SEPTEMBER-IN-REVIEW

International Trade

1. WTO Panel Rules that U.S. Section 301 Tariffs on Imports from China are WTO-Inconsistent (18 September 2020)
2. The U.S. Blinks First – No Tariffs on Imports of Canadian Aluminum (15 September 2020)

New Anti-dumping Investigation

3. New Canadian Anti-dumping Investigation on Concrete Reinforcing Bar from Algeria, Egypt, Indonesia, Italy, Malaysia, Singapore, and Vietnam (22 September 2020)

International Trade

1. WTO PANEL RULES THAT SECTION 301 TARIFFS ON IMPORTS FROM CHINA ARE WTO-INCONSISTENT

On 15 September 2020, the report of the World Trade Organization (WTO) Panel in United States – Tariff Measures on Certain Goods from China (DS543) was released. This dispute concerned China's challenge of US "Section 301" tariff measures that impose additional ad valorem customs duties on certain products imported into the United States from China. This was the first WTO ruling related to the current US administration's practice of applying additional import tariffs to further US trade policy objectives.

The tariff measures at issue were implemented in June and September 2018, further to an investigation conducted by the United States Trade Representative (USTR) under Section 301 of the Trade Act of 1974 (see USTR, China–Section 301) which concluded that China's acts, policies, and practices related to technology transfer, intellectual property, and innovation amounted to "state-sanctioned theft and misappropriation of U.S. technology, intellectual property, and commercial secrets".

China claimed that these measures, which impose additional customs duties at a rate of 25 percent on certain products, are inconsistent with the United States' obligations under Articles I:1 and II:1(a) and (b) of the General Agreement on Tariffs and Trade 1994 (GATT 1994). In response, the United States asserted that any inconsistency was justified as necessary to protect US public morals pursuant to Article XX(a) of the GATT 1994. The United States argued that the Section 301 tariff measures were adopted to "'obtain the elimination' of conduct that violates U.S. standards of rights and wrong, namely China's unfair trade acts, policies, and practices".

The Panel ruled that the Section 301 tariffs are inconsistent with the United States' GATT 1994 obligations and that this inconsistency was not justified under the general exception in Article XX(a) for "measures necessary to protect public morals".

The Panel acknowledged that the public morals objective invoked by the United States in its Article XX(a) defence "reflects societal interests and values that appear to be highly important in the United States". However, the Panel considered that the United States had not provided an explanation demonstrating how the section 301 tariff measures contribute to this objective. More specifically, the Panel found that the United States had failed to demonstrate that a genuine relationship of ends and means exists between the section 301 tariff measures and the public morals objective pursued by the United States. On this basis, the Panel concluded that the measures could not be provisionally justified as necessary to protect US public morals under subparagraph (a) of Article XX. Having arrived at this conclusion, the Panel determined that it would not be necessary to further consider whether the measures satisfy the requirements of the chapeau of Article XX (i.e., whether they are

being applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade).

In rare "concluding comments" after the rulings and recommendations, the Panel explained that, although it was "very much aware of the wider context in which the WTO system currently operates, which is one reflecting a range of unprecedented global trade tensions", the Panel's role was not to draw any legal conclusions or make recommendations on any matters other than those it had been specifically tasked to deal with in this dispute. The Panel emphasized that it had "sought to perform diligently its adjudicatory role" in relation to the matters falling within its terms of reference and expressed encouragement to the United States and China to "pursue further efforts to achieve a mutually satisfactory solution" (i.e., a negotiated settlement).

Tereposky & DeRose LLP regularly provides advice and acts as counsel in international trade disputes, including WTO dispute settlement proceedings.

Dan Hohnstein
613.237.9005
dhohnstein@tradeisds.com

Greg Tereposky
613.237.1210
gtereposky@tradeisds.com

2. THE U.S. BLINKS FIRST – NO TARIFFS ON IMPORTS OF CANADIAN ALUMINUM

Facing imminent Canadian countermeasures against the United States' Section 232 tariffs on Canadian articles of aluminum (see What goes around comes around… Canada Issues List of Proposed Countermeasures against U.S. Aluminum Duties), on September 15, 2020, the United States withdrew its duties, retroactive to September 1, 2020.

Harking back to the days of Voluntary Restraint Agreements (VRAs), the United States issued a list of "expected" monthly import volumes for Canadian imports over the September-December 2020 period:

September:	83,000 tonnes
October:	70,000 tonnes
November:	83,000 tonnes
December:	70,000 tonnes

If shipments in any month exceed the expected volume, the United States expects that shipments in the next month will decline by a corresponding amount. If imports exceed 105 percent of the expected volume in any month, the United States may re-impose the 10 percent tariff going forward.

At the end of the year, Canada and the United States will review the state of aluminum trade and expected market conditions in 2021.

Tereposky & DeRose regularly provides advice on Canadian trade matters. Should you have any questions regarding this matter, we are at your disposal.

Greg Tereposky
613.237.1210
gtereposky@tradeisds.com

Dan Hohnstein
613.237.9005
dhohnstein@tradeisds.com

New Anti-dumping Investigation

3. NEW CANADIAN ANTI-DUMPING INVESTIGATION ON CONCRETE REINFORCING BAR FROM ALGERIA, EGYPT, INDONESIA, ITALY, SINGAPORE, AND VIETNAM

On 22 September 2020, following a Complaint filed by AltaSteel Inc., ArcelorMittal Long Products Canada, G.P., and Gerdau Ameristeel Corporation, the Canada Border Services Agency (CBSA) initiated an anti-dumping investigation under the Special Import Measures Act with respect to the alleged injurious dumping of certain concrete reinforcing bar from Algeria, Egypt, Indonesia, Italy, Malaysia, Singapore, and Vietnam.

This is the third anti-dumping investigation of imported concrete reinforcing bar since 2014.

According to the CBSA's Investigation Schedule, importers are required to file their response to the CBSA's Request for Information by October 15th. Exporters must file their response by October 29th.

The CBSA is expected to issue its preliminary determination on or by December 21st. On that date, provisional anti-dumping duties could be imposed on imports of subject concrete reinforcing bar from the above-referenced countries.

The Notice of Initiation of Investigation provides the following information regarding the concrete reinforcing bar subject to this investigation:

> Hot rolled deformed steel concrete reinforcing bar in straight lengths or coils, commonly identified as rebar, in various diameters up to and including 56.4

millimeters, in various finishes, excluding plain round bar and fabricated rebar products, originating in or exported the People's Democratic Republic of Algeria, the Arab Republic of Egypt, the Republic of Indonesia, the Italian Republic, the Federation of Malaysia, the Republic of Singapore and the Socialist Republic of Vietnam.

Also excluded is 10 mm diameter (10M) rebar produced to meet the requirements of CSA G30 18.09 (or equivalent standards) and coated to meet the requirements of epoxy standard ASTM A775/A 775M 04a (or equivalent standards) in lengths from 1 foot (30.48 cm) up to and including 8 feet (243.84 cm).

For further clarity, the subject goods include all hot rolled deformed bar, rolled from billet steel, rail steel, axle steel, low alloy-steel and other alloy steel that does not comply with the definition of stainless steel.

Uncoated rebar, sometimes referred to as black rebar, is generally used for projects in non corrosive environments where anti-corrosion coatings are not required. On the other hand, anti corrosion coated rebar is used in concrete projects that are subjected to corrosive environments, such as road salt. Examples of anti corrosion coated rebar are epoxy or hot dip galvanized rebar. The subject goods include uncoated rebar and rebar that has a coating or finish applied.

Fabricated rebar products are generally engineered using Computer Automated Design programs, and are made to the customer's unique project requirements. The fabricated rebar products are normally finished with either a protective or corrosion resistant coating. Rebar that is simply cut to length is not considered to be a fabricated rebar product excluded from the definition of subject goods.

Tereposky & DeRose has extensive experience in anti-dumping investigations. Should you have any questions regarding this investigation, we are at your disposal.

Dan Hohnstein
613.237.9005
dhohnstein@tradeisds.com

Stephanie Desjardins
613.237.8680
sdesjardins@tradeisds.com