

TRADE LAW UPDATE



June 2020

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PRESIDENTIAL ACTIONS

[USMCA Set to Enter Into Force on July 1, 2020](#)

The U.S.-Mexico-Canada Free Trade Agreement (USMCA) will displace NAFTA and become effective July 1, 2020. Though similar to NAFTA in many ways, key changes in the USMCA include provisions for digital trade, implementation of new local labor standards in the automotive sector, and the adjustment of the rules of origin for a wide variety of products.

[USTR Opens Online Portal to Solicit Input on Products to Carousel, Duty Rate in Large Civil Aircraft Section 301 Tariff Action](#)

The U.S. Trade Representative (USTR) [issued](#) a draft Federal Register notice outlining its process to review the Section 301 duties imposed on imported goods pursuant to the Large Civil Aircraft Dispute with the European Union (EU). This review is required by statute (Section 306(b)(2) of the Trade Act of 1974) and may result in goods being added to or removed from the list of products subject to Section 301 tariffs. It may also result in a change in the tariff level. To continue reading, please click [here](#).

[USITC Announces New Chairman and Vice Chairman](#)

The U.S. International Trade Commission, a quasi-judicial federal agency that administers U.S. trade remedy laws, has [announced new leadership](#). President Trump designated [Jason E. Kearns](#) as Chairman and [Randolph J. Stayin](#) as Vice Chairman of the ITC, each for two-year terms effective June 17, 2020. Both Chairman Kearns and Vice Chairman Stayin served as ITC commissioners before these designations.

[USTR Releases Uniform Regulations for U.S.-Mexico-Canada Agreement \(USMCA\)](#)

The Office of the U.S. Trade Representative (“USTR”) released the final implementing [regulations](#) of the U.S.-Mexico-Canada Agreement (“USMCA”) on June 3, 2020, an important step for when the USMCA goes into effect on [July 1, 2020](#). The implementing regulations cover the interpretation, application, and administration of the [rules of origin](#), textile and apparel goods, and customs administration and trade facilitation.

[USTR Initiates Section 301 Digital Services Tax Investigations Covering India, the European Union and Several Other Countries](#)

The Office of the U.S. Trade Representative (“USTR”) [announced](#) on June 2, 2020 that it is initiating Section 301 [investigations](#) on Digital Services Taxes (“DSTs”) adopted or under consideration by Austria, Brazil, Czech Republic, the European Union (“EU”), India, Indonesia, Italy, Spain, Turkey, and the United Kingdom (“U.K.”). The Section 301 DST investigations could lead

the U.S. to impose new punitive tariffs and could significantly raise global trade tensions. To continue reading, please click [here](#).

U.S. DEPARTMENT OF COMMERCE DECISIONS

Investigations

- Certain Collated Steel Staples from the People's Republic of China: On June 2, 2020, Commerce released the final determinations of the [antidumping](#) and [countervailing](#) duty investigations and final affirmative critical circumstances determinations.
- Certain Quartz Surface Products from India and Turkey: On June 22, 2020, Commerce issued final [antidumping](#) and [countervailing](#) duty orders.
- Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: On June 22, 2020, Commerce announced the initiation of [antidumping](#) and [countervailing](#) duty investigations.
- Passenger Vehicle and Light Truck Tires from Korea, Taiwan, Thailand, and Vietnam: On June 29, 2020, Commerce announced the initiation of [antidumping](#) duty (all countries) and [countervailing](#) duty (Vietnam only) investigations.

Administrative Reviews

- Ball Bearings and Parts Thereof from the United Kingdom: On June 3, 2020, Commerce released the third amended final [results](#) of the antidumping duty administrative review (2010-2011) pursuant to court decision.
- Magnesium Metal from the People's Republic of China: On June 22, 2020, Commerce released the final [results](#) of the antidumping duty administrative review (2018-2019).
- Pure Magnesium from the People's Republic of China: On June 25, 2020, Commerce released the final [results](#) of the antidumping duty administrative review (2018-2019).
- Certain Cold-Rolled Steel Flat Products from the Republic of Korea: On June 26, 2020, Commerce released the final [results](#) of the countervailing duty administrative review (2017).
- Emulsion Styrene-Butadiene Rubber from Brazil: On June 29, 2020, Commerce released the final [results](#) of the antidumping duty administrative review (2017-2018).

Circumvention Inquiries

- Hydrofluorocarbon Blends from the People's Republic of China: On June 4, 2020, Commerce released the final affirmative [determination](#) of circumvention of the antidumping duty order for Unpatented R-421A.
- Steel Concrete Reinforcing Bar from Mexico: On June 8, 2020, Commerce released the final affirmative [determination](#) of circumvention of the antidumping duty order.

Changed Circumstances Reviews

- Refillable Stainless Steel Kegs from the Federal Republic of Germany: On June 9, 2020, Commerce released the final [results](#) of the antidumping duty changed circumstances review.
- Certain Aluminum Foil and Common Alloy Aluminum Sheet from the People's Republic of China: On June 11, 2020, Commerce released the corrected final [results](#) of the antidumping duty changed circumstances review.
- Large Diameter Welded Pipe from Greece: On June 22, 2020, Commerce released the final [results](#) of the antidumping duty changed circumstances review.

Sunset Reviews

- Monosodium Glutamate from the Republic of Indonesia: On June 4, 2020, Commerce released the final [results](#) of the antidumping duty sunset review.
- Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: On June 8, 2020, Commerce released the final results of the expedited second [antidumping](#) and [countervailing](#) duty sunset reviews.
- Commodity Matchbooks from India: On June 18, 2020, Commerce released the final [results](#) of the antidumping duty sunset review.
- Citric Acid and Certain Citrate Salts from Canada: On June 23, 2020, Commerce released the final [results](#) of the antidumping duty sunset review.

- Certain Oil Country Tubular Goods from the People’s Republic of China: On June 29, 2020, Commerce released the final [results](#) of the second expedited countervailing sunset review.
- Prestressed Concrete Wire Strand from Brazil, India, Japan, Mexico, Korea, and Thailand: On June 30, 2020, Commerce released the final [results](#) of the antidumping duty sunset reviews.

U.S. INTERNATIONAL TRADE COMMISSION

Section 701/731 Proceedings

Investigations

- Quartz Surface Products from India and Turkey: On June 19, 2020, the ITC published its final affirmative [decisions](#) in the antidumping and countervailing duty investigations finding material injury.

Sunset Review Decisions

- Silicon Metal from Russia: On June 3, 2020, the ITC published its final affirmative [decision](#) in the antidumping duty five-year review.
- Carbon and Certain Alloy Steel Wire Rod from China: On June 19, 2020, the ITC published its final affirmative [decision](#) in the antidumping and countervailing duty sunset reviews.
- Calcium Hypochlorite from China: On June 23, 2020, the ITC published its final affirmative [decision](#) in the antidumping and countervailing duty sunset reviews.
- Electrolytic Manganese Dioxide from China: On June 25, 2020, the ITC published its final affirmative [decision](#) in the antidumping duty sunset review.
- Lightweight Thermal Paper from China: On June 29, 2020, the ITC published its final affirmative [decision](#) in the antidumping and countervailing duty sunset review.



Section 337 Proceedings

- Certain Motorized Vehicles and Components Thereof: On June 17, 2020, the ITC released the final [decision](#) finding a violation of Section 337.
- Certain Pocket Lighters: On June 26, 2020, the ITC released the final [decision](#) finding a violation of Section 337.

U.S. CUSTOMS & BORDER PROTECTION

- In a June 17 [bulletin](#), CBP proposed revoking [rulings](#) and similar treatment for battery-operated food mills and mineral-oil based lubricants, as well as [rulings](#) for reversible comforters.
- In a May 5 [ruling](#) published June 5, 2020, CBP ruled that bonded merchandise can only be carried by non-bonded parties if the bonded carrier first takes physical delivery of the merchandise and obligates it bond to a non-bonded carrier.
- On June 4, 2020, CBP [ruled](#) that taxes paid to a foreign government that are later refunded upon export to the U.S. need not be included within the transaction value report upon import.

COURT OF INTERNATIONAL TRADE

Summary of Decisions

[20-79](#)

On June 1, 2020, the CIT denied Plaintiffs' motions for temporary restraining orders and preliminary injunctions against implementation or further enforcement of Presidential Proclamation 9980 that imposes tariffs on certain imported steel-derivative products. The court stated that Plaintiffs failed to demonstrate a likelihood of irreparable harm.

[20-81](#)

On June 5, 2020, the CIT sustained Commerce's remand redetermination in the 2015 countervailing duty administrative review on off-the-road tires from China. Consistent with the most recent opinion and order of the court, Commerce removed the subsidy rate for the Export Buyer's Credit Program and recalculated the duty rate accordingly.

[20-83](#)

On June 15, 2020, the CIT sustained Commerce's second remand redetermination in the third antidumping duty administrative review of crystalline silicon photovoltaic cells, whether or not assembled into modules, from China. The court upheld Commerce's decision to decline to apply an adverse inference because the Defendant-Intervenor failed to exhaust its administrative remedies when it did not file any comments on Commerce's draft remand redetermination.

[20-84](#)

On June 17, 2020, the CIT remanded Commerce's determination in the antidumping duty investigation of stainless steel flanges from India. The court concluded that Commerce failed to provide a sufficient explanation of its findings on the record to permit judicial review. And the court remanded the matter to Commerce to further explain its classification of a challenged sale as an export sale and its 19 U.S.C § 1677b(a)(1)(C) finding of home market non-viability.

[20-85](#)

On June 17, 2020, the CIT sustained Commerce's remand redetermination in the antidumping duty administrative review of oil country tubular goods ("OCTG") from Korea. The court found that Commerce's identification of PPA as a SeAH subsidiary was supported by substantial evidence

and that Commerce's treatment of PPA's G&A expenses as indirect selling expenses was in accordance with the law. Furthermore, the CIT concluded that SeAH did not exhaust its administrative remedies and waived its arguments concerning inconsistent questionnaire instructions and concerning whether SeAH should be granted a constructed export price offset.

[20-86](#)

On June 22, 2020, the CIT sustained Commerce's remand redetermination in the fifth antidumping duty administrative review of certain steel threaded rod from China. On remand, Commerce provided further explanation for its calculation of surrogate financial ratios. No party filed comments on Commerce's remand redetermination and it was therefore sustained.

[20-87](#)

On June 25, 2020, the CIT sustained Commerce's remand redetermination in the countervailing duty investigation of carbon and alloy steel wire rod from Turkey. The court concluded that Commerce's adjustments to Russian export prices for natural gas based on an IEA report was in based on substantial evidence and reasonable.

[20-88 & 20-89](#)

On June 25, 2020, the CIT denied Plaintiff CSC Sugar's motion for judgment on the agency record challenging Commerce's final determination in the 2020 amendments to agreements to suspend the antidumping/countervailing duty investigations of sugar from Mexico ("2020 Amendments"). The court found that, although the 2020 Amendments were substantively similar to the previously vacated 2017 Amendments, the record from 2017 which was referenced did not taint the record of the 2020 Amendments and Commerce did not act in bad faith. The court also found that Commerce reasonably explained why the polarity modification was necessary along with the bulk-shipping provision to enforce the agreement. Additionally, the Court found that Commerce's decision was based on substantial evidence, and that Commerce adequately explained that the 2020 Amendments were in the public interest.

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

2018-2194

On June 15, 2020, Appellant Jinko Solar appealed the decision of the CIT to sustain Commerce's selection of HTS heading 7604 for valuation of aluminum frame inputs and Commerce's method of offsetting the AD cash deposit rate to account for export subsidies. The CAFC affirmed the decisions of the CIT on appeal, having concluded that Commerce's decisions were reasonable, supported by substantial evidence, and based on statute.

2019-1591

On June 24, 2020, Defendants Trina Solar Energy appealed decisions of the CIT regarding the first administrative review of an antidumping duty order on crystalline photovoltaic cells from China. Plaintiff Solarworld Americas cross-appealed. The CAFC affirmed in part, vacated in part, and remanded. The CAFC remanded to the CIT Commerce's decision to use Thai GTA data to value Trina's nitrogen input because it was not adequately explained. The CAFC affirmed the CIT's decision to sustain Commerce's use of zero-quantity data because the defendants failed to demonstrate that the alleged error was harmful. The CAFC also affirmed CIT's decision to sustain Commerce's use of HTS codes that the defendants argued were understated because Commerce undervalued solar-module backsheets. Finally, CAFC affirmed CIT's remand to Commerce to further justify or reconsider the use of Thai GTA data to value Yingli's tempered glass input.

EXPORT CONTROLS AND SANCTIONS

BIS Allows U.S. Companies to Work with Huawei on Standards

The U.S. Department of Commerce's Bureau of Industry and Security ("BIS") published a [notice](#) in the Federal Register announcing a rule change effective June 18, 2020, which amends the Export Administration Regulations ("EAR") to allow for the release of certain technology to Huawei Technologies, Co., Ltd. and 114 of its non-U.S. affiliates designated on the Entity List without a license "if such release is made for the purpose of contributing to the revision or development of a 'standard' in a 'standards organization.'"

State and Treasury Departments Designate 39 Entities under "Caesar Act" Syria Sanctions

New U.S. sanctions on Syria took effect on June 17, 2020 as a result of the "Caesar Syria Civilian Protection Act of 2019" ("[Caesar Act](#)") that was signed into law on December 20, 2019 as part of the National Defense Authorization Act for Fiscal Year 2020. The Caesar Act is named after a Syrian photographer who documented abuses in the Assad regime's prisons.

Pursuant to the Caesar Act and [Executive Order 13894](#), the U.S. State and Treasury Departments [announced](#) 39 new [additions](#) to the Specially Designated Nationals and Blocked Persons List (the "SDN List") maintained by the Treasury Department's Office of Foreign Assets Control ("OFAC"). The Treasury and State Departments also promised that more SDN List designations will follow. The 39 designated entities include regime officials, members of the ruling Assad family, the Fourth Division of the Syrian Arab Army, and an Iran-sponsored militia. The new designations also include 20 private companies.

BIS Adds 33 Chinese Entities to the Entity List, Citing Human Rights Abuses

The U.S. Department of Commerce's Bureau of Industry and Security ("BIS") recently announced the addition of 32 Chinese companies and 1 Chinese government agency to the Entity List, citing connections to items for military end-use and human rights abuses against Uighur Muslims in the Xinjiang region. The addition of these Chinese entities to the Entity List follows BIS's [rule changes](#) that further restricted the supply of U.S. technology to Huawei and its affiliated entities. This action prohibits the export, reexport or in-country transfer of items subject to the Export Administration Regulations ("EAR") to the named entities without authorization from the Department of Commerce.

[Twenty-four](#) of the companies, based in China, Hong Kong, and the Cayman Islands, were added because they allegedly support procurement of items for military end-use in China. The other [nine entities](#), which includes China's Ministry of Public Security's Institute of Forensic Science, were said to be "complicit in human rights violations and abuses committed in China's

campaign of repression, mass arbitrary detention, forced labor and high-technology surveillance against Uighurs, ethnic Kazakhs, and other members of Muslim minority groups in the Xinjiang Uighur Autonomous Region” and will face “new restrictions on access to U.S. technology.”