

# TRADE LAW UPDATE



December 2020

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## PRESIDENTIAL ACTIONS

### [USTR Announces First USMCA Enforcement Action to Address Canada's Tariff-Rate Quotas for Dairy Products](#)

United States Trade Representative (“USTR”) [announced](#) the very first enforcement action under the United States-Mexico-Canada Agreement (“USMCA”) to address Canada’s tariff-rate quotas (“TRQs”) on imported dairy products, which the USTR alleges are in violation of various USMCA Articles to the detriment of U.S. dairy producers. USTR’s announcement follows [complaints from U.S. dairy farmers](#) and [Members of Congress](#) received earlier this year over Canada’s use of TRQs. USTR stated in its announcement that it was “disappointed that Canada’s policies have made this first ever enforcement action under the USMCA necessary to ensure compliance with the agreement.”

### [USITC To Begin Monitoring Imports of Strawberries and Bell Peppers at USTR's Request](#)

The U.S. International Trade Commission (“USITC”) [announced](#) on December 2, 2020 that it would begin monitoring imports of bell peppers and strawberries pursuant to Section 332 of the Tariff Act of 1930, following a [request](#) from the United States Trade Representative (“USTR”) Robert E. Lighthizer. The USITC will monitor imports of the subject products for a 90-day period and will have three weeks to prepare and submit a recommendation to the president with the appropriate trade remedies.

### [UK and EU Agree on Post-Brexit Trade and Cooperation Agreement](#)

On December 24, 2020, the United Kingdom (“UK”) and European Union (“EU”) [agreed on](#) a [Trade and Cooperation Agreement](#) to facilitate free trade between the UK and EU following the UK’s official exit from the EU on January 2, 2020. The UK Parliament approved the agreement and Prime Minister Boris Johnson signed it into law on December 30, 2020. The EU has adopted the agreement on a provisional basis, taking effect January 1, 2021, until it is approved by the European Parliament

## U.S. DEPARTMENT OF COMMERCE DECISIONS

### Investigations

- Forged Steel Fluid End Blocks from [India](#), [Italy](#), [Germany](#), and [China](#): On December 11, 2020, Commerce issued its final affirmative determination in the countervailing duty investigations.
- Forged Steel Fluid End Blocks from India: On December 11, 2020, Commerce issued its final negative [determination](#) in the antidumping duty investigation.
- Forged Steel Fluid End Blocks from [Italy](#) and [Germany](#): On December 11, 2020, Commerce issued its final affirmative determination in the antidumping duty investigations.
- Prestressed Concrete Steel Wire Strand from the Republic of Turkey: On December 11, 2020, Commerce issued its final affirmative [determination](#) in the countervailing duty investigation.
- Prestressed Concrete Steel Wire Strand From Argentina, Colombia, Egypt, the Netherlands, Saudi Arabia, Taiwan, the Republic of Turkey, and the United Arab Emirates: On December 11, 2020, Commerce issued its final affirmative [determination](#) in the antidumping duty investigations.

### Administrative Reviews

- Certain Hardwood Plywood Products from the People's Republic of China: On December 1, 2020, Commerce issued its final [results](#) in the antidumping duty administrative review (2017-2018).
- Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: On December 1, 2020, Commerce issued its final [results](#) in the antidumping duty administrative review (2017-2018).
- Certain Softwood Lumber Products from Canada: On December 1, 2020, Commerce issued its final [results](#) in the countervailing duty administrative review (2017-2018).
- Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: On December 7, 2020, Commerce issued its final [results](#) in the antidumping duty administrative review (2017-2018).
- Laminated Woven Sacks from the People's Republic of China: On December 7, 2020, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: On December 9, 2020, Commerce issued its final results in the [antidumping](#) (2017-2018) and [countervailing](#) (2017) duty administrative reviews.
- Large Residential Washers from Mexico: On December 16, 2020, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Certain Frozen Warmwater Shrimp from the People's Republic of China: On December 23, 2020, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: On December 28, 2020, Commerce issued its final [results](#) in the countervailing duty administrative review (2018).
- Certain Frozen Warmwater Shrimp from India: On December 29, 2020, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Low Melt Polyester Staple Fiber from the Republic of Korea: On December 29, 2020, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Stainless Steel Bar from India: On December 30, 2020, Commerce issued its amended final [results](#) in the antidumping duty administrative review (2018-2019).
- Fine Denier Polyester Staple Fiber from India: On December 30, 2020, Commerce issued its final [results](#) in the countervailing duty administrative review (2017-2018).

### Circumvention Inquiries

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

### Changed Circumstances Reviews

- There have been no results of changed circumstances reviews by the Department of Commerce during the month of December 2020.

## Sunset Reviews

- Certain Preserved Mushrooms from Chile, India, Indonesia, and the People's Republic of China: On December 4, 2020, Commerce issued the final [results](#) of the antidumping duty sunset review.
- Diamond Sawblades and Parts Thereof from the People's Republic of China: On December 7, 2020, Commerce issued the final [results](#) of the second antidumping duty sunset review.
- Certain Crepe Paper Products from the People's Republic of China: On December 7, 2020, Commerce issued the final [results](#) of the third antidumping duty sunset review.
- Prestressed Concrete Steel Wire Strand from the People's Republic of China: On December 31, 2020, Commerce issued the final results of the [antidumping](#) and [countervailing](#) duty sunset reviews.

## U.S. INTERNATIONAL TRADE COMMISSION

### Section 701/731 Proceedings

#### Investigations

- Forged Steel Fittings from India and Korea: On December 23, 2020, the ITC made affirmative final [decisions](#) in the antidumping and countervailing duty investigations, finding material injury.

#### Sunset Review Decisions

- Non-Oriented Electrical Steel from China, Germany, Japan, Korea, Sweden, and Taiwan: On December 16, 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.
- Citric Acid and Certain Citrate Salts from China: On December 28, 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.



#### Section 337 Proceedings

- Certain Movable Barrier Operator Systems and Components Thereof: On December 9, 2020, the ITC published its final affirmative [decision](#) finding a violation of Section 337.
- Certain Botulinum Toxin Products, Processes for Manufacturing or Relating to Same and Certain Products Containing Same: On December 22, 2020, the ITC published its final affirmative [decision](#) finding a violation of Section 337.

## U.S. CUSTOMS & BORDER PROTECTION

- On December 3, 2020, CBP issued an affirmative EAPA [determination](#) pertaining to Fedmet Resources Corporation, LLC and the AD and CVD orders on certain magnesia carbon brick from China.
- On December 21, 2020, CBP issued a negative EAPA [determination](#) pertaining to Tiana International LLC and the AD and CVD orders on glycine from China.
- In a December 28, 2020 [CSMS message](#), CBP stated that a SIMA license is required for imports of pipe spool components.
- On December 30, 2020, CBP [issued](#) a new forced labor withhold release order on palm oil and products containing such produced by Sime Darby Plantation Berhad and its affiliates in Malaysia.
- CBP issued a [notice](#) announcing the lapse of the [Generalized System of Preferences](#) (GSP) special tariff program, effective December 31, 2020, unless renewed by an act of Congress. CBP encourages importers to instruct their broker to flag entries of GSP eligible items with SPI "A" until further notice, starting on January 1, 2021, but importers may not file SPI "A" without paying normal duties at the time of entry.

# COURT OF INTERNATIONAL TRADE

## Summary of Decisions

### [20-171](#)

On December 1, 2020, the CIT remanded CBP's affirmative determination of evasion in EAPA case no. 7238. The CIT ordered CBP to reconsider or further explain its decision to reject Royal Brush's rebuttal submission, and ordered CBP to comply with the public summarization regulatory requirements with respect to Royal Brush.

### [20-173](#)

On December 3, 2020, the CIT sustained Commerce's final determination in the antidumping duty investigation of steel propane cylinders from Thailand. The CIT sustained Commerce's use of zinc coating in the model-match methodology and its conclusion that Sahamit's cost of production information is reliable as supported by substantial evidence.

### [20-177](#)

On December 9, 2020, the CIT denied without prejudice Transpacific's motion to enforce the court's judgment that in issuing Proclamation 9772 the President has exceeded his statutory authority and violated Transpacific's Fifth Amendment guarantees. The judgment is pending an appeal to the U.S. Court of Appeals for the Federal Circuit. According to the CIT, Transpacific has not demonstrated that the Government had not complied with the judgment.

### [20-178](#)

On December 10, 2020, the CIT sustained Commerce's second remand determination in the second antidumping duty administrative review on multilayered wood flooring from China. The Plaintiffs did not challenge Commerce's second remand redetermination to recalculate Senmao's margins after removing an irrecoverable VAT downward adjustment to Senmao's export price.

### [20-179](#)

On December 18, 2020, the CIT sustained Commerce's final results in the 2016 countervailing duty administrative review on chlorinated isocyanurates from China. The CIT determined that Commerce did not err in determining an AFA rate for the Export Buyer's Credit Program and that its selection of 0.87% as the AFA rate is supported by substantial evidence.

### [20-180](#)

On December 21, 2020, the CIT sustained in part and remanded in part Commerce's final results in the 2016-

2017 antidumping duty administrative review on certain frozen fish fillets from Vietnam. The CIT sustained Commerce's use of Japfa Comfeed's financial statements to calculate surrogate financial ratios and Commerce's use of the 2012 data to calculate surrogate values. The CIT remanded the agency's denial of byproduct offsets for fish oil and fish meal for further reconsideration.

### [20-181](#)

On December 21, 2020, the CIT remanded Commerce's remand results in the 2016-2017 antidumping duty administrative review on circular welded carbon steel pipes and tubes from Thailand. The CIT found that Commerce's "cost-based particular market situation determination to disregard sales as outside the ordinary course of trade...is contrary to law." The CIT remanded Commerce's remand results to remove the cost-based particular market situation determinations and to recalculate the margins without the particular market adjustment.

### [20-182](#)

On December 21, 2020, the CIT sustained in part and remanded in part Commerce's remand results in the antidumping duty administrative review on certain passenger vehicle and light truck tires from China. The CIT sustained Commerce's assignment of the China-wide entity rate to Pirelli, Commerce's upward adjustment of Sentury's export price, and Commerce's successor-in-interest determination. The CIT remanded Commerce's calculation of Sentury's export price based on a VAT deduction and instructed the agency to eliminate the adjustments made for Sentury's irrecoverable VAT.

### [20-183](#)

On December 21, 2020, the CIT sustained in part and remanded in part Commerce's second remand results in the antidumping duty administrative review of hardwood and decorative plywood and certain veneered panels from China. The CIT sustained Commerce's revised dumping margin for Linyi Chengen and remanded Commerce's determination of the dumping margin for the separate rate plaintiffs.

### [20-187](#)

On December 21, 2020, the CIT remanded Commerce's remand redetermination in the tenth antidumping duty administrative review of certain activated carbon from China. The CIT remanded Commerce's inclusion of French

export data in calculating the surrogate value for carbonized material. According to the CIT, Commerce failed to cite any evidence that French exports provided an accurate comparison.

#### [20-189](#)

On December 22, 2020, the CIT sustained Commerce's final results in the second antidumping duty administrative review of certain passenger vehicle and light truck tires

from China. The CIT found that Commerce's reliance on one respondent's rate for the separate rate respondents was lawful and supported by substantial evidence and that Commerce's denial of the untimely withdrawal requests was reasonable.

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

#### [19-2395](#)

On December 3, 2020, the CAFC affirmed in part, vacated and remanded in part a decision of the CIT to uphold Commerce's final determination in the antidumping duty investigation of certain carbon and alloy steel cut-to-length plate from France. The CAFC vacated the CIT's judgment sustaining Commerce's decision to rely on Dillinger's books and records to determine cost. The CAFC affirmed the CIT's judgment sustaining Commerce's determinations of the pattern requirement of the average-to-transaction method and level of trade. The case was remanded by the CAFC to the CIT for Commerce to recalculate Dillinger's dumping margin.

#### [20-1501](#)

On December 17, 2020, the CAFC affirmed a remand decision of the CIT in the anticircumvention inquiry on certain aluminum extrusions from China. Because Commerce did not provide adequate notice to Tai-Ao and Regal, Commerce's instructions to suspend liquidation were not in accordance with law. The CAFC affirmed the CIT's decision to sustain Commerce's revised liquidation instructions.

## EXPORT CONTROLS AND SANCTIONS

### [U.S. Sanctions Turkey's Defense Procurement Entity Over Its Purchase of Russian Missile System](#)

The U.S. Department of State [announced](#) the imposition of sanctions on Turkey's Presidency of Defense Industries ("SSB") pursuant to Section 231 of the Countering America's Adversaries Through Sanctions Act ("[CAATSA](#)"). The U.S. is sanctioning SSB over its procurement of the S-400 surface-to-air missile system from Russia's Rosoboronexport ("ROE"). SSB is Turkey's primary defense procurement entity and ROE is Russia's main exporter of arms. As a result of Turkey's actions, the U.S. is imposing full blocking sanctions on four SSB officials along with certain non-blocking CAATSA sanctions on the SSB entity.

### [Sudan's Sponsor of Terrorism Designation Officially Rescinded](#)

The U.S. Department of State [announced](#) that Sudan's designation as a "State Sponsor of Terrorism" has been officially rescinded effective December 14, 2020. In October, the President [notified](#) Congress that Sudan's designation would be rescinded and certified that Sudan had not provided support for acts of terrorism within the last six months, and that Sudan has provided assurances it will not support terrorism in the future. Until the Export Administration Regulations ("EAR") are amended, however, items controlled under Export Control Classification Numbers ("ECCNs") that are subject to anti-terrorism ("AT") controls will still require a license for export or reexport to Sudan pursuant to the AT controls under Section 742.10 of the EAR. Once the Department of Commerce adopts those amendments to the EAR, it will be permissible to export or reexport AT-controlled ECCN items to Sudan without a license.

### [BIS Adds Over 70 New Entities to the Entity List, Including SMIC](#)

The U.S. Department of Commerce's Bureau of Industry and Security ("BIS") has issued a final rule amending the Export Administration Regulations ("EAR") to add 77 entities to the Entity List. This rule took effect on Friday, December 18, 2020 when BIS made a copy available for public inspection on the Federal Register website. As a result of these Entity List designations, the EAR will now require BIS licensing for any exports, reexports or in-country transfers of items "subject to the EAR" to these entities. The designated entities include 60 Chinese companies and additional entities from the countries of Bulgaria, France, Germany, Italy, Malta, Pakistan, Russia and the United Arab Emirates.

### [OFAC Sanctions CEIEC for Its Support to Venezuela Regime](#)

The U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) has [sanctioned](#) CEIEC (China National Electronic Import-Export Company), a Chinese technology exporter, for its alleged support to the Maduro government in Venezuela. As a result of CEIEC's addition to OFAC's Specially Designated Nationals List, all property and interests belonging to CEIEC, or any entity in which it owns a 50% or greater interest—and which are in the United States or in the possession or control of U.S. persons—must be blocked and reported to OFAC. According to OFAC, CEIEC has provided software, training, and technical expertise to the government of Venezuela since 2017, which has been used to oppress the Venezuelan people.