

TRADE LAW UPDATE



July 2019

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PRESIDENTIAL ACTIONS

[**USTR Proposes New Tariffs on EU Products under Section 301**](#)

The Office of the U.S. Trade Representative (USTR) announced on July 1, 2019 a [proposed list](#) of tariffs on approximately \$4 billion worth of products from the European Union (EU). This is a supplemental list to the April 12, 2019 [proposed tariffs](#) with an approximate trade value of \$12 billion.

According to USTR, this action is designed to pressure the EU to implement the World Trade Organization's (WTO) Dispute Settlement Body recommendations in regard to the United States' WTO dispute against the EU's subsidies on large civil aircraft.

Interested parties can appear at a public hearing or file comments on the proposed list.

Key dates:

July 24, 2019: Due date for submission of requests to appear at the public hearing and summary of testimony.

August 5, 2019: Due date for submission of written comments.

August 5, 2019: The Section 301 Committee will convene a public hearing in the Main Hearing Room of the U.S. International Trade Commission, 500 E Street SW, Washington DC 20436 beginning at 9:30 a.m.

August 12, 2019: Due date for submission of post-hearing rebuttal comments.

[**USTR Opens Section 301 Investigation into French Digital Services Tax, Announces Public Comment Period**](#)

On July 10, the Office of the U.S. Trade Representative ("USTR") [announced](#) that it had opened an investigation directed at the Government of France under Section 301 of the Trade Act of 1974. The announcement came as the French Senate considered a new digital services tax ("DST")—[enacted](#) a day later—imposing a 3% revenue tax on companies providing certain online services directed at French customers that earn annual revenues of at least €25 million in France and at least €750 million worldwide. To see the full post on the new Section 301 Investigation click [here](#).

[President Trump Declares Uranium Imports Not a Threat to U.S. National Security](#)

On Friday evening, July 13, 2019, President Trump declared that U.S. imports of uranium [do not pose a national security threat](#) under Section 232 of the Trade Expansion Act of 1962.

The President's decision is surprising as the Administration has been strongly protectionist and has previously imposed Section 232 tariffs on steel and aluminum. Additionally, the decision goes against the U.S. Department of Commerce's findings that imported uranium poses a threat to U.S. national security. To see our full put on the issue, click [here](#).

U.S. DEPARTMENT OF COMMERCE DECISIONS

Investigations

- Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: On July 9, 2019, Commerce released the final affirmative [Antidumping Duty](#) and [Countervailing Duty](#) determinations and final affirmative determinations of Critical Circumstances.
- Diamond Sawblades and Parts Thereof: On July 16, 2019, Commerce released its final [determination](#) of Anti-Circumvention Inquiry.
- Certain Steel Racks and Parts Thereof from the People's: On July 24, 2019, Commerce released the final affirmative Countervailing Duty [determination](#) and Antidumping Duty [determination](#).
- Glycine from the People's Republic of China: On July 25, 2019, Commerce released a [notice](#) of correction to the final affirmative Countervailing Duty determination and Countervailing Duty Order.

Administrative Reviews

- Certain Cold-Rolled Steel Flat Products from the Republic of Korea: On July 5, 2019, Commerce released the amended final [results](#) of the First Countervailing Duty Administrative Review (2016).
- Oil Country Tubular Goods from the People's Republic of China: On July 5, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2017-2018).
- Carbon and Alloy Steel Cut-to-Length Plat from the Federal Republic of Germany: On July 5, 2019, Commerce released the final [results](#) and partial rescission of the Antidumping Duty Administrative Review (2016-2018).
- Certain Hot-Rolled Steel Flat Products from the Republic of Korea: On July 9, 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: On July 10, 2019, Commerce released the amended final [results](#) of the Antidumping Duty Administrative Review (2016-2017).
- Pure Magnesium from the People's Republic of China: On July 18, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2017-2018).
- Certain Stilbenic Optical Brightening Agents from Taiwan: On July 19, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2017-2018).
- Aluminum Extrusions from the People's Republic of China: On July 22, 2019, Commerce released the final [results](#) of the Countervailing Duty Administrative Review (2017).
- Welded Line Pipe from the Republic of Korea: On July 23, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2016-2017).
- Steel Concrete Reinforcing Bar from Mexico: On July 24, 2019, Commerce released the final results of the Antidumping Duty Administrative Review (2016-2017).

- Fresh Garlic from the People’s Republic of China: On July 24, 2019, Commerce released the final results of the 23rd Antidumping Duty Administrative Review (2016-2017).
- Certain Hot-Rolled Steel Flat Products from the Republic of Korea: On July 24, 2019, Commerce released the amended final [results](#) of the first Countervailing Duty Administrative Review
- Steel Concrete Reinforcing Bar from the Republic of Turkey: On July 26, 2019, Commerce released the final [results](#) in the Countervailing Duty Administrative Review (2016).
- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from the People’s Republic of China: On July 30, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review and final determination of No Shipments (2016-2017).

Changed Circumstances Reviews

There have been no Changed Circumstance Reviews initiated by Commerce for the month of July.

Sunset Reviews

- Certain Softwood Lumber Products from Canada: On July 5, 2019, Commerce released the final [results](#) of the Countervailing Duty Expedited Review.
- Uncovered Innerspring Units from the People’s Republic of China, South Africa, and the Socialist Republic of Vietnam: On July 10, 2019, Commerce released the final [results](#) of the Expedited Sunset Reviews of the Antidumping Duty Orders.

U.S. INTERNATIONAL TRADE COMMISSION

Section 701/731 Proceedings

Investigations

- Quartz Surface Products from the People’s Republic of China: On July 5, 2019, the ITC released the final [determinations](#) in the Antidumping Duty and Countervailing Duty Investigations.
- Steel Trailer Wheels from the People’s Republic of China: On July 23, 2019, the ITC released the final revised [schedule](#) for the Antidumping and Countervailing Duty Investigations.
- Polyester Textured Yarn from the People’s Republic of China: On July 29, 2019, the ITC released the [final](#) schedules for the Final Phase of the Countervailing Duty and Antidumping Duty Investigations.



Sunset Review Decisions

- Steel Wire Garment Hangers from the People’s Republic of China: On July 5, 2019, the ITC released the [schedule](#) of the Expedited Five-Year Review.
- Persulfates from the People’s Republic of China: On July 5, 2019, the ITC released the [schedule](#) of an Expedited Five-year Review.
- Laminated Woven Sacks from the People’s Republic of China: On July 5, 2019, the ITC released the [scheduling](#) of the Expedited Five-Year Review.

- Raw Flexible Magnets from the People’s Republic of China and Taiwan: On July 17, 2019, the ITC announced its [determinations](#) for the revocations of the Countervailing Duty Order and Antidumping Duty Order in the Second Review.
- Steel Nails from the People’s Republic of China: On July 18, 2019, the ITC announced in the Second Review its [determination](#) that the revocation of the Antidumping Duty Order of the subject merchandise would lead to material injury in the United States.
- Mattresses from the People’s Republic of China: On July 18, 2019, the ITC released the final revised [schedule](#) for the Antidumping Duty Investigation.

Section 337 Proceedings

- Certain Road Construction Machines and Components Thereof: On July 3, 2019, the ITC announced in its final [determination](#) that there was a violation of section 337 in the investigation. The Commission also issued a limited exclusion order that prohibits the importation of the subject merchandise.
- Certain LED Lighting Devices, LED Power Supplies, and Components Thereof: On July 8, 2019, the ITC announced in their final [determination](#) that there was no violation of section 337 made by the participating respondents, however the ITC did find a violation of section 337 by the defaulting respondent.
- Certain Full-Capture Arrow Rests and Components Thereof: On July 19, 2019, the ITC issued a [notice](#) of final Commission Determination of Section 337 Violation and issuance of a General Exclusion Order and termination of the investigation.
- Certain Road Milling Machines and Components Thereof: On July 24, 2019 in its final [determination](#), the ITC announced that it would be issuing a limited exclusion order, cease and desist order, and ultimately terminated the investigation.
- Certain Thermoplastic Encapsulated Electric Motors, Components Thereof, and Products and Vehicles Containing the Same: On July 25, 2019, the ITC announced in their [determination](#) that they had found no violations of section 337.
- Certain Carbon Spine Board, Cervical Collar, CPR Masks, and Various Medical Training Manikin Devices, and Trademarks, Copyrights of Product Catalogues, Product Inserts and Components Thereof: On July 25, 2019, the ITC issued a [limited exclusion order](#) to the eleven respondents found in default. Additionally, the ITC also issued a cease and desist order against respondent Basic Medical Supply, LLC.

U.S. CUSTOMS & BORDER PROTECTION

[EAPA 7297](#)

- On July 18, 2019, the CBP issued a letter dated June 26, 2019, announcing the commencement of a formal investigation concerning several importers of Chinese-origin carbon steel butt-welded pipe fittings. Allied Group filed six allegations that identified certain companies of evading antidumping duties on the subject merchandise by transshipping the products through Cambodia and/or misclassified as non-subject merchandise.

COURT OF INTERNATIONAL TRADE

Summary of Decisions

[19-79](#)

On July 1, 2019, in the ongoing antidumping and countervailing duty orders on aluminum extrusions from the People's Republic of China, the Court concluded that jurisdiction over this action exists because Plaintiff Perfectus's complaint seeking review of the scope ruling was filed within thirty days of the mailing by post of that ruling as required by statute and was therefore timely and the Court sustains Commerce's finding that the pallet products fall within the plain language of the scope of the Orders.

[19-80](#)

On July 2, 2019, in the classification case of stringed light sets, the Court granted Plaintiff Target's motion for summary judgment and denied the Defendant's cross-motion. The CIT concluded that the subject merchandise based on the principal of use and commercial fungibility with other products was incorrectly classified by Customs. In the Opinion, the CIT stated, "there can be no genuine issue of material fact that the lighting sets at issue are not principally used as Christmas tree lights and are not fungible with Christmas tree lights."

[19-81](#)

On July 3, 2019, in the antidumping duty investigation covering hydrofluorocarbon (HFC) blends and components from the People's Republic of China, the CIT sustained the ITC's Second Remand results on the grounds that the ITC had properly addressed the courts concerns. On remand, the ITC gathered more precise data to demonstrate that it did not reach any conclusions based on erroneous data. Second, the ITC thoroughly and appropriately explained its determination that HFC components and blends are separate like products. For those mentioned reasons, the CIT sustained the ITC's Second Remand results.

[19-82](#)

On July 3, 2019, in the antidumping and countervailing duty investigation of polytetrafluoroethylene resin (PTFE) from India, the CIT denied Plaintiff Chemours Company FC's motion to supplement the administrative record and remanded the matter to the ITC. The CIT also denied Defendant Intervenor Gujarat Fluorochemical's motion to supplement the administrative record as moot.

[19-83](#)

On July 8, 2019, in the twelfth administrative review of the antidumping duty order covering certain frozen fish fillets from the Socialist Republic of Vietnam, the CIT sustained

Commerce's redetermination. Initially, the CIT found Commerce's decision to impose the Vietnam-wide rate on Plaintiff Thuan An to be contrary to law, however on remand Commerce reconsidered its authority to impose a Nonmarket Economy Entity (NME) rate and "acknowledges that the NME-entity rate in the underlying investigation was an individually investigated rate."

[19-84](#)

On July 8, 2019 in the scope determination for the antidumping duty order on steel threaded rod from the People's Republic of China, the CIT sustained Commerce's scope determination and denied Plaintiff Star Pipe Products' challenge to Commerce's liquidation instructions to CBP associated with the scope determination as moot. The CIT agreed with Commerce's determination that the steel threaded rod components of Plaintiff Star Pipe's Joint Restraint Kit were within the scope of the Order and supported by substantial evidence.

[19-85](#)

On July 9, 2019, in the classification case of Plaintiff Ken International's "WeeRide Kangaroo Center-Mounted Bicycle-Child Carrier", the CIT denied the Plaintiff's motion for partial summary judgment and granted the Defendant's motion for partial summary judgment. Plaintiff Kent International argued that their product should fall under the HTSUS subheading 9401.80.40 at a 0% duty rate, however the Court disagreed and ruled in favor of the Defendant. The CIT determined that because the subject merchandise is classifiable under heading 8714, Note 1(h) excludes the merchandise from being classified under the 9401 heading.

[19-86](#)

On July 9, 2019, in the final determination in the administrative review of the antidumping duty order covering certain cased pencils from the People's Republic of China, the CIT sustained and remanded Commerce's final determination. The CIT agreed with Commerce's decision that Plaintiff Prime Time's submission was an unsolicited questionnaire response. The court however, concluded that Commerce acted contrary to law when it removed Prime Time's information from the record and rejected its submission.

[19-88](#)

On July 17, 2019, in the final affirmative determination in the antidumping duty investigation of certain carbon and alloy steel cut-to-length plate from France, Commerce sustained the final results of the Redetermination Pursuant to the Court's Remand. The CIT found that Commerce had

complied with the court's instructions on remand and adequately explained its method for applying partial AFA. Additionally Defendant-Intervenor, Nucor, failed to provide any evidence that the rate selected is not sufficiently adverse.

[19-90](#)

On July 23, 2019, in the case of determining whether or not Commerce used the correct procedure to impose an excise tax on Plaintiff New Image Global's tobacco wraps was in accordance with the law, the CIT granted the Defendant's cross motion for judgment but denied Plaintiff New Image Global's cross motion for judgment. To properly weigh the tobacco wraps, the Defendant, in accordance with USP 1251 and Custom's regulations, used the correct procedures to find a steady weight for the wraps. The CIT agreed with the methodology and concluded that Plaintiff New Image's challenges regarding the reliability of the procedure are without merit.

[19-92](#)

On July 25, 2019, in the case of the first administrative review of the antidumping duty order covering certain crystalline silicon photovoltaic products from the People's Republic of China, the CIT sustained Commerce's remand redetermination. The CIT concluded that Commerce's decision to increase Plaintiff Trina's U.S. selling prices to account for the CVD amount imposed for the Ex-Im Bank Buyer's Credit Program was in accordance with the law and complied with the court's remand order.

[19-94](#)

On July 26, 2019, the CIT granted summary judgment in favor of the Defendant in the classification class of Plaintiff

FANCU America Corporation's imports of printed circuit assemblies used as components in FANCU's programmable "controllers" in their industrial robots. The CIT found that there were no genuine issues of material fact and concluded that the subject merchandise was properly classified under the HTSUS subheading 8538.90.30. The merchandise is subject to a 3.5% duty rate.

[19-95](#)

On July 26, 2019, the CIT granted Plaintiff Moen's motion to dismiss and denied as moot other pending motions in the tariff classification case of various models of showerheads imported from the People's Republic of China. The CIT concluded that the Defendant would not suffer any clear legal prejudice if Plaintiff Moen obtained dismissal.

[19-97](#)

On July 29, 2019, the CIT sustained Commerce's final results of the Redetermination pursuant to the Court Remand in its entirety in the countervailing duty investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation. Plaintiffs ArcelorMittal and Novolipetsk Steel Public Joint Company ("NLMK") challenged certain aspects of Commerce's final determination, however the CIT found their arguments to be unpersuasive. The CIT concluded that Commerce's selection of the AFA rate and decision to reject Plaintiff NLMK's untimely submissions were in accordance to law.

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

[2018-1962](#)

On July 2, 2019, the CAFC agreed with Commerce's determination that Plaintiff-Appellant Quedan Company's agricultural stakes produced in the People's Republic of China are within the scope of an antidumping duty order covering rebar from China. Used for training grape vines and other plants, these agricultural stakes are made of steel concrete reinforced bar (rebar) by cutting rebar to a length of four to five feet followed by sharpening one end to a point to ease driving the stake into the ground. The CAFC found no substantive or procedural error in Commerce's ruling or in their continuation of a suspension liquidation for the Plaintiff's sake.

[2018-1282](#)

On July 22, 2019, Plaintiff-Appellant Erwin Hymer Group North America, Inc. appealed the final judgment of the United States Court of International Trade (CIT) that granted the Government's motion for judgment on the agency record. The CAFC found that the CIT's assertion of residual jurisdiction was improper due to a civil action for contesting the denial of protests that

could have been available under 28 U.S.C. § 1581(a), and the remedy provided under § 1581(a) is not manifestly inadequate. Because the CIT lacked jurisdiction, the CAFC reversed and remanded with instructions to dismiss. This case involved the importation of 149 vehicles into the United States from Canada in 2014. In 2015, CBP had liquidated the entries and classified them under the HTSUS subheading 8703.24.00 that had an ad valorem rate of 2.5%. The CAFC concluded that while Plaintiff Hymer's argument was "inventive" it was ultimately invalid. Additionally, "Hymer has failed to meet its burden to demonstrate that relief under § 1581(a) is manifestly inadequate in light of the true nature of this action."

EXPORT CONTROLS AND SANCTIONS

Trump Administration and BIS Announce Willingness to Issue Huawei Export Licenses; Criteria for Issuing Such Licenses Still Unclear.

As [previously reported](#) in our International Trade Insights blog, the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") added Chinese telecommunications giant Huawei Technologies Co. Ltd. ("Huawei") and sixty-eight of its affiliate companies to the BIS Entity List effective May 16, 2019. This designation prohibits anyone inside or outside of the United States from exporting, re-exporting or making an in-country transfer of commodities, software or technology that is subject to the U.S. Export Administration Regulations ("EAR") to any of the listed Huawei companies without an appropriate license from BIS. Commodities, software and technology are "subject to the EAR" when they are of U.S. origin (regardless of whether they are located inside or outside the U.S.), physically present in the U.S., moving in transit through the U.S. or produced outside of the U.S. with qualifying amounts of controlled U.S.-origin content. The BIS designations for these Huawei companies require BIS to evaluate any license applications according to a general presumption of denial. BIS has also issued a Temporary General License (covered [here](#) in the International Trade Insights blog) which authorizes limited transactions with Huawei Entity List companies under certain contracts that existed on or before May 16, 2019. This Temporary General License is currently scheduled to expire on August 19, 2019.