

TRADE LAW UPDATE



August 2021

IN THIS ISSUE

[Presidential Actions](#)

[U.S. Department of
Commerce Decisions](#)

[U.S. International Trade
Commission Proceedings](#)

[U.S. Customs & Border
Protection Decisions](#)

[Court of International Trade
Decisions](#)

[Federal Court of Appeals
Decisions](#)

[Export Controls and
Sanctions](#)

PRESIDENTIAL ACTIONS

[**CBP Issues Updated Guidance for “U.S. and Foreign Goods Returned” Entered Under HTSUS Subheading 9801.00.10: Brokers, Especially, Should Take Notice**](#)

On August 20, 2021, U.S. Customs and Border Protection (“CBP”) issued Cargo Systems Messaging Service (“CSMS”) [message # 49132200](#) addressing documentation requirements for import shipments valued over \$2,500 to qualify for the duty-free “U.S. and Foreign Origin Goods Returned” preferential tariff provision under HTSUS Subheading 9801.00.10. As a reminder, the Trade Facilitation and Trade Enforcement Act of 2015 (“TFTEA”), signed into law on February 24, 2016, modified Subheading 9801.00.10 to include U.S. goods returned at any time as well as foreign origin goods returned within three years of original export. The new CSMS guidance aligns with the current documentation requirements in 19 C.F.R. § 10.1 (last revised in 2015).

[**U.S. Domestic Industry Files Anti-Circumvention Cases Against Three Countries Regarding Crystalline Silicon Photovoltaic Cells**](#)

The Petitioners representing the U.S. domestic industry filed new petitions with the U.S. Department of Commerce against imports from three countries, Thailand, Vietnam, and Malaysia, alleging that certain Chinese producers are diverting Chinese-origin components through Thailand to undergo minor processing to complete Crystalline Silicon Photovoltaic (“CSPV”) cells and

modules subject to the Orders and subsequently to export the merchandise to the United States to avoid AD/CVD duties. While the requests are hundreds of pages in length, the gist of the allegations against each country is that the operations being performed in each of these countries are minor or insignificant, and the products being exported from each of the three countries are subject to the antidumping and countervailing duty order on CSPV cells and modules from China.

[**Federal Circuit Strikes Down Treasury Regulations Limiting Drawback Refunds on Beer and Wine Exports**](#)

On August 23, 2021, the U.S. Court of Appeals for the Federal Circuit (“Federal Circuit”) struck down federal regulations restricting refunds on export taxes and restricting beer and wine manufacturers greater tax refunds for duties paid on imports. In *National Association of Manufacturers v. Department of the Treasury* (see ruling here), the Federal Circuit upheld the lower court, the Court of International Trade, and ruled against the U.S. Treasury Department’s revised definition of duty drawback for wine. Under U.S. tax law, the duty drawback program allows companies to apply for and receive certain tax refunds of excise taxes paid on imported goods. For example, a wine importer and manufacturer could recoup duties paid on 100 bottles of imported wine by exporting 100 bottles of similarly priced wine of the same class/type.

U.S. DEPARTMENT OF COMMERCE DECISIONS

Investigations

- There were no final determinations of investigation from Commerce during the month of August 2021.

Administrative Reviews

- Light-Walled Rectangular Pipe and Tube from Turkey: On August 2, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).
- Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: On August 2, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2018-2019).
- Emulsion Styrene-Butadiene Rubber from Mexico: On August 3, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2018-2019).
- Light-Walled Rectangular Pipe and Tube from Mexico: On August 3, 2021, Commerce issued its amended final [results](#) of the antidumping duty administrative review (2018-2019).
- Certain Oil Country Tubular Goods from Vietnam: On August 3, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2018-2019).
- Pure Magnesium from China: On August 3, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).
- Certain Quartz Surface Products from China: On August 9, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2018-2020).
- Dioctyl Terephthalate from Korea: On August 11, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).
- Carbon and Certain Alloy Steel Wire Rod from Mexico: On August 18, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2018-2019).
- Diamond Sawblades and Parts Thereof from China: On August 20, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2018-2019).
- Certain Hot-Rolled Steel Flat Products from Australia: On August 23, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2018-2019).
- Certain Hot-Rolled Steel Flat Products from Turkey: On August 23, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2018-2019).
- Stainless Steel Bar from India: On August 25, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).
- Certain Hot-Rolled Steel Flat Products from Japan: On August 26, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2018-2019).
- Stainless Steel Flanges from India: On August 26, 2021, Commerce issued its final results of the [antidumping](#) duty administrative review (2018-2019) and [countervailing](#) duty administrative review (2018).
- Certain Hot-Rolled Steel Flat Products from Korea: On August 26, 2021, Commerce issued its final [results](#) of the countervailing duty administrative review (2018).
- Low Melt Polyester Staple Fiber from Korea: On August 30, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).
- Crystalline Silicon Photovoltaic Cells from China: On August 30, 2021, Commerce issued its final [results](#) of the countervailing duty administrative review (2018).

Changed Circumstances Reviews

- Certain Softwood Lumber Products from Canada: On August 6, 2021, Commerce issued its final [results](#) in the countervailing duty changed circumstances review.

Sunset Reviews

- Polyethylene Retail Carrier Bags from Vietnam: On August 10, 2021, Commerce issued its final [results](#) of the expedited second countervailing duty sunset review.

- Certain Corrosion-Resistant Steel Products from China: On August 19, 2021, Commerce issued its final [results](#) of the expedited countervailing duty sunset review.
- Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from China: On August 31, 2021, Commerce issued its final [results](#) of the antidumping duty sunset review.

U.S. INTERNATIONAL TRADE COMMISSION

Section 701/731 Proceedings

Investigations

- Standard Steel Welded Wire Mesh from Mexico: On August 5, 2021, the ITC issued its affirmative final [decision](#) in the antidumping duty investigation.
- Seamless Refined Copper Pipe and Tube from Vietnam: On August 11, 2021, the ITC issued its affirmative final [decision](#) in the antidumping duty investigation.
- Silicon Metal from Malaysia: On August 13, 2021, the ITC issued its affirmative final [decision](#) in the antidumping duty investigation.
- Utility Scale Wind Towers from Spain: On August 13, 2021, the ITC issued its affirmative final [decision](#) in the antidumping duty investigation.
- Metal Lockers from China: On August 19, 2021, the ITC issued its affirmative final [decision](#) in the antidumping and countervailing duty investigations.
- Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Korea, Russia, and Ukraine: On August 20, 2021, the ITC issued its affirmative final [decision](#) in the antidumping and countervailing duty investigations.



Sunset Review Decisions

- Ironing Tables and Certain Parts Thereof from China: On August 18, 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 Magnesia Carbon Bricks from China and Mexico: On August 20, 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.

Section 337 Proceedings

- Certain High-Density Fiber Optic Equipment and Components Thereof: On August 9, 2021, the ITC issued its final [determination](#) finding violation of Section 337.

U.S. CUSTOMS & BORDER PROTECTION

- CBP issued a [Notice of Determination as to Evasion](#) for Lyke Industrial Tool, LLC on August 10, 2021, finding substantial evidence that the company entered merchandise covered by the AD order for diamond sawblades and parts thereof from China by transshipping through Thailand and falsely claiming Thai-origin.
- CBP issued a [Notice of Determination as to Evasion](#) for Amlink Sourcing, Inc. on August 23, 2021, finding substantial evidence that the company entered merchandise covered by the AD and CVD orders for lightweight thermal paper from China by misclassifying entry type on its entry summaries.

COURT OF INTERNATIONAL TRADE

Summary of Decisions

[21-95 & 21-96 Simpson Strong-Tie Company v. United States](#)

On August 3, 2021, the CIT sustained Commerce's final remand results finding that Plaintiff's split-drive anchors and crimp-drive anchors are not within the scope of the AD order on certain steel nails from China. The CIT had remanded Commerce's scope determination at the agency's request following the Court of Appeal's decision in *OMG, Inc. v. United States* (which dealt with a similar scope issue pertaining to the AD order covering nails from Vietnam). Due to the similarities between the anchors in *OMG* and Simpson's anchors, the court upheld Commerce's determination that "Simpson's anchors are not covered by the scope of the [AD Order]."

[21-97 Heze Huayi Chemical Co., Ltd. and Juancheng Kangtai Chemical Co., Ltd. v. United States](#)

On August 5, 2021, the CIT sustained Commerce's final determination in the AD administrative review of chlorinated isocyanurates from China. The CIT sustained 1) Commerce's selection of Mexico as primary surrogate country, 2) Commerce's selection of surrogate values and financial statements and 3) Commerce's CIF adjustment. The court found that Commerce's determination that Mexico was a "significant producer of comparable merchandise" was permissible under the statute and therefore, Commerce met its obligation to use the "best available information" in selecting Mexico as a primary surrogate country. The court also found that Commerce reasonably exercised its discretion in selecting surrogate values and that the agency provided a legitimate reason for its use and adjustment of FOB data.

[21-98 Changzhou Trina Solar Energy Co., Ltd. et al v. United States](#)

On August 10, 2021, the CIT sustained Commerce's second remand redetermination in the fourth AD administrative review of crystalline photovoltaic cells (whether or not assembled into modules) from China. On remand, Commerce decided to rely on Xenata XS data instead of Maersk data to value Plaintiff's freight expenses. The court found that Commerce's conclusion that the Xenata XS data was more representative and comprehensive than the Maersk data was supported by substantial evidence and in accordance with law. For these reasons and because all parties agreed to the remand redetermination, Commerce's results were sustained.

[21-99 LG Chem, Ltd. v. United States](#)

On August 13, 2021, the CIT sustained Commerce's final determination in the AD investigation of acetone from Korea. The CIT found that Commerce's adjustment of Plaintiff's costs using Kumho's direct-assignment methodology was supported by substantial evidence. The CIT found that Plaintiff's value-based methodology did not reasonably reflect its cost of production due to its use of Chinese prices. Additionally, the court concluded that any error made by Commerce by rejecting Plaintiff's factual information was harmless and not prejudicial. Finally, the court found that Commerce's calculation of Plaintiff's general and administrative expenses based on company-wide financial statements instead of division-specific financial statements was reasonable and supported by substantial evidence, as it captured all the company's general and administrative expenses.

[21-100 Habas Sinai Ve Tibbi Gazlar Istihsal Endustrisi v. United States](#)

On August 18, 2021, the CIT sustained Commerce's final results in the countervailing duty administrative review of steel concrete rebar from Turkey. The court found that Commerce reasonably rejected use of Comtrade and Eurostat data for a tier-two benchmark calculation, which is permitted when the record cannot support calculation of a tier-one benchmark under 19 C.F.R. § 351.511(a)(2)(i)-(ii). The court concluded that Commerce reasonably determined that the Comtrade data was unreliable for purposes of an LTAR analysis. The court also found that Commerce provided a reasonable explanation for relying upon IEA data in calculating its tier-three benchmark, which is permitted where the record cannot support calculation of a tier-two benchmark.

[21-104 Committee Overseeing Action for Lumber Int'l Trade Investigations or Negotiations v. United States](#)

On August 18, 2021, the CIT sustained Commerce's determination that the potential sources of authority considered on remand do not supply a legal basis for the adoption of 19 C.F.R. § 351.214(k) or Commerce's conduct of an expedited review process for CVD rates. The lawfulness of the regulation was part of Plaintiff's challenge to Commerce's final results in the CVD expedited review of certain softwood lumber products from Canada. The CIT vacated 19 C.F.R. § 351.214(k) and the *Final Results of Expedited Review*. The CIT additionally found that prospective application of the vacatur of the *Final Results of Expedited Review* is merited. Thus, upon entry of judgment,

Commerce must issue a *Timken*-like Notice rescinding the *Final Results of Expedited Review*, reinstate the excluded companies in the *CVD Order* prospectively, and impose a cash deposit requirement for all companies that were covered by the *Final Results of Expedited Review*.

[21-105 Echjay Forgings Pvt. Ltd. v. United States](#)

On August 20, 2021, the CIT sustained Commerce's remand results in the AD investigation of stainless-steel flanges from India. The court found that Commerce adequately explained its decision to not collapse the entities owned by the Doshi family.

[21-106 Logitech, Inc. v. United States](#)

On August 24, 2021, the CIT found that Plaintiff's "Webcams" and "ConferenceCams" were classified under HTSUS heading 8517. Plaintiff challenged U.S. Customs and Border Protection's denial of Plaintiff's protest regarding the agency's decision to classify the subject merchandise under HTSUS heading 8525, with a duty rate of 2.1 percent *ad valorem*.

[21-107 Porkarna Engineered Stone Ltd. v. United States](#)

On August 25, 2021, the CIT sustained Commerce's final determination in the AD investigation of certain quartz surface products from India. The court sustained Commerce's decision to include Plaintiff's paid sample sales in the U.S. sales database when calculating Plaintiff's AD rate.

[21-109 MCC Holdings DBA Crane Resistoflex v. United States](#)

On August 26, 2021, the CIT remanded Commerce's remand redetermination in a challenge to the agency's scope determination for the AD order on cast iron pipe fittings from China. According to the court, Commerce misinterpreted the evidence that it cited from the ITC report and the evidence did not support its determination that Plaintiff's flanges are subject merchandise. The CIT remanded the decision to Commerce for the agency to reconsider its decision considering the deficiencies—whether Plaintiff's flanges were within the scope of the AD order was not decided by the court but is to be decided by Commerce upon remand.

[21-110 Star Pipe Products v. United States](#)

On August 26, 2021, the CIT remanded Commerce's remand redetermination in a challenge to the agency's scope determination for the AD order on cast iron pipe fittings from China. According to the court, Commerce failed to address evidence that ductile iron flanged fittings were outside the scope of the ITC investigation. The CIT remanded the decision to Commerce for the agency to reconsider its decision considering the deficiencies—whether Plaintiff's flanges were within the scope of the AD order was not decided by the court but is to be decided by Commerce upon remand.

[21-112 Hyundai Steel Company v. United States](#)

On August 27, 2021, the CIT remanded Commerce's final results in the CVD administrative review of certain hot-rolled steel flat products from Korea. The court remanded Commerce's application of adverse facts available because it did not identify the deficiencies in Plaintiff's submissions.

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

[20-1734 National Association of Manufacturers v. Department of Treasury](#)

On August 23, 2021, the CAFC affirmed the judgment of the CIT which invalidated a set of regulations interpreting 19 U.S.C. § 1313(v) or the duty drawback regime for imports of wine. The definitions as provided within the set of regulations permitted duty drawback claims for exports even without payment of an excise tax and prevented domestically produced exports from qualifying for a claim.

[20-2017 Goodluck India Limited v. United States](#)

On August 31, 2021, the CAFC reversed a remand determination of the CIT, holding that Commerce's decision to reject Goodluck India Ltd.'s questionnaire corrections in the antidumping duty investigation of cold-drawn mechanical tubing from India was supported by substantial evidence and in accordance with law. The CAFC agreed with Commerce that the corrections were not considered "minor." As a result of the CAFC's decision, a 33.8% percent AD rate will apply to Goodluck India Ltd.'s entries.

EXPORT CONTROLS & ECONOMIC SANCTIONS

[U.S. Government Imposes Sanctions and Issues Joint OFAC/BIS Telecommunications Fact Sheet to Support Cuban Protests](#)

During the past month, the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC") has issued three separate rounds of Specially Designated Nationals & Blocked Persons List designations in order to support protests in Cuba that began on July 11th. Further, OFAC and the U.S. Department of Commerce's Bureau of Industry and Security issued a joint fact sheet describing existing OFAC general licenses and BIS license exceptions that facilitate certain telecommunications equipment, software, and services exports to Cuba without prior approval by the U.S. government.

[New Executive Order Authorizes Imposition of Additional Sanctions on the Government of Belarus and Certain Sectors of the Belarusian Economy](#)

On August 9, 2021, President Biden issued [Executive Order 14038](#) (the "EO") which expanded the scope of the national emergency previously declared in [EO 13405](#) of June 16, 2006. The EO imposes additional sanctions in response to conduct by the Government of Belarus ("GoB") and the President Alyaksandr Lukashenka regime which the Biden Administration described as "long-standing abuses aimed at suppressing democracy and the exercise of human rights and fundamental freedoms." As specific examples, the EO cites the "fraudulent" August 9, 2020 election administered by the GoB, in which Lukashenka was reelected, and the GoB's forced grounding of an international flight to arrest Belarusian journalist Raman Pratasevich and his partner Sofia Sapega.