

TRADE LAW UPDATE



April 2020

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PRESIDENTIAL ACTIONS

[Commerce Department Proposes New Aluminum Import Licensing System](#)

On April 29, 2020, the Commerce Department (“Commerce”) published a notice in the Federal Register announcing that it is [proposing](#) new regulations that would establish an Aluminum Import Monitoring and Analysis System. Under the new monitoring system, importers of aluminum products or their customs brokers will be required to submit information via Commerce’s online portal to obtain an auto-generated license after which the license number must accompany the entry documentation. Commerce is requesting comments from interested parties regarding this new scheme by May 29, 2020. To continue reading the full post, please click [here](#).

[United States–Mexico–Canada Agreement \(USMCA\) Set to Take Effect July 1, 2020](#)

On April 24, 2020, U.S. Trade Representative Robert Lighthizer notified Congress that Mexico and Canada had taken the necessary additional measures to comply with their commitments under the United States–Mexico–Canada Agreement (USMCA). The U.S. also notified the governments of Mexico and Canada that the U.S. had completed its domestic procedures to implement the USMCA. Mexico and Canada had previously issued these notifications. Under the USMCA, the agreement becomes effective and replaces NAFTA on the first date of the third month after the last party’s notification. Since the U.S.’s

notification on April 24 was the last notification required, the USMCA will enter into force and become effective July 1, 2020.

[USITC Votes to Continue Investigations Concerning Common Alloy Aluminum Sheet from Various Countries](#)

On April 22, 2020, the United States International Trade Commission (“USITC”) unanimously determined that there was reasonable indication that a U.S. industry is materially injured by reason of imports of common alloy aluminum sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey that are allegedly sold in the United States at less than fair value and subsidized by the governments of the countries referenced above. Chairman David S. Johanson and Commissioners Rhonda K. Schmidlein, Jason E. Kearns, Randolph J. Stayin, and Amy A. Karpel all voted in the affirmative.

[Commerce Initiates AD and CVD Investigations on Imports of Mattresses from Multiple Countries](#)

On April 21, 2020, the Department of Commerce (“Commerce”) [announced](#) the initiation of antidumping (“AD”) duty investigations of imports of mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam and a countervailing duty (“CVD”) investigation of imports of mattresses from China. The petitioners in this case are Brooklyn Bedding, Corsicana Mattress Company (Dallas, TX), Elite Comfort Solutions, FXI, Inc, Innocor, Inc., Kolcraft Enterprises, Inc., Leggett & Platt, Incorporated, International Brotherhood of Teamsters, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO. See our previous post summarizing the petition for details on the scope of the investigation and for importers and exporters named in the petition. To continue reading the full post, please click [here](#).

[USTR and ITC to Consider Trade Impacts on COVID-19 Response](#)

The ongoing COVID-19 pandemic has [impacted](#) almost every aspect of law and public policy, and trade has certainly been no exception. Given that the supply chains for many critical medical supplies and forms of personal protective equipment (“PPE”) run through China, it was inevitable that this impact would affect the Section 301 investigation of China brought by the United States Trade Representative (“USTR”). Late last month, USTR announced a new comment process regarding the need for relief from Section 301 tariffs for products necessary to address the COVID-19 situation. To continue reading the full post, please click [here](#).

U.S. DEPARTMENT OF COMMERCE DECISIONS

Investigations

- Ceramic Tile from the People’s Republic of China: On April 7, 2020, Commerce released the final results of the [antidumping](#) and [countervailing](#) duty investigations.
- Welded Line Pipe from the Republic of Korea: On April 7, 2020, Commerce released a [notice](#) of amended final determination in the antidumping duty investigation.
- Carbon and Alloy Steel Threaded Rod from India: On April 9, 2020, Commerce released an [amended](#) antidumping duty final determination.

Administrative Reviews

- Finished Carbon Steel Flanges from India: On April 1, 2020, Commerce released the final [results](#) of the countervailing duty administrative review (2016-2017).
- Certain Lined Paper Products from India: On April 7, 2020, Commerce released the final [results](#) of the antidumping duty administrative review (2017-2018).
- Citric Acid and Certain Citrate Salts from Canada: On April 7, 2020, Commerce released the final [results](#) of the antidumping duty administrative review (2018-2019).
- Aluminum Extrusions from the People’s Republic of China: On April 8, 2020, Commerce released the final [results](#) of the antidumping duty administrative review (2018-2019).
- Carbazole Violet Pigment 23 from India: On April 8, 2020, Commerce released the final [results](#) of the antidumping duty administrative review (2017-2018).
- Certain Hot-Rolled Carbon Steel Flat Products from Thailand: On April 13, 2020, Commerce released the final [results](#) of the antidumping duty administrative review (2017-2018).
- Certain Circular Welded Non-Alloy Steel Pipe from [Taiwan](#) and [Mexico](#): On April 13, 2020, Commerce released the final results of the antidumping duty administrative reviews (2017-2018).
- Steel Concrete Reinforcing Bar from the Republic of Turkey: On April 14, 2020, Commerce released a notice of [correction](#) to the final results of the countervailing duty administrative review (2017).
- Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: On April 15, 2020, Commerce released a notice of amended final [results](#) of the antidumping duty administrative review (2013-2014).
- Finished Carbon Steel Flanges from India: On April 17, 2020, Commerce released the final [results](#) of the antidumping duty administrative review (2017-2018).

- Finished Carbon Steel Flanges from Italy: On April 20, 2020, Commerce released the final [results](#) of the antidumping duty administrative review (2017-2018).
- Prestressed Concrete Steel Wire Strand from Thailand: On April 20, 2020, Commerce released the final [results](#) of the antidumping duty administrative review (2018).
- Large Power Transformers from the Republic of Korea: On April 20, 2020, Commerce released the final [results](#) of the antidumping duty administrative review (2017-2018).
- Light-Walled Rectangular Pipe and Tube from Mexico: On April 20, 2020, Commerce released the final [results](#) of the antidumping duty administrative review (2017-2018).
- Dioctyl Terephthalate from the Republic of Korea: On April 21, 2020, Commerce released the final [results](#) of the antidumping duty administrative review (2017-2018).
- Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: On April 22, 2020, Commerce released the final [results](#) of the antidumping duty administrative review (2017-2018).
- Certain Steel Nails from the People’s Republic of China: On April 22, 2020, Commerce released the final [results](#) of the antidumping duty administrative review (2017-2018).
- Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: On April 23, 2020, Commerce released the final [results](#) of the countervailing duty administrative review (2017).
- Circular Welded Carbon-Quality Steel Pipe from Oman: On April 24, 2020, Commerce released the final [results](#) of the antidumping duty administrative review (2017-2018).
- Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: On April 29, 2020, Commerce released the final [results](#) of the antidumping duty administrative review (2017-2018).
- Certain Corrosion-Resistant Steel Products from Taiwan: On April 29, 2020, Commerce released amended final [results](#) of the antidumping duty administrative review (2017-2018).

Changed Circumstances Reviews

- There have been no changed circumstances determinations from Commerce during the month of April 2020.

Sunset Reviews

- Carbon and Certain Alloy Steel Wire Rod from the People’s Republic of China: On April 6, 2020, Commerce released the final [results](#) of the expedited antidumping sunset review.
- Sugar from Mexico: On April 7, 2020, Commerce released the final results of the expedited [antidumping](#) and [countervailing](#) sunset reviews of the agreements suspending the investigations.
- Calcium Hypochlorite from the People’s Republic of China: On April 7, 2020, Commerce released the final results of the expedited [antidumping](#) and [countervailing](#) sunset reviews.

U.S. INTERNATIONAL TRADE COMMISSION

Section 701/731 Proceedings

Investigations

- Acetone from Belgium, Korea, and South Africa: On April 2, 2020, the ITC published the final affirmative [decisions](#) in the antidumping duty investigations.
- Carbon and Alloy Steel Threaded Rod from China and India: On April 8, 2020, the ITC published the final affirmative [decisions](#) in the antidumping and countervailing duty investigations.
- Wooden Cabinets and Vanities from China: On April 17, 2020, the ITC published the final affirmative [decisions](#) in the antidumping and countervailing duty investigations.



Sunset Review Decisions

- Chlorinated Isocyanurates from China: On April 24, 2020, the ITC released the final [decision](#) of the countervailing duty five-year review.

- Sugar from Mexico: On April 24, 2020, the ITC released its final [decision](#) to continue the antidumping and countervailing duty suspended investigations.

Section 337 Proceedings

- Certain Memory Modules and Components Thereof: On April 13, 2020, the ITC released the final [decision](#) finding no violation of Section 337.
- Certain Blood Cholesterol Testing Strips and Associated Systems Containing the Same: On April 22, 2020, the ITC released the final [decision](#) finding a violation of Section 337.
- Certain Digital Video Receivers and Related Hardware and Software Components: On April 29, 2020, the ITC released the final [decision](#) finding a violation of Section 337.

U.S. CUSTOMS & BORDER PROTECTION

[U.S. Treasury Department and U.S. Customs and Border Protection Announce 90-Day Duty Postponement due to COVID-19](#)

On April 20, 2020, the Secretary of the Treasury and U.S. Customs and Border Protection (CBP) [announced](#) via the CBP Customs Service Messaging System (CSMS #4243171) that they would be postponing the deadline for payment for the deposit of certain estimated duties, taxes, and fees for importers who have experienced a “significant financial hardship” due to the ongoing coronavirus disease (COVID-19) for up to 90 calendar days. This temporary postponement applies to formal entries of merchandise entered, or withdrawn from warehouse, for consumption (including entries for consumption from a Foreign Trade Zone) in March 2020 or April 2020. CBP released an additional [announcement](#) (CSMS # 4243171) that formally outlined payment instructions for entries that qualify for this postponement period. CBP is publicizing a number of [Frequently Asked Questions](#) regarding this temporary postponement on the CBP.gov [COVID-19 Updates and Announcements](#) webpage. Additionally, CBP is providing an email address for the trade to use with respect to questions; specifically, the Office of Trade, Trade Policy and Programs at OTentrysummary@cbp.dhs.gov.

[U.S. Customs and Border Protection Issues FAQ Guidance on PPE Exports](#)

Following an April 10 [temporary final rule](#) restricting the export of personal protective equipment (PPE) and an April 21 [Notice of Exemptions](#) from the Federal Emergency Management Agency (FEMA), U.S. Customs and Border Protection (CBP) has now issued a set of Frequently Asked Questions (FAQs) regarding the export of PPE. The FAQs, available [here](#), include important information regarding Letters of Attestation and how they are to be uploaded into CBP’s Document Imaging System (DIS).

COURT OF INTERNATIONAL TRADE

Summary of Decisions

[20-42](#)

On April 1, 2020, the CIT sustained in part and remanded in part Commerce’s final results in the thirteenth antidumping duty administrative review of certain frozen fish fillets from Vietnam. The CIT remanded Commerce’s application of AFA to GODACO because Commerce merely stated the legal standard and did not provide reasoning as to why it was appropriate. The CIT concluded that Commerce’s actions as to 19 U.S.C. § 1677m were in accordance with law, since Commerce promptly notified GODACO that its submissions were deficient. Commerce was also justified in refusing to verify GODACO’s submissions because Commerce identified a pattern of missing formulas and numbers that did not reconcile with the reported allocation methodology in GODACO’s submitted material. The court also affirmed Commerce’s

rejection of GODACO’s case briefs due to untimely submitted new factual information, as well as Commerce’s decision to reject Golden Quality’s request to rescind the administrative review. The CIT ordered Commerce to consider South Vina’s substantive arguments on remand, as South Vina was found to have acted in accordance with 19 C.F.R. § 351.309(c)(2). Because the court could not yet consider the rate applied to separate rate respondents on remand, the court could not reach the issue of whether the rate applied to the separate rate respondents is supported by substantial evidence and in accordance with law. Commerce must reevaluate GODACO’s rate on remand.

20-44

On April 6, 2020, the CIT again remanded Commerce's most recent remand results in the antidumping and countervailing duty investigations of certain seamless carbon and alloy steel standard, line, and pressure pipe from China. The CIT held that Commerce's determination that Advance Engineering Corporation's pipe was within the scope of the antidumping and countervailing duty orders was unsupported by substantial evidence and clear reasoning and remanded the issue to Commerce to complete a (k)(1) analysis.

20-45

On April 7, 2020, the CIT sustained Commerce's final results in the countervailing duty administrative review of chlorinated isocyanurates from China. In the final results, Commerce determined that Defendant-Intervenors and mandatory respondents Kangtai and Heze received countervailable subsidies during the period of review, including through the Export Buyer's Credit Program ("EBCP"). The CIT sustained Commerce's use of AFA in its final determination, having found that the Government of China failed to provide necessary information about the EBCP and failed to cooperate with Commerce's requests for information about the program. The CIT further sustained Commerce's selection of 0.87 percent as the AFA rate for the EBCP.

20-46

On April 13, 2020, the CIT sustained Commerce's second remand redetermination in the AD administrative review of carbon and certain alloy steel wire rod from Mexico. The court found that Commerce corroborated the petition rate with independent sources at its disposal to the extent practicable. Although the petitioners had a hand in generating the relevant sources even where third party information was involved, Commerce attempted to demonstrate why the rate it chose was still reliable, whereas Deacero failed to identify any other means for Commerce to corroborate the petition rate. Since Commerce reasonably demonstrated that it corroborated the petition rate with what independent sources it had at its disposal, Commerce is not required to choose another rate and the final results are sustained.

20-48

On April 14, 2020, the CIT remanded Commerce's final results and partial rescission of the 22nd antidumping duty administrative review of fresh garlic from China. The court ordered that, on remand, Commerce shall reconsider or further explain its credibility determination regarding Mr. Crawford as a domestic producer, since Commerce relied

only on information from the previous administrative review to make that determination. On remand, Commerce was instructed to also make findings as to whether the Coalition for Fair Trade in Garlic requested an administrative review as an association only or also on behalf of its individual members.

20-50

On April 17, 2020, the CIT sustained in part and remanded in part Commerce's final results in the 16th antidumping duty administrative review of fresh garlic from China. The CIT sustained Commerce's use of surrogate values (SVs) for respondent, Xinboda's, input value. The CIT also remanded for further consideration or explanation Commerce's use of surrogate financial ratios.

20-51

On April 17, 2020, the CIT sustained in part and remanded in part Commerce's final remand redetermination in the antidumping duty investigation of steel concrete reinforcing bar from Turkey. The CIT remanded Commerce's calculation of duty drawback adjustment to include IPC #36 after the Government acknowledged that it was mistakenly omitted. The CIT sustained Commerce's exclusion of IPC #1598 and rejection of RTAC's proposed methodology after finding that RTAC's challenge lacks merit.

20-54

On April 22, 2020, the CIT sustained Commerce's final determination in the 2016 countervailing duty administrative review of polyethylene terephthalate film, sheet, and strip ("PET film") from India. The CIT sustained Commerce's calculation of benefits under the MEIS program after finding that Commerce reasonably attributed the amount of benefit to Jindal's exports of subject and non-subject merchandise. The CIT also sustained Commerce's application of AFA to determine de facto specificity of the Subsection 32AC program, since the record lacked necessary information. Furthermore, the CIT sustained Commerce's treatment of the PSI program and certain state tax incentive programs as countervailable subsidies.

20-57

On April 30, 2020, the CIT sustained Commerce's remand results in the antidumping duty investigation of cold-drawn mechanical tubing of carbon and alloy steel from India. In its previous opinion, the CIT ordered Commerce on remand to accept Goodluck's corrections to its reported data and to recalculate its AD margin using that data. Since Commerce calculated a rate of zero percent for Goodluck

on remand, Goodluck will no longer be subject to the AD order and as a result the CIT did not need to reach the AFA application or cash deposit issues.

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

There have been no decisions from the CAFC for the month of April 2020.

EXPORT CONTROLS AND SANCTIONS

DDTC Announces New COVID-Related Measures Covering Registration and Licensing

The U.S. Department of State's Directorate of Defense Trade Controls ("DDTC") recently announced on its [website](#) immediate measures intended to mitigate the impact of the SARS-COV2 pandemic on U.S. businesses and supply chains. These measures include the following temporary changes to the registration and licensing requirements. Please click [here](#) to view the full post with DDTC's ITAR modifications.

OFAC Fact Sheet on Humanitarian Assistance to Countries with Sanctions

Treasury's Office of Foreign Assets Control (OFAC) released a [fact sheet](#) that outlines exemptions, exceptions, and authorizations for humanitarian assistance and trade under the sanctions programs for Iran, Venezuela, North Korea, Syria, Cuba, and Ukraine/Russia. The fact sheet can assist with questions about exporting Personal Protective Equipment (PPE) and other items related to the containment and treatment of COVID-19.

FEMA Issues Temporary Final Rule Restricting Export of Certain PPE

The Federal Emergency Management Agency (FEMA) issued a temporary final rule requiring FEMA approval before certain kinds of personal protective equipment (PPE) can be exported from the United States. The temporary rule is being issued pursuant to, among other authorities, the Defense Production Act of 1950 and a series of Executive Orders. Based on these authorities, the President has directed the Secretary of Homeland Security and, in turn, the FEMA Administrator, to allocate PPE to domestic use. While the rule was filed for Public Inspection on Tuesday, April 7, 2020 and takes effect immediately, the rule will not be published in the Federal Register until Friday, April 10, 2020. The rule will remain in effect for 120 days from its publication until August 8, 2020. On April 21, 2020, FEMA issued a [Notification of Exemptions](#) from the temporary final rule in the Federal Register, which took effect on April 17, 2020. To continue reading the full post, please click [here](#).

OFAC Extends General License for Companies Doing Business with PDVSA Affiliate Nynas AB

The U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC") recently issued General License 13E ("GL 13E"), authorizing certain activities involving Nynas AB, a Swedish manufacturer of specialty oils owned in part by PDVSA, Venezuela's state-owned oil company, which would normally be prohibited by Executive Order 13850 ("E.O. 13850"). The notice issued by OFAC indicates that Nynas AB "is engaged with OFAC on a proposed corporate restructuring that could potentially result in significant changes to Nynas AB's ownership and control." As a result, the general license is being extended until May 14, 2020 to allow Nynas AB additional time to "complete the engagement." To continue reading the full post, please click [here](#).