US Multilateral Trade Policy Developments

Japan External Trade Organization

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Free Trade Agreements

Mexico Requests Panel Proceedings in USMCA Dispute with United States Concerning Automotive Rules of Origin

On January 6, 2022, the Government of Mexico requested the establishment of a panel in its dispute with the United States concerning the "interpretation and application" of the rules of origin (ROO) for automotive goods under the United States-Mexico-Canada Agreement (USMCA). Mexico's request alleges that the United States is interpreting and applying the USMCA's automotive rules of origin in a manner inconsistent with Chapters 4 and 5 of the Agreement, as well as the Uniform Regulations adopted by the USMCA Parties. Mexico is requesting panel proceedings because its recent consultations with the United States on this issue "did not solve the dispute." Canada participated in the consultations and is expected to join the dispute as a third party.

As a result of Mexico's request, an independent panel will convene to determine whether the United States is acting in a manner inconsistent with its USMCA obligations. The outcome of this dispute will have important implications for automotive supply chains and for North American trade relations more broadly, given the potential for retaliatory actions that extend beyond the automotive sector. This alert provides an overview of the dispute, Mexico's panel request, and the next steps in the dispute settlement process.

Background

On August 20, 2021, Mexico requested consultations with the United States pursuant to Article 31.4 of the USMCA, alleging that the United States was "imposing specific requirements on motor vehicle manufacturers that are inconsistent with USMCA [rules of origin] and the Uniform Regulations agreed between the parties."[1] On August 26, 2021, the Government of Canada notified the other USMCA Parties that it had a "substantial interest" in the matter and intended to participate in the consultations, pursuant to Article 31.4.4.[2]

In its request for consultations, Mexico claimed that the USMCA's automotive ROO permit the use of "roll-up" methodologies, which allow materials (*e.g.*, automotive parts) that have acquired origin by meeting a regional value content (RVC) threshold to be considered fully originating when used as inputs in a subsequent manufactured product (*e.g.*, a finished vehicle). Roll-up methodologies provide additional flexibility for producers of finished goods to satisfy the applicable ROO and therefore obtain preferential tariff treatment. By contrast, the United States has taken the position that the USMCA does not permit the use of roll-up methodologies with respect to certain "core" parts incorporated into finished vehicles – a position consistent with the United States' objective to limit the use of foreign content in the North American automotive supply chain. For a detailed overview of the relevant USMCA provisions and Mexico's request for consultations, please refer to the W&C US Trade Alert dated August 24, 2021.

Mexico and the United States held consultations on this issue on September 24, 2021. Canada participated in the consultations. Mexico's panel request states that the consultations "did not solve the dispute." According to a public statement from Mexico's Secretary of Economy, Ms. Tatiana Clouthier, US officials indicated during the consultations that they had "no political space" to negotiate a change in the United States' position, and were unwilling to discuss the details of Mexico's complaint.

Mexico's Panel Request

Legal basis for the complaint

[1] Letter from Secretary Tatiana Clouthier Carrillo to US Trade Representative Katherine Tai, August 20, 2021, available at https://www.gob.mx/cms/uploads/attachment/file/663260/Request_for_consultation_RVC_USMCA_05_08_21_fecha_20.pdf.

[2] Letter from Steve Verheul, Assistant Deputy Minister, Trade Policy and Negotiations, Government of Canada, August 26, 2021, available at https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/motor-vehicles-vehicules-moteur.aspx?lang=eng.

Mexico's panel request alleges that the United States has adopted an "incorrect interpretation" of certain USMCA rules of origin. According to Mexico, the United States "considers that the value of the non-originating components or parts used in the production of a passenger vehicle or light truck include, for the purposes of calculating the general RVC of the vehicle or light truck, the value of the non-originating materials used to produce an originating 'core part' and/or the 'super core part' that is subsequently used in the production of a passenger vehicle or light truck[.]" Mexico contends that this interpretation is inconsistent with Paragraph 4 of Article 4.5 (Regional Value Content) of the USMCA, and that US actions based on this interpretation are inconsistent with other USMCA provisions. For example, the request alleges that the United States has acted inconsistently with:

- **Article 4.2(b) (Originating Goods)**, because the United States does not provide that vehicles and parts "that satisfy all applicable requirements of Annex 4-B (Product-Specific Rules of Origin)" are originating;
- **Paragraphs 1 and 2 of Article 4.11 (Accumulation)**, because the United States denies originating status to vehicles that satisfy the requirements of Article 4.2 (Originating Goods) and all other applicable requirements of Chapter 4 (Rules of Origin), and also disqualifies from originating status a "core part" and/or the "super core part" that has satisfied the RVC requirements using the calculation methodologies provided in the USMCA, when used as a material in the production of a passenger vehicle or light truck;
- **Paragraphs 7, 8 and 9 of Article 3 (Regional Value Content for Passenger Vehicles, Light Trucks, and Parts Thereof) of the Appendix to Annex 4-B**, because the United States fails to treat the "core parts" satisfying the applicable RVC requirement as originating, for the purposes of calculating the RVC for a passenger vehicle or light truck;
- **Paragraph 6 of Article 5.16 (Uniform Regulations)**, because the United States "does not apply the principle of roll-up to originating 'core parts' provided for in Section 14 of the Uniform Regulations when calculating the RVC of passenger vehicles and light trucks;" and
- **Paragraphs 1, 2 and 3 of Article 8 (Transitions) of the Appendix to Annex 4-B and sections 19(2) and 19(4) of the Uniform Regulations**, because the United States "has conditioned the approval of an alternative staging regime, and thus the originating status of the vehicles subject to that regime, on the application of the United States' incorrect interpretation" of the automotive ROO.

In contrast to the United States' view, Mexico "considers that any calculation methodology applicable to 'core parts' set forth in paragraphs 8 and 9 of Article 3. . .of the Appendix to Annex 4-B of the USMCA can be used to establish the originating status of a 'core part' for purposes of calculating the general RVC of a passenger vehicle or light truck."

US measures at issue

Mexico's request claims that the United States' "incorrect interpretation" of the auto ROO "is currently reflected in various [alternative staging regime] approval letters issued by the United States to producers in the automotive sector." The USMCA's alternative staging regime (ASR) allows certain vehicles to qualify as originating based on less stringent ROO than would otherwise apply during the five-year period following the Agreement's entry into force.[3] The quantity of passenger vehicles or light trucks eligible for the ASR is generally limited to 10 percent of a vehicle producer's annual production in the USMCA territory, though the quantity of eligible vehicles can be increased if a producer provides "a detailed and credible plan" for the vehicles to satisfy all of the automotive ROO within five years of the Agreement's entry into force.[4]

[3] Art. 8 (Transitions) of the Appendix to Annex 4-B of the USMCA ("Automotive Appendix").

[4] Automotive Appendix Art. 8.3.

According to Mexico, "[t]he wording commonly used" in ASR approval letters issued by the United States to vehicle producers includes the following stipulation:

> "[Y]our plan is approved based on USTR's understanding that [the automaker] will calculate its RVC in a manner consistent with the text of the Agreement, the Uniform Regulations, and direction from USTR and U.S. Customs and Border Protection whereby the calculation for a vehicle's RVC and the calculation for the core parts requirement. . .are calculated separately and independently of one another. More specifically, this means that your plan is approved provided that your vehicle RVC calculation for all vehicles (not just those covered by your alternative staging request) does not count otherwise non-originating components and parts as originating for purposes of the vehicle RVC calculation simply because the same part or component was used as part of the calculation to meet the core parts requirement."

In Mexico's view, this wording "requires producers who seek preferential tariff treatment to adjust their production process. . .to satisfy the unilateral — and incorrect — interpretation of the United States[.]" Additionally, Mexico "understands that the United States' interpretation, as reflected in the ASR approval letters in force, would also be applicable to any future or subsequent application of the USMCA rules of origin for automotive goods." This includes, but is not limited to, "any future letters with regard to ASR plans, future guidance to all automakers regarding the incorrect interpretation, determinations of future origin verifications applying the incorrect interpretation, or any other related, future or subsequent measures that implements the incorrect interpretation."

Next steps

As a result of Mexico's request, an independent panel will convene to determine whether the United States is acting in a manner inconsistent with its USMCA obligations. Pursuant to Article 31.6.5 of the Agreement, Canada will have until January 13, 2022 to join the dispute as a complaining Party. The next steps in the dispute settlement process are:

> (1) composition of the panel (to be completed no later than 40 days after the panel request, provided that the dispute involves more than two Parties;[5]
>
> (2) circulation of an initial panel report no later than 180 days after the appointment of the last panelist;[6] and
>
> (3) circulation of a final panel report within 30 days after the initial panel report.[7] The panel therefore is expected to issue its final report by September of 2022.

USMCA panel reports must contain:

> (1) "findings of fact";
>
> (2) determinations as to whether the measure at issue is inconsistent with obligations in the Agreement, or a Party has otherwise failed to carry out its obligations in the Agreement; and
>
> (3) recommendations, if the disputing Parties have jointly requested them, for the resolution of the dispute.[8]

If the panel in this dispute finds that a US measure is inconsistent with the United States' USMCA obligations, or that the United States has otherwise failed to carry out its obligations under the Agreement, the disputing Parties "shall endeavor to agree on the resolution of the dispute."[9] If the disputing Parties are unable to agree on a resolution

[5] USMCA Art. 31.9.

[6] USMCA Art. 31.17(1)-(2). This deadline may be altered if the disputing Parties agree.

[7] USMCA Art. 31.17.5. This deadline may be altered if the disputing Parties agree.

[8] USMCA Art. 31.13.1.

[9] USMCA Art. 31.18.

within the 45-day period, the complaining Party (Mexico) would be permitted to suspend the application to the United States of benefits “of equivalent effect to the non-conformity” until the disputing Parties agree on a resolution.[10]

The outcome of this dispute will have important implications for automotive supply chains, though these are likely to vary significantly depending on the individual circumstances of specific producers and suppliers. Importantly, the USMCA's Rules of Procedure allow a panel to consider written views submitted by non-governmental entities during the course of the dispute, in addition to hearing the views of the disputing Party governments.[11] Producers and suppliers throughout the automotive supply chain should examine the implications of the Parties’ competing interpretations of the USMCA and consider strategies to protect their commercial interests.

[10] USMCA Art. 31.19.1.

[11] Article 20, USMCA Rules of Procedure for Chapter 31.

US Legislative Developments

House Ways and Means Trade Subcommittee Chairman Proposes Bill to Curtail De Minimis Exemption for Low-Value Shipments

On January 18, Representative Earl Blumenauer (D-OR) introduced legislation that would exclude several categories of imported goods from duty-free treatment under the *de minimis* exemption set forth in Section 321 of the Tariff Act, including China-origin goods, goods subject to Section 301 and Section 232 actions, and goods forwarded through foreign distribution and processing facilities. The legislation also would authorize U.S. Customs and Border Protection (CBP) to require more information on individual *de minimis* shipments than it does presently. Representative Blumenauer, who chairs the House Ways and Means Subcommittee on Trade, has indicated that these changes are intended to promote "U.S. competitiveness" and protect the United States "from unsafe and illicit imports." If enacted, the legislation would create substantial new tariff and compliance burdens for companies operating in the e-commerce sector, where the *de minimis* exemption is widely used when the aggregate fair retail value in the country of shipment of articles that one person imports on one day does not exceed $800. We provide an overview of the legislation below.

Background

Section 321 of the Tariff Act of 1930 (19 U.S.C. § 1321) authorizes U.S. Customs and Border Protection (CBP) to admit free of duty and tax shipments of merchandise (other than bona fide gifts and certain personal and household goods) that one person imports on one day having an aggregate fair retail value in the country of shipment of not more than $800.[1] This exemption is known as *de minimis* entry. The *de minimis* threshold was previously $200 but increased to $800 with the passage of the Trade Facilitation and Trade Enforcement Act of 2015.

Entries that qualify for the Section 321 *de minimis* exemption are not subject to general (*i.e.*, most-favored nation) import duties. CBP also exempts such entries from certain other types of import duties. For example, duties that the US Trade Representative (USTR) imposes pursuant to Section 301 of the Trade Act of 1974 do not currently apply to entries that qualify for *de minimis* treatment under Section 321.[2] By contrast, goods subject to antidumping or countervailing duties imposed by the US Department of Commerce are not eligible for the *de minimis* exemption under Section 321.[3]

According to CBP, the number of shipments that entered the United States pursuant to the *de minimis* exemption has increased significantly in recent years, from 220 million in Fiscal Years 2016 to 771.5 million in Fiscal Year 2021.[4] The increase in *de minimis* shipments has coincided with rapid growth in the use of online e-commerce platforms by US consumers and businesses.

Import Security and Fairness Act (H.R. 6412)

Limitations on *de minimis* exemption

Rep. Blumenauer's legislation, entitled the Import Security and Fairness Act (H.R. 6412), would amend Section 321 to make the following types of article ineligible for the *de minimis* exemption:

[1] The Section 321 "*de minimis*" exemption is distinguishable from "Informal Entries," which bring in commodities with a total value less than $2,500, typically for personal enjoyment, and not for commercial purposes. Such entries require no bond, and CBP liquidates them immediately after clearance.

[2] "Section 301 Trade Remedies Frequently Asked Questions," U.S. Customs and Border Protection, https://www.cbp.gov/trade/programs-administration/entry-summary/section-301-trade-remedies/faqs.

[3] *Id*.

[4] CBP Trade Statistics, https://www.cbp.gov/newsroom/stats/trade. *See also* "CBP Has Taken Steps to Combat Counterfeit Goods in Small Packages but Could Streamline Enforcement," US Government Accountability Office, September 24, 2020, https://www.gao.gov/products/gao-20-692.

- An article subject to an action authorized under Section 301 of the Trade Act of 1974;
- An article subject to an action authorized under Section 232 of the Trade Expansion Act of 1962; and
- An article the country of origin of which is both (1) a "nonmarket economy country" as defined in the United States' antidumping law;[5] and (2) a "priority watch list" country as defined in the "Special 301" provisions of the Trade Act of 1974.[6] China is the only country that the US government currently designates as both a nonmarket economy country and a priority watch list country under the relevant statutes.

Importantly, these changes would newly subject many low-value shipments of China-origin goods to the Section 301 duties that USTR imposed based on its investigation of China's "acts, policies, and practices related to technology transfer, intellectual property, and innovation." The Section 301 duties range from 7.5 to 25 percent (depending on the tariff list in which the item falls) and apply to most categories of imported goods from China, including many consumer products such as clothing, footwear, toys, and sports equipment.

In addition to the above changes, H.R. 6412 would newly prohibit CBP from applying the *de minimis* exemption in any case in which "merchandise covered by a single order or contract . . . is forwarded through a distribution or processing facility located in a foreign country[.]" This prohibition would apply regardless of the country of origin of the merchandise. The bill would a define a "distribution or processing facility" as one that is "used primarily for the storage of articles that are intended for subsequent shipment."

Authority to require documentation for *de minimis* shipments

H.R. 6412 would authorize the Secretary of the Treasury to issue regulations "to authorize or require the submission, transmission, or otherwise making available of such documentation or information to [CBP] as the Secretary determines is reasonably necessary" for CBP to determine the eligibility of articles for the *de minimis* exemption. Such information may include "documentation or information regarding the offer for sale or purchase, or the subsequent sale, purchase, transportation, importation or warehousing of such articles, including such documentation or information relating to the offering of such articles for sale or purchase in the United States through a commercial or marketing platform, including an electronic commercial or marketing platform." The regulations must provide that (1) such documentation or information "is true and correct to the best of the knowledge and belief" of the party submitting, transmitting, or otherwise making it available; and (2) if such party is unable to verify the accuracy of the documentation or information, it may be provided "on the basis of what the party reasonably believes to be true and correct." The bill states that persons who violate these regulations would be liable for a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation "in addition to any other penalty provided by law," but does not elaborate.

Outlook

By newly subjecting many China-origin goods that previously qualified for *de minimis* treatment to both MFN and Section 301 duties, H.R. 6412 would create substantial new tariff burdens for importers. The exclusion from *de minimis* treatment of goods forwarded through a foreign distribution center may also disrupt supply chains and business models that have evolved around the current *de minimis* rules. Additionally, the new regulations proposed in the bill have the potential to increase compliance costs for importers of low-value shipments. For these reasons, industry groups representing the retail and e-commerce sectors have expressed concern about the effects of H.R. 6412, as have some congressional Republicans.

[5] US antidumping law generally defines a nonmarket economy as "any foreign country that the administering authority determines does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise." 19 U.S.C. § 1677(18)(A).

[6] The Special 301 statute requires USTR to identify on an annual basis "priority foreign countries" that (1) deny adequate and effective protection of intellectual property rights, or (2) deny fair and equitable market access to United States persons that rely upon intellectual property protection. 19 U.S.C. § 2242(g)(3).

By contrast, Representative Blumenauer has asserted that the current law "makes it easier for people to import illegal goods and harmful products" because importers provide less data to the US government in connection with *de minimis* entries, and thus there is "virtually no way to tell whether these packages contain products made through forced labor, intellectual property theft, or are otherwise dangerous."[7] Representative Blumenauer has also asserted that the current *de minimis* law facilitates foreign companies "splitting up their shipments to evade tariffs[.]" Nevertheless, the proposed legislation could newly subject low-value shipments to duties even where this is not the case (*e.g.*, smaller shipments, comprised of small purchases, where delivery happens to pass through a foreign warehouse purely for logistical reasons.)

Representative Blumenauer intends to seek the inclusion of H.R. 6412 in a broader bill focused on US trade and competitiveness with China, entitled the US Innovation and Competition Act ("USICA"). The Senate passed its version of the USICA (S.1260) on June 6, 2021 without incorporating any changes to the *de minimis* statute. The House of Representatives is currently working to finalize a competing version of the USICA, and has committed to forming a conference committee with the Senate to reconcile the two competing bills. On January 20, House Speaker Nancy Pelosi stated that the House is "very close to being ready to go to conference" with the Senate on the USICA. The proposed inclusion of H.R. 6412 in the USICA is likely to be controversial, given US consumers' heightened use of e-commerce platforms during the COVID-19 pandemic and current supply chain and inflation challenges.

The text of H.R. 6412 can be viewed here.

[7] "Chairman Blumenauer Unveils New Legislation to Fix Import Loophole, Level Playing Field, and Boost Oversight," Office of Rep. Earl Blumenauer, January 18, 2022, https://blumenauer.house.gov/media-center/press-releases/chairman-blumenauer-unveils-new-legislation-fix-import-loophole-level.

Petitions and Investigations

US Department of Commerce Issues Affirmative Final Determinations in Antidumping and Countervailing Duty Investigations of Granular Polytetrafluoroethylene Resin from India and Russia

On January 19, 2022, the US Department of Commerce (DOC) announced its affirmative final determinations in the antidumping duty (AD) and countervailing duty (CVD) investigations of granular polytetrafluoroethylene (PTFE) resin from India and Russia. In its investigations, DOC determined that imports of the subject merchandise from India and Russia were sold in the United States at the following dumping margins and subsidy rates:

Country	Dumping Margin	Subsidy Rate
India	10.01	31.89
Russia	17.36	2.53

The product covered by these investigations is granular polytetrafluoroethylene (PTFE) resin. Granular PTFE resin is covered by the scope of these investigations whether filled or unfilled, whether or not modified, and whether or not containing co-polymer, additives, pigments, or other materials. Also included is PTFE wet raw polymer. The chemical formula for granular PTFE resin is $C_2 F_4$, and the Chemical Abstracts Service (CAS) Registry number is 9002-84-0.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise processed in a third country, including by filling, modifying, compounding, packaging with another product, or performing any other finishing, packaging, or processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the granular PTFE resin. The product covered by these investigations does not include dispersion or coagulated dispersion (also known as fine powder) PTFE. PTFE further processed into micropowder, having particle size typically ranging from 1 to 25 microns, and a melt-flow rate no less than 0.1 gram/10 minutes, is excluded from the scope of these investigations.

Granular PTFE resin is classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 3904.61.0010. Subject merchandise may also be classified under HTSUS subheading 3904.69.5000.

The US International Trade Commission (ITC) will issue its final injury determinations in these investigations by March 4, 2022. If the ITC reaches affirmative final determinations of injury, DOC will issue antidumping and countervailing duty orders. If the ITC reaches negative final determinations of injury, the investigations will be terminated.

According to DOC, imports from India and Russia under HTSUS subheading 3904.61.0010 were valued at $12 million and $10 million, respectively, in 2019.

US Department of Commerce Initiates Antidumping Investigations of Lemon Juice from Brazil and South Africa

On January 20, 2022, the Department of Commerce (DOC) announced the initiation of antidumping duty (AD) investigations of lemon juice from Brazil and South Africa. DOC initiated these investigations in response to petitions filed by Ventura Coastal, LLC (Ventura, CA).

The petition alleges that imports of the subject merchandise from Brazil and South Africa were sold in the United States at dumping margins of 222.16 percent and 97.15 percent, respectively. The product covered by these investigations is certain lemon juice. Lemon juice is covered: (1) With or without addition of preservatives, sugar, or other sweeteners; (2) regardless of the GPL (grams per liter of citric acid) level of concentration, brix level, brix/acid ratio, pulp content, clarity; (3) regardless of the grade, horticulture method (*e.g.,* organic or not), processed form (*e.g.,* frozen or not-from-concentrate), the size of the container in which packed, or the method of packing; and (4)

regardless of the U.S. Department of Agriculture Food and Drug Administration (FDA) standard of identity (as defined under 19 CFR 146.114 *et seq.*) (*i.e.,* whether or not the lemon juice meets an FDA standard of identity).

The product subject to these investigations is currently classifiable under subheadings 2009.31.4000, 2009.31.6020, 2009.31.6040, 2009.39.6020, and 2009.39.6040 of the Harmonized Tariff Schedule of the United States (HTSUS).

The US International Trade Commission (ITC) is scheduled to issue its preliminary injury determinations in these investigations by February 14, 2022. If the ITC makes negative preliminary determinations of injury, the investigations will be terminated. If the ITC makes affirmative preliminary determinations of injury, the investigations will continue and DOC will be scheduled to make its preliminary determinations in the AD investigations by June 8, 2022.

According to DOC, imports under the above-listed HTSUS subheadings in 2020 were valued at $11.9 million (for Brazil) and $8.8 million (for South Africa).

US Department of Commerce Initiates Antidumping and Countervailing Duty Investigations of Steel Nails from India, Oman, Sri Lanka, Thailand, and Turkey

On January 20, 2022, the US Department of Commerce (DOC) announced the initiation of antidumping duty (AD) investigations of steel nails from India, Sri Lanka, Thailand, and Turkey, and countervailing duty (CVD) investigations of steel nails from India, Oman, Sri Lanka, Thailand, and Turkey. DOC initiated these investigations in response to petitions filed by Mid Continent Steel & Wire, Inc. (Poplar Bluff, MO).

The AD petitions allege that imports of the subject merchandise from India, Sri Lanka, Thailand, and Turkey were sold in the United States at the following dumping margins:

Country	Dumping Margin
India	66.53 to 99.43 percent
Sri Lanka	35.50 to 104.13 percent
Thailand	64.44 to 65.87 percent
Turkey	28.94 to 33.03 percent

The CVD petitions include the following subsidy allegations:

- In the India petition, there are 32 alleged subsidy programs, comprised of one less-than-adequate-remuneration (LTAR) program, nine tax benefit programs, 14 grant programs, and eight loan programs.
- In the Sri Lanka petition, there are 14 alleged subsidy programs, comprised of seven tax programs, three duty concession programs, one loan program, one export promotion and marketing assistance program, and two export insurance programs.
- In the Thailand petition, there are 14 alleged subsidy programs, comprised of one LTAR program, nine tax benefit programs, three Thailand Export-Import Bank programs, and a currency undervaluation allegation.
- In the Turkey petition, there are 27 alleged subsidy programs, comprised of four LTAR programs, six tax benefit programs, six grant programs, five Turkey Export-Import Bank programs, five investment incentive programs, and a currency undervaluation allegation.
- In the Oman petition, there are 13 alleged subsidy programs, comprised of two LTAR programs, seven tax benefit programs, one grant program, and three loan programs.

The merchandise covered by these investigations is certain steel nails having a nominal shaft or shank length not exceeding 12 inches. Certain steel nails include, but are not limited to, nails made from round wire and nails that are

cut from flat-rolled steel or long-rolled flat steel bars. Certain steel nails may be of one piece construction or constructed of two or more pieces. Examples of nails constructed of two or more pieces include, but are not limited to, anchors comprised of an anchor body made of zinc or nylon and a steel pin or a steel nail; crimp drive anchors; split-drive anchors, and strike pin anchors. Also included in the scope are anchors of one piece construction.

Certain steel nails subject to these investigations are currently classified under HTSUS subheadings 7317.00.5501, 7317.00.5502, 7317.00.5503, 7317.00.5505, 7317.00.5507, 7317.00.5508, 7317.00.5511, 7317.00.5518, 7317.00.5519, 7317.00.5520, 7317.00.5530, 7317.00.5540, 7317.00.5550, 7317.00.5560, 7317.00.5570, 7317.00.5580, 7317.00.5590, 7317.00.6530, 7317.00.6560 and 7317.00.7500. Certain steel nails subject to these investigations also may be classified under HTSUS subheadings 7318.15.5060, 7318.15.5090, 7907.00.6000, 8206.00.0000 or other HTSUS subheadings.

The US International Trade Commission (ITC) is scheduled to issue its preliminary injury determinations in these investigations by February 14, 2022. If the ITC makes negative preliminary determinations of injury, the investigations will be terminated. If the ITC makes affirmative preliminary determinations of injury, the investigations will continue. DOC will then be scheduled to make its preliminary AD determinations by June 8, 2022, and its preliminary CVD determinations by March 25, 2022.

US International Trade Commission Finds Imports of Pentafluoroethane (R-125) from China Injure US Industry

On February 2, 2022, the US International Trade Commission (ITC) determined that a US industry is materially injured by reason of imports of pentafluoroethane (R-125) from China that the US Department of Commerce (DOC) has determined are sold in the United States at less than fair value and subsidized by the government of China. As a result of the ITC's affirmative determinations, DOC will issue antidumping and countervailing duty orders on imports of this product from China. Chair Jason E. Kearns, Vice Chair Randolph J. Stayin, and Commissioners Rhonda K. Schmidtlein and Amy A. Karpel voted in the affirmative. Commissioner David S. Johanson voted in the negative.

The Commission made a negative finding concerning critical circumstances with regard to imports of this product from China that are sold in the United States at less than fair value and subsidized by the Government of China. As a result, these imports will not be subject to retroactive antidumping and countervailing duties.

The merchandise covered by these investigations is pentafluoroethane (R-125), or its chemical equivalent, regardless of form, type or purity level. R-125 has the Chemical Abstracts Service (CAS) registry number of 354-33-6 and the chemical formula C2HF5. R-125 is also referred to as Pentafluoroethane, Genetron HFC 125, Khladon 125, Suva 125, Freon 125, and Fc-125. R-125 is classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2903.39.2035 and 2903.39.2938. Merchandise subject to the scope may also be entered under HTSUS subheadings 2903.39.2045, 3824.78.0020, and 3824.78.0050.

In its AD and CVD investigations, DOC determined that imports of the subject merchandise from China were sold in the United States at dumping margins ranging from 51.87 to 267.41 percent, and received countervailable subsidies ranging from 12.75 to 306.57 percent.

According to DOC, imports of R-125 from China were valued at approximately $51 million in 2019.