

# TRADE LAW UPDATE



April 2021

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## PRESIDENTIAL ACTIONS

### [CIT Declares Section 232 Steel Tariffs on “Derivatives” Under Proclamation 9980 Invalid and Contrary to Law](#)

The U.S. Court of International Trade (“CIT” or “the Court”) ruled in an [opinion](#) issued on April 5, 2021, that [Proclamation 9980](#) subjecting steel and aluminum “derivatives” to 25 percent tariffs under Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. § 1862) is invalid because of a failure to comply with statutory time limits.

The Court concluded that Proclamation 9980, which was issued by President Trump and based on the theory that the President had the power to issue the Proclamation based on earlier findings on different products, was void from the outset because it came too late and had no independent basis. As the CIT states in its opinion regarding the inability to rely on an earlier finding regarding different products: “Because the President issued Proclamation 9980 after the congressionally-delegated authority to adjust imports of the products addressed in that proclamation had expired, Proclamation 9980 was action outside of delegated authority.”

### [DoD Requested Comments on Supply Chain Risks for Strategic and Critical Materials](#)

The Department of Defense (“DoD”) [requested](#) industry comments by April 28, 2021 to assist with the DoD’s forthcoming report identifying risks and policy recommendations regarding the supply chain for strategic and critical materials. The Apr. 13, 2021 Federal Register notice notes “the need for resilient, diverse, and secure supply chains to ensure U.S. economic prosperity and national security.” The DoD’s report is due 100 days after Executive Order (“EO”) 14017 “America’s Supply Chains,” signed February 24, 2021, which we comprehensively covered [here](#).

## U.S. DEPARTMENT OF COMMERCE DECISIONS

### Investigations

- Prestressed Concrete Steel Wire Strand from [Indonesia](#), [South Africa](#), [Ukraine](#), [Malaysia](#), [Italy](#), [Tunisia](#), and [Spain](#): On April 9, 2021, Commerce issued its final affirmative determinations in the antidumping duty investigations.

### Administrative Reviews

- Certain Aluminum Foil from China: On April 2, 2021, Commerce issued its amended final [results](#) in the antidumping duty administrative review (2017-2019).

- Certain Hot-Rolled Steel Flat Products from Korea: On April 9, 2021, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Dioctyl Terephthalate from Korea: On April 9, 2021, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Drawn Stainless Steel Sinks from China: On April 9, 2021, Commerce issued its final [results](#) in the antidumping duty administrative review (2019-2020).
- Circular Welded Carbon-Quality Steel Pipe from Oman: On April 9, 2021, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey: On April 14, 2021, Commerce issued its final [results](#) in the countervailing duty administrative review (2018).
- Certain Passenger Vehicle and Light Truck Tires from China: On April 21, 2021, Commerce issued its amended final [results](#) in the antidumping duty administrative review (2019-2020).
- Passenger Vehicle and Light Truck Tires from China: On April 22, 2021, Commerce issued its final [results](#) in the countervailing duty administrative review (2018).
- Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium: On April 22, 2021, Commerce issued its amended final [results](#) in the antidumping duty administrative review (2018-2019).
- Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: On April 23, 2021, Commerce issued its final [results](#) in the antidumping duty administrative review (2017-2019).
- Polyethylene Retail Carrier Bags from Malaysia: On April 26, 2021, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Finished Carbon Steel Flanges from India: On April 27, 2021, Commerce issued its final [results](#) in the countervailing duty administrative review (2018).
- Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Italy: On April 28, 2021, Commerce issued its final [results](#) in the antidumping duty administrative review (2017-2019).
- Chlorinated Isocyanurates from China: On April 30, 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 April 2021.

### Changed Circumstances Reviews

- There have been no final results of changed circumstances by the Department of Commerce during the month of April 2021.

### Sunset Reviews

- There have been no final results of sunset reviews by the Department of Commerce during the month of April 2021.

## U.S. INTERNATIONAL TRADE COMMISSION

### Section 701/731 Proceedings

#### Investigations

- Phosphate Fertilizers from Morocco and Russia: On April 5, 2021, the ITC made affirmative final [decisions](#) in the countervailing duty investigations, finding material injury.
- Standard Steel Welded Wire Mesh from Mexico: On April 9, 2021, the ITC made an affirmative final [decision](#) in the countervailing duty investigation, finding material injury.
- Twist Ties from China: On April 14, 2021, the ITC made affirmative final [decisions](#) in the antidumping and countervailing duty investigations, finding material injury.



- Silicon Metal from Bosnia and Herzegovina, Iceland, and Kazakhstan: On April 16, 2021, the ITC made affirmative final [decisions](#) in the antidumping and countervailing duty investigations, finding material injury.
- Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Czechia: On April 23, 2021, the ITC made an affirmative final [decision](#) in the antidumping duty investigation, finding material injury.
- Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, India, Indonesia, Italy, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey: On April 26, 2021, the ITC made affirmative final [decisions](#) in the antidumping and countervailing duty investigations, finding material injury.
- Small Vertical Shaft Engines from China: On April 30, 2021, the ITC made affirmative final [decisions](#) in the antidumping and countervailing duty investigations, finding material injury.

### **Sunset Review Decisions**

- Diamond Sawblades and Parts Thereof from China: On April 2, 2021, the ITC published its affirmative final [decision](#) to continue the antidumping duty order as revocation would lead to the recurrence or continuation of injury.
- Polyvinyl Alcohol from China and Japan: On April 2, 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**

- Certain Wearable Monitoring Devices, Systems, and Components Thereof: On April 16, 2021, the ITC reviewed and affirmed a final initial [determination](#) finding no violation of Section 337.

### **Section 201 Proceedings**

- Fresh, Chilled, or Frozen Blueberries: On April 2, 2021, the ITC made a negative final [decision](#) finding that imports of blueberries are not a cause of serious injury to domestic industry.

## **U.S. CUSTOMS & BORDER PROTECTION**

- There were no major decisions from CBP during the month of April 2021.

# COURT OF INTERNATIONAL TRADE

## Summary of Decisions

### [21-35 Carbon Activated Tianjin Co., Ltd. and Carbon Activated Corporation et al v. United States](#)

On April 2, 2021 the CIT sustained in part and remanded in part Commerce's final results in the eleventh antidumping duty administrative review of certain activated carbon from China. The Court sustained Commerce's selection of surrogate data to value coal tar pitch. However, the CIT found that Commerce failed to adequately explain or support its selection of Malaysia and rejection of Romania as the primary surrogate country. The CIT also held that Commerce must reconsider its selection of surrogate data to value bituminous coal and adjustments to surrogate financial statements.

### [21-36 PrimeSource Building Products, Inc. v. United States et al](#)

On April 5, 2021, the CIT granted plaintiff PrimeSource's summary judgment *sua sponte*. In doing so, the Court declared the Section 232 steel tariffs on "derivatives" under Proclamation 9980 invalid as contrary to law. The Court instructed the Government to refund duties paid by PrimeSource on all entries subject to the Section 232 tariffs under Proclamation 9980, whether they were liquidated or unliquidated. The Government has 30 days to appeal this decision to the Federal Circuit.

### [21-37 Rebar Trade Action Coalition v. United States](#)

On April 6, 2021, the CIT sustained Commerce's final results in the first antidumping duty administrative review of steel concrete reinforcing bar (rebar) from Turkey. The CIT found that Commerce's decision that Icdas's June 2018 cost data was reliable was supported by substantial evidence and that Commerce properly rejected plaintiff RTAC's argument that the data was unsuitable.

### [21-38 Shanxi Hairui Trade Co., Ltd. et al v. United States](#)

On April 7, 2021, the CIT sustained Commerce's final results in the antidumping duty administrative review of certain steel nails from China. The Court found Commerce's decision to apply AFA to Dezhou Hualude and the

calculation of a sample rate for cooperative non-selected respondents were reasonable and in accordance with law.

### [21-42 Sao Ta Foods JSC et al v. United States](#)

On April 14, 2021, the CIT sustained Commerce's second remand results in the twelfth antidumping duty administrative review of certain frozen warmwater shrimp from Vietnam as supported by substantial evidence and in accordance with the Court's order in *Sao Ta II* to grant separate rate status to two factories of Thuan Phuoc.

### [21-43 SeAH Steel Corporation et al v. United States](#)

On April 14, 2021, the CIT sustained in part and remanded in part Commerce's final results in the 2016-2017 antidumping duty administrative review of oil country tubular goods (OCTG) from Korea. The Court sustained Commerce's application of its differential pricing analysis for the calculation of SeAH's dumping margin. The Court sustained Commerce's calculation of constructed value profit based on SeAH's Canadian market sales and inclusion of a penalty in SeAH's general and administrative expense ratio as supported by substantial evidence. The CIT sustained Commerce's determination that NEXTEEL's non-prime products are not subject merchandise but remanded for Commerce to allocate costs based on the actual costs of prime and non-prime products. The Court also sustained Commerce's exclusion of freight revenue profit because a proper comparison between the U.S. price and foreign market value would not include profit that was earned from freight. The CIT also sustained Commerce's application of an affiliated seller's G&A expense ratio to SeAH's non-further manufactured products but found that Commerce's calculation of further manufacturing cost was not in accordance with the law. The Court remanded for further explanation or reconsideration Commerce's particular market situation determination and adjustment, Commerce's treatment of SeAH's production line suspension costs, and Commerce's decision to include SeAH's inventory valuation losses as G&A expenses.

## COURT OF APPEALS FOR THE FEDERAL CIRCUIT

### [20-1663 Janssen Ortho, LLC v. United States](#)

On April 13, 2021, the CAFC affirmed the CIT's finding that darunavir ethanolate was properly classified under HTSUS subheading 2935.00.60 and eligible for duty-free treatment under the Pharmaceutical Appendix. Janssen alleged that it had paid approximately \$100 million in duties for entries which should have been treated as duty-free. "Darunavir" is a product on the Pharmaceutical Appendix, and the CAFC affirmed CIT's finding that "darunavir ethanolate" is another name for "darunavir."

## EXPORT CONTROLS AND SANCTIONS

### [Biden Administration Imposes New Russia Sanctions and Establishes Framework for Future Expansion of Russian Sanctions Regime](#)

Recently, the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") sanctioned various individuals and entities connected to Russia's technology sector and also expanded sanctions against dealings in Russian sovereign debt. In addition to these immediate actions, President Biden also issued a new Executive Order which will significantly expand OFAC's authority to impose future sanctions against Russia.