

US Multilateral Trade and Policy Developments

Japan External Trade Organization

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Trade Policy Developments

USTR Publishes 2023 National Trade Estimate Report

On March 31, 2023, the Office of the US Trade Representative (USTR) published the 2023 edition of its annual National Trade Estimate Report on Foreign Trade Barriers (the “NTE Report”).¹ The report includes a country-by-country review of the significant foreign barriers facing US exporters and investors, making it a useful guide to USTR’s market access priorities. The report covers 64 economies (including Japan), which together comprise 99% of US goods trade and 66% of services trade. The topics include import policies, technical barriers to trade, sanitary and phytosanitary measures, government procurement, intellectual property protection, services barriers, barriers to digital trade and electronic commerce, investment barriers, export subsidies, competition, state-owned enterprises, labor, and environment.

Labor rights received heavy focus, in line with the administration’s worker-centered trade agenda. The press release² highlights concerns with labor rights in several countries, specifically naming China, Bangladesh, and the Dominican Republic. It also asserts that the United States is increasing its enforcement of the import ban on products made by forced labor, mentioning China’s fishing fleet as one of the enforcement targets.

The report is based on information collected by USTR, other government agencies, embassies, and private sector input. Regulations.gov hosts a call for public input on the NTE Report every year (the 2023 NTE Report submissions can be found here). Because many issues highlighted in the NTE Report are slow to resolve, new reports often contain much of the same content as previous years.

This publication follows the release of the 2023 President’s Trade Agenda on March 1, 2023. By the end of April, USTR will also publish the next Special 301 Report on intellectual property protection.

The Japan chapter

The Japan chapter of the NTE Report praises the new market access that the United States has gained under the 2020 United States–Japan Trade Agreement and the United States–Japan Digital Trade Agreement, especially for agricultural and digital products.

The NTE Report also raises a list of challenges on which USTR is seeking further progress. These include high tariffs on a few remaining products (“including rice and rice products, certain dairy products, fruit juices, pet food, table grapes, frozen blueberries, sugar, chocolate, and sweetened cocoa powder”); non-tariff barriers on some foods; services barriers in express shipping, insurance, telecommunications, and others; competition in digital markets; the medical device reimbursement pricing system; and automotive market access. Most of the topics covered this year were also in last year’s report. A new section was added about general concerns with forthcoming changes to food safety oversight and objections to certain specific beef safety rules (see page 233 of the NTE Report).

USTR’s press release accompanying the NTE Report highlights market access challenges in the Japanese automotive market, including concerns with spectrum allocation for short-range vehicle communications systems. This is a new inclusion in the press release, which adds that USTR will “continue to focus” on these barriers.

US State Department’s CHIPS International Technology Security and Innovation Fund Begins Operation

The State Department has begun to unveil plans for the CHIPS Act’s International Technology Security and Innovation Fund (ITSI). ITSI is a five-year program that will spend US \$500 million to support semiconductor and telecommunications industry development abroad. Unlike the domestically oriented semiconductor subsidies and tax credits that the Commerce and Treasury Departments recently unveiled, State’s ITSI will focus on fostering cooperation with foreign partners and allies. The program’s funding is split between two project areas:

¹ The 2023 National Trade Estimate Report on Foreign Trade Barriers is available at: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/march/ustr-releases-2023-national-trade-estimate-report-foreign-trade-barriers>.

² USTR’s press release is here: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/march/ustr-releases-2023-national-trade-estimate-report-foreign-trade-barriers>.

□ **Semiconductors**

Foster international cooperation to ensure that supply chain components both upstream and downstream of semiconductor production are diverse, resilient, and secure.

□ **Secure and trustworthy telecommunications networks**

Assist foreign governments strengthen data security standards in government ICT procurement processes, finance private sector investments in secure ICT systems, and provide cybersecurity tools to partner governments. The State Department's Digital Connectivity and Cybersecurity Partnership (DCCP), established in 2018, is the lead for this work.³

Funding priorities for 2023

On March 14, 2023, the State Department announced the strategic framework for this year's \$100 million allocation.⁴ This is the first attempt by the State Department to define the program's priorities; the agenda may evolve over time.

For the semiconductor half of the funding, the plan lays out four areas (see below) where the United States will work with partner countries. The State Department describes these efforts as split between a "promote" agenda, which focuses on expanding semiconductor-related industries, and a "protect" agenda, which focuses on protecting key technologies. The State Department has begun issuing notices for grants and funding opportunities to support these projects.

□ **Securing critical mineral inputs**

The State Department plans to help establish new critical mineral mining, refining, and recycling facilities both in the United States and in other countries. The goal is to diversify the critical mineral supply chain.

□ **Strengthening international policy coordination**

The State Department and the Department of Commerce will coordinate US industry incentive programs and supply chain disruption policies with other countries.

□ **Expanding and diversifying downstream capacity in the Indo-Pacific and the Americas**

The State Department will provide funding to promote diversification of semiconductor assembly, testing, and packaging industries "with like-minded partners" in the Americas and the Indo-Pacific. This will include supporting improvements to regulatory and policy environments that could enable more investment, improving workforces and infrastructure, and providing capacity building.

□ **Protecting national security**

The State Department will deepen coordination with other countries to address semiconductor-related national security risks. This will include collaboration on strengthening export controls (including plurilateral export control regimes), restrictions on intangible technology products, outbound investment controls, and other security measures.

³ More information on the DCCP is here: <https://www.state.gov/digital-connectivity-and-cybersecurity-partnership/>.

⁴ The State Department's announcement is here: <https://www.state.gov/department-of-state-allocating-100-million-in-fy-2023-for-chips-act-projects/>.

In addition to supporting these specific projects, the semiconductor funding will also allow the State Department to expand staff and improve its knowledge of the industry. Much of the work for the ITSI agenda will first require the US government to improve its understanding of the semiconductor supply chain. These investments may increase the government's capacity to undertake larger programs in the future.

For the securing telecommunications work area, \$40.7 million of the 2023 budget will go towards DCCP's work on fostering secure ICT ecosystems, deploying secure ICT infrastructure, and cybersecurity. This additional budget will enable a significant expansion to the DCCP's work according to the State Department. The new plan goes beyond the US government's traditional focus on promoting Open RAN and 5G security. It will cover subsea cables, satellite communications, cloud services, and more.

The State Department is looking for opportunities where foreign governments seek assistance in improving communications infrastructure and where US infrastructure contractors are bidding for projects and could benefit from US government support. The State Department has indicated that this could include supporting ICT infrastructure project bids of "like-minded" companies from other countries. The State Department hopes to convince countries to consider "quality, security, and interoperability" in their ICT infrastructure procurement, and not just look for the most affordable options. Funding opportunities for this work will be published over the next few months.

The State Department intends to post updates on the program, including forthcoming funding opportunities and grants on ITSI's website, here: <https://www.state.gov/the-u-s-department-of-state-international-technology-security-and-innovation-fund/>

Customs Reform Legislation Likely to Emerge this Summer in Congress

A new legislative effort to modernize US CBP cargo policies is coming together in Congress and draft legislation is likely to emerge this summer. The initiative, which will be under the banner of Senator Bill Cassidy's Customs Modernization Act (CMA), will include both policies that will strengthen customs enforcement and facilitate trade. Early indications, however, are that enforcement is taking priority over trade facilitation in the government's work.

There are currently two primary work streams through which the legislation is being developed. The first is Senator Cassidy's office, which is drafting the CMA by building on their work from the previous legislative session and feedback from the executive branch and private sector. The second is from CBP, where a long-running modernization effort will soon produce a package of legislative recommendations for the CMA.

The Customs Modernization Act

The content of the CMA is not completely clear yet. Sources expect that more details will be released by the early summer. The bill will likely strengthen enforcement of current trade laws and implement new trade facilitation measures. The Senate Finance Committee is signaling this is a priority effort. It held a hearing on the topic in February, among the first of the new legislative session.⁵ Ranking Member Mike Crapo (R-Idaho) referenced Senator Cassidy's work at the hearing and said the committee would consider it further.⁶ Another Senate hearing on customs modernization is expected in the summer.

⁵ See Ending Trade that Cheats American Workers By Modernizing Trade Laws and Enforcement, Fighting Forced Labor, Eliminating Counterfeits, and Leveling the Playing Field, United States Senate Committee on Finance, available at: <https://www.finance.senate.gov/hearings/ending-trade-that-cheats-american-workers-by-modernizing-trade-laws-and-enforcement-fighting-forced-labor-eliminating-counterfeits-and-leveling-the-playing-field>.

⁶ Representative Crapo's Statement at Hearing on Customs Modernization, available at: <https://www.crapo.senate.gov/media/newsreleases/crapo-statement-at-hearing-on-customs-modernization>.

On the enforcement side, Congress is increasingly concerned about forced labor, intellectual property theft and counterfeiting, illicit drugs, and illegally harvested commodities.⁷ Members are looking at new tools and additional resources that could help stop these products at the border. This may include sharing more data between CBP and traders, increasing supply chain transparency, expanding penalties, and changing de minimis rules, among other options. These enforcement goals have been gradually taking priority over trade facilitation objectives in Washington, where politicians are increasingly focused on economic security and the rise of China. The challenge in designing new legislation is balancing the desire for better security with the need to keep cargo flowing quickly.

For trade facilitation, Congress, CBP, and the private sector are looking at various measures. For imports, these could include streamlining and simplifying data requirements, expanding pre-clearance processes, improving business data protection, and expanding the Customs-Trade Partnership Against Terrorism (CTPAT). There are also proposals for facilitating US exports by streamlining export declaration processes. The private sector appears concerned that Congress and CBP are not prioritizing these goals as much as enforcement, however. This is leading traders to lobby Congress for a more ambitious trade facilitation agenda.

Senator Cassidy originally raised his modernization plan in November 2021.⁸ How much the 2023 CMA will reflect the 2021 CMA is still not clear; though the draft may give insight into Congress' priorities. It included tightening supervision of e-commerce companies, adding new data retention requirements for importers and import facilitators, expanding penalties, and adding new documentation requirements to de minimis shipments. One of the main challenges of this bill was that it focused disproportionately on strengthening customs enforcement, and mostly ignored commercial needs. Amid those debates, a final bill never moved forward.

The 21st Century Customs Framework

The 21st Century Customs Framework ("21CCF") is a CBP modernization initiative launched in 2018. It aims to quicken the movement of legitimate goods while enhancing enforcement, better enforce product safety standards, secure additional funding, and improve data sharing. Some proposals that have come out of 21CCF could be implemented by CBP directly (CBP issued new customs broker regulations in October 2022⁹), but others will require legislative action. Those legislative needs, as identified by CBP, are informing Congress' work on the CMA. CBP intends to propose a full 21CCF legislative package to Congress following the next COAC public meeting in June 2023. Though drafts of some of CBP's proposals have been circulating since summer 2022, a complete final version has not yet been published.¹⁰ Upon its delivery, this package will contribute Senator Cassidy's work in Congress to develop a final CMA.

Private sector engagement in the 21CCF is organized through the Commercial Customs Operations Advisory Committee ("COAC") into four subcommittees. These subcommittees were each assigned a set of priority initiatives by CBP, summarized below:

⁷ Representative Wyden's Hearing Statement on Stopping Illegal Trade at the Border to Protect American Workers, available at: <https://www.finance.senate.gov/chairmans-news/wyden-hearing-statement-on-stopping-illegal-trade-at-the-border-to-protect-american-workers>.

⁸ *Customs Modernization Act of 2021*, draft copy, available at: <https://documents.nam.org/iea/Cassidy%20Customs%20Modernization%20Bill%20Discussion%20Draft.pdf>.

⁹ *Customs Broker Modernization Regulations*, 19 CFR 111, available at: <https://www.cbp.gov/trade/programs-administration/customs-brokers/modernization>.

¹⁰ Government Issue Paper: 21st Century Customs Framework (21CCF) Task Force, June 2022, available at: https://www.cbp.gov/sites/default/files/assets/documents/2022-Jun/NGF-21CCF%20Issue%20Paper_External.post__0.pdf.

- Next Generation Facilitation, which covers the 21CCF task force, ACE 2.0, One US Government, e-commerce, passenger air operations, and emerging technologies.¹¹
- Rapid Response, which is tasked with updating customs broker regulations improving USMCA customs provisions implementation.¹²
- Secure Trade Lanes, which includes working groups on export modernization, in-bond, trade partnerships and engagement, cross-border recognition, pipelines, and remote and autonomous cargo processing.¹³
- Intelligent Enforcement includes working groups on antidumping and countervailing duties, customs bonds, forced labor, and intellectual property rights protection.¹⁴

Though the agenda is ambitious, CBP's internal reforms and proposals for the legislative package have increasingly come to focus on solving specific law enforcement challenges, rather than a broader overhaul of CBP's operations or significant trade facilitation measures. The 21CCF Task Force (part of the COACC Next Generation Facilitation subcommittee) issued a list of trade facilitation recommendations that they believe CBP is overlooking in their December 2022 report:¹⁵

- "Streamlining Data Transmission, Expediting Cargo Release, Driving Accountability & Security;"
- "Protecting Confidential Business Information;"
- "Enhancing Trusted Trader Program Benefits and Funding;"
- "Realizing a True 1USG through Uniform Processes & Partnership;"
- "Export Modernization that Supports Economic Security;" and
- "Exercise Practical, Responsible, Transparent Duty Collection & Enforcement."

The report also raises a variety of specific private sector concerns with CBP's enforcement proposals. The 21CCF Task Force has said it intends to publish its own report "that identifies additional facilitation-centric or transformative modernization concepts for CBP, PGA, or congressional consideration" after the June meetings.¹⁶ This report and other feedback from the COACS will join the ongoing private sector engagement with Congress. The final CMA may go significantly beyond what CBP will propose in its 21CCF legislative package as Congress undertakes its own work.

Prospects

¹¹ Next Generation Facilitation Subcommittee Executive Summary-March 2023, available at: <https://www.cbp.gov/document/report/next-generation-facilitation-subcommittee-executive-summary-march-2023>.

¹² Rapid Response Subcommittee Executive Summary-March 2023, available at: <https://www.cbp.gov/document/report/rapid-response-subcommittee-executive-summary-march-2023>.

¹³ Secure Trade Lanes Subcommittee Executive Summary-March 2023, available at: <https://www.cbp.gov/document/report/secure-trade-lanes-subcommittee-executive-summary-march-2023>.

¹⁴ Intelligent Enforcement Subcommittee Executive Summary-March 2023, available at: <https://www.cbp.gov/document/report/intelligent-enforcement-subcommittee-executive-summary-march-2023>.

¹⁵ Report of the Work of the COAC 21st Century Customs Framework Task Force, COAC, December 2022, available at: <https://www.cbp.gov/sites/default/files/assets/documents/2022-Nov/NGF%2021st%20CCF%20White%20Paper-Dec%202022.pdf>.

¹⁶ 21st Century Customs Framework Task Force Government Issue Paper, COAC, March 2023, available at: <https://www.cbp.gov/sites/default/files/assets/documents/2023-Mar/NGF%2021CCF%20Issue%20Paper%20March%202023.pdf>.

The CMA would be the first major change to US customs law since the Customs Modernization Act of 1993. Since then, US goods trade has increased from \$600 billion per year to \$2.7 trillion, while over 2 million de minimis parcels now enter the country every day. The more complex nature of modern industrial supply chains has compounded the challenges to enforcement.

As the new Congress begins its work, a renewed trade legislation agenda is taking shape. Beyond the CMA, proposals that failed to pass Congress as part of the CHIPS and Science Act last year are returning and more proposals are emerging. Members of Congress are deliberating bills for renewing the GSP and the Miscellaneous Tariff Bill (MTB), creating new authorities to respond to foreign economic coercion, strengthening customs enforcement, making various changes to trade remedy laws, and restricting US investment in China. Passing legislation in a divided Congress is difficult, but many of these measures have bipartisan support and could move forward despite broader political challenges. Details of the bills and more insight into their likelihood of passage will become clearer as Congressional committees continue their work and hold hearings.

Trade Actions

Section 232

None

Section 301

None

Trade Agreements

United States and Kenya Hold Negotiating Round for the Strategic Trade and Investment Partnership

The United States and Kenya held the first detailed negotiating round of the Strategic Trade and Investment Partnership (STIP) on April 17-20, 2023, in Nairobi. According to USTR, the negotiators discussed the proposed texts for the chapters on agriculture; anticorruption; micro-, small-, and medium-sized enterprises (MSMEs); and services domestic regulation. USTR also discussed the negotiations with other Kenyan stakeholders and staff from the US Congress.

This round follows conceptual discussions on February 6-10, 2023, when the parties decided on key issues to include and reviewed the joint statement.¹⁷ The next negotiating round has not been announced yet. Kenyan Trade Minister Moses Kuria has told the media that he expects the talks to be concluded by the end of 2023 and that the final agreement could be signed by April 2024. This ambitious timeline is similar to those USTR has proposed for the Indo-Pacific Economic Framework for Prosperity (IPEF) and US-Taiwan Initiative on 21st Century Trade.

Neither the United States nor Kenya have released much detail on the talks beyond the original Joint Statement.¹⁸ Discussions still appear to be at an early stage, with one source describing recent exchanges as “educational.” Broadly, it seems that STIP will cover the same topics as IPEF. It may focus more on capacity building rather than commitments on regulatory matters, though, given Kenya’s level of development.

The Biden administration is calling STIP a model of engagement with other African countries. It is, however, less ambitious than a full free trade agreement (FTA) and will not provide the same benefits to traders and investors. Kenya, for its part, believes it can leverage STIP to eventually negotiate a full bilateral FTA with the United States. The Biden administration has not committed to that, but the Trump administration’s previous efforts to negotiate a bilateral FTA and support for the proposal by some members of Congress suggest opportunity may exist.

Proposed STIP chapters

Beyond summaries of the negotiating objectives, little detail is available on STIP’s proposed content. USTR recently disclosed the contents of some proposed chapters from the US-Taiwan Initiative on 21st Century Trade¹⁹ and IPEF,²⁰ which may give insight into USTR’s opening positions for STIP.

United States and Japan Sign Critical Minerals Trade Agreement

On March 28, 2023, the United States Trade Representative (USTR) and the Japanese Ambassador to the United States signed the *Agreement Between The Government Of The United States Of America And The Government Of*

¹⁷ USTR’s readout of the April negotiating round is available here: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/april/readout-april-negotiating-round-under-us-kenya-strategic-trade-and-investment-partnership>.

¹⁸ USTR, “United States and Kenya Announce the Launch of the US-Kenya Strategic Trade and Investment Partnership,” July 14, 2022, available here: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/july/united-states-and-kenya-announce-launch-us-kenya-strategic-trade-and-investment-partnership>.

¹⁹ US-Taiwan Initiative on 21st Century Trade Summary of Texts Proposed by the US Side, available here: <https://ustr.gov/sites/default/files/2023-03/US%20Taiwan%20Initiative%20on%2021st%20Century%20Trade%20Public%20Summaries%20.pdf>.

²⁰ IPEF Pillar I Summaries, available here: <https://ustr.gov/sites/default/files/files/uploads/IPEF%20Pillar%201%20text%20summaries%20USTR%20March%202023.pdf>.

*Japan On Strengthening Critical Minerals Supply Chains*²¹ (the “CM Agreement”). According to USTR, the CM Agreement “will strengthen and diversify critical minerals supply chains and promote the adoption of electric vehicle battery technologies.” The Government of Japan has stated it expects the CM Agreement to allow Japanese companies to access the Section 30D clean vehicle tax credit in the Inflation Reduction Act (IRA).

There was little notice or public consultation on the CM Agreement. Though the United States and Japan have been discussing critical minerals industry issues for several months, USTR did not reveal that a formal agreement was imminent until the evening of March 27. Japanese Minister of Economy, Trade and Industry (METI) Yasutoshi Nishimura told reporters that an agreement was under development on the same day.

Content of the CM Agreement

The CM Agreement, which is based on the 2019 *Trade Agreement between the United States of America and Japan*,²² establishes a set of basic commitments for cooperation on electric vehicle battery mineral supply chains, but does not provide for any new market access. It defines the critical minerals covered as cobalt, graphite, lithium, manganese, and nickel.

The following articles of the CM Agreement contain the key commitments:

- **Article 3: Facilitating Trade in Critical Minerals**

Under this article, the parties commit to not restricting the import or export of critical minerals or impose export duties on critical minerals. They further commit to promoting market-oriented conditions and competition in the critical minerals sector by conferring on potential responses to the policies of non-market economies. This article also commits the parties to sharing information and best practices on foreign investment in their critical minerals sectors.

- **Article 4: Facilitating Sustainable Supply Chains for Critical Minerals**

The parties commit to developing sustainable critical mineral supply chains through their ongoing work on international standards on labeling and recycling, improving domestic environment protection regulations for critical minerals, ensuring responsible sourcing, assessing the environmental impact of critical minerals projects, and promoting circular economy measures, among others.

- **Article 5: Building Equitable Supply Chains for Critical Minerals**

The parties confirm their intention to adopt, maintain, and enforce labor rights (including International Labor Organization (ILO) commitments and employer neutrality in union organizing). This includes a commitment to “discourage, through initiatives it considers appropriate” the importation of critical mineral products produced with forced labor. The parties commit to forming a cooperation mechanism to advance these labor rights objectives.

²¹ See Agreement Between The Government Of The United States Of America And The Government Of Japan On Strengthening Critical Minerals Supply Chains, available here: https://ustr.gov/sites/default/files/2023-03/US_Japan_Critical_Minerals_Agreement_2023_03_28.pdf.

²² See 2019 Trade Agreement between the United States of America and Japan, available here: https://ustr.gov/sites/default/files/files/agreements/japan/Trade_Agreement_between_the_United_States_and_Japan.pdf.

CPTPP

CPTPP Members Reach Agreement on UK Accession

On March 31, 2023, members of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) reached agreement with the UK that it has met the conditions necessary to become the 12th member of the CPTPP. The UK's market access requirements were the final part of the negotiations to be concluded. These market access requirements had been set by CPTPP members at a high level in order to establish a precedent that any further accessions, notably that of China, would have to match the commitment of all CPTPP members to an ambitious, liberal import regime.

Negotiations with Canada have held up an agreement on the UK's accession for several weeks. Canada had demanded that the UK remove its ban on imports of hormone-treated beef, and that its market access commitments on agricultural products should match the terms that the UK had agreed to in its recent free trade agreements (FTAs) with Australia and New Zealand, *i.e.*, full duty-free quota-free access within 10 years of the entry into force of the FTAs. The UK and Canada have agreed to resolve their differences on these issues bilaterally in the context of updating the UK-Canada FTA, which is being negotiated separately. Their agreement cleared the way for Canada to approve the UK's accession to the CPTPP.

The UK views CPTPP accession as a significant achievement for the country's post-Brexit trade policy, which will assist it to diversify and grow its imports and exports and help compensate over time for the loss of its free access to the EU's Single Market. The UK already has, or is close to having, bilateral FTAs with nine CPTPP members (Japan, Canada, Australia, New Zealand, Chile, Mexico, Peru, Singapore, Vietnam), so the immediate commercial benefits for it of CPTPP membership will be limited.

Nevertheless, CPTPP accession would not have been possible had the UK remained an EU member state because of the requirements of the EU customs union, which bound the level of UK tariffs to that of the rest of the EU and prevented the UK from opening its market to foreign competition. The EU requirements for regulatory harmonization to which the UK was bound would also have been incompatible with the CPTPP model of regulatory competition based on mutual recognition, equivalence and adequacy. In both of these respects, the CPTPP presents the UK with a framework for economic liberalization and international competition that can help it increase its productivity and growth.

The formal signing of UK's accession will likely take place at the forthcoming CPTPP ministerial meeting scheduled to take place in New Zealand in July 2023, to allow time for the text to be legally verified and translated.

RCEP

RCEP to Enter into Force for the Philippines on June 2, 2023

The Philippines deposited its instrument of domestic ratification for the Regional Comprehensive Economic Partnership Agreement (RCEP) with the ASEAN Secretary-General on April 3, 2023 according to the Ministry of Foreign Affairs of Japan.²³ As a result, the RCEP will enter into force for the Philippines from June 2, 2023 – 60 days after the submission of the instrument of ratification.

The Philippines will become the ninth ASEAN member state after Brunei, Cambodia, Indonesia, Laos, Malaysia, Singapore, Thailand, and Vietnam to complete the necessary ratification procedures, leaving Myanmar as the only

²³ The Secretary-General of ASEAN is the Depositary of the RCEP Agreement. The official press release from the Ministry of Foreign Affairs of Japan (in Japanese) is here: https://www.mofa.go.jp/mofaj/press/release/press6_001473.html.

RCEP signatory still not party to the Agreement.²⁴ The RCEP has already entered into effect for all non-ASEAN members including Australia, China, Japan, Korea, and New Zealand.

The Philippine Senate approved the ratification of the RCEP on February 21, 2023 following months of debate and staunch opposition from the Philippine agriculture sector over concerns that a steep increase in imported goods, including highly sensitive agricultural products such as swine and poultry meats, potatoes, onions, garlic, and rice, could undermine local producers. To address these concerns, President Marcos decided to reassess the costs and benefits of the RCEP following his inauguration in June 2022 and instructed his economic team to press forward with ratification.

Over the last several months, the Marcos administration has actively lobbied for RCEP membership, asserting that non-participation in the RCEP could result in a -0.26% decrease in real gross domestic product (GDP), whereas RCEP participation is expected to lead to a 2.02% increase in GDP. According to Secretary of the Department of Trade and Industry (DTI), Alfredo Pascual, “Philippine exporters gain a market of 15 countries representing nearly 30% of the world’s population, economy, and trade. RCEP gains outweigh the losses. Among others, we need to take advantage of the enhanced trade facilitation provisions that make cross-border trade simpler and faster.” The RCEP is also expected to encourage foreign investment in the Philippines and allow greater participation in areas of digital services, business process outsourcing industry, financial services, aerospace, shipbuilding, and research and development, among others.

While less ambitious than the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the RCEP lays the foundation for deeper cooperation in future and is notable as it brings together countries that have yet to conclude trade agreements with each other. The RCEP also contains provisions that go beyond the existing ASEAN+1 FTAs²⁵ in selected areas and supports the engagement in global and regional supply chains with a single, harmonized and predictable set of regional trade rules. As the RCEP involves countries with different levels of development, it incorporates technical cooperation and capacity building to support the implementation of the Agreement. Notably absent from the RCEP are chapters that address industrial subsidies, state-owned enterprises, labor rights, and the environment. Although the RCEP was originally an ASEAN-led initiative, many now regard it as a China-backed alternative to the CPTPP, which so far excludes China²⁶ but includes various Asia Pacific countries.

²⁴ Despite receiving official notification of Myanmar’s instrument of ratification on January 3, 2022, the political situation in Myanmar continues to raise concerns among several RCEP member states, which has delayed the official acceptance of the instrument of ratification by the ASEAN Secretariat.

²⁵ The ASEAN+1 FTAs refer to the six FTAs in force among ASEAN member states and Australia, China, Hong Kong, India, Japan, Korea, and New Zealand.

²⁶ China submitted its formal application for accession to the CPTPP on September 16, 2021; however, the CPTPP Commission has not yet commenced the accession process, and it remains unclear when, or if, the process will start.

Petitions & Investigations

Petitions

US Manufacturer Files Petition for Imposition of Antidumping Duties on Boltless Steel Shelving Units from India, Malaysia, Taiwan, Thailand, and Vietnam

On April 24, 2023, a petition for antidumping duties on boltless steel shelving units imported from India, Malaysia, Taiwan, Thailand, and Vietnam was filed with DOC.

The product is boltless steel shelving, with or without decks, which are prepackaged for sale to end-users. These are classified under HTSUS 9403.20.0075. Rivet shelving, welded frame shelving, slot and tab shelving, and punched rivet shelving are other common trade names for this type of shelving. They are common in industrial, warehouse, and retail storage, as well as in home garages.

The petitioner is Edsal Manufacturing Co., Inc., a designer, manufacturer, and distributor of steel shelving and cabinets for use in garages and commercial environments. The company is the largest manufacturer of boltless steel shelving in the United States and represents a significant majority of the domestic industry on its own. It has facilities in Chicago, Illinois; Gary, Indiana; Littlestown, Pennsylvania; and Arvin, California. The company was founded in 1951 and is now owned by Monomoy Capital Partners, a private equity firm that invests in middle-market consumer product and manufacturing companies. Edsal once petitioned for and received antidumping and countervailing duties on Chinese-origin boltless steel shelving in 2014. These actions remain in effect and their scope is the same as the new petition.

The petitioner alleges that the product is being sold at less than fair value from suppliers in India, Malaysia, Taiwan, Thailand, and Vietnam. These imports have materially injured the US industry and threatens further material injury, according to the petition. The foreign suppliers are allegedly cumulatively underselling the domestic product at margins averaging 50%. For the Thai exporters specifically, the petition alleges dumping margins between 177.72% and 188.06%. In Thailand, the petition identifies Fuding Industries Company Limited, Pengdong Electromechanical Thailand, and Siam Storage Solutions as companies it alleges maintain large capacity, are highly export oriented, and are targeting the US market. It also identifies Siam Metal Tech Co., Ltd., Siam Steel International Public Company Limited, and Thai First Precision Industry Company Limited as other notable Thai exporters.

The US International Trade Commission (ITC) posted its investigation notice to the Federal Register on May 2,²⁷ automatically starting the process of preliminary review for material injury. ITC will reach its determination by June 9 and will transmit it to DOC by June 16 (subject to any extensions by DOC).

US Manufacturer Files Petition for Imposition of Antidumping and Countervailing Duties on Non-Refillable Steel Cylinders from India

On April 26, 2023, a petition for antidumping and countervailing duties on non-refillable steel cylinders from India was filed with DOC.

The product is “non-refillable steel cylinders for compressed or liquefied refrigerant gas or other gases or materials” imported with or without a valve and pressure release device. The scope specifically excludes “seamless non-refillable steel cylinders,” which are made using a different manufacturing process than the welded cylinders covered

²⁷ *Boltless Steel Shelving Units Prepackaged for Sale From India, Malaysia, Taiwan, Thailand, and Vietnam; Institution of Anti-Dumping Duty Investigations and Scheduling of Preliminary Phase Investigations*, 88 FR 27529 (May 2, 2023) <https://www.federalregister.gov/documents/2023/05/02/2023-09278/boltless-steel-shelving-units-prepackaged-for-sale-from-india-malaysia-taiwan-thailand-and-vietnam>.

by this petition. These steel cylinders are used to store and transport a wide variety of compressed and liquefied gasses. The capacity range for the cylinders covered is from 100 cubic inches (1.6 liter) to 1,526 cubic inches (25 liters). The product falls under the U.S. Department of Transportation Specification 39 or United Nations pressure receptacle standard ISO 11118. In customs data, they are classified under Harmonized Tariff Schedule of the United States ("HTSUS") codes 7311.00.0060 and 7311.00.0090, though those codes may also include non-covered products. The covered product may also be imported under other codes such as 7310.29.0030 and 7310.29.0065, if it is filled with another product or intended for certain specific uses.

The petitioner is Worthington Industries, an independent flat-rolled steel processor based in Columbus, Ohio. The company manufactures pressure vessels, storage cylinders, and framing systems, from purchased flat-rolled steel. Worthington manufactures the subject product at its Paducah, Kentucky and Columbus, Ohio factories. There appear to be no other producers of the subject product in the United States so Worthington represents 100% of the domestic industry.

The petitioner alleges that products from India are underselling the petitioner by about 45%. The antidumping duty margins that the petitioner estimates range from 11.2% to 56.52%. The petitioner was unable to estimate specific ad valorem rates for the subsidies that it identified.

The US International Trade Commission (ITC) posted its investigation notice to the Federal Register on May 3,²⁸ automatically starting the process of preliminary review for material injury. ITC will reach its determination by June 9 and will transmit it to DOC by June 20 (subject to any extensions by DOC). The subject product has been targeted previously, with DOC placing antidumping and countervailing duties on imports from China in May 2021.²⁹

US Manufacturer Files Petition for Imposition of Antidumping and Countervailing Duties on Brass Rods from Brazil, India, Israel, Korea, Mexico, and South Africa

On April 27, 2023, a petition on brass rods from Brazil, India, Israel, Korea, Mexico, and South Africa was filed with DOC. It is seeking antidumping duties on imports of brass rod from Brazil, India, Israel, Mexico, South Africa, and South Korea, as well as countervailing duties on imports from India, Israel, and South Korea.

The petitioners are the American Brass Rod Fair Trade Coalition, Mueller Brass Co. ("Mueller") and Wieland Chase LLC ("Wieland"). Mueller and Wieland are the largest domestic manufacturers of the covered product, together comprising the majority of domestic production. The Coalition is an ad hoc association of the two companies.

The product covered by this petition is brass rod, which can be leaded, low lead, or no-lead solid brass, made from metal alloys of copper, lead, iron, and zinc. The size ranges from 0.25 inches (0.635 cm) to 12 inches (30.48 cm) in diameter and the cross section can be round, polygonal, or in other special forms. These rods are used in a variety of applications, including household products and appliances, industrial machinery, electronic products, building construction, and automotive components. They are usually included in HTSUS 7407.21.9000, though can also enter under 7403.21.0000, 7407.21.1500, 7407.21.3000, 7407.21.5000, and 7407.21.7000.

The petitioner alleges to following dumping margins for each country:

²⁸ *Non-Refillable Steel Cylinders From India; Institution of Anti-Dumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations*, 88 FR 27920 (May 3, 2023) <https://www.federalregister.gov/documents/2023/05/03/2023-09364/non-refillable-steel-cylinders-from-india-institution-of-anti-dumping-and-countervailing-duty>.

²⁹ *Certain Non-Refillable Steel Cylinders From the People's Republic of China: Amended Final Antidumping Duty Determination and Antidumping Duty and Countervailing Duty Orders*, 86 FR 25839 (May 11, 2021) <https://www.federalregister.gov/documents/2021/05/11/2021-09942/certain-non-refillable-steel-cylinders-from-the-peoples-republic-of-china-amended-final-antidumping>.

- Israel: 20%
- Brazil: 62.62%
- Mexico: 63.76%
- South Africa: 27.99%
- India: 10.2%
- South Korea: 12.75%

The petitioner was unable to quantify the countervailing duty margins for the subsidies identified in India, Israel, and South Korea.

The US International Trade Commission (ITC) posted its investigation notice to the Federal Register on May 3, automatically starting the process of preliminary review for material injury.³⁰ ITC will reach its determination by June 12 and will transmit it to DOC by June 20 (subject to any extensions by DOC).

Investigations

US Department of Commerce Issues Preliminary Affirmative Determinations of Circumvention for Aluminum Foil from China, with Respect to the Republic of Korea and the Kingdom of Thailand

On March 22, 2023, the Department of Commerce (DOC) announced preliminary affirmative determinations in the CVD and ADD investigations of imports of certain aluminum foil from Korea and Thailand.³¹ In the investigation, DOC has preliminarily determined that exporters are using inputs of aluminum foil- and sheet-gauge products manufactured in China to circumvent the ADD and CVD orders on aluminum foil from China.

The circumvention inquiries cover aluminum foil, assembled or completed in Korea and Thailand using Chinese-origin aluminum foil and/or sheet, that is subsequently exported from Korea and Thailand to the United States. DOC self-initiated the country-wide circumvention inquiries on July 11, 2022 to determine if US imports of aluminum foil from Korea and Thailand were using inputs manufactured in China, circumventing two duty orders.³²

The Korean companies found to be circumventing the orders are Dong-IL Aluminium Co., Ltd.; Lotte Aluminium Co., Ltd.; Dongwon Systems Corp.; ILJIN ALTECH Co., Ltd.; Korea Aluminium Co., Ltd.; and Sam-A Aluminium Co., Ltd. The Thai companies found to be circumventing the orders are Dingheng New Materials Co., Ltd.; Ding Li New Materials Co., Ltd.; and Sankyu Thai Co., Ltd. (based on adverse facts available).

DOC will direct US Customs and Border Protection (CBP) to suspend liquidation and require a cash deposit of estimated duties on unliquidated entries of aluminum foil, assembled or completed in Korea and Thailand using

³⁰ *Brass Rod From Brazil, India, Israel, Mexico, South Africa, and South Korea; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations*, 88 FR 27921 (May 3, 2023) <https://www.federalregister.gov/documents/2023/05/03/2023-09369/brass-rod-from-brazil-india-israel-mexico-south-africa-and-south-korea-institution-of-antidumping>.

³¹ *Antidumping and Countervailing Duty Orders on Certain Aluminum Foil From the People's Republic of China: Preliminary Affirmative Determinations of Circumvention With Respect to the Republic of Korea and the Kingdom of Thailand*, 88 FR 17177 (Mar. 22, 2023), available at: <https://www.govinfo.gov/content/pkg/FR-2023-03-22/pdf/2023-05832.pdf>.

³² *Certain Aluminum Foil from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 83 FR 17362 (April 19, 2018) and *Certain Aluminum Foil from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 83 FR 17360 (April 19, 2018).

Chinese-origin aluminum foil and/or sheet, that were entered, or withdrawn from warehouse, for consumption on or after July 18, 2022. This will remain in effect until further notice from DOC. If the neither the Chinese exporter of the aluminum foil to Korea or Thailand or the Korean or Thai exporter to the United States have company-specific cash deposit rates, the AD cash deposit rate will be the China-wide 106.09% rate and the CVD deposit will be the “all-others” rate of 18.56%. ACE users would use the following third-country case numbers for such entries: Korea A-580-053/C-580-054; Thailand A-549-053/C-549-054.

DOC has established importer and exporter certifications, for which specific importer entries may apply to be exempt from the cash deposit requirements. These entries must meet the component content requirements in Appendix III of the notice.

DOC will notify the US International Trade Commission (ITC) to include the merchandise subject to these circumvention inquiries within the relevant AD/CVD Orders. If, after consultations, the ITC believes that a significant injury issue is presented by the proposed inclusion, it will have 60 days from the date of notification by DOC to provide written advice.

US Department of Commerce Issues Affirmative Determinations of Circumvention for Stainless Steel Sheet and Strip from China, with Respect to Vietnam

On March 29/30, 2023, DOC published its final affirmative determinations in the circumvention inquiries regarding certain stainless steel sheet and strip (SSSS) from China.³³ DOC determined that SSSS of Chinese-origin that has undergone further processing in Vietnam is merchandise covered by the scope of the ADD and CVD orders on SSSS from China. Additionally, DOC determined that SSSS that is completed in Vietnam using certain non-subject stainless steel flat-rolled inputs sourced from China, is circumventing the ADD/CVD orders on SSSS from China.

The merchandise covered by the Orders is stainless sheet and strip, whether in coils or straight lengths. Stainless steel is an alloy steel containing, by weight, 1.2% or less of carbon and 10.5% or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product with a width that is greater than 9.5 mm and with a thickness of 0.3048 mm and greater but less than 4.75 mm, and that is annealed or otherwise heat treated, and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, annealed, tempered, polished, aluminized, coated, painted, varnished, trimmed, cut, punched, or slit, etc.) provided that it maintains the specific dimensions of sheet and strip set forth above following such processing. The products described include products regardless of shape, and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (e.g., products which have been beveled or rounded at the edges).

For purposes of the width and thickness requirements referenced above: (i) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above; and (ii) where the width and thickness vary for a specific product (e.g., the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Subject merchandise includes stainless sheet and strip that has been further processed in a third country, including but not limited to cold-rolling, annealing, tempering, polishing, aluminizing, coating, painting, varnishing, trimming,

³³ *Stainless Steel Sheet and Strip From the People's Republic of China: Final Scope Ruling and Final Affirmative Determination of Circumvention for Exports From the Socialist Republic of Vietnam*, 88 FR 18521 (March 29, 2023), available at <https://www.govinfo.gov/content/pkg/FR-2023-03-29/pdf/2023-06500.pdf>; *Stainless Steel Sheet and Strip From the People's Republic of China: Final Scope Ruling and Final Affirmative Determination of Circumvention for Exports From the Socialist Republic of Vietnam*, 88 FR 19070 (March 30, 2023), available at <https://www.govinfo.gov/content/pkg/FR-2023-03-30/pdf/2023-06582.pdf>.

cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the Orders if performed in the country of manufacture of the stainless sheet and strip.

Excluded from the scope of the Orders are the following: (i) sheet and strip that is not annealed or otherwise heat treated and not pickled or otherwise descaled; (ii) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); and (iii) flat wire (*i.e.*, cold-rolled sections, with a mill edge, rectangular in shape, of a width of not more than 9.5 mm).

The products under the Orders are currently classifiable under HTSUS subheadings 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.13.0081, 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.23.0030, 7219.23.0060, 7219.24.0030, 7219.24.0060, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.32.0045, 7219.32.0060, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.33.0045, 7219.33.0070, 7219.33.0080, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.34.0050, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.35.0050, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080.

As a result of DOC's determinations, SSSS of Chinese-origin that has undergone further processing or completion in Vietnam will be subject to suspension of liquidation dating back to May 15, 2020.

WTO Developments

India Tables Proposals on WTO Reform

India has joined several other influential WTO Members such as the United States, the EU and Australia in tabling proposals for operational changes to improve the functioning of the WTO and its Councils, committees and other bodies. India's approach involves around 30 relatively small changes that it terms "incremental" with the objective of improving the WTO's "operational efficiency." India describes its proposal as a first list of ideas for Members to agree on and to introduce at least 30 operational improvements before 2025 when the WTO will celebrate its 30th birthday.

India suggests five themes under which ideas for operational improvements could be grouped: (i) regular meetings; (ii) digital tools; (iii) external communication; (iv) rules and procedures; and (v) committee-specific suggestions. Most of the ideas that India has put forward concern relatively minor procedural changes, and they are unlikely to be considered particularly controversial by other WTO Members, but India has also proposed more significant changes that may attract dissent. India has provided a timeframe for the implementation of each of its ideas, of 6, or 12 or 24 months and suggested that those that can be agreed on quickly should be implemented on a rolling basis. India encourages WTO Members to propose other ideas that can be added to its list and suggests that the WTO Secretariat collate these as they are put forward so that the exercise can be turned into a collective initiative for completion by 2025.

The full list of India's proposals is contained in WTO document WT/GC/W/874. It covers the following topics and ideas:

- "Regular meetings": rationalize the meeting schedule of WTO bodies, standardize their agendas, and speed up the completion of minutes of meetings by the Secretariat
- "Digital tools": standardize the WTO website coverage of work by WTO bodies, making it accurate, up-to-date, more informative and easier to access and to use.
- "External communication": ensure that the WTO Secretariat's publications, its press coverage of WTO activities and its communications through social media, are neutral, objective, and accurately reflect the views of WTO Members.
- "Rules and procedures": reform elements of the workings of WTO bodies, including Ministerial Conferences and the "Green Room" process, the conduct of "Text-Based" negotiations to ensure they reflect individual Member's positions transparently, recruitment into the WTO Secretariat, standardization of documentation, selection of chairs of WTO bodies. In addition, matters already on the WTO agenda should be resolved before new issues are added.
- "Committee-specific suggestions": make dispute settlement more accessible to developing countries and LDCs, increase technical assistance for dispute settlement, increase the role of the Trade Policy Review Mechanism to assist developing countries and LDCs to frame and better implement trade policies, ensure the WTO budget is approved on time.

If Members agree, many of these ideas could be implemented relatively easily by the WTO Director-General and Secretariat. However, it may prove more difficult to achieve consensus on some others. In particular, India's proposal that Members should "pause to resolve old issues before adding new ones" to the WTO agenda has been rejected repeatedly in recent years by many other Members, notably the United States. If taken literally, it would have prevented WTO Members from moving on from the Doha Round negotiations once these had stalled to tackle new issues such as Electronic Commerce and others on which plurilateral negotiations have been taking place under the Joint Statement Initiatives that were agreed on by groups of WTO Members at the 11th Ministerial Conference in

2017. Looking forward, it would also prevent Members from taking up in depth trade policies linked to new issues such as climate change and environmental sustainability which many Members view as being critical to maintaining the relevance of the WTO and its centrality to rule-making on international trade.

India's proposal will be taken up for discussion in the General Council, alongside those of other Members.

United States Officially Joins the WTO Agreement on Fisheries Subsidies

On April 11, 2023, USTR Katherine Tai signed the US instrument of acceptance for the WTO's Agreement on Fisheries Subsidies (the "Agreement").³⁴ The event marks the United States' formal joining of the Agreement, which the WTO adopted at the 12th Ministerial Conference in 2022 ("MC12").

The National Oceanic and Atmospheric Administration (NOAA) will be responsible for implementing the commitments for the US government. NOAA has said it can make the necessary changes under its own administrative authorities, though they have not yet published details on their plan. Because there is no need for legal changes, the executive branch has decided it can join the agreement without Congressional action.

Overview of the Agreement

The Agreement is the first WTO agreement to be framed around environmental protection. It will prohibit fisheries subsidies for vessels engaged in illegal, unreported, and unregulated fishing (IUU); vessels fishing overfished stocks; and vessels fishing on unregulated high seas. It also encourages restraint in providing subsidies to ships operating under flags of convenience and strengthens obligations to notify the WTO of all fisheries subsidies. The Agreement also creates a technical assistance program to help developing countries implement the commitments once adopted. Japan was the first country to contribute funding to the program. The commitments will be subject to the WTO Dispute Settlement Understanding.

The Agreement is only the second multilateral agreement adopted by consensus at the WTO since its establishment. It was part of the Geneva Package of outcomes from MC12, which also included commitments on food insecurity, pandemic preparedness, the TRIPS vaccine waiver, and the e-commerce moratorium extension.³⁵

The Agreement will enter force when two-thirds of Members deposit Instruments of Acceptance at the WTO. The United States is the fourth country to do so, following the Seychelles, Singapore, and Switzerland.³⁶ Many others are reportedly working through their domestic legal processes. The WTO Secretariat is hosting workshops in developing countries to support that work.³⁷ Nonetheless, entry into force could take some time; in the case of the WTO Trade Facilitation Agreement it took over two years.

Continuing negotiations

The Agreement, however, is incomplete. It does not cover all the topics that were included in the 2017 ministerial mandate that had reauthorized the negotiations. Issues that negotiators have not yet settled include commitments on subsidies contributing to overcapacity and special and differential treatment for developing countries. The Biden

³⁴ World Trade Organization, Agreement on Fisheries Subsidies, WT/MIN(22)/33, June 22, 2022, available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/33.pdf&Open=True>.

³⁵ A full description of the MC12 outcomes is here: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/24.pdf&Open=True>.

³⁶ The list of countries that have submitted Acceptances is here: https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_acceptances_e.htm.

³⁷ More information on how countries can accept the Agreement is here: https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/agreement_fisheries_subsidies_e.htm.

administration has also expressed a desire to include commitments on combatting forced labor, which USTR Tai restated when signing the Agreement on April 11.³⁸

To accomplish these unresolved goals, the Agreement includes a commitment to continue negotiations for a more ambitious agreement. Those negotiations have already begun, with meetings in March 2023 and another round scheduled for late April. Progress is not expected to be easy since the issues under negotiation now are more complex and politically difficult, particularly where they relate to new binding obligations for developing countries. The current Agreement will lapse after four years if a more comprehensive arrangement is not found (though members can choose to extend the deadline). Some leaders are seeking a conclusion to those negotiations by MC13 in February 2024. In their April 4 statement, the G7 Trade Ministers' Meeting also called for "the prompt entry into force of the Agreement on Fisheries Subsidies and the conclusion of negotiation on comprehensive disciplines on fisheries subsidies" by 2024.³⁹

Japan-China WTO Dispute on Stainless Steel Prepares for Appeal through MPIA

On April 11, 2023, Japan and China notified WTO Members through the Dispute Settlement Body (DSB) that they will follow the process of the Multiparty Interim Arbitration Agreement (MPIA) to appeal a dispute panel ruling requested by Japan that is expected to be finalized shortly in a case involving antidumping duties on stainless steel exports to China (WT/DS601/6). The MPIA process is based on Article 25.2 of the WTO Dispute Settlement Understanding, which allows parties to resort to international arbitration to hear appeals in place of the Appellate Body. The Appellate Body has been unable to hear appeals since 2020.

The purpose of establishing the MPIA was to offer an alternative to the practice of some WTO Members of appealing a dispute panel ruling to the inactive Appellate Body with the result that the case avoided any consideration by the DSB and could not be brought to completion. Twenty-five appeals that have been notified to the DSB are currently unable to proceed in the absence of the Appellate Body.

Japan was not among the original signatories to the MPIA, which pre-commits participating Members to resort to arbitration and to use specific procedures and 3 arbitrators drawn from an established pool of 10 if they wish to appeal a dispute panel report. Japan announced its intention to join the MPIA on March 10, 2023, stating that "[b]ased on the belief that the MPIA will enhance the predictability of the WTO dispute settlement system and contribute to the maintenance and strengthening of the rule-based multilateral trading system, Japan has decided to participate in the MPIA." Japan has become the 26th signatory to the agreement (counting the EU as one). By way of background to its decision, Japan commented favorably on the MPIA appeal over the EU's claim against Colombian antidumping duties, which is the only MPIA case that has been brought to completion so far (DS591). In its announcement, Japan noted also 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 duties on stainless steel (DS601), and since China is already a participant in the MPIA, Japan will be able to use the MPIA as a way of preventing China from appealing the panel ruling "into the void." The other case referred to by 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.

Seven other WTO dispute settlement cases involving MPIA members are currently under adjudication by dispute panels. Six of those involve China. However, in one of those cases, China and Australia have announced recently the

³⁸ USTR's forced labor proposal is here: <https://ustr.gov/sites/default/files/IssueAreas/Trade%20Organizations/WTO/US.Proposal.Forced.Labor.26May2021.final%5B2%5D.pdf>.

³⁹ The G7 Trade Ministers' Statement is here: <https://www.mofa.go.jp/files/100487108.pdf>.

withdrawal of the dispute as a result of their amicable settlement over the complaint by Australia against China's antidumping duties and countervailing measures on imports of barley (DS598).