

TRADE LAW UPDATE



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PRESIDENTIAL ACTIONS

[U.S.-EU Make a Deal on Steel and Aluminum Tariffs](#)

On October 30, the United States and the European Union reached an agreement on section 232 duties being imposed because of global steel and aluminum excess capacity concerns. The trading partners have agreed that the U.S. will adjust tariffs on steel and aluminum to allow elimination of certain U.S. section 232 duties, and the EU will suspend its retaliatory tariffs. While many details are yet to be released, Husch Blackwell provides some guidelines in this article.

[Adapting to New Anti-Dumping and Countervailing Duty Rules](#)

On September 20, the U.S. Department of Commerce published a new set of anti-dumping and countervailing duty [regulations](#) governing a multitude of administrative proceedings including:

- Changes to new shipper reviews;
- Scope ruling requests;
- Anti-circumvention inquiries;
- Covered merchandise referrals from U.S. Customs and Border Protection under the Enforce and Protect Act; and
- Modifications to certification requirements.

This is the most comprehensive overhaul of Commerce regulations since 1997, when new regulations were issued to institute changes arising from the World Trade Organization agreements and accompanying revisions to the statute in 1994.

The current modifications will have the most substantive impact on importers as they relate to new shipper reviews, scope rulings, anti-circumvention proceedings, covered merchandise referrals and certifications. This article highlights and explains these impacts and how importers can navigate the changes.

[U.S. Court of International Trade Stays Department of Commerce's Motion for Voluntary Remand, Setting Course for Court-Annexed Mediation in Section 232 Exclusions Dispute](#)

On September 30, 2021, the Department of Commerce filed a motion requesting a voluntary remand to review 502 section 232 exclusion request denials it issued to Voestalpine High Performance Metals Corporation and Ergo Specialty Steels, Incorporated beginning in 2018. Specifically, Commerce in its motion acknowledges that it lacks documentation explaining why it rejected all 502 requests. This motion for voluntary remand comes only a couple months after Commerce requested the same type of voluntary remand in six separate Section 232 appeals.

[Biden Administration Comes to Agreement with Private Companies and Unions to Begin Operating the Port of Los Angeles 24/7](#)

With the support of the Executive Directors of The Port of Los Angeles (“Port of L.A.”) and the Port of Long Beach, and the President of the International Longshore and Warehouse Union, President Biden [announced](#) on Wednesday October 13, 2021, after week of negotiations, that the Port of L.A. has agreed to begin operating 24/7. The Port of L.A. will join the Port of Long Beach, which has been running 24/7 for the past several weeks. Together, 40% of the containers imported to the United States go through these two ports.

[USTR Announces Agreement with Austria, France, Italy, Spain, and the United Kingdom on Section 301 Tariffs Related to Digital Services Taxes](#)

The Office of the United States Trade Representative (“USTR”) announced that the Department of the Treasury has reached an [agreement](#) with Austria, France, Italy, Spain, and the United Kingdom regarding the treatment of Digital Services Taxes (“DSTs”). The Department of Treasury reached the agreement in conjunction with the Organization for Economic Co-operation and Development (“OECD”) global agreement. In coordination with the Department of Treasury, USTR plans to work together with these governments to ensure implementation of the agreement and rollback of existing DSTs.

U.S. DEPARTMENT OF COMMERCE DECISIONS

Investigations

- Utility Scale Wind Towers from [India](#) and [Malaysia](#): On October 13, 2021, Commerce issued its affirmative final determinations in the antidumping duty investigations. Commerce also issued its final determinations in the countervailing duty investigation pertaining to [India](#).
- Certain Mobile Access Equipment and Subassemblies from China: On October 19, 2021, Commerce issued its affirmative final [determination](#) in the countervailing duty investigations.
- Polyester Textured Yarn from [Malaysia](#), [Indonesia](#), [Vietnam](#), and [Thailand](#): On October 25, 2021, Commerce issues its affirmative final determinations in the antidumping duty investigations.

Administrative Reviews

- Certain Uncoated Paper from Brazil: On October 7, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).
- Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: On October 13, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).
- Glycine from Japan: On October 14, 2021, Commerce issued a correction its final [results](#) of the antidumping duty administrative review (2018-2020).
- Certain Uncoated Paper from Portugal: On October 21, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).
- Welded Line Pipe from the Republic of Korea: On October 21, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2018-2019).
- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from China: On October 25, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2018-2019).
- Multilayered Wood Flooring from China: On October 27, 2021, Commerce issued its final [results](#) of the countervailing duty administrative review (2018).
- Circular Welded Carbon-Quality Steel Pipe from United Arab Emirates: On October 27, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2018-2019).

Changed Circumstances Reviews

- Wooden Cabinets and Vanities from China: On October 8, 2021, Commerce issued its final [results](#) of the antidumping duty changed circumstances review.
- Certain Activated Carbon from China: On October 25, 2021, Commerce issued its final [results](#) of the antidumping duty changed circumstances review.

Sunset Reviews

- Cold-Rolled Steel Flat Products from India: On October 1, 2021, Commerce issued its final [results](#) of the countervailing duty sunset review.
- Certain Corrosion-Resistant Steel Products from Korea: On October 1, 2021, Commerce issued its final [results](#) of the countervailing duty sunset review.
- Cold-Rolled Steel Flat Products from China and Korea: On October 4, 2021, Commerce issued its final [results](#) of the countervailing duty sunset reviews.
- Cold-Rolled Steel Flat Products from Brazil, China, India, Japan, Korea, and United Kingdom: On October 5, 2021, Commerce issued its final [results](#) of the antidumping duty sunset reviews.
- Certain Corrosion-Resistant Steel Products from India: On October 5, 2021, Commerce issued its final [results](#) of the countervailing duty sunset review.
- Certain Corrosion-Resistant Steel Products from China, India, Italy, Korea, and Taiwan: On October 6, 2021, Commerce issued its final [results](#) of the antidumping duty sunset reviews.
- Stainless Steel Wire Rod from Japan, Korea, and Taiwan: On October 8, 2021, Commerce issued its final [results](#) of the antidumping duty sunset reviews.
- Porcelain-on-Steel Cooking Ware from China: On October 13, 2021, Commerce issued its final [results](#) of the antidumping duty sunset reviews.

U.S. INTERNATIONAL TRADE COMMISSION

Section 701/731 Proceedings

Investigations

- There have been no final decisions from the ITC during the month of October 2021.

Sunset Review Decisions

- There have been no final results of sunset reviews from the ITC during the month of October 2021.

Section 337 Proceedings

- Certain Tobacco Heating Articles and Components Thereof: On October 5, 2021, the ITC issued its final [determination](#) finding a violation of Section 337.
- Certain Balanced Armature Devices, Products Containing the Same, and Components Thereof: On October 8, 2021, the ITC issued its final [determination](#) finding a violation of Section 337.
- Certain Foodservice Equipment: On October 20, 2021 the ITC issued its final [determination](#) finding no violation of Section 337.



U.S. CUSTOMS & BORDER PROTECTION

- On October 20, 2021, CBP issued a [Withhold Release Order](#) on Supermax Corporation Bhd.'s subsidiaries Maxter Glove Manufacturing Sdn. Bhd., Maxwell Glove Manufacturing Bhd., and Supermax Glove Manufacturing. As a result, effective October 21, 2021, CBP officials at U.S. ports of entry will detain shipments of disposable gloves from these companies.
- On October 21, 2021, CBP issued a [Withhold Release Order](#) on Mexico tomato farms Agropecuarios Tom S.A. de C.V., and Horticola S.A de C.V., and their subsidiaries. As a result, effective October 21, 2021, CBP officials at U.S. ports of entry will detain shipments of tomatoes from these producers.

COURT OF INTERNATIONAL TRADE

Summary of Decisions

[21-137 Diamond Sawblades Manufacturers' Coalition v. United States](#)

On October 7, 2021, the CIT sustained Commerce's Remand Redetermination pertaining to the scope of the AD order on diamond sawblades and parts thereof from China. The court sustained Commerce's finding that Lyke Industrial Tool's cupwheels are not within the scope of the AD order and concluded that the agency's finding was supported by substantial evidence and in accordance with law.

[21-138 Pokarna Engineered Stone Ltd. v. United States](#)

On October 7, 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 exclude quartz fabricators from its industry support determination. The court found that consolidated plaintiff MSI did not demonstrate that Commerce violated *Chevron* by interpreting the term "producers" to not include fabricators.

[21-141 Cooper \(Kunshan\) Tire Co., Ltd. v. United States](#)

On October 12, 2021, the CIT remanded Commerce's final results in the 2017 administrative review of the CVD order on certain passenger vehicle and light truck tires from China. The court remanded Commerce's application of adverse facts available for Cooper Tire's use of the Export Buyer's Credit Program so that the agency may explain its verification methodology.

[21-142 Hung Vuong Corporation et al v. United States](#)

On October 12, 2021, the CIT sustained Commerce's remand results in the administrative review of the AD order on certain frozen fish fillets from Vietnam. The court sustained Commerce's continued application of AFA as supported by substantial evidence because of the company's reporting deficiencies and failure to cooperate.

[21-146 SeAH Steel Corporation v. United States](#)

On October 19, 2021, the CIT sustained in part and remanded in part Commerce's final results in the 2017-2018 administrative review of the AD order on OCTG from Korea. The court sustained Commerce's constructed export price profit rate and Commerce's decision to exclude freight revenue profit as in accordance with the law. The court remanded for Commerce to re-evaluate its particular market situation determination and further explain

whether the assumptions of Cohen's *d* test were observed in its differential pricing analysis.

[21-147 Husteel Co., Ltd. v. United States](#)

On October 19, 2021, the CIT sustained Commerce's second remand results in the 2016-2017 administrative review of the AD order on circular welded non-alloy steel pipe from Korea. The court found that Commerce's second remand results complied with the remand order by recalculating the dumping margins after removing a particular market situation adjustment.

[21-148 Marmen Inc. v. United States](#)

On October 22, 2021, the CIT sustained in part and remanded in part Commerce's Final Determination in the AD investigation of utility scale wind towers from Canada. The court sustained Commerce's decision to weight average Marmen's plate costs; Commerce's use of invoice dates as the date of sale; Commerce's use of Marmen's reported sales of tower sections; and Commerce's decision not to apply facts otherwise available or an adverse inference. The court remanded Commerce's determination rejecting Marmen's additional cost reconciliation information and Commerce's use of the "A-to-T" methodology to calculate Marmen's dumping margin for further consideration consistent with the CIT's opinion.

[21-149 Carbon Activated Tianjin Co., Ltd. v. United States](#)

On October 22, 2021, the CIT sustained Commerce's remand results in the eleventh administrative review of the AD order on certain activated carbon from China. The CIT upheld as supported by substantial evidence Commerce's decision to select Malaysia as the primary surrogate country, even though Commerce used a Romanian company's financial statements to calculate surrogate financial ratios. Malaysia as the primary surrogate country provided more specific data at the HTS 10-digit level for the coconut-shell charcoal input, explained Commerce. Additionally, the CIT found that the Plaintiffs' claims of a deficiency in the Romanian data were not supported by the administrative record and thus Commerce's finding that the Malaysian data was more contemporaneous with the period of review was supported by substantial evidence.

[21-150 Diamond Sawblades Manufacturers' Coalition v. United States](#)

On October 27, 2021, the CIT sustained Commerce's second Final Remand Redetermination in the sixth administrative

review of the AD order on diamond sawblades and parts thereof from China. The court sustained Commerce's decision to apply AFA only to exporter Bosun's sales in which "first in, first out" ("FIFO") methodology was employed. Commerce was justified in its use of AFA because the FIFO methodology does not properly document country of origin, which exporters are expected to do under the antidumping law. As a result of Commerce's decision, Bosun's dumping margin fell significantly from 82% to 15.91%. The court also found that Commerce complied with the remand order by addressing Plaintiff's argument that the Thai AUV data Commerce used to value copper powder and copper iron clab was aberrational. Commerce explained that Plaintiff made mathematical errors in calculating the

Thai AUV data and that, when correctly calculated, the data is not aberrational.

[21-152 Royal Brush Manufacturing, Inc. v. United States](#)

On October 29, 2021, the CIT sustained U.S. Customs and Border Protection's evasion finding under the Enforce and Protect Act. The court found that CBP had not deprived Royal Brush of due process by relying on confidential information to reach its decision. On remand, CBP explained that certain confidential information had to remain not susceptible to public summary. The CIT also sustained CBP's reexamination of its verification methodology after CBP again concluded that the verification report did not contain new factual information.

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

[21-1009 Hyundai Electric & Energy Systems Co., Ltd. v. United States](#)

On October 4, 2021, the CAFC affirmed the decision of the CIT sustaining Commerce's final results in the fifth administrative review of the AD order on large power transformers from Korea. The appeals court found that Commerce's decisions to rely on AFA and to cancel verification were supported by substantial evidence and otherwise not contrary to law, because Commerce determined and explained that the information Hyundai provided was unverifiable.

EXPORT CONTROLS & ECONOMIC SANCTIONS

[BIS Imposes New Export Restrictions on Software for Biological Equipment](#)

On October 5, 2021, the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") published a [final rule](#) in the *Federal Register* that places new controls on software and technology that can potentially be used for manufacturing biological weapons. The rule comes after a decision in May 2021 by the forty-three (43) participant countries in the Australia Group ("AG") to update the AG Common Control List to include biological equipment, technology and software that could be used to manufacture biological weapons. The AG is an international organization made up of countries dedicated to the eradication of chemical and biological weapons.