US Multilateral Trade Policy Developments

Japan External Trade Organization

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Contents

US Trade Actions

US Trade Representative Seeks Public Comments in Four-Year Review of Section 301 Tariffs on Products of China

On October 12, 2022, the Office of the US Trade Representative (USTR) issued a Federal Register notice seeking public comments to inform its ongoing four-year review of the Section 301 tariffs on China-origin goods. Beginning on November 15, 2022, USTR will accept public comments from interested persons regarding the effectiveness of the Section 301 actions in achieving the objectives of USTR's Section 301 investigation; other actions that could be taken; and the effects of such actions on the United States economy. This process will give interested persons an opportunity to argue for changes to the current tariff lists, including the removal of particular products.

USTR's notice launches the second phase of the agency's four-year review of the tariffs, as required by Section 307(c) of the Trade Act.[1] The first phase of the review, which USTR concluded in September, resulted in the extension of all four Section 301 tariff lists, because "at least one representative of a domestic industry which benefits from each action, as modified, submitted to [USTR] a request for continuation of the action[.]"[2] Following receipt of such requests, Section 307(c)(3) requires USTR to conduct a review of "the effectiveness [of the action] in achieving the objectives of section 301;" "other actions that could be taken (including actions against other products or services;" and "the effects of such actions on the United States economy, including consumers."[3]

On November 15, 2022, USTR will open a docket for interested persons to submit comments with respect to the considerations enumerated in Section 307(c)(3). USTR's notice specifically invites comments on the following factors, among others:

- The effectiveness of the Section 301 actions in obtaining the elimination of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation (the "investigated practices");
- The effectiveness of the actions in counteracting the investigated practices;
- Other actions or modifications that would be more effective in obtaining the elimination of or in counteracting the investigated practices;
- The effects of the Section 301 actions on the US economy, including US consumers;
- The effects of the actions on domestic manufacturing, US technology, US workers, US small businesses, and US supply chain resilience; and
- "Whether the actions have resulted in higher additional duties on inputs used for additional manufacturing in the United States than the additional duties on particular downstream product(s) or finished good(s) incorporating those inputs[.]"

In a statement accompanying the notice, USTR has indicated that the forthcoming electronic docket will include more detailed questions on these issues, including questions about the impact of the actions on US workers, US small businesses, US manufacturing, critical supply chains, US technological leadership, and possible tariff inversions (i.e., where additional tariffs on goods are lower than additional tariffs on inputs used to produce those goods). USTR

[1] 19 U.S.C. 2417(c).

[2] *Request for Comments in Four-Year Review of Actions Taken in the Section 301 Investigation: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, Office of the US Trade Representative, October 12, 2022, **https://ustr.gov/sites/default/files/2022-10/4%20year%20review%20FRN.pdf**.

[3] 19 U.S.C. 2417(c)(3)(A) and (B).

intends to post the questions by November 1, in advance of the docket opening. The questions will be posted at **https://comments.USTR.gov**.

The deadline for submitting comments in this proceeding is January 17, 2023. USTR has indicated that, during the course of the review, it will evaluate whether to provide additional opportunities for public comment through additional written comments or through public hearings. USTR has not specified a date by which it will conclude its review or implement any resulting modifications to the Section 301 actions.

The upcoming public comment proceeding represents a rare and important opportunity for companies to request modifications to the Section 301 actions. USTR has largely ceased its past practice of initiating periodic tariff exclusion processes, and legislation aimed at reinstating the exclusion mechanism has stalled in Congress. As a result, the four-year review process might be the only avenue for companies to seek tariff relief for the foreseeable future.

At this stage, it is unclear whether the four-year review will result in substantial changes to the Section 301 action. Some Biden Administration officials have argued that the Section 301 tariffs were poorly designed and should be recalibrated to better align with US priorities and inflation concerns.[4] Other Administration officials have emphasized the importance of maintaining the tariffs, based on the view that they provide "leverage" for future negotiations between the United States and China, or that they could promote supply chain "resiliency".[5] In deliberations this summer, Administration officials reportedly discussed capping the value of any Section 301 tariff relief at $10 billion annually – a small fraction of the total value of the Section 301 action, which covers approximately $370 billion in annual trade.[6] Given these dynamics, the process of seeking modifications to the Section 301 action is likely to be highly competitive. Interested persons should begin preparing now to participate in the proceeding and address the factors listed in USTR's Federal Register notice.

USTR's Federal Register notice can be viewed **here**.

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[4] "NSC official: China tariffs should be adjusted to fit strategic priorities," Inside US Trade, April 21, 2022, **https://insidetrade.com/daily-news/nsc-official-china-tariffs-should-be-adjusted-fit-strategic-priorities-%C2%A0**.

[5] "USTR Tai calls U.S. tariffs on Chinese goods 'significant' leverage," Reuters, June 22, 2022, **https://www.reuters.com/business/ustr-tai-says-us-tariffs-chinese-goods-are-significant-leverage-2022-06-22/**. *See also* "USTR's Baltzan: China tariffs part of economic shift from efficiency to resiliency," Inside US Trade, September 28, 2022, **https://insidetrade.com/daily-news/ustr%E2%80%99s-baltzan-china-tariffs-part-economic-shift-efficiency-resiliency**.

[6] "Biden considers tiny China tariff relief package," Politico, July 5, 2022, **https://www.politico.com/newsletters/weekly-trade/2022/07/05/biden-considers-tiny-china-tariff-relief-package-00043952**.

Trade Agreements

Malaysia Ratifies CPTPP; Entry into Force on December 1, 2022

The ratification comes after four years of detailed deliberations, extensive consultations, and careful assessment including the findings of a cost-benefit analysis (CBA). In particular, the CBA projects that Malaysia's total trade is expected to increase to US $655.9 billion by 2030 through its CPTPP participation. Malaysia's exports are projected to reach US $354.7 billion in 2030 with the trade balance expected to remain in strong surplus at 8.5% of GDP for the same year. With the entry into force of CPTPP, Malaysia will gain access to new markets including Canada, Mexico and Peru, which are not covered by any of Malaysia's existing free trade agreements (FTA) in place. Apart from the CPTPP, Malaysia has 15 FTAs in force, including 7 bilateral FTAs and 7 regional FTAs.[1]

According to a statement by Malaysia's Ministry of International Trade and Industry (MITI), almost 100% of Malaysian exports to all CPTPP countries will enjoy duty-free treatment by January 1, 2033. Specifically, all Malaysian exports to Australia and Singapore are set to enjoy tariff-free treatment upon entry into force of the CPTPP for Malaysia on December 1, 2022, while all Malaysian exports to New Zealand and Canada will enjoy tariff-free treatment in 2024 and 2029, respectively. Besides tariffs, the CPTPP contains trade-facilitative rules of origin provisions that are designed to support modern business practices and further deepen integration of Malaysian businesses into the regional supply chain.

Under the CPTPP, Malaysian companies will enjoy immediate access to the government procurement market of other CPTPP countries at much lower thresholds as compared to the higher thresholds committed by Malaysia. The CPTPP will further promote exports of Malaysian services through mutual recognition of professional qualifications, licensing or registration. Certain occupations including accountants, architects, construction managers, engineers, dentists, doctors, nurses, quantity surveyors, and veterinarians will gain access to other CPTPP countries through transparent rules governing movement of professionals across borders.

Chile's CPTPP ratification status

In a related development, Chile is in the final stages of its domestic ratification process. As the lower house has already approved the Agreement, the CPTPP will now be forwarded to the Senate for deliberation and a final vote in mid-October 2022. Chilean President Gabriel Boric, who assumed office in March 2022, has indicated that he would review all of Chile's FTAs, including the CPTPP. Minister of Foreign Affairs Antonia Urreloja has expressed concerns about investor-state dispute resolution mechanisms in the Agreement. Reportedly, the government may use side letters to exclude Chile from the investor-state dispute mechanism. However, it remains to be seen how this proposal would be received by other CPTPP members, or how the Chilean government may move forward with ratification of the Agreement.

Click **here** for MITI's statement.

CPTPP Trade Ministers Discuss Cooperation in Digital and Green Economies; Members Split Over China's Accession Bid

Trade Ministers and senior officials from the 11 CPTPP member economies – Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam – met in Singapore on October 8, 2022 for

[1] The seven bilateral FTAs are: (i) Malaysia-Japan Economic Partnership Agreement (entry into force in 2006); (ii) Malaysia-Pakistan Closer Economic Partnership Agreement (2008); (iii) Malaysia-New Zealand Free Trade Agreement (2010); (iv) Malaysia-India Comprehensive Economic Cooperation Agreement (2011); (v) Malaysia -Chile Free Trade Agreement (2012); (vi) Malaysia-Australia Free Trade Agreement (2013); and (vii) Malaysia-Turkey Free Trade Agreement (2015). The seven regional FTAs are (i) ASEAN Free Trade Area (1993); (ii) ASEAN-China Free Trade Agreement (2003); (iii) ASEAN-Korea Free Trade Agreement (2006); (iv) ASEAN-Japan Comprehensive Economic Partnership (2009); (v) ASEAN-Australia-New Zealand Free Trade Agreement (2010); (vi) ASEAN-India Free Trade Agreement (2010); and (vii) ASEAN-Hong Kong Free Trade Agreement (2019).

the Sixth Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) Commission meeting. Singapore's Trade and Industry Minister Gan Kim Yong chaired the meeting, which marked the first in-person gathering since the Covid-19 pandemic. The Parties discussed a range of issues, including the enhancement of CPTPP benefits, the green economy, implementation issues, and the potential accession of new members.

- **Enhancing CPTPP benefits**

The Parties agreed to adopt a set of non-binding guidelines for mutual recognition agreements (MRAs) for professional services. These guidelines are expected to increase transparency and consistency of MRAs negotiated by CPTPP members and create a more business-friendly environment for trade in professional services. The Parties also explored new areas of cooperation especially in digital and green economies. On the digital economy, Singapore convened an e-commerce workshop in late June 2022, which featured presentations on digital trade facilitation, emerging technologies, and data.

- **Green economy**

The Parties noted the growing nexus between trade and environment to address climate change. Singapore hosted a green economy webinar on August 17, 2022 during which participants exchanged views about the adoption and expansion of carbon pricing and carbon markets, the transition to a low-carbon energy future, and the role of trade policies in addressing climate change. In light of modern trade practices, the Parties agreed that these areas present opportunities for deeper collaboration to enhance trade and investment among CPTPP member states. They will further deliberate on how to incorporate digital and green economies into the Agreement.

- **Implementation issues**

The Parties discussed the impact of the CPTPP to date and agreed to commence work on the third-year general review of CPTPP as per Article 27.2.1(b), which was put on hold last year due to unprecedented restrictions arising from the Covid-19 pandemic. The Parties are in the process of conducting analytical studies and assessments on the impact of the Agreement. Once completed, the review will provide key findings on how the CPTPP has generated trade and investment flows, which will further assist CPTPP members to determine appropriate approaches for the next steps of the review.

- **Potential accession of new members**

The Parties discussed the accession applications to date from the United Kingdom (UK), China, Taiwan, Ecuador, and Costa Rica. The UK is in the final stages of its accession process although lack of consensus over market access issues has delayed progress. The UK will reportedly submit an improved market access offer this week when CPTPP officials meet for another negotiating round in Australia. Once negotiations are complete, the Working Group will then submit a report to the CPTPP Commission after which a final decision on the UK's membership will be made by those CPTPP members that have ratified and brought the Agreement into force. As the UK's accession process is the first for the CPTPP and sets a precedent for other potential members, the Parties are keen to ensure that the UK's accession preserves and advances the CPTPP's high standard rules and comprehensive market access commitments.

On China's accession application, the Parties remain divided over how to proceed. Singapore is reportedly the most supportive of China's application, while Australia and Japan remain reluctant owing to China's ongoing economic coercion actions on the trade front and apprehension over the possibility that if China becomes a CPTPP member, China would veto any potential application from the United States in future. The Parties have also delayed serious consideration of Taiwan's accession application due to the inherent complex geopolitical issues and challenges. According to Australia's Minister of Trade Don Farrell, the CPTPP's current "membership priority" is the UK's accession process.

During the meeting, the Parties also welcomed the recent submission of the instrument of ratification by Malaysia, which enables the CPTPP's entry into force for Malaysia on November 29, 2022. Brunei and Chile are the only remaining signatories yet to ratify the Agreement.

Looking ahead, New Zealand will take over as Chair of CPTPP from Singapore in 2023 and will host the next CPTPP Commission meeting.

Click **here** for the Joint Ministerial Statement.

Petitions and Investigations

US Department of Commerce Initiates Antidumping and Countervailing Duty Investigations of Certain Freight Rail Couplers and Parts Thereof from China and Mexico

On October 19, 2022, the US Department of Commerce (DOC) announced the initiation of antidumping duty (AD) and countervailing duty (CVD) investigations of certain freight rail couplers and parts thereof (freight rail couplers) from China and an AD investigation of freight rail couplers from Mexico. DOC initiated these investigations in response to petitions filed by the Coalition of Freight Coupler Producers, the members of which are McConway and Torley, LLC (M&T) (Pittsburgh, PA) and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (the USW) (Washington, DC).

The scope of these investigations covers certain freight railcar couplers (also known as "fits" or "assemblies") and parts thereof. Freight railcar couplers are composed of two main parts, namely knuckles and coupler bodies but may also include other items (*e.g.,* coupler locks, lock lift assemblies, knuckle pins, knuckle throwers, and rotors). The parts of couplers that are covered by the investigations include: (1) E coupler bodies, (2) E/F coupler bodies, (3) F coupler bodies, (4) E knuckles, and (5) F knuckles, as set forth by the Association of American Railroads (AAR). The freight rail coupler parts (*i.e.,* knuckles and coupler bodies) are included within the scope of the investigations when imported separately. Coupler locks, lock lift assemblies, knuckle pins, knuckle throwers, and rotors are covered merchandise when imported in an assembly but are not covered by the scope when imported separately.

The couplers that are the subject of these investigations are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting number 8607.30.1000. Unfinished subject merchandise may also enter under HTSUS statistical reporting number 7326.90.8688. Subject merchandise attached to finished railcars may also enter under HTSUS statistical reporting numbers 8606.10.0000, 8606.30.0000, 8606.91.0000, 8606.92.0000, 8606.99.0130, 8606.99.0160, or under subheading 9803.00.5000 if imported as an Instrument of International Traffic. Subject merchandise may also be imported under HTSUS statistical reporting number 7325.99.5000.

The dumping margins alleged in the petitions range from 67.45 to 169.90 percent for China, and from 160.05 to 187.08 percent for Mexico. The China CVD petition identifies 31 alleged subsidy programs, which DOC is treating as 33 subsidy programs, including grant programs, tax programs, loan programs, and the provision of goods and services for less than adequate remuneration programs.

The US International Trade Commission (ITC) is scheduled to issue its preliminary injury determinations by November 14, 2022. If the ITC makes affirmative preliminary determinations of injury, the investigations will continue, and DOC will be scheduled to issue its preliminary AD determinations by March 7, 2022 and its preliminary CVD determination by December 22, 2022.

According to DOC, imports from China and Mexico under HTSUS subheading 8607.30.1000 were valued at approximately $35 million and $20 million, respectively, in 2021.

US Department of Commerce Issues Affirmative Final Determination in the Antidumping Duty Investigation of Superabsorbent Polymers from South Korea

On October 21, 2022, the US Department of Commerce (DOC) announced its affirmative final determination in the antidumping duty (AD) investigation of certain superabsorbent polymers (SAP) from South Korea. In its investigation, DOC determined that imports of the subject merchandise from Korea were sold in the United States at a dumping margin of 17.64 percent.

The merchandise covered by this investigation is superabsorbent polymers (SAP), which is cross-linked sodium polyacrylate most commonly conforming to Chemical Abstracts Service (CAS) registry number 9003-04-7, where at least 90 percent of the dry matter, by weight on a nominal basis, corrected for moisture content, is comprised of a polymer with a chemical formula of (C3H3O2NaxH1-x)n, where *x* is within a range of 0.00-1.00 and there is no limit to *n.* The subject merchandise also includes merchandise with a chemical formula of {(C2H3)COONayH(1-y)}n, where *y* is within a range of 0.00-1.00 and there is no limit to *n.* SAP is classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 3906.90.5000. SAP may also enter the United States under HTSUS 3906.10.0000.

The US International Trade Commission (ITC) is scheduled to issue its final injury determination in this investigation by December 5, 2022. If the ITC issues an affirmative final determination of injury, DOC will issue an AD order on imports of this product from South Korea.

According to DOC, imports from South Korea under HTSUS subheading 3906.90.5000 were valued at approximatey $108 million in 2021.

US International Trade Commission Finds Imports of Oil Country Tubular Goods from Argentina, Mexico, Russia, and South Korea Injure US Industry

On October 26, 2022, the US International Trade Commission (ITC) determined that a US industry is materially injured by reason of imports of oil country tubular goods (OCTG) from Argentina, Mexico, Russia, and South Korea that the US Department of Commerce (DOC) has determined are sold in the United States at less than fair value and are subsidized by the governments of Russia and South Korea. Chairman David S. Johanson and Commissioners Rhonda K. Schmidtlein, Jason E. Kearns, Randolph J. Stayin, and Amy A. Karpel voted in the affirmative. As a result of the ITC's affirmative determinations, DOC will issue countervailing duty orders on imports of this product from Russia and South Korea, and antidumping duty orders on imports of this product from Argentina, Mexico, and Russia. The Commission made negative critical circumstances findings with regard to imports of this product from Mexico and Russia, and as result, these imports will not be subject to retroactive antidumping duties.

The merchandise covered by these investigations is certain OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than case iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of these investigation also covers OCTG coupling stock. A full description of the scope can be found in DOC's Federal Register notices on its final determinations.

The merchandise subject to this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.1010, 7304.29.1020, 7304.29.1030, 7304.29.1040, 7304.29.1050, 7304.29.1060, 7304.29.1080, 7304.29.2010, 7304.29.2020, 7304.29.2030, 7304.29.2040, 7304.29.2050, 7304.29.2060, 7304.29.2080, 7304.29.3110, 7304.29.3120, 7304.29.3130, 7304.29.3140, 7304.29.3150, 7304.29.3160,7304.29.3180, 7304.29.4110, 7304.29.4120, 7304.29.4130, 7304.29.4140, 7304.29.4150, 7304.29.4160, 7304.29.4180, 7304.29.5015, 7304.29.5030, 7304.29.5045, 7304.29.5060, 7304.29.5075, 7304.29.6115, 7304.29.6130, 7304.29.6145, 7304.29.6160, 7304.29.6175, 7305.20.2000, 7305.20.4000, 7305.20.6000, 7305.20.8000, 7306.29.1030, 7306.29.1090, 7306.29.2000, 7306.29.3100, 7306.29.4100, 7306.29.6010, 7306.29.6050, 7306.29.8110, and 7306.29.8150.

The merchandise subject to this investigation may also enter under the following HTSUS item numbers: 7304.39.0024, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.39.0062, 7304.39.0068, 7304.39.0072, 7304.39.0076, 7304.39.0080, 7304.59.6000, 7304.59.8015, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050, 7304.59.8055, 7304.59.8060, 7304.59.8065, 7304.59.8070, 7304.59.8080, 7305.31.4000, 7305.31.6090, 7306.30.5055, 7306.30.5090, 7306.50.5050, and 7306.50.5070.

In its AD and CVD investigations, DOC determined that imports of the subject merchandise were sold in the United States at the following dumping margins and subsidy rates:

Country	Dumping Margin	Subsidy Rate
Argentina	78.30 percent	NA
Mexico	44.93 percent	NA
Russia	12.84 to 184.21 percent	1.30 to 1.59 percent
South Korea	NA	1.33 percent

US International Trade Commission Finds Imports of Sodium Nitrite from Russia Injure US Industry

On October 17, 2022, the US International Trade Commission (ITC) determined that a U.S. industry is materially injured or threatened with material injury by reason of imports of sodium nitrite from Russia that the U.S. Department of Commerce (Commerce) has determined are sold in the United States at less than fair value. Chairman David S. Johanson and Commissioners Rhonda K. Schmidtlein, Jason E. Kearns, Randolph J. Stayin, and Amy A. Karpel voted in the affirmative. As a result of the ITC's affirmative determination, DOC will issue antidumping duty orders on imports of this product from Russia.

The subject merchandise is sodium nitrite in any form, at any purity level. In addition, the sodium nitrite covered by this investigation may or may not contain an anticaking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti-rust, diazotizing salts, erinitrit, and filmerine. Sodium nitrite's chemical composition is $NaNO_2$, and it is generally classified under subheading 2834.10.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). The American Chemical Society Chemical Abstract Service (CAS) has assigned the name "sodium nitrite" to sodium nitrite. The CAS registry number is 7632-00-0.

In its AD investigation, DOC determined that imports of the subject merchandise from Rusia were sold in the United States at a dumping margin of 207.17 percent. The cash deposit rate adjusted for export subsidy offsets is 25.73 percent.