

# TRADE LAW UPDATE



March 2021

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## PRESIDENTIAL ACTIONS

### [USTR Announces Continuation and Termination of Section 301 Digital Services Taxes Investigations](#)

The United States Trade Representative (“USTR”) [announced](#) the continuation of certain Section 301 investigations related to digital services taxes (“DSTs”) (which are taxes on revenues generated by companies providing digital services). Simultaneously, USTR terminated its investigations of certain other countries. USTR originally [initiated](#) Section 301 DSTs investigations covering multiple countries on June 2, 2020, in response to those countries’ implementation or consideration of DSTs. In January 2021, USTR [announced](#) its findings with respect to the DSTs investigations related to Austria, India, Italy, Turkey, and the United Kingdom, concluding that those countries’ DSTs discriminate against U.S. companies, overly burden U.S. commerce, and were “inconsistent with principles of international taxation.”

USTR will proceed with respect to Austria, India, Italy, Spain, Turkey, and the United Kingdom on possible trade remedies and is seeking comments by April 30, 2021. Section 301 DSTs investigations will be terminated with respect to Brazil, the Czech Republic, the European Union, and Indonesia, since those countries have chosen not to adopt DSTs which were previously under consideration.

### [U.S. Agrees to Temporarily Suspend Tariffs on UK and EU Goods in Large Civil Aircraft Dispute](#)

In a [joint statement](#) released by the Office in the United States Trade Representative (“USTR”), the U.S. and European Union (“EU”) have agreed to temporarily suspend the additional tariffs from the Large Civil Aircraft Dispute. Goods imported from EU countries, including dairy products and liquors, will temporarily not be subject to the additional 25 percent duties under Section 301. The temporary suspension will initially last four months. USTR has not yet announced a specific date when the suspension on tariffs for EU goods will begin. USTR plans to share that information in a forthcoming *Federal Register* notice. Additionally, USTR [announced](#) a similar temporary suspension of tariffs imposed on goods imported from the United Kingdom (“UK”) related to the Large Civil Aircraft Dispute. The temporary suspension began on March 4, 2021 and will remain in effect until at least July 2021.

## Suez Canal Blockage Could Worsen Port Congestion and Impact Usage of Panama Canal

A massive 400-meter container ship, the Ever Given, had become stuck in the Suez Canal after apparently running aground due to high winds from a sandstorm. As a result, potentially hundreds of ships could not pass on either side in the Suez Canal for nearly a week until March 29<sup>th</sup>. Trade through the Suez Canal has resumed but shipments which had to wait to enter the canal or which were rerouted may be delayed. The Suez's competitor in Central America, the Panama Canal, with its expansion and renovation project, may see a definite bump in the near term from cargo currently transiting the Suez, and the question will be whether the Panama Canal can retain and build on this turn of events. Cargo originating from ports in Southeast Asia could continue to transit the Suez, or perhaps the Panama Canal will offer a long-term viable alternative for shippers from Asia to Europe and North America. It is possible that vessel operators of the larger container vessels might be sensitive to the innovations of the Panama Canal to safely handle these larger vessels in more adverse weather environments.

## Section 201 Safeguard Solar Panel Tariffs Set to Expire in February 2022

Solar panels are once again in the news due to several recent developments. Due to various trade remedy actions taken over the course in the past few years, solar panels are 45% more expensive in the United States than in Europe and Australia and 50% more expensive in the United States than the global average. The Solar Energy Industries Association (SEIA) believes tariffs are largely responsible for the high price of solar panels in the United States. The Congressional Research Service (CRS) estimates that 98% of solar panels and their components are manufactured outside the United States, as a result solar panels have been the subject of several ongoing trade disputes.

## USTR Suspends Trade Engagement with Burma

On March 29<sup>th</sup>, the Office of the United States Trade Representative ("USTR") [announced](#) the suspension of all U.S. engagements with Burma (Myanmar) under the 2013 Trade and Investment Framework Agreement ("TIFA"), effective immediately. Pursuant to this announcement, the United States will be suspending all government-to-government meetings following the military coup that occurred in February and the related escalation in violence by Burma's military against its people. As a result of the announcement, U.S. federal agencies, including the Office of the United States Trade Representative and U.S. Customs Border Protection ("CBP"), will not be allowed to meet with their counterparts or other government officials in Burma to discuss trade or other issues until a democratic government is re-established.

## **U.S. DEPARTMENT OF COMMERCE DECISIONS**

### **Investigations**

- Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Czech Republic: On March 5, 2021, Commerce issued its final affirmative [determination](#) in the antidumping duty investigation.
- Common Alloy Aluminum Sheet from India: On March 8, 2021, Commerce issued its final affirmative determinations in the [antidumping](#) and [countervailing](#) duty investigations.
- Common Alloy Aluminum Sheet from Brazil: On March 8, 2021, Commerce issued its final affirmative determination in the [antidumping](#) duty investigation and final negative determination in the [countervailing](#) duty investigation.
- Common Alloy Aluminum Sheet from Turkey: On March 8, 2021, Commerce issued its final affirmative determinations in the [antidumping](#) and [countervailing](#) duty investigations.
- Common Alloy Aluminum Sheet from Bahrain: On March 8, 2021, Commerce issued its final affirmative determinations in the [antidumping](#) and [countervailing](#) duty investigations.
- Common Alloy Aluminum Sheet from [South Africa](#), [Taiwan](#), [Serbia](#), [Spain](#), [Slovenia](#), [Germany](#), [Italy](#), [Croatia](#), [Indonesia](#), [Egypt](#), [Oman](#), and [Romania](#): On March 8, 2021, Commerce issued its final affirmative determinations in the antidumping duty investigations.
- Common Alloy Aluminum Sheet from [Korea](#) and [Greece](#): On March 8, 2021, Commerce issued its final negative determinations in the antidumping duty investigations.
- Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof from China: On March 12, 2021, Commerce issued its final affirmative determinations in the [antidumping](#) and [countervailing](#) duty investigations.
- Certain Chassis and Subassemblies Thereof from China: On March 22, 2021, Commerce issued its final affirmative [determination](#) in the countervailing duty investigation.

- Non-Refillable Steel Cylinders from China: On March 22, 2021, Commerce issued its final affirmative determinations in the [antidumping](#) and [countervailing](#) duty investigations.
- Mattresses from [Vietnam](#), [Serbia](#), [Cambodia](#), [Indonesia](#), [Malaysia](#), [Turkey](#), and [Thailand](#): On March 25, 2021, Commerce issued its final affirmative determinations in the antidumping duty investigations. Commerce issued its final affirmative determination in the countervailing duty investigation on Mattresses from [China](#).

## Administrative Reviews

- Certain Aluminum Foil from China: On March 2, 2021, Commerce issued its final [results](#) in the countervailing duty administrative review (2017-2018).
- Certain Steel Nails from Korea: On March 8, 2021, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Certain Steel Nails from Oman: On March 15, 2021, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan: On March 15, 2021, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Forged Steel Fittings from China: On March 18, 2021, Commerce issued its final [results](#) in the countervailing duty administrative review (2018).
- Welded Carbon Steel Standard Pipes and Tubes from India: On March 19, 2021, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Certain Carbon and Alloy Steel Cut-to-Length Plate from Korea: On March 22, 2021, Commerce issued its final [results](#) in the countervailing duty administrative review (2018).
- Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: On March 22, 2021, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Polyethylene Terephthalate Film, Sheet, and Strip from India: On March 23, 2021, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Carbon and Alloy Steel Threaded Rod from Korea: On March 23, 2021, Commerce issued its final [results](#) in the antidumping duty administrative review (2017-2019).
- Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: On March 23, 2021, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Carbon and Alloy Steel Cut-To-Length Plate from [Korea](#), [Italy](#), and [Belgium](#): On March 24, 2021, Commerce issued its final results in the antidumping duty administrative reviews (2018-2019).
- Corrosion-Resistant Steel Products from China: On March 26, 2021, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Xanthan Gum from China: On March 26, 2021, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Certain Steel Nails from Malaysia: On March 29, 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 March 2021.

## Changed Circumstances Reviews

- Crystalline Silicon Photovoltaic Products from China: On March 25, 2021, Commerce issued its final [results](#) in the antidumping and countervailing duty changed circumstances reviews.
- Certain Frozen Warmwater Shrimp from India: On March 26, 2021, Commerce issued its final [results](#) in the antidumping duty changed circumstances review.

## Sunset Reviews

- Welded Line Pipe from Korea and Turkey: On March 2, 2021, Commerce issued the final [results](#) in the expedited first antidumping duty sunset reviews.

- Certain Cut-to-Length Carbon Steel Plate from the Russia and Ukraine: On March 8, 2021, Commerce issued the final [results](#) in the expedited fourth sunset reviews in the suspension agreements.
- Certain Potassium Phosphate Salts from China: On March 8, 2021, Commerce issued the final results in the expedited second [antidumping](#) and [countervailing](#) duty sunset reviews.
- Certain Cut-to-Length Carbon Steel Plate from China: On March 8, 2021, Commerce issued the final [results](#) in the expedited fourth antidumping duty sunset review.
- Welded Line Pipe from Turkey: On March 9, 2021, Commerce issued the final [results](#) in the expedited first countervailing duty sunset review.
- Melamine from China: On March 9, 2021, Commerce issued the final [results](#) in the expedited antidumping duty sunset review.

## U.S. INTERNATIONAL TRADE COMMISSION

### Section 701/731 Proceedings

#### Investigations

- Large Vertical Shaft Engines from China: On March 2, 2021, the ITC made affirmative final [decisions](#) in the antidumping and countervailing duty investigations, finding material injury.
- Difluoromethane (R-32) from China: On March 8, 2021, the ITC made an affirmative final [decision](#) in the antidumping duty investigation, finding material injury.
- Corrosion Inhibitors from China: On March 18, 2021, the ITC made affirmative final [decisions](#) in the antidumping and countervailing duty investigations, finding material injury.



#### Sunset Review Decisions

- Preserved Mushrooms from Chile, China, India, and Indonesia: On March 5, 2021, the ITC published its affirmative final [decision](#) to continue the antidumping duty orders 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 March 2021.

## U.S. CUSTOMS & BORDER PROTECTION

- On March 29, 2021, CBP [issued a forced labor finding](#) against Top Glove Corporation Bhd., a Malaysian manufacturer of disposable gloves. As a result, port directors may seize certain disposable gloves of Top Glove's at U.S. ports of entry pursuant to section 307 in the Tariff Act of 1930 (19 U.S.C. 1307), which prohibits importation of merchandise mined, manufactured, or produced, in part or in whole, by convict, forced, or indentured labor.

## COURT OF INTERNATIONAL TRADE

### Summary of Decisions

#### [21-29 Thyssenkrupp Materials NA Inc. et al v. United States et al](#)

On March 10, 2021, the CIT granted the United States' motion to dismiss Plaintiffs' complaint challenging the Section 232 aluminum exclusions process created by Commerce's Interim Final Rule. The CIT concluded that the Commerce's process for granting exclusions on an importer-by-importer basis does not violate the Uniformity Clause in the Constitution. Additionally, CIT concluded that

the procedure does not reflect an improper construction of Presidential Proclamations 9704 and 9705.

#### [21-30 New American Keg d/b/a American Keg Company v. United States](#)

On March 23, 2021, the CIT granted in part and denied in part Plaintiff's motion for judgment on the agency record. Plaintiff challenged Commerce's final determination in the antidumping duty investigation of steel kegs from China.

Plaintiff challenged three aspects of Commerce’s decision (1) the selection of the Malaysia as a surrogate country for Ningbo Master’s labor costs; (2) the verification of Ningbo Master’s corrections; and (3) the granting of a separate rate to Jinye. Plaintiff objected to Commerce’s use of Malaysian labor data in calculating a surrogate value for Ningbo Master’s labor costs based on the data’s reliability and the use of forced labor in Malaysia. Because Malaysia’s wage data could be clouded by the use of forced labor and otherwise distorted or unreliable, the court remanded to require Commerce to explain the preference for Malaysian data. The CIT also required Commerce to reconsider the verifications for material inputs and, if necessary, to recalculate Ningbo’s Master Rate. Finally, the CIT concluded that Commerce’s decision that Jinye was eligible for a separate rate was supported by substantial evidence after conducting a *de facto* control test to determine if Jinye had sufficient autonomy. The

record demonstrated none of Jinye’s shareholders, managers, or directors had any relationship with the government of China. The CIT therefore sustained that determination.

#### [21-33 Vicentin S.A.I.C. et al v. United States et al](#)

On March 25, 2021, the CIT sustained Commerce’s remand redetermination in the AD investigation of biodiesel from Argentina. Specifically, the CIT sustained Commerce’s decision to make a particular market situation adjustment when determining constructed value. The Court found Commerce’s pass-through analysis of U.S. prices to be reasonable and sustained its PMS adjustment as supported by evidence and in accordance with law.

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

#### [20-1506 Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States et al](#)

On March 30, 2021, the CAFC affirmed the CIT’s decision to affirm Commerce’s final affirmative determination in the countervailing duty investigation on imports of certain rebar from Turkey. According to the CAFC, Commerce’s use of an adverse facts available countervailable subsidy rate of 14.01 percent was consistent and in accordance with its statutory authority. In the original investigation, Habas had failed to disclose its use of the duty drawback program from which it benefitted, and therefore Commerce was within its statutory authority to draw adverse inferences concerning the withheld information. In applying the 14.01 percent rate, Commerce relied on “facts otherwise available,” on the grounds that Habas failed to explain how in applying such rate Commerce has exceeded its statutory authority.

#### [19-2445 Caterpillar Prodotti Stradali S.R.I. et al v. International Trade Commission](#)

On March 15, 2021, the CAFC affirmed in part, and reversed, vacated, and remanded in part a Section 337 decision issued by the International Trade Commission (ITC) regarding the importation of certain road-milling machines. Caterpillar appealed the underlying Section 337 decision with respect to the ‘530 and ‘309 patents, and Wirtgen cross-appealed as to the ‘641 patent. The CAFC affirmed the ITC’s decision as to the ‘530 and ‘309 patents. However, the CAFC reversed in part, vacated in part, and remanded the ITC’s decision as to the ‘641 patent, concluding that the ALJ erred in finding that Wirtgen failed to prove the knowledge required for inducement. The CAFC found that Wirtgen expressly alleged sufficient knowledge and Caterpillar did not dispute these assertions. Therefore, the ALJ’s finding was not a reasonable one to make.

## EXPORT CONTROLS AND SANCTIONS

### [Commerce Subpoenas Chinese Companies as ICTS Rules Take Effect](#)

Secretary of Commerce Gina M. Raimondo recently [announced](#) that the Department of Commerce (“Commerce”) had served subpoenas on multiple Chinese companies that provide information and communications technology and services (“ICTS”) in the United States pursuant to [Executive Order 13873](#) (“EO 13873”). While it is unknown which companies were served or how many, Commerce’s action indicates that the Biden Administration will move forward with implementing the ICTS rules written during the Trump Administration. The subpoenas were served to support the requirements of reviewing transactions with the potential to harm U.S. national security, U.S. critical infrastructure, or the U.S. digital economy set forth in EO 13873.

### [BIS Implements New Burma Export Controls](#)

The U.S. Department of Commerce’s Bureau of Industry and Security (“BIS”) issued final rules amending the Export Administration Regulations (“EAR”) by implementing [new export controls on Burma](#) (Myanmar), and adding four [entities](#) linked to the recent coup to the Entity List. These final rules effective March 8, 2021 come less than a month after President Biden [imposed sanctions](#) blocking U.S. property and interests of Burmese military and government officials. There have been several additions to these export controls and sanctions since our initial blog post, so for more details please contact our [Export Controls & Economic Sanctions](#) team.