

TRADE LAW UPDATE



November 2019

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PRESIDENTIAL ACTIONS

[USTR Announces New Section 301 Product Exclusions](#)

On November 26, 2019, the United States Trade Representative (“USTR”) issued another round of product exclusions pertaining to the 25% Section 301 List 3 Tariffs. The new list of exclusions includes 32 specifically crafted product descriptions that cover 39 separate exclusion requests. To see the full list of products click [here](#). According to the USTR, the product exclusions apply retroactively to entries going back to September 24, 2018 and remain in effect until August 7, 2020. The products affected include lollipops, outdoor products, bicycles, and carts, among other products. We encourage clients and companies to review the listed exclusions and contact Husch Blackwell’s [Trade and Supply Chain](#) Group with any questions or concerns.

[U.S. and China Agree to Gradually Eliminate Tariffs](#)

Doubts over the progress of negotiations between the U.S. and China have been raised today as President Trump announced that the U.S. has not agreed to roll back tariffs as part of an agreement to end the trade dispute, contradicting statements from China’s Ministry of Commerce and several news reports. Based on recent news reports, it appeared that the United States and China had agreed in principle to gradually reduce and eliminate tariffs that have been imposed by both countries in an effort to relieve to markets beleaguered by the

global economic slowdown. To read the full post, click [here](#).

[Opportunity to Request Administrative Review](#)

On November 1, 2019, Commerce announced in the [Federal Register](#) the opportunity to request an annual administrative review for products that are currently subject to antidumping and countervailing duties. As part of this annual review process Commerce intends to select respondents based on U.S. Customs and Border Patrol (CBP) data for U.S. imports during the period of review. Any party wishing to participate in the antidumping and countervailing duty review process or who may be affected by duties on the products identified in the Federal Register notice should file a request for review no later than November 30, 2019. In order to be eligible to participate in the review a party must either be an exporter or importer of the specific products and during the specific time periods identified in the [Federal Register](#) notice. If your company or your suppliers are affected by these cases, please contact Husch Blackwell’s [International Trade and Supply Chain](#) group for assistance on how the annual review process works.

[World Trade Organization Authorizes China to Impose Punitive Tariffs Against United States](#)

For the first time since China gained membership in 2001, the World Trade Organization (WTO) on November 1, 2019 authorized China to impose \$3.6 billion worth of punitive and retaliatory tariffs on American imports. The WTO [ruled](#) that U.S.

antidumping duties on imports of Chinese steel were overinflated because the methodologies used by the U.S. in antidumping proceedings were inconsistent with WTO rules. WTO Arbitrators suggested that China could impose the countermeasures as early as this month. To read the full post on the WTO's decision, click [here](#).

U.S. DEPARTMENT OF COMMERCE DECISIONS

Investigations

- Polyester Textured Yarn from the People's Republic of China: On November 19, 2019, Commerce released its final [determination](#) in the Countervailing Duty Investigation and final affirmative determination of Critical Circumstances.
- Polyester Textured Yarn from the People's Republic of China: On November 19, 2019, Commerce released its final [determination](#) in the sales at less than fair value investigation and final affirmative determination of Critical Circumstances.
- Polyester Textured Yarn from India: On November 19, 2019, Commerce released its final [determination](#) in the Countervailing Duty Investigation and its final [determination](#) of sales at less than fair value.
- Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: On November 22, 2019, Commerce [amended](#) its final countervailing duty determination.
- Certain Hardwood Plywood Products from the People's Republic of China: On November 29, 2019, Commerce [announced](#) its final affirmative determination of circumvention of the antidumping and countervailing duty orders.
- Magnesium from Israel: On November 29, 2019, Commerce announced its final determination in the [countervailing](#) duty investigation and [antidumping](#) duty investigation.

Administrative Reviews

- Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: On November 6, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2017-2018).
- Certain Cold-Rolled Steel Flat Products from the United Kingdom: On November 6, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2017-2018).
- Crystalline Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: On November 15, 2019, Commerce released a [notice of correction](#) to the final results of the Antidumping Duty Administrative Review (2016-2017).
- Certain Uncoated Paper from Portugal: On November 20, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2017-2018).
- Circular Welded Carbon Steel Pipes and Tubes from Thailand: On November 20, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2017-2018) and final determination of no shipments.
- Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: On November 20, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2017-2018) and final determination of no shipments.
- Certain Carbon and Alloy Cut-to-Length Plate from France: On November 20, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2016-2018).
- Emulsion Styrene-Butadiene Rubber from Poland: On November 21, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2017-2018).
- Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: On November 22, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2017-2018) and final determination of no shipments.

- Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: On November 22, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2018-2019) and final determination of no shipments.
- Polyethylene Terephthalate Resin from the Sultanate of Oman: On November 22, 2019, Commerce released the final [results](#) of the Antidumping Administrative Review (2017-2018).
- Oil Country Tubular Goods from India: On November 22, 2019, Commerce released the final [results](#) of the Antidumping Administrative Review (2017-2018) and final determination of no shipments.
- Xanthan Gum from the People’s Republic of China: On November 25, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review and final determination of no shipments.

Changed Circumstances Reviews

- Fine Denier Polyester Staple Fiber from the Republic of Korea: On November 27, 2019, Commerce released its amended final [results](#) of the Antidumping Duty Changed Circumstances Review.

Sunset Reviews

- Certain Malleable Cast Iron Pipe Fittings from the People’s Republic of China: On November 1, 2019, Commerce released the final [results](#) of the Expedited Third Sunset Review of the Antidumping Duty Order.
- Polyethylene Terephthalate Film, Sheet and Strip from India and Taiwan: On November 4, 2019, Commerce released the final [results](#) of the Expedited Third Sunset Review of the Antidumping Orders.
- Certain Steel Threaded Rod from the People’s Republic of China: On November 29, 2019, Commerce released the final results of the Expedited Sunset Review of the Antidumping Duty Order.

U.S. INTERNATIONAL TRADE COMMISSION

Section 701/731 Proceedings

Investigations

- Strontium Chromate from Austria and France: On November 26, 2019, the ITC announced in its final [determination](#) that an industry in the U.S. is materially injured by imports of the subject merchandise sold at less-than-fair value.



Sunset Review Decisions

- Malleable Iron Pipe Fittings from China: On November 25, 2019, the ITC announced in its [determination](#) in the five-year review that revocation of the antidumping duty order of the subject merchandise would lead to material injury to an industry in the U.S.
- Welded Stainless Steel Pressure Pipe from China, Malaysia, Thailand, and Vietnam: On November 25, 2019, the ITC announced in its [determination](#) in the subject five-year reviews that revocation of the antidumping and countervailing duty orders on subject merchandise from China and the antidumping duty orders on subject merchandise from Malaysia, Thailand, and Vietnam would lead to material injury to an industry in the U.S.

U.S. CUSTOMS & BORDER PROTECTION

- Mattress Bases from Vietnam: On October 30, 2019, CBP [ruled](#) that Section 301 tariffs do not apply to mattress bases largely sourced from China, but assembled in Vietnam.
- Irwin Locking Pliers: CBP [announced](#) on November 19, 2019 a proposal to limit the reach of CIT and CAFC rulings involving locking pliers, which, in CBP's opinion, too narrowly limited the scope of the term "wrench." CBP believed the scope ruling should define locking pliers as "wrenches" instead of "pliers."
- On November 29, 2019, CBP [announced](#) that it had collected approximately \$3.3 million from Santisloh, an importer of machinery that provided false product descriptions and tariff classification numbers.

COURT OF INTERNATIONAL TRADE

Summary of Decisions

[19-137](#)

On November 8, 2019, the CIT partially sustained and partially remanded Commerce's remand redetermination in the third administrative review of the countervailing duty order pertaining to photovoltaic cells from China. The CIT had remanded the issue to Commerce to explain and/or reconsider whether: (1) respondents benefitted from China's Export Buyer's Credit Program ("EBCP"), (2) the provision of aluminum extrusions for less than adequate remuneration ("LTAR") was a specific subsidy, (3) the inclusion of potentially overbroad U.N. Comtrade data in its calculation of the aluminum extrusion and solar glass benchmarks was appropriate, (4) Commerce should have considered Canadian Solar's data on polysilicon imports as a tier-one metric, and (5) the provision of electricity for LTAR was a specific subsidy. On remand, Commerce provided further explanation, but its decisions remain largely unaltered. Because the Government of China would not cooperate by providing information on EBCP, Commerce applied AFA to determine the respondents' participation in the program. Plaintiff Trina argued against Commerce's application of AFA and contended that Commerce failed to show that it is missing information regarding EBCP. The CIT concluded that Commerce did not demonstrate that the certifications were unverifiable and remanded to Commerce for further explanation. The CIT also remanded Commerce's finding that the subsidization of aluminum extrusions represented a countervailable subsidy, as Commerce failed to explain whether it was a specific or a non-specific subsidy. On remand, Commerce still found the subsidization of aluminum extrusions to be de facto specific. The CIT sustained Commerce's decision on the specificity of the provision of aluminum. The CIT found Commerce's rationale in rejecting Canadian Solar's data on polysilicon imports to be unsupported and

remanded the issue to Commerce, requiring Commerce to either use Canadian Solar's data or to provide sufficient evidence supporting its conclusion that the data is unreliable. The CIT also remanded Commerce's finding that subsidized electricity is a specific subsidy in order for Commerce to explain its reasoning for using AFA to fill record gaps, as Commerce inadequately explains how its finding that GOC subsidizes specific industries relates to GOC's non-cooperation.

[19-138](#)

On November 8, 2019, the CIT sustained Commerce's final results of redetermination in the countervailing duty investigation of certain carbon and alloy cut-to-length (CTL) plate from Korea. The CIT had initially remanded Commerce's Final Determination for Commerce to factually determine findings as to whether the R&D grants received by Ricco Metal and Nine-Diget were specific benefits. Additionally, Commerce on remand was to conduct a fact-specific inquiry to justify its application of the highest AFA rates to POSCO. The CIT found that Commerce had the authority to impose the highest available rate and provided an adequate explanation for its decision. The court also determined that Commerce's finding that no identical program existed was sufficient to move to the next step of the AFA methodology. The also CIT found that Commerce's actions were in fact within the scope of the court's remand orders. Finding POSCO's and Nucor's arguments to be without merit, the CIT sustained Commerce's remand results.

[19-140](#)

On November 13, 2019, the CIT remanded Commerce's final scope ruling as to whether or not cedar shakes and shingles were subject to the antidumping and

countervailing duty orders on softwood lumber products from Canada. The Government of Canada argued that cedar shingles and shakes should not be included in the scope based on the omission of a certain HTS code by the petitioner that covers shingles and shakes. Commerce explained in its brief that the “sawn lengthwise” and “actual thickness” language of a prior relevant scope ruling encompasses cedar shakes and shingles. The court found that Commerce’s scope determination was not in accordance with the law and remanded Commerce’s scope ruling for redetermination.

[19-142](#)

On November 15, 2019, the CIT denied the governments motion to dismiss Transpacific Steel LLC’s challenge to the increase in Turkish Section 232 steel tariffs from 25% to 50% in August 2019. A three-judge panel found that there were sufficient merits to Transpacific’s lawsuit such that the case should proceed for consideration on its merits. While this decision is procedural it raises key concerns as to the limits of presidential and executive power as it relates to the institution of tariffs.

[19-143](#)

On November 18, 2019, the CIT remanded Commerce’s remand redetermination in the administrative review of the countervailing duty order on crystalline silicon photovoltaic products from China. The CIT had originally remanded Commerce’s final determination for further explanation or reconsideration of its decision to countervail China’s Export Buyer’s Credit Program (“EBCP”). The remand also instructed Commerce to explain whether it was appropriate to include potentially overbroad U.N. Comtrade data in Commerce’s calculation of aluminum extrusion and solar glass benchmarks. Because the Government of China (“GOC”) refused to cooperate by providing information on the EBCP, Commerce argued that it was unable to verify the respondent’s certificates on non-use. However, the CIT had concluded that Commerce did not demonstrate that the respondent’s certifications were unverifiable and remanded the matter to Commerce for further explanation. On remand, Commerce still found the certifications to be unverifiable and continued to apply AFA in its determination. Based upon arguments from Trina, the CIT stated that it could not sustain Commerce’s determination because it was unclear as to why the missing information regarding EBCP was required to verify non-use. According to the CIT, Commerce also failed to address concerns that monthly fluctuations evinced by the Comtrade data used to calculate the benchmarks were caused by the price of non-subject merchandise. Commerce argued that the use of Comtrade data was

appropriate because it was the only data on the record that could provide any evidence of how such fluctuations in price might have occurred month-to-month. The CIT further remanded this issue to Commerce and instructed the agency to use the IHS data alone in computing a solar glass benchmark, in addition to asking Commerce to provide more evidence of the respondent’s participation in the EBCP.

[19-144](#)

On November 19, 2019, the CIT sustained in part and remanded in part Commerce’s final determination in the countervailing duty investigation of carbon and alloy steel wire rod from Turkey. Consolidated Plaintiffs Habas and Icdas contested Commerce’s use of adverse facts available after determining that Habas and Icdas failed to report the use of a program to offset the costs of AD/CVD investigations. Icdas argued that Commerce’s decision to treat the offset program as countervailable is unsupported by substantial evidence. Defendant-Intervenor Nucor separately argued that Commerce’s selection of benchmark data to calculate the benefit associated with subsidized natural gas is inadequately explained, does not represent the best available information, and is unsupported by substantial evidence and contrary to law. The CIT sustained Commerce’s use of adverse facts of available, since Habas failed to provide adequate information, and remanded Commerce’s selection of benchmark data for further consideration and explanation.

[19-145](#)

On November 20, 2019, the CIT sustained Commerce’s final remand results in the fifth administrative review of the antidumping duty order on certain steel threaded rod from China. The court had remanded this matter to Commerce to consider Gem-Year’s separate rate application based on an appeal from Plaintiff Hubbell Power Systems, a U.S. importer of Chinese exporter Gem-Year’s products. On remand, Commerce assigned Gem-Year a separate rate of 206 percent, the highest rate available. Commerce had to rely on facts otherwise available because Gem-Year had provided unreliable and incomplete data. Hubbell agreed that Gem-Year qualified for a separate rate, but disputed the assignment of what it called the China-wide entity rate. Hubbell argued that the China-wide entity rate cannot serve as an AFA rate, as that rate is predicated on state control and Commerce had determined Gem-Year was absent of state control. They further argued that the 206 percent rate was “plainly punitive” and that Commerce failed to “address the impact of the findings in the first administrative review on these results – when the periods of review overlapped.” The CIT found that Commerce was within its authority to base its

determination on adverse facts available since Gem-Year's submissions were unreliable, incomplete, and unverifiable. The CIT also found that Commerce was within its authority to apply the highest rate available in order to prevent Hubbell from obtaining a more favorable result by failing to cooperate than if it had fully cooperated, which would promote "gamesmanship" and "undermine the purpose of AFA provisions."

[19-147](#)

On November 25, 2019, the CIT granted the Defendants motion to dismiss for failure to state a claim upon which

relief may be granted. The U.S. Government argued that Defendant Greenlight had misclassified and undervalued shipments of athletic apparel to the U.S. over a period of approximately 4 years. Customs subsequently issued a penalty notice alleging fraud after Greenlight allegedly submitted fraudulent documentation to Customs. Defendants argue that the Plaintiff failed to exhaust its administrative remedies and that, even if the Plaintiff did perfect its penalty claim at the administrative level, the fraud allegations lack the requisite level of particularity. For these reasons, and because Greenlight had been without counsel and had not defended itself in this action, the CIT granted the motion to dismiss.

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

[2019-1176](#)

On November 8, 2019, Appellant Industrial Chemicals, Inc. ("Industrial Chemicals") appealed the CIT's judgment dismissing its complaint. The CIT held that it lacked jurisdiction to consider Industrial Chemicals' claim that Customs had improperly denied its protest concerning duty-free treatment for its entries of organic chemicals from India under the Generalized System of Preferences ("GSP"). The CAFC affirmed CIT's dismissal because Industrial Chemicals made sixty-five entries of organic chemical from India after the GSP had lapsed and did not submit its request for retroactive GSP treatment until more than a month after the deadline had passed.

EXPORT CONTROLS AND SANCTIONS

[Trump Administration Grants 90-Day Extension of TGL for Companies Doing Business with Huawei](#)

The U.S. Department of Commerce's Bureau of Industry and Security ("BIS") announced on Monday, November 18, 2019 the issuance of a new 90-day [extension](#) which will allow U.S. companies to continue doing business with Huawei Technologies Co. Ltd. ("Huawei") under the [Temporary General License](#) ("TGL"). BIS did not make any changes to the TGL other than to extend the period until February 16, 2020. Secretary of Commerce Wilbur Ross indicated in a statement that "[t]he Temporary General License extension will allow carriers to continue to service customers in some of the most remote areas of the United States who would otherwise be left in the dark [However,] the Department will continue to rigorously monitor sensitive technology exports to ensure that our innovations are not harnessed by those who would threaten our national security." To see the full post, click [here](#).