

# TRADE LAW UPDATE



February 2019

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## PRESIDENTIAL ACTIONS

### [USTR Signs Wine and Distilled Spirits Continuity Agreements with the UK](#)

On January 31, 2019, Ambassador Gregg Doud and Ambassador Kim Darroch signed two agreements covering wine and distilled spirits to ensure there would be no disruption in trade of these products between the United States and the UK when the UK leaves the European Union (EU). To see the full text of the agreement, click [here](#).

### [USTR Signs Mutual Recognition Agreements with the United Kingdom](#)

On February 14, 2019, Deputy U.S. Trade Representative C.J. Mahoney and Ambassador Kim Darroch signed two mutual recognition agreements (MRAs) covering telecom equipment, electro-magnetic compatibility (EMC) for information and communications technology products, pharmaceutical good manufacturing practice (GMP) inspections, and marine equipment. These MRAs are similar to the previous ones between the U.S. and the EU in order to ensure these product sectors are not negatively impacted during the UK's leave from the EU.

### [United States Issues WTO Counter Notification Concerning India's Market Price Support for Various Pulses](#)

On February 15, 2019, the United States and Canada submitted a counter notification to the World Trade Organization (WTO) Committee on Agriculture (COA) on India's market price support for five pulses: chickpeas, pigeon peas, black matpe, mung beans, and lentils. According to both the U.S.'s and Canada's calculations, India had substantially underreported its market price support for these products. India's market price support for each of the pulses far exceeded its WTO allowable levels of trade-distorting domestic support. The next COA meeting is scheduled for February 26-27, 2019.

### [Congress Directs USTR to Implement List 3 Exclusion Process by March 17, 2019](#)

The President signed, the Consolidated Appropriations Act, 2019, on Friday, February 15, 2019 an appropriations bill to keep the government fully open. In the [Joint Explanatory Statement](#) (JES) from the House Appropriations Committee that accompanied the bill, Congress directs the Office of the U.S. Trade Representative (USTR) to create an exclusion process for the

third tranche of Section 301 tariffs on China “no later than 30 days after the enactment of this Act, following the same procedures as those in rounds 1 and 2...” This language does not tie a round 3 exclusion process to the level of the tariff (10% or 25%). Significantly, though, this language in the JES was not included as part of the bill signed by the President and is therefore not legally binding. Nevertheless, the JES expresses Congress’ intent and indicates that Congress expects USTR to begin an exclusion process covering goods on List 3 no later than March 17, 2019.

### **President Trump Delays Section 301 Tariff Increase on Tranche 3**

On February 24, 2019, President Trump announced via tweet that he would be delaying the increase of Section 301 tariffs on China. The U.S. planned to increase tariffs on \$200 billion worth of Chinese products from 10% to 25% on March 1, 2019 (See our previous post [here](#)). However, in his February 24th tweet, the President expressed his approval with the status of the trade talks, stating that the parties had made “substantial progress...on important structural issues including intellectual property protection, technology transfer, agriculture, services, currency, and many other issues.” President Trump did not specify a new deadline date for imposing additional tariffs or concluding the trade talks, but anticipates hosting a summit for both himself and President Xi at Mar-a-Lago to conclude the agreement.

### **United States Wins WTO Dispute Finding China Provides Excessive Government Support to its Grain Producers**

On February 28, 2019, U.S. Trade Representative Robert Lighthizer and Secretary of Agriculture Sonny Perdue announced that a World Trade Organization (WTO) dispute settlement panel had found that China had provided trade distorting support to its grain producers well in excess of its commitments under WTO rules. China’s market price support policy artificially raised Chinese prices for grains above market levels, and created incentives for increased Chinese production of agricultural products and reduced imports. Following the announcement, Ambassador Lighthizer stated, “The United States proved that China for years provided government support for its grain producers far in excess of the levels China agreed to when it joined the WTO. China’s excessive support limits opportunities for U.S. farmers to export their world-class products to China. We expect China to quickly come into compliance with its WTO obligations.”

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

### **Investigations**

- Certain Plastic Decorative Ribbon from the People’s Republic of China: On February 1, 2019, Commerce released its Final Affirmative Countervailing Duty [determination](#).
- Certain Plastic Decorative Ribbon from the People’s Republic of China: On February 1, 2019, Commerce released its Final Antidumping Duty [determination](#).
- Steel Wheels from the People’s Republic of China: On February 1, 2019, Commerce [postponed](#) its Final Antidumping Duty Determination.
- Truck and Bus Tires from the People’s Republic of China: On February 15, 2019, Commerce released its Amended Final [determination](#) and issued both Countervailing Duty and Antidumping Duty [orders](#).
- Rubber Bands from the People’s Republic of China: On February 19, 2019, Commerce issued both Antidumping and Countervailing Duty [orders](#).
- Cast Iron Soil Pipe from the People’s Republic of China: On February 25, 2019, Commerce announced its affirmative Final [determinations](#) in their antidumping duty and countervailing duty investigations.

- Corrosion-Resistant Steel Products from Taiwan: On February 26, 2019, Commerce released a [notice](#) of Court Decision Not in Harmony with the Final Determination of the Antidumping Duty Investigation and Notice of the Amended Final Determination of the Investigation.
- Large Diameter Welded Pipe from the [Republic of Korea](#) and the [Republic of Turkey](#): On February 27, 2019, Commerce released their Final Affirmative Countervailing Duty Determinations.
- Large Diameter Welded Pipe from the [Republic of Turkey](#), [Greece](#), the [Republic of Korea](#), and [Canada](#): On February 27, 2019, Commerce released their Final Affirmative Antidumping Duty Determinations.
- Cast Iron Soil Pipe from the People’s Republic of China: On February 28, 2019, Commerce released its Final Affirmative Antidumping Duty [determination](#) and Countervailing Duty [determination](#).

## Administrative Reviews

- Stainless Steel Butt-Weld Pipe Fittings from Malaysia: On February 1, 2019, the Final [results](#) of the Antidumping Duty Administrative Review (2017-2018) were released.
- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People’s Republic of China: On February 1, 2019, Commerce issued a [notice](#) of Court Decision Not in Harmony with the Final Results of the Antidumping Administrative Review.
- Freshwater Crawfish Tail Meat from the People’s Republic of China: On February 7, 2019, the Final [results](#) of the Antidumping Duty Administrative Review and New Shipper Reviews (2016-2017) were released.
- Certain Oil Country Tubular Goods from Turkey: On February 11, 2019, Commerce [rescinded](#) their Antidumping Duty Administrative Review (2017-2018).
- Fresh Garlic from the People’s Republic of China: On February 19, 2019, Commerce issued a [notice](#) of Court Decision Not in Harmony with the Final Results of the Administrative Review and Notice of Amended Final Results.
- Certain Steel Nails from the Republic of Korea: On February 19, 2019, Commerce released the Final [results](#) of the Antidumping Duty Administrative Review (2016-2017).
- Welded Line Pipe from the Republic of Turkey: On February 19, 2019, Commerce issued a [notice](#) of Court Decision Not in Harmony with the Final Determination in the Less Than Fair Value Investigation and released a Notice of the Amended Final Determination and Amended Antidumping Duty Order.
- Chlorinated Isocyanurates from the People’s Republic of China: On February 20, 2019, the Final [results](#) for the Antidumping Duty Administrative Review (2016-2017) were released.
- Certain New Pneumatic Off-The-Road Tires from the People’s Republic of China: On February 20, 2019, Commerce issued a [notice](#) of Court Decision Not in Harmony with the Final Results of the Administrative Review and the Notice of the Amended Final Results of the Antidumping Duty Administrative Review (2013-2014).
- Certain Corrosion-Resistant Steel Products from Taiwan: On February 25, 2019, the Amended Final [results](#) of the Antidumping Duty Administrative Review (2016-2017) were released.
- Large Residential Washers from the Republic of Korea: On February 26, 2019, the Final [results](#) of the Antidumping Duty Administrative Review (2017-2018) were released.
- Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People’s Republic of China: On February 26, 2019, the Final [results](#) of the Antidumping Administrative Review (2016-2017) were released.

## Changed Circumstances Reviews

Commerce has not published any new Changed Circumstances Reviews for the month of February

## Sunset Reviews

- Welded Large Diameter Line Pipe from Japan: On February 1, 2019, the Final [results](#) of the Expedited Third Sunset Review of the Antidumping Duty Order were released.

## U.S. INTERNATIONAL TRADE COMMISSION

### Section 701/731 Proceedings

#### Investigations

- Common Alloy Aluminum Sheet from China: On February 5, 2019, the ITC released its final [determination](#).
- Large Diameter Welded Pipe from China and India: On February 5, 2019, the ITC released its final [determinations](#).
- Cast Iron Soil Pipe from China: On February 6, 2019, the ITC released a revised [schedule](#) for the Final Phase of Countervailing Duty and Antidumping Duty Investigations.
- Common Alloy Aluminum Sheet from the People's Republic of China: On February 6, 2019, the ITC issued a countervailing duty [order](#) on common alloy aluminum.
- Plastic Decorative Ribbon from China: On February 8, 2019. The ITC released a revised [schedule](#) for the Final Phase of Investigations.
- On February 12, 2019, the ITC released a revised schedule for the Final Phase of Countervailing and Anti-Dumping Duty Investigation for the following products:
  - [Steel Wheels](#) from China
  - [Glycine](#) from China, India, Japan and Thailand
  - [Laminated Woven Sacks](#) from Vietnam
  - [Quartz Surface Products](#) from China
- .
- Rubber Bands from China: On February 15, 2019, the ITC released its final [determinations](#).
- Truck and Bus Tires from China: On February 19, 2019, the ITC released its Final remand [determinations](#) for its February 2017 negative injury decision in the original antidumping and countervailing duty investigations.



#### Sunset Review Decisions

- Crystalline Silicon Photovoltaic Cells and Modules from the People's Republic of China: On February 6, 2019, the ITC released its revised [schedule](#) for Full Five-Year Reviews.
- On February 8, 2019, the ITC released a revised schedule for Full Five-Year Reviews for the following products:
  - [Certain Large Residential Washers](#) from Korea and Mexico
  - [Utility Scale Wind Towers](#) from China and Vietnam
- Pasta from Italy and Turkey: On February 15, 2019, the ITC released a [schedule](#) of the Expedited Five-Year Reviews.
- Fresh Tomatoes from Mexico: On February 28, 2019, the ITC released its revised [schedule](#) for Full-Five Year Reviews.

## Section 337 Proceedings

- On February 11, 2019, the ITC issued a [notice](#) of Revised Deadlines for Section 337 Complaints due to the partial government shutdown.
- 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 February 13, 2019, the ITC issued a [notice](#) of Commission Determination in order to Extend the Target Date from February 25, 2019 to April 8, 2019.
- Certain X-Ray Breast Imaging Devices and Components Thereof: On February 19, 2019, the ITC issued a [notice](#) of Commission Decision to Terminate the Investigation based on Settlement.
- Certain Thermoplastic-Encapsulated Electric Motors, Components Thereof, and Products and Vehicles Containing Same II: On February 25, 2019, the ITC issued a [notice](#) determining that there was no violation of section 337 and that the target date for the completion of the investigation would be extended to April 29, 2019.
- Certain Batteries and Electrochemical Devices Containing Composite Separators, Components Thereof, and Products Containing Same: On February 26, 2019, the ITC released a [notice](#) that they will not be reviewing the initial determination and will terminate the investigation.
- Certain Modular LED Display Panels and Components Thereof: On February 27, 2019, the ITC issued a [notice](#) that they will not be reviewing the initial determination and will terminate the investigation.

## U.S. CUSTOMS & BORDER PROTECTION

No CBP decisions were released during the month of February.

## COURT OF INTERNATIONAL TRADE

### Summary of Decisions

#### [19-17](#)

On February 1, 2019, the Court remanded Commerce's decision in order to reconsider its methodology in determining the all-others rate for the final results of the antidumping administrative review for diamond sawblades from China. The Court determined that Commerce's decision to use only Jiangsu's rate in setting the all-others rate was not supported by substantial evidence. The Court remanded the matter to Commerce to choose a new mandatory respondent, and use any other record evidence to devise a fair all-others rate.

#### [19-18](#)

On February 4, 2019, upon classification of additional Teva footwear, the Court ruled in favor of the defendant, the United States, and granted summary judgment. The classification of five of seven styles of sandals at issue were previously addressed in [Deckers II](#). The plaintiff did not show any material facts that would call for a different

HTSUS code to be applied. The plaintiff did not show or persuade that there were any material differences with respect to the remaining two styles, which were not an issue in [Deckers II](#).

#### [19-19](#)

On February 12, 2019, the Court sustained Commerce's Final Results of Redetermination and remand in the antidumping duty investigation of certain carbon and alloy steel cut-to-length plate from Austria. The Plaintiffs had challenged Commerce's methodology for selecting foreign like products. The Court sustained the department's determination since their remand results now comply with the Court's remand order and was supported by substantial evidence.

#### [19-20](#)

On February 13, 2019, the Court remanded to Commerce a decision interpreting the scope of an antidumping duty

order on certain non-malleable cast iron pipe fittings from the People's Republic of China. The Plaintiff, Star Pipe Products, challenged Commerce's 2017 Final Scope ruling to include certain ductile iron flanges imported by Star Pipe. The Court found that Commerce failed to comply with its regulation when it reached a decision to place Star Pipe's flanges in the scope of the Order without considering the antidumping duty petition. Commerce also failed to give fair and adequate consideration to record evidence contained in the final injury determination of the ITC that detracts from its conclusion.

#### [19-23](#)

On February 19, 2019, the Court sustained Commerce's remand redetermination in the tenth administrative review of the antidumping duty order of certain frozen warm water shrimp Vietnam. The Court found that "Commerce's selection of the Indian GTA import data for HTS 0306.17 to value the frozen shrimp input," and explanation, "that the proper offsets are captured in the surrogate financial statements," were supported by substantial evidence.

#### [19-24](#)

On February 26, 2019, the Court sustained Commerce's Remand Redetermination in the antidumping duty investigation of certain cold-rolled steel flat products from the Republic of Korea. The Plaintiff, Hyundai Steel, filed comments on the Remand Redetermination opposing Commerce's AFA adjustment for sales involving domestic inland freight services provided by an unaffiliated freight

provider and the agency's denial of a constructed export price. The Court concluded that Commerce's Remand Redetermination complied with the court's remand order and was supported by substantial evidence.

#### [19-25](#)

On February 27, 2019, the Court remanded Commerce's antidumping duty determination in order to reevaluate the application for rates separate from the China-wide entity rate for certain steel threaded rod from the People's Republic of China. The Plaintiff, Hubbell Power Systems, challenged Commerce's decision to apply the China-wide duty rate on Gem-Year Industrial Co. The Court remanded the issue back to Commerce to see if Gem-Year is entitled to a separate rate and to determine one.

#### [19-26](#)

On February 28, 2019, in the Customs classification matter for pharmaceutical equipment, the Court granted the Plaintiff's, Mckesson Canada Corp.'s, motion for summary judgment and denied the Defendant's cross-motion for judgment. The dispute between the two parties was what the primary function of the product was. Upon further inspection, the Plaintiff's product, the Pacmed, was found to be primarily a packing machine and appropriately classified under the 8422 HTSUS heading. For that reason, the Court ruled in favor of the Plaintiff.

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

#### [2018-1206](#)

On February 15, 2019, in the tariff classification case between Home Depot and the United States over certain doorknobs with integral locks, the Court vacated the decision of the Trade Court and held that the products were properly classified as composite goods. Originally, the doorknobs had been liquidated under the HTSUS heading 8301, which has a 5.7% duty rate. Home Depot protested that Custom's had misclassified the products and should have liquidated them under the HTSUS heading 8302, which has a 3.9% duty rate. The Court remanded the Trade Court to make a finding as to the "essential nature" of the composite goods in order to determine which of the two competing HTSUS headings the goods should be classified under.

#### [2018-1316](#)

On February 19, 2019, in the case between ADC Telecommunications and the United States over the tariff classification of imported Value Added Modules consisting of fiber optic telecommunications network equipment, the Court ruled in favor of the Government stating that they had correctly classified the products under the appropriate HTSUS Subheading. ADC Telecommunications argued that their products should have been classified under the HTSUS Subheading 8517.62.00 which holds a duty free rate, as opposed to the HTSUS Subheading Customs had determined, 9013.80.90, it is listed under with a

4.5% rate. Upon further evaluation of the proposed subheading, 8517, the definition did not cover the certain product. For that reason, the Court ruled in favor of Custom's tariff classification for fiber optic telecommunications network equipment.

## **EXPORT CONTROLS AND SANCTIONS**

No export control and sanctions updates were published for the month of February.