

# TRADE LAW UPDATE



May 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 Publishes Notice on Increase in Section 301 List 3 Tariff Rate](#)

On May 8, 2019, USTR released its [federal register notice](#) on the tariff increase for the [third tranche](#) (List 3) Section 301 tariffs on China. The duty rate on the estimated \$200 billion worth of Chinese products will increase from 10% to 25% effective 12:01am ET on Friday, May 10, 2019. The notice also announces that an exclusion process will be instituted for these products in a separate notice. The rate increase to 25% means that entries of goods

(1) entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on May 10, 2019, and

(2) exported to the United States on or after May 10, 2019 will now be subject to an additional tariff of 25%. Entries must be subject to both qualifiers-meaning that if a shipment has been exported prior to May 10, 2019 it will still be subject to the 10% duty rate. However, if the shipment is exported after 12:01am ET on May 10 the 25% duty rate will apply. To see our full post, click [here](#).

### [China Hits Back With Higher Tariffs on \\$60B in U.S. Goods](#)

On May 13, 2019, China's Ministry of Finance announced that it will raise tariffs on \$60 billion in U.S. goods, starting on June 1, 2019. This action was taken in retaliation for President Trump's [latest decision](#) to raise tariffs on \$200 billion worth of Chinese products from 10% to 25%. The proposed tariffs would affect a wide range of U.S. goods exported to China. A range of tariff rates are proposed, however, depending on the type of product. To see the full post on the retaliatory actions taken by China, click [here](#).

### [USTR Considering 4<sup>th</sup> Round of Tariffs on Chinese Goods](#)

On May 13, 2019, the Office of the U.S. Trade Representative (USTR) released another round of proposed tariffs on Chinese goods worth roughly \$325 billion. If these new tariffs come into effect, this would be the fourth round of tariffs in the ongoing and escalating trade war between the two countries. This proposed list of new tariffs came in response to China's retaliatory tariff increase on \$60 billion worth of U.S. products which was in response to the U.S.'s sudden and unprecedented [increase of tariffs](#) to 25% on the third round of Section 301 goods which had been in effect since September 24, 2018. To see our full post on the issue, click [here](#).

## **President Trump Removes GSP Status for Turkey and Reduces Tariff Rate on Turkish Steel**

On May 16, 2019, the President [announced](#) that he would be terminating Turkey's status as a beneficiary of specialized treatment pursuant to the U.S. Generalized System of Preferences program (GSP).

At the direction of President Trump, the Office of the U.S. Trade Representative (USTR) announced in March its intent to withdraw the beneficiary status from India and Turkey under the GSP. To see our previous post on the issue, click [here](#). There still has been no update from the White House on India's status as a GSP beneficiary country.

Hours after the announcement that Turkey would no longer be a beneficiary of GSP status, the President [announced](#) that the U.S. would be reducing its previously imposed tariffs on Turkish steel from 50% to 25%. The announcement indicated that this decision was made after a reduction in steel imports from Turkey over the past year. The Department of Commerce cites as a basis for this reduction that the 232 steel tariffs have resulted in the decline in imports of steel articles from Turkey by "48 percent in 2018."

## **White House Announces Delay on the Imposition of 232 Automobile Tariffs**

On May 17, 2019, the White House issued a [proclamation](#) delaying the immediate institution of special additional tariffs on the imports of automobiles and automobile parts into the U.S. In the proclamation, President Donald Trump stated that he would:

"[D]irect the United States Trade Representative (Trade Representative) to pursue negotiation of agreements contemplated...to address the threatened impairment of the national security with respect to imported automobiles and certain automobile parts from the European Union, Japan, and any other country the Trade Representative deems appropriate, and to update me on the progress of such negotiations **within 180 days**. Under current circumstances, this action is necessary and appropriate to remove the threatened impairment of the national security." To see the full post, click [here](#).

## **U.S., Canada, and Mexico to Lift Duties on Section 232 Aluminum and Steel Products**

On May 17, 2019, after numerous rounds of negotiations, the [United States](#), [Canada](#), and [Mexico](#) issued formal statements on lifting duties on Section 232 steel and aluminum products. While Canada and the U.S. explicitly stated that their respective tariffs would be lifted within the next two days, Mexico has yet to announce how quickly their retaliatory tariffs would end. In the new agreement between the US and Canada, the U.S. would be lifting the imposed tariffs from last June— 25% on imports of steel and 10% on aluminum – as well as Canada's retaliatory tariffs on steel and aluminum products. Similarly, Mexico will be lifting their retaliatory tariffs that targeted U.S. pork, dairy, and metal products. To see the full post, click [here](#).

## **USTR Requests Comments on Section 301 Exclusion Process**

On Tuesday, May 21, 2019, USTR and the Office of Management and Budget ("OMB") published in the Federal Register a [request for comments](#) on the Section 301 exclusion process for Tranche 3 tariffs which were increased from 10% to 25% on [May 10, 2019](#). The notice also included a draft exclusion request form for the List 3 products. The draft exclusion request form includes more data requirements on U.S. and third-party sourcing, overall gross revenue, and on whether the company has applied for and/or received previous exclusion requests. To see our full post on the issue, click [here](#).

## **President Trump Announces Tariffs on All Imported Goods from Mexico**

Key Facts:

- President Trump is imposing tariffs on all imported goods from Mexico beginning on June 10, 2019
- The tariff rate will begin at 5% and increase to 10% on July 1, 15% on August 1, 20% on September 1, and 25% on October 1, 2019.
- The tariffs will remain at 25% until "Mexico substantially stops the illegal inflow of aliens coming through its territory"

On May 30, 2019, President Trump [announced](#) that he would impose tariffs on all imported goods from Mexico beginning on June 10, 2019 at a 5% duty rate and increasing an additional 5% each month for three months.

The President cited to The International Emergency Economic Powers Act as his inherent authority to impose these broad tariffs. However, it is unclear which section of the Act he is invoking these powers from. The President is also required to

immediately transmit to Congress a report specifying the circumstances which necessitate such action and the reason for choosing this response.

## U.S. DEPARTMENT OF COMMERCE DECISIONS

### Investigations

- Glycine from India: On May 1, 2019, Commerce released its final determinations for both the [Antidumping Duty](#) and [Countervailing Duty](#) Investigation.
- Glycine from the People's Republic of China: On May 1, 2019, Commerce released its final affirmative Countervailing Duty [determination](#).
- Glycine from Japan: On May 1, 2019, Commerce issued its final Antidumping Duty [determination](#).
- Large Diameter Welded Pipe: On May 2, 2019, Commerce issued an amended final affirmative antidumping determination and antidumping duty order to the following countries:  
[Republic of Korea](#)  
[Greece](#)  
[Turkey](#)
- Certain Quartz Surface Products from the People's Republic of China: On May 23, 2019, Commerce released both the final affirmative [Countervailing Duty](#) and final affirmative [Antidumping Duty](#) determinations.

### Administrative Reviews

- Polyethylene Terephthalate Film, Sheet, and Strip from India: On May 6, 2019 Commerce issued a [notice](#) of Correction of Final Results for the Antidumping Duty Administrative Review (2016-2017).
- Polyethylene Terephthalate Film, Sheet, and Strip from United Arab Emirates: On May 8, 2019, Commerce issued the final [results](#) of the Antidumping Duty Administrative Review (2016-2017).
- Welded Stainless Pressure Pipe from India: On May 8, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2016-2017).
- Certain Magnesia Carbon Bricks from the People's Republic of China: On May 13, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2016-2017).
- Multilayered Wood Flooring from the People's Republic of China: On May 14, 2019, Commerce issued the final [results](#) of the Antidumping Duty New Shipper Review (2014-2015).
- Certain Lined Paper Products from India: On May 21, 2019, the final [results](#) of the antidumping duty administrative review (2016-2017) were released.
- Certain Lined Paper Products from India: On May 23, 2019, Commerce issued the final [results](#) of the Countervailing Duty Administrative Review (2016).
- Certain Cold Rolled Steel Flat Products from the Republic of Korea: On May 24, 2019, Commerce issued the final [results](#) of the Antidumping Duty Administrative Review (2016-2017) and the final [results](#) of the Countervailing Duty Administrative Review (2016).
- Certain Oil Country Tubular Goods from the Republic of Korea: On May 24, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2016-2017).
- Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from [Mexico](#) and the [Republic of Korea](#): On May 28, 2019, Commerce released the final results of the Antidumping Duty Administrative Review and the final determinations of No Shipments (2016-2017).

- Wooden Bedroom Furniture from the People’s Republic of China: On May 29, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review and final determination of No Shipments (2017).
- Certain Steel Nails from the People’s Republic of China: On May 29, 2019, Commerce issued the amended final [results](#) of the Antidumping Duty Administrative Review (2016-2017).

### Changed Circumstances Reviews

There have been no Changed Circumstances Reviews published by the Department of Commerce for the month of May.

### Sunset Reviews

- Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: On May 10, 2019, Commerce released the final [results](#) of the Sunset Reviews and Revocation of the Antidumping Duty and Countervailing Duty Orders.
- Certain Steel Nails from the People’s Republic of China: On May 17, 2019, Commerce released the final [results](#) of the Expedited Sunset Review of the Antidumping Duty Order.

## U.S. INTERNATIONAL TRADE COMMISSION

### Section 701/731 Proceedings

#### Investigations

- Steel Trailer Wheels from the People’s Republic of China: On May 2, 2019, the ITC released the [schedule](#) of the final phase of Countervailing Duty and Antidumping Duty Investigations.
- Fresh Tomatoes from Mexico: On May 14, 2019, the ITC announced that it would [terminate](#) its review of the subject merchandise since there is no longer a suspension agreement in place.
- Steel Wheels from the People’s Republic of China: On May 17, 2019, the ITC announced its final [determinations](#) in the Antidumping Duty and Countervailing Duty investigations and found that the importation of steel wheels has caused material injury to a U.S. industry.
- Laminated Woven Sacks from Vietnam: On May 30, 2019, the ITC announced its final [determinations](#) in the Antidumping Duty and Countervailing Duty investigations and found that the importation of the subject merchandise has caused material injury to a U.S. industry.



#### Sunset Review Decisions

- Utility Scale Wind Towers from China and Vietnam: On May 8, 2019, the ITC issued its [determination](#) that the revocation of the subject merchandise would lead to material injury of U.S. industries.
- Non-Malleable Cast Iron Pipe Fittings from the People’s Republic of China: On May 10, 2019, the ITC released its [schedule](#) of an Expedited Five-Year Review.

#### Section 337 Proceedings

There have been no Section 337 Proceedings published from the ITC for the month of May.

## U.S. CUSTOMS & BORDER PROTECTION

- On May 6, 2019, U.S. Customs and Border Protection (CBP) announced in its final [determination](#) that they had found substantial evidence that Royal Brush Manufacturing Inc. (“Royal Brush”) had imported to the United States cased pencils that were made originally in China from the Philippines. Royal Brush had transshipped pencils through the Subic Bay, Philippines and falsely declared the country of origin. In doing so, no case deposits were applied to the subject merchandise.

## COURT OF INTERNATIONAL TRADE

### Summary of Decisions

#### [19-52](#)

On May 1, 2019, the CIT sustained Commerce’s remand redetermination results following a countervailing duty investigation for certain hot-rolled steel flat products from the Republic of Korea. The court reviewed two issues on remand, Commerce’s selection of the highest calculated AFA rate and Commerce’s corroboration. Concerning the first issued on the selection of the AFA rate, the CIT found that Plaintiff POSCO did not exhaust its administrative remedies. The second issue presented was whether or not the selected 1.05% AFA rate was corroborated based upon substantial evidence and whether Commerce’s selection of a non-de-minimis AFA rate was appropriate because it was a rate calculated for a cooperating Korean company in another countervailing duty proceeding for a similar program.

#### [19-53](#)

On May 2, 2019, in the case of garage door openers that were redesigned to avoid infringement on a registered patent, the CIT denied the ITC’s motion for a stay pending appeal based on the grounds that the ITC did not meet its burden for a stay. A stay of the preliminary injunction and all other proceedings in this matter was not warranted as: (1) the ITC has not demonstrated a “strong showing” of likelihood of success on the merits, (2) the ITC has not demonstrated that it will be irreparably injured absent a stay in this action, (3) the issuance of a stay would substantially injure another party, the Plaintiff, and (4) the public interest is neutral. For those reasons, the CIT denied the ITC’s motion for a stay.

#### [19-55](#)

On May 9, 2019, the CIT sustained Commerce’s selection of Thailand as the primary surrogate country as well as the valuation of steel to calculate the brokerage and handling costs (B&H). The CIT then remanded Commerce’s calculation of the surrogate financial ratios as related to labor in the U.S. Department of Commerce’s final results in

the fourth administrative review of certain steel threaded rod from the People’s Republic of China. Commerce’s decision not to adjust the B&H costs for the costs associated with acquiring letters of credit, and the weight assigned to shipping containers in the calculation of B&H costs were all unsupported by substantial evidence.

#### [19-58](#)

On May 14, 2019, the CIT sustained Commerce’s final results of the Redetermination Pursuant to the Court Remand in the case of determining whether or not Plaintiff OMG, Inc.’s zinc anchor products are considered to be nails. It was argued that Plaintiff OMG’s product is simply not a nail “constructed of two or more pieces” because it does not function like a nail and because record evidence demonstrates that anchors like OMG’s are considered a separate type of product from nails by the relevant industry the court sustained Commerce’s Remand Results.

#### [19-59](#)

On May 15, 2019, the CIT sustained and remanded certain aspects of the final determinations of the Department of Commerce’s (“Department”) 2015 Administrative Review of the countervailing duty order on off-the-road tires from the People’s Republic of China. Specifically, the CIT remanded the Department’s findings with respect to the adverse inference applied to the Export Buyer’s Credit Program, remanded the Department’s benchmark calculations, and sustained the Department’s decision to countervail the Processing Trade Program.

#### [19-60](#)

On May 17, 2019, the CIT sustained the Commission’s final affirmative material injury determination in the antidumping duty investigation of emulsion styrene-butadiene rubber from Brazil, Mexico, the Republic of Korea, and Poland. The CIT concluded that 1) the Commission’s findings regarding the volume of subject imports was supported by substantial evidence, 2) the



Commission's findings regarding price effects was supported by substantial evidence and in accordance with the law, 3) the Commission's findings regarding the impact of subject imports was supported by substantial evidence and in accordance with the law, and 4) whether the Commission's determination that Poland was not a negligible source of the subject imports was supported by substantial evidence and in accordance with the law.

#### 19-61

On May 20, 2019, the CIT granted Plaintiff POSCO's motion for reconsideration and remanded Commerce's final results in the countervailing subsidy investigation of certain carbon and alloy steel cut-to-length plate from Korea. The CIT remanded to Commerce the issue of whether, under the first step of the AFA methodology, a program identical to the assistance received by Nine-Digit and Ricco Metal existed and denied POSCO's motion to reconsider the application of AFA to Hyundai and the attribution of that rate to POSCO.

#### 19-62

On May 21, 2019, in the first administrative review of oil country tubular goods from the Republic of Korea, the CIT denied both motions from Plaintiff SeAH Steel Corporation and the Defendant-Intervenors for consideration. Plaintiff SeAH's motion for reconsideration argued that the court's decision contained manifest errors, however the court denied their motion on the grounds that, "SeAH fails to demonstrate that there is manifest error with the court's reasoning and repeats the same arguments evaluated by the court previously." The court also denied the Defendant-Intervenors' motion for reconsideration citing

that their proposed revisions to the remand instructions essentially mirrored the Government's previous broad request for a voluntary remand on the particular market situation issue. The court expressed concern that the Government's request amounted to a "do-over" and constituted an impermissible attempt to rationalize the agency's actions after the fact.

#### 19-63

On May 22, 2019, the CIT sustained the U.S. Department of Commerce's remand results on the administrative review of the antidumping duty order on certain crystalline silicon photovoltaic products from Taiwan. Because, SAS-Solartech did not challenge the Remand Results and both Plaintiff and the Defendant Intervenors waived any objections by declining to submit comments on the Remand Results, the CIT sustained Commerce's Remand Redetermination.

#### 19-64

On May 24, 2019, the CIT ordered a reconsideration of determination in the administrative review on the antidumping duty order on off-the-road tires from the People's Republic of China. The eight plaintiffs present in the case contested that the order issued by Commerce concerning the rates they received were incorrect. Of the eight plaintiffs, six of the plaintiffs received a rate of 33.14%, while the rest received the China-wide rate of 105.31%. The CIT ruled that the determination was contrary to law in certain respects and remanded the determination to Commerce for appropriate corrective action for each of the eight plaintiffs.

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

#### 2018-1378

On May 2, 2019, in the tariff classification case involving imported sausage casings, Kalle USA, Inc. appealed the Court of International Trade's summary judgment decision classifying the casings as made-up textiles under subheading 6307.90.98 of the Harmonized Tariff Schedule of the United States. Plaintiff Kalle argues that the CIT erroneously interpreted the phrase "completely embedded in plastics" as it is used in HTSUS Chapter 59 Note 2(a)(3), and that the casings should be classified as plastics under HTSUS Chapter 39. The Federal Circuit concluded that Plaintiff Kalle's proposed interpretation failed to offer meaningful effect to the inclusion of "completely embedded" and failed to distinguish between an "impregnated" fabric and a "completely embedded" fabric, the Court declined to adopt it. Ultimately, the Court found Kalle's remaining arguments unpersuasive and Kalle's Nalo-Protex G1 and G2 casings were not "completely embedded in plastics" as that phrase is used in HTSUS Chapter 59. The Federal Circuit agreed with the CIT Trade Court's decision to classify the casings under HTSUS subheading 6307.90.98.

## [2019-1015](#)

On May 8, 2019, Appellant Sumec NA, Inc., dba Sumec North America (“Sumec”), a U.S. importer, appealed the CIT’s decision in the antidumping duty case of *Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules, from the People’s Republic of China* and sued Appellee the United States (“Government”) in the U.S. Court of International Trade (“CIT”), challenging the U.S. Department of Commerce’s (“Commerce”) liquidation instructions. Sumec filed a motion for a preliminary injunction to enjoin the Government from liquidating certain entries, and the CIT issued an opinion and order denying Sumec’s Motion. The CAFC concluded that the CIT did not abuse its discretion in denying Appellant Sumec’s motion for a preliminary injunction on the grounds that Sumec hadn’t demonstrated that it would be irreparably harmed absent immediate relief in the form of a preliminary injunction. The CAFC also found that the CIT did not commit legal error in determining that the availability of reliquidation means that Sumec failed to demonstrate irreparable harm.

## [2018-1116-1118](#)

On May 16, 2019, Plaintiff Sunprime Inc. appealed from the final decision of the United States Court of International Trade in favor of the United States and SolarWorld Americas, Inc., concluding that Sunprime’s solar modules are covered by the scope of the antidumping and countervailing duty orders on U.S. imports of certain solar cells from the People’s Republic of China. The United States and SolarWorld cross-appealed from the same decision, which also concluded that Commerce could not instruct United States Customs and Border Protection to continue suspending liquidation of Sunprime’s solar modules entered or withdrawn from warehouse for consumption before the scope inquiry was initiated. Because the CAFC agreed with the Court of International Trade that Commerce’s final scope ruling is supported by substantial evidence and that Commerce cannot continue a suspension of liquidation that Customs lacked authority to implement in the first place.

## **EXPORT CONTROLS AND SANCTIONS**

### **[Huawei Targeted by Entity List Designation and Executive Order](#)**

On Wednesday, May 15, the U.S. Department of Commerce’s Bureau of Industry and Security (“BIS”) announced in a [press release](#) that it would add Huawei Technologies Co. Ltd. (“Huawei”) and additional Huawei affiliates to BIS’s Entity List. The Entity List designation will become effective when it is [published in the Federal Register](#) on May 21, 2019. BIS explained that it is taking this action because it determined that “[T]here is reasonable cause to believe that Huawei has been involved in activities contrary to the national security or foreign policy interests of the United States.” Among other reasons, BIS specifically cited Huawei’s [Superseding Indictment](#) in the US District Court for the Eastern District of New York for violating US sanctions against Iran. To see the full post, click [here](#).

### **[BIS Issues Temporary General License on Certain Existing Huawei Products](#)**

On May 22, 2019, the U.S. Department of Commerce’s Bureau of Industry and Security (BIS) has published a [Temporary General License](#) for specific, limited engagement in transactions with Huawei Technologies Co., Ltd. and its sixty-eight non-U.S. affiliates which were added to the BIS Entity List effective May 16, 2019. (See our previous post [here](#)). The license is intended to allow Huawei and its affiliates to work temporarily with U.S. companies to continue to support current customers, headsets and to release software updates for existing hardware.

While the license was not published in the Federal Register until today, the temporary general license took effect on May 20, 2019 and will last for 90 days through August 19, 2019. BIS will evaluate whether to extend the license beyond 90 days. To see the full post on the issue, click [here](#).