

# TRADE LAW UPDATE



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## PRESIDENTIAL ACTIONS

### [USTR Announces and Immediately Suspends Section 301 DSTs Tariffs Against Austria, India, Italy, Spain, Turkey, and UK](#)

The United States Trade Representative (“USTR”) Katherine Tai announced 25% additional tariffs on approximately \$2 billion worth of imported goods from Austria, India, Italy, Spain, Turkey, and the United Kingdom, which have adopted Digital Service Taxes (“DSTs”). However, USTR also immediately suspended the tariffs for 180 days to provide additional time for ongoing multilateral negotiations on international taxation issues at the Organization for Economic Co-operation and Development (“OECD”) and Group of 20 (“G20”). As a result, these tariffs are not scheduled to take effect until November 29, 2021.

### [The Disappearance of the Service Contract in Ocean Shipping and Resurgence of Ocean Tramp Practices](#)

Global supply chains are experiencing real problems in the shipping segment, where there continue to be only Federal Maritime Commission (“FMC”) traditional remedies, including FMC formal investigations, complaints in federal court, and class actions, which are used to highlight badly needed attention to glaring issues of national concern. However, in terms of more permanent solutions, serious amendments to the Shipping Act should be sought with U.S. shippers and the overall U.S. economy in mind. Husch Blackwell provides insight into these issues in this *International Trade Insights* post.

## U.S. DEPARTMENT OF COMMERCE DECISIONS

### Investigations

- Certain Non-Refillable Steel Cylinders from China: On May 11, 2021, Commerce issued its amended final affirmative [determination](#) in the antidumping duty investigation.
- Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: On May 14, 2021, Commerce issued its amended final affirmative [determination](#) in the antidumping duty investigation.
- Certain Chassis and Subassemblies Thereof from China: On May 17, 2021, Commerce issued its final affirmative [determination](#) in the antidumping duty investigation.
- Methionine from France: On May 17, 2021, Commerce issued its final affirmative [determination](#) in the antidumping duty investigation.
- Certain Walk-Behind Lawn Mowers and Parts Thereof from China: On May 20, 2021, Commerce issued its final affirmative determinations in the [antidumping](#) and [countervailing](#) duty investigations.
- Certain Walk-Behind Lawn Mowers and Parts Thereof from Vietnam: On May 20, 2021, Commerce issued its final affirmative determination in the [antidumping](#) duty investigation.

- Passenger Vehicle and Light Truck Tires from Vietnam: On May 27, 2021, Commerce issued its final affirmative determinations in the [antidumping](#) and [countervailing](#) duty investigations.
- Passenger Vehicle and Light Truck Tires from [Taiwan](#), [Thailand](#), and [Korea](#): On May 27, 2021, Commerce issued its final affirmative determinations in the antidumping duty investigations.

### **Administrative Reviews**

- Certain Steel Nails from China: On May 5, 2021, Commerce issued a correction to the final [results](#) in the antidumping duty administrative review (2014-2015).
- Finished Carbon Steel Flanges from Spain: On May 5, 2021, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Oil Country Tubular Goods from Turkey: On May 10, 2021, Commerce issued its final [results](#) in the countervailing duty administrative review (2018).
- Polyethylene Terephthalate Film, Sheet, and Strip from India: On May 17, 2021, Commerce issued its final [results](#) in the countervailing duty administrative review (2018).
- Xanthan Gum from China: On May 18, 2021, Commerce issued its amended final [results](#) in the antidumping duty administrative review (2016-2017).
- Certain Lined Paper Products from India: On May 25, 2021, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Certain Pasta from Italy: On May 26, 2021, Commerce issued its final [results](#) in the antidumping duty administrative review (2018-2019).
- Certain Corrosion-Resistant Steel Products from [Taiwan](#) and [Korea](#): On May 27, 2021, Commerce issued its final results in the antidumping duty administrative reviews (2018-2019).

### **Circumvention Inquiries**

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

### **Changed Circumstances Reviews**

- Certain Pasta from Italy: On May 10, 2021, Commerce issued its final [results](#) of the changed circumstances review.

### **Sunset Reviews**

- Certain Magnesia Carbon Bricks from Mexico and China: On May 10, 2021, Commerce issued its final [results](#) of the expedited second antidumping duty sunset reviews.

## U.S. INTERNATIONAL TRADE COMMISSION

### Section 701/731 Proceedings

#### Investigations

- Chassis and Subassemblies from China: On May 7, 2021, the ITC issued its affirmative final [decision](#) in the countervailing duty investigation, finding material injury.
- Non-Refillable Steel Cylinders from China: On May 11, 2021, the ITC issued its affirmative final [decisions](#) in the antidumping and countervailing duty investigations, finding material injury.
- Mattresses From Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: On May 14, 2021, the ITC issued its affirmative final [decisions](#) in the antidumping and countervailing duty investigations, finding material injury.



#### Sunset Review Decisions

- Prestressed Concrete Steel Wire Strand from China: On May 4, 2021, the ITC issued its affirmative final [decision](#) to continue the antidumping and countervailing duty orders as revocation would lead to the recurrence or continuation of injury.
- Boltless Steel Shelving Units Prepackaged for Sale from China: On May 5, 2021, the ITC issued its affirmative final [decision](#) to continue the antidumping duty order as revocation would lead to the recurrence or continuation of injury.
- Certain Steel Grating from China: On May 24, 2021, the ITC issued its the ITC issued its affirmative final [decision](#) to continue the antidumping and countervailing duty orders as revocation would lead to the recurrence or continuation of injury.

#### Section 337 Proceedings

- There have been no Section 337 decisions from the ITC during the month of May 2021.

## U.S. CUSTOMS & BORDER PROTECTION

- On May 28, 2021, CBP [issued](#) a Withhold Release Order (“WRO”) against Dalian Ocean Fishing Co., Ltd. based on information that reasonably indicates the use of forced labor in its fishing operations. “Effective immediately, the new Withhold Release Order instructs CBP personnel at all U.S. ports of entry to begin detaining tuna, swordfish, and other seafood harvested by vessels owned or operated by the Dalian Ocean Fishing Co., Ltd.”

## COURT OF INTERNATIONAL TRADE

### Summary of Decisions

#### [21-51 Husteel Co., Ltd. v. United States](#)

On May 3, 2021, the CIT sustained in part and remanded in part the U.S. Department of Commerce's remand results in the 2016–2017 administrative review of the antidumping duty order on circular welded non-alloy steel pipe from Korea. The court remanded Commerce's particular market situation determinations and adjustments based on the CIT's determination in *Saha Thai II* in which the court concluded Commerce must "reconsider its approach of basing normal value on constructed value" in calculating a particular market situation adjustment. The court sustained Commerce's treatment of Hyundai Steel and Hyundai Steel (Pipe Division) as a single entity based on record evidence including the use of the same address provided for the headquarters of both.

#### [21-54 Ferrostaal Metals GmbH et al v. United States](#)

On May 4, 2021, the CIT sustained Commerce's final determinations in the AD/CVD anticircumvention inquiries of certain cold-rolled steel flat products from Korea. The CIT found that Commerce's decisions to reject PMF's quantity and value responses, and to apply AFA to demonstrate that PMF was unable to trace its inputs, were reasonable and in accordance with law.

#### [21-55 Risen Energy Co., Ltd. v. United States](#)

On May 5, 2021, the CIT sustained Commerce's remand redetermination in the fifth antidumping duty administrative review of crystalline silicon photovoltaic cells from China. Commerce's use of facts otherwise available, and decision not to use partial AFA to calculate Risen's dumping margin, comports with the relevant statute and is consistent with the *Mueller* directive which states that Commerce may incorporate an adverse inference under 19 U.S.C. § 1677e(a) in calculating a cooperative respondent's margin, if doing so will yield an accurate rate, promote cooperation, and thwart duty evasion.

#### [21-56 Clearon Corp. et al v. United States](#)

On May 6, 2021, the CIT sustained Commerce's second remand results in the countervailing duty administrative review of chlorinated isocyanurates from China. The court found that Commerce had sufficiently complied with the court's instructions in *Clearon II* by relying on uncontroverted record evidence supporting Heze's claims of non-use of the Export Buyer's Credit Program ("EBCP"). Though Commerce did not "confer with the parties on a

verification procedure" or verify Heze's claims of non-use as directed by the court, the court found that Commerce sufficiently complied with the its instructions in *Clearon II*. Commerce used the alternative set out in *Clearon II*—relying on the uncontroverted record evidence supporting Heze's claims of non-use of EBCP— and therefore verification was not required

#### [21-58 Calgon Carbon Corporation et al v. United States](#)

On May 11, 2021, the CIT sustained Commerce's second remand redetermination in the tenth antidumping duty administrative review of certain activated carbon from China. The court sustained Commerce's surrogate value methodology as lawful and supported by substantial evidence. Commerce's selection of Thai data, which excluded French imports, to calculate a surrogate value for Respondent's carbonized material complied with the court's order in *Calgon II*.

#### [21-59 Coalition of American Flange Producers v. United States](#)

On May 13, 2021, the CIT sustained Commerce's remand results in the antidumping duty investigation of stainless steel flanges from India. Specifically, at issue was Commerce's classification of a sale as an export sale, thereby excluding it from Chandan's home market database. As required by the court in its remand order, Commerce addressed 1) the export quality packaging provision, 2) Chandan's treatment of the challenged agreement's logo provision, and 3) the final payment and delivery terms of the sale. The court ultimately accepted Commerce's explanation of the previously unaddressed evidence and concluded that, given the totality of the evidence, Commerce's remand results were based on substantial evidence.

#### [21-60 Guizhou Tyre Co., Ltd. et al v. United States](#)

On May 14, 2021, the CIT sustained in part and remanded in part Commerce's remand redetermination in the antidumping duty administrative review of off-the-road tires from China. The court sustained Commerce's decision to redetermine Xugong's dumping margin upon recalculating export price and constructed export price to remove the deduction from U.S. price for Chinese value-added tax. The court also sustained Commerce's decision to apply the rate of 16.78% to unexamined separate-rate respondents. The CIT remanded Commerce's decision to deny separate-rate status to Aeolus and GTC, because Commerce's determination that the companies were under

*de facto* government control was unsupported by substantial evidence.

[21-62/21-63 \*Trans Texas Tire, LLC v. United States\*](#)

On May 18, 2021, the CIT sustained in part and remanded in part Commerce’s final determinations in the antidumping and countervailing duty investigations of certain steel wheels 12 to 16.5 inches in diameter from China. The court concluded that Commerce’s final scope determinations and its CVD calculation were supported by substantial evidence and in accordance with law. However, the court found that Commerce unlawfully assessed duties from the original suspension of liquidation because Commerce failed to provide adequate notice. The court remanded the case to Commerce to re-issue the instructions to comply with the opinion.

[21-64 \*Guizhou Tyre Co., Ltd. v. United States\*](#)

On May 19, 2021, the CIT sustained in part and remanded in part Commerce’s final results in the countervailing duty administrative review of truck and bus tires from China. The CIT sustained the issuance of the CVD Order while the Commission’s remand determination was still on appeal to the CIT. The CIT also sustained Commerce’s decision to apply AFA to the loans presented at verification. The CIT remanded Commerce’s decision to apply AFA to the grants presented at verification as well as the application of AFA related to use of EBCP. With respect to Commerce’s use of benchmarks to determine whether inputs were provided for less than adequate remuneration (“LTAR”), the CIT remanded Commerce’s adjustment to ocean freight and import duties and Commerce’s selection of actual import

prices as benchmarks for synthetic rubber and butadiene for further explanation. Finally, the CIT remanded Commerce’s decision to not assign Jinhaoyang the same cash deposit rate as Double Coin because Commerce failed to provide a reasonable explanation.

[21-65 \*Icdas Celik Enerji Tersane Ve Ulasim Sanayi, A.S. v. United States\*](#)

On May 20, 2021, the court sustained Commerce’s second remand results in the antidumping duty investigation of carbon and alloy steel wire rod from Turkey. The court concluded that Commerce’s duty drawback methodology and calculation of AD margins were in accordance with law and supported by substantial evidence. The court found that Commerce followed the second remand order to recalculate normal value without making a circumstance of sale adjustment regarding the duty drawback adjustment to export price or constructed export price.

[21-67 \*Fabuwood Cabinetry Corp. v. United States\*](#)

On May 27, 2021, the CIT sustained Commerce’s remand results in an antidumping and countervailing duty scope ruling concerning certain hardwood plywood products from China. The court concluded that Commerce’s unchallenged remand results complied with the remand instructions from *Fabuwood I* —which ordered Commerce to further explain or reconsider its decision to accept the petitioner’s scope ruling request. On remand, Commerce reversed itself and concluded that the scope ruling request was deficient and did not provide a proper basis to issue a scope ruling. The CIT affirmed the remand on the basis that it was lawful and supported by substantial evidence

## COURT OF APPEALS FOR THE FEDERAL CIRCUIT

[20-1461 \*Uttam Galva Steels Limited v. United States et al\*](#)

On May 14, 2021, the CAFC affirmed the CIT’s decision to sustain Commerce’s determination to grant a duty drawback adjustment under 19 U.S.C. § 1677a(c)(1)(B) that resulted in no dumping margin. Commerce made duty drawback adjustments by increasing the export price by the total amount of drawback duties, even though the inputs for which the drawback was granted were not incorporated into the exported goods. The Federal Circuit affirmed the CIT’s decision to sustain this determination because 19 U.S.C. § 1677a(c)(1)(B) only requires that the drawback is issued “by reason of the exportation” and does not require that the input was incorporated into the good.

[20-1475 \*Bio-Rad Laboratories, Inc. v. International Trade Commission\*](#)

On May 28, 2021, the CAFC affirmed the ITC’s section 337 decision concerning certain microfluidic chips. The CAFC affirmed the ITC’s decision that 10X Genomics infringed U.S. patents 9,500,664; 9,636,682; and 9,649,63 by importing its “GEM Chips.” The decision was based on the CAFC’s finding that substantial evidence supported the findings of indirect infringement. Specifically, that 10X had knowledge of the patents at least by the filing of the complaint in this investigation, which was sufficient for indirect infringement here. Additionally, 10X’s evidence of noninfringing uses relate to entirely hypothetical uses not currently available to customers.