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International Trade

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This article outlines the most important developments in international trade law during 2018. It summarizes developments in the US trade policy development, World Trade Organization (WTO) dispute settlement activities, and US trade cases at the Department of Commerce (Commerce) and International Trade Commission (ITC).

I. US Trade Policy Developments

A. SECTION 232

Section 232 of the Trade Expansion Act of 1962 authorizes the US Department of Commerce to investigate whether a product is being imported “in such quantities or under such circumstances as to threaten to impair the national security.”¹ The Act also grants the President the statutory authority to then “adjust the imports” through tariffs or quotas.² Accordingly, as of March 23, 2018, following two presidential proclamations signed under section 232, steel and aluminum imports are subject to a twenty-five percent tariff³ and a ten percent tariff, respectively.⁴ Similarly, on May 23, 2018, the US Secretary of Commerce, Wilbur Ross, initiated a section 232 investigation to determine whether imports of automobiles and of automotive parts into the United States present a threat to national security.⁵

* This article surveys developments in international trade law during 2018. The committee editors of this article were Sylvia Y. Chen, Arnold & Porter Kaye Scholer LLP, and Cynthia Galvez, and Laura El-Sabaawi, Wiley Rein LLP. The authors were Chloe Baldwin and Zachary Simmons, Steptoe & Johnson LLP; Jonathan Babcock, Theodore P. Brackemyre, Laura El-Sabaawi, Derick Holt, Elizabeth S. Lee, Usha Neelakantan, Wiley Rein LLP; Geoffrey Goodale, FisherBroyles, LLP; Brittney Powell, Fox Rothchild LLP; and Molly O'Casey, Cornell University.

1. Trade Expansion Act § 232, 19 U.S.C. §1862 (1962).

2. *Id.*

3. Proclamation No. 9777, 83 Fed. Reg. 45,025 (2018).

4. Proclamation No. 9776, 83 Fed. Reg. 45,019 (2018).

5. See *U.S. Department of Commerce Initiates Section 232 Investigation into Auto Imports*, U.S. DEP'T OF COMMERCE (May 23, 2018), <https://www.commerce.gov/news/press-releases/2018/05/us-department-commerce-initiates-section-232-investigation-auto-imports>.

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The metal 232 tariff does not apply to those countries that agreed to quotas for steel, namely South Korea, Brazil, Argentina and Australia, or for aluminum, namely Argentina and Australia.⁶ The stated purpose of these tariffs is to respond to the distortion in the US and global steel markets caused by large volumes of excess global steel production, created in large part by “unfair practices by overseas competitors.”⁷

But the metal 232 tariffs have spawned multiple requests for World Trade Organization (WTO) panels to examine whether the tariffs constitute illegal safeguard measures.⁸ Additionally, other countries have retaliated with their own tariffs.⁹ Similarly, concerning the auto 232 tariff, members of the WTO warned that the proposed measure could cause “serious disruption” to world markets and the multilateral trading system.¹⁰

B. SECTION 301—CHINA

Section 301 of the Trade Act of 1974 provides the United States with statutory power to enforce trade agreements and address “unfair” foreign barriers to US exports.¹¹ In 2018, the United States Trade Representative (USTR) imposed tariffs on Chinese imports.¹² First, twenty-five percent tariffs went into effect on fifty billion dollars’ worth of imports.¹³ Then, ten percent tariffs went into effect on approximately \$200 billion worth of imports, and these tariffs will increase to twenty-five percent on January 1, 2019.¹⁴

6. See *Section 232 Tariffs on Aluminum and Steel: Duty on Imports of Steel and Aluminum Articles under Section 232 of the Trade Expansion Act of 1962*, DEP’T OF HOMELAND SECURITY, <https://www.dhs.gov/trade/programs-administration/entry-summary/232-tariffs-aluminum-and-steel> (last visited Mar. 30, 2019).

7. Neil Irwin, *The Real Risks of Trump’s Steel and Aluminum Tariffs*, N.Y. TIMES (Mar. 1, 2018), <https://www.nytimes.com/2018/03/01/upshot/trump-tariff-steel-aluminum-explain.html>. See Proclamation No. 9777, 83 Fed. Reg. 45,025 (2018).

8. See *Panels Established to Review US Steel and Aluminum Tariffs, Countermeasures on US Imports*, WTO.ORG, https://www.wto.org/english/news_e/news18_e/dsb_19nov18_e.htm (last visited Mar. 30, 2019).

9. *Id.*

10. *Members Raise Concerns Over US Section 232 Investigation on Automobiles and Automotive Parts*, WTO.ORG, https://www.wto.org/english/news_e/news18_e/good_03jul18_e.htm (last visited Mar. 30, 2019).

11. Trade Act of 1974 § 301, 19 U.S.C. §2411 (1974).

12. See China’s Acts, Policies, and Practices Related to Tech. Transfer, Intellectual Prop., and Innovation, 83 Fed. Reg. 14,906 (U.S. Trade Representative April 6, 2018) (Notice and Request for Comment Pursuant to Section 301); *see also* China’s Acts, Policies, and Practices Related to Tech. Transfer, Intellectual Prop., and Innovation, 83 Fed. Reg. 28,710 (U.S. Trade Representative June 20, 2018) (Notice of action, request for comments, and notice for public hearing).

13. *Id.*

14. See China’s Acts, Policies, and Practices Related to Tech. Transfer, Intellectual Prop., and Innovation, 83 Fed. Reg. 33,608 (U.S. Trade Representative July 17, 2018) (Request for comments and notice of public hearing).

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The stated purpose of the tariffs is to target China's "economic aggression."¹⁵ Namely, the tariffs are considered a response to Chinese policies forcing technology transfers from US companies to Chinese entities through investment processes; preventing market-based returns for US intellectual properties (IPs) through unfair licensing practices; generating large-scale technology and IP transfers through investments and acquisitions; and gaining access to business information through cyber intrusions into US computer networks.¹⁶

II. USMCA

On November 30, 2018, North American leaders signed the US-Mexico-Canada Agreement (USMCA or the Agreement),¹⁷ a new trilateral trade agreement to replace the North American Free Trade Agreement (NAFTA) which had been in effect since 1994.¹⁸ The USMCA modernizes the twenty-four-year-old NAFTA with key changes for targeted industries (e.g. automotive and dairy), revises origin rules, and the harmonizes regulatory systems.¹⁹ The USMCA consists of thirty-four chapters, twelve more than NAFTA's twenty-two chapters, and includes new or revised chapters on labor, the environment, anticorruption, competitiveness, and digital trade.²⁰ Although the USMCA preserves core NAFTA principles discussed herein, observers note roughly two-thirds of the Agreement is borrowed from the now-abandoned Trans-Pacific Partnership (TPP).²¹ The discussion below highlights a number of key provisions of the USMCA text that diverge from NAFTA.

Unlike NAFTA, which lacked a sunset/review process or expiration date, the USMCA stipulates the agreement will terminate sixteen years after the date of its entry into force, unless the parties agree to renew it for another sixteen-year term.²² The Agreement provides for a joint review process to

15. Remarks on Signing a Memorandum on Actions by the United States Related to the Section 301 Investigation of China's Laws, Policies, Practices, or Actions Related to Technology Transfer, Intellectual Property, and Innovation and an Exchange with Reporters, 2018 DAILY COMP. PRES. DOC. 2 (Mar. 22, 2018).

16. Memorandum on Actions by the United States Related to the Section 301 Investigation of China's Laws, Policies, Practices, or Actions Related to Technology Transfer, Intellectual Property, and Innovation, 2018 DAILY COMP. PRES. DOC. 180 (Mar. 22, 2018).

17. Agreement Between the United States of America, the United Mexican States, and Canada, Can.-Mex.-U.S., Nov. 30, 2018, USTR.GOV, <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between> [hereinafter USMCA].

18. North American Free Trade Agreement, Can.-Mex.-U.S., Dec. 17, 1992, 32 I.L.M. 289 and 605 (1993) [hereinafter NAFTA].

19. *Id.*

20. *Id.*

21. See e.g., Michael Collins, *New Trade Deal with Canada, Mexico Borrows Heavily from Pact that Trump Abandoned*, USA TODAY, (Oct. 3, 2018), <https://www.usatoday.com/story/news/politics/2018/10/03/usmca-new-trade-deal-canada-borrows-pact-trump-abandoned/1498224002/>.

22. USMCA, *supra* note 17, art. 34.7(1).

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begin six years after its entry into force and at the beginning of every renewal period.²³ Notwithstanding, any country may withdraw from the Agreement with six months' written notice and without justification.²⁴

The USMCA maintains the NAFTA criteria for originating goods²⁵ and methods for calculating Regional Value Content²⁶ and transaction value; however, it increases the *de minimis* threshold for non-originating content to ten percent.²⁷ The Agreement also establishes a special rule for sets of goods and kits,²⁸ which are now considered "originating only if each good in the set is originating and both the set and the goods meet the other applicable requirements"²⁹

The USMCA also revises the origin rules for the automotive industry and raises the percentage of a vehicle's content that must be made in North America to qualify for preferential treatment from 62.5 percent to seventy-five percent.³⁰ Seventy percent of the steel and aluminum used must originate in one of the countries.³¹ New wage requirements will also be phased in over five years.³² The Agreement modifies the acceptable methods to certify the origin of goods, removes the requirement for a prescribed certification format,³³ and allows certifications of origin to be provided on invoices if other minimum requirements are met.³⁴

Recognizing the importance of international standards, the USMCA overhauls NAFTA's chapter on standards-related measures and incorporates the World Trade Organization's Technical Barriers to Trade Agreement (TBT Agreement).³⁵ The USMCA defines the definition to standards that are consistent with the TBT Agreement,³⁶ requiring application of the TBT Committee Decision on International Standards to determine whether there is an applicable international standard or recommendation.³⁷ The USMCA imposes new obligations on the Parties to conduct a review of any "major technical regulations it proposes to adopt" and establish procedures for

23. *Id.* art. 34.7(2).

24. *Id.* art. 34.6.

25. Compare USMCA, *supra* note 17, art. 4.2 with NAFTA, *supra* note 18, art. 401.

26. Compare USMCA, *supra* note 17, art. 4.5 with NAFTA, *supra* note 18, art. 402.

27. Compare USMCA, *supra* note 17, art. 4.12 with NAFTA, *supra* note 18, art. 405.

28. See USMCA, *supra* note 17, art. 4.17; *General Rules for the Interpretation of the Harmonized System*, WCOOMD.ORG, http://www.wcoomd.org/~media/wco/public/global/pdf/topics/nomenclature/instruments-and-tools/hs-interpretation-general-rules/0001_2012e_gir.pdf?la=en (last visited Mar. 30, 2019).

29. USMCA, *supra* note 17, art. 4.17.

30. *Id.* Annex 4-B, art. 4-B.3(1).

31. *Id.* Annex 4-B, art. 4-B.6(1).

32. *Id.* Annex 4-B, art. 4-B.7(1).

33. *Id.* art. 5.2(2).

34. *Id.*

35. USMCA, *supra* note 17, art. 11.3.

36. Compare USMCA, *supra* note 17, art. 11.1 with NAFTA, *supra* note 18, art. 915.

37. Compare USMCA, *supra* note 17, art. 11.4 with NAFTA, *supra* note 18, art. 905 (USMCA art. 11.4(3), The USMCA further prohibits the use of principles or criteria outside of the TBT Committee Decisions to recognize applicable international standards).

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Parties to petition review of regulations.³⁸ The Parties maintain discretion to decide whether a proposed regulation is considered major.³⁹

The USMCA also sets forth an updated framework to provide greater protection of IP rights, and extends the period of IP protection for works, performances, or phonograms to seventy years after an author's death, an increase from the previous fifty-year protection period.⁴⁰ The updated framework also requires a domain name dispute mechanism,⁴¹ enlarges the damages available to litigants for trademark infringement,⁴² and authorizes the imposition of criminal and civil penalties for trade secrets violations.⁴³

Furthermore, the USMCA allows Parties to levy sanctions for labor violations that impact trade,⁴⁴ prohibits the importation of goods produced by forced or child labor,⁴⁵ requires the adoption of labor rights recognized by the International Labor Organization,⁴⁶ and mandates the adoption of collective bargaining rights in Mexico.⁴⁷ In a new chapter on digital trade, the Agreement adopts rules that restrict data localization policies,⁴⁸ ban restrictions on data transfers across borders,⁴⁹ and prohibit customs and other charges on digital products.⁵⁰ Under the USMCA, Parties are required to give the others three months' notice before beginning negotiations of a free trade agreement with a non-market economy country.⁵¹ The USMCA also reportedly contains the first provision in a trade agreement to address currency manipulation by partners and requires the publication of foreign exchange market data.⁵²

III. WTO Dispute Settlement

This year saw no shortage of activity for the WTO's dispute settlement system, the organization's judicial arm designed to resolve the world's most pressing trade disputes.⁵³ Noteworthy challenges include: (1) China's

38. USMCA, *supra* note 17, art. 11.5.

39. *Id.* art. 11.5(1)(b).

40. *Id.* art. 20.63.

41. *Id.* art. 20.27.

42. *Id.* art. 20.82.

43. *Id.* art. 20.71.

44. USMCA, *supra* note 17, art. 23.5(2)(h).

45. *Id.* art. 23.6.

46. *Id.* art. 23.2.

47. *Id.* art. 23.

48. *Id.* art. 19.12 ("No Party shall require a covered person to use or locate computing facilities in that Party's territory as a condition for conducting business in that territory.")

49. *Id.* art. 19.8.

50. USMCA, *supra* note 17, art. 19.3.

51. *Id.* art. 32.10.

52. See C. Fred Bergsten, *A Positive Step in the USMCA: Countering Currency Manipulation*, PETERSON INST. FOR INT'L ECON., October 4, 2018, <https://piie.com/blogs/trade-investment-policy-watch/positive-step-usmca-countering-currency-manipulation>.

53. This review is limited to developments in the WTO dispute settlement system as of December 1, 2018.

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challenges to the European Union's and United States' treatment of China as a non-market economy (NME) in antidumping cases looming over the dispute settlement system⁵⁴ and (2) a number of trade disputes between the United States and Canada, including the latest iteration of the historic softwood lumber dispute.⁵⁵ Some significant and longstanding US trade disputes, including those challenging European subsidies on aircraft and Indian subsidies on solar panels, received consequential verdicts in 2018.⁵⁶ And, the dispute settlement system processed a significant number of cases that did not involve the United States, for example, the multi-party challenge to Australia's tobacco plain packaging measure.⁵⁷ But what seemed to dominate the dispute settlement system in 2018 was the myriad of cases challenging various US import tariffs, for example, the section 232 national security tariffs on steel and aluminum products.⁵⁸

Following the expiration of Article 15(a)(ii), its Accession Protocol, on December 11, 2016, China requested consultations with the United States and European Union regarding their treatment of China as an NME in antidumping cases.⁵⁹ In its requests for consultations, China alleged that the United States' and European Union's use of information other than Chinese prices and costs to determine normal value in antidumping cases runs afoul of various provisions of the General Agreement on Tariffs and Trade (GATT) 1994 and the Antidumping Agreement.⁶⁰ Although the dispute challenging certain US measures (DS515) has not advanced beyond the consultations stage, the dispute involving the European Union's Basic Regulation (DS516) is now before a dispute settlement panel, with briefing

54. See, e.g., Award of the Arbitrator, *United States – Certain Methodologies and their Application to Anti-Dumping Proceedings Involving China*, WTO Doc. WT/DS471/RPT (Jan. 19, 2018).

55. Request for the Establishment of a Panel by the United States, *United States – Countervailing Measures on Softwood Lumber from Canada*, WTO Doc. WT/DS533/2 (Mar. 16, 2018).

56. Request for the Establishment of a Panel United States, *India – Certain Measures Relating to Solar Cells and Solar Modules Recourse to article 21.5 of the DSU by India*, WTO Doc. WT/DS456/20 (Jan. 29, 2018).

57. Panel Report, *Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging*, WTO Doc. WT/DS467/23 (Aug. 30, 2018).

58. Request for the Establishment of a Panel by the United States, *China – Certain Measures Concerning the Protection of Intellectual Property Rights*, WTO Doc. WT/DS542/8 (Oct. 19, 2018).

59. Dr. Cora JungBluth, *NEW STUDY: The EU, Anti-Dumping and China's New Market Economy Status*, GED-PROJECT.DE (Dec. 9, 2016), https://ged-project.de/videos/competitiveness/impact_of_emerging_markets/china-to-be-or-not-to-be-a-market-economy-is-not-the-question/.

60. See e.g., Acceptance by the United States of the Requests to Join Consultations, *United States – Measures Related to Price Comparison Methodologies*, WTO Doc. WT/DS515/15 (Dec. 18, 2017); Communication from the Panel, *European Union – Measures Related to Price Comparison Methodologies*, WTO Doc. WT/DS516/12 (Nov. 27, 2018).

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and argument having concluded in the second half of 2018.⁶¹ The panel expects to issue its final report in the second quarter of 2019.⁶²

In 2018, the dispute settlement system delivered results in longstanding trade disputes between the United States and China and also witnessed the commencement of new disputes between the two Members. In a dispute concerning various aspects of the US Department of Commerce's countervailing duty methodology (DS437), a compliance panel ruled that while the United States had acted inconsistently with WTO-covered agreements in part, China had failed to demonstrate its remaining allegations, for example, with respect to the legal standard for public body determinations under Article 1.1(a)(1) of the Agreement on Subsidies and Countervailing Measures.⁶³ Both the United States and China have since appealed aspects of the compliance panel's report to the Appellate Body.⁶⁴ In a dispute concerning various aspects of the US Department of Commerce's antidumping duty methodology (DS471), including the presumption that all firms in China operate as part of a single economic entity subject to state control, an arbitrator granted the United States fifteen months—until August 22, 2018—to implement the recommendations and rulings of the Dispute Settlement Body (DSB) in the proceeding.⁶⁵ Following this deadline, on September 9, 2018, China requested authorization to suspend concessions or other obligations totaling \$7.043 billion on the grounds that the United States failed to comply with the DSB's recommendations and rulings within the established reasonable period of time.⁶⁶ The United States has objected to China's proposed level of suspension of concessions.⁶⁷ In addition, a compliance panel delivered what was largely a victory for the United States in its challenge to China's redetermination of antidumping and countervailing duties on broiler chicken from the United States (DS427). Among other findings, the compliance panel determined that the cost of production methodology

61. See e.g., Communication from the Panel, *European Union – Measures Related to Price Comparison Methodologies*, WTO Doc. WT/DS516/12 (Nov. 27, 2018).

62. *WTO Panel Set to Decide EU-China Dumping Row Next Year*, LAW 360 (Nov. 27, 2018), https://www.law360.com/internationaltrade/articles/1105243/wto-panel-set-to-decide-eu-china-dumping-row-next-year?nl_pk=152520c5-0e76-4df1-9b33-d06a5348a3fc&utm_source=newsletter&utm_medium=email&utm_campaign=internationaltrade.

63. Panel Report, *United States – Countervailing Duty Measures on Certain Products from China*, WTO Doc. WT/DS437/RW (March 21, 2018).

64. Notification of an Appeal by the United States, *United States – Countervailing Duty Measures*, WTO Doc. WT/DS437/24 (April 27, 2018); Notification of an Other Appeal by China, *United States – Countervailing Duty Measures*, WTO Doc. WT/DS437/25 (May 2, 2018).

65. Award of the Arbitrator, *United States – Certain Methodologies and their Application to Anti-Dumping Proceedings Involving China*, WTO Doc. WT/DS471/RPT (Jan. 19, 2018).

66. Recourse to Article 22.2 of the DSU by China, *United States – Certain Methodologies and their Application to Anti-Dumping Proceedings Involving China*, WTO Doc. WT/DS471/18 (Sept. 9, 2018).

67. Recourse to Article 22.6 of the DSU by the United States, *United States – Certain Methodologies and their Application to Anti-Dumping Proceedings Involving China*, WTO Doc. WT/DS471/20 (Sept. 21, 2018).

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applied by China, which estimated the average cost of producing a chicken, and then calculated the cost of producing the various parts by determining how much they weighed in relation to a given chicken's weight, was inconsistent with Article 2.2.1.1 of the Antidumping Agreement.⁶⁸ The United States and China also commenced new trade disputes in 2018, for example, the United States' challenge to certain Chinese intellectual property measures (DS542), and China's challenge to state-level subsidies and domestic content requirements in the US energy sector (DS563).⁶⁹

In May, Canada requested the establishment of a dispute settlement panel in two separate complaints over the United States' antidumping and countervailing duties in the long-running dispute on softwood lumber (DS533 and DS534).⁷⁰ The panels were established in April, and have indicated that they expect to issue their reports within the first half of 2019.⁷¹ Also in May, the United States requested the establishment of a panel with respect to measures maintained by the Canadian province of British Columbia governing the sale of wine in grocery stores (DS531).⁷² The panel was established in July, but has not yet been composed. Finally, in July 2018, the panel upheld Canada's challenge to the United States' countervailing duties on supercalendered paper and the investigation underlying the imposition of those duties (DS505).⁷³ The United States has appealed these findings, with the matter awaiting hearing by the Appellate Body in 2019.⁷⁴

Some significant and longstanding US trade disputes also received consequential verdicts in 2018. The Appellate Body delivered its latest ruling in the dispute between the United States and the European Union over E.U. subsidies to Airbus (DS316), finding that the European Union had not fully complied with previous adverse rulings but rejecting claims by the United States related to import substitution subsidies.⁷⁵ Both the United

68. Panel Report, *China – Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States*, WTO Doc. WT/DS427/RW (Jan. 18, 2018).

69. Request for Consultations by the United States, *China – Certain Measures Concerning the Protection of Intellectual Property Rights*, WTO Doc. WT/DS542/1 (Mar. 23, 2018); Request for Consultations by the United States, *United States – Certain Measures Related to Renewable Energy*, WTO Doc. WT/DS563/1 (Aug. 14, 2018).

70. Request for the Establishment of a Panel by Canada, *United States – Countervailing Measures on Softwood Lumber from Canada*, WTO Doc. WT/DS533/2 (Mar. 15, 2018); Request for the Establishment of a Panel by Canada, *United States – Anti-Dumping Measures Applying Differential Pricing Methodology to Softwood Lumber from Canada*, WTO Doc. WT/DS534/2 (Mar. 15, 2018).

71. *See id.*

72. Request for the Establishment of a Panel by the United States, *Canada – Measures Governing the Sale of Wine in Grocery*, WTO Doc. WT/DS531/7 (May 25, 2018).

73. Panel Report, *United States – Countervailing Measures on Supercalendered Paper from Canada*, WTO Doc. WT/DS505/R at 96 (July 5, 2018).

74. Notification of an Appeal by the United States, *United States – Countervailing Measures on Supercalendered Paper from Canada*, WTO Doc. WT/DS505/6 (August 27, 2018).

75. Appellate Body Report, *European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft*, WTO Doc. WT/DS316/AB/RW (May 15, 2018).

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States and the European Union hailed the findings by the Appellate Body as a victory, with the United States using the Appellate Body's ruling to request the imposition of billions of dollars' worth of sanctions on European products, while the European Union subsequently requested the composition of a further compliance panel.⁷⁶ The latest compliance panel is not expected to complete its work before the end of 2019, meaning a continuation of the ongoing saga of the aircraft disputes well into its fifteenth year of litigation.⁷⁷ In another longstanding (and continuing) dispute, the United States requested authorization to retaliate against India following adverse rulings against its national solar power program, which the Appellate Body ruled in 2016 was discriminatory (DS456).⁷⁸ Shortly thereafter, India responded by requesting the establishment of a compliance panel, meaning that the dual requests for retaliation and compliance rulings will continue into 2019.⁷⁹

Moreover, in this past year, a ruling by the Appellate Body in a dispute brought by Vietnam against Indonesian safeguards upheld the panel's findings that the tariffs were not safeguards because they did not suspend or modify concessions under the GATT 1994.⁸⁰ Significantly, the Appellate Body established a standard of review which could have a direct bearing on the adjudication of the disputes involving US section 232 tariffs. In addition, the panel provided its long-awaited report on Australia's tobacco plain packaging measure, which had been challenged by four separate complainants (Indonesia, Cuba, Honduras, and the Dominican Republic).⁸¹ The panel rejected all claims of all complainants, and while Honduras and the Dominican Republic have appealed certain aspects of the panel's findings to the Appellate Body,⁸² the reports in respect of the disputes

76. Request for Consultations by the European Union, *European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft*, WTO Doc. WT/DS316/36 (May 29, 2018).

77. See generally, *European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft*, WTO WT/DS316.

78. Recourse to Article 22.2 of the DSU by the United States, *India – Certain Measures Relating to Solar Cells and Solar Modules*, WTO Doc. WT/DS456/18 (Dec. 20, 2018).

79. Recourse to Article 21.5 of the DSU by India, *India – Certain Measures Relating to Solar Cells and Solar Modules*, WTO Doc. WT/DS456/20 (Jan. 29, 2018).

80. Appellate Body Report, *Indonesia – Safeguard on Certain Iron or Steel Products*, WTO Doc. WT/DS496/AB/R at 30 (Aug. 15, 2018). See also Brett Fortnam, Indonesia-Vietnam ruling could hint at WTO view of Section 232, *WORLD TRADE ONLINE* (Aug. 21, 2018), <https://insidetrade.com/daily-news/indonesia-vietnam-ruling-could-hint-wto-view-section-232>.

81. See Panel Reports, *Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging*, WTO Doc. WT/DS435/R, WT/DS441/R, WT/DS458/R, WT/DS467/R (June 28, 2018).

82. Notification of an Appeal by Honduras, *Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging*, WTO Doc. WT/DS435/23 (July 19, 2018); Notification of an Appeal by the Dominican Republic, *Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging*, WTO Doc. WT/DS441/23 (Aug. 23, 2018).

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brought by Indonesia and Cuba were adopted by the DSB on August 27, 2018.⁸³ Depending on the ability to resolve the fate of the Appellate Body, however, the tobacco plain packaging appeals may be one of the last to be heard by the Appellate Body as it currently stands.

Throughout the course of 2018, the United States has continued to reject proposals to fill vacancies on the Appellate Body bench, citing longstanding concerns about the need for reform of the Appellate Body's operation and functions. In particular, the United States has criticized the Appellate Body for being overly judicially active, for delving too far into the review of factual findings, and for failing to issue reports within the time required under the DSU.⁸⁴ In November 2018, the European Union, China, and ten other WTO Members issued a proposal to amend the rules governing the Appellate Body in ways that seek to address these criticisms.⁸⁵ As of October 2018, the Appellate Body was down to the minimum of three Members required to hear an appeal and, if the United States continues to block appointments to the bench, the Appellate Body will be unable to operate as of December 2019.⁸⁶

IV. Significant Department of Commerce Cases

Another active year for anti-dumping (AD) and countervailing duties (CVD) litigation at Commerce, 2018 involved Commerce initiating over sixty AD and CVD investigations, involving at least seventeen different countries and a variety of products ranging from steel pipe products, to stainless steel kegs, to mattresses, to magnesium, to aluminum wire and cable.⁸⁷ A selection of Commerce proceedings are discussed below.

83. Action by the Dispute Settlement Body, *Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging*, WTO Doc. WT/DS441/24, WT/DS458/22 (Aug. 28, 2018).

84. See e.g., Brett Fortnam *U.S. Rejects Proposal Brought by 58 Members to Fill WTO Appellate Body Slots*, WORLD TRADE ONLINE (Jan. 22, 2018), <https://insidetrade.com/daily-news/us-rejects-proposal-brought-58-members-fill-wto-appellate-body-slots>; Jack Caporal, *U.S. Opens New Front Against Appellate Body Over Delayed Reports*, WORLD TRADE ONLINE (June 22, 2018), <https://insidetrade.com/daily-news/us-opens-new-front-against-appellate-body-over-delayed-reports>; Hannah Monicken, *U.S.: DSU Bans Appellate Body Practice of 'Advisory Opinions'*, WORLD TRADE ONLINE (Oct. 31, 2018), <https://insidetrade.com/daily-news/us-dsu-bans-appellate-body-practice-advisory-opinions>.

85. European Commission Press Release IP/18/6529, *WTO reform: EU proposes way forward on the functioning of the Appellate Body* (Nov. 26, 2018); Brett Fortnam, *WTO proposal would amend rules to address U.S. Appellate Body criticisms*, WORLD TRADE ONLINE (Nov. 26, 2018), <https://insidetrade.com/inside-us-trade/wto-proposal-would-amend-rules-address-us-appellate-body-criticisms>.

86. See *Appellate Body Members*, WTO https://www.wto.org/english/tratop_e/dispu_e/ab_members_descrp_e.htm (indicating that the terms of Ujal Singh Bhatia and Thomas R. Graham will end Dec. 10, 2019).

87. For a list of filed investigations see *ACCESS*, INT'L TRADE ADMIN., <https://access.trade.gov/login.aspx>.

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A. “SOLAR I” AND “SOLAR II” PROCEEDINGS

The proceedings on *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from China (Solar I)* continued this year, with ongoing administrative reviews in each. The final results of the fourth *Solar I* AD/CVD administrative reviews were issued in July 2018, calculating combined duty margins ranging between 24.97–27.44 percent, with a 238.95 percent margin for the China-wide entity (unchanged from prior review).⁸⁸ Preliminary results are expected in the fifth *Solar I* administrative reviews in December 2018 and January 2019. The final result of the second *Solar II* AD administrative review was issued in June 2018.⁸⁹ The AD duty margins for Taiwan were 1.33 percent.⁹⁰ Commerce rescinded the second administrative reviews of the *Solar II* China orders.⁹¹ The preliminary results of the third administrative reviews of the China and Taiwan orders are expected in January 2019.

Notably, Commerce’s determination that certain so-called “hybrid” solar cells, which contain both a crystalline silicon component and a thin film component, are covered by the scope of the *Solar I* orders was upheld by the US Court of International Trade in 2017 and is now pending before the US Court of Appeals for the Federal Circuit.⁹² A related decision of the US Court of International Trade, involving the extent of US Customs and Borders Protection’s authority to determine whether merchandise is within the scope of an order, was reversed by the Court of Appeals.

Finally, in November, Commerce and the ITC initiated five-year “sunset” reviews of the *Solar I* orders, to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry.⁹³ After conducting expedited sunset reviews, Commerce determined that revocation of the orders would likely lead to a continuation or recurrence of dumping at weighted-average dumping

88. *Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules, from the People’s Republic of China*, 83 Fed. Reg. 34,828 (July 23, 2018) (final results of countervailing duty admin. rev. and partial rescission of countervailing duty admin. rev., 2015); *Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules, from the People’s Republic of China*, 83 Fed. Reg. 54,566 (Oct. 30, 2018) (amended final results of countervailing duty admin. rev., 2015); *Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules, from the People’s Republic of China*, 83 Fed. Reg. 35,616 (July 27, 2018) (final results of antidumping duty admin. rev. and final determ. of no shipments, 2015-2016).

89. *Certain Crystalline Silicon Photovoltaic Products from Taiwan*, 83 Fed. Reg. 30,401 (June 28, 2018) (final results of anti-dumping duty admin. rev., 2016–2017).

90. *Id.* at 30,402.

91. *Id.* at 30,403.

92. *SolarWorld Americas, Inc. v. United States*, 273 F. Supp. 3d 1254 (Court Int’l Trade Oct. 18, 2017).

93. *Initiation of Five-Year (Sunset) Reviews*, 82 Fed. Reg. 50,612 (Nov. 1, 2017); *Crystalline Silicon Photovoltaic Cells and Modules from China*, 82 Fed. Reg. 50, 681 (Nov. 1, 2017) (institution of five-year reviews).

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margins as high as 249.96 percent, and net countervailable subsidies at margins as high as 19.41 percent.⁹⁴

**B. CERTAIN HARDWOOD PLYWOOD PRODUCTS FROM CHINA AD/
CVD INVESTIGATIONS**

In November 2017, Commerce made affirmative final determinations in the AD/CVD investigations of hardwood plywood from China.⁹⁵ The weighted-average dumping margins calculated for mandatory respondents, separate-rate recipients, and the China-wide entity was 183.36 percent,⁹⁶ and the subsidy rates ranged from 22.98 percent to 194.90 percent.⁹⁷ In its final margin calculations in the AD investigation, Commerce relied upon the intermediate input methodology.⁹⁸ Following the ITC's final affirmative determination of material injury by reason of subject imports, the AD/CVD orders on hardwood plywood from China were published on January 4, 2018.⁹⁹

**C. ALUMINUM EXTRUSIONS CIRCUMVENTION PROCEEDING
INVOLVING VIETNAM**

On March 5, 2018, Commerce initiated anti-circumvention inquiries to determine whether extruded aluminum products that are exported from the

94. Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules, from the People's Republic of China, 83 Fed. Reg. 10,663 (Mar. 12, 2018) (final results of the expedited first sunset review of the anti-dumping duty order); Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules, from the People's Republic of China, 83 Fed. Reg. 10,431 (Mar. 9, 2018) (final results of the expedited first sunset review of the countervailing duty order).

95. See the Issues and Decision Memorandum accompanying Certain Hardwood Plywood Products from the People's Republic of China, 82 Fed. Reg. 53,460 (Nov. 16, 2017) (final determ. of sales at less than fair value, and final affirm. determ. of critical circumstances, in Part); see the Issues and Decision Memorandum accompanying Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China, 82 Fed. Reg. 53,473 (Nov. 16, 2017) (final affirm. determ., and final affirm. critical circumstances determ., in Part).

96. Certain Hardwood Plywood Products from the People's Republic of China, 83 Fed. Reg. 504 (Jan. 4, 2018) (amended final determ. of sales at less than fair value, and anti-dumping duty order).

97. Certain Hardwood Plywood Products from the People's Republic of China, 83 Fed. Reg. 513 (Jan. 4, 2018) (countervailing duty order).

98. See the Issues and Decision Memorandum accompanying Certain Hardwood Plywood Products from the People's Republic of China, 82 Fed. Reg. 53,460 at cmt. 2 (Nov. 16, 2017) (final determ. of sales at less than fair value, and final affirm. determ. of critical circumstances, in Part).

99. Certain Hardwood Plywood Products from the People's Republic of China, 83 Fed. Reg. 504 (Jan. 4, 2018) (amended final determ. of sales at less than fair value, and anti-dumping duty order); Certain Hardwood Plywood Products from the People's Republic of China, 83 Fed. Reg. 513 (Jan. 4, 2018) (countervailing duty order).

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Socialist Republic of Vietnam (Vietnam) are circumventing the AD¹⁰⁰ and CVD¹⁰¹ orders on aluminum extrusions from the People's Republic of China (China).¹⁰² Notably, Commerce initiated both a “merchandise completed or assembled in other foreign countries” inquiry pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act), and a “minor alterations” inquiry pursuant to section 781(c) of the Act.¹⁰³ Commerce initiated the anti-circumvention inquiries in response to a request from the Aluminum Extrusions Fair Trade Committee (AEFTC), who alleged that China Zhongwang Holdings Ltd. and its affiliates were circumventing the AD/CVD orders on aluminum extrusions by completing Chinese extrusions in Vietnam, by re-melting and re-extruding, and then shipping them to the United States. The AEFTC presented evidence that Vietnam's imports of Chinese aluminum extrusions, as well as Vietnam's exports of aluminum extrusions to the United States, have surged since the original investigations on aluminum extrusions, among other evidence. Commerce found the information provided by the AEFTC to be compelling enough to find that there exists a sufficient basis to initiate the anti-circumvention inquiries. Commerce's preliminary determination is currently pending.

V. Significant International Trade Commission Cases

A. LARGE DIAMETER WELDED PIPE FROM CANADA, CHINA, GREECE, INDIA, KOREA, AND TURKEY

Following a January 17, 2018 petition filed by a group of domestic producers of large diameter welded pipe for use in oil and gas and structural applications, the ITC issued affirmative preliminary determinations against imports from all of the subject countries – Canada, China, Greece, India, Korea and Turkey – in March 2018.¹⁰⁴ The ITC's vote was unanimous, with the four appointed Commissioners at the time finding a reasonable indication that the domestic industry was materially injured and threatened with material injury by reason of subject imports.¹⁰⁵ The ITC cumulated and found present material injury with regard to imports from Canada, China, India, Korea and Turkey. Finding Greek imports to be negligible, but also likely to imminently exceed the negligibility threshold, the ITC made an affirmative finding of threat of material injury with regard to Greece.¹⁰⁶

100. Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order, 76 Fed. Reg. 30,650 (May 26, 2011).

101. *Id.* at 30,653.

102. Aluminum Extrusions from the People's Republic of China: Initiation of Anti-Circumvention Inquiries, 83 Fed. Reg. 9,267 (Mar. 5, 2018).

103. *Id.* at 9,271-72.

104. Large Diameter Welded Pipe from Canada, China, Greece, India, Korea, and Turkey, Inv. Nos. 701-TA-593-596 and 731-TA-1401-1406, USITC Pub. 4768 (Mar. 2018) (Preliminary).

105. *Id.*

106. *Id.*

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Briefing has recently concluded in the final phase of the ITC's investigation.¹⁰⁷ Because the Commerce investigations on China and India proceeded more expeditiously than the other cases due to a lack of participation from Chinese and Indian respondents, the ITC will issue its final determinations on China and India in December 2018, with its final determinations on the four remaining countries following early the next year.

B. WIRE ROD FROM TEN COUNTRIES

In January 2018, the ITC found that the US wire rod industry was materially injured by dumped imports from Belarus, Russia, and the UAE.¹⁰⁸ While arguments for separate domestic like products were raised pertaining to grade 1080 and above tire bead and tire cord wire rod, the ITC defined a single domestic like product corresponding to the scope of the orders.¹⁰⁹ In March 2018, the ITC found that the US wire rod industry was materially injured by dumped imports of wire rod from South Africa and Ukraine.¹¹⁰ Finally, in May 2018, the agency found that the domestic wire rod industry was materially injured by wire rod imports from Italy, Korea, Spain, Turkey, Ukraine, and the United Kingdom.¹¹¹

C. STAINLESS STEEL FLANGES FROM INDIA AND CHINA

In August 2017, the ITC and Commerce began AD and CVD investigations of stainless steel flanges from China and India in response to the petitions filed with the ITC and Commerce by the Coalition of Stainless Steel Flange Producers.¹¹² Following affirmative preliminary determinations from both agencies, these investigations entered their final stages over the course of the spring and summer of 2018. The ITC found that the US stainless steel flanges industry was materially injured by subsidized and dumped imports from China on May 11, 2018 and July 13, 2018, respectively.¹¹³ On September 18, 2018, the ITC found that the US stainless steel flanges industry was materially injured by subsidized and dumped

107. *Id.*

108. Carbon and Certain Alloy Steel Wire Rod from Belarus, Russia, and the United Arab Emirates, Inv. Nos. 731-TA-1349, 1352, and 1357, USITC Pub. 4752 (Jan. 2018) (Final).

109. *Id.* at 9-15.

110. Carbon and Certain Alloy Steel Wire Rod from South Africa and Ukraine, Inv. Nos. 731-TA-1353 and 1356, USITC Pub. 4766 (Mar. 2018) (Final).

111. Carbon and Certain Alloy Steel Wire Rod from Italy, Korea, Spain, Turkey, and the United Kingdom, Inv. Nos. 701-TA-573-574 and 731-TA-1350, 1351, 1354, 1355, and 1358, USITC Pub. 4782 (May 2018) (final).

112. Stainless Steel Flanges from India, Inv. Nos. 701-TA-586 and 731-TA-1384, USITC Pub. 4828 at 1 (Sept. 2018) (Final); Stainless Steel Flanges from China, Inv. No. 731-TA-1383, USITC Pub. 4807 at 1 (July 2018) (Final); Stainless Steel Flanges from China, Inv. Nos. 701-TA-585, USITC Pub. 4788 at 1 (May 2018) (Final).

113. *See* Stainless Steel Flanges from India, Inv. Nos. 701-TA-586 and 731-TA-1384, USITC Pub. 4828 at I-1 – I-4 (Sept. 2018) (Final); *see also* Stainless Steel Flanges from China, Inv. No.

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imports from India.¹¹⁴ Commerce also reached affirmative determinations in both investigations as well.¹¹⁵ As a result of these affirmative findings from both the ITC and Commerce, AD and CVD orders are now in effect on stainless steel flanges from China at margins of 257.11 percent and 174.13 percent, respectively;¹¹⁶ and, AD and CVD orders are in place on stainless steel flanges from India at margins ranging from 19.16 percent to 145.25 and 4.92 percent to 256.16 percent, respectively.¹¹⁷

Notably, one of the respondent companies—Viraj Profiles Limited (Viraj),¹¹⁸ an affiliate of Bebitz Flange Works Pvt. Ltd.—in Commerce’s AD and CVD investigations of stainless steel flanges from India, was already prohibited from importing certain stainless steel products into the United States. In October 2014, the ITC began investigating Viraj’s imports of stainless steel products in response to a September 2014 complaint filed by Slater Stainless, Inc., Valbruna Stainless, Inc., and Acciaierie Valbruna S.p.a. (collectively, Valbruna), which alleged that Viraj had violated section 337 of the Act by importing and selling certain stainless steel products manufactured using Valbruna’s stolen trade secrets.¹¹⁹ On May 25, 2016, the ITC found that Viraj had violated section 337 of the Act, and issued a limited exclusion order against Viraj, in which it prohibited Viraj from importing into the United States for a period of 16.7 years any stainless steel products that were manufactured or sold using any of the misappropriated trade secrets from Valbruna.¹²⁰ On September 11, 2017, the US Court of Appeals for the Federal Circuit affirmed the ITC’s decision.¹²¹

731-TA-1383, USITC Pub. 4807 at I-1 – I-3 (July 2018) (Final); *see also* Stainless Steel Flanges from China, Inv. Nos. 701-TA-585, USITC Pub. 4788 at I-1 – I-2 (May 2018) (Final).

114. Stainless Steel Flanges from China, Inv. Nos. 701-TA-585, USITC Pub. 4788 at 36, I-2 (May 2018) (Final); Stainless Steel Flanges from China, Inv. No. 731-TA-1383, USITC Pub. 4807 at 4, I-2 (July 2018) (Final).

115. *See* Stainless Steel Flanges from India, Inv. Nos. 701-TA-586 and 731-TA-1384, USITC Pub. 4828 at 8, I-2 (Sept. 2018) (Final).

116. Stainless Steel Flanges from China, Inv. No. 731-TA-1383, USITC Pub. 4807 at I-3 (July 2018) (Final); Stainless Steel Flanges from China, Inv. Nos. 701-TA-585, USITC Pub. 4788 at I-10 (May 2018) (Final).

117. Stainless Steel Flanges from India, Inv. Nos. 701-TA-586 and 731-TA-1384, USITC Pub. 4828 at I-3 – I-4 (Sept. 2018) (Final).

118. *See* Stainless Steel Flanges from India, Inv. Nos. 701-TA-586 and 731-TA-1384, USITC Pub. 4828 at I-4 (Sept. 2018) (Final).

119. *See* Certain Stainless Steel Products, Certain Processes for Manufacturing or Relating to Sam, and Certain Products Containing Same, Inv. No. 337-TA-933, 2016 WL 4103468 at 1 (May 25, 2016) (Viraj Limited Exclusion Order).

120. *Id.* at 1-3.

121. *Viraj Profiles Ltd. v. Int’l Trade Comm’n*, 697 Fed. Appx. 699 (Fed. Cir. 2017).

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D. HARDWOOD PLYWOOD FROM CHINA

In December 2017, the ITC issued an affirmative final determination of material injury with respect to imports of hardwood plywood from China.¹²² Back in November 2016, the ITC had instituted investigations into imports of hardwood plywood from China, following the filing of a petition by the Coalition for Fair Trade of Hardwood Plywood and its individual members.¹²³ In a unanimous decision in December 2017, the ITC found that an industry in the United States is materially injured by reason of dumped and subsidized imports of hardwood plywood from China.¹²⁴ Specifically, the ITC found that the volume of subject imports, as well as the increase in volume, was significant both in absolute terms and relative to production and consumption.¹²⁵ In addition, the ITC found there was significant underselling of the domestic like product by subject imports and that the significant and increasing volume of low-priced subject imports prevented price increases that otherwise would have occurred.¹²⁶ Furthermore, the ITC concluded that dumped and subsidized imports of hardwood plywood from China had a significant impact on the domestic industry.¹²⁷

VI. Section 337 Developments

Several significant section 337 developments occurred in 2018. These included: (1) the promulgation by the ITC of revisions to its section 337-related regulations; (2) three key decisions by the US Court of Appeals for the Federal Circuit (CAFC); and (3) several seminal Commission determinations.

This year, the ITC published a final rule to amend its regulations relating to the rules of practice and procedure governing section 337 investigations (the Final Rule), and the Final Rule entered into effect on June 7, 2018.¹²⁸

The CAFC issued three important decisions in 2018. In *Diebold Nixdorf*, the CAFC reversed the ITC's ruling in the *Certain Automated Teller Machines, ATM Modules, Components Thereof, and Products Containing the Same* case (Inv. No. 337-TA-989) and held that that all of the asserted claims of the patent at issue of the complainant, Nautilus Hyosung, were invalid as indefinite and that, therefore, Diebold Nixdorf had not violated section

122. Hardwood Plywood from China, 82 Fed. Reg. 61,325 (Dec. 27, 2017); Hardwood Plywood from China, Inv. Nos. 701-TA-565 and 731-TA-1341, USITC Pub. 4747 at 1 (Dec. 2017) (Final) [hereinafter Hardwood Plywood ITC Determination].

123. Hardwood Plywood from China, Inv. Nos. 701-TA-565 and 731-TA-1341, USITC Pub. 4747 at 1 (Dec. 2017) (Final).

124. *See generally id.*

125. *See id.* at 21–22.

126. *Id.* at 22–24.

127. *Id.* at 25–28.

128. *Id.*

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337.¹²⁹ In *Converse*, the CAFC vacated the decision that the ITC had issued in the *Certain Footwear Products* (Inv. No. 337-TA-936) and remanded the matter to the ITC for further proceedings based on the CAFC's determination that the ITC had erred by applying incorrect standards in determining trademark invalidity and infringement.¹³⁰ In *DBN Holding*, the CAFC ruled in favor of DBN Holding, which was previously known as DeLorme Publishing Company (DeLorme), and reversed and remanded a decision issued by the ITC in response to a petition filed by DeLorme asking the ITC to rescind or modify a civil penalty order based upon the CAFC's determination that the ITC erred in finding that DeLorme's arguments were barred by *res judicata*.¹³¹

The ITC also issued several seminal decisions in 2018. In *Certain Non-Volatile Memory Devices and Products Containing Same* (Inv. No. 337-TA-1046), the ITC held that economic investments and activities related to research prototypes can meet the economic prong of the domestic industry requirement.¹³² In addition, in *Certain Solid State Storage Drives, Stacked Electronics Components*, the ITC ruled that investments in non-manufacturing activities, such as engineering and research and development, can be used to satisfy the domestic industry requirements relating to "significant investment in US plant and equipment" or "significant employment of US labor or capital."¹³³ Moreover, in *Robotic Vacuum Cleaning Devices*, the ITC reaffirmed that the economic prong of the domestic industry requirement could be satisfied by, among other expenditures, significant investment in engineering labor in the United States, even if the manufacturing of the subject products occurred in a foreign country.¹³⁴ Collectively, these rulings demonstrate that the statute's requirements relating to plant, labor, or capital investments can be satisfied by engineering and development activities that fit within those general categories.

129. *Diebold Nixdorf, Inc. v. Int'l Trade Comm'n*, 899 F.3d 1291 (Fed. Cir. Aug. 15, 2018).

130. *Converse, Inc. v. Int'l Trade Comm'n*, 909 F.3d 1110 (Fed. Cir. Oct. 30, 2018).

131. *DBN Holding, Inc. v. Int'l Trade Comm'n*, 2017-2128, 2018 WL 6181653 (Fed. Cir. Nov. 27, 2018).

132. *See generally* *Certain Non-Volatile Memory Devices and Products Containing Same* Notice of the Commission's Final Determination Finding a Violation of Section 337; Issuance of a Limited Exclusion Order and Cease and Desist Orders; Termination of the Investigation, 83 Fed. Reg. 51,980 (Oct. 15, 2018).

133. *Certain Solid State Storage Drives, Stacked Electronics Components, and Products Containing Same*, Inv. No. 337-TA-1097 (June 29, 2018).

134. *See generally* *Certain Robotic Vacuum Cleaning Devices and Components Thereof Such as Spare Parts*; Notice of the Commission's Final Determination Finding a Violation of Section 337; Issuance of a Limited Exclusion Order and Cease and Desist Orders; Termination of the Investigation, 83 Fed. Reg. 63,186 (Dec. 7, 2018).

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