

# US Multilateral Trade and Policy Developments

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**Japan External Trade Organization**

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## Trade Policy Developments

### European Commission's Proposed Changes to Scrap Steel Trade Draw Attention from US Congress

On February 27 and 28, ahead of EU Trade Commissioner Valdis Dombrovskis' visit to Washington, DC (which was later canceled for unrelated reasons), members of the US Senate and House of Representatives sent letters to the US Trade Representative (USTR) Katherine Tai asking her to take action on upcoming reforms to the European Union's waste shipment regulatory framework through the Waste Shipment Regulation (the "Regulation").<sup>1</sup> The legislators believe the regulation could hurt the competitiveness of the US steel industry and urged USTR to raise the issue with the EU and pressure them to change the regulations.<sup>2</sup>

#### The US Industry Challenge

The core of their objection is a section of the Regulation proposal that would create new supervision requirements for the export of non-hazardous waste, including scrap metals destined for recycling. Scrap steel is one of the most common inputs for steel producers in several countries, including the United States, Turkey, India, and Mexico. Traditionally the trade of scrap has been loosely controlled among the members of the Organization for Economic Co-operation and Development (OECD, a group of mostly developed countries). Tight export restrictions could distort metals markets, lowering costs for European steel recyclers and raising them elsewhere. The Congressional letters went as far as suggesting the EU's actions would violate the WTO and OECD Control System for waste recovery commitments.<sup>3</sup>

The letters appear to have been timed to reach USTR just before EU Trade Commissioner Valdis Dombrovskis and EC President Ursula von der Leyen arrived in Washington (the visits are partly focused on seeking a compromise on US electric vehicle tax credits that the EU worries will harm its industry – President von der Leyen arrived in Washington on March 10, 2023). US industries encountering market access challenges in Europe are attempting to leverage these talks to draw attention to their own challenges. USTR has not commented publically on the letters, and they were not mentioned in the Leaders' Statement that followed the Biden-von der Leyen meeting.

#### The EU's Waste Shipment Regulation Reforms

The European Commission first introduced the Regulation proposal in 2021. Initial outlines of this action emerged in 2020 in the EC's Circular Economy Action Plan, a part of the European Green Deal.<sup>4</sup>

Under the EU's ordinary legislative procedure, the EU's co-legislators (*i.e.* the European Parliament and the Council of the European Union (the "Council")) must first adopt their negotiating positions with the amendments they wish to see brought to the Commission's proposal. They must then negotiate between themselves the final text of the

<sup>1</sup> European Commission, Proposal for a regulation of the European Parliament and of the Council on shipments of waste and amending Regulations (EU) No 1257/2013 and (EU) No 2020/1056, COM(2021) 709 final, available here: [https://eur-lex.europa.eu/resource.html?uri=cellar:6c0588b1-4878-11ec-91ac-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:6c0588b1-4878-11ec-91ac-01aa75ed71a1.0001.02/DOC_1&format=PDF).

<sup>2</sup> See Senators' letter: Letter of Todd Young, Thom Tillis, and Joe Manchin to USTR Katherine Tai, "Re: Proposed Revisions to EU Waste Shipment Regulations Threaten American Steel Competitiveness and Impede Global Climate Ambitions," February 28, 2023, available here: [https://www.manchin.senate.gov/imo/media/doc/manchin\\_letter\\_to\\_ustr\\_re\\_eu\\_scrap\\_steel.pdf?cb](https://www.manchin.senate.gov/imo/media/doc/manchin_letter_to_ustr_re_eu_scrap_steel.pdf?cb).

<sup>3</sup> For more information on the OECD Control System, see: OECD, "The OECD Control System for waste recovery," <https://www.oecd.org/env/waste/theoecdcontrolsystemforwasterecovery.htm>.

<sup>4</sup> See European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A new Circular Economy Action Plan – For a cleaner and more competitive Europe," March 11, 2020, Section 4.4 of the Action Plan, available here: [https://eur-lex.europa.eu/resource.html?uri=cellar:9903b325-6388-11ea-b735-01aa75ed71a1.0017.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:9903b325-6388-11ea-b735-01aa75ed71a1.0017.02/DOC_1&format=PDF).

regulation in so-called “trilogue negotiations,” before both individually adopting that final text. The Regulation will only become EU law after the text is adopted by the European Parliament and the Council and published in the Official Journal of the European Union.

The European Parliament adopted its proposed amendments to the EC’s Regulation proposal on January 17, 2023 (“the Parliament’s negotiating position”).<sup>5</sup> Sweden, which holds the Council’s rotating presidency until the end of June, plans to discuss the regulation at the June 20, 2023, meeting of the Environment Council.

The Regulation proposal pursues three policy objectives embodied in the reforms:

1. Restricting and monitoring shipments of waste within the EU;
2. Tightening restrictions on exports of waste to countries outside the EU; and
3. Strengthening enforcement against illegal waste shipments.

The proposed Regulation would go further in restricting waste exports than is common under other regimes. The Regulation would prohibit the export of hazardous waste and further restrict the export of non-hazardous waste to countries that are not part of the OECD. The Regulation would also introduce a new ban on the export of most plastics, which would take effect immediately for non-OECD countries and after four years for OECD members (definitions of plastic for this purpose are included in annexes to the Regulation proposal and are based on the 2019 Basel Convention Plastic Waste Amendments).

For non-hazardous, non-plastic waste exports to OECD members (which includes scrap ferrous and non-ferrous metal, glass, paper, and textiles), the Regulation, as proposed, would implement a new monitoring system meant to ensure the environmentally sustainable handling of waste. Companies exporting non-hazardous waste would have to audit facilities they export waste to every three years to ensure compliance with a range of environmental standards set out in an annex to the Regulation. If destination countries fail to meet these standards, the European Commission would enter into a dialogue with the country in question. If the results proved unsatisfactory, the Commission would be empowered to suspend exports.

The increased regulatory costs of this monitoring, combined with the risk of an export halt, is the source of the US Congress members’ concern. The risk of disruption may however be mitigated by Article 48(4) of the Regulation proposal, which would allow OECD members (such as the United States) to bypass the proposed Regulation’s monitoring standards through a regulatory equivalence agreement.

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<sup>5</sup> European Parliament, Amendments adopted by the European Parliament on January 17, 2023 on the proposal for a regulation of the European Parliament and of the Council on shipments of waste and amending Regulations (EU) No 1257/2013 and (EU) No 2020/1056 (COM(2021)0709, P9\_TA(2023)0003, available at: [https://www.europarl.europa.eu/doceo/document/TA-9-2023-0003\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2023-0003_EN.pdf)).

## Trade Actions

### Section 232

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#### Update on the New Aluminum 232 and Other Tariff Actions against Russia

On March 2, 2023, industry received clarity on the product scope of the actions with the publication of 88 FR 13267, *Adjusting Imports of Aluminum Into the United States*, to the Federal Register.<sup>6</sup> The Annexes contain the covered HTSUS codes, which matched previous codes for aluminum and derivative aluminum articles, and new Chapter 99 codes for Russian products. Section B of the Annex further says that after April 10, 2024, aluminum articles “where any amount of the primary aluminum used in the manufacture of the derivative aluminum articles is smelted in Russia, or where the derivative aluminum articles are cast in Russia” should use these new codes. CBP added these new Chapter 99 codes to Automated Commercial Environment (ACE) in Harmonized System Update (HSU) 2304 on March 9, 2023.

On March 9, 2023, the US Customs and Border Protection (CBP) issued guidance<sup>7</sup> on how it will track the smelt and cast disclosure requirements. CBP will add three new fields to ACE for importers to record the countries of smelt and last cast. CBP expects to deploy this system by March 14, 2023, and it will enter force on April 10, 2023. The first of the three new fields, “Primary Country of Smelt,” will require importers to enter the country from where the largest volume of new aluminum was produced; the second field, “Secondary Country of Smelt,” will require importers to enter the country from where the second largest volume of new aluminum was produced; and the third field, “Country of Cast,” will require importers to enter the last country in which the aluminum was cast. If any of the primary aluminum came from Russia, but Russia is also not the primary country of smelt, the importer must enter Russia as the secondary country of smelt. The inclusion of Russia in these fields is how CBP will implement the tariff on “any” Russian aluminum.

Importers must report this data in ACE for all covered aluminum products from all countries, regardless of any exclusions that otherwise apply, that are imported or withdrawn from Foreign Trade Zones for consumption on or after 12:01 am EDT on April 10, 2023. The guidance also reiterates which aluminum products importers must report through this system. This is similar to the system that is currently in place for the International Trade Administration’s Aluminum Import Monitor (with the exception of the guidance to enter Russia for the secondary country if any Russian content is included).

#### Background

On February 24, 2023, the US government announced a new round of trade actions targeting Russia, including tariff increases, sanctions, and export controls. The original announcements omitted key details on the coverage and implementation of the tariff changes, which the government has now addressed in further updates.

#### Aluminum tariffs

The White House issued *A Proclamation on Adjusting Imports of Aluminum Into the United States*, having the effect of imposing:

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<sup>6</sup> Executive Office of the President, *Adjusting Imports of Aluminum Into the United States*, 88FR 13267 (March 2, 2023), available at <https://www.federalregister.gov/documents/2023/03/02/2023-04470/adjusting-imports-of-aluminum-into-the-united-states>.

<sup>7</sup> US Customs and Border Protection, *(Updated) Guidance: Section 232 Aluminum Smelt and Cast Requirements*, CSMS 55438432 (March 10, 2023), available at [https://content.govdelivery.com/bulletins/gd/USDHSCBP-34dec60?wgt\\_ref=USDHSCBP\\_WIDGET\\_2](https://content.govdelivery.com/bulletins/gd/USDHSCBP-34dec60?wgt_ref=USDHSCBP_WIDGET_2).

1. As of March 10, 2023, a 200% duty on "aluminum articles that are the product of Russia and derivative aluminum articles that are the product of Russia"; and
2. As of April 10, 2023, a 200% duty on "aluminum articles where any amount of primary aluminum used in the manufacture of the aluminum articles is smelted in Russia, or the aluminum articles are cast in Russia, and derivative aluminum articles where any amount of primary aluminum used in the manufacture of the derivative aluminum articles is smelted in Russia, or the derivative aluminum articles are cast in Russia." (Where "primary aluminum" is defined as new aluminum metal that is produced from alumina (or aluminum oxide) by the electrolytic Hall-Heroult process.)

The original White House announcement did not include the relevant annexes with the technical details of the actions, leaving importers to speculate that the HS codes covered were the same as previous actions. How US CBP would assess the presence of "any" Russian primary aluminum content in aluminum derivatives was also an open question. Understanding the reach of these rules was particularly important because the existing alternative quota arrangements negotiated by several of the US' largest trading partners will not apply if the imports contain "any" Russian content.

#### **Other tariffs**

In addition to the Section 232-based increases on aluminum tariffs, the White House also issued on February 24, 2023, *A Proclamation on Increasing Duties on Certain Articles from the Russian Federation*. Acting under the authority of the Suspending Normal Trade Relations with Russia and Belarus Act, the Proclamation established new duties of 35% or 70% on certain other products. It also increased duties from 35% to 70% on certain products covered by Proclamation 10420 of June 27, 2022. Like the aluminum tariffs, it was not immediately clear what specific products were included in this list.

On March 3, 2023, *Increasing Duties on Certain Articles From the Russian Federation*, was published to the Federal Register as 88 FR 13277.<sup>8</sup> The notice contains the affected HTSUS codes in its Annex with the new tariff rates that will enter force on April 1, 2023. These tariffs cover various metals, minerals, chemicals, and certain metal derivative products. This includes iron, steel, rare earths, platinum, and nickel, among others. Unlike the aluminum Section 232 tariffs, which cover any products from third countries that may contain Russian-sourced aluminum, these tariffs only cover products originating in Russia.

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<sup>8</sup> Executive Office of the President, *Increasing Duties on Certain Articles From the Russian Federation*, 88FR 13277 (March 2, 2023), available at <https://www.federalregister.gov/documents/2023/03/02/2023-04471/increasing-duties-on-certain-articles-from-the-russian-federation>.

## Trade Agreements

### USMCA

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#### **Mexican Government Bans Imports of Goods Produced by Forced Labor from May 2023; Implements USMCA Commitments**

Last month, the Government of Mexico published in the Official Gazette an Agreement between the Secretariat of Economy and the Secretariat of Labor and Social Welfare signed on February 13, 2023, banning the import of goods produced in whole or in part by forced or compulsory labor, including forced or compulsory child labor. The Agreement will enter into force on May 19, 2023.<sup>9</sup>

The Agreement provides that only goods that “are not subject” to a regulation on forced labor issued by the Secretariat of Labor and Social Welfare (*Secretaría del Trabajo y Pevisión Social* - STPS) can be imported into the Mexican territory. Implementing measures establish an administrative mechanism to enforce this ban.

Although the measure aims to comply with Mexico’s commitments under the United States-Mexico-Canada Agreement (USMCA), it will have a broader effect as it ensures that Mexico’s stance regarding forced labor has general application. The Secretary of Economy said in a press release that “[through] this Agreement, Mexico reinforces its fight for the eradication of forced labor in global supply chains. [Mexico] honors the commitment it made in the USMCA (Article 23.6), and in turn, places itself at the forefront of nations that have adopted a new paradigm in foreign trade based on human rights and the respect for the dignity of people, interceding mainly for the historically disadvantaged sectors.”<sup>10</sup>

#### **Background**

Mexico ratified the 1930 International Labor Organization (ILO) Convention on Forced Labor (No. 29) in May 1934, which was incorporated into Mexican law in August 1935. Article 1 of Convention No. 29 provides that “Each Member [...] which ratifies this Convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.”

Chapter 23 of the USMCA sets out ambitious goals and binding commitments to respect international instruments on labor rights protection and not to lower labor standards to attract trade and investment. The Chapter provides inter alia that the “Parties recognize the goal of trading only in goods produced in compliance with this Chapter.” (Article 23.2.2 of the Statement of Shared Commitments).

Article 23.6 of the USMCA provides that “[the] Parties recognize the goal of eliminating all forms of forced or compulsory labor, including forced or compulsory child labor. Accordingly, each Party shall prohibit the importation of goods into its territory from other sources produced in whole or in part by forced or compulsory labor, including forced or compulsory child labor.”

However, the Mexican government acknowledged that “in order to prevent the importation into the national territory of goods produced in whole or in part by forced or compulsory labor, including forced or compulsory child labor, it is [first] necessary to determine the existence of such type of labor in their production so as to restrict their import.”

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<sup>9</sup> “The Agreement between the Secretariat of Economy and the Secretariat of Labor and Social Welfare,” Mexico’s Official Gazette, February 17, 2023, available at (in Spanish): [https://www.dof.gob.mx/nota\\_detalle.php?codigo=5679955&fecha=17/02/2023](https://www.dof.gob.mx/nota_detalle.php?codigo=5679955&fecha=17/02/2023).

<sup>10</sup> Mexico’s Secretariat of Economy’s press release available at (in Spanish): <https://www.gob.mx/se/prensa/gobierno-de-mexico-publica-acuerdo-para-prohibir-la-importacion-de-mercancias-producidas-con-trabajo-forzoso?idiom=es>.

## The administrative mechanism

The Secretariat of Economy, responsible for foreign trade policy, and the STPS, responsible for enforcement of international conventions on labor rights, have agreed to implement the following mechanism to deal with allegations of goods produced under forced or compulsory labor, as defined by Article 2 (1) of the ILO Convention No. 29.

- Mexican citizens or entities established in Mexico may submit petitions to prohibit the import of specific goods from any origin on the grounds that they are made with forced labor.<sup>11</sup> Investigations may also be self-initiated by the Mexican government.
- Petitions must be substantiated with a full description of facts of the alleged forced labor and supporting documents. They must identify *inter alia* the country or region of origin of the imported goods, the manufacturer/s, and the tariff classification under the TIGIE.<sup>12</sup> They must also provide any relevant information regarding the goods, such as technical specifications, components, inputs, and intended use.
- Upon accepting a petition, the STPS may seek corroborating information from foreign governments with which Mexico has signed cooperation agreements in this field. If a foreign authority has determined the existence of forced labor in the production of the investigated goods following international parameters, the foreign decision will be recognized as such.
- Alternatively, the STPS may launch its own investigation. It will inform the importer of the goods under review and allow it to submit relevant information within 20 working days. The procedure does not provide for any notification to the government of the country of origin of the goods about the initiation of the investigation.
- The STPS will have up to 180 working days of the petition being filed, although that deadline may be extended, to issue its final decision.
- If forced labor is found under either procedure, the decision will be communicated to the Single Window for the enforcement of the ban on the import of subject goods from a specific origin. The STPS will publish on its website the list of resolutions adopted.
- The petition will be rejected if it is not sufficiently substantiated. However, rejection will not prevent the petitioner from resubmitting a new petition when he or she gathers additional evidence.
- Any interested person, Mexican or foreign, may request the ban to be withdrawn when he or she can prove that the use of forced or compulsory labor to produce the subject goods has ceased; or when the authorities of another country has revoked the determination on the use of forced labor that was the basis for the ban.
- The Agreement provides in broad language that the STPS may seek assistance and information from other Mexican or foreign authorities with regard to any investigation that it is conducting.

## Reactions

On the day of publication of the Mexican measure, the Office of the United States Trade Representative (USTR) issued a press release welcoming Mexico's action on imports produced with forced labor.<sup>13</sup> Ambassador Katherine

<sup>11</sup> It applies to both goods imported for final consumption in the Mexican territory or for re-export.

<sup>12</sup> The TIGIE (*la Tarifa de la Ley de los Impuestos Generales de Importación y de Exportación*) is the Harmonized Tariff Schedule of Mexico.

<sup>13</sup> "Statement from Ambassador Katherine Tai on Mexico's Action on Imports Produced with Forced Labor," Office of the United States Trade Representative, February 17, 2023, available at: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/february/statement-ambassador-katherine-tai-mexicos-action-imports-produced-forced-labor>.

Tai said: “With this resolution, Mexico has taken an important step toward joining the United States and Canada in prohibiting the importation of goods produced with forced labor. In light of this progress, the United States, Canada, and Mexico will work more closely together to eliminate forced labor from global supply chains and tackle transshipment, leveling the playing field for North American workers while protecting the most vulnerable workers around the world.”

According to USTR, the United States continues to use trade policy to address forced labor worldwide, including in global supply chains. It referred to its “Trade Strategy to Combat Forced Labor,” announced in January 2022,<sup>14</sup> based on the enforcement of US domestic legislation (*i.e.*, Section 307 of the Tariff Act of 1930, and the Uyghur Forced Labor Prevention Act of 2022) and bilateral dialogues with trading partners such as Canada, Mexico, Japan, and the European Union.

### Canada’s actions

Canada has also taken action to improve the enforcement of its forced labor laws in recent years. On May 28, 2021, Canada Border Services Agency (CBSA) updated its Memorandum to include information on Canada’s import prohibition on goods mined, manufactured, or produced wholly or in part by forced labor as established by the Canada–United States–Mexico Agreement Implementation Act.<sup>15</sup>

The Memorandum provides guidelines and general information on how to proceed in cases of goods that have allegedly been produced by forced labor. It also refers to the cooperation between CBSA and the Labor Program of Employment and Social Development Canada (ESDC), Canada’s lead department for labor-related programs, to identify goods that have been produced by prison or forced labor to prevent their entry into Canada.

## US-Taiwan Initiative on 21st Century Trade

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### USTR Releases Details of Proposals for the US-Taiwan Initiative on 21st Century Trade

On March 16, 2023, USTR released summaries of the proposals<sup>16</sup> discussed during the second negotiating round of the US-Taiwan Initiative on 21st Century Trade, which took place in Taipei in January 2023. The document details US priorities for electronic pre-arrival submission of customs documents, express shipping facilitation, regulatory decisions-making processes, licensing of foreign services suppliers, anti-corruption standards, and promoting small business trade.

#### □ Customs administration and trade facilitation

The United States is proposing commitments to automating customs systems, reducing customs formalities, and improving border procedures, with the goal of reducing the cost of shipping goods across borders. The text would require online submission of customs forms and single window pre-arrival screening to facilitate immediate release of perishable goods. It also includes measures to support e-commerce retail shipments: reducing restrictions on express consignment shipping and facilitating return of goods.

#### □ Good regulatory practices

<sup>14</sup> “USTR Announces the Development of a Focused Trade Strategy to Combat Forced Labor,” Office of the United States Trade Representative, January 25, 2022, available at: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/january/ustr-announces-development-focused-trade-strategy-combat-forced-labor>.

<sup>15</sup> “Goods manufactured or produced by prison or forced labour,” Memorandum D9-1-6, Canada Border Services Agency, May 28, 2021, available at: <https://www.cbsa-asfc.gc.ca/publications/dm-md/d9/d9-1-6-eng.html>.

<sup>16</sup> The summaries of the US negotiating texts are available here: <https://ustr.gov/sites/default/files/2023-03/US%20Taiwan%20Initiative%20on%2021st%20Century%20Trade%20Public%20Summaries%20.pdf>.

The United States is proposing a commitment to good regulatory practices, which could provide more certainty and transparency to traders. The measures include providing early information about regulatory plans, public consultations, online access to regulatory information, and the formation of a committee to share information and work on regulatory issues of mutual interest.

□ **Services domestic regulation**

The services proposal would build on the 2021 WTO Joint Statement Initiative on Services Domestic Regulation by ensuring that foreign services providers are treated fairly and transparently in licensing procedures. These standards would apply to all sectors that foreign companies are permitted to operate in, which is farther-reaching than the existing WTO commitment. USTR intends for this to be a new standard for future arrangements with other countries.

□ **Anticorruption**

The anticorruption chapter proposal has seven articles covering topics like anti-bribery standards, money laundering, corruption proceeds recovery, whistleblower protection, and denial of entry to corrupt foreign officials.

□ **Small and Medium-Sized Enterprises (SMEs)**

The proposal calls for promoting cooperation between the two governments on facilitating SME trade, publishing regulatory information needed by SMEs to be published in accessible ways, and proposes an ongoing dialogue to support SME trade.

As expected, there is no mention of direct market access commitments, like tariff cuts. Nevertheless, ambitious commitments on customs barriers and business licensing could help modestly reduce non-tariff barriers. USTR said after the January meetings that the United States and Taiwan had “reached consensus in a number of areas” so it is possible that some of these chapters are already essentially settled.

The document did not include details on the other chapters proposed in the original negotiating mandate.<sup>17</sup> These were agriculture, technical standards, digital trade, labor protection, environmental protection, state-owned enterprise discipline, and cooperation on challenges posed by non-market economies. It is possible that USTR has not proposed text for these chapters yet. The content of the agreement will be similar to, and developed alongside, the Indo-Pacific Economic Framework for Prosperity (IPEF). USTR is likely to propose its digital trade, labor, and environment chapters for IPEF at the March 13-19 negotiation round in Bali, Indonesia, so similar chapters could emerge soon for the Taiwan negotiations.

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<sup>17</sup> The parties’ original negotiating mandate is available here [https://ustr.gov/sites/default/files/2022-08/US-Taiwan%20Negotiating%20Mandate%20\(Final\).pdf](https://ustr.gov/sites/default/files/2022-08/US-Taiwan%20Negotiating%20Mandate%20(Final).pdf).

## Petitions and Investigations

### US Department of Commerce Determines that Imports from Oman and the United Arab Emirates are Not Circumventing the Antidumping Duty Order on Welded Carbon Steel Standard Pipes and Tubes from India

On March 1, 2023, the US Department of Commerce (DOC) published a negative determination in the anti-circumvention inquiry regarding certain welded carbon steel standard pipes and tubes (“pipe and tubes”) from India.<sup>18</sup> The DOC determined that imports of pipe and tubes, completed in Oman and the United Arab Emirates (UAE) from hot-rolled steel produced in India, are not circumventing the antidumping duty order on pipe and tube from India. As a result of the negative determination, pipe and tubes from Oman and the UAE will not be subject to duties under the India order.

The products covered by the India order include certain welded carbon steel standard pipes and tubes with an outside diameter of 0.375 inch or more but not over 16 inches. These products are commonly referred to in the industry as standard pipes and tubes produced to various American Society for Testing Materials (ASTM) specifications, most notably A-53, A-120, or A-135. This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090.

### US Department of Commerce Issues Preliminary Affirmative Determinations in ADD and CVD Investigations of Certain Freight Rail Couplers from China

On March 3 and 13, 2023, respectively, the DOC announced its affirmative preliminary determinations in the countervailing duty (CVD) and antidumping duty (ADD) investigations of certain freight rail couplers and parts thereof from China.<sup>19</sup> In its investigations, DOC preliminarily determined that imports of the subject merchandise were sold in the United States at a subsidy rate of 265.99%, and a dumping margin of 169.90% (the adverse facts available rate from the petition).

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

Subject freight railcar couplers and parts are included within the scope whether finished or unfinished, whether imported individually or with other subject or nonsubject parts, whether assembled or unassembled, whether

<sup>18</sup> *Certain Welded Carbon Steel Standard Pipes and Tubes From India: Final Negative Determinations of Circumvention of the Antidumping Duty Order*, 88 Fed. Reg. 12,917 (Mar 1, 2023), available at: <https://www.govinfo.gov/content/pkg/FR-2023-03-01/pdf/2023-04161.pdf>.

<sup>19</sup> *Certain Freight Rail Couplers and Parts Thereof From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances*, 88 Fed. Reg. 15,372 (Mar. 13, 2023), available at <https://www.govinfo.gov/content/pkg/FR-2023-03-13/pdf/2023-05106.pdf>; *Certain Freight Rail Couplers and Parts Thereof From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Preliminary Affirmative Critical Circumstances Determination*, 88 Fed. Reg. 13,425 (Mar. 3, 2023), available at: <https://www.govinfo.gov/content/pkg/FR-2023-03-03/pdf/2023-04438.pdf>.

mounted or unmounted, or if joined with nonsubject merchandise, such as other nonsubject parts or a completed railcar. Finishing includes, but is not limited to, arc washing, welding, grinding, shot blasting, heat treatment, machining, and assembly of various parts. When a subject coupler or subject parts are mounted on or to other nonsubject merchandise, such as a railcar, only the coupler or subject parts are covered by the scope.

The finished products covered by the scope of these investigations meet or exceed the AAR specifications of M-211, “Foundry and Product Approval Requirements for the Manufacture of Couplers, Coupler Yokes, Knuckles, Follower Blocks, and Coupler Parts” and/or AAR M-215 “Coupling Systems,” or other equivalent domestic or international standards (including any revisions to the standard(s)).

The country of origin for subject couplers and parts thereof, whether fully assembled, unfinished or finished, or attached to a railcar, is the country where the subject coupler parts were cast or forged. Subject merchandise includes coupler parts as defined above that have been further processed or further assembled, including those coupler parts attached to a railcar in third countries. Further processing includes, but is not limited to, arc washing, welding, grinding, shot blasting, heat treatment, painting, coating, priming, machining, and assembly of various parts. The inclusion, attachment, joining, or assembly of nonsubject parts with subject parts or couplers either in the country of manufacture of the in-scope product or in a third country does not remove the subject parts or couplers from the scope.

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

## **US International Trade Commission Finds Reasonable Indication that US Industry is Injured by Imports of Tin Mill Products from Canada, China, Germany, Netherlands, South Korea, Taiwan, Turkey, and United Kingdom**

On March 10, 2023, the US International Trade Commission (ITC) issued a preliminary affirmative finding with respect to tin mill products from Canada, China, Germany, the Netherlands, South Korea, Taiwan, Turkey, and United Kingdom.<sup>20</sup> In doing so, the ITC found “that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of tin mill products from Canada, China, Germany, Netherlands, South Korea, Taiwan, Turkey, and United Kingdom 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 DOC investigations will continue.

As noted in the January 2023 report, on January 18, 2023, US producer Cleveland-Cliffs and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union filed ADD and CVD petitions alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of tin mill products from China and less-than-fair-value imports of tin mill products from Canada, China, Germany, Netherlands, South Korea, Taiwan, Turkey, and United Kingdom; and that the US industry is injured as a result.

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

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<sup>20</sup> *Tin Mill Products From Canada, China, Germany, Netherlands, South Korea, Taiwan, Turkey, and United Kingdom*, 88 Fed. Reg. 15,080 (Mar. 10, 2023), available at: <https://www.govinfo.gov/content/pkg/FR-2023-03-10/pdf/2023-04862.pdf>.

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 Department of Commerce Issues Countervailing Duty Order on Barium Chloride from India**

On March 7, 2023, the DOC published the CVD order on barium chloride from India.<sup>21</sup> The subsidy rate is 23.57%. As noted in the January 2023 report, the DOC published its final affirmative CVD determination in its investigation of barium chloride from India on January 6, 2023.<sup>22</sup> On the same day, the DOC published a final negative determination of sales at less than fair value covering the same subject merchandise, having calculated a 0.00% dumping margin.

The merchandise covered by this investigation is barium chloride, a chemical compound having the formulas BaCl<sub>2</sub> or BaCl<sub>2</sub>·2H<sub>2</sub>O, currently classifiable under HTSUS subheading 2827.39.4500.

### **US Department of Commerce Issues Preliminary Determination CVD Investigation of Paper File Folders from India**

On March 14, 2023, the DOC issued an affirmative preliminary determination in the CVD investigation of file folders from India.<sup>23</sup> The DOC found a preliminary subsidy rate ranging between 3.65% and 59.26%.

The petitioner in this investigation is the Coalition of Domestic Folder Manufacturers, the members of which are Smead Manufacturing Company, Inc. and TOPS Products LLC. The products within the scope of this investigation are 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 percent 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

<sup>21</sup> *Barium Chloride From India: Countervailing Duty Order*, 88 FR 14120, International Trade Administration (March 7, 2023), available at: <https://www.federalregister.gov/documents/2023/03/07/2023-04604/barium-chloride-from-india-countervailing-duty-order#:~:text=Therefore%2C%20entries%20of%20barium%20chloride,of%20the%20suspension%20of%20liquidation>.

<sup>22</sup> *Barium Chloride From India: Final Affirmative Countervailing Duty Determination*, 88 FR 1044, International Trade Administration (January 6, 2022), available at: <https://www.federalregister.gov/documents/2023/01/06/2023-00086/barium-chloride-from-india-final-affirmative-countervailing-duty-determination>.

<sup>23</sup> *Preliminary Affirmative Determination in the Countervailing Duty Investigation of Paper File Folders from India*, International Trade Administration (March 14, 2023), available at: <https://www.trade.gov/preliminary-determination-countervailing-duty-investigation-paper-file-folders-india>.

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 (1) 13 or more pockets, (2) a flap covering the top, (3) a latching mechanism made of plastic and/or metal to close the flap, and (4) 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: (1) plastic lamination covering the entire exterior of the folder, (2) printing, foil stamping, embossing (*i.e.*, raised relief patterns that are 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, (3) 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 percent of the entire exterior surface area, and (4) patterns, pictures, designs, or artwork covering no less than thirty percent of the exterior surface area of the folder;
- portfolios, which are folders having (1) a width of at least 16 inches when open flat, (2) no tabs or dividers, and (3) one or more pockets that are suitable for holding letter size documents and that cover at least 15 percent of the surface area of the relevant interior side or sides; and
- report covers, which are folders having (1) no tabs, dividers, or pockets, and (2) 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.

## WTO Developments

### Japan Joins the WTO's Multiparty Interim Appeal Arbitration Arrangement

In an unexpected move, Japan is notifying the WTO Dispute Settlement Body (DSB) of its intention to participate in the Multiparty Interim Appeal Arbitration Arrangement ("MPIA"). Japan announced its decision in a government statement on March 10, 2023.<sup>24</sup> Japan will become the 52nd WTO Member to participate in the MPIA (counting the EU as 27).

The MPIA was created under the leadership of the EU and Canada in order to fill the void left in WTO dispute settlement after the Appellate Body ceased functioning in late 2019. Other WTO Members that participate in the MPIA include Australia and New Zealand, Brazil, China, Singapore, and Switzerland.<sup>25</sup> The United States does not participate since it considers the MPIA to have many of the same faults of the Appellate Body that it has criticized in recent years.

The MPIA functions under the arbitration provisions of Article 25 of the WTO Dispute Settlement Understanding (DSU), and it replicates as closely as possible the substantive and procedural rules for Appellate Review in Article 17 of the DSU. Participants in the MPIA agree in advance to refer any trade disputes between them to binding adjudication by an independent appeals tribunal if they are not satisfied with the ruling of the dispute settlement panel that has examined their dispute in the first place. To date, only one appeal has been lodged and concluded under the MPIA, on the dispute over Colombia's antidumping duties on EU French fries (DS591).<sup>26</sup>

#### MPIA as interim arrangement

In its announcement, Japan emphasizes that it considers the MPIA to be only an interim arrangement until the WTO dispute settlement system has been reformed and fully restored, an objective that Japan states it is committed to working actively towards. Discussions on WTO dispute settlement reform have now entered a "new phase." While the EU and many other WTO Members are proposing the restoration of a two-tier dispute settlement system that includes an appellate body or an equivalent of some kind, the United States has not expressed its support for that outcome and Japan's position on the restoration of an appellate body is unclear. Japan expressed its deep concern about an Appellate Body ruling in 2019 that supported Korea's bans on imports from Japan following the Fukushima nuclear power plant accident (DS495), and Japan has not joined the long list of WTO Members since then that have opposed the United States' block on the appointment of new Appellate Body members.

In Japan's announcement of its decision, it notes that "two of the dispute cases that Japan has filed with the WTO have already been 'appealed into the void' and those cases have been virtually left in limbo. In the future, further panel reports will be issued on the other two dispute cases that Japan has filed with the WTO.

One of those cases involves Japan's complaint against China over its antidumping measures on stainless steel (DS601), on which the dispute panel is expected to issue its final report to the parties in the first quarter of 2023. Since China is already a participant in the MPIA, in principle Japan will be able to use the MPIA as a way of preventing China from appealing the panel ruling "into the void" if it loses the case. The other case referred to by

<sup>24</sup> "Cabinet Approval on the participation in the MPIA (Multi-Party Interim Appeal Arbitration Arrangement)," Ministry of Economy, Trade and Industry of Japan, March 10, 2023, available at: [https://www.meti.go.jp/english/press/2023/0310\\_001.html](https://www.meti.go.jp/english/press/2023/0310_001.html).

<sup>25</sup> The MPIA members are Australia, Benin, Brazil, Canada, China, Chile, Colombia, Costa Rica, Ecuador, the European Union's 27 members, Guatemala, Hong Kong (China), Iceland, Macao (China), Mexico, Montenegro, New Zealand, Nicaragua, Norway, Pakistan, Peru, Singapore, Switzerland, Ukraine, and Uruguay.

<sup>26</sup> MPIA arbitrators issued their ruling on December 21, 2022. At the DSB meeting on January 27, 2023, Colombia stated it intends to implement the arbitrators' awards.

Japan is its dispute over India's imposition of tariffs on imports of certain IT products (DS584), but unlike China India is not a participant in the MPIA.

### **Japan and Korea Agree to End Korea-Japan 2019 WTO Dispute over Export Restrictions**

The Trade Ministries of Japan and Korea have announced that they are in consultations to agree on the removal of Japan's restrictions on exports to Korea of chemicals used in the production of semi-conductors and other high-tech products and on a halt to Korea's dispute settlement proceedings in the WTO over the restrictions (DS590).<sup>27</sup>

In 2019, Japan imposed restrictions on exports to Korea of hydrogen fluoride, photoresists and fluorine polyimide, which are three key chemicals used in the manufacture of smartphone displays and semiconductors, and it removed Korea from its so-called "white list" of trusted trading partners. The restrictions resulted from a flare-up of diplomatic tensions over the decades-old dispute about Korea's demand for compensation from Japanese companies for their use of forced labor during Japan's occupation of Korea from 1910 to 1945. Korea has now announced a solution to the dispute has been found that will involve its own companies paying the compensation sought. There has been no formal mention of any payment by Japanese companies.

Although the restrictions had an initial commercial impact, Korean companies such as Samsung, Hynix and LG Display managed successfully and relatively quickly to diversify to suppliers in other countries and to expand domestic production of the chemicals.

In the WTO, a dispute panel was established by the Dispute Settlement Body in 2019, but it has never been composed, leaving it dormant for the past three years. Kamchan Kang, Director-General at Korea's Trade Ministry has said that "The suspension of the WTO dispute resolution process is not really a withdrawal but a pause. If the issue does not progress well, the process may resume again."

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<sup>27</sup> More information on DS590 is here: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds590\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds590_e.htm).