

# TRADE LAW UPDATE



November 2020

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## PRESIDENTIAL ACTIONS

### [EU Releases New Complaint System to Address Trade Deal Violations and Market Barriers](#)

The European Commission [debuted](#) their new complaints system for stakeholders to report harmful trade barriers and violations to European Union (“EU”) trade agreements. The “[Single Entry Point](#)” complaints system allows member states, companies, trade associations, civil society groups and EU citizens to report any market access barriers and non-compliance of Trade and Sustainable Development commitments which are part of EU trade agreements or under the Generalised Scheme of Preferences.

### [EU Imposes Tariffs on U.S. Following WTO Decision on Boeing Subsidies](#)

The European Union (“EU”) has imposed additional tariffs on approximately \$4 billion worth of U.S. goods, after a World Trade Organization (WTO) [decision](#) last month authorized proportionate retaliation against the U.S. for its subsidies to Boeing. According to the European Commission’s [Implementing Regulation](#) published in the Official Journal of the European Union on November 9, 2020, negotiations with the U.S. to settle the dispute over subsidies to their respective aircraft industries “have so far not yielded results,” while the U.S. still maintains tariffs on approximately \$7.5 billion worth of European goods as a result of a parallel WTO decision authorizing U.S. retaliation against the EU.

### [USTR Requests That ITC Conduct Section 332 Investigation to “Monitor and Investigate” Imports of Strawberries and Bell Peppers](#)

In a November 3, 2020 letter, U.S. Trade Representative (“USTR”) Robert E. Lighthizer [requested](#) that the International Trade Commission (“ITC”) “monitor and investigate imports of strawberries and bell peppers” pursuant to section 332(g) of the Tariff Act of 1930. Section 332 is a provision that allows USTR to ask for a fact-finding investigation by the ITC, but does not result directly in any trade relief. USTR’s request follows the September 1, 2020 announcement of an [interagency plan](#) to address the threat of increased imports of perishable fruits and vegetables to American producers.

## U.S. DEPARTMENT OF COMMERCE DECISIONS

### Investigations

- There have been no final determinations of investigation from the Department of Commerce during the month of November 2020.

### Administrative Reviews

- Fresh Garlic from the People's Republic of China: On November 6, 3030, Commerce issued its final [results](#) in the 24<sup>th</sup> antidumping duty administrative review (2017-2018).
- Steel Concrete Reinforcing Bar from Mexico: On November 6, 2020, Commerce issued its final [results](#) in the antidumping duty administrative review (2017-2018).
- Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: On November 6, 2020, Commerce issued its final [results](#) in the antidumping duty administrative review (2017-2018).
- Diamond Sawblades and Parts Thereof from the People's Republic of China: On November 9, 3030, Commerce issued its final [results](#) in the antidumping duty administrative review (2017-2018).
- Chlorinated Isocyanurates from the People's Republic of China: On November 9, 2020, Commerce issued its final [results](#) in the countervailing duty administrative review (2017).
- Monosodium Glutamate from the Republic of Indonesia: On November 10, 2020, Commerce issued its final [results](#) in the antidumping duty administrative review (2017-2018).
- Citric Acid and Certain Citrate Salts from Colombia: On November 13, 2020, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Certain Carbon Butt-Weld Pipe Fittings from the People's Republic of China: On November 24, 2020, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Stainless Steel Bar from India: On November 24, 2020, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Multilayered Wood Flooring from the People's Republic of China: On November 27, 2020, Commerce issued its final [results](#) in the countervailing duty administrative review (2017).
- Certain Steel Nails from Taiwan: On November 27, 2020, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Welded Line Pipe from the Republic of Korea: On November 30, 2020, Commerce issued its final [results](#) in the antidumping duty administrative review (2017-2018).
- Certain Softwood Lumber from Canada: On November 30, 2020, Commerce issued its final [results](#) in the antidumping duty administrative review (2017-2018).

### Circumvention Inquiries

- There have been no determinations of circumvention by the Department of Commerce during the month of November 2020.

### Changed Circumstances Reviews

- Certain Frozen Warmwater Shrimp from India: On November 5, 2020, Commerce issued the final [results](#) of the antidumping duty changed circumstances reviews.

### Sunset Reviews

- Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: On November 4, 2020, Commerce issued the final [results](#) of the antidumping duty sunset review.
- Hand Trucks and Certain Parts Thereof from the People's Republic of China: On November 4, 2020, Commerce issued the final [results](#) of the antidumping duty sunset review.
- Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: On November 9, 2020, Commerce issued the final [results](#) of the countervailing duty sunset review.
- Chloropicrin from the People's Republic of China: On November 9, 2020, Commerce issued the final [results](#) of the antidumping duty sunset review.

## U.S. INTERNATIONAL TRADE COMMISSION

### Section 701/731 Proceedings

#### Investigations

- Glass Containers from China: On November 5, 2020, the ITC made a negative final [decision](#) in the antidumping duty investigation, finding no material injury.

#### Sunset Review Decisions

- Tetrahydrofurfuryl Alcohol from China: On November 2, 2020, the ITC published its final affirmative [decision](#) to continue the antidumping order as revocation would lead to the recurrence or continuation of injury.
- Prestressed Concrete Steel Wire Strand from Brazil, India, Japan, Korea, Mexico, and Thailand: On November 3, 2020, the ITC published its final affirmative [decision](#) to continue the antidumping and countervailing orders as revocation would lead to the recurrence or continuation of injury.
- Commodity Matchbooks from India: On November 3, 2020, the ITC published its final affirmative [decision](#) to continue the antidumping and countervailing duty orders as revocation would lead to the recurrence or continuation of injury.
- Certain Frozen Fish Fillets from Vietnam: On November 24, 2020, the ITC published its final affirmative [decision](#) to continue the antidumping duty order as revocation would lead to the recurrence or continuation of injury.
- Oil Country Tubular Goods from China: On November 27, 2020, the ITC published its final affirmative [decision](#) to continue the antidumping and countervailing duty orders as revocation would lead to the recurrence or continuation of injury.

#### Section 337 Proceedings

- Certain Dental and Orthodontic Scanners and Software: On November 23, 2020, the ITC published its final negative [decision](#) finding no violation of Section 337.



## U.S. CUSTOMS & BORDER PROTECTION

- In an October 28, 2020 [ruling](#), CBP declared that a license fee paid to an unaffiliated company for the purpose of using an eco-friendly resin in the manufacture of shoe insoles is dutiable.
- In a November 11, 2020 [bulletin](#), CBP proposed modifying rulings and similar treatment for vehicle lifts.

## COURT OF INTERNATIONAL TRADE

### Summary of Decisions

#### [20-158](#)

On November 4, 2020, the CIT remanded Commerce's final results in the antidumping duty administrative review of stainless steel bar from India. The Government requested a remand so that Commerce may "reconsider or further explain its application of [the] revised partial [AFA] methodology, its change in methodology from the preliminary results to the final results, and if appropriate, the rates assigned to the respondents." The CIT found that the Government established that its remand request is "based on concerns that are substantial and legitimate" and granted the Government's request. The final results

were remanded to Commerce for further explanation or reconsideration of its selection of partial AFA in the final results.

#### [20-160](#)

On November 9, 2020, the CIT remanded Commerce's final results in the sixth antidumping duty administrative review of large power transformers from Korea. The Government requested a remand for Commerce to address documents the CIT received from Hyundai presented at verification, and, if necessary, reconsider its reliance on total AFA. The CIT found that the Government's remand request was

supported by substantial and legitimate concerns, and granted the Government's request.

#### [20-161](#)

On November 10, 2020, the CIT sustained Commerce's final results in the first antidumping duty administrative review of hot-rolled steel from Japan. According to the CIT, Commerce reasonably determined that NSSMC possessed the ability to obtain downstream sales from its affiliated resellers. The CIT found that it was reasonable for Commerce to determine that NSSMC did not put forth "maximum efforts" to report downstream sales.

Therefore, the Court found that Commerce's decision to apply AFA was reasonable and Commerce articulated a reasonable rationale for its selection of AFA.

#### [20-163](#)

On November 16, 2020, the CIT remanded Commerce's remand results in the first antidumping duty administrative review of certain steel nails from Taiwan. The CIT concluded that Commerce's use of an adverse inference was supported by substantial evidence and a reasonable explanation. However, the Court could not conclude that Commerce adequately corroborated the petition rate and therefore ordered Commerce to reconsider its selection of the 78.17 percent AFA rate.

#### [20-165](#)

On November 18, 2020, the CIT remanded in part and sustained in part Commerce's remand results in the fourth antidumping duty administrative review of large power transformers from Korea. The CIT ordered Commerce to clarify or reconsider its decision not to issue a

supplemental questionnaire to Hyosung and to reconsider its decision to rely on total AFA to determine HHI's margin. The CIT sustained Commerce's remand results in all other respects.

#### [20-166](#)

On November 19, 2020, the CIT declined modifying the preliminary injunction and therefore effectively terminated an exemption from safeguard duties on imported bifacial solar modules pursuant to Proclamation 10101.

#### [20-167](#)

On November 19, 2020, the CIT remanded Commerce's final results in the countervailing duty expedited review of certain softwood lumber products from Canada. The CIT remanded the final results to Commerce for further reconsideration of the statutory basis authorizing the agency's promulgation of 19 C.F.R. § 351.214(k).

#### [20-168](#)

On November 23, 2020, the CIT sustained in part and remanded in part Commerce's remand results in the 2015-2016 antidumping duty administrative review of circular welded non-alloy steel pipe from Korea. The CIT ordered Commerce to explain the statutory authority to conduct a cost-based particular market situation analysis when normal value is based on home market sales and to adjust the cost of production for purposes of the sales-below-cost test.

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

#### [19-2381](#)

On November 30, 2020, the CAFC affirmed a CIT decision to affirm Commerce's interpretation of an antidumping duty order on steel threaded rod from China. The CIT had found that certain steel threaded rod components found in joint restraint kits imported by Star Pipe were subject to the order. The CAFC affirmed because substantial evidence supported Commerce's finding that the joint restraint kits were within the scope of the order. No prior guidance indicated that the order should be interpreted outside of its literal terms.

## EXPORT CONTROLS AND SANCTIONS

### [BIS Amends License Review Policy for National Security Controlled Items Destined for China, Venezuela, and Russia](#)

The U.S. Department of Commerce's Bureau of Industry and Security ("BIS") issued a [final rule](#) effective October 29, 2020 amending Section 742.4(b)(7) of the Export Administration Regulations ("EAR") to revise the license review policy for items controlled for National Security reasons ("NS items") destined for the People's Republic of China ("China"), Venezuela, or the Russian Federation ("Russia").

According to the final rule, BIS will review all NS item applications involving China, Russia or Venezuela to determine the risk of diversion to a "military end user" or for a "military end use." Exports, reexports and transfers of NS items destined for civil end users and civil end uses in China, Venezuela or Russia are subject to a presumption of approval, while BIS will apply a presumption of denial when reviewing applications for exports, reexports or transfers of NS items that will make a "material contribution" to the "development, production, maintenance, repair, or operation" of weapon systems, subsystems and assemblies in those three countries.

### [White House Rescinds Sudan's State Sponsor of Terrorism Designation, Continues National Emergency](#)

On November 2, 2020, the White House released a [notice](#) continuing the national emergency with respect to Sudan declared in Executive Order 13067 of 1997. Secretary of State Mike Pompeo issued a [press statement](#) clarifying that the United States is continuing certain Sudan-related sanctions pursuant to obligations to the United Nations ("UN"), but that the notice of continuation "does not reflect negatively on our improved bilateral relationship with Sudan...and does not have any impact on the decision or procedures to rescind Sudan's State Sponsor of Terrorism (SST) designation." On October 26, 2020 the President issued a [Certification of Rescission](#) regarding the 1993 determination that the government of Sudan supports acts of international terrorism, following a [peace agreement](#) between Sudan and Israel a few days earlier.

### [BIS Requests Comments on Proposed Controls for Certain Software](#)

On November 6, 2020, BIS published a [proposed rule](#) in the Federal Register proposing to add certain software to the Commerce Control List ("CCL") and thereby place export controls on it. BIS seeks comments on its proposed rule by December 21, 2020 so that it can ensure the proposed controls are "effective and appropriate" regarding their potential impact on "commercial or scientific applications."

### [Executive Order Prohibits U.S. Persons from Investing in "Communist Chinese Military Companies"](#)

President Trump issued an [Executive Order](#) ("E.O.") on November 12, 2020 titled "Addressing the Threat from Securities Investments that Finance Communist Chinese Military Companies." The E.O., which will be published in the Federal Register on November 17, 2020 and will take effect on January 11, 2021 at 9:30 eastern standard time, designates thirty one (31) Chinese companies as "Communist Chinese military companies" and prohibits U.S. persons, including U.S. citizens, permanent resident aliens, entities organized under U.S. law or any persons in the United States, from conducting "transactions" in publicly traded securities issued by those Communist Chinese military companies.

### [BIS Amends EAR to Implement Export Enforcement Provisions of Export Control Reform Act](#)

The U.S. Department of Commerce's Bureau of Industry and Security ("BIS") recently issued a [final rule](#), effective November 18, 2020, which revises certain provisions of the Export Administration Regulations ("EAR") to implement enforcement provisions pursuant to the Export Control Reform Act of 2018 ("ECRA"), which expanded the export control authorities available to the Secretary of Commerce. BIS also amended the EAR with respect to the issuance of licenses and denial orders and the payment of civil penalties, not directly related to implementation of ECRA.