

# TRADE LAW UPDATE



September 2020

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## PRESIDENTIAL ACTIONS

### [Court of International Trade Will Not Issue Stay To Delay Refund Payments to Importers in Section 232 Case Challenging Rate Increases on Steel Imports from Turkey](#)

The U.S. Court of International Trade (CIT) [will not stay](#) its order (Ct. No. 19-00009) instructing U.S. Customs and Border Protection (CBP) to refund importers' Section 232 tariffs on steel from Turkey. A three-judge panel denied the government's motion to stay while also denying the Plaintiffs' motion to enforce judgement. The CIT found that the government's appeal is unlikely to be successful, and ruled that the government had not provided a reasonable justification for why the Court of Appeals for the Federal Circuit (CAFC) might overturn the panel's prior decision that the duties were unlawful. As stated by the CIT panel, "the Court of Appeals would have to overrule both the statutory and the constitutional holdings that the President's imposition of additional tariffs on certain steel articles from Turkey is unlawful."

### [USTR Rescinds 10% Tariff on Canadian Aluminum, Expecting Imports to "Normalize"](#)

The Office of the U.S. Trade Representative (USTR) announced the rescission of Section 232 tariffs on Canadian aluminum, retroactive to September 1, 2020. The 10% tariff on non-alloyed, unwrought aluminum under subheading 7601.10 from Canada was announced on August 6, 2020 and went into effect on August 16, 2020. Following the USTR's announcement of the tariffs last month, Canada

responded with retaliatory tariffs that it intended to implement on September 16, 2020.

### [WTO Rules that U.S. Section 301 Tariffs on Chinese Imports Violate International Trade Rules](#)

The World Trade Organization (WTO) dispute settlement body [ruled](#) that the tariffs imposed by the U.S. on imports from China are inconsistent with the [General Agreement on Tariffs and Trade](#) (GATT), and recommended that the U.S. "bring its measures into conformity" with its obligations under the GATT. Beginning in 2018, at the direction of President Trump, the U.S. imposed tariffs on \$400 billion worth of imports from China over 4 different lists or tranches. The U.S. and China negotiated a "phase one" trade deal earlier this year, however, most of the tariffs were still left in place.

### [Steel Import Licenses Must Include Country of "Melt and Pour"](#)

The U.S. Department of Commerce's (Commerce) Steel Import Monitoring and Analysis System (SIMA) will be modified effective October 13, 2020 to require that the country where the steel was "melted and poured" to be identified in the license application. Other changes in the [final rule](#) published on September 11, 2020, include adding coverage for eight additional HTS numbers in order to synchronize the system with the coverage of Section 232 for basic steel mill products; increasing the low value license to \$5,000 and allowing multiple uses; and extending the SIMA program indefinitely.

## [Court of International Trade Receives Over 3,500 Complaints Challenging Section 301 China Tariffs](#)

On September 18, 2020, and September 21, 2020, Husch Blackwell filed complaints at the Court of International Trade (CIT) on behalf of approximately 80 individual plaintiffs challenging both the substantive and procedural processes followed by the United States Trade Representative (USTR) when instituting Section 301 Tariffs on imports from China under List 3 and List 4A. This followed the first in the series of complaints filed by HMTX Industries LLC, along with Halstead New England Corporation, Metroflor Corporation (importers of vinyl tile), on September 10, 2020. The List 3 tariffs went into effect on September 24, 2018, while the List 4 tariffs went into effect on September 1, 2019. As of September 30, 2020, there were over 3,500 complaints filed at the CIT challenging the USTR's implementation of List 3 and List 4A.

## [CBP Proposes Rule to Eliminate Section 321 Exemption for Imports Subject to Section 301 Tariffs](#)

U.S. Customs and Border Protection ("CBP") is preparing a regulatory change that would eliminate the \$800 de minimis exemption for imports subject to Section 301 tariffs, according to a [proposed rule](#) submitted by CBP to the Office of Management and Budget ("OMB") on September 2, 2020. Reviews of the proposed rule by OMB and an interagency review are the final steps before the publication of a final rule in the *Federal Register*.

## [USTR, DOC, and Department of Agriculture Issue Plan to Investigate Foreign Imports of Certain Perishable Produce](#)

On September 1, 2020 the Office of the United States Trade Representative (USTR), Department of Agriculture, and Department of Commerce issued a 32-page [report](#) outlining the Trump Administration's plan to address increased foreign imports of perishable fruits and vegetables. Following the public hearings held in August, the Administration published this report in hopes to open a dialogue with senior Mexican Government officials over the next 90 days regarding specific produce.

## **U.S. DEPARTMENT OF COMMERCE DECISIONS**

### **Investigations**

- Certain Glass Containers from the People's Republic of China: On September 18, 2020, Commerce issued its final affirmative [determination](#) in the antidumping duty investigation.

### **Administrative Reviews**

- Certain Oil Country Tubular Goods from India: On September 11, 2020, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Certain Hot-Rolled Steel Flat Products from Japan: On September 16, 2020, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Certain Steel Nails from the United Arab Emirates: On September 25, 2020, Commerce issued its final [results](#)
- in the antidumping duty administrative review (2018-2019).

### **Circumvention Inquiries**

- Hydrofluorocarbon Blends (Indian Blends) from the People's Republic of China: On October 1, 2020, Commerce issued its affirmative final [determination](#) of circumvention of the antidumping duty order by Indian blends containing Chinese components.

### **Changed Circumstances Reviews**

- There have been no changed circumstances review results from Commerce during the month of September, 2020.

### **Sunset Reviews**

- Citric Acid and Certain Citrate Salts from the People's Republic of China: On September 2, 2020, Commerce issued the final [results](#) of the countervailing duty sunset review.

# U.S. INTERNATIONAL TRADE COMMISSION

## Section 701/731 Proceedings

### Investigations

- Polyethylene Terephthalate (PET) Sheet from Korea and Oman: On September 10, 2020, the ITC published its final affirmative [decision](#) in the antidumping duty investigations finding material injury.

### Sunset Review Decisions

- Polyethylene Terephthalate Film, Sheet, and Strip from China and the United Arab Emirates: On September 1, 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.
- Certain Crystalline Silicon Photovoltaic Products from China and Taiwan: On September 4, 2020, the ITC published its final affirmative [decision](#) to continue the antidumping orders as revocation would lead to the recurrence or continuation of injury.
- Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India and Taiwan: On September 22, 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

- Certain Integrated Circuits and Products Containing the Same: On September 29, 2020, the ITC [affirmed](#) its previous finding of no violation of Section 337.

## U.S. CUSTOMS & BORDER PROTECTION

- In a September 2, 2020 [bulletin](#), CBP published notices that propose to revoke rulings and similar treatment for machine covers and wireless network extenders.
- CBP [ruled](#) that LED lamps imported by Grakon for incorporation into automobiles originate from Mexico, the country where the lights inside the lamps are assembled, rather than the country of the lamps' final assembly.
- In a September 22, 2020 [notice](#), CBP announced that it is seeking comments on an existing information collection request on detention notices.
- In a September 24, 2020 [notice](#), CBP announced that it is updating its "test program for submitting electronic Foreign-Trade Zone (FTZ) admission applications."
- In a September 30, 2020 [bulletin](#), CBP published ruling actions modifying or revoking rulings pertaining to controllable shading systems; digital blood pressure monitors; reversible comforters; digital camera inspection systems; insulated pizza, grocery and food delivery bag; alloy steel pipes; kluber microlube GB 0; and nonwoven wipes.

## COURT OF INTERNATIONAL TRADE

### Summary of Decisions

#### 20-131

On September 4, 2020, the CIT sustained Commerce's final remand redetermination in the antidumping duty investigation of steel concrete reinforcing bar from Turkey. Commerce's redetermination complied with the court's previous remand order by recalculating Habaş's duty drawback adjustment to include IPC #36.

#### 20-135

On September 15, 2020, the CIT remanded Commerce's remand results in the twelfth administrative review of the antidumping duty order covering certain frozen warmwater shrimp from Vietnam. Commerce's denial of separate rate status to Thuan Phoc's individual factories was unreasonable. The court also found that Commerce's change in practice regarding trade names was arbitrary and capricious.

#### 20-136

On September 15, 2020 the CIT denied Defendants' motion to stay enforcement of the court's judgment and denied the Plaintiffs' motion to enforce judgment. The court *sua sponte* enjoined liquidation of the subject entries pending the final and conclusive disposition of *Transpacific II*.

#### 20-137

On September 23, 2020, the CIT remanded Commerce's remand results in the antidumping duty investigation on carbon and alloy steel wire rod from Turkey. The court sustained Commerce's remand results pertaining to Commerce's full duty drawback adjustment to export price. However, the court concluded that Commerce's remand methodology did not comport with the plain language of the statute. Specifically, Commerce's COS adjustment methodology and explanation did not comport with the statute, or its own interpretation of that statute (19 U.S.C. § 1677b(a)(6)(C)). Commerce improperly treated the COS provision as a catch-all adjustment for normal value calculation. The CIT ordered Commerce to recalculate normal value without making a COS adjustment.

#### 20-138

On September 25, 2020, the CIT sustained in part and remanded in part Commerce's final results in the 2013 countervailing duty administrative review of aluminum extrusions from China. The court remanded, requiring Commerce to exclude "non-aluminum extrusion components of subassemblies" from the scope of the order, and for Commerce to reconsider or further explain its countervailing of aluminum extrusion "inputs" to the subject merchandise. The court sustained all other challenged aspects of Commerce's final results.

## COURT OF APPEALS FOR THE FEDERAL CIRCUIT

#### 20-1004

On September 3, 2020, the CAFC affirmed a CIT decision to remand Commerce's final results to recalculate Trina's export price with a duty offset. The CAFC found that Commerce's decision not to increase Trina's export price by the amount countervailed for the Ex-Im Bank Buyer's Credit Program was contrary to law. Commerce's decision to value Trina's module glass with Thai imports of tempered glass was supported by substantial evidence. Thus, the CAFC affirmed the decision of the CIT.

## **EXPORT CONTROLS AND SANCTIONS**

### **D.C. District Court Judge Blocks Commerce's TikTok Ban**

A federal judge from the U.S. District Court for the District of Columbia granted TikTok's motion for preliminary injunction, resulting in a nationwide temporary suspension of an order from the U.S. Department of Commerce ("Commerce") for Apple and Google to remove TikTok from its U.S. app stores. Last week, Chinese social media app WeChat was separately [granted a similar injunction](#) by a federal judge from the U.S. District Court for the Northern District of California. The two China-based smartphone apps are facing impending bans pursuant to Executive Orders ("E.O.") [13942](#) (for TikTok) and [13943](#) (for WeChat), issued by the President on August 6, 2020.

### **U.S. Moves to Block Conventional Arms Sales to Iran**

President Trump issued an [Executive Order](#) on September 21, 2020 which, effective immediately, imposes secondary sanctions on the transfer and sale of certain conventional arms shipments and the supply of related services to Iran by non-U.S. persons. This Executive Order follows the current administration's failed effort to [reinstate sanctions](#) and a conventional arms embargo by the U.N. Security Council. The Executive Order, titled "Blocking Property of Certain Persons with Respect to the Conventional Arms Activities of Iran", attempts to enforce such sanctions unilaterally by authorizing the U.S. Secretary of State to impose blocking sanctions on any non-U.S. person who transfers conventional arms to Iran or otherwise performs activities to support such transfers.

### **U.S. Scheduled Bans on TikTok and WeChat Apps Delayed**

China-based smartphone apps, TikTok and WeChat, have each received a reprieve from the respective bans, which were originally ordered by President Trump on August 6, 2020 against both parties and were scheduled to take effect on September 21, 2020. Please see our previous [post](#) covering the Executive Orders. Pursuant to the Executive Orders banning the apps on national security grounds, the U.S. Department of Commerce ("Commerce") published final rules for implementing the bans on September 19, 2020, which were subsequently withdrawn. Commerce then [delayed the order](#) to withdraw TikTok from U.S. app stores until September 27, 2020 at 11:59pm. Meanwhile, Commerce's order to withdraw WeChat has been suspended temporarily due to an injunction granted by the U.S. District Court for the Northern District of California.

### **D.C. Federal Judge Rules EAR Does Not Infringe FedEx's Rights**

A federal judge for the U.S. District Court for the District of Columbia dismissed FedEx Corporation's challenge to the U.S. Department of Commerce's (Commerce) Export Administration Regulations (EAR). Specifically, FedEx challenged the EAR requirements for global couriers to either verify the contents of its packages or to cease business with certain foreign entities, such as Huawei Technologies Co. Ltd., which FedEx described as departmental overreach that infringed upon its Fifth Amendment right to due process.

### **BIS Seeks Comments on Identifying "Foundational Technologies"**

The U.S. Department of Commerce's Bureau of Industry and Security ("BIS") recently published an Advanced Notice of Proposed Rulemaking ("ANPRM") regarding the identification and review of controls for certain "foundational technologies." This ANPRM represents another step toward implementation of the "emerging and foundational technology" provisions set forth in the Export Control Reform Act ("ECRA") of 2018, which has been slow to get off the ground. Section 1758 of the ECRA requires that "foundational technologies" be identified and that BIS establish appropriate controls for that technology under the Export Administration Regulations ("EAR").