WHITE & CASE

US Multilateral Trade and Policy Developments

Japan External Trade Organization

February 2023

Contents

Trade Policy Developments

Updates on the Recent Expansions to Buy America Rules

On February 9, 2023, the US Office of Management and Budget issued new proposed guidance to implement the 2021 Build America, Buy America Act (BABA). Comments on the proposed guidance are due on March 13, 2023.

Unlike the mix of different, agency-specific Buy America laws that have historically been implemented, the 2021 BABA is uniquely expansive, covering multiple agencies. Under the law, Federal financial assistance will only be granted for infrastructure projects according to the following requirements:

- All iron, steel, and other construction materials used in such project must have undergone all manufacturing processes in the United States ("from the initial melting stage through the application of coatings").
- Any manufactured products used in such project must be manufactured in the United States, and the cost of components in such manufactured products "that are mined, produced or manufactured in the United States" must be greater than 55 percent of the total cost of all components" of that manufactured product.
- Any construction materials used must have undergone all manufacturing processes in the United States.

A Federal agency may waive the application of a Buy America requirement only if such requirement:

- "would be inconsistent with the public interest" (a "public interest waiver");
- The "types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality" (a "nonavailability waiver"); or
- "the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall

The new proposed guidance establishes, *inter alia*, expanded definitions for "construction materials," "infrastructure project," "iron and steel products," "manufactured products," and other terms; and provides additional guidance on determining the cost of components for manufactured products.

On February 15, 2023, the Department of Transportation announced additional Buy America regulations for the electric vehicle (EV) charging network portion of the Bipartisan Infrastructure Act (BIL, the Act that also contained BABA).[1] This regulation sets additional standards for electric vehicle charger networks funded through the BIL. The regulations require US-made content in the chargers, including requiring that metal casings for the chargers be made in the United States effective immediately.

An additional requirement that 55% of the total value of EV chargers be made in the United States will enter force on July 1, 2024. The regulations also include rules for interoperability standards, research funding, and funding for deployment of public EV chargers.

[1] "Biden-Harris Administration Announces Latest Steps to Deliver a National Network of Convenient, Reliable, Made-in-America Electric Vehicle Chargers," United States Department of Transportation (February 15, 2023) available here: https://highways.dot.gov/newsroom/biden-harris-administration-announces-latest-steps-deliver-national-network-convenient.

Commerce Department Issues First Notice of Funding Opportunity for CHIPS Act Support

The Department of Commerce issued the first Notice of Funding Opportunity ("Notice")[2] for building commercial semiconductor fabrication facilities on February 28, 2023. The Notice provides details on how to apply for funding and how the applications will be evaluated. The program, part of the CHIPS and Science Act, will begin accepting full applications on March 31, though companies should submit statements of interest as soon as possible. The program is run by the newly created CHIPS Program Office, part of CHIPS for America and housed in the Department of Commerce's National Institute of Standards and Technology (NIST).[3] CHIPS for America will oversee $39 billion in direct funding for semiconductor manufacturing and $11 billion in support for R&D.

Scope

The Notice is seeking applications to build, expand, or modernize facilities for producing semiconductors. This will include leading-edge, current generation, and mature-node product lines. It also covers facilities for both semiconductor fabrication and for back-end work like assembly, testing, and packaging. Private companies, non-profits, and other consortia can all apply.

The program is targeting four criteria for its 10-year vision of success:

1. "Make the U.S. home to at least two new large-scale clusters of leading-edge logic chip fabs;"
2. "Make the U.S. home to multiple, high-volume advanced packaging facilities;"
3. "Produce high-volume leading-edge memory chips in the U.S.;" and
4. "Increase production capacity for current-generation and mature-node chips, especially for critical domestic industries [i.e. automotive, defense, medical device, infrastructure, and aerospace.]"[4]

The Commerce Department is encouraging all interested parties to make statements of interest now, including for any of the future funding opportunities, so they can test interest and begin discussions. The program will begin accepting full applications for leading-edge facilities on March 31 and for current generation and mature-node facilities on June 26, 2023.

Evaluation criteria

The Notice sets out a broad range of criteria with which the CHIPS Program Office will judge funding applications:[5]

- **Economic and national security**

  The primary goal of the program is to diversify the global semiconductor supply chain by increasing the share of production in the United States, while also providing the US defense industry with access to a secure domestic

[2] "Notice of Funding Opportunity: CHIPS Incentives Program – Commercial Fabrication Facilities," National Institute of Standards and Technology (NIST), United States Department of Commerce (February 28, 2023) available here: https://www.nist.gov/system/files/documents/2023/02/28/CHIPS-Commercial_Fabrication_Facilities_NOFO_0.pdf.

[3] More information on the CHIPS Program Office is available here: https://www.nist.gov/news-events/news/2023/02/us-department-commerce-announces-chips-america-leaders-and-staff.

[4] "Vision for Success: Commercial Fabrication Facilities: CHIPS Incentives Program," National Institute of Standards and Technology, United States Department of Commerce (February 28, 2023) available here: https://www.nist.gov/system/files/documents/2023/02/28/Vision_for_Success-Commercial_Fabrication_Facilities.pdf.

[5] "Fact Sheet: CHIPS Program Office Launches Notice of Funding Opportunity," National Institute of Standards and Technology, United States Department of Commerce (February 28, 2023) available here: https://www.nist.gov/system/files/documents/2023/02/28/CHIPS_NOFO-1_Fact_Sheet_0.pdf.

supply chain. This is most important criteria by which applications will be judged and is weighed more heavily than the others. Companies considering applying should carefully consider how their business models and product lines can meet these expectations.

- **Commercial viability**

  The Commerce Department expects projects to be commercially viable in the long term. Applicants should show a plan for reliable cash flows and demonstrate that they will continue investing in keeping their facilities up to date and competitive.

- **Financial strength**

  Applicants should show a detailed financial model and have secured additional private sector funding.

- **Technical readiness**

  Applications should have a clear implementation plan, a strategy for meeting environmental and permitting requirements, and demonstrate that the applicant has relevant experience in carrying out similar work.

- **Workforce development**

  The Department of Commerce expects applications to have clear plans for investing in local workforce development, which may include partnerships with trade associations, unions, and universities. Projects with over $150 million in government funding will also be required to provide day care facilities for their employees' children. Like all government-funded construction, facilities built with CHIPS funding will also be covered by the Davis-Bacon Act's prevailing wage standard.[6]

- **Supporting inclusive economic growth**

  The Department of Commerce also expects applicants to make further investment in economic growth and inclusivity in the United States. This may include building R&D facilities, supporting the CHIPS program's R&D initiatives, supporting local minority-owned businesses, making additional environmental sustainability commitments, and buying US-made steel and construction materials, among other options.

If an application is initially judged to meet these requirements, it will be deemed eligible for the program and progress to the due diligence phase. The due diligence phase must be completed before the application receives full approval. These investigations will cover (but are not limited to) the following: "national security risks, financial and commercial information, environmental impacts, and other issues." The applicant may be required to pay the costs of outside technical consultants that the Department hires to conduct these reviews.

Once a project is selected, there will be further evaluations and negotiations of the size and form of financial support that the CHIPS program will provide. This support may include direct funding, loans, and federal guarantees of third-party loans. The Commerce Department expects applications to have outside funding, *i.e.*, their CHIPS funding will be a supplement. There is no fixed amount for the CHIPS funding, but the Commerce Department's expectation is that its funding would amount to 5-15% of a project's total capital expenditure and that its direct funding and loans combined would not exceed 35% of the total.

Guardrails

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[6] *The Davis-Bacon Act, as Amended*, Public Law 107-217, as amended, United States Department of Labor (August 21, 2002) available here: https://www.dol.gov/agencies/whd/laws-and-regulations/laws/dbra.

In addition to the selection criteria and due diligence requirements, projects are subject to two sets of guardrails for protecting taxpayers and national security.

The national security guardrails restrict companies involved in CHIPS-funded projects from doing business with "countries of concern," most notably the People's Republic of China.[7] First, companies may not "knowingly engage in any joint research or technology licensing effort with a foreign entity of concern that raises national security concerns." Second, "applicants must agree not to engage in certain significant transactions involving expanding semiconductor manufacturing capacity in countries of concern for 10 years beginning on the date of the award." If these restrictions are violated, the company must return its CHIPS funding. The Commerce Department will publish more details on these restrictions by the end of March 2023.

The taxpayer guardrails feature two notable restrictions that the Commerce Department believes will protect the funding from abuse. First, for awards over $150 million, if the applicant's profits from the project exceed the original application's projections, the applicant may be required to return a portion of those profits to the government. This is apparently meant to discourage applicants from undervaluing their projects in order to receive excessive federal funding. The second restriction is that the money given to the applicant cannot be used to fund stock buybacks or dividends. The Department will give extra favor to applications that agree to limit or cease all stock buybacks for five years.

Additional opportunities

This Notice of Funding Opportunity is the first of three that the CHIPS Program Office will issue in 2023. The second Notice, to be issued in late spring, will be for semiconductor materials and manufacturing equipment suppliers. The third will be for R&D facilities and is expected sometime in the third quarter.

Beyond the Commerce Department's CHIPS funding, there are other programs that interested companies should consider. The Advanced Manufacturing Tax Credit will provide federal income tax credits to qualifying investments in facilities that manufacture semiconductors or semiconductor manufacturing equipment. The Treasury Department and the Internal Revenue Service (IRS) will publish guidance on this tax credit in March 2023. State and local governments are also providing incentives to investors, which the CHIPS program expects applicants to seek out as a supplement to federal support. In addition to those sources of direct assistance, the Commerce Department's Economic Development Administration (EDA) is launching a Tech Hubs program[8] to support community development, and CHIPS for America is creating the National Semiconductor Technology Center[9] to support semiconductor research.[10]

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[7] The definition of "countries of concern" is based on 15 U.S.C. § 4651(8).

[8] More information about the Tech Hubs, including access to the EDA's Request for Information is available here: https://www.eda.gov/funding/programs/regional-technology-and-innovation-hubs.

[9] More information about the NSTC is available here: https://www.nist.gov/chips/national-semiconductor-technology-center-update-community.

[10] The Commerce Department will post information on all of these programs to NIST's Chips for America page here: https://www.nist.gov/chips.

Trade Actions

Section 301

China Grants Additional Extension to Exclude 124 US Items from "List 1" and "List 3" Retaliatory Tariffs until September 15, 2023

On February 13, 2023, China's State Council Tariff Commission (SCTC) issued Notification No. 1/2023[11] granting a seven-month extension to exclude 124 US items[12] 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). The exclusions were set to expire on February 15, 2023 and have been extended until September 15, 2023.

Specifically, the affected items include:

- Six items from China's 25% retaliatory import tariff measures in response to previous Section 301 actions by the United States ("List 1" retaliatory tariffs), which China first excluded on December 19, 2019.
- Seventy-nine items under "List 3" retaliatory tariffs ranging from 5% to 25%, which China first excluded on May 12, 2020.
- Thirty-nine additional items that were not included in the initial exclusions. These items were first excluded as of January 1, 2022.

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.

Section 232

US Appeals Court Upholds Section 232 Tariffs on Derivative Steel Products

An effort to overturn the Section 232 tariffs on derivative steel products failed on February 7, 2023, when the US Court of Appeals for the Federal Circuit issued an opinion in *PrimeSource Building Products, Inc. v. United States et al.*, Case No. 2021-2066,[13] overturning a lower court and upholding the Section 232 tariffs. The ruling affirms that the Section 232 tariffs on derivative steel products are consistent with US law.

The Trump Administration extended the steel and aluminum tariffs to derivative products of steel and aluminum with Proclamation 9980 on January 24, 2020.[14] Imports sought to overturn the new tariffs, arguing that they were imposed after the deadline for changes to the 232 decision had expired. The Court of International Trade sided with the plaintiffs, ruling in April 2021 that the imposition of Section 232 tariffs on derivative steel products was invalid because the statutory deadline for making changes the Section 232 investigation had passed. The appeals court reversed this decision, finding that the "the President was making a 'contingency-dependent choice that [is] a

[11] SCTC Notification No. 1/2023 is available here (in Chinese): http://gss.mof.gov.cn/gzdt/zhengcefabu/202302/t20230215_3866623.htm.

[12] The list of 124 items subject to the exclusion is available here (in Chinese): http://gss.mof.gov.cn/gzdt/zhengcefabu/202302/P020230215462078528298.pdf.

[13] Case No. 2021-2066 is available here: https://cafc.uscourts.gov/opinions-orders/21-2066.OPINION.2-7-2023_2076649.pdf.

[14] *Proclamation 9980 of January 24, 2020: Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles Into the United States*, Federal Register (85 FR 5281) available here: https://www.federalregister.gov/documents/2020/01/29/2020-01806/adjusting-imports-of-derivative-aluminum-articles-and-derivative-steel-articles-into-the-united.

commonplace feature of plans of action." The court also cited precedent for making adjustments to Section 232 tariffs after their implementation.

Trade Agreements

IPEF

IPEF Negotiators Meet in India in February, Target Ambitious Schedule

The Indo-Pacific Economic Framework for Prosperity's (IPEF) parties recently met in India for negotiations on Pillars II (Supply Chains), III (Clean Economy), and IV (Fair Economy). The meetings notably featured in-depth discussion on the text of the three pillars, indicating they have quickly made progress in just a few months of negotiations.[15] Launched in May 2022, the negotiators target completing the agreement by November 2023.

February's special negotiating round

Three-hundred negotiators from Australia, Brunei, Fiji, India, Indonesia, Japan, the Republic of Korea, Malaysia, New Zealand, the Philippines, Singapore, Thailand, and the United States, and Vietnam gathered in New Delhi on February 8-11 for what was termed a "special negotiating round."[16] The parties described this round's discussions as "in-depth and text-based." The negotiations focused on Pillars II, III, and IV of IPEF, since India opted out of Pillar 1 (countries are free to choose among the four pillars as they like, though so far only India has turned down any of them). Parties reportedly shared proposals for the full text in this round for review, demonstrating the quick pace that these negotiations are moving. During the meetings, Indian Minister of Commerce and Industry Piyush Goyal even called for an "early harvest" of deliverables.

These three pillars are focused on broader economic development and resilience objectives, while Pillar I covers the issues that are more commonly included in free trade agreements. Pillar II, Supply Chains, focuses on finding cooperative ways countries can mitigate the threat of supply chain disruptions. This will likely focus on sharing information about supply chains that are critical to each country's security and then seeking ways to collaborate on improving their resiliency. Pillar III, Clean Economy, promotes clean energy development and decarbonization. Finally, Pillar IV, Fair Economy, is a collection of objectives related to promoting economic inclusion and rule of law. This will likely include measures related to anticorruption, tax enforcement, and capacity building.

For the United States, negotiations on these three pillars is led by the Department of Commerce, with support from USTR and the Departments of Agriculture, Energy, Homeland Security, Labor, State, Transportation, and the Treasury. The US negotiators held a series of stakeholder engagements alongside the negotiating round, including listening sessions in advance of the meeting and alongside it. They also joined the Indian negotiators for a listening session with local stakeholders.

Pillar I and USTR

Although Pillar I (Trade) was not covered during the meetings in New Delhi, intercessional discussions have continued among the parties. USTR Katherine Tai visited Vietnam and Malaysia in early February and IPEF

[15] "U.S. Department of Commerce Readout of the Indo-Pacific Economic Framework Special Negotiating Round," United States Department of Commerce (February 11, 2023) available here: https://www.commerce.gov/news/press-releases/2023/02/us-department-commerce-readout-indo-pacific-economic-framework-special.

[16] "India hosts the special negotiation round for Pillars II-IV of Indo-Pacific Economic Framework (IPEF) from 8-11 February 2023 in New Delhi," India's Ministry of Commerce & Industry (February 13, 2023) available here: https://pib.gov.in/PressReleasePage.aspx?PRID=1898768.

negotiations were on the agenda alongside bilateral issues. USTR is taking the lead for Pillar I, with support from the Commerce Department.

Pillar I covers a variety of topics often found in US trade agreements, with subheadings for labor, environment, digital economy, agriculture, transparency and good regulatory practices, competition policy, trade facilitation, inclusivity, and technical assistance and economic cooperation. To the disappointment of some, it does not include the usual tariff cuts. This will limit the potential economic impact of the agreement and will make it more difficult for the United States to win concessions from the other parties, though it also makes it more politically palatable in the United States. Though this is a limitation, negotiators still have scope to find other ways of improving market access. Serious commitments on non-tariff barriers and digital trade issues could still prove meaningful. Whether or not that is achievable remains to be seen. Nevertheless, it leaves the door open to potentially valuable breakthroughs.

Next steps

The next round of negotiations will take place in Bali, Indonesia from March 13-19 and cover all four pillars.[17] The round will likely take place in March and cover all four pillars. USTR has indicated that it may table text for the digital trade portion of Pillar I. After that will likely be events alongside the May meeting of the APEC trade ministers in Detroit. IPEF members appear to be targeting completion for at least one of the pillars by then. Early indications are that Pillars II and IV are closest to completion, so the public may see one of them by that time. Negotiators are targeting the November APEC Leaders' Summit in San Francisco for completion of the agreement, capping off the ambitious timeline.

In addition to IPEF, the United States is negotiating similar arrangements with Taiwan, through the US-Taiwan Initiative on 21st-Century Trade, and Latin America, through the Americas Partnership for Economic Prosperity (APEP). These agreements appear to be following similar outlines so developments in IPEF will likely inform their development. USTR is targeting late 2023 for completion of all of these agreements.

If successful, the Biden Administration may face an additional challenge in making the agreement permanent. USTR is structuring IPEF as an executive agreement, which would not need approval from Congress. Balancing the domestic interests of business, labor, and Congress in the final agreement will be key to ensuring the durability of the framework after this President's departure.

GSP

United States and Pacific Islands Convene Inaugural Trade and Investment Dialogue; Discuss Possible Regional Designation for GSP Purposes

On February 27, 2023, the senior officials from the United States and the Pacific Islands Forum met virtually for the first Senior Officials Meeting of the United States-Pacific Islands Trade and Investment Dialogue meeting. Deputy Assistant United States Trade Representative Colette Morgan led the meeting, which was co-chaired by representatives from Australia, the Cook Islands, the Federated States of Micronesia, Fiji, French Polynesia, Kiribati, the Marshall Islands, Nauru, New Caledonia, New Zealand, Niue, Palau, Papua New Guinea, Samoa, the Solomon Islands, Tonga, Tuvalu, and Vanuatu. The Trade and Investment Dialogue is a key deliverable from the Pacific Island Countries Leaders' Summit, which took place in September 2022.

During the meeting, the Parties outlined their priority areas for closer engagement with the United States, including regional and national trade, investment and development cooperation, as well as funding and technical assistance to

[17] "United States to Participate in Second Indo-Pacific Economic Framework Negotiating Round in Indonesia," United States Trade Representative (February 24, 2023), available here: https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/february/united-states-participate-second-indo-pacific-economic-framework-negotiating-round-indonesia.

meet their goals. According to the USTR readout,[18] the Parties also discussed ways in which the Pacific Island economies could utilize the US System of Preferences (GSP) program, including among others, whether the entire region could be designated as a "regional association for the GSP program." Such designation could provide for further integration of "regional supply chains and promote enhanced access to the U.S. market for the developing Pacific Islands states." Nevertheless, the GSP program expired at the end of 2020. Congressional reauthorization remains uncertain as the current House and Senate bills have not yet been reconciled.

The Parties are expected to meet in-person later in the year on the sidelines of the Pacific Island Forum Trade Minister's meeting.

CPTPP

CPTPP Enters into Force for Chile

On February 1, 2023, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) entered into force for Chile following the publication in the *Diario Oficial* of Presidential Decree No. 318/2022 dated December 29, 2022.[19]

The CPTPP is now in force among 10 signatories: Australia, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Singapore, Peru, and Vietnam. The only signatory yet to ratify the CPTPP is Brunei Darussalam.

With the entry into force of the CPTPP, Chile's trade and investment relations with other CPTPP member countries will be governed by improved or expanded disciplines as compared to the bilateral or regional free trade agreements (FTAs) that Chile had previously signed with each of the other CPTPP member countries.[20] Chile will also obtain improved access for its goods and services in these markets. One of the potential benefits for Chilean businesses is a common set of rules of origin that would allow its integration into regional value chains among member countries.

The CPTPP was signed on March 8, 2018 and entered into force for the first six signatories on December 30, 2018.[21] Chile's National Congress voted to approve the CPTPP on October 11, 2022, following four years of intense legislative debate. The administration of President Gabriel Boric conditioned the ratification of the Agreement on the signing of "side letters" with the various CPTPP member countries to modify elements of the chapter on investor-State dispute settlement. Although this strategy had only limited success, the Chilean Ministry of Foreign Affairs went ahead and submitted its instrument of ratification with the CPTPP treaty depositary on December 22, 2022.

In a first press release dated February 21, 2023,[22] Chile's Ministry of Foreign Affairs said in a carefully worded statement that the Inter-Ministerial Committee for International Economic Negotiations is coordinating the "proper" implementation of the CPTPP with the actors involved. The Chilean government had previously explained that the

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[18] "Readout of the First Senior Officials Meeting of the United States-Pacific Islands Trade and Investment Dialogue," United States Trade Representative (February 27, 2023) available here: https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/march/readout-first-senior-officials-meeting-united-states-pacific-islands-trade-and-investment-dialogue.

[19] Presidential Decree No. 318/2022, *Official Gazette*, Chile's Ministry of Foreign Affairs (December 29, 2022), available here (in Spanish): https://www.diariooficial.interior.gob.cl/publicaciones/2023/02/21/43483/01/2273273.pdf.

[20] Chile has bilateral FTAs with CPTPP member states: Australia (entry into force in 2009), Canada (1997), Japan (2007), Malaysia (2012), Mexico (1999), Peru (2009) and Vietnam (2014). In addition, Chile is part of two regional FTAs with certain CPTPP member states: the "P4" (Brunei Darussalam, New Zealand and Singapore) (2006) and the Pacific Alliance (Peru and Mexico) (2016).

[21] The CPTPP entered into force first for Australia, Canada, Japan, Mexico, New Zealand and Singapore. It then entered into force for Vietnam in January 2019, Peru in September 2021, and Malaysia in November 2022.

[22] "Chile y la entrada en vigor del CPTPP," Chile's Ministry of External Relations (February 21, 2023), available here (in Spanish): https://www.subrei.gob.cl/sala-de-prensa/noticias/detalle-noticias/2023/02/21/chile-y-la-entrada-en-vigor-del-cptpp.

implementation would be according to the "Protocol Agreement of Understanding for the Approval of the CPTPP."[23] Signed on August 6, 2019 between the Ministry itself and the Senate Foreign Relations Committee prior to obtaining congressional approval of the CPTPP, the Protocol Agreement contains unilateral statements by the Chilean government with regard to the interpretation of different CPTPP provisions. The Ministry also emphasized that the "Under-Secretary for International Economic Relations would continue to work together with [Chile's] commercial partners within the CPTPP and other multilateral fora to improve the standards that regulate dispute settlement mechanisms between investors and States."

A second press release issued on the same day reported the status of Chile's efforts to sign side letters with the other CPTPP member countries to limit the scope of the investor-State dispute resolution mechanism.[24] The Ministry published the only side letter signed until now with New Zealand on February 17, 2023,[25] and joint statements with Mexico[26] and Canada.[27] It also states that progress has been made to sign similar side letters with Australia, Malaysia and Mexico.

The whole package of the CPTPP Agreement and all annexes and additional instruments such as different side letters signed bilaterally with certain member countries have been published in a dedicated portal[28] of the Ministry of Foreign Affairs.

RCEP

Philippine Senate Approves RCEP Ratification

On February 21, 2023, the Philippine Senate finally approved the ratification of the RCEP. The passage of the ratification comes after the Senate completed its deliberations, which have been postponed several times following the signing of the RCEP Agreement by former President Rodrigo Duterte on November 15, 2020. Twenty senators voted in favor of Senate Resolution 485 ("SR 485") to ratify the RCEP, while one senator voted against it and another abstained. Two other senators were not present during the voting. The passage of SR 485 requires a two-thirds vote of the 24-member chamber, or 16 votes in favor according to Article 7, Section 31 of the Constitution of the Republic of the Philippines.

Senate President Juan Miguel Zubiri and Senate Pro Tempore Loren Legarda co-sponsored SR 485. During the deliberations, Senator Legarda confirmed that the Senate will closely monitor the implementation of the RCEP by setting up a special committee to address the concerns of various sectors that will be directly affected by the mega-regional FTA. Meanwhile, Senator Zubiri expressed confidence that the Senate made a right decision as the ratification will enable the Philippines to reap the RCEP benefits that other RCEP member states already enjoy. He

[23] The Protocol Agreement of Understanding for the Approval of the CPTPP is available here (in Spanish): https://www.subrei.gob.cl/docs/default-source/default-document-library/protocolo-entendimiento661e29c2b72f4fc6a2793d95e8800481.pdf?sfvrsn=9a66d0a2_2.

[24] "Subrei avanza en la implemntación del CPTPP," Chile's Ministry of External Relations (February 21, 2023), available here (in Spanish): https://www.subrei.gob.cl/sala-de-prensa/noticias/detalle-noticias/2023/02/21/subrei-avanza-en-la-implementaci%C3%B3n-del-cptpp.

[25] The Chile-New Zealand exchange of letters dated February 17, 2023 is here: https://www.subrei.gob.cl/docs/default-source/tratado-tpp11/nz-cl-(isds).pdf?sfvrsn=ce9347e_2.

[26] The Chile-Mexico joint statement is available here (in Spanish): https://www.minrel.gob.cl/minrel/site/docs/20221123/20221123220508/declaracion_conjunta_mexico_chile_23_11_2022.pdf.

[27] The Chile-Canada joint statement is available here (in Spanish): https://www.subrei.gob.cl/docs/default-source/acuerdos/cptpp/otros-documentos/declaraci%C3%B3n-conjunta-sobre-la-pr%C3%A1ctica-de-los-tratados-de-inversi%C3%B3n.pdf?sfvrsn=686149f9_2.

[28] The CPTPP dedicated portal is available here: https://www.subrei.gob.cl/acuerdos-comerciales/acuerdos-comerciales-vigentes/cptpp/.

highlighted that non-participation in the RCEP could result in a -0.26% decrease in real GDP, whereas RCEP participation is expected to lead to a 2.02% increase in GDP according to a study conducted by the Senate. The RCEP will also encourage foreign investment in the Philippines and allow greater participation in areas of digital services, business process outsourcing industry, financial services, aerospace, shipbuilding, research and development, among others.

With its ratification, the Philippines becomes the ninth ASEAN member state after Brunei, Cambodia, Indonesia, Laos, Malaysia, Singapore, Thailand, and Vietnam, which completed its ratification procedures. Reportedly, the Philippines will soon submit its instrument of ratification to the ASEAN Secretariat, marking the completion of ratification procedures by Philippines. The RCEP will enter into force for the Philippines 60 days after its official submission instrument of ratification.

Status of Myanmar

Myanmar's ratification remains undecided among various RCEP member countries. The ASEAN Secretariat circulated its official notification of Myanmar's instrument of ratification among RCEP member states on January 3, 2022, making the entry into force date for Myanmar on March 4, 2022. Myanmar, however, requested that the Agreement should retroactively enter into effect in January citing the submission of its instrument of domestic ratification to the ASEAN Secretariat in October 2021.

Despite the above, the political situation in Myanmar continues to raise concerns among RCEP member states, which has delayed the official acceptance of the instrument of ratification by the ASEAN Secretariat. According to a source familiar with the RCEP negotiations, Cambodia, Indonesia, Malaysia, and Singapore opine that the RCEP should enter into force for Myanmar on March 4, 2022, while Thailand agrees with Myanmar that the RCEP should retroactively enter into force on January 1, 2022. Brunei, Laos, the Philippines, and Vietnam are still in the process of consulting their respective domestic authorities for legal interpretation on the entry into force date for Myanmar. The status of entry into force date of RCEP for Myanmar with all ASEAN dialogue partners,[29] including Australia, China, Japan, Korea, and New Zealand, remains unclear as well.

[29] India was an original participating country, 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 future.

Petitions and Investigations

US International Trade Commission Determines that US Industry is Not Materially Injured by Imports of Steel Nails from India, Thailand, and Turkey

On February 6, 2023, the International Trade Commission (ITC) determined that an industry in the United States is not materially injured or threatened with material injury by reason of imports of steel nails from India, Thailand, and Turkey.[30] As noted in the December 2022 report, the US Department of Commerce ("Commerce") previously determined that imports of steel nails from Thailand, Turkey, and India were being sold into the United States at less than fair value.

As a result of the ITC's negative determination, an antidumping duty order will not be imposed on these imports.

US International Trade Commission Determines that US Industry is Materially Injured by Imports of Lemon Juice from Brazil and South Africa; Commerce Issues Antidumping Order

On February 6, 2023, the ITC notified Commerce that an industry in the United States is materially injured by reason of less-than-fair-value imports of lemon juice from Brazil and South Africa. As a result of the Commission's affirmative determination, antidumping duty orders were imposed by Commerce on February 16, 2023.[31]

As noted in the December 2022 report, DOC published its final affirmative determinations in the antidumping duty (ADD) investigations on December 23, 2022, determining that imports of the subject merchandise from South Africa were sold in the United States at dumping margins ranging from 47.89% to 73.69%; and imports from Brazil were sold in the United States at dumping margins ranging from 0.00% to 22.31%.[32]

The product covered by this investigation is certain lemon juice. Lemon juice is covered: (i) with or without addition of preservatives, sugar, or other sweeteners; (ii) regardless of the GPL (grams per liter of citric acid) level of concentration, brix level, brix/acid ratio, pulp content, clarity; (iii) 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 (iv) regardless of the US 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).

Excluded from the scope are: (i) lemon juice at any level of concentration packed in retail-sized containers ready for sale to consumers; and (ii) beverage products, such as lemonade, that contain 20% or less lemon juice as an ingredient by actual volume. "Retail-sized containers" are defined as lemon juice products sold in ready-for-sale packaging (*e.g.,* clearly visible branding, nutritional facts listed, *etc.*) containing up to 128 ounces of lemon juice by actual volume.

The scope also includes certain lemon juice that is blended with certain lemon juice from sources not subject to this investigation. Only the subject lemon juice component of such blended merchandise is covered by the scope of this

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[30] "Steel Nails From India, Thailand, and Turkey," 88 FR 8912 (February 10, 2023), available here: https://www.federalregister.gov/documents/2023/02/10/2023-02833/steel-nails-from-india-thailand-and-turkey.

[31] "Certain Lemon Juice From Brazil and the Republic of South Africa: Antidumping Duty Orders," 88 FR 10088 (Feb. 16, 2023), available at https://www.federalregister.gov/documents/2023/02/16/2023-03282/certain-lemon-juice-from-brazil-and-the-republic-of-south-africa-antidumping-duty-orders.

[32] "Certain Lemon Juice From Brazil: Final Affirmative Determination of Sales at Less Than Fair Value," US Federal Register, December 23, 2022, available at https://www.federalregister.gov/documents/2022/12/23/2022-28009/certain-lemon-juice-from-brazil-final-affirmative-determination-of-sales-at-less-than-fair-value.

investigation. Blended lemon juice is defined as certain lemon juice with two distinct component parts of differing country(s) of origin mixed together to form certain lemon juice where the component parts are no longer individually distinguishable.

The product subject to this investigation is currently classifiable under subheadings 2009.31.4000, 2009.31.6020, 2009.31.6040, 2009.39.6020, and 2009.39.6040 of the HTSUS.

US International Trade Commission Finds Reasonable Indication That an Industry in the United States is Materially Injured by Reason of Imports of Gas Powered Pressure Washers from China and Vietnam

On February 13, 2023, the ITC issued a preliminary affirmative finding with respect to gas powered pressure washers (GPPW) from China and Vietnam.[33] In doing so, the Commission found "that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of gas powered pressure washers from China and Vietnam … that are alleged to be sold in the United States at less than fair value … and to be subsidized by the government of China." As a result, the ITC's investigation will proceed to the final phase, and the Commerce investigations will continue.

As noted in the December 2022 and January 2023 reports, on December 29, 2022, US producer FNA Group, Inc. filed antidumping and countervailing duty petitions alleging that certain GPPW from China and Vietnam are being, or are likely to be, sold in the United States at less than fair value, and that the US industry is injured as a result. Petitioner further alleges that the Government of China is providing countervailable subsidies with respect to the manufacture, production, and export of GPPW.

The merchandise covered by this investigation is cold water GPPW (also commonly known as power washers), which are machines that clean surfaces using water pressure that are powered by an internal combustion engine, air-cooled with a power take-off shaft, in combination with a positive displacement pump. This combination of components (*i.e.*, the internal combustion engine, the power take-off shaft, and the positive displacement pump) is defined as the "power unit." The scope of the investigation covers cold water GPPW, whether finished or unfinished, whether assembled or unassembled, and whether or not containing any additional parts or accessories to assist in the function of the "power unit," including, but not limited to, spray guns, hoses, lances, and nozzles, The scope of the investigation covers cold water gas powered pressure washers, whether or not assembled or packaged with a frame, cart, or trolley, with or without wheels attached.

For purposes of this investigation, an unfinished and/or unassembled cold water GPPW consists of, at a minimum, the power unit or components of the power unit, packaged or imported together. Importation of the power unit whether or not accompanied by, or attached to, additional components including, but not limited to a frame, spray guns, hoses, lances, and nozzles constitutes an unfinished cold water GPPW for purposes of this scope. The inclusion in a third country of any components other than the power unit does not remove the cold water gas powered pressure washer from the scope. A cold water GPPW is within the scope of this investigation regardless of the origin of its engine. Subject merchandise also includes finished and unfinished cold water GPPW that are further processed in a third country or in the United States, including, but not limited to, assembly or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the in-scope cold water GPPW.

Cold water GPPW are easily distinguishable from hot water GPPW and have different physical characteristics. While a hot water pressure washer also includes an engine and a pump, it must also include a boiler to heat the water as it

[33] "Gas Powered Pressure Washers From China and Vietnam," 88 FR 10378 (Feb. 17, 2023), available at https://www.federalregister.gov/documents/2023/02/17/2023-03437/gas-powered-pressure-washers-from-china-and-vietnam.

leave the pump. The boiler also includes a heating coil. The boiler needs a separate energy source such as natural gas, butane, propane, kerosene or diesel fuel. In addition, it needs a burner system to ignite the boiler. Hot water pressure washers are generally larger in size than cold water pressure washers due to the need for the boiler. The scope does not include hot water GPPW.

Also specifically excluded from the scope of this investigation is merchandise covered by the scope of the antidumping and countervailing duty orders on certain vertical shaft engines between 99cc and up to 225cc, and parts thereof from the People's Republic of China.

The cold water GPPW subject to this investigation are classified in the HTSUS at subheadings 8424.30.9000 and 8424.90.9040.

US Department of Commerce Initiates Antidumping Investigations of Tin Mill Products from Canada, China, Germany, Korea, the Netherlands, Taiwan, Turkey, and the United Kingdom; and a CVD Investigation of Tin Mill Products from China

On February 14, 2023, Commerce published the initiation notices in the antidumping duty investigations of tin mill products from Canada, the People's Republic of China, Germany, the Netherlands, the Republic of Korea, Taiwan, the Republic of Turkey, and the United Kingdom[34]; and the countervailing duty investigation of tin mill products from the People's Republic of China.[35]

As noted in the January 2023 report, the petitions were filed on January 18, 2023 by US producer Cleveland-Cliffs Inc. and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("United Steelworkers").

The ITC published a Federal Register notice on January 18, 2023 to commence the preliminary investigation phase.[36]

The petitioners allege the following dumping margins:

Country	Alleged dumping margin
Canada	78.29%
China	130.88%
Germany	43.64%
The Netherlands	124.17% ~ 294.27%
South Korea	13.46% ~ 110.84%
Taiwan	47.22% ~ 60.12%
Turkey	96.51% ~ 106.43%

[34] Tin Mill Products From Canada, the People's Republic of China, Germany, the Netherlands, the Republic of Korea, Taiwan, the Republic of Turkey, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations, 88 FR 9481 (February 14, 2023), available here: https://www.federalregister.gov/documents/2023/02/14/2023-03085/tin-mill-products-from-canada-the-peoples-republic-of-china-germany-the-netherlands-the-republic-of.

[35] Tin Mill Products From the People's Republic of China: Initiation of Countervailing Duty Investigation, 88 FR 9476 (February 14, 2023), available here: https://www.federalregister.gov/documents/2023/02/14/2023-03086/tin-mill-products-from-the-peoples-republic-of-china-initiation-of-countervailing-duty-investigation.

[36] "Tin Mill Products From Canada, China, Germany, Netherlands, South Korea, Taiwan, Turkey, and United Kingdom; Institution of Anti-Dumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations," 88 FR 4206 (January 18, 2023), available here: https://www.federalregister.gov/documents/2023/01/24/2023-01325/tin-mill-products-from-canada-china-germany-netherlands-south-korea-taiwan-turkey-and-united-kingdom.

Country	Alleged dumping margin
United Kingdom	110.81%

The products within the scope of these investigations are tin mill flat-rolled products that are coated or plated with tin, chromium, or chromium oxides. Flat-rolled steel products coated with tin are known as tinplate. Flat-rolled steel products coated with chromium or chromium oxides are known as tin-free steel or electrolytic chromium-coated steel. The scope includes all the noted tin mill products regardless of thickness, width, form (in coils or cut sheets), coating type (electrolytic or otherwise), edge (trimmed, untrimmed or further processed, such as scroll cut), coating thickness, surface finish, temper, coating metal (tin, chromium, chromium oxide), reduction (single- or double-reduced), and whether or not coated with a plastic material. All products that meet the written physical description are within the scope of the investigations unless specifically excluded.

The merchandise subject to these investigations is currently classified under HTSUS subheadings 7210.11.0000, 7210.12.0000, 7210.50.0000, 7212.50.0020, 7212.50.0090, 7212.10.0000, and 7212.50.0000 if of non-alloy steel and under HTSUS subheadings 7225.99.0090, and 7226.99.0180 if of alloy steel.

US International Trade Commission Determines that US Industry is Materially Injured by Imports of Sodium Nitrite From India; Commerce Issues AD and CVD Orders

On February 21, 2023, the ITC determined that an industry in the United States is materially injured by reason of imports of sodium nitrite from India.[37] As a result of this affirmative determination, on February 27, 2023, Commerce issued an antidumping duty order covering subject merchandise.[38]

Previously, on January 6, 2023, Commerce published its final affirmative determinations in the ADD[39] and CVD[40] investigations of sodium nitrite from India. The DOC calculated a dumping margin of 44.82% and a subsidy rate of 2.40%.

The product covered by this investigation 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 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.

[37] “Sodium Nitrite From India,” 88 FR 12421 (Feb. 27, 2023), available at https://www.federalregister.gov/documents/2023/02/27/2023-03917/sodium-nitrite-from-india.

[38] Sodium Nitrite From India: Antidumping Duty and Countervailing Duty Orders, 88 FR 12313 (Feb. 27, 2023), available at https://www.federalregister.gov/documents/2023/02/27/2023-03934/sodium-nitrite-from-india-antidumping-duty-and-countervailing-duty-orders.

[39] “Sodium Nitrite From India: Final Affirmative Determination of Sales at Less Than Fair Value,” 88 FR 1052, International Trade Administration (January 6, 2022), available at: https://www.federalregister.gov/documents/2023/01/06/2023-00072/sodium-nitrite-from-india-final-affirmative-determination-of-sales-at-less-than-fair-value.

[40] “Sodium Nitrite From India: Final Affirmative Countervailing Duty Determination,” 88 FR 1042, International Trade Administration (January 6, 2022), available at: https://www.federalregister.gov/documents/2023/01/06/2023-00073/sodium-nitrite-from-india-final-affirmative-countervailing-duty-determination.