

TRADE LAW UPDATE



November 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

[United States Set to Rollback Existing Section 232 Tariffs on Steel and Aluminum from the European Union](#)

On October 31, 2021, the Secretary of Commerce and United States Trade Representative released a [statement](#) confirming that the United States and the European Union (EU) have come to an agreement (Agreement) that will modify the current section 232 tariffs on steel and aluminum imports. To see the full post regarding this issue, click [here](#).

[USTR Grants 6-Month Extension on Exclusions for 81 COVID-Related Products](#)

The Office of the United States Trade Representative (“USTR”) announced in a [notice](#) that 81 COVID specific product exclusions would be extended for an additional 6 months, with all COVID exclusions receiving an additional 16-day transition period. The exclusions on the 81 products was set to expire on November 14, 2021, but will now be pushed back until May 31, 2022, allowing these medical – care products to remain free from additional duties upon importation. The announcement comes after USTR requested public comments on August 27, 2021 on whether the exclusions should be further extended. To see the full post, click [here](#).

U.S. DEPARTMENT OF COMMERCE DECISIONS

Investigations

- There have been no final results of investigations from Commerce during the month of November 2021.

Administrative Reviews

- Steel Nails from Taiwan: On November 5, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).
- Glycine from India: On November 10, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2018-2020).
- Certain Hardwood Plywood Products from China: On November 12, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2019).
- Cold-Rolled Steel Flat Products from the United Kingdom: On November 12, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).

- Fine Denier Polyester Staple Fiber from India: On November 12, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).
- Steel Wheels 12 to 16.5 Inches in Diameter from China: On November 12, 2021, Commerce issued its final [results](#) of the countervailing duty administrative review (2019).
- Pasta from Turkey: On November 15, 2021, Commerce issued its final [results](#) of the countervailing duty administrative review (2019).
- Citric Acid and Certain Citrate Salts from [Colombia](#) and [Belgium](#): On November 15, 2021, Commerce issued its final results of the antidumping duty administrative review (2019-2020).
- Pasta from Italy: On November 15, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).
- Drawn Stainless Steel Sinks from China: On November 17, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2020-2021).
- Certain Cased Pencils from China: On November 18, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).
- Certain Frozen Warmwater Shrimp from India: On November 26, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).
- Large Residential Washers from Mexico: On November 26, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).
- Circular Welded Carbon Steel Pipes and Tubes from Turkey: On November 29, 2021, Commerce issued its final [results](#) of the countervailing duty administrative review (2019).
- Strontium Chromate from France: On November 29, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).
- Certain Steel Nails from Oman: On November 29, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).
- Diamon Sawblades and Parts Thereof from China: On November 30, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).
- Finished Carbon Steel Flanges from India: On November 30, 2021, Commerce issued its final [results](#) of the countervailing duty administrative review (2019).

Changed Circumstances Reviews

- Certain Activated Carbon from China: On November 17, 2021, Commerce issued its final [results](#) of the antidumping duty changed circumstances review.

Sunset Reviews

- Hydrofluorocarbon Blends from China: On November 5, 2021, Commerce issued its final [results](#) of the expedited antidumping duty sunset review.
- Narrow Woven Ribbons with Woven Selvedge from China and Taiwan : On November 16, 2021, Commerce issued its final [results](#) of the expedited antidumping duty sunset review.
- Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Korea, Mexico, and Turkey: On November 30, 2021, Commerce issued its final [results](#) of the expedited antidumping duty sunset review.

U.S. INTERNATIONAL TRADE COMMISSION

Section 701/731 Proceedings

Investigations

- Aluminum foil from Armenia, Brazil, Oman, Russia and Turkey: On November 12, 2021 the ITC issued its final affirmative [determinations](#) in the antidumping and countervailing duty investigations.

Sunset Review Decisions

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

Section 337 Proceedings

- Certain Electronic Devices, Including Streaming Players, Televisions, Set Top Boxes, Remote Controllers, and Components Thereof: On November 17, 2021, the ITC issued its final [determination](#) finding a violation of Section 337.



U.S. CUSTOMS & BORDER PROTECTION

- On November 4, 2021, CBP issued a [Withhold Release Order](#) on disposable gloves produced in Malaysia from a group of companies collectively known as Smart Glove. This group of companies includes Smart Glove Corporation Sdn Bhd, GX Corporation Sdn Bhd, GX3 Specialty Plant, Sigma Glove Industries, and Platinum Glove Industries Sdn Bhd.
- On November 24, 2021, CBP issued its affirmative notice of [determination](#) as to evasion in the consolidated EAPA case (Case 7522) and based upon evidence found that the named importers imported certain quartz surface products from China into the United States by undervaluation, misclassification, and/or transshipment through Malaysia.

COURT OF INTERNATIONAL TRADE

Summary of Decisions

[21-154 Solar Energy Industries Association, Nextera Energy Inc., Invenergy Renewables LLC, and EDF Renewables, Inc v. United States](#)

On November 16, 2021 the CIT denied CBP's motion to dismiss and granted Plaintiff's motion for summary judgement. This is one of a number of appeals opposing the withdrawal of exclusions on solar panels from safeguard duties. The court specifically held that Presidential Proclamation 10101 constituted a clear misconstruction of section 204 of the Trade Act and was outside the President's delegated authority. This proclamation attempted to rollback exclusions concerning solar panels using section 204 of the Trade Act. The court granted plaintiff's motion for summary judgement and set aside Proclamation 10101 on the basis that trade-restricting modifications are not permitted under the authority granted to the President under the Trade Act. Going forward the government is enjoined from enforcing the Proclamation and plaintiff will be refunded all duties it paid under the Proclamation with interest.

[21-155 Invenergy Renewables v. United States](#)

On November 17, 2021, the CIT granted summary judgement on the agency record for the plaintiff and vacated the USTR's withdrawal of a previously granted exclusion concerning solar panel imports. This case raised similar concerns related to the power granted to the President under sections 201 – 204 of the Trade Act. *See* Slip Op. 21-154 above) and the withdrawal of an exclusion request that had been previously granted. In this case, the government issued a second, mostly identical, withdrawal of an exclusion request after the first one had been enjoined by the court. The court held that the USTR had no statutory authority to withdraw the previously granted exclusion and, even if it had, the withdrawal was an arbitrary and capricious agency decision. President Trump subsequently attempted to withdraw the exclusions with Proclamation 10101, which as discussed above, the court found unlawful. Ultimately, the court ordered that the second withdrawal of the exclusion be vacated for lack of statutory authority and enjoined the government from enforcing it.

[21-156 Trans Texas Tire, LLC v. United States](#)

Trans Texas Tire ("TTT" or "Plaintiff") challenged Commerce's antidumping duty order involving certain steel wheels imported from China. TTT and Zhejiang Jingu

Company ("Jingu") challenged Commerce's authority to impose duties retroactively on such imports without sufficient notice. Plaintiff argued that Commerce's Preliminary Determination and the Preliminary Scope Decision Memorandum specifically excluded "certain steel wheels" coated with chrome. However, in the Final Determination and the Final Scope Decision Memorandum, Commerce clarified that chrome wheels coated through certain processes such as PVD would not be excluded from the AD order. The Court found that Commerce did not provide adequate notice to modify the scope and retroactively collect duties. The Court then remanded the case to Commerce so that instructions could be provided to CBP consistent with the Court's decision. Commerce in its remand redetermination revised its instructions to CBP, excluding from the order any imports of PVD chrome wheels between preliminary and final determination in order to provide adequate notice. The Court found the re-formulated instructions proper and sustained Commerce's remand results.

[21-157 Trans Texas Tire, LLC v. United States](#)

In the parallel case to 21-156, the issue facing the Court in this case was whether Commerce's revised instructions to CBP provided adequate notice of the inclusion of PVD chrome wheels in Commerce's countervailing duty order. The CIT directed Commerce to reformulate its instructions to CBP after the plaintiff's challenged Commerce's retroactive assessment of duties on PVD chrome wheels dating back to Commerce's preliminary determination. Initially, it was unclear if PVD chrome wheels would be within the scope of the order, until Commerce clarified in its final determination that PVD chrome wheels would specifically not be excluded. The Court agreed that adequate notice had not been provided in this case and remanded for re-instruction. On remand, Commerce revised its instructions to CBP, effectively changing the date the products would be subject to the order so that duties would not be assessed retroactively between the date of the Preliminary Determination and June 24, 2019. The Court then concluded that the reformulated instructions properly addressed the issue at hand and sustained the remand results.

[21-158 Dalian Meisen Woodworking Co., Ltd., v. United States](#)

On November 18, 2021, the CIT remanded Commerce's determination to apply AFA to Chinese producers of

cabinets. The court remanded with instruction to Commerce to reexamine its decision and recalculate its rate for the Chinese cabinet producers. The court determined that the producers had complied with Commerce's investigation and had responded correctly and to the best of their ability. While there were other issues related to the marketing of the products being investigated, the Court determined that Commerce did not have the statutory authority to examine these issues and therefore its decision to apply adverse facts available was

unsupported by substantial evidence on the record. The court specifically instructed Commerce to reconsider whether and to what extent it will use the correctly provided answers to determine the antidumping margin, reconsider its application of an adverse inference, and to the extent Commerce changes its rate, to also recalculate other cabinet producers' rates.

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

[21-1065 Kent International, Inc. v. United States](#)

On November 3, 2021, the CAFC reversed and remanded the CIT's decision to affirm CBP's denial of Kent's claims related to the HTSUS classification of Kent's children's bicycle seats. Kent petitioned to reclassify its shipment of bicycle seats through the port of Long Beach as "accessories of bicycles" to seats, which would prevent the collection of a 10% duty. Kent had successfully reclassified a shipment of the same goods through New York. CAFC found that the CIT erred when it approved CBP's use of bypass entries as evidence that a treatment previously accorded did not exist. But the CAFC affirmed the CIT's finding that CBP did not have a de facto established and uniform practice.

EXPORT CONTROLS & ECONOMIC SANCTIONS

[BIS Blacklists Certain Entities with Ties to China, Pakistan and Russia](#)

The U.S. Department of Commerce's Bureau of Industry and Security (BIS) recently issued a final [rule](#) amending the U.S. Export Administration Regulations (EAR) to add twenty-seven (27) companies and individuals to the BIS Entity List effective November 26, 2021. These companies and researchers are alleged to have ties to China's military quantum computing efforts as well as Pakistani nuclear and missile proliferation.

The new companies added include eight technology companies from the People's Republic of China (PRC), sixteen (16) PRC and Pakistani-based companies and individuals named for their involvement with Pakistan's unsafeguarded nuclear program and ballistic missile development, and three affiliates of Corad Technology Limited, a company blacklisted in 2019, added as a result of its diversion of U.S.-origin technology to Iran's military and space programs, North Korean front companies, and the PRC government and defense industry. To see the full post on this issue, click [here](#).