

TRADE LAW UPDATE



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IN THIS ISSUE

[Presidential Actions](#)

[U.S. Department of
Commerce Decisions](#)

[U.S. International Trade
Commission Proceedings](#)

[U.S. Customs & Border
Protection Decisions](#)

[Court of International Trade
Decisions](#)

[Federal Court of Appeals
Decisions](#)

[Export Controls and
Sanctions](#)

PRESIDENTIAL ACTIONS

[**USTR Proposes Products for Tariff Countermeasures in Response to Harm Caused by EU Aircraft Subsidies**](#)

On April 8, 2019, the World Trade Organization (WTO) found that the European Union subsidies to Airbus had caused adverse effects to the United States. The Office of the United States Trade Representative (USTR) began its process under Section 301 of the Trade Act of 1974 to identify products of the EU to which additional duties may be applied until the EU removes these subsidies. The USTR released a preliminary [list](#) of EU products to be covered by these additional duties.

[**United States Prevails on “Zeroing” Again: WTO Panel Rejects Flawed Appellate Body Findings**](#)

On April 9, 2019, U.S. Trade Representative Robert Lighthizer announced that a World Trade Organization (WTO) panel had found in favor of the United States in a dispute involving the use of “zeroing” in calculating antidumping duties. This dispute concerned a challenge by Canada to an antidumping investigation of softwood lumber products.

In this report, the WTO panel considered and rejected Appellate Body findings concerning the use of “zeroing” to calculate antidumping duties. The panel interpreted the WTO Antidumping Agreement and found that the text does not prohibit zeroing under the alternative methodology designed to address targeted dumping. The panel found that, reading a prohibition on zeroing into the text would render that alternative approach useless, contrary to the intention of WTO Members. The panel explained that it “carefully considered” prior panel and Appellate Body reports but disagreed with those reports and therefore found convincing reasons to arrive at different conclusions.

[**U.S. Beef, Poultry and Egg Products Gain New Market Access in Tunisia**](#)

On April 17, 2019, the U.S. Trade Representative Robert Lighthizer and U.S. Secretary of Agriculture Sonny Perdue announced today that the government of Tunisia and the United States have finalized U.S. export certificates to allow imports of U.S. beef, poultry, and egg products into Tunisia. In 2018, U.S. exports of agricultural products to Tunisia exceeded \$264 million. Over 90 percent of exports were corn, soybeans, or corn and soy products. Initial estimates are that Tunisia would import annually \$5-10 million of beef, poultry, and egg products from the United States, with additional growth over time.

Statement from U.S. Trade Representative Robert Lighthizer on the ITC Report

On April 18, 2019, United States Trade Representative Robert Lighthizer released the following statement about the U.S. International Trade Commission's (ITC) report on the United States-Mexico-Canada Agreement (USMCA):

"We welcome the International Trade Commission's independent analysis of the USMCA. This report is an important step forward in gaining congressional approval of the USMCA. The ITC analysis shows that USMCA will increase U.S. employment by 176,000 jobs and is projected to increase GDP by 0.35%. This is more than double the 0.15% growth rate the ITC projected for the multilateral Trans-Pacific Partnership. These findings validate President Trump's action to withdraw from TPP and renegotiate the disastrous NAFTA. With USMCA, we will have stronger growth, more trade and more jobs – particularly in manufacturing. There can be no doubt that the USMCA is a big win for America's economy."

The Office of the United States Trade Representative (USTR) released an analysis of the estimated impact the USMCA will have on U.S. investment, purchases of U.S. auto parts, and jobs in the U.S. automotive sector. The analysis, based in large part on information provided by North American automakers, estimates that over a five-year period the USMCA will result in:

- \$34 billion in new automotive manufacturing investments in the U.S.
- \$23 billion in new annual purchases of U.S.-made automotive parts; and
- 76,000 jobs in the U.S. automotive sector alone.

To see USTR's full analysis, [click here](#).

United States Wins Dispute Finding China's Administration of Grain Tariff-Rate Quotas Breaches WTO Commitments

On April 18, 2019, U.S. Trade Representative Robert Lighthizer and Secretary of Agriculture Sonny Perdue announced that a World Trade Organization (WTO) dispute settlement panel found that China has administered its tariff-rate quotas (TRQs) for wheat, corn, and rice inconsistently with its WTO commitments. China's grain TRQs have annually been underfilled. USDA estimated that if China's TRQs had been fully used, it would have imported as much as \$3.5 billion worth of corn, wheat and rice in 2015 alone.

USTR Releases Annual Special 301 Report on Intellectual Property Protection and review of Notorious Markets for Piracy and Counterfeiting

On April 25, 2019, the Office of the United States Trade Representative (USTR) released its annual Special 301 Report on the adequacy and effectiveness of trading partners' protection of intellectual property rights and the findings of its Notorious Markets List.

The Special 301 Report identifies trading partners that do not adequately or effectively protect and enforce intellectual property (IP) rights or otherwise deny market access to U.S. innovators and creators that rely on protection of their IP rights. Trading partners that currently present the most significant concerns regarding IP rights are placed on the Priority Watch List or Watch List. USTR identified 36 countries for these lists in the Special 301 Report.

Specifically, over the coming weeks, USTR will review the developments against the benchmarks established in the Special 301 action plans for countries that have been on the Priority Watch List for multiple years. For such countries that fail to address U.S. concerns, USTR will take appropriate actions, such as enforcement actions under Section 301 of the Trade Act or pursuant to World Trade Organization or other trade agreement dispute settlement procedures, necessary to combat unfair trade practices and to ensure that trading partners follow through with their international commitments. To see the full 301 Report, click [here](#).

The Notorious Markets List highlights 33 online markets and 25 physical markets that are reported to engage in and facilitate substantial copyright piracy and trademark counterfeiting. To see the full Notorious Markets List, click [here](#).

U.S. DEPARTMENT OF COMMERCE DECISIONS

Investigations

- Laminated Woven Sacks from the Socialist Republic of Vietnam: On April 11, 2019, Commerce released its final [AD](#) and [CVD](#) determinations.

Administrative Reviews

- Stainless Steel Bar from Brazil: On April 12, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2017).
- Uncovered Innerspring Units from the People's Republic of China: On April 18, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2017-2018).
- Large Power Transformers from the Republic of Korea: On April 19, 2019, the final [results](#) of the Antidumping Duty Review (2016-2017) were released.
- Light-Walled Rectangular Pipe and Tube from Mexico: On April 22, 2019, Commerce released its final [results](#) for the Antidumping Duty Administrative Review (2016-2017).
- Certain Steel Nails from the People's Republic of China: On April 24, 2019, the final [results](#) of the Antidumping Duty Administrative review and Final determination of No Shipments (2016-2017) were released.
- Hydrofluorocarbon Blends from the People's Republic of China: On April 25, 2019, the final [results](#) of the Antidumping Duty Administrative review and final determination of No Shipments (2016-2017) were released.
- Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: On April 25, 2019, the final [results](#) of the Countervailing Duty Administrative Review (2016) were released.
- Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: On April 26, 2019, the final [results](#) of the Antidumping Duty Administrative Review and final determination of No Shipments (2016-2017) were released.
- Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: On April 29, 2019, Commerce released the final [results](#) and final determination of No Shipments of the Antidumping Duty Administrative Review (2016-2017).
- Certain Hot-Rolled Steel Flat Products from Australia: On April 30, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2016-2017).

Changed Circumstances Reviews

- Carbon and Alloy Steel Wire Rod from the Republic of Korea and the United Kingdom: On April 8, 2019, Commerce issued a [notice](#) of the final results of the Antidumping Duty Changed Circumstances Review.
- Polyvinyl Alcohol from the People's Republic of China: On April 18, 2019, Commerce issued a notice of the final [results](#) of the Antidumping Duty Changed Circumstances Review.

Sunset Reviews

- Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: On April 16, 2019, the final [results](#) of the Expedited Second Sunset Review of the Antidumping Duty Order were released.

U.S. INTERNATIONAL TRADE COMMISSION

Section 701/731 Proceedings

Investigations

- Certain Pasta from Italy and Turkey: On April 10, 2019, the ITC announced its [determination](#) that the revocation on certain pasta from Italy and Turkey would lead to the continuation or recurrence of material injury to an industry in the United States.
- Cast Iron Soil Pipe from the People's Republic of China: On April 12, 2019, the ITC announced its final [determinations](#) in the AD and CVD investigation that industries in the US would be materially injured by the importation of the subject merchandise.
- Large Diameter Welded Pipe from Canada, Greece, Korea, and Turkey: On April 19, 2019, the ITC announced its final [determination](#) that an industry in the United States is materially injured by the importation of the subject merchandise.
- Steel Propane Cylinders from China and Thailand: On April 29, 2019, the ITC issued a revised [schedule](#) of the final Phase of the Countervailing Duty and Anti-Dumping Duty Investigations.
- Certain Large Residential Washers from Korea and Mexico: On April 30, 2019, the ITC released its final [determinations](#) on whether or not the continuation of the subject merchandise from these countries would continue to cause material injury in the United States.



Sunset Review Decisions

- Certain Welded Large Diameter Line Pipe from Japan: On April 22, 2019, the ITC released its [schedule](#) of a Full Five-Year Review.
- Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China: On April 26, 2019, the ITC released its [schedule](#) of the Expedited Five-Year Reviews.

Section 337 Proceedings

- Certain Mobile Electronic Devices and Radio Frequency and Processing Components Thereof: On April 1, 2019, the ITC issued a [determination](#) finding that there was no violation of Section 337 and terminated the investigation.
- Certain Industrial Automation Systems and Components Thereof Including Control Systems, Controllers, Visualization Hardware, Motion and Motor Control Systems, Networking Equipment, Safety Devices, and Power Supplies: On April 12, 2019, the ITC issued a general exclusion order denying entry of the subject merchandise that infringe the complainant's asserted trademarks and [terminated](#) the investigation.

U.S. CUSTOMS & BORDER PROTECTION

- Aluminum Door Thresholds: On April 12, 2019, the CBP posted its [final determination](#) from March 20, 2019 that it had found substantial evidence that Columbia Aluminum Products, LLC had transshipped their Chinese made merchandise through Vietnam and falsely declared the country of origin.

COURT OF INTERNATIONAL TRADE

Summary of Decisions

[19-41](#)

On April 1, 2019, the CIT sustained and further remanded Commerce's remand redetermination in the 2014-2015 administrative review of the antidumping duty order on welded carbon steel standard pipe and tube products from Turkey. Commerce's action on remand negated the statutory drawback adjustment that Plaintiff Toscelik earned by exporting its finished product to the United States and impinges on the agency's ability to make a fair comparison. Commerce reasonably relied on Plaintiff Toscelik's questionnaire responses and concluded that Commerce's grant of circumstances of sale adjustment was supported by substantial evidence.

[19-42](#)

On April 5, 2019, the CIT granted the Defendant's motion for partial dismissal and partially dismissed the consolidated plaintiff's, SeAH Steel Corporation, complaint in the final determination of the 2015-2016 administrative review of the antidumping order for welded line pipe from the Republic of Korea. The Defendant sought to dismiss paragraph ten of Plaintiff SeAh's argument, which stated, "Finally, Plaintiff believes that Commerce's determination may have contained other errors of law and fact that will become more apparent after a full review of the administrative record." The CIT concluded that because paragraph ten of Plaintiff SeAh's argument stated no specific errors of law or fact and denied the other parties fair notice of the scope of SeAh's claims, the paragraph will be dismissed.

[19-43](#)

On April 5, 2019, the CIT granted in part the Defendant's motion to partially dismiss Plaintiff Perry Chemical's complaint to the extent that it seeks relief for injuries

allegedly sustained by other parties, and with respect to the second administrative review entries of the subject merchandise. The CIT found that Plaintiff Perry Chemicals lacked standing because they did not pay the cash deposits and suffered no injury during the second administrative review.

[19-46](#)

On April 12, 2019, the CIT denied the defendant's, Hyundai Heavy Industries and Hyundai Corporation, motion for reconsideration on the basis that Hyundai improperly re-litigated issues that had already been addressed and rejected by the court.

[19-49](#)

On April 22, 2019, the CIT granted the Plaintiff, United States, motion for summary judgment on the grounds that the Plaintiff, Titan Metals, had submitted fraudulent entry documents. The court found no genuine issue of material fact and ordered the Plaintiff to pay \$146,368.64 in antidumping duties and a penalty of \$141,984.98, 50% of the statutory maximum of \$283,969.77.

[19-50](#)

On April 26, 2019, the CIT sustained Commerce's final results in the administrative review of the antidumping duty order covering freshwater crawfish tail meat from China. Because Commerce did not abuse its discretion by rejecting the untimely filed financial statements, and Plaintiff Xiping Opeck Food Co., LTD., had failed to exhaust its administrative remedies when disputing the use of the South African financial statements, the court sustained Commerce's final results.

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

2018-1215

On April 9, 2019, the CAFC granted Plaintiff Irwin Industrial Tool Company's motion for summary judgments that its imported hand tools were properly classified as pliers under HTSUS code 8203.20.6030. The Defendant argued against the ruling, saying that the subject merchandise was misclassified by the CIT and should instead be ruled as wrenches. The Federal Circuit concluded that there was substantial evidence that Plaintiff Irwin Industrial Tool Company's tools were properly identified as pliers and not wrenches.

2018-1305

On April 29, 2019, Plaintiff Rubies Costume Company appealed the grant of summary judgment by the CIT in favor of the Government as to the tariff classification of a nine-piece Santa Claus costume packaged and sold together as a set. The parties argued as to the implications of the "festive" nature of the costume. The merchandise, however, is excluded from classification as "festive articles" by the notes to chapter 95 of the Harmonized Tariff Schedule of the United States. The Court concluded that the correct classification of the merchandise is under HTSUS 6110.30.30, 6103.43.15, 6116.93.94, and 4209.92.30. The CAFC found that the jacket, pants, and gloves have, "the features of a well-made textile costume, classifiable as wearing apparel under HTSUS chapter 61." The CAFC also agreed with the CIT's conclusion that the Santa Suit Toy sack had the essential characteristics of items listed under heading 4202. On that basis, the Court affirmed the judgment of the Court of International Trade.

EXPORT CONTROLS AND SANCTIONS

President Trump to End Sanctions Waivers for Iranian Oil

On April 21, 2019, the White House [announced](#) that President Trump has decided not to reissue the Iranian oil sanctions waivers, called "Significant Reduction Exceptions" (SREs) when they expire in early May. The White House statement explained that "[t]his decision is intended to bring Iran's oil exports to zero, denying the regime its principal source of revenue."

In November 2018, when the United States [resumed full reimposition](#) of sanctions against Iran, the Administration did grant waivers to eight (8) countries to continue to purchase oil from Iran due to concerns over disrupting the international oil market. These SREs were granted to China, India, Japan, Turkey, Italy, Greece, South Korea, and Taiwan for a period of six months and are currently scheduled to lapse on May 2. Secretary of State Mike Pompeo recently announced that secondary sanctions may be imposed for non-compliance after the SREs are withdrawn. To see the full post, click [here](#).