

TRADE LAW UPDATE



September 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

[CIT Issues Resolving Order in Section 301 Litigation](#)

On September 8, 2021, the US Court of International Trade issued an [order](#) resolving the steps that Plaintiffs will need to take in order to preserve their rights to receive refunds, in conformance with the injunction that was issued by the court on July 6, 2021. The order resolves an ongoing back-and forth between plaintiffs and defendants over the past two months on how to ensure that refunds are available to the plaintiffs. Instead of creating a repository and requiring plaintiffs to continually submit a list of entries to be suspended, the court has deferred the submission of that information until the end of the case and the government has agreed to make refunds provided that Plaintiffs win on the merits for all entries that were unliquidated as of July 6, 2021 and for all entries after that date.

This order has no impact on previously liquidated entries, for which the availability of refunds will be decided at the end of this litigation if the plaintiffs prevail on the merits after all appeals.

[EPA Issues Final Rule to Phase Down HFCs as White House Announces Measures to Prevent Illegal Imports](#)

The United States Environmental Protection Agency (EPA) has [finalized a rule](#) intending to reduce the production and consumption of hydrofluorocarbons (HFCs) in the United States by enforcing a cap and phasedown program under the American Innovation and Manufacturing (AIM) Act. According to the EPA, the [final rule](#) will phase down U.S. production and consumption of HFCs by eighty-five percent over the next fifteen years. Beginning January 1, 2022, [allowances](#) will be required to produce or import HFCs. The AIM Act instructs the EPA to issue a fixed quantity of transferrable production and consumption allowances, which producers and importers must hold in quantities equal to the amount of HFCs they produce or import. Alongside the EPA's final rule, the EPA and other federal agencies under the Biden Administration announced additional actions intended to reduce consumption of HFCs, with a focus on curtailing and controlling illegal imports.

U.S. DEPARTMENT OF COMMERCE DECISIONS

Investigations

- Certain Aluminum Foil from [Armenia](#), [Brazil](#), [Oman](#), [Russia](#), and [Turkey](#): On September 23, 2021, Commerce issued its affirmative final determinations in the antidumping duty investigations. Commerce also issued its final determinations in the countervailing duty investigations pertaining to [Oman](#) and [Turkey](#).
- Thermal Paper from [Germany](#), [Korea](#), [Japan](#), and [Spain](#): On September 30, 2021, Commerce issued its affirmative final determinations in the antidumping duty investigations.

Administrative Reviews

- Certain Crystalline Silicon Photovoltaic Products from Taiwan: On September 6, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).
- Hydrofluorocarbon Blends from China: On September 6, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).
- Fine Denier Polyester Staple Fiber from India: On September 7, 2021, Commerce issued its final [results](#) of the countervailing duty administrative review (2019).
- Steel Concrete Reinforcing Bar from Mexico: On September 9, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2018-2019).
- Carbon and Certain Alloy Steel Wire Rod from Mexico: On September 14, 2021, Commerce issued its amended final [results](#) of the antidumping duty administrative review (2018-2019).
- Certain Stilbenic Optical Brightening Agents from Taiwan: On September 15, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).
- Emulsion Styrene-Butadiene Rubber from Brazil: On September 24, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).
- Steel Concrete Reinforcing Bar from Turkey: On September 27, 2021, Commerce issued its final [results](#) of the countervailing duty administrative review (2018).
- Forged Steel Fittings from China: On September 28, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2018-2019).
- Circular Welded Non-Alloy Steel Pipe from Korea: On September 28, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2018-2019).
- Glycine from Japan: On September 29, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2018-2020).

Changed Circumstances Reviews

- There were no final results of changed circumstances reviews during the month of September 2021.

Sunset Reviews

- Magnesium Metal from China: On September 16, 2021, Commerce issued its final [results](#) of the antidumping duty sunset review.
- Certain Carbon Steel Butt-Weld Pipe Fittings from Brazil, Japan, Taiwan, Thailand, and China: On September 17, 2021, Commerce issued its final [results](#) of the expedited antidumping duty sunset reviews.
- Certain Tissue Paper Products from China: On September 21, 2021, Commerce issued its final [results](#) of the expedited antidumping duty sunset review.
- Certain Corrosion-Resistant Steel Products from Italy: On September 28, 2021, Commerce issued its final [results](#) of the expedited countervailing duty sunset review.

U.S. INTERNATIONAL TRADE COMMISSION

Section 701/731 Proceedings

Investigations

- Methionine from Japan and Spain: On September 10, 2021, the ITC issued its affirmative final [decisions](#) in the antidumping duty investigations.

Sunset Review Decisions

- Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from China: On September 8, 2021, the ITC issued its final affirmative [decision](#) to continue the antidumping and countervailing duty orders as revocation would lead to the recurrence or continuation of injury.

Section 337 Proceedings

- There were no final Section 337 decisions during the month of September 2021.



U.S. CUSTOMS & BORDER PROTECTION

- CBP issued a [Notice of Investigation](#) on September 9, 2021 for EAPA case 7618: CNC Associates N.Y., Inc. dba CNC Cabinetry. CBP will investigate whether the company evaded the AD/CVD orders on wooden cabinets from China.
- CBP issued a [Notice of Determination](#) as to Evasion on September 16, 2021 for EAPA case 7553, finding that Pacific Building Material Inc.; Deco Kitchen Cabinet & Bath, Inc.; Skyview Cabinet USA, Inc.; and Greentree Trading Company evaded AD/CVD orders on wooden cabinets from China by falsely claiming Malaysia as the country of origin.
- CBP issued a [Notice of Determination](#) as to Evasion on September 16, 2021 for EAPA case 7553, finding that CEK Group LLC; D&J Trading Inc.; KSA Supply Corporation; and Power Poly & Hanger Supply Inc. evaded AD/CVD orders on wooden cabinets from China by falsely claiming Thailand as the country of origin.

COURT OF INTERNATIONAL TRADE

Summary of Decisions

[21-113 Prosperity Tieh Enterprise Co., Ltd. v. United States](#)

On September 1, 2021, the CIT remanded Commerce's redetermination in the AD investigation of CORE from Taiwan. The court vacated Commerce's determination on collapsing as Commerce failed to consider the "totality of the circumstances" between all entities in its determination of whether there was significant potential for manipulation of price or production. The court held that Commerce must either 1) evaluate the relationship between each individual entity being considered for collapsing or 2) evaluate the relationship between an already collapsed entity and the additional entity with which the collapsed entity is being considered for further collapsing. Accordingly, the court ordered Commerce to recalculate the margins based on its vacatur.

[21-114 Canadian Solar Inc. et al v. United States](#)

On September 3, 2021, the CIT partially sustained and partially remanded Commerce's final results in the fifth AD administrative review of crystalline silicon photovoltaic cells from China. Commerce requested a remand on three issues, which were unopposed: 1) reconsidering the benchmark for aluminum extrusions, 2) choosing the benchmark for solar-grade polysilicon, and 3) its application of AFA in its specificity finding for the provision of electricity for LTAR. Further, because the court found that evidence on the record supported Commerce's determination that "users of aluminum extrusions do not make up something akin to the whole of the Chinese economy," the court sustained Commerce's specificity determination, holding that it is "not unsupported by substantial evidence on the record, or otherwise not in accordance with law." The court also found that Commerce's chosen land benchmark is lawful and supported by substantial evidence because Commerce had previously conducted a proper tiered benchmark analysis. Finally, the court concluded that Commerce's uncreditworthy determination pertaining to Canadian Solar in 2016 was reasonable because record evidence did not indicate that Canadian Solar or its cross-owned affiliates were party to a commercial loan.

[21-115 Worldwide Door Components, Inc. v. United States & 21-116 Columbia Aluminum Products, LLC v. United States](#)

On September 14, 2021, the CIT remanded Commerce's remand determination in the AD/CVD scope inquiry on aluminum extrusions from China. The court analyzed

Commerce's methodology for scope determinations and found that Commerce's remand decision impermissibly relied on a factual finding or inference pertaining to WorldWide Door Components, Inc.'s and Columbia Aluminum Products, LLC's door thresholds. In both cases, the court ordered Commerce to reconsider the applicability of the finished merchandise exclusion to WorldWide's and Columbia's door thresholds.

[21-117 Unicatch Industrial Co., Ltd. et al v. United States](#)

On September 14, 2021, the CIT sustained Commerce's final results of the third AD administrative review of steel nails from Taiwan. The court found that Commerce's decision to rely on individual affiliates to determine whether purchase prices were above market price was in accordance with the law. The court also sustained Commerce's decision to use the weighted-average price paid to Unicatch's unaffiliated suppliers as the market price was supported by substantial evidence and in accordance with the law. Lastly, the court sustained Commerce's cost of manufacturing adjustment.

[21-118 & 21-119 Saha Thai Steel Pipe Public Co. Ltd. v. United States](#)

On September 17, 2021, the CIT sustained Commerce's remand results in the AD administrative reviews of circular welded carbon steel pipes and tubes from Thailand (2016-2017 and 2017-2018 PORs, respectively). The court sustained Commerce's removal of the particular market situation adjustment and found that Commerce's recalculation of the weighted-average dumping margin without the adjustment is in accordance with law.

[21-121 NTSF Seafoods JSC et al v. United States](#)

On September 20, 2021, the CIT sustained Commerce's remand results in the AD administrative review of certain frozen fish fillets from Vietnam. The court sustained Commerce's decision on remand to grant an offset for NTSF's sales of fish oil and fish meal byproducts for the last three months of the period of review. Commerce determined that NTSF reconciled its byproduct reporting properly and substantiated an offset because NTSF's reporting accounted for the byproducts generated in its responses during the period of review. The court also found that Commerce's use of Indonesian Global Trade Atlas data to calculate a surrogate value for NTSF's byproduct offsets was product-specific and constituted the best available information, and therefore is supported by substantial evidence.

[21-123 Calcutta Seafoods Pvt. Ltd. et al v. United States](#)

On September 20, 2021, the CIT sustained Commerce's remand results in the AD review of certain frozen warmwater shrimp from India. The court concluded that the remand results complied with the court's order in *Calcutta I* because Commerce recalculated the Elque Group's AD duty rate without applying AFA and the recalculated rate reflects the evidence in the record and is sufficiently explained by Commerce.

[21-124 Government of Argentina v. United States](#)

On September 21, 2021, the CIT sustained Commerce's final results in the CVD changed circumstances review ("CCR") of biodiesel from Argentina. The court found that Commerce conducted the CCR in accordance with law and that the agency's final results were supported by substantial evidence.

[21-126 Histeel Co., Ltd. v. United States](#)

On September 23, 2021, the CIT remanded Commerce's final results in the AD review of heavy walled rectangular welded carbon steel pipes and tubes from Korea. The court concluded that Commerce impermissibly applied a particular market situation adjustment prior to conducting a sales-below-cost test under 19 U.S.C. § 1677b(b), contrary to the plain language of the statute. Furthermore, the court found that Commerce failed to provide substantial evidence that a particular market situation existed in the Korean market for the subject merchandise during the period of review.

[21-127 Linyi Chengen Import and Export Co., Ltd.](#)

On September 24, 2021, the CIT remanded Commerce's third remand redetermination in the AD investigation of hardwood and decorative plywood and certain veneered panels from China. The court found that the all-others separate rate was unsupported by substantial evidence. While the court sustained Commerce's departure from the expected method, the court concluded that Commerce's 57.36% separate rate assigned to the voluntary and cooperating separate rate plaintiffs was not reasonable and was unsupported by substantial evidence.

[21-128 Qingdao Sentury Tire Co., Ltd. et al v. United States](#)

On September 24, 2021, the CIT partially sustained and partially remanded Commerce's second remand results in the AD administrative review of certain passenger vehicle and light truck tires from China. The court found that Commerce's separate rate analysis failed to first determine whether Pirelli was wholly foreign-owned or located in a

market economy prior to its acquisition. The court remanded to Commerce to determine whether Pirelli was wholly foreign-owned or located in a market economy prior to the Chem China acquisition; whether a separate rate analysis should be conducted for the period from January 2015 to October 2015; whether the presumption of Chinese governmental control applies to Pirelli prior to Chem China's acquisition; and if so, whether there was *de jure* or *de facto* Chinese governmental control over Pirelli before Chem China's acquisition. The court sustained Commerce's removal of the downward adjustment to Sentury's export price and revised dumping margins for Sentury and the revised all-others separate rate.

[21-130 M S International, Inc. v. United States](#)

On September 24, 2021, the CIT sustained Commerce's final determination in the AD investigation of certain quartz surface products from China. The court sustained Commerce's surrogate country and surrogate value selections for quartz powder, transportation, and financial statements. The court concluded that Commerce reasonably found Mexico to be a significant producer of identical merchandise based on the three-prong comparability test that considers the physical characteristics, end uses, and production processes.

[21-131 Godaco Seafood JSC v. United States](#)

On September 27, 2021, the CIT sustained Commerce's second remand results in the AD administrative review of certain frozen fish fillets from Vietnam. The court found that the separate rate that Commerce determined for the non-examined companies was supported by substantial evidence. The court found that Commerce's use of "any reasonable method" under 19 U.S.C. § 1673d(c)(5)(B) to calculate a revised all-others separate rate was supported by substantial evidence and reasonable. Commerce applied a simple average of the separate rates assigned in the four prior administrative reviews to account for any variations in the all-others separate rate between the periods of review.

[21-132 NEXTEEL Co., Ltd. v. United States](#)

On September 27, 2021, the CIT remanded Commerce's final results in the AD administrative review of circular welded non-alloy steel pipe from Korea. The court concluded that Commerce's cost-based particular market situation determination and subsequent adjustment are not in accordance with the law because 19 U.S.C. § 1677b(e) does not authorize a cost-based particular market situation adjustment when Commerce bases normal value on home market sales.

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

[20-1044 Wanxiang America Corporation v. United States](#)

On September 2, 2021, the CAFC affirmed the decision of the CIT finding that it lacked jurisdiction over Appellant's action under 28 U.S.C. § 1581(i). The CAFC held that Appellant could have sought relief under another subsection of 28 U.S.C. § 1581 and had not shown that such relief would have been manifestly inadequate.

EXPORT CONTROLS & ECONOMIC SANCTIONS

[BIS Requests Comments from Information and Communications Technology \(ICT\) and Semiconductor Supply Chains on Supply Chain Vulnerabilities](#)

The Department of Commerce's ("Commerce") Bureau of Industry & Security ("BIS") recently issued requests for comments on risks to the information communications and technology and semiconductor supply chains. These comments are being requested as part of the U.S. government's [broader review](#) of supply chain vulnerabilities (see [here](#), [here](#), and [here](#)).