

TRADE LAW UPDATE



March 2020

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PRESIDENTIAL ACTIONS

[Customs Changes Course: No Longer Accepting Requests to Defer Duty Payments](#)

On Friday, March 20, 2020 Customs announced that it was accepting requests for short-term relief from payment of estimated duties, taxes and fees due to the COVID-19 emergency, as discussed [here](#).

Nevertheless, on March 26, 2020, Customs issued “[Additional Guidance for Entry Summary Payments Impacted by COVID-19](#)” that revised the information and policy in the earlier announcement. In its “Additional Guidance” Customs stated that it was no longer accepting requests for additional days for payment of estimated duties, taxes and fees, but commented that CBP retains the right to allow additional days for payment in narrow circumstances, such as physical inability to file entry or payments, based on technology outages or port closures. To continue reading the full post, please click [here](#).

[CBP is Focusing on Shipments of COVID-19 Response Materials to Identify Spurious Goods and Expedite Legitimate Shipments](#)

On March 24, 2020 the New York Field Office of Customs and Border Protection (CBP) issued [Informational Pipeline 20-001-NYFO](#) concerning Imports of Pandemic Response Materials in response to increased COVID-19 cases in the greater New York City area and across the nation. The Pipeline indicated that many of these shipments are legitimate, but also noted that other shipments

involve “nefarious actors” seeking to profit off of vulnerable segments of the population. To continue reading the full post, please click [here](#).

[The Court of International Trade – A Customs Protest or a Scope Ruling Is a Necessary First Step Before Filing Appeals Pursuant to 1581\(i\) of AD and CVD Orders](#)

The Court of International Trade (CIT) issued a decision in *TR International Trading Co. v. United States* ([Slip Op. 20-34](#)) on March 16, 2020, stating that if a company wishes to file an appeal under the Court’s residual jurisdiction under 19 U.S.C. §1581(i), then it must first ensure that it has either filed a protest with U.S. Customs and Border Protection (CBP) or requested a scope ruling from the Department of Commerce (Commerce). One of these two actions must occur before a company seeks judicial review by the CIT. To continue reading the full post, please click [here](#).

[CBP Announces that Garlic and Pipe Fittings Importers are Evading Antidumping and Countervailing Duties](#)

U.S. Customs and Border Protection (“CBP”) recently announced two new final determinations that importers of garlic and pipe fittings were evading antidumping and countervailing duties, under the Enforce and Protect Act (“EAPA”).

Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015 is commonly referred to as The Enforce and Protect Act of 2015 or EAPA. EAPA establishes formal procedures for submitting and investigating antidumping or countervailing allegations of evasion against U.S. importers. U.S. Customs and Border Protection has the responsibility for tracking and reporting allegations of evasion from initial receipt, vetting and enforcement actions, to final disposition of an investigation. In recent years, CBP has been ramping up use of these enforcement tools, as evidenced by these two recent decisions. Since the first case was filed in 2016 and to date, CBP has issued fourteen final EAPA determinations, all of which have been found to be affirmative. To continue reading the full post, please click [here](#).

[Court of International Trade Assigns 3-Judge Panel to Section 232 Steel and Aluminum Derivatives Tariff Appeals](#)

The Court of International Trade on Thursday, March 12, 2020, reassigned several pending appeals on the recent challenges to the Section 232 derivative tariffs on steel and aluminum. These duties were originally [announced](#) on January 24, 2020, and went into effect on February 8, 2020. (See original post [here](#)). While it is unusual for a CIT appeal to be heard by a three-judge panel, in the appeals related to the 2018 Section 232 Tariffs on Steel and Aluminum, the CIT also convened a three-judge panel. The panel will be comprised of Chief Judge Timothy Stanceau, Judge Jennifer Choe-Groves, who was on the panel reviewing the AIIIS appeal filed in 2018, and Judge Miller Baker, the court's most recently appointed judge. To continue reading the full post, please click [here](#).

[Canada Approves U.S.-Mexico-Canada Agreement. Implementation May Be Slowed By COVID-19](#)

On March 13, 2020, the Canadian Parliament approved the U.S.-Mexico-Canada Agreement (the "USMCA" in the United States or "CUSMA" in Canada), with Royal Assent, Canada's equivalent to a U.S. presidential signature, following shortly thereafter. As a result, Canada became the final of the three countries to approve the revised NAFTA free trade agreement. Before implementing the USMCA, the member countries must take a number of additional steps including developing uniform regulations, approving the rules of the other countries, and assessing progress toward meeting certain commitments (for example, certain labor courts to be established in Mexico). To continue reading the full post, please click [here](#).

U.S. DEPARTMENT OF COMMERCE DECISIONS

Investigations

- Hydrofluorocarbon Blends from the People's Republic of China: On March 18, 2020, Commerce released its affirmative final [determination](#) of circumvention with respect to unfinished R-32/ R-125 blends.

Administrative Reviews

- Certain Pasta from Italy: On March 3, 2020, Commerce released amended final [results](#) of the antidumping duty administrative review (2017-2018).
- Circular Welded Carbon Steel Pipe and Tube Products from the Republic of Turkey: On March 3, 2020, Commerce released amended final [results](#) of the antidumping duty administrative review (2017-2018).
- Steel Wire Garment Hangers from the People's Republic of China: On March 11, 2020, Commerce released the final [results](#) of the antidumping duty administrative review (2017-2018).
- Certain Steel Nails from Malaysia: On March 12, 2020, Commerce released the final [results](#) of the antidumping duty administrative review (2017-2018).
- Polyethylene Terephthalate Film, Sheet, and Strip from India: On March 12, 2020, Commerce released the final [results](#) of the countervailing duty administrative review (2017).
- Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: On March 13, 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 (2010-2011).
- Certain Steel Nails from Taiwan: On March 13, 2020, Commerce released the final [results](#) of the antidumping duty administrative review and determination of no shipments (2017-2018).
- Certain Pneumatic Off-the-Road Tires from the People's Republic of China: On March 13, 2020, Commerce released the final [results](#) of the countervailing duty administrative review (2017).

- Polyethylene Terephthalate Film, Sheet, and Strip from India: On March 16, 2020, Commerce released the final [results](#) of the antidumping duty administrative review (2017-2018).
- Certain Corrosion-Resistant Steel Products from the Republic of Korea: On March 17, 2020, Commerce released the final results of the [antidumping](#) duty administrative review (2017-2018) and the [countervailing](#) duty administrative review (2017).
- Steel Concrete Reinforcing Bar from the Republic of Turkey: On March 19, 2020, Commerce released the final [results](#) of the antidumping duty administrative review (2017-2018).
- Steel Concrete Reinforcing Bar from the Republic of Turkey: On March 20, 2020, Commerce released the final [results](#) of the countervailing duty administrative review (2017).
- Certain Corrosion-Resistant Steel Products from Taiwan: On March 24, 2020, Commerce released the final [results](#) of the antidumping duty administrative review (2017-2018).
- Certain Crystalline Silicon Photovoltaic Products from Taiwan: On March 24, 2020, Commerce released the final [results](#) of the antidumping duty administrative review and final determination of no shipments (2018-2019).

Changed Circumstances Reviews

- Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: On March 13, 2020, Commerce released the final [results](#) of the changed circumstances review.

Sunset Reviews

- Certain Oil Country Tubular Goods (OCTG) from India, Korea, Turkey, and Vietnam: On March 4, 2020, Commerce released the final [results](#) of the expedited first antidumping duty sunset reviews.
- Non-Oriented Electrical Steel from Taiwan: On March 6, 2020, Commerce released the final [results](#) of the expedited countervailing sunset review.
- Electrolytic Manganese Dioxide from the People’s Republic of China: On March 20, 2020, Commerce released the final [results](#) of the expedited second antidumping duty sunset review.
- Lightweight Thermal Paper from the People’s Republic of China: On March 20, 2020, Commerce released the final [results](#) of the expedited second countervailing duty sunset review.
- Lightweight Thermal Paper from the People’s Republic of China: On March 23, 2020, Commerce released the final [results](#) of the expedited second antidumping duty sunset review.

U.S. INTERNATIONAL TRADE COMMISSION

Section 701/731 Proceedings

Investigations

- Fabricated Structural Steel from Canada, China, and Mexico: On March 20, 2020, the ITC published its final [results](#) of the antidumping and countervailing duty investigations finding that there was no material injury or threat of material injury. Accordingly, no antidumping duty or countervailing duty orders will be issued and the case will be closed.

Sunset Review Decisions

- There were no Sunset Review decisions from the ITC for the month of March.

Section 337 Proceedings

- There were no Section 337 decisions from the ITC for the month of March.



U.S. CUSTOMS & BORDER PROTECTION

- On March 11, 2020, CBP published a [notice](#) stating that it will adopt its proposal to limit the CIT and CAFC’s rulings involving locking pliers.

- On March 9, 2020, CBP posted two new final determinations of duty evasion under the Enforce and Protect Act (EAPA), finding that importers of [garlic](#) and importers of [pipe fittings](#) illegally avoided antidumping duties. [Read the Husch Blackwell blog post on the issue.](#)
- A CBP [ruling](#) published February 18 said that the origin of sticky notes produced in Taiwan is based on the origin of the rolls of paper. Cutting the paper and adding the glue to produce sticky notes from rolls of paper is not considered a substantial change, said CBP.
- In a March 26 [CSMS message](#), CBP abruptly ended the duty deferral process that was to offer relief to businesses affected by the economic fallout caused by COVID-19.

COURT OF INTERNATIONAL TRADE

Summary of Decisions

[20-26 & 20-27](#)

On March 2, 2020, the CIT sustained Commerce’s final determination in the countervailing duty investigation of stainless steel flanges from India. In its determination, Commerce applied adverse inferences to calculate a CVD rate for Plaintiff Bebitz and its affiliates. Bebitz also challenged Commerce’s decision to deny its extension request. Because Bebitz did not respond timely to the supplemental questionnaire issued by Commerce, Commerce found that it lacked accurate and reliable information regarding Bebitz’s affiliates and applied facts available to determine which cross-owned companies should have been reported. Commerce denied Bebitz’s extension request because it was filed after the deadline and could not be considered without “extremely compelling circumstances.” For these reasons, the CIT sustained Commerce’s final determination.

On March 3, 2020, for similar reasons, the CIT sustained Commerce’s final determination in the antidumping duty investigation of stainless steel flanges from India. Plaintiff Bebitz had failed to timely submit responses to Commerce’s questionnaires and Commerce therefore applied adverse facts available to calculate an AD rate.

[20-28](#)

On March 4, 2020, the CIT remanded Commerce’s remand results in the antidumping duty investigation of certain steel nails from China. At issue was Commerce’s decision on remand to include Midwest Fastener’s strike pin anchors under the scope of the antidumping order for steel nails. The CIT had remanded the issue to Commerce for redetermination, citing that the language of the scope did not support Commerce’s interpretation and that Commerce did not provide examples of previous scope rulings which supported its interpretation, despite having asserted that there were numerous such examples. Commerce also, according to CIT, seemingly ignored evidence that strike pin anchors are marketed differently than nails. Furthermore, the CIT determined that

Commerce’s proposal to instruct CBP that only the pin component of the strike pin anchor is dutiable was flawed because Commerce, in order to determine the scope of the order, needed to determine whether the entire strike pin anchor is a nail or not.

[20-31](#)

On March 11, 2020, the CIT remanded Commerce’s first remand redetermination in the 2012-2013 antidumping duty administrative review of multilayered wood flooring (“MLWF”) from China. According to the CIT, the downward adjustments made by Commerce in determining the export price of Plaintiff Senmao’s subject merchandise to account for Chinese VAT were contrary to law. Commerce had wrongfully classified the VAT as an export tax, allowing them to make the adjustment and in effect increase the dumping margin.

[20-32](#)

On March 12, 2020, the CIT sustained Commerce’s remand redetermination in the eleventh administrative review of the antidumping duty order covering certain frozen fish fillets from Vietnam. The CIT concluded that Commerce reasonably determined that the minority government shareholder in Plaintiff Caseamex could not influence the day-to-day operations and that the minority government shareholder who had a position on the management board could not influence appointment of managers or directors, since appointees to the board are appointed by a majority of shareholders.

[20-36](#)

On March 19, 2020, the CIT sustained Commerce’s remand results in the antidumping and countervailing duty investigations of corrosion-resistant steel (“CORE”) from Italy and China. Under protest, Commerce had found that the CORE components in Plaintiff Trendium’s pool walls were outside the scope of the antidumping and countervailing duty orders. At the request of both parties, the CIT sustained the results.

[20-37](#)

On March 20, 2020, the CIT sustained Commerce's final affirmative determination in the antidumping duty anti-circumvention investigation on uncovered innerspring units from China. According to the CIT, Commerce reasonably rejected the Plaintiff's attempt to avoid the scope of 19 U.S.C. § 1677j(b)(1)(B). Plaintiff argued that the "manufacturing" activities fell outside the scope of the statute, that used the terms "completion" and "assembly." The CIT rejected this argument and found that Plaintiff failed to explain how Commerce's interpretation of the statute was unreasonable. The CIT also sustained Commerce's use of AFA in making its final determination, since Plaintiff Macao Commercial never provided Commerce with the requested cost reconciliation information. Lastly, Commerce had also found the Plaintiff's manufacturing process to produce innerspring units in Macao from Chinese-origin parts to be minor or insignificant under 19 U.S.C. §§ 1677j(b)(1)(C) & 1677j(b)(2). For all of these reasons, the CIT sustained Commerce's final determination.

[20-38](#)

On March 24, 2020, the CIT sustained Commerce's second remand redetermination in the antidumping duty investigation of welded line pipe from Korea. On its first remand, the CIT ordered Commerce to reconsider or further explain its refusal to reassess Hyundai HYSCO's home market viability in light of its decision to remove certain challenged local sales from HYSCO's home market database. On its second remand, Commerce explained that it continued to rely on the remaining quantity of HYSCO's

home market sales. With no challenge to the remand results, the CIT sustained Commerce's second remand redetermination.

[20-39](#)

On March 24, 2020, the CIT sustained Commerce's remand redetermination in the countervailing duty investigation of certain aluminum foil from China. On remand, Commerce accepted the Plaintiff's non-use of China's Export Buyer's Credit Program ("EBCP") and granted its request for an Entered Value Adjustment ("EVA"), resulting in a lower subsidy rate for the Plaintiff. Since no party challenged Commerce's remand redetermination, the CIT sustained Commerce's decision.

[20-41](#)

On March 26, 2020, the CIT sustained Commerce's second remand redetermination in the 2010-2011 antidumping duty administrative review of ball bearings and parts thereof from the United Kingdom. The CIT determined that the Trade Preferences Extension Act of 2015 ("TPEA") did not apply to remand determinations of administrative reviews where the decision to apply AFA predated the TPEA's enactment, since the administrative record on which Commerce relied was compiled entirely before TPEA enactment. Additionally, Commerce's use of AFA was supported by substantial evidence and in accordance with law.

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

[2019-1561](#)

On March 11, 2020, Appellant ICCS appealed the CIT's grant of summary judgment in favor of the government ruling that Customs lawfully issued a notice to ICCS to redeliver merchandise that violated 19 U.S.C. § 1526(e) by displaying a counterfeit certification mark. The CAFC affirmed the decision of the CIT, since the counterfeit "PREMIUM" labels met the definition of a "spurious" mark for not having gone through proper testing and certification.

[2019-1404](#)

On March 27, 2020, the CAFC affirmed the CIT's decision sustaining Commerce's final results and partial rescission in the 21st antidumping duty administrative review of fresh garlic from China. The CAFC agreed with the CIT that Commerce did not err in rescinding Appellant NMGGC's requested review of Harmoni, since Commerce has the authority to maintain the integrity of its proceedings.

[2018-1450, 2018-1653, 2018-1667](#)

On March 2, 2020, Appellants Comcast, ARRIS, and Technicolor appealed the decision of the ITC in the Section 337 investigation of television set-top boxes. According to the CAFC, the ITC was within its authority to issue a limited exclusion order limited to Comcast's imports of subject merchandise and had discretion in selecting a remedy that had reasonable relation to unlawful trade practices. The court also agreed with the ITC that Comcast was the importer of record for X1 set-top boxes, since the set-top boxes were "so tailored to Comcast's system and requirements that they would not function within another cable operator's system." The CAFC affirmed the ITC's decision, having found its rulings to be in accordance with law and supported by substantial evidence.

EXPORT CONTROLS AND SANCTIONS

[OFAC Issues Two New General Licenses for Companies Doing Business with GAZ Group](#)

The U.S. Treasury's Office of Foreign Assets Control ("OFAC") has recently issued two new General Licenses to extend pre-existing authorizations for transactions with GAZ Group that would otherwise be prohibited under OFAC's Ukraine- and Russia-related sanctions. [General License 15H](#) ("GL 15H") authorizes certain activities necessary to maintenance or wind down of operations or existing contracts and certain automotive safety and environmental activities with the Russian automotive conglomerate GAZ Group and its 50%-or-greater-owned subsidiaries. GL 15H, which took effect on March 20, 2020, replaces and supersedes [GL 15G](#) and extends the deadline for authorized transactions and activities from March 31, 2020 to July 22, 2020. Any company that engaged in transactions under GL 15G should now reference GL 15H instead. To continue reading the full post, please click [here](#).

[BIS Renews Huawei Temporary General License and Requests Comments on Future Renewals](#)

The U.S. Department of Commerce's Bureau of Industry and Security (BIS) announced the issuance of yet another [extension](#) of the temporary general license (TGL) allowing companies to continue business with Huawei Technologies Co., Ltd. and its 114 subsidiary and affiliate companies that are currently named on BIS's Entity List. The TGL was scheduled to expire on April 1, 2020, but has been extended to May 15, 2020, according to a *Federal Register* notice published by BIS on March 12, 2020. Anyone who is seeking to rely on the TGL should be aware that it features certain eligibility limitations and also imposes recordkeeping obligations and requires the collection of certain end-user certifications. To continue reading the full post, please click [here](#).