

# TRADE LAW UPDATE



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## PRESIDENTIAL ACTIONS

### [BIS Announces the Opportunity to Submit Comments on the Section 232 Investigation on Imports of Mobile Cranes](#)

The Department of Commerce's Bureau of Industry and Security ("BIS"), invited comments from interested parties on BIS's Section 232 national security investigation on imports of [mobile cranes](#). Comments on the mobile cranes investigation may be submitted on or before July 10, 2020 and rebuttal comments on or before August 10, 2020. We strongly encourage clients to review the notices to determine whether or not their imports will be affected. All written comments with respect to the mobile cranes investigation must be filed through the Federal eRulemaking Portal at <http://www.regulations.gov/> under docket number BIS-2020-0009. Parties should anticipate submitting comments in the investigation if their products are associated with imported mobile cranes. Please see our previous [post](#) announcing the start of the investigation for more details.

### [BIS Announces the Opportunity to Submit Comments in the Section 232 Investigation on Imports of Steel for Electrical Transformers](#)

The Department of Commerce's Bureau of Industry and Security ("BIS") is [inviting comments](#) from interested parties on its investigation regarding the potential expansion of Section 232 tariffs to include imports of steel incorporated into electrical transformers. Comments on the investigation may

be submitted on or before June 9, 2020 and rebuttal comments on or before June 19, 2020. All written comments must be addressed to "Section 232 Electrical Steel Investigation" and filed through the Federal eRulemaking Portal at <http://www.regulations.gov/> under docket number BIS-2020-0015. While comments are being solicited, there is no further specificity as to the products that are being investigated and therefore affected parties should anticipate submitting comments if their products are associated with laminated or wound cores for use in transformers. Please see our previous [post](#) announcing the start of the investigation for more details.

### [White House Issues Executive Order Providing Agencies with Regulatory Enforcement Discretion to Promote Economic Recovery](#)

The Trump Administration issued its Executive Order on Regulatory Relief to Support Economic Recovery (the "EO") on May 19, 2020 ([Executive Order](#)). The EO seeks to remedy the economic impact of the ongoing COVID-19 pandemic by removing certain administrative barriers and providing flexibility in the implementation and enforcement of other administrative provisions and requirements. Although certain provisions of the EO are vague, Section 1 states the EO's policy that "Agencies should address this economic emergency by rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery, consistent with applicable law and with protection of the public health and safety, with

national and homeland security, and with budgetary priorities and operational feasibility.” To continue reading the full post, please click [here](#).

### [New FMC Interpretative Demurrage and Detention Rules: Will They Assist Ocean Transportation Intermediaries?](#)

On April 28, 2020, the Federal Maritime Commission (“Commission” or “FMC”) released the long-awaited interpretive rules in Docket No. 19-05 relating to how ocean common carriers may lawfully apply demurrage and detention charges to exporters, importers, and ocean transportation intermediaries, including Customs brokers in certain circumstances and still be compliant with the “reasonableness” requirement of 46 U.S.C § 41102(c). The analyses and guidance in the interpretive rules have been in high demand in view of the oftentimes strained circumstances pursuant to which five and six figure demands have been made by ocean carriers for demurrage and detention, especially against OTIs. This article has the objective to focus OTI entities on the selective structuring of relationships, and the requirement to analyze these relationships in the context of the Incentive Principle with the objective of minimizing risks of the demurrage/detention variety. To continue reading, please click [here](#).

## U.S. DEPARTMENT OF COMMERCE DECISIONS

### Investigations

- Certain Quartz Surface Products from the Republic of Turkey and India: On May 1, 2020, Commerce released the final determinations of the [antidumping duty](#) and [countervailing duty](#) investigations and final determinations of critical circumstances.
- Certain Hot-Rolled Steel Flat Products from Turkey: On May 15, 2020, Commerce released an amended final [determination](#) of the antidumping duty investigation.
- Certain Glass Containers from the People’s Republic of China: On May 22, 2020, Commerce released the final [determination](#) of the countervailing duty investigation.

### Administrative Reviews

- Certain Steel Threaded Rod from the People’s Republic of China: On May 5, 2020, Commerce released the final [results](#) of the antidumping duty administrative review and final determination of no shipments (2018-2019).
- Certain Hot-Rolled Carbon Steel Flat Products from the People’s Republic of China: On May 7, 2020, Commerce released the final [results](#) of the antidumping duty administrative review (2017-2018).
- Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: On May 8, 2020, Commerce released the final [results](#) of the antidumping duty administrative review (2018-2019).
- Carbon Activated Carbon from the People’s Republic of China: On May 11, 2020, Commerce released a notice of amended final [results](#) of the antidumping duty administrative review (2014-2015).
- Light-Walled Rectangular Pipe and Tube from Mexico: On May 27, 2020, Commerce released amended final [results](#) of the antidumping duty administrative review (2017-2018).

### Changed Circumstances Reviews

- Large Diameter Welded Pipe from India: On May 6, 2020, Commerce released the final [results](#) of the antidumping and countervailing duty changed circumstances review.
- Biodiesel from Argentina: On May 12, 2020, Commerce released the final results of the [antidumping](#) and [countervailing](#) duty changed circumstances reviews.
- Certain Aluminum Foil and Common Alloy Aluminum Sheet from the People’s Republic of China: On May 22, 2020, Commerce released the final [results](#) of the antidumping duty changed circumstances review.

### Sunset Reviews

- Barium Carbonate from the People’s Republic of China: On May 5, 2020, Commerce released the final [results](#) of the expedited third antidumping duty sunset review.
- Ferrovandium from the Republic of South Africa and the People’s Republic of China: On May 5, 2020, Commerce released the final [results](#) of the expedited third antidumping duty sunset review.

- Polyethylene Terephthalate (PET) Film, Sheet and Strip from the People’s Republic of China and the United Arab Emirates: On May 6, 2020, Commerce released the final [results](#) of the expedited second antidumping duty sunset review.
- Tow-Behind Lawn Groomers and Certain Parts Thereof from the People’s Republic of China: On May 6, 2020, Commerce released the final [results](#) of the expedited second antidumping duty sunset review.
- Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: On May 6, 2020, Commerce released the final results of the expedited [antidumping](#) and [countervailing](#) duty sunset reviews.
- Oil Country Tubular Goods from Ukraine: On May 7, 2020, Commerce released the final [results](#) of the antidumping duty sunset review.

## U.S. INTERNATIONAL TRADE COMMISSION

### Section 701/731 Proceedings

#### Investigations

- Sodium Sulfate Anhydrous from Canada: On May 19, 2020, the ITC published its final affirmative [decision](#) of material injury in the antidumping duty investigation.
- Ceramic Tile from China: On May 28, 2020, the ITC published its final affirmative [decisions](#) in the antidumping and countervailing duty investigations finding material injury.



#### Sunset Review Decisions

- There have been no Sunset Review decisions from the ITC during the month of May 2020.

#### Section 337 Proceedings

- Certain Infotainment Systems, Components Thereof, and Automobiles Containing the Same: On May 6, 2020, the ITC released the final [decision](#) finding no violation of Section 337.
- Certain Human Milk Oligosaccharides and Methods of Producing the Same: On May 26, 2020, the ITC release the final [decision](#) finding a violation of Section 337.

## U.S. CUSTOMS & BORDER PROTECTION

- In an April 30 [ruling](#), CBP declared that Bitcoin mining machines are not classifiable as automatic data processors.
- On May 1, 2020, CBP published an [update](#) to their previous guidance on Section 232 product exclusions.
- On May 11, 2020, CBP [announced](#) the launch of the USMCA center to assist with the implementation of the USMCA.
- On May 15, 2020, CBP [announced](#) the calendar year 2020 tariff-rate quota for imported tuna in airtight containers.
- On May 20, 2020, CBP extended travel restrictions on the [Canadian](#) and [Mexican](#) borders. The travel bans do not apply to cargo and exempt crossing the border to work in the U.S.
- On May 21, 2020, CBP released its EAPA final [determination](#) that an importer of wooden bedroom furniture evaded antidumping duties.

## COURT OF INTERNATIONAL TRADE

### Summary of Decisions

#### [20-61](#)

On May 6, 2020, the CIT remanded the ITC’s final negative material injury and threat of material injury determinations in the antidumping and countervailing duty investigations on Polytetrafluoroethylene Resin (“PTFE”)

from China. The CIT directed the ITC to further explain its decision not to discount post-petition data, taking into account the increase in subject import prices in the final quarter of 2017.

## 20-62

On May 8, 2020, in compliance with the mandate issued by the Court of Appeals for the Federal Circuit, the CIT affirmed Commerce's third redetermination in the antidumping duty investigation on *Xanthomonas campestris* (xanthan gum) from China. It upheld Commerce's use of xanthan gum as an asset, rather than a direct material input and the use of financial statements that had a more complete English translation to calculate surrogate value.

## 20-63

On May 11, 2020, the CIT sustained Commerce's final results in the 2016-2017 antidumping duty administrative review of hydrofluorocarbon ("HFC") blends from China. The CIT sustained Commerce's selection of Mexico as the primary surrogate country, because Plaintiff T.T.I. failed to exhaust its administrative remedies on the issue. The CIT also concluded that Commerce reasonably relied on Mexican GTA data to value R-32, R-134a, and AHF and that Commerce reasonably rejected Mexichem's financial statements to calculate surrogate financial ratios, because the incomplete translations precluded Commerce from assessing the statements.

## 20-64

On May 13, 2020, the CIT sustained in part and remanded in part Commerce's final determination in the fourth antidumping duty administrative review of crystalline silicon photovoltaic cells, whether or not assembled into modules, from China. The court sustained Commerce's decisions to include zero quantity Thai import data when calculating surrogate values, derive surrogate financial ratios using KCE's unconsolidated financial statements, and value Trina's nitrogen inputs using Mexican import data. The court remanded for further explanation or reconsideration Commerce's refusal to adjust Trina's constructed export price to account for a countervailed subsidy, as well as its reliance on Maersk rate quotes to value Trina's freight expenses.

## 20-65

On May 13, 2020, the CIT remanded Commerce's final results in the tenth antidumping duty administrative review on activated carbon from China. The court remanded Commerce's choice of surrogate value for carbonized material and Commerce's adjustments to the surrogate financial ratios, because Commerce did not explain sufficiently its reasoning and the respondents did not have a sufficient opportunity to address their objections.

## 20-69

On May 18, 2020, the CIT sustained in part and remanded in part Commerce's remand redetermination in the 2015-2016 antidumping duty administrative review on oil country tubular goods ("OCTG") from Korea. The court concluded that Commerce's particular market situation finding was unsupported by substantial evidence and directed Commerce to reverse its finding and to recalculate the dumping margins. The CIT sustained Commerce's classification of SeAH's proprietary products and Commerce's treatment of SeAH's G&A expenses, having found that Commerce's explanation of its methodology was reasonable, responsive to the court's request for clarification, and avoided impermissible double counting.

## 20-71

On May 22, 2020, the CIT sustained Commerce's final redetermination in the antidumping duty investigation on large diameter welded pipe ("LDWP") from Turkey. On remand, Commerce granted BMB the full amount of the post-sale price adjustment, which resulted in a de minimis estimated weighted-average dumping margin.

## 20-72

On May 26, 2020, the CIT sustained Commerce's third remand results in the second antidumping duty administrative review of large power transformers from Korea. On its third remand, Commerce removed the circumstance of sale adjustments for the delayed delivery charges to determine Hyundai's normal value. The CIT found that this complied with the previous order.

## **COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

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

## EXPORT CONTROLS AND SANCTIONS

### [BIS Postpones Annual Export Controls Conference Until 2021](#)

The U.S. Department of Commerce's Bureau of Industry and Security (BIS) [announced](#) that its 33rd [Annual Export Controls Conference](#) scheduled to be held in Washington, D.C. from June 29 – July 1, 2020 has been postponed until July 26-28, 2021 due to the COVID-19 outbreak. BIS has indicated that they will contact those who registered with additional information, including on reimbursement of registration fees.

### [BIS Extends Huawei TGL While Also Restricting Supply of Foreign-Produced Items to Huawei and Affiliated Entities](#)

On May 15, 2020, the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") announced two new rules changes directed at Chinese telecommunications giant Huawei Technologies Co., Ltd. ("Huawei"). As we have [previously covered](#), BIS has named Huawei and 114 of its affiliate companies to its Entity List under the U.S. Export Administration Regulations (the "EAR"). These designations generally prohibit anyone, anywhere in the world from exporting, re-exporting or making an in-country transfer of "items subject to the EAR" to the Huawei Entity List designee companies unless authorized by a BIS license. These most recent rules changes : (i) provide a 90-day extension to BIS's existing Temporary General License for certain Huawei transactions, and (ii) expand BIS's existing "foreign-produced direct product rule" in order to prohibit the use of U.S. origin software and technology in producing certain items for the Huawei Entity List designees. To continue reading the full post, please click [here](#).

### [OFAC Removes General License 13E and Issues General Licenses 3H and 9G](#)

Office of Foreign Assets Control ("OFAC") recently announced the removal of [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. The [notice](#) issued by OFAC states that Nynas AB "has undertaken a corporate restructuring that has resulted in Nynas AB no longer being blocked pursuant to the Venezuela Sanctions Regulations (31 C.F.R. Part 591)." As a result, U.S. persons and companies do not require authorization from OFAC to engage in transactions with Nynas AB, provided that such activities do not involve other blocked persons.

OFAC also issued two new General Licenses— [GL 3H](#), which authorizes transactions related to certain bonds, and [GL 9G](#), which authorizes transactions related to certain securities. Effective May 12, 2020, GL 3H replaces and supersedes GL 3G, while GL 9G replaces and supersedes GL 9F. Companies which relied on GL 3G and/or GL 9F for transactions should now reference GL 3H and/or GL 9G.