

TRADE LAW UPDATE



August 2019

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

[President Trump Announces Tariffs on \\$300 Billion of Chinese Products](#)

On Thursday, August 1, 2019, President Trump announced via twitter an additional 10% tariff on [\\$300 billion](#) worth of Chinese products (“List 4”). This is the fourth round of tariffs in the ongoing trade war between the U.S. and China. The List 4 tariffs were proposed on May 13, 2019 (see our previous post [here](#)).

President Trump indicated that the tariffs will begin on September 1, 2019 at a 10% duty rate and come as a result of China not purchasing large quantities of U.S. agricultural products and its continued sales of fentanyl. To see the full post on President Trump’s tariffs, click [here](#).

[USTR Delays Implementation of Section 301 Duties on Certain Tranche 4 Products](#)

The Office of the U.S. Trade Representative (“USTR”) [announced](#) on August 13, 2019 that several goods included on the upcoming tranche 4 of Section 301 tariffs, including laptops, computer monitors, cell phones, video game consoles, certain toys and certain items of footwear and clothing will not face additional 10 percent tariffs until December 15, 2019. The agency also said there will be some products excluded entirely from the new set of tariffs for health, safety,

national security or “other factors.”

USTR [released](#) the tariff lines that will not face additional tariffs until December 15, 2019 and the list is far broader than originally anticipated. The list of products includes electronics, clothes and toys, chemicals, food, camping gear, blankets, baby items, sports equipment, watches, clocks, small appliances, wooden hangers and fireworks, along with a wide variety of clothes and electronics. The list of products on which tranche 4 tariffs are delayed potentially includes more than 650 individual tariff lines. To see the full post on the USTR’s announcement, click [here](#).

[President Trump Announces Increases to Tariff Rate on Products from China](#)

On August 23, 2019, President Trump [announced](#) via Twitter that the tariff rates on Lists 1, 2, and 3, worth approximately \$250 billion worth of goods imported from China, will increase from 25% duty to 30% beginning October 1, 2019. Additionally, the President indicated that the tariff rate on the List 4 tariffs currently set to begin on September 1 will increase to 15% from 10%. It is unclear if the tariffs currently set to go into effect on [December 15](#) will also be increased to 15%.

This action comes after China [announced](#) retaliatory tariffs of between 5-10% on approximately \$75 billion worth of U.S. imports that will begin in two stages that will mirror the United States’ List 4 tariffs, on September 1, 2019 and December 15, 2019. To see our full post on the announcement, click [here](#).

U.S. DEPARTMENT OF COMMERCE DECISIONS

Investigations

- Glycine from Thailand: On August 5, 2019, Commerce released its final negative Countervailing Duty [determination](#) and final negative Critical Circumstances determination.
- Glycine from Thailand: On August 5, 2019, Commerce released its final [determination](#) in the Antidumping Duty Investigation and final affirmative determination of Critical Circumstances in Part.
- Aluminum Extrusions from the People's Republic of China: On August 12, 2019, Commerce announced the final affirmative [determination](#) of Circumvention of the Antidumping Duty and Countervailing Duty Orders.
- Steel Propane Cylinders from the People's Republic of China and Thailand: On August 15, 2019, Commerce released the amended final [determinations](#) in the Antidumping Duty Investigation.
- Refillable Stainless Steel Kegs from Mexico: On August 19, 2019, Commerce released the final affirmative [determination](#) in the Antidumping Duty Investigation and final determination of Critical Circumstances.
- Certain Polyester Staple Fiber from the Republic of Korea: On August 28, 2019, Commerce issued a notice of the final [results](#) of the Antidumping Duty Changed Circumstances Review.

Administrative Reviews

- Monosodium Glutamate from the Republic of Indonesia: On August 1, 2019, Commerce released the final [results](#) of the Antidumping Administrative Review (2016-2017).
- Chlorinated Isocyanurates from the People's Republic of China: On August 1, 2019, Commerce released the final [results](#) of the Countervailing Duty Administrative Review (2016).
- Polyethylene Terephthalate Film, Sheet, and Strip from India: On August 2, 2019, Commerce released a [notice](#) of Court Decision Not in Harmony with the final results of the Antidumping Duty Administrative Review and issued a notice of amended final results of the Antidumping Duty Administrative Review (2015-2016).
- Certain Hot-Rolled Steel Flat Products from the Republic of Korea: On August 5, 2019, Commerce released the amended final [results](#) of the Antidumping Duty Administrative Review (2016-2017).
- Multilayered Wood Flooring from the People's Republic of China: On August 5, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review and final determination of No Shipments (2016-2017).
- Drawn Stainless Sinks from the People's Republic of China: On August 6, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2017-2018).
- Multilayered Wood Flooring from the People's Republic of China: On August 6, 2019, Commerce released the final results of the Countervailing Duty Administrative Review and partial rescission (2016).
- Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from the Russian Federation: On August 8, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2016-2017).
- Certain Crystalline Silicon Photovoltaic Products from Taiwan: On August 12, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review and final determination of No Shipments.
- Citric Acid and Certain Citrate Salts from Canada: On August 19, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2017-2018).
- Certain Cut-to-Length Quality Steel Plate from the Republic of Korea: On August 19, 2019, Commerce released the final [results](#) of the Countervailing Duty Administrative Review (2017).
- Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: On August 27, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2016-2017).

- Certain Frozen Warm Water Shrimp from the Socialist Republic of Vietnam: On August 27, 2019, Commerce released the final [results](#) of the Antidumping Duty Administrative Review (2017-2018).
- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People’s Republic of China: On August 28, 2019, Commerce released the final [results](#) of the Countervailing Duty Administrative Review (2016).
- Low Melt Polyester Staple Fiber from the Republic of Korea: On August 28, 2019 Commerce issued a notice of final [results](#) for the Antidumping Duty Changed Circumstances Review.

Changed Circumstances Reviews

- Certain Crystalline Silicon Photovoltaic Products from Taiwan: On August 2, 2019, Commerce released the [notice](#) of the final results of the Antidumping Duty Changed Circumstances Review.

Sunset Reviews

- Diffusion-Annealed Nickel-Plated Flat-Rolled Steel Products from Japan: On August 5, 2019, Commerce released the final results of the Expedited First Five-Year Sunset Review of the Antidumping Duty Order.
- Circular Welded Carbon Quality Steel Line Pipe from the People’s Republic of China: On August 6, 2019, Commerce released the final results of the Expedited Second Sunset review for both the [Countervailing Duty Order](#) and the [Antidumping Duty Order](#).
- Light-Walled Rectangular Pipe and Tube from the Republic of Korea, Mexico, Turkey, and the People’s Republic of China: On August 27, 2019, Commerce released the final [results](#) of the Expedited Second Sunset Review of the Antidumping Duty Orders.
- Small Diameter Graphite Electrodes from the People’s Republic of China: On August 27, 2019, Commerce released the final [results](#) of the Expedited Second Sunset Review of the Antidumping Duty Order.
- Light-Walled Rectangular Pipe and Tube from the People’s Republic of China: On August 30, 2019, Commerce released the final [results](#) of the Expedited Second Five-Year Sunset Review of the Countervailing Duty Order.

U.S. INTERNATIONAL TRADE COMMISSION

Section 701/731 Proceedings

Investigations

- Magnesium from Israel: On August 5, 2019, the ITC released the [schedule](#) of the final phase of Countervailing Duty and Antidumping Duty Investigations.
- Fresh Tomatoes from Mexico: On August 7, 2019, the ITC released the [schedule](#) of the final phase of the Antidumping Duty Investigation.
- Steel Propane Cylinders from the People’s Republic of China and Thailand: On August 9, 2019, the ITC released the final [determinations](#) for both the Antidumping Duty and Countervailing Duty Investigations.
- Vertical Metal File Cabinets from the People’s Republic of China: On August 21, 2019, the ITC released the [schedule](#) of the final phase of the Countervailing Duty and Antidumping Duty Investigations.
- Glycine from Thailand: On August 21, 2019, the ITC announced in its final [determination](#) that it would be terminating the Countervailing Duty Investigation.



- Glycine from Thailand: On August 23, 2019, the ITC announced the final [schedule](#) of the final phase of the Antidumping Duty Investigation.
- Acetone from Belgium, Korea, Singapore, South Africa, and Spain: On August 26, 2019, the ITC released the [schedule](#) of the final phase of the Antidumping Duty Investigation.
- Carbon and Alloy Steel Threaded Rod from the People’s Republic of China, India, Taiwan, and Thailand: On August 27, 2019, the ITC released the [schedule](#) of the final phase of the Countervailing Duty and Antidumping Duty Investigations.
- Steel Trailer Wheels from the People’s Republic of China: On August 28, 2019, the ITC announced in its final [determination](#) that imports of the subject merchandise have caused material injury to a U.S. industry.

Sunset Review Decisions

- Hot-Rolled Steel Products from the People’s Republic of China, India, Taiwan, Thailand, and Ukraine: On August 19, 2019, the ITC announced in its [determination](#) in the third review of the Antidumping Duty and Countervailing Duty Order that the revocation of the subject merchandise would lead to the material injury to an industry in the U.S.
- Persulfates from the People’s Republic of China: On August 21, 2019, the ITC announced in its [determination](#) in the fourth review that the revocation of the antidumping duty order of the subject merchandise would lead to the material injury to an industry in the U.S.
- Steel Wire Garment Hangers from the People’s Republic of China: On August 21, 2019, the ITC announced in its [determination](#) in the second review that the revocation of the Antidumping Duty Order of the subject merchandise would lead to the material injury to a U.S. industry.
- Laminated Woven Sacks from the People’s Republic of China: On August 21, 2019, the ITC announced in its [determination](#) in the second review that the revocation of the Antidumping Duty and Countervailing Duty Orders of the subject merchandise would lead to the material injury to a U.S. industry.

Section 337 Proceedings

- Certain Mobile Electronic Devices and Radio Frequency and Processing Components Thereof: On August 23, 2019, the ITC announced in its [determination](#) that it would be terminating the investigation in its entirety based upon settlement.

U.S. CUSTOMS & BORDER PROTECTION

There have been no CBP decisions released for the month of August.

COURT OF INTERNATIONAL TRADE

Summary of Decisions

19-99

On August 1, 2019, the CIT remanded Commerce’s remand redetermination in the administrative review of carbon and certain alloy steel wire rod from Mexico. The court found that Commerce’s remand results did not comply with the court’s order and the decision by Commerce to

apply a 40.52% AFA-rate to Plaintiff Deacero is unsupported by substantial evidence.

19-100

On August 1, 2019, the court sustained Commerce’s remand redetermination in the first administrative review

of steel concrete reinforcing bar from Mexico. The CIT found that Commerce's decision not to collapse six non-producing fixed asset owning companies on remand complied with the court's order and was supported by substantial evidence. Additionally, Commerce's reliance on the cost experiences of the collapsed fixed asset owners to value the non-collapsed companies and decision not to apply total or partial facts available with an adverse inference to the respondent were sustained.

[19-103](#)

On August 2, 2019, the CIT sustained Commerce's final negative determination in the countervailing duty investigation of citric acid and certain citrate salts from Thailand. The CIT concluded that Commerce's determination was supported by substantial evidence and in accordance with the law because the record was "replete" with documents demonstrating that the Respondents' machinery "originated from China." Additionally, Commerce properly demonstrated that the imported machinery into Thailand would have a zero duty rate applied whether it was under Thailand's Investment Promotion Act or the ASEAN-China FTA.

[19-104](#)

On August 2, 2019, the CIT sustained Commerce's redetermination upon remand in the third administrative review in the antidumping duty order on large power transformers from the Republic of Korea. On remand, Commerce reconsidered its findings of Plaintiff Hyundai Heavy Industries' ("HHI") misreported costs and prices for accessories. Commerce determined that HHI had properly reported accessories consistent with the scope of the issued antidumping duty order. The court sustained the rest of Commerce's remand results on the grounds that HHI had left sufficient enough gaps in their questionnaires and the documentation they provided. What Plaintiff HHI deemed necessary and sufficient was not recognized by the CIT and for those reasons the CIT sustained the remand results.

[19-106](#)

On August 6, 2019, the CIT sustained, in part, and remanded Commerce's final determination in the antidumping duty investigation of certain carbon and alloy steel cut-to-length plate from Taiwan. The Court found that Commerce had made an error when it based part of its difference-in-merchandise ("DIFMER") analysis on AFA-adjusted data. Because of the error, the CIT remanded the issue back to Commerce; however the remaining issues are sustained on the grounds that Plaintiff China Steel Corp's arguments lack merit.

[19-107](#)

On August 8, 2019, the CIT sustained Commerce's determinations in the administrative review of the countervailing duty order on steel concrete reinforcing bar (rebar) from the Republic of Turkey. Upon review of its order finding a countervailable subsidy for the provision of natural gas to Turkish rebar producers, Commerce calculated a CVD rate using only Azerbaijani domestic prices because they represented the most reliable world market price on the record with an inflow pipeline connection to Turkey. The CIT concluded that the record supports the Department's findings and the court finds Commerce's treatment of prices on the record to be reasonable.

[19-108](#)

On August 8, 2019, the CIT denied the Defendant's motion to dismiss for lack of subject-matter jurisdiction and granted Plaintiff Oman Fasteners' unopposed motion to consolidate in the second administrative review of the antidumping duty order on certain steel nails from the Sultanate of Oman.

[19-111](#)

On August 15, 2019, the CIT granted Commerce's request for a remand to reassess its VAT calculation and sustained Commerce's determination on all other present issues in the antidumping duty investigation on aluminum foil from the People's Republic of China. The CIT found that the methodology that Commerce used for its VAT calculation was incorrect and granted Commerce's request for remand.

[19-112](#)

On August 19, 2019, the CIT granted the defendant's motion to dismiss for lack of subject matter jurisdiction in the antidumping duty case of tapered roller bearings from the People's Republic of China. The court concluded that because jurisdiction could have been invoked under 28 U.S.C. §1581(c), residual jurisdiction under 28 U.S.C. § 1581(i) is not available. Moreover, although Plaintiff Wanxiang America Corporation contended otherwise, the Commerce guidance to CBP is not a reviewable Administrative Procedure Act ("APA") final agency action. For those reasons, the court granted the Government's motion to dismiss for lack of subject matter jurisdiction.

[19-113](#)

On August 20, 2019, the CIT granted Plaintiff Trendium Pool Products' motion for judgment on the agency record in the scope ruling case of finished pool kits and pool walls

from Canada. The CIT found that Plaintiff Trendium's pool products do not fit within the plain language of the scope order. Additionally, Commerce's decision was not in accordance with the law because Trendium's products were never considered as part of the ITC's injury analysis.

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

2018-2298

On August 7, 2019, appellants Juancheng Kangtai Chemical Co., Ltd. ("Kangtai Chemical") and NAC Group Limited ("NAC") (together, "Kangtai") appealed from the opinion and order of the U.S. Court of International Trade ("CIT") dismissing its complaint. The CIT held that it lacked jurisdiction under 28 U.S.C. § 1581(i) (2012) to consider the three counts raised in Kangtai's complaint relating to certain antidumping duties. The dispute arose over certain entries of chlorinated isocyanurates from the People's Republic of China. The CIT dismissed the three counts of the complaint for lack of jurisdiction, explaining that the focus of Kangtai's complaint aimed to challenge Commerce's evaluation of sales in the ninth administrative review ("AR9") and entries in tenth administrative review ("AR10"), a claim properly arising out of § 1581(c). According to the CIT, the complaint alleges "that Commerce imposed a liquidation rate that improperly considered already reported sales and entries." The CIT rejected Kangtai's challenge "that the sales made during the ninth POR—and considered in AR 9—and then entered during the tenth POR, should have been assigned the AR 9 rate but were improperly liquidated at the AR 10 rate," reasoning instead that "those eighteen entries went unreported in AR 10, even though they were entered during [the tenth POR]" based on Kangtai's failure to report them after being directed to do so by Commerce. The CIT further determined that a remedy under § 1581(c) was not manifestly inadequate because Kangtai was "on notice" that duties would be assessed against its entries based on language in the AR 9 Final Results and could have filed "a complaint challenging the results of AR 9."

EXPORT CONTROLS AND SANCTIONS

BIS Extends Huawei Temporary General License with Major Changes and Adds New Affiliates to Entity List

In May of 2019, the US Department of Commerce's Bureau of Industry and Security ("BIS") [added](#) Chinese telecommunications giant Huawei Technologies Co. Ltd. ("Huawei") and sixty-eight of its affiliated companies to BIS's Entity List. These designations prohibit anyone, anywhere in the world from exporting, re-exporting or making an in-country transfer of "items subject to the EAR" to the listed Huawei Companies ("Items subject to the EAR" generally consist of US-origin commodities, software or technology, items produced outside the US which include qualifying US-origin content and items that are physically present in or transiting through the US). Shortly after making these designations, BIS [issued a Temporary General License](#) which authorized limited ongoing transactions with Huawei to support existing networks and Huawei equipment and handsets. To see the full post on this issue, click [here](#).