

TRADE LAW UPDATE



January 2020

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

[**President Trump Signs U.S.-Mexico-Canada Agreement \(USMCA\)**](#)

President Trump signed the implementing legislation for the USMCA on January 29, 2020, making the United States the second of the three countries, after Mexico last December, to sign the agreement. The USMCA will not take effect until 90 days after it is ratified by Canada. The Liberals currently operate a minority government, and while the Conservatives have stated that they ultimately aim to move USMCA forward, other opposition parties have either opposed the USMCA or expressed that negotiations could be quite lengthy. To read a brief overview of the main changes USMCA makes to NAFTA, please see our [previous post on the issue](#).

[**Trump Administration Announces 25% Tariffs on Finished Steel Products and 10% Tariffs on Aluminum Products**](#)

On Friday January 24, 2020, the White House announced that it plans to impose an additional 25 percent tariff on some steel articles and 10 percent on some aluminum articles starting February 8, 2020 under Section 232 of the Trade Expansion Act of 1962. A proclamation issued by the White House indicated that these new tariffs are being imposed due to the fact that there has been a surge in imports in certain derivative articles of steel and aluminum, and because domestic capacity has not risen as originally expected following imposition of the initial steel and aluminum tariffs in March 2018. To view the full post on the Section 232 expansion, please click [here](#).

[**U.S.-Mexico-Canada Agreement \(USMCA\) Passes Senate**](#)

On January 16, 2020, the U.S.-Mexico-Canada Agreement (USMCA) passed the U.S. Senate by a vote of 89 to 10. While some Senators expressed disapproval over the deal for various reasons, passage of the USMCA enjoyed a great deal of bipartisan support after Democrats in the House of Representatives negotiated for more labor enforcement mechanisms that earned the endorsement of the AFL-CIO. Now that the USMCA has been approved by the Senate, it will be submitted to the President to be signed into public law and thereafter implemented through presidential proclamation. Mexico passed the deal in December, however, the deal will not take full effect until Canada passes the deal. The House of Commons is expected to hold a vote in the next few weeks. To view the full post, please click [here](#).

[**U.S. and China Sign Phase One Trade Agreement, Signaling Pause in Escalation of Trade War**](#)

At a White House ceremony on Wednesday, January 15, 2020, U.S. President Donald Trump and Chinese Vice Premier Liu He met to sign Phase 1 of the Trade Deal that has been negotiated since May 2019 in order to end any further escalation in the trade war between the two countries. The agreement consists of eight chapters covering intellectual property, technology

transfers, financial services, exchange rate practices, and trade in agriculture, energy, and manufactured goods, as well as trade in services. To view the full post on the phase one agreement, please click [here](#).

[U.S., EU, and Japan Trade Ministers Issue Joint Statement on Subsidy Reform](#)

The Office of the U.S. Trade Representative (USTR) issued a [joint statement](#) with the trade ministers of Japan and the European Union (EU) following a meeting between the three ministers on January 14, 2020. The joint statement announces the three economic powers' frustrations with the World Trade Organization's (WTO) current countervailable subsidy measures and their desire for reform. The proposed subsidy reforms aim to close what the three countries consider to be loopholes exploited by China and follow criticism that the U.S.-China trade negotiations have not addressed China's aggressive use of industrial subsidies. To view the full post, please click [here](#).

[New Year, New Incoterms®](#)

The implementation of new Incoterms® 2020 starting on January 1, 2020 was one of the first important changes for the new year. The Incoterms® rules, published by the International Chamber of Commerce (ICC), are the world's essential terms of trade for the sale of goods. Incoterms® provide specific guidance to individuals and entities participating in the import and export of global trade on a daily basis. To view the full post on the changes to the Incoterms®, please click [here](#).

U.S. DEPARTMENT OF COMMERCE DECISIONS

Investigations

- Aluminum Extrusions from the People's Republic of China: On January 3, 2020, Commerce released a notice of amended final [determination](#) of circumvention pursuant to a Court decision.
- Certain Corrosion-Resistant Steel Products from India: On January 8, 2020, Commerce released a notice of amended final [determination](#) in the antidumping investigation pursuant to a Court decision.
- Certain Corrosion-Resistant Steel products from Korea: On January 8, 2020, Commerce released [corrections](#) to the affirmative final determinations of circumvention of the antidumping and countervailing duty orders.
- Certain Fabricated Structural Steel from Mexico: On January 30, 2020, Commerce released its final affirmative determination in the [antidumping](#) and [countervailing](#) duty investigations.
- Certain Fabricated Structural Steel from the People's Republic of China: On January 30, 2020, Commerce released its final affirmative determination in the [antidumping](#) and [countervailing](#) duty investigations.
- Certain Fabricated Structural Steel from Canada: On January 30, 2020, Commerce released its final negative [determination](#) in the countervailing duty investigation and final affirmative [determination](#) in the antidumping duty investigation.

Administrative Reviews

- Diamond Sawblades and Parts Thereof from the People's Republic of China: On January 2, 2020, Commerce released a notice of final amended [results](#) of the Antidumping Duty Administrative Review (2014-2015).
- Certain Carbon and Alloy Steel Cut-to-Length Plate from Taiwan: On January 2, 2020, Commerce released the final [results](#) of the Antidumping Duty Administrative Review and final results of no shipments (2016-2018).
- Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation: On January 3, 2020, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2017-2018).
- Certain Uncoated Paper from Indonesia: On January 6, 2020, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2018-2019).
- Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: On January 9, 2020, Commerce released the final [results](#) of the Antidumping Duty Administrative Review and final determination of no shipments (2017-2018).
- Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: On January 13, 2020, Commerce released a notice of final amended [results](#) in the Countervailing Duty Administrative Review (2014).
- Seamless Refined Copper Pipe and Tube from the People's Republic of China: On January 16, 2020, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2017-2018).

- Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People’s Republic of China: On January 16, 2020, Commerce released a notice of final amended [results](#) of the Antidumping Duty Administrative Review (2015-2016)
- Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: On January 16, 2020, Commerce released the final [results](#) of the Countervailing Duty Administrative Review (2017).
- Certain Pasta from Italy: On January 16, 2020, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2017-2018).
- Welded Carbon Steel Standard Pipes and Tubes from India: On January 16, 2020, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2017-2018).
- Certain Carbon and Alloy Steel Cut-to-Length Plate from Italy: On January 17, 2020, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2016-2018).
- Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium: On January 17, 2020, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2016-2018).
- Monosodium Glutamate from the Republic of Indonesia: On January 22, 2020, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2016-2017).
- Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: On January 22, 2020, Commerce released the final [results](#) of the Antidumping Duty Administrative Review and final determination of no shipments (2017-2018).
- Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: On January 22, 2020, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2017-2018).
- Uncoated Paper from Indonesia: On January 29, 2020, Commerce released the final [results](#) of the Countervailing Duty Administrative Review (2018).

Changed Circumstances Reviews

- Cast Iron Soil Pipe Fittings from the People’s Republic of China: On January 8, 2020, Commerce released the final [results](#) of the Changed Circumstances review.
- Truck and Bus Tires from the People’s Republic of China: On January 13, 2020, Commerce released the final [results](#) of the Antidumping Duty Changed Circumstances review.
- Truck and Bus Tires from the People’s Republic of China: On January 21, 2020, Commerce released a [correction](#) to the final results of the Antidumping Duty Changed Circumstances review.

Sunset Reviews

- Steel Concrete Reinforcing Bar from the Republic of Turkey: On January 28, 2020, Commerce released the final [results](#) of the Countervailing Sunset Review.
- Monosodium Glutamate from the People’s Republic of China: On January 31, 2020, Commerce released the final [results](#) of the first expedited Antidumping Sunset Review.

U.S. INTERNATIONAL TRADE COMMISSION

Section 701/731 Proceedings

Investigations

- Polyester Textured Yarn from China and India: On January 9, 2020, the ITC released its final [determination](#) in the Antidumping and Countervailing Duty Investigations.
- Magnesium from Israel: On January 17, 2020, the ITC released its final [determination](#) in the Antidumping Duty and Countervailing Duty Investigations.
- Carbon and Alloy Steel Threaded Rod from Taiwan: On January 29, 2020, the ITC released its final [determination](#) in the Antidumping Duty Investigation.
- Dried Tart Cherries from Turkey: On January 31, 2020, the ITC released its final [determination](#) in the Antidumping and Countervailing Duty Investigations.



Sunset Review Decisions

- There have been no Sunset Review decisions by the ITC during the month of January.

Section 337 Proceedings

- There have been no 337 decisions by the ITC during the month of January.

U.S. CUSTOMS & BORDER PROTECTION

- On January 2, 2020, CBP published [notices](#) that propose revoking or modifying rulings for embroidered motifs, instant noodle soup, and document holders.
- In a January 22, 2020 *Federal Register* [notice](#), CBP ruled that Japan is the country of origin for videoscopes made from components from Thailand.

COURT OF INTERNATIONAL TRADE

Summary of Decisions

[20-2](#)

On January 3, 2020, the CIT remanded Commerce's final determination in the antidumping administrative review of welded line pipe from Korea. The Plaintiff and Consolidated Plaintiffs filed a motion for judgment on the agency record challenging various aspects of Commerce's AD administrative review. The Court remanded Commerce's particular market situation (PMS) adjustment of reported costs of production because Commerce improperly made PMS adjustments to the costs of production (COP) when it conducted the sales-below-cost test. The court found that this was an improper reading of the statute, which only allows for a COP calculation to identify sales below cost in the market sales context but does not allow an adjustment to a COP calculation for a PMS. The Court also found that both Commerce's PMS determination and determination that third country sales are unrepresentative were unsupported by substantial evidence and contrary to law.

[20-4](#)

On January 7, 2020, the CIT sustained in part and remanded in part Commerce's final determination in the antidumping investigation of large diameter welded pipe from Turkey. The Court concluded that Commerce did not properly determine the dates of U.S. sales, as Commerce could not determine whether the Plaintiff's long-term contracts involved additional proprietary specifications and thus whether they were custom goods. On remand, Commerce was instructed to address whether the material terms of the contract were fixed before the invoice date in order to determine accurate dates of U.S. sales. The Court upheld Commerce's post-sales price adjustment and freight and warehousing services adjustments, but remanded to Commerce for further reconsideration the

dates of U.S. sales and the PMS adjustment to the reported costs of production.

[20-06](#)

On January 13, 2020, the CIT sustained Commerce's scope ruling determination in the antidumping and countervailing duty investigations of crystalline silicon photovoltaic ("CSPV") products from China. The CIT found that Commerce's determination that Plaintiff's solar modules were within the scope of the AD/CVD orders was supported by substantial evidence and in accordance with the law, as it was within Commerce's authority to base country of origin on the origin of the cells and not the assembly of the modules.

[20-07](#)

On January 16, 2020, the CIT sustained in part and remanded in part Commerce's final results in the twelfth antidumping administrative review of frozen warmwater shrimp from Vietnam. The Court sustained Commerce's use of Bangladeshi NACA data to value Plaintiff Fimex's raw shrimp as reasonably determined and supported by substantial evidence, as Vietnam is a non-market economy and a surrogate market must be used. The Court remanded for further explanation Commerce's decision to deny separate rate statuses to Thuan Phuoc's factories, since Commerce failed to explain why the factory names did not qualify as trade names of Thuan Phuoc, but sustained Commerce's denial of a separate rate to Sao Ta Foods Joint Stock Company.

[20-08](#)

On January 17, 2020, the CIT remanded Commerce's final determination in the countervailing duty investigation of

ripe olives from Spain. The Court remanded for further explanation Commerce's conclusion that European Union subsidy payments were de jure specific to olives because Commerce did not provide an interpretation of the statute. The Court also held that Commerce's application of Section 1677-2(1) to conclude that demand for raw olives was dependent on demand for table olives was arbitrary and not in accordance with the law.

20-10

On January 28, 2020, the CIT remanded in part Commerce's final determination in the antidumping duty investigation of carbon and alloy steel wire rod from Turkey. The CIT concluded that Commerce's duty neutral methodology for calculating Plaintiffs Icdas and Habas's duty drawback adjustment was not in accordance with the law, as the methodology contravened the language of the statute and was an insufficiently explained departure from past practice. The CIT sustained Commerce's reliance on a surrogate interest rate, instead of Habas's zero-interest loans, to impute credit expenses on home market sales, since Habas's short-term borrowing rate was non-commercial.

20-11

On January 29, 2020, the CIT sustained in part and remanded in part Commerce's final results in the fifth antidumping administrative review of certain steel threaded wire rod from China. The Court sustained Commerce's selection of Thailand as the primary surrogate country in the calculation of normal value, since China is a non-market economy and Commerce is required by statute to use the best available information to value the factors of production. According to the CIT, Commerce's selection of Thailand over Ukraine was supported by substantial evidence because Thailand was the only country for which Commerce had steel-grade specific values to match to the Plaintiff's low-carbon inputs, as well as financial statements contemporaneous with the POR. The CIT also sustained Commerce's use of Thai GTA data for the surrogate values. However, the CIT remanded for further explanation or consideration Commerce's calculation of the surrogate financial ratios related to labor because Commerce inadequately explained why it did not adjust the ratios to account for certain SG&A expenses that should have been classified under labor expenses.

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

2018-1116

On January 7, 2020, Appellant Sunprime Inc. appealed the CIT's decision concluding that Sunprime's solar modules are covered by the scope of the antidumping and countervailing duty orders on imports of certain solar cells from China. The United States and SolarWorld cross-appealed from the same decision, which also concluded that Commerce could not instruct Customs to continue suspending liquidation of Sunprime's solar modules before the scope inquiry was initiated. The CAFC affirmed the CIT's decision that Commerce's final scope ruling was supported by substantial evidence, but reversed the CIT's decision that Commerce's instructions regarding suspension of liquidation were unlawful, holding that Customs is empowered to determine in the first instance whether goods are subject to antidumping duty orders.

2018-2335

On January 10, 2020, the Appellants challenged a decision from the CIT affirming in part and reversing in part Commerce's ruling not to free the non-individually investigated separate-rate firms from all obligations accompanying issuance of the antidumping order, despite having a rate of zero. Commerce ruled that although the zero-rate firms would not be subject to cash deposits upon entry, the merchandise would remain subject to other obligations, such as the suspension of liquidation of entries. The CIT reversed Commerce's decision to include the voluntary-review firms in the order, but affirmed Commerce's inclusion of the appellants, which was the issue challenged before the CAFC. The CAFC affirmed the judgment of the CIT.

2017-2168

On January 13, 2020, the U.S. Dept. of Commerce appealed the CIT's determination that Commerce lacked authority to retroactively suspend liquidation of helical spring lock washers entered on or after the issuance date of an antidumping duty order. United Steel and Fasteners, Inc. cross-appealed the CIT's affirmance of Commerce's determination that its washers were within the scope of the antidumping duty order. The CAFC affirmed the CIT's decision after concluding that Commerce's retroactivity determination was improper and that substantial evidence supported Commerce's scope ruling.

EXPORT CONTROLS AND SANCTIONS

Certain Firearms, Ammunition and Accessories To Undergo Export Regulation Update

U.S. Department of State – Directorate of Defense Trade Controls (“DDTC”) and U.S. Commerce Department – Bureau of Industry and Security (“BIS”) published new coordinated final rules which will take effect on Monday, March 9, 2020. On that date, the DDTC rule will remove specifically identified firearms, ammunition, accessories and associated technical data from the United States Munitions List (“USML”) and the BIS rule will create new Export Control Classification Numbers (“ECCNs”) to classify the same items on its Commerce Control List (the “CCL”). As a result, the items covered by these rules will no longer be subject to export and temporary import controls imposed under the DDTC’s International Traffic in Arms Regulations (“ITAR”) and will instead be subject to export controls imposed under the BIS’s Export Administration Regulations (“EAR”). The items to be transferred from the USML to the CCL under these new rules include (but are not limited to) non-automatic and semi-automatic firearms with up to .50 caliber and ammunition of up to .50 caliber (except for ammunition with special features that warrant its continued listing on the USML). To view the full post on the issue, please click [here](#).

Trump Administration Expands Iran Sanctions to New Sectors in Recent Executive Order

In a January 10th [Executive Order](#), President Trump expanded sanctions on Iran after a ballistic missile attack on two American military bases in Iraq. Executive Order 13902 expands secondary sanctions on Iran to include “significant” or “material” support transactions between non-U.S. persons and Iran’s construction, mining, manufacturing, and textiles sectors as potentially sanctionable transactions. Executive Order 13902 also authorizes the U.S. Secretary of the Treasury to extend these secondary sanctions to additional sectors of Iran’s economy in its discretion after consulting with the U.S. Secretary of State. The Executive Order also gives the U.S. Secretary of the Treasury the authority to impose correspondent and payable-through account sanctions on non-U.S. financial institutions that facilitate significant financial transactions for the sectors of Iran’s economy and any persons or entities that are sanctioned under Executive Order 13902. To view the full post, please click [here](#).