

# TRADE LAW UPDATE



June 2019

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## PRESIDENTIAL ACTIONS

### [\*\*India Loses GSP Preferential Status Effective June 5, 2019\*\*](#)

In a sudden announcement after 8pm on Friday May 31, 2019, the President made the anticipated decision that India was to be removed from the Generalized System of Preferences (“GSP”), effective June 5, 2019. The [statement](#) issued by the White House claims that the President had “determined that India has not assured the United States that India will provide equitable and reasonable access to its markets.” The end of the GSP eligibility and removal of India’s developing country status comes after holding that status for approximately 30 years and is a deepening indication of the U.S.’s increased protectionist stance in the global trade environment. To see our full post on India losing its GSP status, click [here](#).

### [\*\*USTR Extends Deadline for Shipments from China to Enter Goods Under 10% Duty Rate on List 3\*\*](#)

Late Friday, May 31, 2019, the Office of the U.S. Trade Representative (“USTR”) [announced](#) that they would extend the time frame for the application of increased tariffs on shipments of goods exported from China prior to May 10, 2019. The increase from 10% to 25% in duties was announced on May 8<sup>th</sup> and was set to be applicable on all imports starting on June 1, 2019. The USTR has now revised its earlier announcement and has stated that shipments must be entered before midnight on June, 15, 2019 in order to remain subject to the 10% duty rate. Any entries after midnight on June 15, 2019 will be subject to the increased rate of 25% announced on May 8, 2019. To see our full post on the issue, click [here](#).

### [\*\*USTR Initiates Section 301 List 3 Exclusion Process\*\*](#)

The Office of the U.S. Trade Representative (USTR) announced on June 19, 2019 an [exclusion process](#) for product exclusions from the tariffs on \$200 billion of Chinese products (“List 3”). The exclusion process will open at noon (EDT) on June 30, 2019.

The exclusion process for List 3 will be slightly different from the process involved for the List 1 and List 2 exclusions. USTR is opening a portal at <http://exclusions.USTR.gov/> for requestors to file exclusion requests and interested parties to comment on them. Among other information, the questions in the exclusion request form will require data on the company’s gross revenues, percentage of total gross sales for which the requested product accounted, and the amount of sourcing of the product from domestic or third-country suppliers. To see our full post and key dates for the Section 301 3 exclusion process, click [here](#).

## USTR Announced Reallocation of Unused Fiscal Year 2019 WTO Tariff-Rate Quota Volume for Raw Cane Sugar

On June 25, 2019, the Office of the U.S. Trade Representative (“USTR”) announced the reallocation of the unused country-specific and first-come, first-served in-quota allocations under the tariff-rate quotas (“TRQs”) on imported raw cane sugar for the 2019 Fiscal Year (“FY”). The in-quota quantity for the TRQ on raw cane sugar for the 2019 Fiscal Year is 1,117,195 metric tons raw value. The USTR determined to reallocate 100,071 of the original TRQ to countries who have stated that they do not plan to fill their FY 2019 allocated raw cane sugar quantities. To see a full list of the countries the USTR is allocating the sugar to, click [here](#).

## U.S. DEPARTMENT OF COMMERCE DECISIONS

### Investigations

- Certain Steel Nails from the Socialist Republic of Vietnam: On June 19, 2019, Commerce released a [notice](#) of its Final Scope Ruling and notice of the Amended Final Scope Ruling in the Antidumping and Countervailing duty orders of the subject merchandise.
- Steel Propane Cylinders: On June 21, 2019, Commerce announced its final determinations in the Antidumping Duty Investigations for the [People’s Republic of China](#) and [Thailand](#).
- Steel Propane Cylinders from the People’s Republic of China: On June 21, 2019, Commerce released the final affirmative Countervailing Duty [determination](#).
- Carbon Steel Butt-Weld Pipe Fittings from the People’s Republic of China: On June 21, 2019, Commerce issued the final affirmative [determination](#) of Circumvention of the Antidumping Duty Order.
- Glycine from India and Japan: On June 21, 2019, Commerce released the amended final affirmative Antidumping Duty [determination](#).

### Administrative Reviews

- Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: On June 4, 2019, Commerce issued the final [results](#) of the Antidumping Duty Administrative Review (2017-2018).
- Sugar from Mexico: On June 4, 2019, Commerce released the final results of the Administrative Review (2017) for the Agreement Suspending the [Antidumping Duty](#) and [Countervailing Duty](#) Investigation on sugar.
- Certain Lined Paper Products from India: On June 5, 2019, Commerce issued a [notice](#) of correction to the final results for the Antidumping Duty Administrative Review (2016-2017).
- Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: On June 6, 2019 Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2016-2017).
- Certain Crystalline Silicon Photovoltaic Products from Taiwan: On June 7, 2019, Commerce issued a [notice](#) of Court Decision Not in Harmony with the final results of the Antidumping Duty Administrative Review (2014-2016) and notice of Amended final results of the Antidumping Duty Administrative Review (2014-2016).
- Magnesium Metal from the People’s Republic of China: On June 10, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2017-2018).
- Certain Corrosion-Resistant Steel Products from India: On June 10, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review and the final Determination of No Shipments (2017-2018).

- Certain Steel Nails from the People’s Republic of China: On June 12, 2019, Commerce released a [notice](#) of correction of the Amended Final Results of the Antidumping Duty Administrative Review (2016-2017).
- Welded Line Pipe from the Republic of Korea: On June 14, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review and final determination of No Shipments (2016-2017).
- Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: On June 14, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2017-2018).
- Certain Passenger Vehicle Light Truck Tires from the People’s Republic of China: On June 17, 2019, Commerce released the Amended final [results](#) of the Countervailing Duty Administrative Review (2016).
- Freshwater Crawfish Tail Meat from the People’s Republic of China: On June 18, 2019, Commerce released the final [results](#) of the Antidumping Duty New Shipper Review (2017-2018).
- Certain Hot-Rolled Steel Flat Products from the Republic of Korea: On June 19, 2019, Commerce released the final [results](#) of the Countervailing Duty Administrative Review (2016).
- Circular Welded Carbon-Quality Steel Pipe from Oman: On June 25, 2019, Commerce released the [final results](#) of the Antidumping Duty Administrative Review (2016-2017).
- Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: On June 27, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative review and final determination of No Shipments (2016-2017).
- Uranium from the Russian Federation: On June 28, 2019, Commerce released the final [results](#) of the Administrative Review (2016-2017) in the Agreement Suspending the Antidumping Investigation.
- Certain Hot-Rolled Steel Flat Products from Japan: On June 28, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review and final determination of No Shipments (2016-2017).
- Carbon and Certain Alloy Steel Wire Rod from Mexico: On June 28, 2019, the final [results](#) of the Antidumping Duty Administrative Review and final determination of No Shipments (2016-2017).

### **Changed Circumstances Reviews**

- Carbon and Alloy Steel Wire Rod from the Republic of Korea: On June 13, 2019, Commerce released the final [results](#) of the Antidumping Duty Changed Circumstances Review.

### **Sunset Reviews**

- Raw Flexible Magnets from the People’s Republic of China and Taiwan: On June 6, 2019, Commerce released their final [results](#) of the Expedited Sunset Reviews of the Antidumping Duty Orders.
- Freshwater Crawfish Tail Meat from the People’s Republic of China: On June 7, 2019, Commerce released the final [results](#) of the Sunset Review and Revocation of the Antidumping Duty Order.
- Prestressed Concrete Steel Rail Tie Wire from Mexico and the People’s Republic of China: On June 10, 2019, Commerce released the final [results](#) of the Sunset Reviews and the Revocation of the Antidumping Duty Orders.
- Certain Hot-Rolled Carbon Steel Flat Products from India, Indonesia, the People’s Republic of China, Taiwan, Thailand, and Ukraine: On June 10, 2019, Commerce released the final [results](#) of the Expedited Third Sunset Reviews of the Antidumping Duty Orders.
- Sodium Nitrite from the People’s Republic of China: On June 11, 2019, Commerce released the final [results](#) of the Second Expedited Sunset Review of the Countervailing Duty Order.
- Certain Hot-Rolled Carbon Steel Flat Products from Thailand: On June 11, 2019, Commerce released the final [results](#) of the Third Expedited Sunset Review of the Countervailing Duty Order.
- Sodium Nitrite from Germany and the People’s Republic of China: On June 11, 2019, Commerce issued the final [results](#) of the Second Expedited Sunset Review of the Antidumping Duty Orders.

- Persulfates from the People’s Republic of China: On June 11, 2019, Commerce released the final [results](#) of the Fourth Expedited Sunset Review of the Antidumping Duty Order.
- Non-Malleable Cast Iron Pipe Fittings from the People’s Republic of China: On June 11, 2019, Commerce released the final [results](#) of the Third Expedited Sunset Review of the Antidumping Duty Order.
- Laminated Woven Sacks from the People’s Republic of China: On June 11, 2019, Commerce released the final results of the Second Expedited Sunset reviews for both the [Antidumping Duty Order](#) and [Countervailing Duty Order](#).
- Steel Wire Garment Hangers from the People’s Republic of China: On June 11, 2019, Commerce issued the final [results](#) of the Second Expedited Sunset Review of the Antidumping Duty Order.
- Certain Hot-Rolled Carbon Steel Flat Products from India and Indonesia: On June 12, 2019, Commerce released the final [results](#) of the Expedited Sunset Reviews of the Countervailing Duty Orders.

## U.S. INTERNATIONAL TRADE COMMISSION

### Section 701/731 Proceedings

#### Investigations

- Mattresses from the People’s Republic of China: On June 13, 2019, the ITC released the [schedule](#) for the final phase of the Antidumping Duty Investigation.
- Fresh Tomatoes from Mexico: On June 14, 2019, the ITC announced the [resumption](#) of the final phase of the Antidumping Duty Investigation.
- Stainless Steel Kegs from the People’s Republic of China, Germany, and Mexico: On June 17, 2019, the ITC released the [schedule](#) of the Final Phase of Countervailing and Antidumping Duty Investigations.
- Glycine from the People’s Republic of China, India, Japan: On June 21, 2019, the ITC released the final [determinations](#) in the Antidumping Duty and Countervailing Duty investigations.
- Aluminum Wire and Cable from the People’s Republic of China: On June 28, 2019, the ITC released the [schedule](#) for the final phase of the Countervailing Duty and Antidumping Duty Investigations.

#### Sunset Review Decisions

- Sodium Nitrite from China and Germany: On June 4, 2019, the ITC released the [scheduling](#) of the Expedited Five-Year Reviews.
- Raw Flexible Magnets from China and Taiwan: On June 5, 2019, the ITC released the [scheduling](#) of the Expedited Five-Year Reviews.
- Steel Nails from the People’s Republic of China: On June 6, 2019, the ITC released the [scheduling](#) of the Expedited Five-Year Reviews.
- Circular Welded Carbon-Quality Steel Pipe from the People’s Republic of China: On June 19, 2019, the ITC announced in its second [review](#) that it determined that the revocation of the antidumping and countervailing duty orders on the subject merchandise would lead to the continuation or recurrence of material injury to an industry in the U.S.
- On June 21, 2019, the ITC announced its termination of the Five-Year Reviews for the following products:
  - [Prestressed Concrete Steel Rail Tie Wire from the People’s Republic of China and Mexico](#)

- [Crawfish Tail Meat from the People’s Republic of China](#)
- [Certain Off-the-Road Tires from the People’s Republic of China](#)
- Hot-Rolled Steel Products from the People’s Republic of China, India, Indonesia, Taiwan, Thailand, and Ukraine: On June 28, 2019, the ITC released the [schedule](#) of the Expedited Five-Year Reviews to determine whether the revocation of the Antidumping and Countervailing Duty Orders would lead to material injury.

## Section 337 Proceedings

- Certain Magnetic Data Storage Tapes and Cartridges Containing Same (II): On June 12, 2019, the ITC announced its final [determination](#) in finding a violation of Section 337. The ITC also determined to issue a limited exclusion order and a cease and desist order and set bond rates on the entered value of covered products.
- Certain Mounting Apparatuses for Holding Portable Electronic Devices and Components Thereof: On June 21, 2019, the ITC announced its final [determination](#) in finding a violation of Section 337 and terminated the investigation.
- Certain Strength-Training Systems and Components Thereof: On June 28, 2019, the ITC issued a [notice](#) to terminate the investigation based on a consent order stipulation and proposed consent order.

## U.S. CUSTOMS & BORDER PROTECTION

U.S. Customs & Border Protection has not published any Notices of Final Determination or Enforce and Protect Act (EAPA) Notices of Actions for the month of June.

## COURT OF INTERNATIONAL TRADE

### Summary of Decisions

#### [19-66](#)

On June 3, 2019, in the ongoing case of determining whether or not Plaintiff Midwest Fastener’s zinc and nylon anchor products are considered to be nails, the CIT sustained the Department of Commerce’s final results of the redetermination pursuant to the Court Remand. The CIT concluded that Plaintiff’s zinc and nylon anchors do not function like nails and are considered a separate type of product from nails by the relevant industry. Commerce’s remand results were sustained and Plaintiff Midwest Fastener’s products were excluded from the scope.

#### [19-69](#)

On June 6, the CIT denied Plaintiffs Confederacion de Asociaciones Agricolas del Estado de Sinaloa, Consejo Agrícola de Baja California, Asociacion Mexicana de Horticultura Protegida, Asociacion de Productores de Hortalizas del Yaqui y Mayo, and Sistem Producto Tomate (collectively, “Plaintiffs”) motion for a temporary restraining order (“TRO”) and preliminary injunction (“PI”)

in the antidumping duty investigation of tomatoes from Mexico. The Court determined that the Plaintiffs had not met their burden to establish the likelihood of success on the merits and irreparable harm absent injunctive relief. They also had failed to establish if the hardships tip in favor of denying the Plaintiff’s motion. The Court also found the public interest to be neutral. For those reasons the CIT denied the plaintiff’s motions.

#### [19-70](#)

On June 7, 2019, in the anticircumvention investigation of heat-treated 5050-grade aluminum extrusions from the People’s Republic of China, the Court sustained Commerce’s determination that it had the authority to conduct a later-developed product anticircumvention inquiry and concluded that Commerce’s determination that the subject merchandise are “later-developed products” is supported by substantial evidence. However, the Court found that Commerce’s decision to suspend liquidation relative to the date of the Initiation Notice was not in accordance with law because the language in the



notice did not provide an adequate notice. The Court remanded Commerce to, “reformulate its liquidation instructions consistent with the opinion.”

#### 19-71

On June 12, 2019, in the final results of the sixth administrative review of the antidumping duty order on the imports of certain steel nails from the People’s Republic of China, the CIT partially sustained and partially remanded Commerce’s first remand results. The Court found that neither the law nor the facts supported Commerce’s findings that “1) none of Shandong’s factors of production or its U.S. sales information was usable, and 2) that Shandong failed to comply with Commerce’s requests for production and sales information to the best of its ability and 3) that a rate of 118.04% was legally and factually justified.” Due to those mentioned reasons, the Court remanded the matter to Commerce to reissue a redetermination.

#### 19-72

On June 13, 2019, concerning the final determination in the 2015-2016 administrative review of the antidumping duty order on chlorinated isocyanurates from the People’s Republic of China, the Court sustained and remanded Commerce’s final determination. Specifically, the Court remanded Commerce’s determination to treat Defendant Intervenor’s, Juancheng Kangtai Chemical, sales to Customer X as export price sales on the grounds that Commerce could not persuasively argue that Kangtai and Customer X were unaffiliated.

#### 19-74

On June 17, 2019, the CIT granted the Defendant’s motion for summary judgment and denied Plaintiff Echostar Technologies motion for summary judgement in the case of collecting a refund of 99% duties paid on its exported video technology goods. U.S. Customs and Border Protection (“CBP”) liquidated the twelve claims in issue for goods exported in 2011 and 2012 and denied duty refunds worth \$276,275.12. The Court determined that “Echostar’s electronic submission of summary data was not a ‘filing’ under 19 U.S.C. § 1313; and CBP was not responsible for Echostar’s untimely filing.”

#### 19-77

On June 21, 2019 the Court sustained Commerce’s final determinations in the administrative review of the antidumping duty on fine denier polyester staple fiber from the Republic of Korea. Plaintiffs Solianus Inc and Consolidated Fibers challenged Commerce’s “all-others” antidumping duty rate that was assigned to all non-investigated Korean producers and exporters in the final decision. On review, the Court sustained Commerce’s methodology in calculating the “all-others” antidumping duty rate Of 30.15%.

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

#### 2018-1018

On June 7, 2019, Appellee Ford Motor Company (“Ford”) sued Appellant United States (“the Government”) in the U.S. Court of International Trade (“CIT”), challenging U.S. Customs and Border Protection’s (“Customs”) classification of its model year (“MY”) 2012 Transit Connect 6/7 vehicles under the Harmonized Tariff Schedule (“HTSUS”) of the United States Subheading 8704.31.00, which bears a duty rate of 25% ad valorem. Ford and the Government filed cross-motions for summary judgment, with Ford arguing that its products should be classified under the HTSUS Subheading 8703.23.00 which has a lower duty rate of 2.5% ad valorem. The CIT denied the Government’s cross-motion for judgement and ended up granting Ford’s. The CAFC found Ford’s arguments unpersuasive and reversed the judgment of the CIT and ruled in favor of the Government.

#### 2018-1109

The sealed opinion was issued on May 9, 2019, however the public version of the opinion was issued June 14, 2019. On May 9, 2019, BMW of North America LLC (“BMW”) appealed the final judgment of the United States Court of International Trade, sustaining the United States Department of Commerce’s application of an adverse facts available (“AFA”) rate of 126.44% against BMW in the antidumping duty administrative review of ball bearings and parts thereof from Japan and the United

Kingdom. The CAFC concluded that Commerce did not set forth its reasoning in sufficient detail to allow review of whether the selected AFA rate was unduly punitive and vacated the USCIT's decision and remanded for further proceedings consistent with the opinion.

#### 2018-1787

On June 21, 2019, in the countervailing duty investigation on certain corrosion-resistant steel products (CORE) from Korea, the CAFC rejected the broad legal position advanced by Commerce in defending its decision, however they did not find any reversible error in Commerce's decision. The Plaintiff, Nucor Corporation, alleged that the Korean Government had provided subsidies to Korean CORE producers through its sale of electricity. Commerce found no electricity-sale subsidies and the Court of International Trade affirmed Commerce's findings concerning the electricity sales. Plaintiff Nucor argued that Commerce had committed reversible error when they limited the analysis to Korean Electric Power Corporation's (KEPCO) prices in relation to its costs and not consider Korean Power Exchange's (KPX) prices that they charged. Because Commerce only mentioned KEPCO's costs in its preliminary decision and did not bring up KPX, the CAFC stated that Plaintiff Nucor should have been, "sufficiently on notice of Commerce's limited focus. Yet it [Nucor] did not adequately raise the issue to Commerce in its case brief filed after the preliminary decision." Ultimately the CAFC rejected the broad position asserted by Commerce, however they did not find any reversible error in Commerce's decision.

## **EXPORT CONTROLS AND SANCTIONS**

There have been no export controls and sanctions updates during the month of June.