

# TRADE LAW UPDATE



January 2019

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## PRESIDENTIAL ACTIONS

### [USTR Requests First-Ever Environment Consultations Under the U.S.-Peru Trade Promotion Agreement \(PTPA\)](#)

On January 4, 2019, the Office of the U.S. Trade Representative (USTR) requested consultations with Peru under the United States – Peru Trade Promotion Agreement (PTPA). The United States and Peru discussed and attempted to resolve any concerns regarding a recent Peruvian action to move the Agency for the Supervision of Forest Resources and Wildlife (OSINFOR) from its position as a separate and independent agency to a subordinate position within Peru’s Ministry of Environment (MINAM). This was the first request for consultations made under the PTPA.

### [Joint Statement of the Trilateral Meeting of the Trade Ministers of the European Union, Japan and the United States](#)

On January 9, 2019, the EU, Japan, and the U.S. continued to discuss their shared objective to address non-market oriented policies and practices of third countries that lead to severe overcapacity, create unfair competitive conditions for their workers and businesses, hinder the development and use of innovative technologies, and undermine the proper functioning of international trade, including where existing rules are not effective.

The Ministers instructed their staff to finalize trilateral text-based work for industrial subsidies in this area by spring of 2019 in order to engage with other key WTO Members. The parties also confirmed their agreement to cooperate on enforcement, development of new rules, investment review for national security purposes, and on export controls focusing on the area of forced technology transfers by spring of 2019.

### [Statement on the United States Trade Delegation’s Meetings in Beijing](#)

On January 7-9, 2019, an official delegation from the United States led by Deputy U.S. Trade Representative Jeffrey Gerrish held meetings in Beijing with Chinese officials to discuss ways to achieve fairness, reciprocity, and balance in trade relations between the two countries. The officials discussed the need for any agreement to provide for complete implementation subject to ongoing verification and effective enforcement. The meetings were held as part of the agreement reached by President Donald J. Trump and President Xi Jinping in Buenos Aires to engage in 90 days of negotiations with a view to achieving structural changes in China with respect to forced technology transfer, intellectual property protection, non-tariff barriers, cyber intrusions and cyber theft of trade secrets for commercial purposes, services, and agriculture. The talks

focused on China's pledge to purchase a substantial amount of agricultural, energy, manufactured goods, and other products and services from the United States. The second set of meetings between took place on January 30-31, 2019, in Washington DC, in advance of the Chinese New Year with hopes of a rapid conclusion to the fast approaching March 1, 2019 deadline for the jump in tariffs to 25%.

### **Furloughed Government Agencies Reopen...Temporarily**

President Trump announced on Friday, January 25, that he and Congress reached a deal to temporarily fund the agencies affected by the partial government shutdown until February 15, 2019. Congress voted to pass the funding bill late Friday night. The government shutdown lasted for 35 days which was the longest shutdown to ever occur. This lapse in appropriations has seriously affected trade policy and a number of federal agencies were closed or were operating with minimal staff (see our previous post [here](#)).

### **USTR Statement on the EU's Consultation Request at the WTO**

On January 29, 2019, the United States received a request for consultations at the World Trade Organization from the European Union challenging the imposition of U.S. antidumping and countervailing duties on Spanish olives. This stems from an investigation where the U.S. Department of Commerce found that olives from Spain were being unfairly dumped in the United States at rates ranging from 16.88 to 25.50 percent. The U.S. Department of Commerce also found that olives from Spain were unfairly subsidized at rates ranging from 7.52 to 27.02 percent.

The U.S. International Trade Commission (USITC) found that the U.S. olive industry was materially injured by unfairly traded Spanish imports. The USITC's final determination includes evidence that Spanish producers engaged in significant price underselling during the period examined, particularly when import values were increasing, resulting in loss of market share to the most important sector for the U.S. industry. The USITC's record also indicates that the actions of the Spanish producers resulted in significant job losses and declines in profitability for the U.S. industry.

## **U.S. DEPARTMENT OF COMMERCE DECISIONS**

**There were no published decisions on antidumping or countervailing duty investigations, administrative reviews, changed circumstances reviews, or sunset reviews for the month of January due to the partial government shutdown.**

## **U.S. INTERNATIONAL TRADE COMMISSION**

**There were no published announcements on investigations, sunset reviews, or section 337 proceedings for the month of January due to the partial government shutdown.**

## **U.S. CUSTOMS & BORDER PROTECTION**

**There were no published Customs and Border Protection Investigations or Determinations in the month of January due to the partial government shutdown.**

# COURT OF INTERNATIONAL TRADE

## Summary of Decisions

### 19-2

The Court sustained and remanded Commerce's final determination in the less than fair value investigation of imports of welded line pipe from the Republic of Korea. Specifically, the Court sustained Commerce's 1) differential pricing analysis; 2) rejection of portions of SeAH's case brief that contained untimely new factual information; 3) calculation of credit expenses on SeAH's back-to-back sales; and 4) treatment of grades B and X42 pipe as separate grades for purposes of product matching. The Court remanded Commerce's decision to include certain local sales in HYSCO's home market sales database for further explanation, stating that, "Commerce may want to reopen the record to solicit relevant letters of credit or information related to such letters or further explain its determination." The Court concluded that the issues presented were in accordance with law and backed by substantial evidence.

### 19-3

On January 8, 2019, the Court granted Shandong Rongxin's motion for judgment on the agency record and remanded Commerce's Final Results. Rongxin challenged that their product, certain cased pencils from China, should be classified under a different rate from the country-wide one because they were independent from the Chinese government. Specifically, Rongxin contended that Commerce's determination - that the Chinese government exerted, or has the potential to exercise, de facto control over Rongxin's day-to-day operations (including the selection of management), resulting in the application of the non-market economy country-wide rate and not the separate, company-specific rate sought by Rongxin - was unsupported by substantial evidence and contrary to law. The Court agreed with Rongxin's argument and remanded Commerce's results for further explanation.

### 19-4

On January 11, 2019, the Court granted the United States' motion for judgment by default for a penalty in the amount of \$51,102 plus post-judgment interest as provided by law plus costs. In the underlying proceeding, Selecta Corporation had failed to respond in any way since the issuance of the penalty claim and throughout the duration of the litigation before the Court. Accordingly, the Court found that it had no basis to conclude that the penalty proposed by the United States would be inequitable. Based on the government's loss of the use of the funds, the Court concluded that the imposition of the

penalty sought by the U.S. was the appropriate disposition of this action and ruled in favor of the Government.

### 19-7

On January 16, 2019, the Court partially sustained and remanded for further explanation Commerce's final results of an administrative review of the antidumping duty order for pneumatic off-road-tires from China. The Court ruled that Commerce needed to re-examine the methodology it used in the review, finding that Commerce wrongly determined that a Chinese value-added tax on the materials used in tire production was an export tax because it could not be refunded.

### 19-8

On January 18, 2019, the Court granted the United States' motion for default judgment because the Defendant, Six Star Wholesale, failed to answer the complaint and did not respond to the Plaintiff's motion for default judgment. The Court awarded the Plaintiff \$529,684.06 (unpaid duties of \$143,228.02 and civil penalties of \$386,456.04). Six Star Wholesale had misclassified certain wire hangers and polyethylene retail carrier bags in order to avoid CBP's 55.31% tariff for steel wire garment hangers from China.

### 19-9

On January 18, 2019, the Court sustained and remanded Commerce's Final Results for two Turkish steel pipe producers, Toscelik and Erbosan, from the 2015 administrative review concerning the countervailing duty order on circular welded carbon steel pipes and tubes from Turkey. The Court sustained the duty placed on Toscelik because it deemed Commerce's findings "reasonable" that it could not determine the delivery terms of their hot-rolled steel sales and that certain hot-rolled steel purchases of different steel grades should nonetheless be included in the agency's benchmark calculations. The Court remanded Commerce's decision to deny the second producer's (Erbosan) no-shipment certification and to explain whether Erbosan's knowledge of U.S. entries of its subject merchandise is relevant in the CVD context.

### 19-10

On January 23, 2019, the Court remanded Commerce's Final Determination in the sales at less than fair value investigation of steel concrete reinforcing bar from Turkey. The Court ordered the agency to further explain its decision with respect to the duty drawback adjustment

and the application of partial adverse facts available to Icdas. The Final Determination was sustained in all other respects.

### [19-13](#)

On January 25, 2019, the Court remanded the Department of Commerce's final results in the first administrative review of the countervailing duty order on chlorinated isocyanurates from the People's Republic of China because Commerce's decision to use adverse facts available is neither supported by substantial evidence nor in accordance with law. If, on remand, Commerce continues to determine that Heze, the Defendant Intervenor, used and benefitted from the Export Buyer's Credit Program, the Department may continue to justify the use of the .87% rate to calculate the countervailing duty rate if it is supported by substantial evidence and otherwise is in accordance with law.

### [19-15](#)

On January 30, 2019, the Court remanded Commerce's scope ruling to exclude the plaintiff's product, pole line hardware, from the scope of the antidumping duty order for certain helical spring lock washers (HSLWs) from China. The plaintiff, Maclean Power L.L.C., moved for judgment on the agency record, seeking a reversal of Commerce's determination that its pole line hardware falls within the scope of the antidumping order. The Court found that

Commerce had incorrectly determined that the HSLWs in MacLean's pole line hardware fell within the scope of the Order because the HSLWs were neither imported alone nor as part of a set or kit, but rather as unique assembled products. Commerce provided no support for its failure to treat the pole line hardware as unique manufactured products. Commerce did not decide whether the pole line hardware, as assembled, falls under the class or kind of merchandise contemplated in the language of the Order. It did not analyze the components of the pole line hardware to determine whether they were parts of sets or separate dutiable items.

### [19-16](#)

The Court sustained Commerce's second remand results. The Plaintiff, Xinboda, challenged the Final Determination in Commerce's fifteenth administrative review of the antidumping duty order covering fresh garlic from China. Specifically, Xinboda challenged the surrogate financial statements used to derive surrogate financial ratios, the surrogate value for labor, the surrogate value for fresh whole raw garlic bulbs, and Commerce's application of its "zeroing" methodology in calculating their dumping margin.

## **COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

**There were no CAFC decisions released for the month of January.**

## EXPORT CONTROLS AND SANCTIONS

### OFAC Announces New Sanctions Related to Venezuela

On January 8, 2019, the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") [added](#) approximately 30 individuals and entities to its Specially Designated Nationals and Blocked Persons List (the "SDN List") due to their engagement in corrupt currency exchange transactions which enriched themselves by at least \$2.4 billion at the expense of Venezuela's citizens. These sanctioned persons include two former Venezuelan National Treasurers – Claudia Patricia Diaz Guillen ("Diaz") and Alejandro Jose Andrade Cedeno ("Andrade") – who authorized a Venezuelan businessman named Raul Antonio Gorriñ Belisario ("Gorriñ") to convert Venezuelan bolivars into U.S. dollars at highly favorable exchange rates at currency exchange houses under his control. Gorriñ then shared the resulting excess currency conversion profits with Diaz and Andrade by engaging in deceptive practices to purchase a wide variety of properties, aircraft and other luxury assets on behalf of Diaz, Andrade, their family members and their other business associates. The Treasury Department published a [diagram](#) which explains the scheme in further detail.

### Venezuela Files WTO Complaint Challenging US Sanctions

On January 11, 2019, Venezuela [initiated](#) a World Trade Organization ("WTO") complaint against U.S. sanctions, [claiming](#) that the United States has "imposed certain coercive trade-restrictive measures on the Bolivarian Republic of Venezuela in the context of attempts to isolate Venezuela economically." That same day, the U.S. imposed additional sanctions on Venezuelan nationals and entities allegedly engaging in corrupt currency exchange transactions (see our previous post [here](#)). The WTO will now begin consultations, during which the parties will have an opportunity to resolve their dispute without entering into litigation. If the parties cannot reach an agreement within 60 days, Venezuela may request adjudication by a dispute settlement panel. It remains to be seen whether the WTO dispute settlement system will be of any assistance to Venezuela in light of predicted paralysis in December 2019 when two of the three current WTO judicial appointments are set to expire. To date, the United States has refused to entertain any appellate body appointments due to concerns that the current members have strayed from their original mandate.

### OFAC Lifts Sanctions on EN+, Rusal and EuroSibEnerg

On Sunday, January 27, 2019, the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC") announced the lifting of sanctions imposed on En+ Group plc ("En+"), UC Rusal plc ("Rusal") and JSC EuroSibEnerg ("ESE"). As previously reported [here](#), this announcement follows the Administration's notification submitted to Congress on December 19, 2018. According to a press release issued by [OFAC](#), under the terms of the entities' removal from the Specially Designated Nationals ("SDN") list, "En+, Rusal and ESE have reduced [Russian oligarch] Oleg Deripaska's direct and indirect shareholding stake in these companies and severed his control. This action ensures that the majority of directors on the En+ and Rusal boards will be independent directors – including U.S. and European persons – who have no business, professional or family ties to Deripaska or any other SDN, and that independent U.S. persons vote a significant block of the shares of En+." OFAC also indicated that the companies have agreed to "unprecedented transparency" of their operations by U.S. Department of Treasury. Meanwhile, all individual sanctions against Mr. Deripaska remain in place.