enter into (*i.e.*, sign) a tariff-only agreement, but it does not require him to do so at least 90 days in advance of signing, as is required for agreements covering tariff and non-tariff barriers. Several other notification and consultation requirements set forth in TPA do not apply to tariff-only agreements. It therefore is possible that the United States could finalize, sign, and implement an agreement with Japan relatively quickly.

While some Members of Congress (*e.g.*, Senate Finance Committee Chairman Grassley) have indicated that they would not object to the Trump administration's plan to implement an agreement with Japan without congressional approval, at least some Members are likely to object to this approach. Indeed, while Congress has delegated authority to the Executive Branch to negotiate and enter into trade agreements, it historically has sought to ensure that Congress is notified and consulted throughout such negotiations and has the final say in approving the resulting agreements. Though members of the Trump administration believe its approach is permissible under TPA, some Members might nonetheless argue that they have not been adequately consulted on the negotiations with Japan and that the resulting agreement should be submitted to Congress for approval.

Should the Trump administration insist on implementing the agreement unilaterally, this approach may cause frictions with congressional Democrats, potentially impeding progress towards congressional approval of the USMCA.

- **WTO consistency.** Some WTO Members might question whether the US-Japan trade agreement is consistent with GATT Article XXIV, given the agreement's limitation in scope to agriculture, certain industrial goods, and digital trade. GATT Article XXIV:8 requires that regional trade agreements eliminate duties and other restrictive regulations of commerce on "substantially all the trade" among the constituent members. If the US-Japan agreement does not cover "substantially all the trade" between the two countries, the agreement may be found to be inconsistent with GATT Article XXIV:8 and, in turn, the most-favoured nation obligation set forth in GATT Article I.

  This concern, however, might not apply to the US-Japan trade agreement if it qualifies as an "interim agreement" within the meaning of GATT Article XXIV:5, which provides that "the provisions of this Agreement shall not prevent, as between the territories of contracting parties, the formation of a customs union or of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or of a free-trade area", so long as certain conditions are met. In particular, the duties and other regulations of commerce applicable at the time of the formation of the interim agreement "shall not be higher or more restrictive" than those that existed prior to the formation of the interim agreement, and any interim agreement "shall include a plan and schedule for the formation of [a customs union or free-trade area] within a reasonable length of time."

  On the other hand, Article XXIV:7(b) allows WTO Members to make recommendations to the parties of an "interim agreement" if the Members find that the agreement "is not likely to result in the formation of a customs union or of a free-trade area within the period contemplated by the parties to the agreement or that such period is not a reasonable one." The Members receiving such recommendations "shall not maintain or put into force" their

interim agreement "if they are not prepared to modify it in accordance with these recommendations." These provisions are untested but may become relevant for the US-Japan agreement in light of the White House's characterization of the deal as "the first stage" of a comprehensive trade agreement between the two countries. Japan in particular is likely to be concerned about the agreement's consistency with WTO rules and, therefore, these procedural hurdles, which could affect the bilateral agreement and its implementation.

USMCA Gains Momentum in Congress, but Obstacles Remain

Negotiations between House Democrats and the Office of the US Trade Representative (USTR) on the US-Mexico-Canada Agreement (USMCA) have gained momentum, with a substantive back-and-forth regarding the key issues of labor rules, pharmaceutical IP, environmental rules, and enforcement. On September 9, House Ways and Means Committee Chairman Richard Neal (D-MA) circulated a document outlining the Democrats' USMCA Working Group's proposals with respect to each of the priority areas, and on September 11, USTR issued a formal counterproposal. House Democrats have indicated that, while the counterproposal represents a step in the right direction, more work is needed. Despite the apparent progress, time is running short to pass the USMCA this year. This alert summarizes recent developments and the potential obstacles that remain.

Democratic Negotiating Objectives

The Democrats' USMCA Working Group has not published the written proposals it has submitted to USTR, although on September 9, Chairman Neal circulated a document outlining the Working Group's proposals in general terms. The Democrats' negotiating objectives remain clear, and include items likely to face continued opposition from the Trump administration and/or Mexico.

Labor

On labor, the Working Group is seeking to:

- "Establish high-standard labor rules that are strong and clear enough to be enforceable";
- "Establish mechanisms and resources to monitor whether internationally recognized core labor rights are being afforded to workers"; and
- "Establish mechanisms, resources, and commitment to hold partners and actors accountable to labor commitments and rules in the agreement."

Though not stated in the document, it is expected that some of the Working Group's proposals on labor are modeled on a proposal developed by Sens. Ron Wyden (D-OR) and Sherrod Brown (D-OH) earlier this year. According to a summary released by Sens. Wyden and Brown, their proposed "Labor Cooperation and Enforcement Agreement" would permit teams of U.S. and Mexican officials to "audit and inspect facilities suspected of violating labor standards", and "[i]f facilities were found to be in violation, the U.S. could then take action to deny NAFTA's preferential tariff treatment to goods imported from that facility. In the case of forced labor, the U.S. could deny imports from those facilities all together, as is already provided under U.S. law[.]" USTR reportedly is amenable to this concept and is drawing from the Wyden-Brown proposal as it develops its own proposed solution to the concerns that House Democrats have raised. However, the Mexican government stated last week that Mexico is "totally" opposed to the concept of binational inspections of Mexican facilities (Mexico's Undersecretary of Foreign Affairs for North America, Jesus Seade, stated that "putting the law in the hands of some inspectors that would have free rein" would be a "horror.") It may therefore be difficult to develop a solution on labor enforcement that is acceptable to House Democrats, the Trump administration, and Mexico, particularly in time for the Agreement to be approved by Congress this year.

In addition, the document expresses skepticism that the Mexican government will fully implement the labor reforms it recently enacted into law to comply with Annex 23-A of the USMCA. It states that "Mexico now has a good law on paper, but it needs to demonstrate that it has the resources, infrastructure, and political will to follow through on promised reforms." According to the document, "[t]he USMCA does not contain any monitoring or enforcement mechanisms that would provide Congress with confidence that paper reforms will lead to change on the ground in Mexico," and "House Democrats have been burned before when they've relied on promises from our trading partners on labor, environment, and other issues." Moreover, AFL-CIO officials last week stated that the budget that Mexican President Andrés Manuel López Obrador has proposed in order to implement the labor reforms is inadequate and "raises some serious red flags about their fiscal ability to carry out these reforms." Mexico's Labor Minister also stated this week that the labor reform will be implemented in three stages, and that the first stage will not begin until "the last quarter of 2020". It may therefore be difficult for Mexico and the Trump administration to quickly persuade House Democrats that the law will be fully implemented.

Enforcement

On enforcement, the document states that the Working Group seeks to "[f]ix the procedures in the NAFTA's state-to-state dispute settlement mechanism that have allowed parties to block the formation of an arbitral panel and frustrate formal enforcement for all obligations, across the agreement[.]" The document also rejects one proposal that the Trump administration has offered to assuage Democratic concerns regarding panel blocking, *i.e.*, that the United States could take unilateral action under Section 301 against any country that prevents the formation of a USMCA panel requested by the United States. The document circulated by Chairman Neal states that "Section 301 of the Trade Act of 1974, which authorizes the President to impose tariffs under certain circumstances, is not a substitute for meaningful enforcement commitments in the agreement." It therefore appears that the Working Group is seeking language similar to that included in the TPP Dispute Settlement Chapter, which sought to preclude parties from blocking the formation of panels.

Mexico and Canada likely would not object to modifying the USMCA so as to prevent panel blocking, but it is unclear whether the Trump administration is willing to accommodate such changes, which it resisted during the renegotiation of NAFTA. The Trump administration has indicated that it is reluctant to change this aspect of the USMCA, and that it wants to retain the ability to block the formation of panels (USTR Lighthizer stated in July that this feature of NAFTA was left in place "largely because we didn't want to be in a position where someone could challenge U.S. trade laws.") However, congressional Democrats including Speaker Pelosi have repeatedly expressed concern that, unless the USMCA is amended to prevent panel blocking, none of the commitments in the Agreement are truly "enforceable." Persuading the Trump administration to change this aspect of the USMCA may prove difficult, given the administration's view that the United States can obtain more favorable results through unilateral pressure and negotiation than through traditional dispute settlement mechanisms. If USTR's counterproposal does indeed agree to modify the USMCA so as to prevent panel blocking, it would represent a major change in approach, and indicate that the Administration is prepared to cede significant ground on this and other issues in order to reach a compromise.

Intellectual property

On intellectual property, the Working Group seeks to:

- "Preserve Congress's freedom to legislate to reduce high prescription drug prices and foster timely access to medicines";
- "Maintain and refine the standards for timely access to affordable medicines established in 2007 as part of the May 10 Agreement;" and
- "Enhance opportunities for generic competition to improve access to medicines[.]"

According to the document, these changes are necessary because "USMCA provisions that lock-in domestic policies, particularly as they relate to biologics and secondary patents, contribute to high U.S. drug prices," and "[o]ther USMCA provisions ignore terms agreed by Congressional Democrats and a Republican Administration as part of the May 10th, 2007 Agreement, as well as key parts of U.S. law that promote competition and timely access to affordable medicines." Democrats have emphasized in particular their opposition to Article 20.F.14 of the USMCA, which would require parties to provide 10 years of market exclusivity for new biologic medicines (close to the 12 years required under US law). For example, a recent letter signed by more than 100 House Democrats stated that the provision "would limit Congress' ability to adjust the biologics exclusivity period, locking the US into policies that keep cancer and other drug prices high while exporting this model [to Mexico and Canada]."

Canada and Mexico likely would not object to scaling back the USMCA provisions on biologics as Democrats have demanded. In the United States, however, groups representing the pharmaceutical industry have been among the most vocal advocates of the USMCA and are likely to oppose any scaling back of the intellectual property protections afforded to biologics and other medicines under the Agreement. Moreover, some Republican Members of Congress would likely oppose such changes, particularly given that the TPP's allegedly inadequate protections for biologic medicines were a key Republican criticism of that agreement. Developing a solution that responds to Democratic concerns on pharmaceutical IP while preserving Republican support for the USMCA may therefore prove challenging.

USTR Counterproposal

On September 11, 2019, USTR formally responded to a proposal submitted last month by House Democrats regarding remaining priority concerns with the USMCA. USTR's counterproposal, which has not been made public, has sparked optimism among USMCA supporters that a compromise between the House and the Trump administration can be reached on the contentious issues of labor rules, pharmaceutical intellectual property, environmental rules, and enforcement. Despite this progress, House leadership has stated that further negotiations are required, and Chairman Neal indicated that the Democrats' USMCA Working Group was preparing a response to USTR's counterproposal. Chairman Neal also refused to say that any of the Democrats' main concerns had thus far been resolved.

While the specifics of USTR's counterproposal are not currently known, press reports suggest that USTR has ceded ground on each of the four key issues. For example, sources say that USTR is now willing to strengthen government-to-government dispute settlement provisions and to enhance labor enforcement via binational inspection teams.

Timing

The Ways & Means document indicates that congressional Democrats are reluctant to consider the USMCA implementing legislation until they are fully satisfied with the substance of the Agreement, regardless of the timelines for congressional consideration set forth in TPA. The document acknowledges that "[f]ast track procedures under TPA place timelines on Congress's consideration of trade agreements negotiated by the executive branch". However, it also states that "USMCA will be ready for a vote as soon as it is ready; no sooner, and also no later," and that "[i]t is in everybody's interest—Democrats, Republicans, Americans, Canadians, and Mexicans—that we take the time now to get the agreement right." The document therefore implies that, if the Trump administration were to submit a USMCA implementing bill over Democratic objections, Democrats may vote to change House rules so that the expedited legislative procedures set forth in TPA do not apply to the USMCA, allowing the legislation to languish in Congress indefinitely.

Congressional override of TPA's "fast track" process has a particularly noteworthy historical precedent: in 2008, during her previous term as House Speaker, Rep. Pelosi introduced a resolution that changed House rules to specify that expedited legislative procedures would not apply to implementing legislation for the US-Colombia trade

agreement. The House approved the resolution, and the agreement therefore stalled in Congress even though it was submitted under the 2002 TPA law. The FTA was only approved years later during the Obama administration. The USMCA could face a similar obstacle if House Democrats' demands are not met or election-year politics intervenes.

Outlook

Despite the obstacles described above, it remains possible that Congress will approve the USMCA implementing legislation this year, especially if USTR and the House Democrats continue to make progress. As noted above, the US business community has made congressional approval of the USMCA a priority, and the Agreement enjoys support from most congressional Republicans. Nevertheless, it will likely be challenging for the Trump administration to satisfy the demands that congressional Democrats have presented, and to do so in a way that also is acceptable to Mexico and congressional Republicans. Thus far, USTR's counterproposals appear to be insufficient.

Moreover, time is running short: the US presidential election will intensify over the coming months, and will increase the difficulty of securing bipartisan cooperation on the USMCA – particularly given that TPA's "fast track" rules permit several months of congressional deliberations between the time that FTA implementing legislation is formally submitted and both chambers of Congress must vote on the bill. Thus, unless the negotiations between USTR and House Democrats maintain their momentum and quickly lead to a bipartisan deal, the likelihood that the Trump administration will secure congressional approval of the USMCA will continue to shrink.

Overview of US-Japan Bilateral Agreements on Agricultural and Industrial Goods and Digital Trade

On September 25, 2019, President Donald Trump and Japanese Prime Minister Shinzo Abe announced in a joint statement that the United States and Japan have reached consensus on two separate trade agreements: (1) a US-Japan Trade Agreement,[1] which will reduce tariffs on certain agricultural and industrial goods; and (2) a US-Japan Digital Trade Agreement. The two leaders indicated that they intend for the two agreements to be signed "at the earliest possible date" and enter into force "in the very near future." The joint statement further explains that the two countries intend to hold further consultations after the US-Japan Trade Agreement enters into force, followed by negotiations for a more comprehensive bilateral trade agreement between the United States and Japan. While the texts of the new agreements have not yet been released, the US and Japanese governments have separately released summaries and fact sheets describing the agreements. This report provides an overview of the two agreements and the next steps towards their implementation.

Scope of the Agreements[2]

As expected, the announced trade agreements appear to be limited in its scope, focusing on market access for agricultural and industrial goods and digital trade. According to the summaries and fact sheets released by the two countries regarding the US-Japan Trade Agreement and the US-Japan Digital Trade Agreement, the agreements cover, *inter alia*, the following issues:

- **Agriculture.** According to the fact sheet released by the Office of the US Trade Representative (USTR), "the tariff treatment for the products covered in this agreement will match the tariffs that Japan provides preferentially to countries in the CP-TPP agreement." The fact sheets state that Japan will either eliminate or reduce tariffs on $7.2 billion of US food and agricultural products through staged tariff reductions ($2.9 billion), staged tariff elimination ($3.0 billion), and immediate tariff elimination ($1.3 billion). Included in the first category are beef and pork (fresh and frozen) while the second category concerns, *e.g.*, wine, cheese and

[1] The US-Japan joint statement is available **here**.

[2] The fact sheets released by USTR are available **here** (for a general overview) and **here** for agriculture-related items.

whey, ethanol, and processed pork, and the third category includes almonds, blueberries, sweet corn, grain sorghum, and other products.

In addition, preferential market access in the form of country specific quotas (CSQs) will be provided for some products including wheat, wheat products, malt, glucose, and corn starch. The agreement also provides for reduction of Japan's "mark up" on US wheat and barley and limited use of safeguards by Japan for surges in imports of beef, pork, whey, oranges, and race horses. The United States also will reduce or eliminate tariffs on a small subset of agricultural products from Japan, comprising 42 tariff lines for Japan and valued at $40 million in 2018, according to USTR. These products include certain perennial plants and cut flowers, persimmons, green tea, and soy sauce.

According to USTR's statement, once the US-Japan Trade Agreement is implemented, "over 90 percent of U.S. food and agricultural products imported into Japan will either be duty free or receive preferential tariff access." As a result, USTR claims that "American farmers and ranchers will have the same advantage as CP-TPP countries selling into the Japanese market."

- **Industrial Goods.** The United States has agreed to reduce or eliminate tariffs on certain industrial goods from Japan, which encompass almost 200 tariff lines and include certain machine tools, fasteners, steam turbines, bicycles, bicycle parts, musical instruments, chemical products, steel products, and aluminium products.[3] While the US-Japan Trade Agreement does not provide for reductions in US tariffs on automobiles or auto parts from Japan, the US tariff schedule under this agreement will state that tariffs for those products will be eliminated following further negotiations, according to a summary of the agreement released by Japan. The summary also indicates that Japan did not agree to reduce or eliminate tariffs for industrial products, and that the US-Japan Trade Agreement will have a provision concerning rules of origin.
- **Digital Trade.** The US-Japan Digital Trade Agreement is expected to provide for a "high-standard and comprehensive set of provisions addressing priority areas of digital trade." According to the fact sheet released by USTR, the agreement "meets the gold standard on digital trade rules set by the USMCA." According to USTR, the agreement addresses the following:
  - Prohibitions on imposing customs duties on digital products transmitted electronically such as videos, music, e-books, software, and games.
  - Ensuring non-discriminatory treatment of digital products, including coverage of tax measures.
  - Ensuring barrier-free cross-border data transfers in all sectors.
  - Prohibiting data localization requirements, including for financial service suppliers.
  - Prohibiting arbitrary access to computer source code and algorithms.
  - Ensuring firms' flexibility to use innovative encryption technology in their products.

  In general, the description of this agreement suggests that it will be similar (and perhaps identical) to the digital trade chapter in the recently-completed USMCA, and similar to the digital trade chapter of the CPTPP, on which the USMCA chapter was based.

[3] The schedule of tariff concessions that the United States will provide to Japan with respect to industrial goods is available **here**.

Comparison to TPP Commitments

The above descriptions confirm that, taken together, the US-Japan Trade Agreement and the US-Japan Digital Trade Agreement are much narrower in scope than the Trans-Pacific Partnership (TPP), from which the United States withdrew in 2017. TPP, which later became the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) signed by 11 countries, concerned not only trade in goods, but also trade in services and investment and provided for various trade-related disciplines concerning, for example, sanitary and phytosanitary (SPS) measures, technical barriers for trade (TBT), and state-owned enterprises (SOEs).

Furthermore, the coverage of trade in agricultural and industrial goods under the US-Japan Trade Agreement appears to be more limited than that agreed under TPP. For example, the summary of the agreement released by Japan specifically states that rice is not covered under the bilateral agreement, whereas Japan had agreed to establish a new duty-free CSQ for US rice under TPP. Japan has also clarified that there will be no new CSQ for US products for 33 tariff lines for which Japan has established TPP-wide tariff rate quotas (TRQs) (*e.g.*, milk powder and butter); and there will be no tariff reduction or elimination for forestry products or fishery products. In addition, while US frozen poultry meat will be granted a TPP-equivalent level of market access under the US-Japan Trade Agreement, Japan will not make any concession with respect to fresh poultry meat although it had agreed to provide staged tariff elimination for all US poultry meat under TPP. Lastly, neither the United States nor Japan has specifically indicated the agreement's coverage with respect to soybean products. Under TPP, Japan had agreed to eliminate tariffs on US soybean oil and soybean meal, but it appears, based on limited information available at this time, that Japan will not provide similar market access under the US-Japan Trade Agreement.

As mentioned above, the United States also did not agree to reduce tariffs on automotive goods from Japan – a concession that Japan had secured under TPP. These areas are expected to be covered in the second stage of negotiations between the two countries, but the timing and outcome of such negotiations are far from certain. In this respect, the joint statement says only that "the United States and Japan intend to conclude consultations within 4 months after the date of entry into force of the United States-Japan Trade Agreement and enter into negotiations thereafter in the areas of customs duties and other restrictions on trade, barriers to trade in services and investment, and other issues[.]"

Section 232 Tariffs on Automotive, Steel, and Aluminium Imports

The new agreements also leave unresolved the various US actions under Section 232 of the Trade Expansion Act of 1962. The United States has not made a formal, express commitment in the new agreement to refrain from imposing tariffs on Japanese automotive goods under Section 232, or to remove the Section 232 tariffs currently in effect on Japanese steel and aluminum products.

With regard to potential Section 232 restrictions on automotive imports from Japan, the summary of the trade agreements released by Japan cites the following sentence provided in the joint statement: "While faithfully implementing these agreements, both nations will refrain from taking measures against the spirit of these agreements and this Joint Statement." This is almost identical to the language included in the US-Japan joint statement issued at the beginning of the bilateral trade negotiation in September 2018, which Japan repeatedly cited during the negotiation as evidence that the United States had agreed to refrain from imposing Section 232 tariffs on Japanese automotive goods while the negotiations were ongoing. Japan appears to expect that the United States will continue to refrain from enacting such measures on Japanese autos, based on the inclusion of this same language in the new joint statement. However, the United States has provided only a verbal commitment that it does not "intend" to impose Section 232 measures on Japanese automotive goods "at this point" (USTR Robert Lighthizer told reporters on September 25 that "at this point, it is certainly not our intention, the president's intention, to do anything on autos, on 232s, on Japan.")

Japan has noted that the US-Japan Trade Agreement contains a provision that allows either party to terminate the agreement after providing the other party four months' advance notification of its intention to do so. Although such termination provisions are common in US trade agreements, this provision will likely serve as Japan's leverage to exert pressure on the United States to refrain from imposing Section 232 tariffs on Japanese automotive goods.

The summaries of the agreement also make no mention of the United States' existing Section 232 measures on Japanese steel and aluminum imports, and it appears unlikely that these measures will be terminated under the initial US-Japan Trade Agreement. The Trump-Abe joint statement indicates that, as bilateral negotiations continue, "both nations will make efforts for an early solution to other tariff related issues." While vague, this latter statement may indicate that the two sides will continue to discuss the possible exemption of Japanese auto exports from any potential Section 232 measures on automotive goods (which Japan has prioritized), as well as the possible removal of the Section 232 measures on Japanese steel and aluminum imports. The timing and outcome of any such discussions are uncertain, however.

Outlook

At this stage, it is expected that the two countries still need to finalize and sign the legal texts of the two agreements, after which the processes of ratification and implementation will begin. As this process unfolds, Japan could face some pushback from CPTPP parties to the extent that the additional market access that Japan provides to the United States erodes the tariff preferences afforded to those parties, and questions arise as to whether the US-Japan Trade Agreement is consistent with WTO rules, especially those under GATT Article XXIV.

- **US implementation process.** In a Presidential message to Congress dated September 16, President Trump stated that he intends to enter into the US-Japan Trade Agreement pursuant to Section 103(a) of Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA), indicating that the Trump administration intends to implement the agreement without congressional approval.[4] The schedule of tariff concessions that the United States will provide to Japan with respect to industrial goods further confirms this approach, as the tariff reductions to which the United States has committed fall within the parameters specified in Section 103(a) (that is, the United States has not agreed to reduce any rate of duty (other than a rate of duty that does not exceed 5 percent) to a rate that is less than 50 percent of the rate that applied on the date of TPA's enactment.) Nevertheless, some Members of Congress might object to the Trump administration's plan to implement the agreement without Congressional approval.

  President Trump's September 16 message to Congress also states that President Trump "will be entering into an Executive Agreement with Japan regarding digital trade." This statement indicates that the Trump administration also intends to enter into the US-Japan Digital Trade Agreement without seeking congressional approval. The administration may seek to justify this approach by claiming that the agreement – like the USMCA digital trade chapter on which it is based – does not require any changes to US law (USTR stated in the draft Statement of Administrative Action for the USMCA that "[n]o statutory or administrative changes will be required to implement [the digital trade chapter] [because] U.S. laws and regulations are already in

[4] Section 103(a) authorizes the President to:

- "Enter into" trade agreements regarding tariff barriers "whenever the President determines that one or more existing duties or other import restrictions of any foreign country…are unduly burdening and restricting the foreign trade of the United States"; and
- Proclaim "such modification or continuance of any existing duty…as the President determines to be required or appropriate to carry out any such trade agreement", subject to certain limitations. For example, the President may not reduce any rate of duty (other than a rate of duty that does not exceed 5 percent) to a rate that is less than 50 percent of the rate that applied on the date of TPA's enactment. The President also may not reduce the rate of duty on any "import sensitive agricultural product" below the rate applicable under the Uruguay Round Agreements or a successor agreement. Any tariff reductions exceeding these limitations may take effect "only if a provision authorizing such reduction is included within an implementing bill provided for under section 106 [of TPA] and that bill is enacted into law."

conformity with the obligations assumed under the Chapter.") However, TPA does not provide clear authority for the President to enter unilaterally into agreements on digital trade, and some Members of Congress may therefore question whether the President possesses the legal authority to unilaterally enter into the US-Japan Digital Trade Agreement.

- **WTO consistency.** As noted in our September 4, 2019 report, GATT Article XXIV requires that regional trade agreements eliminate duties and other restrictive regulations of commerce on "substantially all the trade" among the constituent members. Given the announced scope of the US-Japan Trade Agreement, some WTO Members could question whether the Agreement meets the "substantially all the trade" requirement. While the Agreement could nonetheless be justified under WTO rules as an "interim agreement" that will lead to the formation of a free-trade area, the United States and Japan would need to include "a plan and schedule for the formation of [a customs union or free-trade area] within a reasonable length of time." This requirement has not yet been interpreted by WTO panels or the Appellate Body, but Members might argue that United States and Japan will need to provide a more detailed "plan and schedule" than the four-month consultation period and reference to future negotiations provided in their joint statement.

- **Business reactions.** The business communities in the United States and Japan generally have been supportive of the agreements announced this week. While Japanese automakers have urged the Japanese government to continue seeking market access for Japanese autos and auto products, they have welcomed the statements suggesting that the United States will refrain from imposing Section 232 measures on such products. The Japan Agricultural Cooperatives also have been supportive given that Japanese rice growers will not be exposed to additional competition from US growers. The US agriculture sector generally has welcomed the improved market access for US agricultural exports to Japan, especially in light of recently-increased competition from CPTPP parties and the European Union, which has its own bilateral trade agreement in place with Japan. However, some US business groups have reacted coolly to the new agreements by urging the Trump administration to follow through on its commitment to secure a more comprehensive agreement with Japan. The US Chamber of Commerce, for example, stated that the agreements are "not enough" and that "[t]he Chamber strongly urges the administration to hold fast to its commitment to achieve a comprehensive, high-standard trade agreement with Japan that addresses the full range of our trade priorities, including services, intellectual property protection, and regulatory barriers to trade."

  USTR's announcement on the new agreements with Japan says that "[t]he United States looks forward to further negotiations with Japan for a comprehensive agreement that addresses remaining tariff and non-tariff barriers and achieves fairer, more balanced trade." However, some industry groups have expressed concern that, having already secured market access for US agricultural exports to Japan, the US government will feel less political pressure to expiditiously conclude and ratify a second agreement with Japan addressing services, intellectual property, and other issues.

- **Timing of implementation.** It is expected that Japan will complete its implementation process during the extraordinary session of the Diet that is scheduled to be held between early October and mid-December of this year. President Trump could potentially proclaim the tariff reductions agreed under the US-Japan Trade Agreement as soon as this process is completed. In fact, USTR Lighthizer has suggested that the target date for entry into force of the US-Japan Trade Agreement is January 1, 2020, and the two sides may also seek to implement the digital trade agreement quickly. However, implementation could be delayed depending on the progress of deliberations in the Japanese Diet, the extent of possible pushback from CPTPP parties or other WTO Members, and the reaction of the US Congress to the Trump administration's plan to implement the agreements unilaterally.

US Trade Actions

Section 301

USTR Issues Section 301 Tariff Exclusions for Hundreds of Goods on Lists 1-3; Announces Amendments to List 3 Exclusion Process

On September 20, 2019, the Office of the US Trade Representative (USTR) published Federal Register notices excluding over 400 Chinese-origin products from the 25% additional tariffs that have been imposed on these goods pursuant to Section 301 of the Trade Act of 1974.[5] The products at issue are found on three different lists of Chinese goods (Lists 1, 2 and 3) now subject to the tariffs, and include such items as electric motorcycles, lamp shades, computer components, engines, and power tools. USTR also announced certain amendments to the List 3 exclusion process, including changes to the duration of exclusions granted for products on List 3. These developments are summarized below.

Background

USTR began accepting product exclusion requests for List 1 and 2 goods shortly after Section 301 tariffs were imposed on these products in July and August 2018, respectively. USTR began accepting product exclusion requests for List 3 goods only after the Section 301 tariff rate on these products increased to 25% (from the prior rate of 10%) in May 2019 as a result of difficulties in the bilateral negotiation between the United States and China. Exclusion requests generally are required to address:

- Whether the particular product is available only from China;
- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requester or other US interests; and
- Whether the particular product is strategically important or related to "Made in China 2025" or other Chinese industrial programs.

Properly filed exclusion requests are subject to a review process consisting of, *inter alia*, the following steps:

- Public comment period. Interested persons have 14 days from the date a request is posted on Regulations.gov to respond to the request. If a response is submitted, the requester has 7 days to reply to the response.
- Initial substantive review. After the public comment period closes, USTR conducts an "initial substantive review" of whether the exclusion request should be granted, based on the substantive criteria listed above and in the Federal Register notice.
- Administrability review. If a request passes the initial substantive review, USTR consults with US Customs and Border Protection (CBP) to determine whether an exclusion would be administrable. Requests that pass the administrability review are granted.

Exclusions Approved for Lists 1-3

The majority of the exclusions, totalling 310 tariff lines, are from List 1, which was issued in July 2018 and covers approximately $34 billion in annual import value. Eighty-nine products will be excluded from List 2, which was issued

[5] The Federal Register notices pertaining to **List 1**, **List 2**, and **List 3** are available at the included links.

in August 2018 and covers approximately $16 billion in annual import value. Thirty-eight products will be excluded from List 3, which was issued in September 2018 and covers approximately $200 billion in annual import value.

- **List 1:** The exclusions granted by USTR are established in 310 "specially prepared product descriptions" that cover certain products within a specified 10-digit Harmonized Tariff Schedule of the United States (HTSUS) subheading. According to USTR, these exclusions cover 724 separate product exclusion requests. Examples of excluded products are listed below. For the precise scope of the excluded products, please see the full product descriptions and 10-digit HTSUS numbers referenced in the Annex to USTR's Federal Register notice.
    - Certain types of centrifugal pumps classified under HTSUS subheading 8413;
    - Certain compressors for use in household refrigerators, air conditioners, and other items, classified under HTSUS subheading 8414
    - Certain heat exchanger unites classified under HTSUS subheading 8419
    - Certain types of fork-lift trucks classified under HTSUS subheading 8427
    - Certain types of ball, tapered, and roller bearings classified under HTSUS subheading 8482
    - Certain types of AC and DC motors classified under HTSUS subheading 8501
    - Certain GPS devices classified under HTSUS subheading 8526
    - Certain four-wheel off-road vehicles classified under HTSUS subheading 8703
    - Certain wing, tail, fuselage, and other components of drone aircraft classified under HTSUS subheading 8803
    - Certain thermostats for airconditioning, refrigeration or heating systems, classified under HTSUS subheading 9032
- **List 2:** The exclusions granted by USTR are reflected in 89 specially prepared product descriptions, which cover 400 separate exclusion requests according to USTR. Examples of excluded products are listed below. For the precise scope of the excluded products, please see the full product descriptions and 10-digit HTSUS numbers referenced in the Annex to USTR's Federal Register notice.
    - Certain electric motorcycles classified under HTSUS subheading 8711
    - Certain electric skateboards classified under HTSUS subheading 8711
    - Certain solar panels classified under HTSUS subheading 8541
    - Certain crystalline silicon photovoltaic cells classified under HTSUS subheading 8541
    - Certain DC motors classified under HTSUS subheading 8501
    - Certain spark-ignition combustion engines classified under HTSUS subheading 8407
    - Certain iron and steel pipes, posts, and girders, classified under HTSUS subheading 7308
    - Various products comprised of polyvinyl chloride, classified under HTSUS subheading 3920

- **List 3:** The exclusions granted by USTR are reflected in 38 specially prepared product descriptions, which cover 46 separate exclusion requests. Examples of the excluded products are listed below. For the precise scope of the excluded products, please see the full product descriptions and 10-digit HTSUS numbers referenced in the Annex to USTR's Federal Register notice.
    - Various fabrics classified under HTSUS subheadings 5407, 5513, and 5903
    - Certain grills classified under HTSUS subheadings 4402 and 7321
    - Certain spark ignition reciprocating piston engines classified under HTSUS subheading 8407
    - Various printed circuit assemblies classified under HTSUS subheading 8473
    - Certain power supplies for automatic data processing machines classified under HTSUS subheading 8504
    - Certain aluminum radiators for motor vehicles classified under HTSUS subheading 8708
    - Certain LED light fixtures used in horticulture, classified under HTSUS subheading 9405

USTR has noted that the scope of each exclusion is governed by the scope of the product descriptions in the Annexes to the relevant Federal Register notices, and not by the product descriptions set out in any particular request for exclusion. USTR also has confirmed that the granted exclusions are available for any product that meets the description set forth in the Federal Register notice, regardless of whether the importer filed an exclusion request.

The exclusions granted to products on Lists 1 and 2 will apply retroactively to the dates that the Section 301 tariffs on these items took effect, and will apply for one year from the date the exclusions' publication in the Federal Register (*i.e.* until September 20, 2020). However, as explained in greater detail below, USTR has announced certain amendments to the List 3 exclusion process that will result in a different effective period for product exclusions granted to List 3 goods.

Amendments to List 3 exclusion process

In USTR's June 24, 2019 Federal Register notice announcing the List 3 exclusion process, USTR stated that the exclusions granted to products on List 3 would be effective starting from the September 24, 2018, effective date of the List 3 tariffs, and would extend for one year after the publication of the exclusion determination in the Federal Register. However, USTR's September 20, 2019 Federal Register notice granting certain List 3 exclusions states that "[t]his policy…would have resulted in disparities in the effective periods between exclusions granted early in the exclusion process and those granted later." Accordingly, USTR "is amending the exclusion process so as to adopt a uniform expiration date for exclusions granted for the [List 3 tariff action], subject to special circumstances. In particular, all exclusions from the [List 3 tariff action] will be effective from September 24, 2018, to August 7, 2020." Thus, regardless of the date on which a List 3 exclusion is granted by USTR, all List 3 exclusions will be effective for a period of approximately 22.5 months.

Outlook

This latest round of exclusions comes as the United States and China are resuming bilateral trade negotiations. A delegation from Beijing arrived in Washington on Thursday, September 19 for working-level discussions, ahead of planned high-level negotiations in October. While the new exclusions may be read as a sign of goodwill in the midst of the ongoing negotiations, they more likely come in response to concerns voiced by the US private sector (and supported by recent economic data and statements of the US Federal Reserve) as to the tariffs' negative economic impact, particularly on small- and medium-sized US businesses.

Notably, USTR's online index of Section 301 exclusion requests shows that the agency has now issued decisions on all 10,814 exclusion requests submitted for goods on List 1, and all 2,869 exclusion requests submitted for goods on List 2, as shown in the table below. Of these, USTR has approved a total of 4,727 exclusion requests. Exclusion requests submitted for goods on Lists 1-2 therefore have had a combined success rate of approximately 35%. To date, USTR has received more than 30,000 exclusion requests for products on List 3, but has processed only a small portion of those requests, as shown below.

Status of Section 301 Product Exclusion Requests					
Product List	**Granted**	**Denied**	**Success Rate**	**Pending**	**Total Received**
List 1 ($34 billion)	3,653	7,161	34%	0	10,814
List 2 ($16 billion)	1,074	1,795	37%	0	2,869
List 3 ($200 billion)	61	378	16%	29,893	30,332

Notably, USTR still has not yet indicated whether it plans to reopen the exclusion process for List 1 and 2 goods in the coming months, even though the exclusions already granted for List 1 goods will begin to expire as soon as December of 2019. Given the ongoing difficulties in the bilateral negotiation between the United States and China, there is a strong chance that the Section 301 tariff on List 1 goods will remain in effect well into 2020 if not longer. Parties that have obtained exclusions for goods on List 1 may therefore wish to monitor closely any announcements from USTR regarding the potential reopening of the exclusion process, so that they may promptly request the renewal of their exclusions if this opportunity arises.

Petitions and Investigations

US Department of Commerce Issues Preliminary Antidumping Duty Determinations on Fabricated Structural Steel from Canada, China, and Mexico

On September 4, 2019, the US Department of Commerce (DOC) announced its affirmative preliminary determinations in the antidumping duty (AD) investigations of imports of certain fabricated structural steel from China and Mexico. In its investigation, DOC preliminarily determined that exporters from China and Mexico have sold fabricated structural steel in the United States at dumping margins ranging from 0.00 percent to 141.38 percent and 0.00 percent to 30.58 percent, respectively. DOC also announced a negative preliminary determination in the AD investigation of certain fabricated structural steel from Canada. As a result of these determinations, DOC will instruct US Customs and Border Protection to collect cash deposits from importers of fabricated structural steel from China and Mexico based on the preliminary rates noted above.

The petitioner in these investigations is the American Institute of Steel Construction Full Member Subgroup (Chicago, IL). The merchandise covered by these investigations is carbon and alloy fabricated structural steel. Fabricated structural steel is made from steel in which: (1) iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is two percent or less by weight. Fabricated structural steel products are steel products that have been fabricated for erection or assembly into structures, including, but not limited to, buildings (commercial, office, institutional, and multi-family residential); industrial and 2 utility projects; parking decks; arenas and convention centers; medical facilities; and ports, transportation and infrastructure facilities. Fabricated structural steel is manufactured from carbon and alloy (including stainless) steel products such as angles, columns, beams, girders, plates, flange shapes (including manufactured structural shapes utilizing welded plates as a substitute for rolled wide flange sections), channels, hollow structural section (HSS) shapes, base plates, and plate-work components.

The products subject to the investigations are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings: 7308.90.3000, 7308.90.6000, and 7308.90.9590. The products subject to the investigations may also enter under the following HTSUS subheadings: 7216.91.0010, 7216.91.0090, 7216.99.0010, 7216.99.0090, 7222.40.6000, 7228.70.6000, 7301.10.0000, 7301.20.1000, 7301.20.5000, 7308.40.0000, 7308.90.9530, and 9406.90.0030.

DOC is scheduled to announce the final determinations in these investigations on or around January 24, 2020. If DOC's final determinations are affirmative, the US International Trade Commission (ITC) will be scheduled to make its final injury determinations on or around March 9, 2020. If DOC makes affirmative final determinations of dumping, and the ITC makes affirmative final injury determinations, DOC will issue AD orders. If DOC makes negative final determinations of dumping, or the ITC makes negative final determinations of injury, the investigations will be terminated and no orders will be issued.

In 2018, imports of fabricated structural steel from Canada, China, and Mexico were valued at an estimated $722.5 million, $897.5 million, and $622.4 million, respectively, according to DOC.

Click **here** to view the DOC fact sheet on these investigations.

US Department of Commerce Issues Affirmative Preliminary Determination in Countervailing Duty Investigation of Imports of Ceramic Tile from China

On September 10, 2019, the US Department of Commerce (DOC) announced its affirmative preliminary determination in the countervailing duty (CVD) investigation of imports of ceramic tile from China. In its investigation, DOC preliminarily found that imports of ceramic tiles from China received countervailable subsidies at rates ranging

from 103.77 to 222.24 percent. As a result of the preliminary determination, DOC will instruct US Customs and Border Protection to collect cash deposits from importers of ceramic tile from China based on these preliminary rates.

The petitioner in this investigation is the Coalition for Fair Trade in Ceramic Tile. The members of the Coalition are American Wonder Porcelain (Lebanon, TN), Crossville, Inc. (Crossville, TN), Dal-Tile Corporation (Dallas, TX), Del Conca USA, Inc. (Loudon, TN), Florida Tile, Inc. (Lexington, KY), Florim USA (Clarksville, TN), Landmark Ceramics (Mount Pleasant, TN), and StonePeak Ceramics (Chicago, IL). The merchandise covered by this investigation is ceramic flooring tile, wall tile, paving tile, hearth tile, porcelain tile, mosaic tile, flags, finishing tile, and the like (hereinafter ceramic tile). Ceramic tiles are articles containing a mixture of minerals including clay (generally hydrous silicates of alumina or magnesium) that are fired so the raw materials are fused to produce a finished good that is less than 3.2 cm in actual thickness.

Subject merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheadings of heading 6907: 6901.21.1005, 6907.21.1011, 6907.21.1051, 6907.21.2000, 6907.21.3000, 6907.21.4000, 6907.21.9011, 6907.21.9051, 6907.22.1005, 6907.22.1011, 6907.22.1051, 6907.22.2000, 6907.22.3000, 6907.22.4000, 6907.22.9011, 6907.22.9051, 6907.23.1005, 6907.23.1011, 6907.23.1051, 6907.23.2000, 6907.23.3000, 6907.23.4000, 6907.23.9011, 6907.23.9051, 6907.30.1005, 6907.30.1011, 6907.30.1051, 6907.30.2000, 6907.30.3000, 6907.30.4000, 6907.30.9011, 6907.30.9051, 6907.40.1005, 6907.40.1011, 6907.40.1051, 6907.40.2000, 6907.40.3000, 6907.40.4000, 6907.40.9011, and 6907.40.9051. Subject merchandise may also enter under subheadings of headings 6914 and 6905: 6914.10.8000, 6914.90.8000, 6905.10.0000, and 6905.90.0050.

DOC is currently scheduled to announce its final CVD determination on or about January 22, 2020. If DOC makes an affirmative final determination, the US International Trade Commission (ITC) will be scheduled to make its final injury determination on or about March 6, 2020. If DOC makes an affirmative final determination in this investigation, and the ITC makes an affirmative final injury determination, DOC will issue a CVD order. If DOC makes a negative final determination, or the ITC makes a negative final determination of injury, the investigation will be terminated and no order will be issued.

In 2018, imports of ceramic tile from China were valued at an estimated $483.1 million, according to DOC.

Click **here** for DOC's fact sheet on the decision.

US Department of Commerce Issues Affirmative Preliminary Determinations in Antidumping Duty Investigations of Acetone from Belgium, South Africa, and South Korea

On September 18, 2019, the US Department of Commerce (DOC) announced its affirmative preliminary determinations in the antidumping duty (AD) investigations of imports of acetone from Belgium, South Africa, and South Korea. In its investigations, DOC preliminarily found that exporters of acetone from Belgium, South Africa, and South Korea, have sold acetone in the United States at the following dumping margins:

- Belgium – 28.17 percent
- South Africa – 45.85 percent
- South Korea – 7.67 percent to 47.70 percent

As a result of these preliminary decisions, DOC will instruct US Customs and Border Protection to collect cash deposits from importers of acetone from Belgium, South Africa, and South Korea based on these preliminary rates.

The petitioner in this investigation is the Coalition for Acetone Fair Trade. The members of the Coalition for Acetone Fair Trade are AdvanSix, Inc. (Parsippany, NJ), Altivia Petrochemicals, LLC (Haverhill, OH), and Olin Corporation (Clayton, MO). The merchandise covered by these investigations includes all grades of liquid or aqueous acetone. Acetone is also known under the International Union of Pure and Applied Chemistry (IUPAC) name propan-2-one. The merchandise covered by these investigations is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 2914.11.1000 and 2914.11.5000. Acetone and acetone combinations and mixtures covered by these investigations may also enter under different HTSUS subheadings, such as 2902.20.0000, 2902.70.0000, 2905.12.0050, or 2914.12.0000.

DOC is scheduled to announce its final determinations on or about December 3, 2019. If DOC's final determinations are affirmative, the US International Trade Commission (ITC) will be scheduled to make its final injury determinations on or about January 16, 2020. If DOC makes affirmative final determinations of dumping, and the ITC makes affirmative final injury determinations, DOC will issue AD orders. If DOC makes negative final determinations of dumping, or the ITC makes negative final determinations of injury, the investigations will be terminated and no orders will be issued.

In 2018, imports of acetone from Belgium, South Africa, and South Korea were valued at an estimated $51.1 million, $21.8 million, and $61.2 million, respectively, according to DOC.

Click **here** to view DOC's fact sheet on the decisions.

US Department of Commerce Issues Affirmative Preliminary Determinations in Antidumping Duty Investigations of Carbon and Alloy Steel Threaded Rod from China, India, and Taiwan

On September 20, 2019, the US Department of Commerce announced its affirmative preliminary determinations in the antidumping duty (AD) investigations of imports of carbon and alloy steel threaded rod from China, India, and Taiwan. In its investigations, DOC preliminarily determined that exporters from China, India, and Taiwan have sold carbon and alloy steel threaded rod in the United States at the following dumping margins:

- China – 4.81 percent to 59.45 percent
- India – 2.04 percent
- Taiwan – 32.26 percent

As a result of these decisions, DOC will instruct US Customs and Border Protection to collect cash deposits from importers of carbon and alloy steel threaded rod from China, India, and Taiwan as applicable.

The petitioner in these investigations is Vulcan Threaded Products, Inc. (Pelham, AL). The merchandise covered by these investigations is carbon and alloy steel threaded rod. Steel threaded rod is certain threaded rod, bar, or studs, of carbon or alloy steel, having a solid, circular cross section of any diameter, in any straight length. Steel threaded rod is normally drawn, cold-rolled, threaded, and straightened, or it may be hot-rolled. In addition, the steel threaded rod, bar, or studs subject to these investigations are non-headed and threaded along greater than 25 percent of their total actual length. Alloy and certain carbon steel threaded rod are currently classifiable under subheadings 7318.15.5051, 7318.15.5056, and 7318.15.5090 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under subheading 7318.15.2095 and 7318.19.0000 of the HTSUS.

DOC is scheduled to announce the final determination with respect to Taiwan on or about December 4, 2019, and with respect to China and India, on or about February 11, 2020. If DOC's final determinations are affirmative, the US International Trade Commission (ITC) will be scheduled to make its final injury determination with respect to Taiwan

on or about January 24, 2020, and with respect to China and India, on or about March 26, 2020. If DOC makes affirmative final determinations of dumping, and the ITC makes affirmative final injury determinations, DOC will issue AD orders. If DOC makes negative final determinations of dumping, or the ITC makes negative final determinations of injury, the investigations will be terminated and no orders will be issued.

In 2018, imports of carbon and alloy steel threaded rod from China, India, and Taiwan were valued at an estimated $325 million, $111 million, and $156 million, respectively, according to DOC.

Click **here** for DOC's fact sheet on the decisions.

US Department of Commerce Issues Affirmative Preliminary Determinations in the Antidumping and Countervailing Duty Investigations of Imports of Dried Tart Cherries from Turkey

On September 23, 2019, the US Department of Commerce (DOC) announced its affirmative preliminary determinations in the antidumping duty (AD) and countervailing duty (CVD) investigations of imports of dried tart cherries from Turkey. In its investigations, DOC preliminarily determined that exporters from Turkey sold dried tart cherries in the United States at dumping margins ranging from 541.29 to 648.35 percent, and received countervailable subsidies at a rate of 204.93 percent. As a result of these determinations, DOC will instruct US Customs and Border Protection to collect cash deposits from importers of dried tart cherries from Turkey based on these preliminary rates.

These investigations were initiated based on petitions filed by the Dried Tart Cherry Trade Committee. The members are Cherry Central Cooperative (Traverse City, MI), Graceland Fruit, Inc. (Frankfort, MI), Payson Fruit Growers Coop (Payson, UT), Shoreline Fruit, LLC (Traverse City, MI), and Smeltzer Orchard Co. (Frankfort, MI). The scope of these investigations covers dried tart cherries, which may also be referred to as, e.g., dried sour cherries or dried red tart cherries. Dried tart cherries may be processed from any variety of tart cherries. Tart cherries are generally classified as Prunus cerasus. The subject merchandise is currently classifiable under 0813.40.3000 of the Harmonized Tariff Schedule of the United States (HTSUS). The subject merchandise may also enter under subheadings 0813.40.9000, 0813.50.0020, 0813.50.0060, 2006.00.2000, 2006.00.5000, and 2008.60.0060.

DOC is currently scheduled to announce its final AD and CVD determinations on or about December 5, 2019. If DOC makes affirmative final determinations, the US International Trade Commission (ITC) will be scheduled to make its final injury determinations on or about January 21, 2019. If DOC makes affirmative final determinations in these investigations, and the ITC makes affirmative final injury determinations, DOC will issue AD and CVD orders. If DOC makes negative final determinations, or the ITC makes negative final determinations of injury, the investigations will be terminated and no orders will be issued.

In 2018, imports of dried tart cherries from Turkey were valued at an estimated $1.2 million.

Click **here** for DOC's fact sheet on the determination.

US International Trade Commission Votes to Continue Antidumping Duty Order on Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan

On September 12, 2019, the US International Trade Commission (ITC) determined that revoking the existing antidumping order on imports of diffusion-annealed, nickel-plated flat-rolled steel products from Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The ITC took these actions as part of the five-year sunset review process required by the Uruguay Round Agreements Act (URAA).

The URAA requires the Department of Commerce to revoke an antidumping or countervailing duty order, or terminate a suspension agreement, after five years unless the Department of Commerce and the ITC determine that revoking the order or terminating the suspension agreement would be likely to lead to continuation or recurrence of dumping or subsidies (Commerce) and of material injury (ITC) within a reasonably foreseeable time.

As a result of the ITC's affirmative determinations in the five-year sunset review, the existing antidumping duty order on imports of diffusion-annealed, nickel-plated flat-rolled steel products from Japan products from Japan will remain in place. In its review of the antidumping duty order, the Department of Commerce determined that revocation of the order "would be likely to lead to continuation or recurrence of dumping at weighted-average margins up to 77.70 percent."

The products subject to this antidumping duty order are are classified primarily under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7212.50.0000 and 7210.90.6000, but may also be classified under HTSUS subheadings 7210.70.6090, 7212.40.1000, 7212.40.5000, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.90.0010, 7220.90.0015, 7225.99.0090, or 7226.99.0180.

The ITC's Federal Register notice concerning this determination can be viewed here.

US International Trade Commission Issues Affirmative Final Determination in Antidumping Investigation of Glycine from Thailand

On September 18, 2019, the US International Trade Commission (ITC) determined that a US industry is materially injured by reason of imports of glycine from Thailand. The US Department of Commerce determined in July 2019 that imports of glycine from Thailand were sold in the United States at dumping margins ranging from 201.59 to 227.27 percent.

As a result of the USITC's affirmative determination, Commerce will issue an antidumping duty order on imports of this product from Thailand. Chairman David S. Johanson and Commissioners Rhonda K. Schmidtlein and Jason E. Kearns voted in the affirmative. Commissioners Randolph J. Stayin and Amy A. Karpel did not participate in these votes.

The Commission's public report *Glycine from Thailand* (Inv. No. 731-TA-1415 (Final), USITC Publication 4977, October 2019) will contain the views of the Commission and information developed during the investigation, and will be available by October 23, 2019.

In 2018, imports of glycine from Thailand were valued at an estimated $8.7 million.

US International Trade Commission Votes to Continue Antidumping Duty Order on Certain Welded Large Diameter Line Pipe from Japan

On September 13, 2019, the US International Trade Commission (ITC) determined that revoking the existing antidumping duty order on imports of certain welded large diameter line pipe from Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The ITC took these actions as part of the five-year sunset review process required by the Uruguay Round Agreements Act (URAA).

The URAA requires the Department of Commerce to revoke an antidumping or countervailing duty order, or terminate a suspension agreement, after five years unless the Department of Commerce and the ITC determine that revoking the order or terminating the suspension agreement would be likely to lead to continuation or recurrence of dumping or subsidies (Commerce) and of material injury (ITC) within a reasonably foreseeable time.

As a result of the ITC's affirmative determination in the five-year sunset reviews, the existing antidumping duty order on imports of certain welded large diameter line pipe from Japan will remain in place. In its review of the antidumping

duty order, the Department of Commerce determined that revocation of the order "would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the margins of dumping likely to prevail would be up to 30.80 percent."

The products subject to this antidumping duty order currently are classified under U.S. Harmonized Tariff Schedule (HTSUS) item numbers 7305.11.10.30, 7305.11.10.60, 7305.11.50.00, 7305.12.10.30, 7305.12.10.60, 7305.12.50.00, 7305.19.10.30. 7305.19.10.60, and 7305.19.50.00.

The ITC's Federal Register notice concerning this determination can be viewed **here**.

US International Trade Commission Issues Affirmative Final Determination in Antidumping Investigation of Refillable Stainless Steel Kegs from Mexico

On September 16, 2019, the US International Trade Commission (ITC) determined that a US industry is materially retarded by reason of imports of refillable stainless steel kegs from Mexico. The US Department of Commerce (DOC) in August 2019 announced its affirmative final determination that exporters from Mexico have sold refillable stainless steel kegs in the United States at a dumping margin of 18.48 percent.

As a result of the ITC's affirmative determination, Commerce will issue an antidumping duty order on imports of this product from Mexico. Chairman David S. Johanson and Commissioners Rhonda K. Schmidtlein and Jason E. Kearns voted in the affirmative. Commissioners Randolph J. Stayin and Amy A. Karpel did not participate in this vote.

The Commission also made a negative finding concerning critical circumstances with regard to imports of this product from Mexico. As a result, imports of refillable stainless steel kegs from Mexico will not be subject to retroactive antidumping duties.

The Commission's public report *Refillable Stainless Steel Kegs from Mexico* (Inv. No. 731-TA-1427 (Final), USITC Publication 4976, October 2019) will contain the views of the Commission and information developed during the investigation. The report will be available by October 23, 2019.

In 2018, imports of refillable stainless steel kegs from Mexico were valued at an estimated $13.4 million.

US International Trade Commission Votes to Continue Antidumping and Countervailing Duty Investigations of Polyethylene Terephthalate (PET) Sheet from Korea and Oman, but Not Mexico

On September 10, 2019, the United States International Trade Commission (ITC) determined that there is a reasonable indication that a US industry is materially injured by reason of imports of polyethylene terephthalate (PET) sheet from Korea and Oman that are allegedly sold in the United States at less than fair value. The ITC further found that imports of this product from Mexico are negligible and voted to terminate the investigation concerning Mexico.

As a result of the ITC's affirmative determinations, the US Department of Commerce will continue with its antidumping duty investigations concerning imports of this product from Korea and Oman, with its preliminary antidumping duty determinations due on or about January 6, 2020. As a result of the Commission's finding of negligibility, the investigation concerning imports of this product from Mexico will be terminated.

Chairman David S. Johanson and Commissioners Rhonda K. Schmidtlein, Jason E. Kearns, and Amy A. Karpel voted in the affirmative with respect to Korea and Oman and made a finding of negligibility with respect to Mexico. Commissioner Randolph J. Stayin voted in the affirmative with respect to all investigations.

The ITC's public report *Polyethylene Terephthalate (PET) Sheet from Korea, Mexico, and Oman* (Inv. Nos. 731-TA-1455-1457 (Preliminary), USITC Publication 4970, September 2019) will contain the views of the Commission and information developed during the investigations, and will be available after October 11, 2019.

US Department of Commerce Finalizes Suspension Agreement in Antidumping Duty Investigation of Fresh Tomatoes from Mexico

On September 19, 2020, the US Department of Commerce (DOC) announced that it had finalized an agreement with Mexican tomato growers to suspend the United States' antidumping duty (AD) investigation of fresh tomatoes from Mexico, halting the process for imposing antidumping duties on tomatoes from Mexico.

According to DOC, the new suspension agreement "completely eliminates the injurious effects of unfairly priced Mexican tomatoes, prevents price suppression and undercutting, and eliminates substantially all dumping, while allowing Commerce to audit up to 80 Mexican tomato producers and U.S. sellers per quarter, or more with good cause." In addition, the agreement "closes loopholes from past suspension agreements that permitted sales below the reference prices in certain circumstances, and includes an inspection mechanism to prevent the importation of low-quality, poor-condition tomatoes from Mexico, which can have price-suppressive effects on the market."

The new agreement stems from a November 14, 2018 request from the Florida Tomato Exchange that DOC terminate a previous Suspension Agreement on Fresh Tomatoes from Mexico, which DOC had entered into in 2014. DOC on February 6, 2019, notified the Mexican signatories that it would withdraw from the 2013 Suspension Agreement. On May 7, 2019, the 2013 Suspension Agreement was terminated and, as a result, Commerce continued its AD investigation on imports of fresh tomatoes from Mexico. The new Suspension Agreement was the result of intense negotiations between DOC and Mexican tomato growers, who have accepted the Agreement despite reservations about its inspection mechanism.

On September 24, 2019, DOC published a **notice** in the Federal Register formally suspending the AD investigation of fresh tomatoes from Mexico and setting forth the text of the new suspension agreement.