

TRADE LAW UPDATE



August 2020

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PRESIDENTIAL ACTIONS

[EU Lifts Tariffs on U.S. Lobsters; U.S. Agrees to Limited Rollback on Certain Products](#)

On August 21, 2020, the United States Trade Representative Robert Lighthizer and European Union (EU) Commissioner Phil Hogan issued a [joint statement](#), announcing that both parties would reduce tariffs on certain goods. Specifically, the EU has agreed to eliminate tariffs on imports of U.S. live and frozen lobster products. The elimination of these tariffs will span a five year period. The EU had previously reached a free-trade agreement with Canada that resulted in significant increases in European imports of Canadian lobsters, while U.S. lobster [exports declined](#). In return, the U.S. agreed to reduce its tariffs by 50% on specific imported goods from the EU, including “certain prepared meals, certain crystal glassware, surface preparations, propellant powders, cigarette lighters and lighter parts.” Both of these tariff changes will be made pursuant to a Most Favored Nation (MFN) basis and will apply retroactively to August 1, 2020.

[Commerce Proposes Modifications to AD/CVD Laws to Strengthen Enforcement](#)

The U.S. Department of Commerce (“Commerce”) announced in the [Federal Register](#) that it is proposing significant changes to its antidumping and countervailing duty regulations. The last time such sweeping changes were undertaken were in 1997 after the WTO went into effect. Commerce is

requesting comments on the proposed changes by September 14, 2020. Although, as of the date of this newsletter, several interested parties had requested an extension to this deadline.

Among the most significant changes outlined in Commerce’s proposal are the changes to its conduct of scope proceedings, anti-circumvention proceedings, new shipper reviews, petition comment periods, and other procedural changes. For a full summary of the changes, please see our [original post](#).

[USTR Revises List of EU Imports Subject to Section 301 Tariffs](#)

The Office of the U.S. Trade Representative (USTR) issued an updated [list](#) of goods from the European Union (EU) subject to Section 301 tariffs as part of the Large Civil Aircraft dispute. In October 2019, the World Trade Organization [ruled in favor](#) of the U.S. and Boeing in the dispute against the EU and Airbus, allowing for these Section 301 tariffs to be imposed against the EU. The revisions to the list of products both add and remove products, which are described in the [full post](#). These modifications take effect on September 1, 2020.

[Canada Announces Retaliatory Tariffs on U.S. Imports](#)

Prime Minister Chrystia Freeland announced that Canada will be imposing retaliatory tariffs on \$2.7 billion worth of U.S. imports in response to President Trump's [decision](#) to re-implement a 10% ad valorem tariff on non-alloyed unwrought aluminum from Canada (HTS subheading 7601.10). During a news conference Freeland stated, "We will impose dollar-for-dollar countermeasures in a balanced and perfectly reciprocal retaliation." These decisions come after the two countries, along with Mexico, recently implemented the [USMCA](#) to further facilitate trade.

Following the announcement, the Canadian Department of Finance issued a [notice](#) containing a list of over sixty aluminum goods subject to a 10% rate that will take effect on September 16, 2020. According to the notice, interested parties (Canadian companies or Canadian industry associations) should provide written comments by September 6, 2020 to fin.tariff-tarif.fin@canada.ca.

U.S. DEPARTMENT OF COMMERCE DECISIONS

Investigations

- Utility Scale Wind Towers from Canada: On August 26, 2020, Commerce issued its amended final [determination](#) in the countervailing duty investigation.
- Difluoromethane (R-32) from the People's Republic of China: On August 27, 2020, Commerce issued its preliminary [determination](#) in the antidumping duty investigation.
- Non-Refillable Steel Cylinders from the People's Republic of China: On August 28, 2020, Commerce issued its preliminary [determination](#) in the countervailing duty investigation.

Administrative Reviews

- Emulsion Styrene-Butadiene Rubber from Brazil: On August 5, 2020, Commerce issued its final [results](#) in the antidumping duty administrative review (2017-2018).
- Steel Wire Garment Hangers from the People's Republic of China: On August 11, 2020, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Narrow Woven Ribbons with Woven Selvedge from Taiwan: On August 20, 2020, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).

Circumvention Inquiries

- Hydrofluorocarbon Blends from the People's Republic of China (HFC Components segment): On August 19, 2020, Commerce made a final negative [determination](#) and concluded that HFC components were not within the scope of the AD Order and therefore not circumventing the antidumping duty order. As a result, no antidumping duties will be required to be posted on imports of HFC components.

Changed Circumstances Reviews

- Large Diameter Welded Pipe from the Republic of Korea: On August 21, 2020, Commerce issued the final [results](#) of the antidumping and countervailing duty changed circumstances reviews.

Sunset Reviews

- Citric Acid and Certain Citrate Salts from the People's Republic of China: On August 17, 2020, Commerce issued the final [results](#) of the second expedited antidumping duty sunset review.

U.S. INTERNATIONAL TRADE COMMISSION

Section 701/731 Proceedings

Investigations

- Utility Scale Wind Towers from Canada, Indonesia, Korea, and Vietnam: On August 25, 2020, the ITC published its final affirmative [decision](#) in the antidumping and countervailing duty investigations finding material injury.

Sunset Review Decisions

- Oil Country Tubular Goods from India, Korea, Turkey, Ukraine, and Vietnam: On August 3, 2020, the ITC published its final affirmative [decision](#) to continue the antidumping and countervailing orders as revocation would lead to the recurrence or continuation of injury.
- Barium Carbonate from China: On August 14, 2020, the ITC published its final affirmative [decision](#) to continue the antidumping orders as revocation would lead to the recurrence or continuation of injury.
- Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, and Trinidad and Tobago: On August 21, 2020, the ITC published its final affirmative [decision](#) to continue the antidumping and countervailing orders as revocation would lead to the recurrence or continuation of injury.



Section 337 Proceedings

- There have been no Section 337 decisions from the ITC for the month of August 2020.

U.S. CUSTOMS & BORDER PROTECTION

- CBP issued a [notice](#) that goods produced in Hong Kong will need to be marked as products of China. The marking changes were originally set to take effect on September 25, 2020, or 45 days after publication of the notice in the *Federal Register*. The changes are now scheduled to take effect on November 9, 2020, or 90 days after publication, according to an [update from CBP](#).

COURT OF INTERNATIONAL TRADE

Summary of Decisions

[20-108 & 20-109](#)

On August 4, 2020, the CIT sustained Commerce's second remand redetermination in the third administrative review of the countervailing duty order for crystalline silicon photovoltaic cells (20-108) and Commerce's first administrative review of the countervailing duty order for crystalline silicon photovoltaic products (20-109) from China. In case 20-108, the court sustained Commerce's decision to reject Canadian Solar's input data as a tier one metric and rely on tier two data. The court also sustained Commerce's finding that the provision of electricity for less than adequate remuneration is a regionally-specific subsidy. As in case 20-108, in 20-109, the court sustained Commerce's determination to use IHS data as a benchmark for aluminum extrusions and to use the PV insights and GTM Research data to set a benchmark for solar glass.

[20-110](#)

On August 4, 2020, the CIT sustained Commerce's final results in the fifth antidumping duty administrative review of large power transformers from the Republic of Korea. The CIT sustained Commerce's reliance on facts available and cancellation of cost verification because Hyundai did not provide reliable information regarding cost-reconciliation and product-specific costs.

[20-115](#)

On August 11, 2020, the CIT remanded Commerce's final determination in the countervailing duty investigation of biodiesel fuel from Indonesia. The court found that two of Commerce's three countervailability findings were supported by substantial evidence and in accordance with law. Specifically, Commerce did not err in determining that the Government of Indonesia provided countervailable monetary grants to Wilmar and Musim Mas through the Biodiesel Subsidy Fund, and that the Government of

Indonesia's 2015 export levy on crude palm oil provided goods for less than adequate remuneration. The court also remanded Commerce's determination that Indonesia's 1994 differential export tariff on crude palm oil provided a countervailable financial contribution in the form of goods provided for less than adequate remuneration because it was not supported by substantial evidence or in accordance with law.

[20-117](#)

On August 14, 2020, the CIT remanded Commerce's final determination in the antidumping duty administrative review of off-the-road tires from China. The CIT remanded for reconsideration Commerce's decision not to review GTC and to decline to assign GTC its own individual dumping margin, according to the plain meaning of the regulations.

[20-118](#)

On August 14, 2020, the CIT remanded Commerce's remand redetermination in the antidumping duty changed circumstances review of stainless steel bar from India. The court found that Commerce's decision to use an adverse inference because Venus did not identify its consumption of subject inputs until directed to do so was unsupported by substantial evidence. The court sustained Commerce's remand results to the extent that the results explained why Venus was not the producer of the imported SS bar and remanded the amended Final Results for Commerce to reconsider the use of total AFA.

[20-122](#)

On August 21, 2020, the CIT remanded for further explanation and consideration Commerce's final determination in the administrative review of tapered roller bearings and parts thereof, finished or unfinished, from China. The court found that Commerce failed to meet its obligation to consider corrective information and provide a reasoned explanation of its determination that ZMC failed to establish an absence of de facto government control.

[20-124](#)

On August 26, 2020, the CIT affirmed Commerce's final results in the antidumping duty administrative review of helical spring lock washers (HSLWs) from China. The court sustained Commerce's choice and use of a surrogate value for a primary input, having found that Commerce, within its discretion, made a reasonable selection that was supported by substantial evidence and in accordance with law.

[20-125](#)

On August 26, 2020, the CIT remanded Commerce's final determination in the second antidumping duty administrative review covering welded line pipe (WLP) from Korea. The court remanded Commerce's determination that SeaH's third country sales into the Canadian market were non-representative for further explanation or reconsideration. The court remanded Commerce's PMS determination and adjustment, reliance on particular profit and selling expense information, deduction to NEXTEEL's constructed value to account for sales of non-prime products, reallocation of NEXTEEL's costs from suspended production, and use of SeAH's average costs for the review period. The court also remanded Commerce's allocation of G&A expenses when calculating constructed export price. Because the court remanded Commerce's determination of normal value for the mandatory respondents, the court ordered Commerce to recalculate the non-examined company's rate as appropriate to reflect any adjustments to its calculation of the dumping margins for NEXTEEL and SeAH.

[20-128 & 20-129](#)

On August 27, 2020, the CIT remanded Commerce's decision placing certain door thresholds within the scope of antidumping and countervailing duty orders on aluminum extrusions from China. The court found that Commerce erred in refusing to consider whether Plaintiffs' thresholds satisfied the requirement of the "Finished Merchandise Exclusion" and also found that Commerce's misinterpretation of the express inclusion of "door thresholds" caused it to apply 19 C.F.R. 351.225(k)(1) erroneously. The CIT ordered that, on remand, Commerce must consider whether the Plaintiffs' door thresholds qualify for the Finished Merchandise Exclusion.

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

[19-2131](#)

On August 28, 2020, the CAFC affirmed a CIT decision to sustain Commerce's remand redetermination that masonry anchors from Vietnam imported by OMG Inc. are not considered nails, despite being partially composed of a steel pin resembling a nail. They do not, therefore, fall within the scope of the 2015 AD/CVD orders on nails from various countries. As the CIT had found, the dictionary definitions define a nail as "a fastener inserted by impact into the materials to be fastened." The CAFC concluded that OMG's anchors are unambiguously outside the scope of the AD/CVD orders and that Commerce's remand determination was supported by substantial evidence.

EXPORT CONTROLS AND SANCTIONS

[U.S. Adds 38 New Huawei Affiliates to Entity List While Again Expanding Foreign-Produced Direct Product Rule](#)

The U.S. Department of Commerce's Bureau of Industry and Security ("BIS") has announced that it is further [restricting access](#) by Huawei Technologies Co. Ltd. and its designated non-U.S. affiliates ("Huawei") to U.S.-produced technology and software. As we have [previously discussed](#), BIS first added Huawei to its Entity List on May 15, 2019 and has continued to impose additional export restrictions on Huawei under the U.S. Export Administration Regulations ("EAR"). A full analysis of BIS's actions can be read [here](#).

[U.S. Seeks Snapback of U.N. Sanctions on Iran Despite Departure from Nuclear Deal](#)

The United States is formally demanding that the United Nations (U.N.) reimpose sanctions on Iran for its failure to meet commitments to limit its nuclear program set forth under the Joint Comprehensive Plan of Action (JCPOA). U.N. sanctions on Iran were [lifted in 2015](#) as part of the terms of the JCPOA, which included the United States, European Union, France, Germany, the United Kingdom, Russia, and China as signatories. The U.S. [formally withdrew](#) from the JCPOA in 2018 and [reinstated sanctions](#) on Iran.

[U.S. Moves to Ban TikTok and WeChat Apps Amid U.S.-China Tensions](#)

On August 6, 2020, the White House issued two (2) Executive Orders ("EO") banning the popular China-based social media app [TikTok](#) and the messaging and electronic payments app [WeChat](#). Both orders are scheduled to take effect in 45 days (approximately September 21, 2020). While a U.S. ban on TikTok, owned by Beijing-based ByteDance Ltd., had been anticipated, especially after India banned the app earlier this year, the EO on Tencent Holding Ltd.'s ("Tencent") WeChat was not anticipated and has significant potential business ramifications.