

TRADE LAW UPDATE



February 2020

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PRESIDENTIAL ACTIONS

[USTR Announces Increase in Section 301 Tariffs for New Airplanes and Aircraft, Minor Changes for Other Goods](#)

On February 14, 2020, the Office of the U.S. Trade Representative (USTR) announced that it had completed its review of the current Section 301 tariffs due to the ongoing Large Civil Aircraft dispute with the European Union (EU). As previously reported, various European goods (including aircraft, certain textiles and wearing apparel, hardware, cheeses, and other agricultural goods) were subject to additional duties due the ongoing Large Civil Aircraft dispute with the EU since October 18, 2019. With this announcement, new airplanes and aircraft are now subject to additional duty of 15 percent (increased from 10 percent). To read the full post on the issue, please click [here](#).

[Update on Section 232 Derivative Product Tariffs](#)

Importers of steel and aluminum derivative products should consider challenging the administration's imposition of additional Section 232 tariffs. The imposition of additional tariffs on products not originally included in the Section 232 tariffs on steel and aluminum is potentially unconstitutional, and the processes which followed the imposition of additional Section 232 tariffs are procedurally flawed. One party has already obtained an injunction from the Court of International Trade ("CIT") stopping Customs and Border Protection ("CBP") from collecting duties on steel and aluminum derivative products. The injunction is company-specific and we believe an injunction obtained by this company or others will not apply to your company unless an appeal is filed and an injunction is obtained on your behalf.

Husch Blackwell has already filed two appeals with the CIT challenging the Section 232 derivative product tariffs and is working to obtain injunctions to stop CBP from collecting duties. If your company's imports fall into any one of the categories listed in the [full post](#) on our [International Trade Insights](#) blog, then you may contact Husch Blackwell's [International Trade and Supply Chain](#) team to determine the best strategy to avoid facing unnecessary tariffs.

[Commerce Initiates AD Investigation of Imports of Difluoromethane \(R-32\) from China](#)

On February 13, 2020, the Department of Commerce ("Commerce") announced the initiation of an antidumping duty ("AD") investigation of imports of difluoromethane, a chemical compound known also as R-32, from the People's Republic of China. The petitioner in this case is Arkema, Inc., which estimated that 2018 imports of R-32 from China were valued at approximately \$21.5 million. To read the full post on Commerce's R-32 antidumping investigation, please click [here](#).

[India Removed from U.S. List of Developing and Least-Developed Countries under Countervailing Duty Law](#)

The United States has updated its [list](#) of developing and least-developed countries pertaining to countervailing duty (CVD) law. The most notable change is that India has been removed from this list due to its share of global trade, one of the several factors considered in creating the list of developing countries. Prior to the change in designation, if India faced a CVD investigation and the subsidy margin was below the de minimis threshold of 2%, the United States would be forced to conclude that there was no subsidization and the investigation would be terminated with respect to India. With the change in designation, this preferential margin threshold is no longer available to India in CVD investigations initiated by the United States. Going forward, the United States would terminate a CVD investigation against India only if the new de minimis threshold, a subsidy margin below 1%, is satisfied. Other developing countries ineligible for the 2% de minimis standard due to their share of global trade are Brazil, Indonesia, Malaysia, Thailand, and Vietnam.

[Commerce Finds Dumping and Countervailable Subsidization of Imports of Carbon and Alloy Steel Threaded Rod from China and India](#)

On February 10, 2020, the Department of Commerce (“Commerce”) announced its affirmative final determinations in the AD and CVD investigations of imports of carbon and alloy steel threaded rod from China and India. See the [fact sheet](#) for a summary of the final cash deposit rates and margins. To read the full post on Commerce’s determinations, please click [here](#).

[China to Reduce Tariffs on \\$75 Billion of U.S. Goods](#)

China’s Ministry of Finance [announced](#) today that China will reduce tariffs by up to fifty percent on certain U.S. imports as the two countries move forward to implement “Phase One” of the trade deal signed on January 15, 2020. China’s tariff cuts will affect U.S. goods worth approximately \$75 billion and will reduce duty rates from 10% to 5% and from 5% to 2.5% depending on the product. More than 1,700 products will be affected, such as soybeans, automobiles, oil and gas, seafood, and poultry. To read the full post on China’s tariff reduction on U.S. imports, please click [here](#).

[Commerce Modifies Countervailing Duty Regulations to Address Currency Undervaluation](#)

The Commerce Department issued its [final rule](#) amending the countervailing duty regulations to address potential currency undervaluation. This revision to Commerce’s regulations will take effect in 60 days and will apply to all new investigations and administrative reviews that begin on or after April 6, 2020. The new rules would effectively clear the way for the U.S. to start applying punitive tariffs on goods from countries accused of having undervalued currencies.

U.S. DEPARTMENT OF COMMERCE DECISIONS

Investigations

- Acetone from South Africa, Belgium, and Korea: On February 13, 2020, Commerce released its final determinations in the antidumping duty investigations of acetone from [South Africa](#), [Belgium](#), and [Korea](#).
- Carbon and Alloy Steel Threaded Rod from India: On February 18, 2020, Commerce released its final determinations in the [antidumping](#) and [countervailing](#) duty investigations.
- Carbon and Alloy Steel Threaded Rod from China: On February 18, 2020, Commerce released its final [determination](#) in the countervailing duty investigation.
- Diamond Sawblades and Parts Thereof from the People’s Republic of China: On February 20, 2020, Commerce released its final [determination](#) in the anti-circumvention inquiry.
- Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: On February 28, 2020, Commerce released its final determinations in the [antidumping](#) and [countervailing](#) duty investigations.

Administrative Reviews

- Uncovered Innerspring Units from the People’s Republic of China: On February 6, 2020, Commerce released the final [results](#) of the antidumping duty administrative review.
- Wooden Bedroom Furniture from the People’s Republic of China: On February 11, 2020, Commerce released the final [results](#) of the antidumping duty administrative review and final determination of no shipments (2018).

- Certain Tool Chests and Cabinets from the People’s Republic of China: On February 11, 2020, Commerce released the final [results](#) of the countervailing duty administrative review (2017-2018).
- Finished Carbon Steel Flanges from Spain: On February 12, 2020, Commerce released the final [results](#) of the antidumping duty administrative review (2017-2018).
- Polyethylene Retail Carrier Bags from Malaysia: On February 13, 2020, Commerce released the final [results](#) of the antidumping duty administrative review (2017-2018).
- Certain Steel Nails from the People’s Republic of China: On February 19, 2020, Commerce released a [notice](#) of court decision not in harmony with the final results and notice of amended final results in the antidumping duty administrative review (2013-2014).
- Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People’s Republic of China: On February 19, 2020, Commerce released the final [results](#) and partial rescission of review in the antidumping duty administrative review (2017-2018).
- Certain Magnesia Carbon Bricks from the People’s Republic of China: On February 20, 2020, Commerce released the final [results](#) of the antidumping duty administrative review (2017-2018).
- Monosodium Glutamate from the People’s Republic of China: On February 20, 2020, Commerce released the final [results](#) of the antidumping duty administrative review (2017-2018).
- Chlorinated Isocyanurates from the People’s Republic of China: On February 24, 2020, Commerce released the final [results](#) of the antidumping duty administrative review (2017-2018).
- Narrow Woven Ribbons with Woven Selvedge from the People’s Republic of China: On February 25, 2020, Commerce released the final [results](#) of the countervailing duty administrative review (2017).
- Certain Hardwood Plywood Products from the People’s Republic of China: On February 26, 2020, Commerce released the final [results](#) of the countervailing duty administrative review (2017-2018).
- Drawn Stainless Steel Sinks from the People’s Republic of China: On February 28, 2020, Commerce released the final results of the antidumping duty administrative review (2018-2019).

Changed Circumstances Reviews

- There have been no Changed Circumstances determinations by Commerce during the month of February.

Sunset Reviews

- Chlorinated Isocyanurates from the People’s Republic of China: On February 4, 2020, Commerce released the final [results](#) of the expedited first Countervailing Sunset Review.
- Non-Oriented Electrical Steel from the People’s Republic of China, Germany, Japan, Korea, Sweden, and Taiwan: On February 27, 2020, Commerce released the final [results](#) of the antidumping duty sunset review.
- Non-Oriented Electrical Steel from the People’s Republic of China: On February 27, 2020, Commerce released the final [results](#) of the countervailing duty sunset review.

U.S. INTERNATIONAL TRADE COMMISSION

Section 701/731 Proceedings

Investigations

- Fabricated Structural Steel from Canada: On February 13, 2020, the ITC announced the [termination](#) of the countervailing duty investigation after a negative determination from Commerce.

Sunset Review Decisions

- Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: On February 5, 2020, the ITC released the final [results](#) of the expedited third antidumping sunset review.
- Steel Concrete Reinforcing Bars (Rebar) from Mexico: On February 5, 2020, the ITC released the final [results](#) of the expedited antidumping sunset review.



- Refined Brown Aluminum Oxide from China: On February 25, 2020, the ITC released the final [results](#) of the third antidumping duty sunset review.
- Steel Threaded Rod from China: On February 26, 2020, the ITC released the final [results](#) of the second antidumping duty sunset review.

Section 337 Proceedings

- Certain Microfluidic Systems and Components Thereof and Products Containing Same: On February 19, 2020, the ITC announced its final [determination](#) finding a violation of Section 337.

U.S. CUSTOMS & BORDER PROTECTION

- On February 4, 2020, CBP issued filing [instructions](#) on the expanded Section 232 tariffs on derivative products.
- On February 7, 2020, CBP published a [final rule](#) imposing restrictions on archaeological imports from Jordan and Yemen.
- A CBP [ruling](#) published January 23, 2020, states that dishwasher pumps made of parts from China that are assembled in Serbia are considered to be of Serbian origin.
- A February 4, 2020 CBP [ruling](#) states that charges incurred by vendors after an international shipment of merchandise may not be excluded from the transaction value.

COURT OF INTERNATIONAL TRADE

Summary of Decisions

[20-13](#)

On February 3, 2020, the CIT sustained in part and remanded in part Commerce's remand redetermination in the fourth antidumping duty administrative review on certain steel threaded rod from China. The Court had remanded for further explanation or reconsideration Commerce's calculation of surrogate financial ratios as related to labor, as well as Commerce's decision not to adjust costs associated with acquiring letters of credit and the weight assigned to shipping containers in the calculation of brokerage and handling (B&H) costs. On remand, Commerce determined it appropriate to exclude the cost of obtaining letters of credit from the total B&H costs. However, Commerce declined to reallocate labor expenses in the surrogate financial statements and to adjust the weight assigned to shipping containers in its surrogate value calculation of B&H costs. The CIT sustained Commerce's remand redeterminations pertaining to the adjustment of surrogate financial ratios, but remanded Commerce's decision to apply a 10,000-kilogram denominator in calculating B&H costs, as it was inadequately explained and unsupported by substantial evidence. Commerce failed to acknowledge the commercial reality that the cost of shipping a container does not depend on its weight.

[20-15](#)

On February 6, 2020, the CIT sustained in part and remanded in part Commerce's final determination in the

countervailing duty administrative review on certain corrosion-resistant steel products (CORE) from India. The Court sustained Commerce's application of facts otherwise available, since the Plaintiff failed to provide requested information regarding its affiliates, failed to provide information by established deadlines, and significantly impeded Commerce's ability to conduct the administrative review. Applying AFA, Commerce assigned Plaintiff's affiliates' use of subsidy programs to the Plaintiff, resulting in an AFA rate of 588.43 percent. The Court, at Commerce's request, remanded the calculation of the AFA rate for further reconsideration with respect to the Market Access Initiative Program and four other programs specified by the Plaintiff as inapplicable.

[20-20](#)

On February 18, 2020, the CIT sustained the ITC's remand redetermination following the antidumping and countervailing duty investigations of truck and bus tires from China. The Court concluded that substantial evidence supported the ITC's volume determination, as the ITC relied on data demonstrating an increase in subject imports and market share during the period of investigation. The Court also sustained the ITC's price effects determination and impact determination, since record evidence showed that foreign producers of the subject merchandise were undercutting the domestic industry.

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

[2019-1289](#)

On February 7, 2020, Appellant Hitachi Metals appealed the CIT's judgment affirming the ITC's determination that a U.S. domestic industry was materially injured by imports of steel goods sold at less than fair value. Specifically, Hitachi challenged the ITC's "domestic like product" determination, which the CIT had affirmed. The CAFC affirmed the judgment of the CIT, having found no error in the ITC's like product determination and concluding that the ITC's determination was supported by substantial evidence.

[2019-1207](#)

On February 10, 2020, Appellant CP Kelco US, Inc. appealed the decision of the CIT upholding Commerce's treatment of *Xanthomonas Campestris* (*X. Campestris*) as an asset rather than as a direct material input, and Commerce's decision to use Thai Fermentation Industry Ltd. (Thai Fermentation) financial statements to calculate surrogate financial ratios. The CAFC affirmed the CIT's judgment upholding Commerce's classification of *X. Campestris* as an asset, since the bacteria is used to produce the input xanthan gum. The CAFC reversed the CIT's decision regarding Commerce's use of Thai Fermentation financial statements to calculate surrogate financial ratios, since Commerce previously had better explained the use of Ajinomoto (Thailand) Co., Ltd. financial statements.

[2019-1091](#)

On February 14, 2020, Appellant SeAH Steel VINA Corporation ("SeAH") challenged the CIT's affirmation of Commerce's second remand redetermination in the antidumping duty investigation covering certain oil country tubular goods ("OCTG") from Vietnam. The CAFC affirmed in part and reversed in part the decision of the CIT in this matter. The CAFC affirmed the CIT's decision pertaining to Commerce's selection of Bhushan for surrogate financial ratios, and Commerce's selection of surrogate values for inland insurance. The CAFC reversed and remanded to the CIT for further reconsideration Commerce's allocation methodology for brokerage and handling costs.

[2019-1727](#)

On February 28, 2020, the Court of Appeals for the Federal Circuit affirmed the Court of International Trade's [decision](#) that found the institution of Section 232 tariffs on steel and aluminum were not an unconstitutional delegation of authority by Congress to the President under Supreme Court precedent. This appeal addressed the basic steel and aluminum products that were subject to the March 23, 2018, Presidential Proclamation, but the appeal did not address the issues being raised regarding the procedural and substantive legality of the more recent derivative steel and aluminum products in the Presidential Proclamations of 9704 and 9705. Thus, absent a successful appeal to the U.S. Supreme Court, the Section 232 tariffs of 25% on steel and the 10% tariffs on aluminum will remain in force. The Federal Circuit stated that it was bound by Supreme Court precedent concluding that Section 232 is not an unconstitutional delegation of authority of Congressional powers to the President.

EXPORT CONTROLS AND SANCTIONS

[BIS Sets Date for 2020 Export Controls Update Conference](#)

The U.S. Department of Commerce's Bureau of Industry and Security (BIS) has announced that its 33rd Annual Conference on Export Controls will take place in Washington, D.C. from June 29 to July 1, 2020. The conference attracts attendees from various sectors to learn about and discuss relevant export control issues. The Annual Conference will be held at the Marriott Marquis Hotel in downtown Washington near the Mount Vernon Square area. According to BIS, more detailed program information will be provided as it becomes available.