

US Multilateral Trade and Policy Developments

Japan External Trade Organization

November 2022

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US Trade Policy Developments

US Treasury Receives Comments on Inflation Reduction Act from Japan, EU, and Korea

The Governments of Japan, the European Union and Korea filed comments in November 2022 with the US Treasury Department urging the US government to remedy the discriminatory aspects of the IRA.

The submissions focus primarily on the IRA's regional content and assembly requirements for EVs that receive US tax credits, as well as its domestic content requirements for iron, steel, and manufactured goods used in clean energy projects that receive US tax credits. The EU's submission goes further, arguing that several other tax credits in the IRA (e.g., the Advanced Manufacturing Production Tax Credit and the Clean Fuel Production Tax Credit) are market-distorting and risk causing "adverse effects" to EU interests.

The submissions propose a range of potential policy changes to address these concerns, including repealing the relevant provisions, delaying their implementation, providing country-specific waivers, altering the form of certain subsidies, and adopting "flexible" interpretations of key statutory terms. However, many of these proposals will be challenging for the United States to implement, and the Biden Administration has recently downplayed both its willingness and ability to modify the discriminatory elements of the IRA.

Submission from the Government of Japan

Japan's submission focuses on the regional content and assembly requirements for EVs, which "are not consistent with the U.S. and Japanese governments' shared policy to work with allies and like-minded partners to build resilient supply chains[.]" The submission includes the following recommendations:

- Regarding the final assembly requirement, Japan advocates "flexible interpretation of the definitions of both 'final assembly' and 'North America' to ensure that EVs produced by allies such as Japan are accorded treatment no less favorable than countries in the North America region[.]"
- Regarding the critical minerals requirement, Japan considers that the definition of "extracted or processed in the United States or in any country with which the United States has a free trade agreement in effect" should be interpreted "in a flexible manner so that the EV tax credit can be applicable to a vehicle with critical minerals extracted or processed in allied countries such as Japan."
- Regarding the battery components requirement, Japan considers that the phrase "manufactured or assembled in North America" should be interpreted "in a flexible manner so that the EV tax credit can be applicable to a vehicle with battery components manufactured or assembled in allied countries such as Japan."
- Japan considers that "almost all vehicles including ones planned to be produced in the U.S." will be ineligible for the IRA's EV tax credit, if the statutory term "foreign entity of concern" is interpreted "to exclude any companies located in certain countries or into which an entity of a particular country has made investments." In Japan's view, the scope of a "foreign entity of concern" and its verification procedure should be clarified so that stakeholders can submit further comments based on the clarification.

Japan's comments are here: https://downloads.regulations.gov/IRS-2022-0020-0689/attachment_1.pdf.

Submission from the Government of the European Union

The EU submission expresses concern about nine of the IRA's tax credit provisions. The EU considers five of these provisions to be "particularly problematic" given that they contain "clearly discriminatory domestic content requirements, in breach of WTO rules":

- Extension and Modification of credit for Electricity from Certain Renewable Resources
- Extension and Modification of the Energy Tax Credit
- Clean Vehicle Tax Credit
- Clean Electricity Production Credit
- Clean Electricity Investment Credit

The EU alleges that the domestic content requirements included in these provisions violate the national treatment obligations of the GATT 1994, and may also violate the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement) and the Agreement on Trade-Related Investment Measures (TRIMS Agreement).

- The other four IRA provisions criticized by the EU are as follows:
- Sustainable Aviation Fuel Tax Credit
- Tax Credit for Production of Clean Hydrogen
- Advanced Manufacturing Production Tax Credit
- Clean Fuel Production Tax Credit

The EU considers that these tax credits contain “problematic domestic production requirements” that put EU-based producers at a disadvantage, “as they must compete on a distorted market with subsidised US-based producers.” In the EU’s view, these subsidies pose a risk of “adverse effects” to the EU’s interests.

The EU proposes a number of policy changes to address these concerns, including:

- “Removing all discriminatory content and production requirements affecting the European Union and its economic operators and products.”
- “Ensuring the EU and its economic operators are treated no less favourably than other trading partners of the United States.”
- Converting the four production-based tax credits to “non-discriminatory consumption subsidies.”
- Building transparency provisions into subsidies to be granted through tax credits and other programs under the IRA. This would involve “the introduction of public reporting and notification requirements” for taxpayers availing themselves of the credits.
- “Ensuring that the level and structure of subsidization does not create adverse effects on the EU.” In particular, the EU notes that the relevant IRA subsidies are “unbound in financial value as there is no spending or production cap,” which the EU requests to change in order to achieve shared climate policy goals “while protecting a level-playing field[.]”

The EU’s comments are here: https://downloads.regulations.gov/IRS-2022-0020-0774/attachment_1.pdf.

Submission from the Government of Korea

Korea’s submission challenges the IRA’s regional content and assembly requirements for EVs as well as its domestic content requirements for clean energy projects. Korea argues that these measures are discriminatory and likely

violate the United States' KORUS and WTO obligations. Korea's submission makes the following requests, among others:

- With regard to the EV tax credit, Korea requests that “the discriminatory elements be amended, or that the treatment that is provided to North American countries be conferred equally to the ROK with regard to the requirements related to final assembly, battery components, and recycled critical minerals.” Alternatively, “a grace period of three years should be provided for the implementation of clean vehicle tax credits, given that Korean companies have committed to investments in the United States but it will take up to three years to complete construction.”
- Korea seeks flexible interpretations of the battery and critical mineral requirements for EVs. For example, the submission requests that Treasury “broadly interpret the term ‘free trade agreement’” to include arrangements such as Trade and Investment Framework Agreements (TIFAs). This, in Korea's view, would make it easier for vehicles to satisfy the IRA's critical minerals requirement (which states that a specified percentage of critical minerals in the vehicle battery must be extracted or processed in the United States or an FTA partner country). In addition, Korea requests that the calculation of regional content for critical minerals be aggregated (*i.e.*, the percentage is based on the total value of all applicable critical minerals contained in the battery, instead of being calculated separately for each type of critical mineral). Korea proposes the same calculation methodology for the battery components requirement.
- Korea requests that the IRA's domestic content requirements for iron, steel, and manufactured goods used in clean energy projects be interpreted “in the least restrictive manner possible to minimize negative impacts on foreign investment and resolve inconsistencies with U.S. international obligations.” However, the submission provides no specific suggestions as to how this can be achieved.

Korea's comments are here: https://downloads.regulations.gov/IRS-2022-0020-0700/attachment_1.pdf.

Prospects

The US Treasury could adopt some of the proposals contained in the submissions of Japan, the EU and Korea during the rulemaking process. For example, the IRA does not specify detailed calculation methodologies for the regional content requirements that apply to EVs, and the law leaves many key terms undefined (e.g., “manufactured or assembled,” “extracted or processed,” and “free trade agreement.”) These ambiguities provide Treasury with some discretion as to the trade-restrictiveness of the regional content rules.

However, many of the proposals set forth in the submissions would require legislative action by Congress, including the requests to delay implementation of the regional content rules, to ensure that that Korean, Japanese, and EU producers are accorded the same treatment as North American producers, and to convert certain production subsidies to consumption subsidies. Secretary Yellen recently acknowledged these limitations, stating that Treasury will take other countries' concerns “into account,” but must “implement the law that was written.”

The Biden Administration has given no indication that it would support legislative action to address trading partners' concerns about the IRA. Instead, Ambassador Tai recently characterized trading partners' concerns about the IRA as “growing pains” resulting from the Biden Administration's new approach to trade policy (which she emphasized is focused on concepts such as “fairness” and “resilience,” unlike past trade policies that were “tremendously responsive to large corporate interests[.]”) Ambassador Tai expressed confidence that the United States “will be able to work towards a resolution” with partners such as the EU, but implied that this may involve the EU introducing subsidies of its own, rather than amending the IRA. Even if the Biden Administration were interested in amending the IRA, doing so might become even more difficult in the next Congress, where Republicans are likely to gain a narrow majority in the House of Representatives.

If the United States is unable to amend the IRA's domestic and regional content requirements, there is a risk that the law will inspire copycat measures. For example, in response to the IRA, French President Emmanuel Macron recently called for a "Buy European Act" that reserves subsidies for European manufacturers, because "[y]ou have China that is protecting its industry, the U.S. that is protecting its industry and Europe that is an open house[.]" A proliferation of regional content requirements has the potential to reduce global efficiencies in the EV and clean energy sectors, and would also signal a decline in relevance of WTO and FTA rules.

In the nearer-term, trade tensions resulting from these measures may increase the difficulty of concluding new trade arrangements, such as the IPEF.

United States and Singapore Hold Inaugural US-Singapore Partnership for Growth and Innovation Annual Dialogue

US Under Secretary of Commerce for international Trade Marisa Lago and Singapore Permanent Secretary of the Ministry of Trade and Industry Gabriel Lim held the inaugural US-Singapore Partnership for Growth and Innovation (PGI) annual dialogue on October 27, 2022. The inaugural meeting comes after US Secretary of Commerce Gina Raimondo and Singapore Minister for Trade and Industry Gan Kim Yong signed a memorandum of understanding (MOU) to implement the PGI in October 2021.

The PGI is a bilateral economic cooperation platform, which seeks to enhance US-Singapore collaboration in new and forward-looking areas as follows:

- Advanced manufacturing and supply chain resilience
- Clean energy and environmental technologies
- Digital economy and smart cities
- Healthcare.

During the meeting, the Parties including the private sector and civil society representatives from both countries reviewed PGI activities and outcomes in 2022 as well as discussed plans for collaboration in 2023. Through the PGI, the Parties agreed to promote standards and rules that advance technological innovation, which enable companies to maximize the benefits of the digital economy. The Parties also worked together to expand membership in the Global Cross-Border Privacy Rule (CBPR) forum, which was launched in April 2022 to facilitate the flow of cross-border data.

The United States and Singapore have discussed with their respective private sectors to identify challenges in regional manufacturing supply chains and ways to meet the digital, clean energy, and infrastructure needs of cities. They also explored areas for collaboration to improve resilience and promote seamless trade through the development and adoption of international standards. The United States also conducted an Advanced Manufacturing Business Development Mission to Singapore and other countries in the region in October 2022 to explore new opportunities for business collaboration. The Parties also discussed the outcomes of the World Cities Summit held in July 2022, which provided a platform for companies from Singapore and the United States to demonstrate their advanced technology and service solutions to participating governments and prospective business partners.

As next steps, the Parties agreed to continue their work on expanding membership in the CBPR forum in the months ahead. They will conduct networking sessions and workshops under the US-Singapore Women in Tech Partnership Program, which was launched in June 2022 to promote women's roles as tech leaders. Both sides will develop interoperable artificial intelligence (AI) governance frameworks to support the adoption of trustworthy AI.

They will also exchange information on cybersecurity labelling schemes, develop advanced telecommunications cooperation, enhance supply chain connectivity and resiliency, and implement regional clean energy projects. The Parties also agreed to invite other ASEAN countries to participate in PGI activities to ensure their work alignments with ASEAN initiatives.

US Trade Actions

Section 301

China Grants Additional Extension to Exclude 95 US Items from “List 1” and “List 3” Retaliatory Tariffs until May 31, 2023

On November 25, 2022, China’s State Council Tariff Commission (SCTC) issued Notification No. 10/2022¹ granting a six-month extension from December 1, 2022 through May 31, 2023 to exclude 95 US items from China’s two batches of retaliatory import tariff measures in response to previous Section 301 actions by the United States (*i.e.*, “List 1” and “List 3” retaliatory tariffs).

Specifically, 16 items were first excluded from China’s “List 1” 25% retaliatory tariffs measures from September 11, 2019, while 79 of 95 items were later excluded from the “List 3” measures (ranging from 5% to 25%) from February 28, 2020. The items excluded from the retaliatory tariffs include, among others, those falling under tariff headings 2701, 4407, 8412, 8413, 8421, 8462, 9012, 9013, 9018, 9022, and 9027.²

This marks the third time the SCTC has extended the exclusion decisions on these 95 items, with the most recent extension scheduled to expire by November 30, 2022. The scope of items subject to exclusion is consistent with those under the previous extensions. In May 2019, the SCTC introduced the exclusion process open to Chinese companies that import, produce or use products subject to China’s retaliatory tariffs.

Other Actions

US Department of Commerce Solicits Comments for New Cost-Based Particular Market Situation Rule

On November 18, 2022, the US Department of Commerce (DOC) published a notice in the *Federal Register*³ requesting comments to inform the development of a potential new regulation on cost-based particular market situation (PMS). The notice states that Commerce is “issuing this advanced notice of proposed rulemaking to inform the public that Commerce is considering issuing a PMS regulation and to invite comments on that new regulation.”

As currently implemented, the cost-based PMS provision⁴ allows DOC to consider specific commercial and/or policy factors, on an individual or collective basis, that distort the cost of production of subject merchandise; and upon finding the existence of a PMS, to adjust respondents’ reported costs of production to account for such distortions. The statute does not provide specific guidance, however, as to what PMS factors DOC should consider, which has led to some confusion amongst parties to antidumping proceedings and, importantly, a series of reversals on appeal.

In its notice, DOC requests that stakeholders:

- Identify information which they believe DOC should consider in determining if a PMS exists, which distorts the costs of production if that information is reasonably available and relevant to the PMS allegation;

¹ The SCTC notice is here (in Chinese): http://gss.mof.gov.cn/gzdt/zhengcefabu/202211/t20221128_3853670.htm.

² The 95 items of US imports subject to the exclusion is here (in Chinese): <http://gss.mof.gov.cn/gzdt/zhengcefabu/202211/P020221128548519465675.pdf>.

³ The Federal Register notice is here: <https://www.federalregister.gov/documents/2022/11/18/2022-25216/determining-the-existence-of-a-particular-market-situation-that-distorts-costs-of-production>.

⁴ 19 U.S.C. § 1677b(e)(1), (3).

- Identify information which they believe DOC should not be required to consider when determining if a PMS exists, regardless of the PMS allegation; and
- Provide comments on adjustments which DOC may make to its calculations when it determines the existence of a PMS, but the record before it does not allow for the quantification of cost distortions.

The notice cites specifically to the Court of Appeals for the Federal Circuit (CAFC) opinion in *Nesteel Co. v. United States*, 28 F.4th 1226 (Fed. Cir. 2022), in which the Court found that DOC's PMS finding was not supported by substantial evidence. The remand proceeding in that case is ongoing. Following the CAFC remand (and several US Court of International Trade (CIT) reversals of PMS findings), DOC wants to spell out "the information which Commerce should consider, or need not consider, in determining if a PMS exists that distorts costs of production." This suggests that DOC is not abandoning cost-based PMS as a tool, and is instead seeking to refine its approach so that its PMS determinations withstand judicial scrutiny. Comments are due by December 18, 2022.

Trade Agreements

Regional Comprehensive Economic Partnership

RCEP to Enter into Force for Indonesia on January 2, 2023

According to government sources, Indonesia formally submitted its instrument of ratification to the ASEAN Secretariat for the Regional Comprehensive Economic Partnership (RCEP) on November 3, 2022, marking the completion of ratification procedures by Indonesia.⁵ The move follows the approval by Indonesia's House of Representatives (*Dewan Perwakilan Rakyat* – DPR RI) of the *Draft Law on the Ratification of the Regional Comprehensive Economic Partnership Agreement* (RCEP) at the DPR RI plenary meeting on August 30, 2022. The RCEP will enter into force for Indonesia on January 2, 2023.

With its ratification, Indonesia – the largest economy in Southeast Asia – becomes the eighth ASEAN member state after Brunei, Cambodia, Laos, Malaysia, Singapore, Thailand, and Vietnam to complete the necessary ratification procedures. The RCEP has already entered into effect for all non-ASEAN members⁶ including Australia, China, Japan, Korea, and New Zealand. The Philippines and Myanmar remain the only RCEP signatories still not party to the Agreement.

In Myanmar, the worsening political situation continues to raise concerns among some RCEP member states, which has delayed the official acceptance of the instrument of ratification by the ASEAN Secretariat. Meanwhile, the Philippines is the only RCEP signatory that has not ratified the Agreement. According to a radio interview on November 9, 2022 with Department of Trade and Industry (DTI) Secretary Alfredo Pascual, “President Ferdinand R. Marcos, Jr. is committed to ratify” the RCEP despite opposition from the agriculture sector; however, his economic team has not yet formally endorsed the RCEP to the Senate for its concurrence.

RCEP coverage

The RCEP is the world's largest trade agreement, which comprises nearly 30% of GDP and a third of the world's population. The Agreement consolidates and builds upon the existing ASEAN+1 FTAs with China, Japan, Korea, and Australia and New Zealand, and delivers a single, harmonized and predictable set of regional trade rules covering all 15 markets, which aims to incentivize businesses to locate their supply chains within the covered Asia-Pacific region.

Comprised of 20 chapters,⁷ the RCEP contains rules governing such topics as market access for goods⁸ and services, rules of origin, standards, temporary movement of natural persons, investment, e-commerce, competition, government procurement, and intellectual property, albeit with varying degrees of ambition and substance.

⁵ Under Article 20.6.3 of the Agreement, the RCEP will enter into force 60 days after the deposit of the instrument of ratification, acceptance, or approval to the Secretary-General of ASEAN as the Depository of the RCEP Agreement.

⁶ India was an original participating economy, but withdrew its membership in November 2019 over market access concerns, primarily with China. However, there is a fast-track accession process in place should India wish to re-join the RCEP in the future.

⁷ The RCEP contains 20 chapters as follows: (i) initial provisions and general definitions; (ii) trade in goods; (iii) rules of origin; (iv) customs procedures and trade facilitation; (v) sanitary and phytosanitary measures; (vi) standards, technical regulations, and conformity assessment procedures; (vii) trade remedies; (viii) trade in services; (ix) temporary movement of natural persons; (x) investment; (xi) intellectual property; (xii) electronic commerce; (xiii) competition; (xiv) small and medium enterprises; (xv) economic and technical cooperation; (xvi) government procurement; (xvii) general provisions and exceptions; (xviii) institutional provisions; (xix) dispute settlement; and (xx) final provisions.

⁸ Market access for goods covers tariff elimination of at least 92% of goods traded among RCEP parties within a 20-year timeframe. Notably, the RCEP does not deliver significant new market access for goods in terms of tariff reduction and elimination

The RCEP also contains provisions that go beyond the existing ASEAN+1 FTAs in selected areas and supports the parties' engagement in global and regional supply chains. As the RCEP involves countries with different levels of development, it incorporates technical cooperation and capacity building to support the implementation of the Agreement. Notably absent from the RCEP are chapters that address industrial subsidies, state-owned enterprises, labor rights, and the environment.

While less ambitious than the CPTPP, the RCEP lays the foundation for deeper cooperation in the future and is notable as it brings together countries that have yet to conclude trade agreements with each other, such as Japan and China, as well as those with long-standing and challenging diplomatic relationships, such as Japan and Korea and Australia and China, respectively. Although the RCEP was originally an ASEAN-led initiative, many now regard it as a China-backed alternative to the CPTPP, which so far excludes China but includes various Asia Pacific countries.

Asia Pacific Economic Cooperation

APEC Leaders Endorse Bangkok Goals on Bio-Circular-Green Economy, Advance Agenda for Free Trade Area of the Asia-Pacific; United States Prepares to Host APEC in 2023

The Leaders of 21 member economies⁹ of the Asia Pacific Economic Cooperation (APEC) met in person for the first time in four years for the 29th APEC Economic Leaders' Meeting (AELM) from November 18-19, 2022 in Bangkok. Thai Prime Minister Prayuth Chanocha chaired the AELM amidst high geopolitical tensions between the United States and China and Russia's war in Ukraine. Chinese President Xi Jinping attended the AELM, while US President Joseph Biden did not attend and was represented instead by Vice President Kamala Harris. Deputy Prime Minister Andrei Belousov represented Russia on behalf of Russian President Vladimir Putin.

Prime Minister Prayuth highlighted the important work and key achievements throughout Thailand's host year under the theme "Open. Connect. Balance." Thailand has hosted over 100 APEC related meetings throughout 2022, including working group-level and committee-level meetings, four clusters of APEC senior official meetings, and eight sectoral ministerial meetings on trade, tourism, forestry, health, food security, women, small and medium-sized enterprises (SMEs) and finance, as well as the 33rd APEC Ministerial Meeting (AMM).

The Leaders discussed ways to enhance trade and mitigate the impacts of the Covid-19 pandemic. They also mentioned how the war in Ukraine has further adversely impacted the global economy, while noting that APEC is not the forum to resolve security issues. They agreed that trade and investment play a critical role in enhancing economic prosperity and addressing global challenges, welcomed the successful outcomes of the 12th WTO Ministerial Conference (MC12), and look forward to the early and effective implementation of such outcomes.

In the lead up to the AELM, United States Trade Representative Katherine Tai commented during a press conference that APEC is "an incubator of ideas" and "a catalyst for cooperation" that is "uniquely positioned to explore how we can build a more durable and resilient global economy."¹⁰ She is optimistic on trade prospects in 2023, including the United States hosting APEC, momentum in the negotiations for the Indo-Pacific Economic Framework for Prosperity (IPEF) – 11 APEC members are participating in the IPEF – and reform efforts at the WTO.

as most RCEP parties already have existing FTAs in force with each other through a combination of bilateral and plurilateral agreements, including the ASEAN+1 FTAs and the CPTPP.

⁹ APEC's 21 member economies are: Australia, Brunei, Canada, Chile, China, Hong Kong, Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, the Philippines, Russia, Taiwan, Thailand, the United States, and Vietnam.

¹⁰ "Opening Remarks by Ambassador Katherine Tai During APEC Press Conference," USTR, November 17, 2022, <https://ustr.gov/about-us/policy-offices/press-office/speeches-and-remarks/2022/november>.

Besides the AELM, Thailand also hosted the APEC Leaders' Informal Dialogue, which offered a platform for APEC economies to exchange views on ways to promote sustainable and inclusive growth. Saudi Arabian Prime Minister His Royal Highness Crown Prince Mohammed bin Salman and French President Emmanuel Macron attended the dialogue as special guests.

Bangkok Goals on the Bio-Circular-Green economy

The Leaders endorsed the Bangkok Goals on the Bio-Circular-Green (BCG) economy (the "Bangkok Goals") as a comprehensive framework to further APEC's sustainability objectives. The adoption of the Bangkok Goals marks APEC's first comprehensive goals on sustainability and inclusivity agenda, which focus on four key areas including climate change mitigation, sustainable trade and investment, environmental conservation, and waste management.

Under the Bangkok Goals, the Parties agreed to: (i) intensify cooperation to enhance stability, resilience, and sustainability of supply chains; (ii) advance work on the facilitation of trade in environmental goods and services by building on discussions concerning the APEC List of Environmental Goods and the Reference List of Environmental and Environmental Related Services; (iii) advance concrete initiatives on responsible business conduct, environmental, social and governance (ESG) industry practices; (iv) advance gender equality and economic integration; and (v) enhance the roles of micro, small, and medium enterprises (MSMEs). The Bangkok Goals website was launched upon adoption and can be accessed at www.bangkokgoals.apec.org.

Revived agenda for the Free Trade Area of the Asia Pacific

The Leaders welcomed the advancement of the Free Trade Area of the Asia-Pacific (FTAAP) agenda proposed again by Thailand.¹¹ They agreed to adopt the FTAAP Agenda Work Plan 2023-2026 to take forward the refreshed conversation on the FTAAP in the post Covid-19 context to help build capacities of economies to better prepare for next generation trade issues. In this context, the Parties tasked their respective officials to report progress in carrying out the Work Plan to the AMM in the following years.

¹¹ The idea of the FTAAP has been around since 2004. In 2014, APEC members committed to taking a concrete step towards greater regional economic integration by endorsing a roadmap for the FTAAP to translate its vision into reality. However, there has been little traction at a high policy level.

Petitions and Investigations

US Department of Commerce Issues Preliminary Affirmative Determination of Sales at Less Than Fair Value in Antidumping Duty Investigations of Certain Preserved Mushrooms From the Netherlands, Poland, and Spain

On November 3, 2022, the US Department of Commerce (DOC) published its affirmative preliminary determinations in the antidumping duty (ADD) investigations of certain preserved mushrooms from the Netherlands, Poland, and Spain.¹² In its investigations, DOC preliminarily determined that imports of the subject merchandise from the Netherlands were sold in the United States at dumping margins ranging from 0.00% to 146.59%; from Poland at dumping margins ranging from 23.43% to 30.01%; and from Spain at dumping margins ranging from 10.28% to 40.07%.

The petitioner in this investigation is Giorgio Foods, Inc. The product covered by this investigation is certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this investigation are the genus *Agaricus*. “Preserved mushrooms” refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heat sterilized in containers each holding a net drained weight of not more than 12 ounces (340.2 grams), including but not limited to cans or glass jars, in a suitable liquid medium, including but not limited to water, brine, butter, or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Excluded from the scope are “marinated,” “acidified,” or “pickled” mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives. To be prepared or preserved by means of vinegar or acetic acid, the merchandise must be a minimum 0.5% by weight acetic acid.

The merchandise subject to this investigation is classifiable under subheadings 2003.10.0127, 2003.10.0131, and 2003.10.0137 of the Harmonized Tariff Schedule of the United States (HTSUS). The subject merchandise may also be classified under HTSUS subheadings 2003.10.0143, 2003.10.0147, and 2003.10.0153.

DOC is scheduled to issue its final determinations in these investigations by March 20, 2023. If both DOC and the US International Trade Commission (ITC) reach affirmative final determinations with respect to each country, DOC will issue AD orders on imports of this product from the Netherlands, Poland, and Spain.

US Department of Commerce Issues Preliminary Affirmative Determination of Sales at Less Than Fair Value in Antidumping Duty Investigation of White Grape Juice Concentrate From Argentina

On November 3, 2022, the DOC published its preliminary determination that white grape juice concentrate (WGJC) from Argentina is being, or is likely to be, sold in the United States at less than fair value (LTFV).¹³ In its ADD investigation, DOC preliminarily determined that imports of the subject merchandise from Argentina was sold in the United States at dumping margins ranging from 12.21% to 27.17%.

The petitioner in this case is Delano Growers Grape Products, LLC. The product covered by this investigation is white grape juice concentrate with a Brix level of 65 to 68, whether in frozen or non-frozen forms. White grape juice concentrate is concentrated grape juice produced from grapes of the *Vitis vinifera* L. species with a white flesh, including fresh market table grapes and raisin grapes (e.g., Thompson Seedless), as well as several varieties of wine

¹² The Federal Register notice is here: <https://www.federalregister.gov/documents/2022/11/03/2022-23922/certain-preserved-mushrooms-from-the-netherlands-preliminary-affirmative-determination-of-sales-at>.

¹³ The Federal Register notice is here: <https://www.federalregister.gov/documents/2022/11/03/2022-23924/white-grape-juice-concentrate-from-argentina-preliminary-affirmative-determination-of-sales-at-less>.

grapes (e.g., Chardonnay, Chenin Blanc, Sauvignon Blanc, Colombard, etc.). The scope of this investigation covers white grape juice concentrate regardless of whether it has been certified as kosher, organic, or organic kosher. The white grape juice concentrate subject to this investigation consists of 100% grape juice with no other types of juice intermixed and no additional sugars or additives included. The scope does not cover white grape juice concentrate produced from grapes of the *Vitis labrusca* species (e.g., Niagara). The products covered by this investigation are currently classified under the following HTSUS subheadings: 2009.69.0040 and 2009.69.0060.

DOC is scheduled to issue its final determination in this investigation by March 20, 2023. If both DOC and the USITC reach an affirmative final determination, DOC will issue an ADD order on imports of this product from Argentina.

US Department of Commerce Initiates Antidumping Duty Investigations of Paper File Folders from China, India, and Vietnam; and a Countervailing Duty Investigation of Paper File Folders from India

On November 8, 2022, the US Department of Commerce (DOC) published initiation notices regarding the antidumping and countervailing duty investigations of paper file folders from China, India and Vietnam; and from India, respectively.¹⁴ The petitioners were filed by the Coalition of Domestic Folder Manufacturers.

The scope of these investigations covers file folders consisting primarily of paper, paperboard, pressboard, or other cellulose material, whether coated or uncoated, that has been folded (or creased in preparation to be folded), glued, taped, bound, or otherwise assembled to be suitable for holding documents. The scope includes all such folders, regardless of color, whether or not expanding, whether or not laminated, and with or without tabs, fasteners, closures, hooks, rods, hangers, pockets, gussets, or internal dividers. The term “primarily” as used in the first sentence of this scope means 50% or more of the total product weight, exclusive of the weight of fasteners, closures, hooks, rods, hangers, removable tabs, and similar accessories, and exclusive of the weight of packaging. Subject folders have the following dimensions in their folded and closed position: lengths and widths of at least 8 inches and no greater than 17 inches, regardless of depth. The scope covers all varieties of folders, including but not limited to manila folders, hanging folders, fastener folders, classification folders, expanding folders, pockets, jackets, and wallets.

Excluded from the scope are:

- Mailing envelopes with a flap bearing one or more adhesive strips that can be used permanently to seal the entire length of a side such that, when sealed, the folder is closed on all four sides;
- Binders, with two or more rings to hold documents in place, made from paperboard or pressboard encased entirely in plastic;
- Non-expanding folders with a depth exceeding 2.5 inches and that are closed or closeable on the top, bottom, and all four sides (e.g., boxes or cartons);
- Expanding folders that have (i) 13 or more pockets, (ii) a flap covering the top, (iii) a latching mechanism made of plastic and/or metal to close the flap, and (iv) an affixed plastic or metal carry handle;
- Expanding folders that have an outer surface (other than the gusset, handles, and/or closing mechanisms) that is covered entirely with fabric, leather, and/or faux leather;
- Fashion folders, which are defined as folders with all of the following characteristics: (i) plastic lamination covering the entire exterior of the folder, (ii) printing, foil stamping, embossing (i.e., raised relief patterns that are

¹⁴ The Federal Register notice is here: <https://www.federalregister.gov/documents/2022/11/08/2022-24316/paper-file-folders-from-the-peoples-republic-of-china-india-and-the-socialist-republic-of-vietnam>.

recessed on the opposite side), and/or debossing (*i.e.*, recessed relief patterns that are raised on the opposite side), covering the entire exterior surface area of the folder, (iii) at least two visible and printed or foil stamped colors other than the color of the base paper, and other than the printing of numbers, letters, words, or logos, each of which separately covers no less than 10% of the entire exterior surface area, and (iv) patterns, pictures, designs, or artwork covering no less than thirty percent of the exterior surface area of the folder;

- Portfolios, which are folders having (i) a width of at least 16 inches when open flat, (ii) no tabs or dividers, and (iii) one or more pockets that are suitable for holding letter size documents and that cover at least 15% of the surface area of the relevant interior side or sides; and
- Report covers, which are folders having (i) no tabs, dividers, or pockets, and (ii) one or more fasteners or clips, each of which is permanently affixed to the center fold, to hold papers securely in place.

Imports of the subject merchandise are provided for under HTSUS category 4820.30.0040.

The dumping margins alleged in the petitions range from 62.61% to 192.70% for China; 86.01% to 225.24% for India; and 180.61% to 233.93% for Vietnam. The India CVD petition identifies 14 alleged subsidy programs, and DOC found that there is sufficient information to initiate a CVD investigation on 12 of the 14 alleged programs.

The USITC published its preliminary affirmative injury determination on December 2, 2022; therefore, the DOC investigations will continue.

US Department of Commerce Issues Final Affirmative Determination of Sales at Less Than Fair Value in Antidumping Duty Investigation of Emulsion Styrene-Butadiene Rubber from the Russian Federation

On November 17, 2022, the DOC published its final affirmative determination in the ADD investigation of emulsion styrene-butadiene rubber (ESBR) from the Russian Federation.¹⁵ In the same proceeding, DOC reconsidered Russia's market economy status and determined to treat Russia as a non-market economy in forthcoming proceedings. DOC determined that imports of the subject merchandise from Russia were sold in the United States at dumping margins ranging from 8.15% to 17.47%.

The products covered by this investigation are cold-polymerized emulsion styrene-butadiene rubber (ESB rubber). The scope of the investigation includes, but is not limited to, ESB rubber in primary forms, bales, granules, crumbs, pellets, powders, plates, sheets, strip, *etc.* ESB rubber consists of non-pigmented rubbers and oil-extended non-pigmented rubbers, both of which contain at least one percent of organic acids from the emulsion polymerization process.

ESB rubber is produced and sold in accordance with a generally accepted set of product specifications issued by the International Institute of Synthetic Rubber Producers (IISRP). The scope of the investigation covers grades of ESB rubber included in the IISRP 1500 and 1700 series of synthetic rubbers. The 1500 grades are light in color and are often described as "Clear" or "White Rubber." The 1700 grades are oil-extended and thus darker in color, and are often called "Brown Rubber."

Specifically excluded from the scope of this investigation are products which are manufactured by blending ESB rubber with other polymers, high styrene resin master batch, carbon black master batch (*i.e.*, IISRP 1600 series and 1800 series) and latex (an intermediate product).

¹⁵ The Federal Register notice is here: <https://www.federalregister.gov/documents/2022/11/17/2022-25050/emulsion-styrene-butadiene-rubber-from-the-russian-federation-final-affirmative-determination-of>.

The products subject to this investigation are currently classifiable under subheadings 4002.19.0015 and 4002.19.0019 of the HTSUS. ESB rubber is described by Chemical Abstracts Services (CAS) Registry No. 9003-55-8. This CAS number also refers to other types of styrene butadiene rubber.

If the ITC determines that the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of ESB, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation

US Department of Commerce Issues Final Affirmative Determination of Sales at Less Than Fair Value in Antidumping Duty Investigation of Certain Preserved Mushrooms from France

On November 28, 2022, the DOC published its final affirmative determination in the ADD investigation of preserved mushrooms from France.¹⁶ DOC determined that imports of the subject merchandise from France were sold by mandatory respondents (Bonduelle Europe Long Life and France Champignon) in the United States at a dumping margin of 360.88%. The rate for non-examined companies is 224.68%.

The merchandise covered by this investigation is certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this investigation are the genus *Agaricus*. “Preserved mushrooms” refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heat sterilized in containers each holding a net drained weight of not more than 12 ounces (340.2 grams), including but not limited to cans or glass jars, in a suitable liquid medium, including but not limited to water, brine, butter, or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces.

Excluded from the scope are “marinated,” “acidified,” or “pickled” mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives. To be prepared or preserved by means of vinegar or acetic acid, the merchandise must be a minimum 0.5% by weight acetic acid.

The merchandise subject to this investigation is classifiable under subheadings 2003.10.0127, 2003.10.0131, and 2003.10.0137 of the HTSUS. The subject merchandise may also be classified under HTSUS subheadings 2003.10.0143, 2003.10.0147, and 2003.10.0153.

If the ITC determines that the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of preserved mushrooms from France, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

¹⁶ The Federal Register notice is here: <https://www.federalregister.gov/documents/2022/11/28/2022-25912/certain-preserved-mushrooms-from-france-final-affirmative-determination-of-sales-at-less-than-fair>.