

# TRADE LAW UPDATE



February 2021

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## PRESIDENTIAL ACTIONS

### [USITC Determines Imports of Blueberries Do Not Injure U.S. Industry](#)

The U.S. International Trade Commission (“USITC”) [determined](#) in a unanimous vote on February 11, 2021 that imports of fresh, chilled, or frozen blueberries have not increased in quantities sufficient to be a serious cause of injury to the domestic industry. On September 29, 2020, the United States Trade Representative [requested](#) that the USITC initiate an investigation under Section 201 of the Trade Act of 1974 (“global safeguard investigation”), as part of the previous U.S. administration’s [interagency plan](#) to address increased imports of certain perishable produce. As a result of the USITC’s vote, this global safeguard investigation will be terminated and no additional duties, quotas, or other trade remedies will be imposed on imports of blueberries into the United States.

### [USTR and U.S. Industry Agree to No Change in Section 301 Large Civil Aircraft Tariffs](#)

The U.S. Trade Representative (“USTR”) in consultation with relevant U.S. industry issued a [notice](#) stating that it is “unnecessary” to revise the Section 301 tariffs related to [large civil aircraft subsidies](#) provided by the European Union. The notice states that USTR will “continue to consider the action taken in the investigation” but can be understood as a sign that the U.S. does not seek to escalate the dispute at this time. The likelihood of resolving the dispute through

negotiation will depend on what the Biden administration determines after its review of the dispute and previous negotiations with the EU. Since there are currently no changes to the large civil aircraft tariffs, duty rates remain at 15% for aircraft and parts, and 25% for all other items from the EU subject to the Section 301 tariffs.

### [Details on Xinjiang Uighur Autonomous Region \(XUAR\) Withhold Release Order Requirements on Cotton and Tomato Products](#)

On January 13, 2021 U.S. Customs and Border Protection (“CBP”) [issued](#) a Withhold Release Order regarding cotton products and tomato products produced in China’s Xinjiang Uyghur Autonomous Region (“XUAR”) effective February 13, 2021. The agency stated that: “CBP issued a Withhold Release Order (“WRO”) against cotton products and tomato products produced in Xinjiang based on information that reasonably indicates the use of detainee or prison labor and situations of forced labor.” CBP identified the following International Labor Organization [forced labor indicators](#) as a result of its investigation: “debt bondage, restriction of movement, isolation, intimidation and threats, withholding of wages, and abusive living and working conditions.” This finding effectively shifts the burden to an importer to prove that a product produced in the XUAR containing cotton or tomato goods was not produced using any forced labor indicators.

## U.S. DEPARTMENT OF COMMERCE DECISIONS

### Investigations

- Wood Mouldings and Millwork Products from the People's Republic of China: On February 16, 2021, Commerce issued its amended final affirmative [determination](#) in the antidumping duty investigation.
- Phosphate Fertilizers from the [Russian Federation](#) and the [Kingdom of Morocco](#): On February 16, 2021, Commerce issued affirmative final determinations in the countervailing duty investigations.
- Standard Steel Welded Wire Mesh from Mexico: On February 18, 2021, Commerce issued an affirmative final [determination](#) in the countervailing duty investigation.
- Twist Ties from the People's Republic of China: On February 22, 2021, Commerce issued affirmative final determinations in the [antidumping](#) and [countervailing](#) duty investigations.
- Ultra-High Molecular Weight Polyethylene from the Republic of Korea: On February 25, 2021, Commerce issued its final affirmative [determination](#) in the antidumping duty investigation.
- Silicon Metal from the Republic of Kazakhstan: On February 26, 2021, Commerce issued its final affirmative [determination](#) in the countervailing duty investigation.
- Silicon Metal From Bosnia and Herzegovina and Iceland: On February 26, 2021, Commerce issued its final affirmative [determinations](#) in the antidumping duty investigations.

### Administrative Reviews

- Cast Iron Soil Pipe Fittings from the People's Republic of China: On February 2, 2021, Commerce issued its final [results](#) in the countervailing duty administrative review (2017-2018).
- Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates: On February 2, 2021, Commerce issued its amended final [results](#) in the antidumping duty administrative review (2018-2019).
- Cast Iron Soil Pipe Fittings from the People's Republic of China: On February 9, 2021, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Citric Acid and Certain Citrate Salts From Thailand: On February 11, 2021, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Certain Activated Carbon from the People's Republic of China: On February 22, 2021, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Light-Walled Rectangular Pipe and Tube from Turkey: On February 24, 2021, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Certain Aluminum Foil from the People's Republic of China: On February 25, 2021, Commerce issued its final [results](#) in the antidumping duty administrative review (2017-2019).
- Citric Acid and Certain Citrate Salts from Belgium: On February 26, 2021, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).

### Circumvention Inquiries

- There have been no final determinations of circumvention by the Department of Commerce during the month of February 2021.

### Changed Circumstances Reviews

- Certain Cold-Rolled Steel Flat Products and Certain Corrosion-Resistant Steel Products from the Republic of Korea: On February 23, 2021, Commerce issued its final [results](#) in the antidumping and countervailing duty changed circumstances reviews.

### Sunset Reviews

- Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: On February 4, 2021, Commerce issued the final [results](#) of the expedited third antidumping duty sunset review.
- Carbazole Violet Pigment 23 from India and the People's Republic of China: On February 5, 2021, Commerce issued the final [results](#) of the expedited third antidumping duty sunset reviews.

- Carbazole Violet Pigment 23 from India: On February 9, 2021, Commerce issued the final [results](#) of the expedited third countervailing duty sunset review.
- Steel Grating from the People’s Republic of China: On February 9, 2021, Commerce issued the final [results](#) of the expedited second countervailing duty sunset review.
- Melamine from the People’s Republic of China: On February 25, 2021, Commerce issued the final [results](#) of the expedited countervailing duty sunset review.

## U.S. INTERNATIONAL TRADE COMMISSION

### Section 701/731 Proceedings

#### Investigations

- Wood Mouldings and Millwork Products from China: On February 17, 2021, the ITC made affirmative final [decisions](#) in the antidumping and countervailing duty investigations, finding material injury.

#### Sunset Review Decisions

- Passenger Vehicles and Light Truck Tires from China: On February 11, 2021, the ITC published its affirmative final [decision](#) to continue the antidumping and countervailing orders as revocation would lead to the recurrence or continuation of injury.
- Hand Trucks and Certain Parts Thereof from China: On February 16, 2021, the ITC published its affirmative final [decision](#) to continue the antidumping order as revocation would lead would lead to the recurrence or continuation of injury.
- Certain Crepe Paper Products from China: On February 26, 2021, the ITC published its affirmative final [decision](#) to continue the antidumping order as revocation would lead to the recurrence or continuation of injury.



#### Section 337 Proceedings

- There have been no final Section 337 decisions by the ITC during the month of February 2021.

## U.S. CUSTOMS & BORDER PROTECTION

- In a recently released [ruling](#) dated December 15, 2020, CBP ruled that sourcing fees paid by BMW of North America to North American vendors is not dutiable.
- On February 12, 2021, CBP provided [answers](#) to frequently asked questions regarding the Xinjiang regional Withhold Release Order.
- In a recently released [ruling](#) dated September 11, 2020, CBP ruled that the country of origin for pipe clamps and bar clamps for woodworking depends on the origin of the clamp heads.
- In a recently released [ruling](#) dated December 16, 2020, CBP ruled that the processing operations in China on frozen eels from the U.S. and Europe constitute a substantial transformation into fillets. As a result, the country of origin is China.
- In a recently released [ruling](#) dated December 18, 2020, CBP ruled that mesh wi-fi network extenders should be classified in a separate HTS subheading from wireless routers since they perform different functions.

# COURT OF INTERNATIONAL TRADE

## Summary of Decisions

### [21-11 Calcutta Seafoods Pvt. Ltd. et al v. United States](#)

On February 3, 2021, the CIT remanded Commerce's final results in the antidumping duty administrative review of certain frozen warmwater shrimp from India. The CIT found that Commerce was sufficiently notified of the difficulties the Elque Group had as a small business and therefore was statutorily obligated to provide further assistance under section 1677m(c)(2), but instead did not and applied AFA. The CIT remanded the final results to Commerce to revise and refile.

### [21-12 Universal Steel Products, Inc. et al v. United States et al](#)

On February 4, 2021, the CIT denied plaintiffs' motion for partial summary judgment challenging Proclamation 9705 and its subsequent modifications that enacted and modified Section 232 tariffs on imported steel products. The CIT found that Commerce's Steel Report was not a final agency action subject to judicial review under the Administrative Procedure Act. The CIT also determined that the duration and timing of the Section 232 duties as set forth in Proclamation 9705 did not violate Section 232.

### [21-13 Shenzhen Xinboda Industrial Co., Ltd. v. United States](#)

On February 8, 2021, the CIT sustained Commerce's remand redetermination in the sixteenth antidumping duty administrative review of fresh garlic from China. On remand, Commerce explained its practice of only rejecting financial statements that evidence a previously determined countervailed subsidy. The CIT found that Commerce's decision was reasonable and supported by substantial evidence and sustained the remand redetermination.

### [21-18 Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. et al v. United States](#)

On February 17, 2021, the CIT remanded Commerce's final determination in the antidumping duty administrative review of circular welded carbon steel standard pipe and tube from Turkey. The CIT remanded the final determination to Commerce to eliminate any adjustment to costs of production based on a particular market

situation in the sales-below-cost test and to reweigh the evidence applicable to the reduction of constructed export price by Section 232 duties paid, without an adverse inference.

### [21-20 Icdas Celik Enerji Tersane Ve Ulasim Sanayi A.S. et al v. United States](#)

On February 19, 2021, the CIT sustained Commerce's final results in the countervailing duty administrative review of steel concrete reinforcing bar from Turkey. The CIT found Commerce's final determination to be in accordance with law and support by substantial evidence and sustained the results accordingly.

### [21-21 The Chemours Company FC, LLC v. United States](#)

On February 22, 2021, the CIT sustained the remand results of the ITC in the antidumping and countervailing duty investigations of polytetrafluorethylene resin from China. The CIT found that the ITC's remand determination was supported by substantial evidence and in accordance with law and was therefore sustained.

### [21-22 Nucor Corporation et al v. United States](#)

On February 22, 2021, the CIT sustained Commerce's remand results in the first countervailing duty administrative review of certain corrosion-resistant steel products from Korea. The CIT found that Commerce supported its remand redetermination that substantial evidence that Dongbu's loans from private creditors could not be used as a benchmark for measuring benefits from government loans and that Dongbu's loan restructuring was a specific subsidy.

### [21-23 Bosun Tools Co., Ltd. et al v. United States](#)

On February 24, 2021, the CIT sustained Commerce's second remand redetermination in the seventh antidumping duty administrative review of diamond sawblades and parts thereof from China. The CIT found that Commerce's decision to use the expected method to calculate the rate for the separate rate respondents was supported by substantial evidence and in accordance with law and were therefore sustained.

## COURT OF APPEALS FOR THE FEDERAL CIRCUIT

### [20-1202 Home Products International, Inc. v. United States](#)

On February 16, 2021, the CAFC dismissed Target Corporation's appeal of a decision by the CIT in the matter *Home Prod. Int'l, Inc. v. United States*. Because Target was not party to the CIT action and has not preserved any argument challenging the CIT's denial of its motion to intervene, the CAFC dismissed Target's nonparty appeal.

## EXPORT CONTROLS AND SANCTIONS

### [U.S. Imposes Targeted Sanctions and Export Restrictions on Burma in Response to Military Coup](#)

On February 1, 2021, the military of Burma (Myanmar) in an unanticipated coup d'état installed General Min Aung Hlaing as leader and detained the country's top elected leaders, including the President and Prime Minister. In response, on February 10, 2021, President Biden issued [Executive Order 14014](#) (the "E.O.") authorizing the U.S. Department of Treasury's ("Treasury") Office of Foreign Assets Control ("OFAC") to impose certain sanctions blocking U.S. property and interests of Burmese military officials and Burmese government officials on or after February 2, 2021, as well as secondary sanctions on non-US persons who provide material assistance to or in support of persons or entities sanctioned under the E.O.

### [BIS Updates Hong Kong Recordkeeping FAQs Consistent with Removal of Hong Kong from EAR Country Chart](#)

The merging of Hong Kong with China with respect to Hong Kong's treatment under the Export Administration Regulations ("EAR") is now reflected in the Department of Commerce's Bureau of Industry and Security's Hong Kong recordkeeping guidance. On February 19, 2021, BIS updated its [Hong Kong recordkeeping FAQs](#) to make that guidance consistent with the [final rule BIS issued on December 23, 2020](#) implementing Executive Order 13936 (the "E.O."). The E.O. was signed in the wake of U.S. objections to Chinese government national security legislation imposed on Hong Kong in 2020, which outlaws any act of "secession," "terrorism," or "collusion" with a foreign power.