

# TRADE LAW UPDATE



October 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

### [The Current and Future Status of the U.S.-Mexico-Canada Agreement](#)

U.S. Trade Representative (USTR) Robert Lighthizer and certain officials in the administration have expressed optimism about the future of the U.S.-Mexico-Canada Agreement (USMCA). [Concerns are growing](#), however, about whether the intended overhaul of NAFTA will be ratified by the United States Congress.

On October 23, 2019, Senator Grassley, chairman of the Senate Finance Committee, stated that he had a “growing worry” about the current progress of USMCA and claimed that the Democrats are stalling in the hopes of stopping the deal. House Speaker Nancy Pelosi has repeatedly expressed that negotiations between Democrats and the administration on USMCA have been genuine and with the intention of moving the legislation forward. Ratifying the USMCA is contingent on support from Democrats, who possess a majority in the House of Representatives. Click [here](#) to see the full post.

### [Opening Day for Section 301 List 4 Exclusion Process](#)

The process for filing exclusion requests for products on the Section 301 [List 4](#) began on October 31, 2019 and ends on January 31, 2020. The Office of the U.S. Trade Representative (“USTR”) [published](#) the exclusion request procedures in the Federal Register on October 24, 2019.

Exclusion requests can be submitted via USTR’s portal at [exclusions.ustr.gov](#). To be eligible for an exclusion, an importer must demonstrate that (a) there is an insufficient supply from U.S. sources; (b) the additional duties have caused severe economic harm; and (c) the imported good is not identified on the “Made in China 2025” list. Exclusion requests are specific to products imported at the HTSUS 10-digit level and any request must clearly and succinctly identify the physical characteristics such that U.S. Customs can administer the exclusion. Click [here](#) to see the full post.

### [ITC Opens MTB Process; Petitions Due by December 10, 2019](#)

The U.S. International Trade Commission (ITC) [announced](#) on October 11, 2019 the opening of its system for accepting petitions for tariff relief under the American Competitiveness Act of 2016 (commonly referred to as the Miscellaneous Tariff Bill or MTB). The MTB allows U.S. importers to petition for duty-free or reduced-duty treatment of imported products that are unavailable domestically. It is important to note that the duty relief afforded under the MTB applies to customs duties and not tariffs imposed on imports pursuant to Section 232 or 301 tariffs.

Interested parties may file petitions for relief through the ITC’s MTB portal for the next 60 days. All petitions must be submitted no later than 5:15 p.m. EST on December 10, 2019. Nevertheless, we strongly encourage interested parties to submit MTB petitions earlier. After reviewing the petitions and comments filed, the ITC will compile and submit a report with its recommendations to the House Ways and Means Committee and Senate Finance Committee, which must pass the MTB in

order for the three-year duty suspensions to take effect. If signed into law, the MTB exemptions may become effective January 1, 2021, with an expiration date of December 31, 2024. The timeline for the process can be found [here](#). To see the full post regarding the MTB process, click [here](#).

### **[U.S. Levies Tariffs on E.U. Imports over World Trade Organization's Airbus Decision](#)**

The U.S. is set to levy 25% tariffs on imports of specified European foods in response to the World Trade Organization's ("WTO") decision on October 2, 2019, that the European Union (E.U.) provided subsidies to Airbus at the expense of Boeing and the United States. These new tariffs will affect approximately \$7.5 billion beginning today, October 18, 2019.

The goods subject to additional tariffs not only include goods that would affect Airbus directly, such as a 10% levy on large civil aircraft, but also products like Irish whiskey, various European cheeses, and other agricultural goods. According to the Office of the U.S. Trade Representative ("USTR"), the bulk of the tariffs are on products primarily from France, Germany, Spain, and the United Kingdom, since they were most responsible for the Airbus subsidies. Click [here](#) to view the list of products that are subject to the retaliatory 25% tariffs. To see the full post, click [here](#).

### **[USTR Announces Start Date for Section 301 List 4 Exclusion Process](#)**

The Office of the U.S. Trade Representative ("USTR") [announced](#) that starting on October 31, 2019, the exclusion process for Chinese imports subject to [List 4](#) Section 301 tariffs of 15% will open and will conclude on January 31, 2020.

Details on the specifics of the application process have been published in the Federal Register on October 24, 2019 and can be found [here](#). The exclusion request process is similar to the one instituted for List 3 and applications are to be submitted via USTR's portal at [exclusions.ustr.gov](https://exclusions.ustr.gov). To be eligible for an exclusion, an importer must demonstrate that (a) there is an insufficient supply from U.S. sources; (b) the additional duties have caused severe economic harm; and (c) the imported good is not identified on the "Made in China 2025" list. Exclusion requests are specific to products imported at the HTSUS 10-digit level and any request must clearly and succinctly identify the physical characteristics such that U.S. Customs can administer the exclusion. To see the full post, click [here](#).

### **[USTR Announces New List of Excluded Products](#)**

On October 24, 2019, the Office of the United States Trade Representative ("USTR") granted exclusions for 83 specific HTS numbers which are currently subject to 25 percent Section 301 tariffs under List 3. The product exclusions apply retroactively effective September 24, 2018 until August 7, 2020. To see a full list of the excluded products, click [here](#). The announcement relating to the List 3 exclusions comes surprisingly soon after the closure of the exclusion deadline for List 3 on September 30, 2019. Typically, the exclusion processes have been taking 6 months or more for List 1 and List 2.

Starting September 24, 2018, the U.S. imposed additional 10 percent duties on goods from China with an annual trade value of approximately \$200 billion as part of the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. These duties were increased to 25 percent on May 10, 2019. Any goods on List 3 which are not specifically excluded are still subject to these additional 25% tariffs, until further notice. To see the full post, click [here](#).

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

### **Investigations**

- Strontium Chromate from [Austria](#) and [France](#): On October 8, 2019, Commerce announced its final affirmative determinations in the Antidumping Duty Investigation and final negative determination of Critical Circumstances.
- Carbon and Alloy Steel Threaded Rod from Thailand: On October 21, 2019, Commerce announced its final affirmative [determination](#) in the Antidumping Duty investigation and final affirmative determination of critical circumstances.

- Acetone from Spain: On October 21, 2019, Commerce announced its final [determination](#) in the Antidumping Duty investigation and final determination of No Shipments.
- Acetone from Singapore: On October 21, 2019, Commerce announced its final [determination](#) in the Antidumping Duty investigation.
- Refillable Stainless Steel Kegs from the People’s Republic of China: On October 24, 2019, Commerce announced its final determinations in the [Countervailing](#) Duty and [Antidumping](#) Duty investigations and final affirmative determinations of Critical Circumstances, in part.
- Refillable Stainless Steel Kegs from Germany: On October 24, 2019, Commerce announced its final [determination](#) in the Antidumping Duty Investigation.
- Vertical Metal File Cabinets from the People’s Republic of China: On October 25, 2019, Commerce announced its final [determination](#) in the Countervailing Duty investigation.

## Administrative Reviews

- Large Residential Washers from Mexico: On October 1, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2017-2018).
- Polyethylene Retail Carrier Bags from the People’s Republic of China: On October 1, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2017-2018).
- Narrow Woven Ribbons with Woven Selvedge from Taiwan: On October 2, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2017-2018).
- Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: On October 9, 2019, Commerce released the amended final [results](#) of the Antidumping Duty Administrative Review (2016-2017).
- Aluminum Extrusions from the People’s Republic of China: On October 21, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2017-2018).
- Circular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: On October 21, 2019, Commerce released the final [results](#) of the Countervailing Duty Administrative Review (2017) and recession of Countervailing Duty Administrative Review, in part.
- Stainless Steel Bar from India: On October 21, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2017-2018).
- Hydrofluorocarbon Blends from the People’s Republic of China: On October 22, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2017-2018).
- Stainless Steel Butt-Weld Pipe Fittings from Italy: on October 22, 2019, Commerce announced the final [results](#) of the Antidumping Duty Administrative Review (2017-2018)
- Certain Steel Nails from Republic of Korea: On October 22, 2019, Commerce announced the final [results](#) of the Antidumping Duty Administrative Review (2017-2018).
- Certain Uncoated Paper from Brazil: On October 23, 2019, Commerce announced the final [results](#) of the Antidumping Duty Administrative Review (2017-2018).
- Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: On October 23, 2019, Commerce announced the final [results](#) of the Countervailing Duty Administrative Review (2017).
- Certain Frozen Warm Water Shrimp from India: On October 29, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2017-2018).
- Freshwater Crawfish Tail Meat from the People’s Republic of China: On October 31, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2017-2018).

## Changed Circumstances Reviews

- Fine Denier Polyester Staple Fiber (PSF) from the Republic of Korea: On October 2, 2019, Commerce released a notice of final [results](#) of the Antidumping Duty Changed Circumstances Review.

## Sunset Reviews

- Welded Stainless Steel Pressure Pipe from Malaysia, Thailand, and the Socialist Republic of Vietnam: On October 2, 2019, Commerce released the final [results](#) of the Expedited First Sunset Reviews of the Antidumping Duty Orders.
- Circular Welded Austenitic Stainless Pressure Pipe from the People’s Republic of China: .On October 2, 2019, Commerce released the final results of the Expedited Second Sunset Review of the [Countervailing Duty](#) and [Antidumping Duty](#) Order.
- Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, and Trinidad and Tobago: On October 8, 2019, Commerce released the final [results](#) of the Expedited Third Sunset Reviews of the Antidumping Duty Orders.
- Carbon and Certain Alloy Steel Wire Rod from Brazil: On October 8, 2019, Commerce released the final [results](#) of the Expedited Third Sunset Reviews of the Countervailing Duty Order.
- Silicon Metal from the Russian Federation: On October 10, 2019, Commerce released the final [results](#) of the Expedited Third Sunset Review of the Antidumping Order.
- Oil Country Tubular Goods from the Republic of Turkey: On October 15, 2019, Commerce released the final [results](#) of the Expedited First Sunset Review of the Countervailing Duty Order.

## U.S. INTERNATIONAL TRADE COMMISSION

### Section 701/731 Proceedings

#### Investigations

- Dried Tart Cherries from Turkey: On October 4, 2019, the ITC released the [schedule](#) of the final phase for the Countervailing Duty and Anti-Dumping Duty Investigations.
- Refillable Stainless Steel Kegs from Mexico: On October 9, 2019, the ITC released its final [determination](#) that an industry in the U.S. is materially retarded due to imports from Mexico.



#### Sunset Review Decisions

- Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: On October 2, 2019, the ITC announced in its [determination](#) that the revocation of the antidumping duty order of the subject merchandise would lead to the material injury of an industry in the United States.
- Certain Welded Large Diameter Line Pipe from Japan: On October 3, 2019, the ITC announced in its [determination](#) that the revocation of the antidumping duty order of the subject merchandise would lead to material injury in the United States.
- Uncovered Innerspring Units from the People’s Republic of China, South Africa, and Vietnam: On October 3, 2019, the ITC announced in its [determination](#) that the revocation of the antidumping duty order of the subject merchandise would lead to the material injury of an industry in the United States.

## Section 337 Proceedings

- Certain Subsea Telecommunication Systems and Components Thereof: On October 9, 2019, the ITC announced in its [determination](#) that the investigation has been terminated based on the finding of no violation of Section 337.
- Certain Radio Frequency Micro-Needle Dermatological Treatment Devices and Components Thereof: On October 9, 2019, the ITC announced in its [determination](#) not to review an initial determination terminating the investigation based on a settlement agreement. The investigation was terminated outright.
- Certain Portable Gaming Console Systems with Attachable Handheld Controllers and Components Thereof: On October 10, 2019, the ITC announced in its [determination](#) that the investigation has been terminated, finding no violation of Section 337.
- Certain Semiconductor Devices, Integrated Circuits, and Consumer Products Containing the Same: On October 23, 2019, the ITC announced in its [determination](#) that it would not review an initial determination based on a settlement agreement and withdrawal of the complaint.

## U.S. CUSTOMS & BORDER PROTECTION

- On October 1, 2019, CBP posted a [Notice of Initiation of Investigation and Interim Measures](#) regarding certain hardwood plywood products from the People's Republic of China. CBP will investigate whether the importers have evaded the antidumping and countervailing duty orders.

## COURT OF INTERNATIONAL TRADE

### Summary of Decisions

#### [19-129](#)

On October 17, 2019, the CIT remanded Commerce's remand redetermination in the eleventh administrative review of the antidumping order on certain frozen fish fillets from Vietnam. In its first remand, Commerce elaborated on its decision to deny a separate rate to Can Tho Import-Export Joint Stock Company ("Caseamex"). Caseamex requested the court to again remand the case to Commerce to establish a separate rate. In the second remand, Commerce concluded that Caseamex failed to demonstrate autonomy and therefore did not qualify for a separate rate, having found that a minority shareholder retained influence over Casemex. Caseamex challenged Commerce's Second Remand Results as contrary to law and unsupported by substantial evidence. They contended that Commerce erred by assessing potential influence based on facts that occurred prior to the period of review. In a non-market economy (NME) such as Vietnam, Commerce applies a single rate for the companies in the NME unless the exporter requests a separate rate and proves an absence of government control. Because the government of Vietnam is a minority shareholder in Caseamex, not a majority shareholder, Commerce needed further evidence to prove the government's *de facto* control over the exporter. Commerce's argument that the

minority government shareholder retained *de facto* control over Caseamex was directly rebutted by Caseamex's Articles of Association, which lays out explicit rules to counter a minority shareholder from having control over the company's operations. Commerce argued that a minority shareholder, referred to as "Mr. X" in the CIT opinion, retained *de facto* control by voting with the government minority shareholder, who Commerce claimed held sway over Mr. X by appointing him as Chairman of the Board. The CIT concluded that the facts Commerce relied upon to support this argument occurred outside of the POR for the eleventh review, however, and therefore could not be used to determine that Caseamex lacked autonomy.

#### [19-130](#)

On October 17, 2019, the CIT remanded in part and sustained in part Commerce's final results of redetermination in the antidumping duty investigation of steel concrete rebar from Turkey. Plaintiff "Habas" and Consolidated Plaintiff "Icdas" each challenged certain aspects of Commerce's final affirmative determination. The CIT previously remanded Commerce's calculation of the Plaintiff's respective duty drawback adjustments and the use of partial adverse facts available in relation to certain sales for which Icdas could not provide manufacturer

codes. On Remand, Commerce revised its method of calculating the duty drawback adjustments to U.S. price and made a circumstances of sale (“COS”) adjustment to normal value to increase it by the same amount as the duty drawback adjustment. Commerce also provided additional reasoning to support its use of partial adverse facts with respect to Icdas. Habas and Icdas challenged Commerce’s use of a COS adjustment, and Icdas continued to challenge Commerce’s use of partial adverse facts available. The CIT sustained Commerce’s duty drawback adjustment as applied to export price and its use of partial adverse facts available, but remanded Commerce’s decision to make a COS adjustment.

#### [19-131, 19-132](#)

On October 18, 2019, the CIT granted Plaintiff CSC Sugar’s Motion for Judgment on the Agency Record in the countervailing duty and antidumping duty investigations on sugar from Mexico. The issue arose over Commerce’s decision to redefine “refined sugar” after negotiating a suspension agreement with the Mexican government, prompted by the American Sugar Coalition’s petition to investigate subsidies for sugar from Mexico. CSC Sugar contended that Commerce did not meet its obligation to provide a complete administrative record, specifically arguing that Commerce failed to include ex parte communications between Commerce and interested parties in the record. The CIT agreed and ordered Commerce to supplement the administrative record. CSC Sugar subsequently filed a motion for judgment on the agency record, arguing that Commerce’s failure to maintain contemporaneous ex parte memoranda could not be adequately remedied by Commerce’s belated and incomplete supplementation of the record, since the incomplete record foreclosed any opportunity for the Plaintiff to inspect or comment on those memoranda. The CIT found that while the Plaintiff bore the burden of proving it suffered “substantial prejudice,” this standard does not apply to technical failures on Commerce’s part.

#### [19-134](#)

On October 21, 2019, the CIT remanded Commerce’s first remand determination in the antidumping investigation of imports of welded line pipe from the Republic of Korea. The CIT previously remanded the matter for further explanation or reconsideration, holding that Commerce failed to inquire into what the respondents knew or should have known by failing to account for certain record evidence when making its determination. On remand, Commerce reclassified the challenged local sales, the exclusion of which resulted in a revised estimated weighted-average dumping margin. The reclassification did not affect the calculation of the all-others rate. Maverick

asserted that the exclusion of the challenged sales rendered the home market unviable and required Commerce to calculate Maverick’s margin using the constructed value methodology, as opposed to normal value. Commerce countered that, as a matter of practice, it determines home market viability early on in a proceeding and declines to revisit that determination later. Commerce’s regulations dictate that, in most circumstances, the prices in the exporting country’s home market are the appropriate basis for determining normal value. If the exporting country does not constitute a viable market, commerce may resort to a third country or constructed value. Commerce, according to CIT, failed to comply with its mandate to ensure the sufficiency of the home market as a basis for normal value. In its remand determination, Commerce explained that it would not reconsider market viability because it typically makes that determination early in the proceedings. However, Commerce itself has previously recognized that there may be instances where they must delay or reconsider a decision on viability. The CIT did not find Commerce’s explanation sufficient in declining to reconsider home market viability and therefore remanded the issue to Commerce to reconsider the Plaintiff’s home market viability.

#### [19-135](#)

On October 29, 2019, the CIT remanded Commerce’s second remand results in the antidumping duty investigation of certain hot-rolled steel flat products from Turkey. Plaintiff Erdemir and Consolidated Plaintiff Colakoglu each challenged aspects of Commerce’s final determination in the antidumping investigation. On its second remand, Commerce revised its method of calculating Colakoglu’s duty drawback adjustments to U.S. price and made a circumstance of sale (“COS”) adjustment to normal value in order to increase it by the same amount as the duty drawback adjustment. This resulted in a higher weighted dumping margin for Colakoglu. Commerce explained that it made the COS adjustment to ensure that “both sides of the dumping equation contain the same amount of per-unit import duties.” Colakoglu challenged Commerce’s reliance on its authority to adjust normal value pursuant to the COS provision. Commerce further explained that it made the COS adjustment to account for “differences not otherwise accounted for in the statute.” Colakoglu imported several inputs subject to varying duties and purchased the same inputs from domestic sources. Colakoglu participated in a duty exemption program, and therefore did not record the import duties in its records. According to Commerce, when subject merchandise can be produced from various inputs, where only some of which were dutiable imports, or from inputs procured from both

foreign and domestic sources, “the presumption that the normal value includes the full duty proportionate to the full duty drawback is uncertain.” Commerce attempted to remedy this perceived distortion by applying the full duty drawback adjustment to U.S. price, applying a cost-side adjustment, and applying a COS adjustment to normal value. Commerce’s COS adjustment to normal value contravenes both the statutory provision and the agency’s implementing regulation. Commerce’s explanation that it made the COS adjustment “to ensure a fair comparison” was inadequate in this case because Commerce’s

adjustments went beyond those explicitly in the relevant statute, which sets out how to determine normal value, not constructed value. Commerce’s COS adjustment also contravenes the language of its regulation, as Commerce offered no explanation as to how an adjustment to U.S. price constitutes a circumstance of sale. For these reasons, the CIT remanded Commerce’s second remand results and ordered that Commerce shall recalculate normal value without a COS adjustment related to the duty drawback adjustment made to export price.

## COURT OF APPEALS FOR THE FEDERAL CIRCUIT

### 2018-1229

On October 3, 2019, Mid Continent Steel & Wire, Inc. (“Mid Continent”) appealed the opinion and order of the U.S. Court of International Trade (“CIT”), arguing that the U.S. Department of Commerce (“Commerce”) should have imposed a higher dumping rate on PT Enterprise, Inc. Based on a petition from appellant Mid Continent, Commerce initiated an antidumping investigation into steel nails from India, Korea, Malaysia, Oman, Taiwan, Turkey, and Vietnam. Commerce separated the Taiwan investigation into its own proceeding, naming Taiwanese exporter PT Enterprise, Inc. and its affiliate Pro-Team Coil Nail Enterprise, Inc. as mandatory respondents. Mid Continent took issue with Commerce’s method of calculating PT’s “constructed value,” which was calculated using the cost of PT’s inputs. Mid Continent contended that certain of PT’s “tollers,” manufacturers that offer manufacturing services with provided inputs, should not have been included in Commerce’s calculation because they are affiliated with PT and the prices may be artificially low. In both its preliminary and final determinations, Commerce found no evidence of affiliation between PT and its tollers. Mid Continent filed an action in the CIT, seeking a higher duty by challenging Commerce’s determination of no affiliation between PT and its tollers, while PT appealed to the CIT where it sought a reduced or eliminated duty by challenging aspects of Commerce’s methodology. The CIT sustained the relevant Commerce conclusions on remand. The Court of Appeals for the Federal Circuit rejected Mid Continent’s challenge on the grounds that Commerce provided plenty of substantial evidence for its non-affiliation determination. In its cross-appeal, PT challenged the methods Commerce used in calculating the dumping margin and specifically focused on three methodology issues: Commerce’s zeroing of negative dumping margins for sales in the A-to-A group, Commerce’s reliance on a rigid Cohen’s *d* ratio instead of a flexible threshold to exclude insignificant price differences, and Commerce’s use of a simple average instead of a weighted average to calculate the pooled variance used in the Cohen’s *d* calculation. The Court of Appeals affirmed the CIT’s judgment as to the issues raised in PT’s cross-appeal with the exception of Commerce’s use of a simple average instead of a weighted average, which the Court of Appeals remanded to the CIT to be further remanded to Commerce for explanation.

### 2018-2190

On October 10, 2019, Vinh Hoan Corporation (“Vinh Hoan”) appealed the U.S. Department of Commerce’s determination in the eighth antidumping administrative review of frozen fish fillets from Vietnam. Vinh Hoan challenged Commerce’s methodology in calculating the value of Vinh Hoan’s fish oil by-product, which was used in calculating a constructed normal value for Vinh Hoan’s frozen fish fillets. Vinh Hoan argued that the HTS data constitutes the best available information, not the method Commerce used. In cases where the merchandise originated from a non-market economy such as Vietnam, however, Commerce may analyze the factors of production instead of relying on market prices, since the prices in Vietnam do not necessarily reflect fair value of the merchandise. Commerce chose to construct the value of Vinh Hoan’s fish oil because a by-product is, by definition, less valuable than its main input, yet using the value derived from the HTS data would mean valuing the fish oil by-product at a significantly higher price than its main input. Commerce rejected the HTS data because the product description also included refined, packaged fish oil that does not represent Vinh Hoan’s unrefined, unpackaged fish oil. The

CAFC affirmed the CIT's decision sustaining Commerce's determination in the eighth administrative review, having found that Commerce's decision to analyze the factors of production instead of relying on HTS data was supported by substantial evidence and was within Commerce's authority.

## 2018-1296

On October 17, 2019, the CAFC affirmed in part, vacated and remanded in part Oman Fasteners' ("OF") appeal from the CIT. Commerce had determined that Oman Fasteners, a foreign exporter of steel nails, was selling its products to the United States at less than fair value based on an assessment of the price in the home market. Because the company did not sell a significant volume of nails in its home market, Commerce calculated a constructed value. Oman Fasteners challenged several aspects of Commerce's calculation, including Commerce's initial choice of method, Commerce's selection of information as inputs for the calculation, and Commerce's decision that it would not calculate a cap limiting the profit component of the constructed value. The CAFC rejected OF's challenge regarding Commerce's choice of method and partly rejected OF's challenge regarding Commerce's selection of information. The CAFC remanded to Commerce for further explanation its refusal to consider the effects of subsidies on the accuracy of the information it selected as inputs for calculating OF's constructed value. The CAFC affirmed OF's challenge on the profit-cap determination and vacated the CIT's judgment upholding Commerce's refusal to considering subsidies in determining the profit component of the constructed value. The case has been remanded to the CIT for it to remand to Commerce for further proceedings on that issue.

## **EXPORT CONTROLS AND SANCTIONS**

### **Commerce Adds 28 Chinese Organizations to BIS Entity List**

On October 7, 2019, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) [announced](#) that it would add twenty eight (28) Chinese entities consisting of companies, government offices, and security bureaus to the Entity List for engaging in or enabling activities contrary to U.S. foreign policy interests. Similar to the actions taken against China's [Huawei in May 2019](#), the End-User Review Committee (ERC) has determined it necessary to impose sanctions on the 28 Chinese based entities, which includes twenty (20) government agencies and eight (8) artificial intelligence companies, due to China's treatment of the people of the Xinjiang Uighur Autonomous Region (XUAR). The full list of entities is available [here](#). To see the full post on Commerce's decision, click [here](#).

### **President Trump Imposes Sanctions Against Turkey for its Syria Offensive**

On October 14, 2019, President Trump [announced](#) via Twitter his intention to authorize sanctions against Turkey and "any persons contributing to Turkey's destabilizing actions in northeast Syria." The announcement followed Turkey's recent military operation against predominately Kurdish forces in northern Syria, which began following the withdrawal of U.S. troops from the region. Later in the day, President Trump issued an [Executive Order](#) (the "Syria-Turkey EO") to formally implement those sanctions. To see the full post including details on these sanctions, click [here](#).