

TRADE LAW UPDATE



September 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

[Trump Delays Hike in Tariff Lists 1, 2, and 3 as Gesture of “Good Will”](#)

On Wednesday, September 11, 2019, President Donald Trump posted an unexpected tweet that the United States would be delaying the implementation of the tariff increase from October 1, 2019 to October 15, 2019 as a “gesture of good will” towards China. Originally, President Trump had planned to increase the current 25% tariff rate on \$250 billion worth of Chinese goods to 30%. To see our previous post on this announcement, click [here](#).

[U.S. Announces New Trade Agreement with Japan](#)

On September 25, 2019, the U.S. Trade Representative (USTR) announced a new [bilateral trade deal](#) between the U.S. and Japan. According to the Office of the USTR, Japan will reduce or eliminate tariffs for certain American agricultural goods, while the U.S. will reduce or eliminate tariffs for certain agricultural imports from Japan. American agricultural goods affected by the deal include beef and pork, wheat and barley, certain nuts and berries, wine, and ethanol, among other miscellaneous agricultural goods. Among Japanese agricultural goods affected are certain plants and flowers, green tea, chewing gum, and soy sauce. The U.S. will also reduce or eliminate tariffs on certain Japanese

industrial goods, including certain machine tools, bicycles and bicycle parts, steam turbines, fasteners, and musical instruments. To see the full post on the new trade deal, click [here](#).

[Two New Sets of Section 301 Product Exclusions](#)

On September 30, 2019, the Office of the U.S. Trade Representative (USTR) issued a Federal Register Notice announcing two new sets of product exclusions for Section 301 tariffs on goods from China. The newly granted exclusions cover 92 product exclusions from the first [tranche](#) of Section 301 tariffs, which went into effect on July 6, 2018. The second set of granted exclusions cover 111 product exclusions from the second [tranche](#), which went into effect on August 23, 2018. The exclusions from the first tranche mostly cover certain machinery, while the second tranche exclusions cover electrical components, such as certain electric motors, conductors, and copper wire. Importers and those affected by these tariffs are encouraged to review these lists and contact counsel should they require any additional clarification. The new exclusions will apply for one year from the date of publication on the Federal Register of the granted exclusion requests.

U.S. DEPARTMENT OF COMMERCE DECISIONS

Investigations

- Certain Steel Racks and Parts Thereof from People’s Republic of China: On September 16, 2019, Commerce released the amended final affirmative Antidumping Duty [determination](#) and Antidumping Duty Order and Countervailing Duty Order.
- Fresh Tomatoes from Mexico: On September 24, 2019, Commerce released a [notice of suspension](#) of the antidumping investigation.

Administrative Reviews

- Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China: On September 19, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2017-2018).
- Certain Crystalline Silicon Photovoltaic Products from People’s Republic of China: On September 25, 2019, Commerce published its notice amending the final results pending the CIT’s decision on remand to modify Commerce’s original [determination](#) pertaining to the AD administrative review which was not in harmony with Commerce’s final results in the 2014-2016 administrative review. Commerce had not made a determination in the CVD investigation on certain solar products from China that the Export Buyer’s Credit Program was an export subsidy. The Court concluded, however, that Commerce had “necessarily found” that the Export Buyer’s Credit Program was an export subsidy and ordered Commerce to increase Trina Solar’s U.S. selling prices by the amount countervailed.
- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from People’s Republic of China: On September 30, 2019, Commerce released a [notice of correction](#) to the final results of the 2016-2017 antidumping administrative review, stating that they incorrectly included Wuxi Suntech in the list of companies they found had made no shipments of subject merchandise to the U.S. during the POR. Commerce corrected the results, stating that Wuxi Suntech did in fact have shipments of subject merchandise to the U.S. during the POR and that Wuxi Suntech is not eligible for separate rate status.

Changed Circumstances Reviews

- Certain Hot-Rolled Steel Flat Products from Japan: On September 5, 2019, Commerce released a notice of the final [results](#) of the Antidumping Duty Changed Circumstances Review.
- Certain Hot-Rolled Steel Flat Products from Japan: On September 18, 2019, Commerce released a correction to the final [results](#) of the Antidumping Duty Changed Circumstances Review.
- Certain Steel Nails from People’s Republic of China: On September 20, 2019, Commerce released a notice of the final [results](#) of the Antidumping Duty Changed Circumstances Review.

Sunset Reviews

- Oil Country Tubular Goods from India: On September 24, 2019, Commerce released the final [results](#) of the Expedited Sunset Review of the Countervailing Duty Order.

U.S. INTERNATIONAL TRADE COMMISSION

Section 701/731 Proceedings

Investigations

- Steel Racks from the People's Republic of China: On September 13, 2019, the ITC announced in its final [determination](#) in the Antidumping Duty and Countervailing Duty Investigation that a U.S. industry is materially injured by the imports of the subject merchandise.
- Fabricated Structural Steel from Canada, People's Republic of China, and Mexico: On September 23, 2019, the ITC announced the [scheduling](#) of the final phase of the Countervailing Duty and Antidumping Duty Investigations.
- Softwood Lumber from Canada: On September 27, 2019, the ITC gave notice of the [remand](#) of its final determinations in the Antidumping and Countervailing Duty investigations.

Sunset Review Decisions

- Silicon Metal from Russia: On September 23, 2019, the ITC [announced](#) its intention to conduct a full five-year review to determine whether the revocation of the AD order would continue to injure the domestic industry.
- Oil Country Tubular Goods (OCTG) from India, Korea, Turkey, Ukraine, and Vietnam: On September 24, 2019, the ITC posted an [announcement](#) that it would proceed with reviews to determine whether the revocation of CVD orders on OCTG from India and Turkey and the AD orders on OCTG from India, Korea, Turkey, Ukraine, and Vietnam would continue to injure the domestic industry.
- Circular Welded Carbon Quality Steel Line Pipe from China: On September 25, 2019, the ITC [determined](#) that the revocation of CVD and AD orders would likely continue to injure the domestic industry.
- Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, and Trinidad and Tobago: On September 25, 2019, the ITC [announced](#) its intention to conduct a full five-year review to determine whether the revocation of the CVD order on Brazil and AD orders on Indonesia, Mexico, Moldova, and Trinidad and Tobago would continue to injure the domestic industry.
- Small Diameter Graphite Electrodes from China: On September 30, 2019, the ITC gave [notice](#) of the scheduling of a full five-year review to determine whether the revocation of the AD order on electrodes from China would continue to injure the domestic industry.

Section 337 Proceedings

There were no final determinations for the month of September.

U.S. CUSTOMS & BORDER PROTECTION

- On September 17, 2019, Customs & Border Protection posted its final [determination](#) in the AD circumvention investigation on Diamond Tools Technology LLC (DTT). CBP has determined that there is significant evidence DTT's diamond sawblades were exported from China to the U.S. through Thailand and evaded AD duties by claiming Thai origin. DTT did not declare that the merchandise was subject to an AD order upon entry and, as a result, no cash deposits were collected.

COURT OF INTERNATIONAL TRADE

Summary of Decisions

[19-115](#)

On September 3, 2019, the CIT sustained a remand redetermination for the final results of the administrative review of the antidumping duty order on pneumatic off-the-road tires from the People's Republic of China. In prior judicial proceedings, the CIT remanded the Amended Final Results to Commerce because the Court found it unlawful for Commerce to reduce export price to account for "irrecoverable" value-added tax (VAT). The Court also ordered Commerce to recalculate the deductions from its constructed export price to adjust for double-counting. The CIT sustained the Second Remand Redetermination after Commerce eliminated its deduction for irrecoverable VAT and lowered the Plaintiff's average dumping margin to comply with the Court's previous order.

[19-116](#)

On September 4, 2019, the CIT sustained in part and remanded in part Commerce's remand redetermination following an administrative review of the antidumping order on oil country tubular goods from the Republic of Korea. The CIT sustained Commerce's redetermination with respect to the findings of a particular market situation and dumping margin calculation for non-examined companies, as well as with respect to the classification of proprietary SeAH products. Commerce initially concluded that a particular market situation existed. The Court concluded that Commerce's determination was unsupported by substantial evidence, so Commerce, on remand, recalculated the dumping margin and did not apply the particular market situation analysis. However, the CIT remanded the matter once again to Commerce instructing the agency to deduct SeAH's general and administrative expenses as selling expenses, as Commerce did not adequately explain what evidence supports the treatment of general expenses as selling expenses.

[19-117](#)

On September 4, 2019, the CIT granted Plaintiff American Cast Iron Pipe Company's motion for an injunction of liquidation in the final determination in the antidumping duty investigation on large diameter welded pipe from the Republic of Korea. The CIT granted the Plaintiff's motion on the grounds that the Plaintiff had met its burden to warrant issuance of an injunction. In its complaint, the Plaintiff argued that Commerce's adjustment methodology was insufficient to account for a particular market situation in Korea that distorted the cost of production. As Commerce was unable to support the notion that the

Plaintiff's claims are without merit, the Court stated that there was no harm in granting the statutory injunction to ensure that remedies remain available throughout the pendency of this case, as there is serious potential for irreparable harm if the court does not grant the motion.

[19-118](#)

On September 6, 2019, the CIT granted Plaintiff Sumec North America's motion for judgment on the agency record concerning the issuance of a Timken Notice on certain imports of crystalline silicon photovoltaic cells from the People's Republic of China. The CIT found that Commerce had erred in setting the effective date of the Timken Notice, amended cash deposit instructions, and demonstrated clear prejudice in their actions towards Plaintiff Sumec.

[19-120](#)

On September 10, 2019, the CIT remanded Commerce's final determination in the antidumping duty investigation of biodiesel from Argentina. In their calculation of normal value, Commerce included the estimated value of RINs, tradeable credits that are part of a regulatory scheme administered by the EPA, making the legal basis for Commerce's determination unclear. Commerce's explanation regarding its authority to adjust normal value for RINs is incomplete, as Commerce must clearly ground its determination in the statute. The Plaintiffs argued that Commerce's decision to reject domestic Argentine prices in its determinations, and favoring constructed prices, was unsupported by substantial evidence. While the Court acknowledged that Commerce's rejection of Argentine soybean prices was in accordance with the law, as Argentina's prices are greatly distorted, the Court remanded the decision for further explanation because it was not supported by substantial evidence on the record.

[19-121](#)

On September 13, 2019, the CIT denied Plaintiff Intervenor Zhejiang Wanli Tools Group motion to reverse liquidation. Wanli's motion was not within the scope of a previously-issued injunction, which limited the scope specifically to entries that Wanli exported, not produced. To conclude that CBP failed to comply with the terms of the injunction would require Wanli to prove that it exported the goods in the relevant entry. The evidence before the Court did not support such a conclusion, showing that Jiarong Enterprises, not Wanli, was the exporter for the goods in question.

[19-122](#)

On September 18, 2019, the CIT partially sustained and partially remanded Commerce's final affirmative countervailing duty determination with respect to certain aluminum foil from the People's Republic of China. The Court remanded Commerce's determination with respect to the export value adjustment (EVA) because Commerce failed to explain how determination of EVA is relevant to US sales analysis. The Court also remanded Commerce's determination regarding China's Export Buyer's Credit Program, since Zhongji challenges Commerce's use of adverse inference from facts otherwise available. The Court sustained all other determinations.

[19-123](#)

On September 19, 2019, the CIT remanded Commerce's final scope determination of an antidumping order on diamond sawblades from People's Republic of China. Although the scope of the order is "susceptible to interpretation," the evidentiary record does not support Commerce's conclusion that Lyke's cupwheels fall outside the scope of the antidumping order. Additionally, Commerce incorrectly applied the regulatory framework in its analysis when it considered function and use of Lyke's cupwheels. Function and use is a (k)(2) factor, which Commerce may only consider if (k)(1) factors, such as the petition or the ITC determination, are insufficient. Commerce had found, however, that the (k)(1) sources "definitively answer the scope question."

[19-124](#)

On September 20, 2019, the CIT sustained Commerce's Remand Results in the administrative review of the CVD order on Welded Carbon Steel Pipes and Tubes from

Turkey. The Plaintiff argues that Commerce is required to conduct a "pass-through" investigation to determine if subsidy effects "passed through" to third-party shippers/resellers. The Court contended that Commerce had reasonably determined that ignorance of third party sales is irrelevant for duty determination and sustained the Remand Results.

[19-125](#)

On September 23, 2019, the CIT remanded Commerce's final determination in the seventh administrative review of diamond sawblades and parts thereof from People's Republic of China. According to the CIT, Commerce abused its discretion and acted in an arbitrary manner by rejecting the Consolidated Plaintiff's second supplemental response. The Court ordered that the second supplemental response be placed on the record and included in the calculation of the Plaintiff's AD rate and, if necessary, recalculating the separate rate applicants' rate.

[19-126](#)

On September 27, 2019, the CIT issued an affirmative injunction to enforce its previous judgment in the antidumping case on ironing tables from China. In the months following the judgment, Customs incorrectly liquidated entries at a lower-than-specified dumping rate, resulting in the under-collection of millions of dollars. When the Court ordered the entries to be reliquidated, Target Corporation, an importer of record, immediately challenged the decision. The Court stayed any reliquidation and enforced its judgment on the Government and Plaintiff.

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

There have been no Court of Appeals decisions released for the month of September.

EXPORT CONTROLS AND SANCTIONS

[U.S. Treasury Imposes New Sanctions on Iran's Central Bank](#)

On September 20, 2019, President Trump announced a new round of sanctions against Iran, following the September 14 attacks on Saudi Arabian oilfields that the U.S. and the Kingdom quickly attributed to the Islamic Republic. The new sanctions

target Iran's central bank and its National Development Fund, which, according to Treasury Secretary Mnuchin, cuts off "all source of funds" to Iran. To see the new changes to the Treasury's sanctions list, click [here](#).

Despite the Trump administration's insistence that these new sanctions will be severe, it is unclear that they will significantly impact Iran's economy or its behavior, since the administration has already imposed sanctions on purchases of U.S. dollars by the Iranian government last year. The sanctions against the development fund may prove more significant depending on how well-funded it is, especially if it still has access to oil revenues, but that is still unknown to the U.S.