

TRADE LAW UPDATE



December 2018

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PRESIDENTIAL ACTIONS

[U.S. Beef Gains New Market Access in Morocco](#)

On December 6, 2018, U.S. Trade Representative Robert Lighthizer and U.S. Secretary of Agriculture Sonny Perdue announced that the government of Morocco had agreed to allow imports of U.S. beef and beef products into Morocco. This is the first year that U.S. beef and poultry exporters have access to Morocco's market under the terms of the U.S.-Morocco Free Trade Agreement (FTA).

USTR Chief Agricultural Negotiator, Ambassador Gregg Doud and U.S. Agriculture's Ken Isley led U.S. and Moroccan officials met to negotiate a health certificate and the terms of U.S. high quality and standard quality beef into Morocco. Representatives also discussed improvements to the administration of Morocco's wheat tariff-rate quota and other agriculture and SPS issues, and have agreed to continue this work under the agriculture and SPS subcommittees under the FTA.

[Public Hearing on Negotiating Objectives for U.S. – Japan Trade Agreement](#)

On December 10, 2018, the Office of the U.S. trade Representative (USTR) held a public hearing regarding a proposed U.S. – Japan Trade Agreement, including U.S. interests and priorities in order to develop U.S. negotiating positions. The hearings were held at the U.S. International Trade Commission. The hearing is part of the public notice and comment process following USTR's notification to Congress on October 16, 2018 of the Trump Administration's intention to enter into negotiations with Japan for a U.S. - Japan Trade Agreement. The schedule of witnesses at the hearing can be found [here](#).

[USTR Announces Delay in Increase of Section 301 List 3 Duty Rate](#)

On December 14, 2018, the Office of the United States Trade Representative [announced](#) that they would be postponing the date on which the rate of additional duties would increase to 25% for the products covered under the third phase of Section 301 tariffs covering [\\$200 billion](#) worth of goods currently subject to 10% tariffs. Duties on this list of products were previously set to increase to 25% on January 1, 2019, but as a result of ongoing trade negotiations with China, this date has now been postponed to March 2, 2019. (See our previous post [here](#)). Should the countries fail to come to an agreement by the March 1, 2019 deadline, the higher 25% tariff will go into effect.

[Joint Statement on Signing the Bilateral Agreement on Prudential Measures Regarding Insurance and Reinsurance](#)

On December 19, 2018, the United States and the United Kingdom (UK) released a joint statement that the parties had signed the Bilateral Agreement between the United States of America and the United Kingdom on Prudential Measures Regarding Insurance and Reinsurance (U.S.-UK Covered Agreement). The goal of the U.S.-UK Covered Agreement is to provide “regulatory certainty and market continuity as the United Kingdom prepares to leave the European (EU).” The U.S.-UK Covered Agreement, like the covered agreement with the EU, hopes to benefit the U.S. and UK economies and consumers by “reducing burdens on insurers and reinsurers while maintaining prudential standards.” To view the complete text of the U.S.-UK Covered Agreement click [here](#).

[USTR Grants First Round of Product Exclusions](#)

On December 21, 2018, the USTR announced an update to the Harmonized Tariff Schedule in order to grant approximately 1,000 product exclusion requests from tariffs that went into effect on July 6, 2018 on approximately \$34 billion worth of imports from China. Click [here](#) to see the Federal Register Notice and list of products that are excluded.

U.S. DEPARTMENT OF COMMERCE DECISIONS

Investigations

- Certain Steel Racks from the People’s Republic of China: On December 3, 2018, the Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final [determination](#) with Final Antidumping Duty Determination was released.
- Uncovered Innerspring Units from the People’s Republic of China: On December 21, 2018, the Final Affirmative [determination](#) of Circumvention of the Antidumping Duty Order was released.

Administrative Reviews

- Welded Carbon Steel Standard Pipe and Tube Products from Turkey: On December 7, 2018, the Final [results](#) of the Antidumping Duty Administrative Review (2017-2017) were released.
- High Pressure Steel Cylinders from the People’s Republic of China: On December 10, 2018, the Final [results](#) of the Countervailing Duty Administrative Review (2016) were released.
- Certain Steel Nails from the People’s Republic of China: On December 10, 2018, the [notice](#) of Court Decision Not in Harmony with the Final Results of the First Antidumping Duty Administrative Review and Notice of the Amended Final Results of the First Antidumping Duty Administrative Review were released.
- Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: On December 11, 2018, the Final [results](#) of the Antidumping Duty Administrative Review (2016-2017) were released.
- Certain Pasta from Italy: On December 11, 2018, the Final [results](#) of the Antidumping Duty Administrative Review (2016-2017) were released.
- Monosodium Glutamate from the People’s Republic of China: On December 13, 2018, the Final [results](#) of the Antidumping Duty Administrative Review (2016-2017) were released.
- Certain Oil Country Tubular Goods from Turkey: On December 13, 2018, the Final [results](#) of the Antidumping Duty Administrative Review (2016-2017) were released.
- Certain Corrosion-Resistant Steel Products from India: On December 14, 2018, the Final [results](#) of the Antidumping Duty Administrative Review (2016-2017) were released.

- Diffusion-Annealed, Nickel-Plated, Flat-Rolled Steel Products from Japan: On December 14, 2018, the Final [results](#) of the Antidumping Duty Administrative Review (2016-2017) were released.
- Pasta from Italy: On December 14, 2018, the Final [results](#) of the Countervailing Duty Administrative Review (2016) were released.
- Certain Polyester Staple Fiber from the People’s Republic of China: On December 14, 2018, the [notice](#) of Court Decision Not in Harmony with the Final Results of the Antidumping Duty Administrative Review and Notice of the Amended Final Results of Antidumping Duty Administrative Review were released.
- Diamond Sawblades and Parts Thereof from the People’s Republic of China: On December 14, 2018, the Final [results](#) of the Antidumping Duty Administrative Review (2016-2017) were released.
- Certain Corrosion-Resistant Steel Products from Taiwan: On December 17, 2018, the Final [results](#) of the Antidumping Duty Administrative Review (2016-2017) were released.
- Xanthan Gum from the People’s Republic of China: On December 19, the Final [results](#) of the Antidumping Duty Administrative Review, Final Determination of No Shipments Review, and Partial Discontinuation of Antidumping Duty Administrative Review (2016-2017) were released.
- Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: On December 26, 2018, the Final [results](#) of the Countervailing Duty Administrative Review (2016) were released.

Changed Circumstances Reviews

- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: On December 20, 2018, the Department of Commerce released its Final [results](#) of Changed Circumstances Reviews, and Revocation of the Antidumping and Countervailing Duty Orders.
- Biodiesel from Argentina: On November 13, 2018, the Department of Commerce [initiated](#) its Changed Circumstances Reviews of the Antidumping and Countervailing Duty Orders.

Sunset Reviews

- Antidumping or Countervailing Duty Order Finding, or Suspending Investigation; Advance [notification](#) of Sunset Review, December 3, 2018. The products subject to upcoming sunset reviews are:
 - Certain Hot-Rolled Carbon Steel Flat Products from China, India, Indonesia, Taiwan, Thailand, and Ukraine
 - Off the Road Tires from China
 - Non-Malleable Cast Iron Pipe Fittings from China
 - Raw Flexible Magnets from China and Taiwan
 - Sodium Nitrite from China and Germany
- Certain Pasta from [Italy](#) and [Turkey](#): On December 6, 2018, the Final Results of the Expedited Fourth Sunset Reviews of the Countervailing Duty Order were released.
- Certain Pasta from Italy and Turkey: On December 6, 2018, the Final [results](#) of the Expedited Fourth Sunset Reviews of the Antidumping Duty Orders were released.
- Silicomanganese from India, Kazakhstan, and Venezuela: On December 17, 2018, the Final [results](#) of the Expedited Third Sunset Reviews of the Antidumping Duty Orders were released.
- Steel Concrete Reinforcing Bars from Belarus, the People’s Republic of China, Indonesia, Latvia, Moldova, Poland, and Ukraine: On December 17, 2018, the Department of Commerce announced its [continuation](#) of Antidumping Duty Orders.

- Clad Steel Plate from Japan: On December 18, 2018, the Department of Commerce announced its [continuation](#) of the Antidumping Duty Order.
- Fresh Tomatoes from Mexico: On December 27, 2018, the Final [results](#) of the Full Sunset Review of the Suspended Antidumping Duty Investigation were released.

U.S. INTERNATIONAL TRADE COMMISSION

Section 701/731 Proceedings

Investigations

- Glycine from China, India, Japan, and Thailand: On December 3, 2018, the [scheduling](#) of the Final Phase of Countervailing Duty and Antidumping Duty Investigations was released.
- Polytetrafluoroethylene (PTFE) Resin from China and India: On December 4, 2018, the ITC released its Final negative [determination](#) of polytetrafluoroethylene (PTFE) resin from China and India. Accordingly, no antidumping duty orders will be instituted on these products.
- Silicomanganese from China and Ukraine: On December 6, 2018, the ITC released its final affirmative [determinations](#) for the continuation of the antidumping duty orders for another 5 years.
- Quartz Surface Products from China: On December 17, 2018m, the ITC released its [scheduling](#) of the Final Phase of Countervailing Duty and Antidumping Duty Investigations.



Sunset Review Decisions

- Steel Nails from China: On December 3, 2018, the ITC gave [notice](#) that it had instituted a Five-Year Review.
- Certain Welded Large Diameter Line Pipe from Japan: On December 20, 2018, the ITC issued released a [notice](#) of Commission Determination to Conduct a Full Five-Year Sunset Review.

Section 337 Proceedings

- Certain Robotic Vacuum Cleaning Devices and Components Thereof such as Spare Parts: On December 7, 2018, the ITC released a [notice](#) of their final determination, finding a violation of Section 337 and issued a limited exclusion order that prohibits the entry of certain vacuum cleaning devices and spare parts that infringes the patent in this investigation. The ITC also issued cease and desist orders that prohibited the sale and distribution of the products within the United States pursuant to the patent.
- Certain Microfluidic Devices: On December 11, 2018, in its final initial [determination](#), the ITC found a violation of Tariff Act of 1930 concerning certain asserted patents, and extended the investigation completion date to February 11, 2019.
- Certain Electronic Nicotine Delivery Systems and Components Thereof: On December 13, 2018, the ITC instituted their [investigation](#).
- Certain Multi-Stage Fuel Vapor Canister Systems and Activated Carbon Components Thereof: On December 14, 2018 the ITC instituted their [investigation](#).

- Certain Mobile Electronic Devices and Radio Frequency and Processing Components Thereof: On December 18, 2018, the ITC issued its [determination](#) to review the final Initial determination finding a violation of Section 337 and extend the investigation completion date to February 19, 2019.
- Certain Self-Anchoring Beverage Containers: On December 21, 2018, the ITC released its Final [determination](#) of Violation of Section 337 and issued a general exclusion order barring entry of merchandise that infringes the patent covered by this investigation.
- Certain Dental Ceramics, Products thereof, and Methods of Making the Same: On December 26, 2018, the ITC found no violation of section 337 and [terminated](#) their investigation.
- Certain Industrial Automation Systems and Components thereof Including Control Systems, Controllers, Visualization Hardware, Motion and Motor Control Systems, Networking Equipment, Safety Devices, and Power Supplies: On December 28, 2018, the ITC [determined](#) not to review a Final Initial Determination Finding a Section 337 Violation by the Defaulted Respondents. The ITC also requested that all written submissions be filed no later than January 11, 2019.
- Certain Programmable Logic Controller (PLCs), Components thereof, and Products Containing the Same: On December 31, 2018, the ITC issued a notice that it will not review the initial determination that grants a motion by Radwell International, Inc. and will therefore [terminate](#) the investigation.

U.S. CUSTOMS & BORDER PROTECTION

- Stainless Steel Flanges: CBP issued [a notice](#) on December 6, 2018, that it had commenced a formal investigation looking into two companies (Prime Stainless Products, LLC and to H&H Machine Co.), for evading antidumping and countervailing duties.
- Aluminum Extrusions: CBP issued [a decision](#) on December 11, 2018, that two companies (Sun Bright International Corporation and Fair Importing Corporation) evaded antidumping and countervailing duties on aluminum extrusions from China. The decision stems from several ongoing EAPA investigations currently being handled by CBP.

COURT OF INTERNATIONAL TRADE

Summary of Decisions

[18-169](#)

On December 6, 2018, the Court granted the Plaintiff's motion for judgment on the agency record and Commerce's Final Results were remanded for reconsideration of POSCO's M-Tech's research and development grants and Commerce's application of the highest AFA rate because Commerce had failed to evaluate why the highest available rate should be applied to POSCO. . POSCO challenged Commerce's final affirmative determination in the countervailing duty investigation of certain carbon and alloy steel cut-to-length plate from Korea.

[18-172](#)

On December 14, 2018, the Plaintiff's motion for summary judgment was denied and the Defendant's cross-motion

for summary judgment was granted. Hartford Fire Insurance Company (Hartford) challenged the denial of its protests by the U.S. Customs and Border Protection for payment of antidumping duties on certain surety bonds. Because the court disagrees that the passage of the Pension Protection Act of 2006 (PPA) rendered the subject bonds unenforceable, the court denied the Plaintiff's motion and granted Defendant's motion for summary judgment.

[18-176](#)

On December 21, 2018, the Court sustained Commerce's remand redetermination with respect to the review of the antidumping duty order for off-the-road tires from the People's Republic of China. The remand covered three issues: 1) the recalculation of export price ("EP") and

constructed export price (“CEP”) for the mandatory respondents to eliminate its previous downward adjustments for Chinese irrecoverable value-added tax (“VAT”); 2) the surrogate value for inputs of reclaimed rubber production inputs; and 3) the surrogate value for foreign inland freight.

18-177

On December 21, 2018, on cross-motions for judgment challenging the denial of protests over the applicable rate of antidumping duties for six entries of stainless steel plate in coils assessed by U.S. Customs and Border Protection. The Court found that Customs’ affirmative liquidation of the entries at issue were ultra vires and had no legal effect.

18-179

On December 26, 2018, the Court sustained the U.S. Department of Commerce’s selection of Romania as the

primary surrogate country and Romanian pricing data as the surrogate value for raw garlic. The Court remanded to Commerce to explain further its addition of delivery costs to the surrogate value for raw garlic and calculation of Plaintiff’s movement expenses.

18-182

On December 27, 2018, the Court remanded the U.S. Department of Commerce’s determination denying a separate rate for Zhaofeng in the 2015-2016 administrative review for tapered roller bearings and parts thereof from the People’s Republic of China. Due to Commerce’s failure to adequately explain how the de facto and de jure criteria are affected by Zhaofeng’s misreporting in its March 2016 quantity and value reconciliation report, the Court concluded that Commerce’s decision to deny Zhaofeng separate rate status was not supported by substantial evidence on the record.

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

2017-2445

On December 7, 2018, the CAFC concluded that the Commission had made an error in reassessing the sufficiency of Laerdal’s complaint against defaulting respondents post-institution and the appropriate remedy to impose under the circumstances. Laerdal’s complaint claimed that the default respondents had infringed on their patents, trademark, trade dress, and copyright rights by selling certain medical products in the U.S. Because the Commission had approved Laerdal’s trade dress claims and instituted an investigation without any additional questioning, the Court ruled that, the Commission cannot, post-institution and without opposition or appearance from respondents, assert insufficient pleading as a basis for denying relief. The Court also stated that once the respondents were, “found in default, the Commission was required to issue relief upon Laerdal’s request.” For those given reasons, the Court reversed the Commission’s determination that Laerdal failed to plead its trade dress claim, vacate the Commission’s decision that no relief was warranted for the claims, and remanded the Commission to determine the appropriate remedy.

2018-1373

On December 12, 2018, the CAFC sustained a duty set by the U.S. Department of Commerce on solar cells from China and rejected arguments from solar panel manufacturer SolarWorld Americas Inc. that the department had “low-balled” the Chinese exporters’ production costs when calculating the duty rates. The three-judge panel stated that Commerce had chosen the appropriate surrogate values for certain factors of production, including aluminum and other materials necessary to make solar panels. “We conclude that substantial evidence supports Commerce’s finding that the world market price was the best available information on the record.” For those given reasons, the Court sustained the duties set by Commerce.

EXPORT CONTROLS AND SANCTIONS

OFAC Extends Expiration Date of Certain Ukraine-Related General Licenses by Two Weeks

On December 7, 2018, the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) further extended the expiration date of certain Ukraine-related general licenses related to EN+ Group plc (EN+), United Company RUSAL PLC (RUSAL), and GAZ Group (GAZ) as the entities continue discussions with OFAC to potentially effect “significant changes in

control of these sanctioned entities.” The new General Licenses 13H (Authorizing Certain Transactions Necessary to Divest or Transfer Debt, Equity, or Other Holdings in Certain Blocked Persons), 14D (Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts with United Company RUSAL PLC), 15C (Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts with GAZ Group), and 16D (Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts with EN+ Group PLC or JSC EuroSibEnergō) supersede their previous versions by extending the expiration date from January 7, 2019, to January 21, 2019.

OFAC previously extended the expiration date for General Licenses 13G, 14C, 15B, and 16C to January 7, 2019. See our previous guidance [here](#).

OFAC Announces Multiple Changes to Russia Related Sanctions

On December 19, 2018, the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) and the U.S. State Department took multiple sanctions actions related to Russia:

Proposed Delisting of En+ Group, UC RUSAL and ESE

OFAC [notified](#) Congress of its intent to remove En+ Group plc (“En+ Group”), UC RUSAL plc (“UC RUSAL”) and JSC EuroSibEnergō (“ESE”) from its Specially Designated Nationals and Blocked Persons List (the “SDN List”) within thirty (30) days from December 19, 2018. OFAC first added these companies to the SDN List in April 2018 when it imposed sanctions on Oleg Deripaska due to his status as a senior Russian government official. OFAC added these three companies to the SDN List because Deripaska was the majority owner of En+ Group (which, in turn, was the majority owner of both UC RUSAL and ESE). Under OFAC’s 50% ownership rule, these sanctions also extended to any subsidiaries in which En+ Group, UC RUSAL or ESE held an ownership interest of 50% or greater.