

# TRADE LAW UPDATE



March 2019

## IN THIS ISSUE

[Presidential Actions](#)

[U.S. Department of  
Commerce Decisions](#)

[U.S. International Trade  
Commission Proceedings](#)

[U.S. Customs & Border  
Protection Decisions](#)

[Court of International Trade  
Decisions](#)

[Federal Court of Appeals  
Decisions](#)

[Export Controls and  
Sanctions](#)

## PRESIDENTIAL ACTIONS

### [USTR Announces List 3 Tariffs Will Not Increase to 25%](#)

On February 28, 2019, the Office of the U.S. Trade Representative released a [federal register notice](#) delaying the increase in Section 301 (List 3) tariffs to 25% on \$200 billion of Chinese goods until further notice. The tariff rate on goods covered under List 3 will remain at 10% indefinitely. These tariffs were set to increase from 10% to 25% on March 1, 2019 (see our previous post [here](#)). The U.S. and China have been engaged in trade negotiations for several months and the parties are hoping to finalize a trade deal in coming weeks.

### [Trump Administration Charts Trade Policy Course More Favorable to American Workers](#)

On March 1, 2019, U.S. Trade Representative Robert Lighthizer delivered President Trump's Trade Policy Agenda and Annual Report to Congress. In the 373-page [report](#), USTR outlined the President's first two years of trade policy and laid out future plans to work with Japan, the EU, and UK. To see the USTR published fact sheet, click [here](#).

### [President Trump Announces Intent to Withdraw GSP Status for India and Turkey](#)

At the direction of President Trump, the Office of the U.S. Trade Representative ("USTR") has [announced](#) the United States' intent to withdraw beneficiary status from India and Turkey under the U.S. Generalized System of Preferences ("GSP") program.

The GSP program is a program designed to promote economic growth in developing countries and provides preferential duty-free treatment for over 3,500 products from a wide range of designated beneficiary countries when imported into the United States.

In its recent announcement, USTR cited India's "failure to...provide equitable equitable and reasonable access to its markets in numerous sectors" and indicated Turkey is "sufficiently economically developed" as the reasoning behind the intended removal of beneficiary status.

As per the statute, the President notified Congress of this decision on March 4, 2019; however, the termination of GSP treatment will not take effect for at least 60 days and will be enacted by a Presidential Proclamation.

### **Commerce Initiates Section 232 Investigation on Titanium Sponge**

On March 4, 2019, the U.S. Department of Commerce announced that it would be conducting a Section 232 Investigation on imports of titanium sponge. Commerce Secretary Wilbur Ross stated that the investigation will be looking into whether or not the “quantity or circumstances” of the imports are a threat to national security.

In a [press release](#) issued by the Department of Commerce, Secretary Ross stated, “Titanium sponge has uses in a wide range of defense applications, from helicopter blades and tank armor to fighter jet airframes and engines.”

Commerce must submit its report, along with any recommendations, to the President within 270 days after initiation, which will fall on November 29, 2019. After that date, the President will have 90 days to make his determination.

This will be the fifth investigation under the Trump administration pursuant to Section 232 of the Trade Expansion Act of 1962. The administration has launched previous Section 232 investigations concerning steel, aluminum, uranium, and auto parts. To see our previous post on Commerce’s most recent 232 Auto Tariff Report, click [here](#).

### **USTR Requests First-Ever Consultations Under the U.S.- Korea Free Trade Agreement**

On March 15, 2019, the Office of the U.S. Trade Representative (USTR) requested the first ever consultations with South Korea under the chapter on Competition-Related Matters (Chapter 16) of the United States-Republic of Korea Free Trade Agreement (KORUS). Through these consultations, the United States will attempt to resolve concerns regarding procedures in competition hearings held by the Korea Fair Trade Commission (KFTC). Some of these KFTC hearings have denied U.S. parties certain rights, including the opportunity to review and rebut the evidence against them.

### **CIT Rules Section 232 Tariffs on Steel are Constitutional**

On March 25, 2019, the Court of International Trade issued its decision in the American Institute for International Steel’s appeal on the institution of Section 232 tariffs on iron and steel products. The CIT found that the Section 232 tariffs were constitutional and thus this decision results in the continuation of these tariffs for the foreseeable future. To see the full blog post, click [here](#).

### **USTR Releases 2019 National Trade Estimate Report**

On March 29, 2019, the Office of the U.S. Trade Representative (USTR) released the 2019 National Trade Estimate (NTE). The NTE is an annual report on the status of foreign trade and investment barriers to American exports around the world. To view the full version of the report, click [here](#).

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

### **Investigations**

- Certain Plastic Decorative Ribbon from the People’s Republic of China: On March 1, 2019, Commerce released its Corrected Final Affirmative Countervailing Duty [determination](#).

- Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria: On March 4, 2019, Commerce released a [notice](#) of Court Decision Not in Harmony with the Final Determination in the Antidumping Investigation and a notice of the Amended Final Determination and Order Pursuant to the Court Decision.
- Fresh Tomatoes from Mexico: On March 5, 2019, Commerce announced its [intent](#) to Terminate the Suspension Agreement, Rescind the Sunset and Administrative Reviews, and resume the Antidumping Duty Investigation.
- Large Diameter Welded Pipe from the People’s Republic of China: On March 6, 2019, Commerce issued both a Countervailing Duty [Order](#) and Antidumping Duty [Order](#).
- Large Diameter Welded Pipe from India: On March 6, 2019, Commerce issued both a Countervailing Duty [Order](#) and Antidumping Duty [Order](#).
- Rubber Bands from Thailand: On March 7, 2019, Commerce released its Final Negative Countervailing Duty [determination](#) and Final Antidumping Duty [determination](#).
- Carbon and Certain Alloy Steel Wire Rod from Mexico: On March 13, 2019, the Final Affirmative [determination](#) of Circumvention of the Antidumping Duty Order was released.
- Certain Plastic Decorative Ribbon from the People’s Republic of China: On March 22, 2019, Commerce released the Amended Final Affirmative Antidumping Duty [determination](#), Antidumping Duty Order, and Countervailing Duty Order.
- Certain Steel Wheels from the People’s Republic of China: On March 28, 2019, the Final Affirmative Countervailing Duty [determination](#) and Final Antidumping [determination](#) was released.

## **Administrative Reviews**

- Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: On March 5, 2019, the Final [results](#) of the Antidumping Duty Administrative Review (2016-2017) were released.
- Certain Frozen Warm Water Shrimp from the Socialist Republic of Vietnam: On March 6, 2019, Commerce released a [notice](#) of Court Decision Not in Harmony with the Final Results of the Administrative Review (2014-2015).
- Carbazole Violet Pigment 23 from India: On March 13, 2019, the Final [results](#) of the Antidumping Duty Administrative Review (2016-2017) were released.
- Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: On March 13, 2019, Commerce [rescinded](#) their Antidumping Duty Administrative Review (2017-2018).
- Polyethylene Terephthalate Film, Sheet, and Strip from India: On March 13, 2019, Commerce released the Final [results](#) of the Antidumping Duty Administrative Review (2016-2017).
- Certain Uncoated Paper from Indonesia: On March 14, 2019, the Final [results](#) of the Antidumping Duty Administrative Review (2017-2018) were released.
- Certain Steel Nails from Malaysia: On March 18, 2019, the Final [results](#) of the Antidumping Duty Administrative Review (2016-2017) were released.
- Certain Corrosion-Resistant Steel Products from the Republic of Korea: On March 22, 2019, the Final [results](#) of the Antidumping Duty Administrative Review (2016-2017) were released.
- Polyethylene Terephthalate Film Sheet, and Strip from India: On March 22, 2019, the Final [results](#) of the Countervailing Duty Administrative Review (2016) were released.
- Narrow Woven Ribbons with Woven Selvedge from Taiwan: On March 22, 2019, the Final [results](#) of the Antidumping Duty Administrative Review and Final determination of No Shipments (2016-2017) were released.
- Certain Frozen Warm Water Shrimp from India: On March 22, 2019, Commerce [rescinded](#) the Antidumping Duty Administrative Review (2017-2018).

- Stainless Steel Bar from Spain: On March 25, 2019, the Final [results](#) of the Antidumping Duty Administrative Review (2017-2018) were released.
- Narrow Woven Ribbons with Woven Selvedge from the People’s Republic of China: On March 25, 2019, the Final [results](#) of the Countervailing Duty Administrative Review (2016) were released.
- Certain Corrosion-Resistant Steel Products from India: On March 25, 2019, the Final [results](#) of the Countervailing Duty Administrative Review (2015-2016) were released.
- Oil Country Tubular Goods from the Republic of Turkey: On March 27, 2019, the Final [results](#) of the Countervailing Duty Administrative Review (2016) were released.
- Certain Steel Nails from Taiwan: On March 27, 2019, the Final [results](#) of the Antidumping Duty Administrative Review (2016-2017) were released.
- Certain Corrosion-Resistant Steel Products from the Republic of Korea: On March 28, 2019, Commerce announced its Final [results](#) and Partial Rescission of the Countervailing Duty Administrative Review (2015-2016).

### Changed Circumstances Reviews

- Large Residential Washers from the Republic of Korea: On March 13, 2019, Commerce issued the Final [results](#) of Changed Circumstance of the Antidumping and Countervailing Duty Orders.
- Large Residential Washers from Mexico: On March 13, 2019, Commerce issued the Final [results](#) of Changed Circumstances of the Antidumping Duty Order.

### Sunset Reviews

- Sodium Hexametaphosphate from the People’s Republic of China: On March 1, 2019, Commerce issued a [notice](#) of its continuation of the Antidumping Duty Order.
- Low-Enriched Uranium from France: On March 15, 2019, Commerce released the Final [results](#) of the Sunset Review and Revocation of the Antidumping Duty Order.
- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People’s Republic of China: On March 20, 2019, Commerce announced its continuation of its [Antidumping](#) and [Countervailing](#) Duty Orders.
- Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China: On March 25, 2019, the Final [results](#) of the Expedited Second Sunset Review of the Countervailing Duty Order were released.

## U.S. INTERNATIONAL TRADE COMMISSION

### Section 701/731 Proceedings

#### Investigations

- Large Diameter Welded Pipe from Canada, Greece, Korea, and Turkey: On March 12, 2019, the [schedule](#) of the Final Phase of Antidumping and Countervailing Duty Investigations was released.
- Steel Propane Cylinders from China and Thailand: On March 13, 2019, the ITC released the [scheduling](#) of the Final Phase of Countervailing and Antidumping Duty Investigations.



- Plastic Decorative Ribbon from the People’s Republic of China: On March 21, 2019, the ITC announced its final [determinations](#) for the antidumping and countervailing duty investigations finding that a U.S. industry is materially injured from the imports of the subject merchandise.
- Steel Racks from the People’s Republic of China: On March 28, 2019, the ITC released its [scheduling](#) of the Final Phase of Countervailing Duty and Antidumping Duty Investigations.
- Rubber Bands from Thailand: On March 29, 2019, the ITC released its Supplemental [schedule](#) for the antidumping duty investigation.
- Rubber Bands from Thailand: On March 29, 2019, the ITC announced its [termination](#) of the countervailing duty investigation.

### **Sunset Review Decisions**

- Utility Scale Wind Towers from China and Vietnam: On March 5, 2019, the ITC announced its [cancellation](#) of Hearings for the Full Five-Year Reviews.
- Silicomanganese from India, Kazakhstan, and Venezuela: On March 8, 2019, the ITC released its [schedule](#) of Expedited Five-Year Reviews.
- Crystalline Silicon Photovoltaic Cell and Modules from China: On March 7, 2019, the ITC released its final [determinations](#).

### **Section 337 Proceedings**

- Certain Digital Cameras, Software, and Components Thereof: On March 14, 2019, the ITC released a [notice](#) of Commission Determination to Grant a Joint Motion to Terminate the Investigation on the Basis of a Settlement Agreement.
- Certain Magnetic Tape Cartridges and Components Thereof: On March 29, 2019, the ITC released a [notice](#) that it had found a violation of section 337 in this investigation and has issued a limited exclusion order and cease and desist orders.

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

- Glycine: CBP issued a [notice](#) on February 28, 2019, that it had commenced a formal investigation looking into Newtrend USA Co., Ltd., for evading antidumping duties on the Antidumping Duty order on Glycine from China.

## **COURT OF INTERNATIONAL TRADE**

### **Summary of Decisions**

#### **19-27**

On March 4, 2019, the CIT remanded Commerce’s Second Remand Results concerning the agency’s selection of the appropriate surrogate country and sustained Commerce’s value-added tax adjustment. The Plaintiff, collectively known as Jacobi, originally challenged the results from

Commerce’s final results in the seventh administrative review of the antidumping duty order on certain activated carbon from China. The Court concluded that Commerce should reconsider the selection of a primary surrogate country and its surrogate value selections.

#### **19-29**

On March 5, 2019, the Court remanded Commerce’s final scope determination for reconsideration for the antidumping and countervailing duty orders on light-walled rectangular pipe and tube from the People’s Republic of China. The CIT concluded that Commerce had incorrectly assumed that plaintiff Carlson’s products met the description of subject merchandise and then proceeded to consider whether the scope contained exclusionary language based on further processing. The CIT then remanded Commerce’s final scope determination.

#### [19-30](#)

On March 8, 2019, the CIT denied plaintiff SeAH’s motion for reconsideration on the grounds that Commerce exercised its regulatory authority in conducting the differential price analysis in the investigation on welded line pipe from Korea.

#### [19-32](#)

On March 11, 2019, the CIT denied plaintiff Apple’s motion for summary judgement in the classification case of two different types of iPad cases, leather and plastic, on the grounds that Commerce had classified the plastic case under the correct subheading and that the plaintiff did not have standing to challenge Customs’ classification of the leather case.

#### [19-34](#)

On March 12, 2019, the CIT remanded Commerce’s remand redetermination following an antidumping duty investigation on certain corrosion-resistant steel products

from India. The CIT found that Commerce’s modified calculation of Uttam Galva’s weighted dumping margin was not supported by substantial evidence.

#### [19-36](#)

On March 21, 2019, the Court sustained Commerce’s determination on remand that Plaintiff Huameng’s sale subject to the new shipper review of fresh garlic from the People’s Republic of China was not bona fide.

#### [19-39](#)

On March 27, 2019, in the administrative review of the antidumping duty order on hot-rolled steel from the Russian Federation, the CIT sustained Commerce’s final results on the grounds that Plaintiff Severstal was still able to submit all information in a timely manner even though they had initially argued that Commerce had mishandled its April 14 extension request.

#### [19-40](#)

On March 29, 2019, in the tariff classification case of Plaintiff Quaker Pet’s pet carrier products, the Court granted the plaintiff’s motion for summary judgment on the grounds that the products should have been classified under the HTSUS heading 6307 and not headings 4201 or 4202. Following the ruling, Judge Katzmann ordered that Plaintiff Quaker Pet was to be refunded for any excess duties collected or payments tendered, including interest, to the extent provided by law.

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

#### [2018-1375](#)

On March 5, 2019, in its final results of an administrative review and a new shipper review of the antidumping duty order on freshwater crawfish tail meat from the People’s Republic of China, the court found the plaintiffs’ arguments to be unpersuasive and ruled in favor of the defendant. The plaintiffs, collectively named “Chinese Respondents”, argued that Commerce’s calculations of the weighted average dumping margins for each respondent were incorrect and “improperly rejected the two Thai financial statements... in favor of [the Oceana Report] in the calculation of surrogate financial ratios.” The Court affirmed the CIT’s finding that Commerce had acted appropriately and used the correct methodology to determine each of the respondent’s weight average dumping margins.

#### [2017-2577](#)

On March 12, 2019, in its remand determination, Commerce imposed countervailing and antidumping duties on the importation of a class or kind of merchandise – specifically, solar cells and modules, laminates, and/or panels, containing solar cells imported or sold for importation to the United States from the People’s Republic of China. When defining the scope of the orders, Commerce used a new test, rather than the typically-used “substantial transformation” test to determine the country



of origin. Plaintiff Canadian Solar argued that Commerce had failed to provide an explanation for using a different method, however the CAFC concluded that Commerce did provide a reasonable explanation on the grounds that the test they used would include within the scope of the orders the very imports found to injure the domestic industry – solar panels assembled in China using non-Chinese solar cells. Using this new test, Commerce was able to determine that the harm to domestic industry was caused, by Chinese pricing and subsidization of solar panels assembled in China using non-Chinese cells.

### 2018-1553

On March 18, 2019, the CAFC found that the Plaintiffs-Appellants, Jangho and Permasteelisa, have constitutional standing in Commerce's scope ruling case covering aluminum extrusions from the People's Republic of China. The government recognized that Jangho and Permasteelisa having participated by invitation as interested parties in Commerce's proceedings, are authorized by statute to pursue their challenged to Commerce's scope ruling. In their complaints challenging the March 2014 Commerce Ruling, Jangho and Permasteelisa would be concretely harmed by being subjected to AD & CVD Orders' duties as a result of the challenged ruling.

## **EXPORT CONTROLS AND SANCTIONS**

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