

# TRADE LAW UPDATE



May 2022

## IN THIS ISSUE

[Highlights From April](#)

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

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

[Court of International Trade Decisions](#)

[Federal Court of Appeals Decisions](#)

[Export Controls and Sanctions](#)

## HIGHLIGHTS FROM MAY

### [\*\*BIS Considers More Public and Expensive Consequences for Companies Violating the EAR\*\*](#)

Matthew Axelrod, the Assistant Secretary for Export Enforcement at the U.S. Department of Commerce's Bureau of Industry and Security ("BIS"), told a conference held by the Society for International Affairs on May 16, 2022, that his agency is considering major policy changes to its administrative enforcement authorities. Axelrod said the policy changes, expected to be rolled out in the next few months, are intended to incentivize export compliance by corporations under the Export Administration Regulations ("EAR").

### [\*\*OFAC Issues New Sanctions Prohibiting Certain Accounting, Auditing, Corporate Formation and Management Services to Persons in Russia Effective June 7, 2022; And Additional Bank Designations and General Licenses\*\*](#)

On May 8, 2022 the U.S. Department of the Treasury's ("Treasury") Office of Foreign Assets Control ("OFAC") further escalated U.S. sanctions against the Russian Federation ("Russia") by [issuing](#) two Determinations, adding new

individuals and entities to the Specially Designated Nationals and Blocked Persons list ("SDN List"), and issuing three new general licenses in connection with the Determinations and SDN List designations.

### [\*\*BIS Expands List of Items Subject to EAR Russia Industry Sector Sanctions Effective Immediately\*\*](#)

On May 9, 2022, the Bureau of Industry and Security ("BIS") released for public inspection a [Final Rule](#) adding hundreds of new items to a list of restricted items in Supplement No. 4 to Part 746 of the U.S. Export Administration Regulations ("EAR"). BIS created the Supplement No. 4 list two months ago in March 2022 to prohibit the export, reexport, or in-country transfer to or within Russia of specified items included on the list. (Husch Blackwell has previously provided more in-depth guidance on this [here](#)) The Supplement No. 4 list is one of two (2) Russia Industry Sector Sanctions lists in the EAR, and Monday's updates to the Supplement No. 4 list impose strict liability on any person who exports, reexports or transfers (in-country) the listed items to or within Russia.

## [USTR Announces Opportunity for Domestic Industry Parties to Comment on Continuation of Section 301 Tariffs](#)

July 6, 2022, will mark the four-year anniversary of the institution of Section 301 tariffs against approximately \$370 Billion in imports from China into the United States. In light of this anniversary, the Office of the United States Trade Representative (“USTR”) is commencing the first phase of its Four-Year Review Process, which will allow representatives of domestic industries which benefit from the trade actions to submit comments on whether or not the Section 301 tariffs should continue. In a notice to be published in the Federal Register on May 5, 2022 (unpublished version available [here](#)), USTR is requesting interested parties to address whether the imposition of the tariffs has been beneficial.

### **U.S. DEPARTMENT OF COMMERCE DECISIONS**

#### **Investigations**

- Freight Rail Coupler Systems and Certain Components Thereof From the People's Republic of China: On May 20, 2022 Commerce issued its final affirmative countervailing duty [determination](#).
- Freight Rail Coupler Systems and Certain Components Thereof From the People's Republic of China: On May 27, 2022, final affirmative [determination](#) of sales at less-than-fair value.

#### **Administrative Reviews**

- Large Residential Washers From Mexico: On May 4, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: On May 4, 2022, Commerce issued its final [results](#) of antidumping duty administrative review and final determination of no shipments (2019-2020).
- 1,1,1,2-Tetrafluoroethane (R-134a) From the People's Republic of China: On May 6, 2022, Commerce issued its final [results](#) of the antidumping duty administrative review (2020-2021).
- Wooden Bedroom Furniture From the People's Republic of China: On May 6, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2020).
- Stainless Steel Flanges From India: On May 9, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2019-2020).
- Certain Hot-Rolled Steel Flat Products From the Republic of Korea: On May 9, 2022, Commerce issued its final results of countervailing duty administrative review (2019).
- Steel Concrete Reinforcing Bar From Taiwan: On May 11, 2022, Commerce issued a notice of court decision not in harmony with the results of antidumping duty administrative review; notice of amended final [results](#).
- Certain Carbon and Alloy Steel Cut-To-Length Plate From Germany: On May 13, 2022 Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: On May 17, 2022 Commerce issued its amended final [results](#) of antidumping duty administrative review in part (2019).
- Certain Hot-Rolled Steel Flat Products From Japan: On May 24, 2022, Commerce issued its final [results](#) of antidumping duty administrative review and final determination of no shipments (2019-2020).
- Certain Cold-Rolled Steel Flat Products From the Republic of Korea: On May 26, 2022, Commerce issued a [notice](#) of court decision not in harmony with final results, notice of amended final results of the antidumping duty review.

#### **Changed Circumstances Reviews**

- There were no changed circumstances review issued during the month of May.

## Sunset Reviews

- Large Residential Washers From the People's Republic of China: On May 6, 2022, Commerce issued its final [results](#) of expedited sunset review of antidumping duty order.
- Wooden Bedroom Furniture From the People's Republic of China: On May 6, 2022, Commerce issued its final [results](#) of the expedited third sunset review of the antidumping duty order.
- Polyester Staple Fiber From the Republic of Korea and Taiwan: On May 9, 2022, Commerce issued its final [results](#) of the expedited sunset reviews of the antidumping duty orders.
- Certain Biaxial Integral Geogrid Products From the People's Republic of China: On May 24, 2022, Commerce issued its final [results](#) of the expedited first sunset review of the countervailing duty order.
- Certain New Pneumatic Off-the-Road Tires From India: On May 25, 2022, Commerce issued its final [results](#) of expedited first sunset review of the countervailing duty order.

## U.S. INTERNATIONAL TRADE COMMISSION Section 701/731 Proceedings

### Investigations

- There were no investigation decisions issued during the month of May

### Section 337 Proceedings

- Certain Routers, Access Points, Controllers, Network Management Devices, Other Networking Products, and Hardware and Software Components Thereof: On May 6, 2022, the ITC issued its Commission [Determination](#) To Review in Part a Final Initial Determination Finding No Violation of Section 337 and, on Review, To Affirm the Finding of No Violation; Termination of the Investigation.



## COURT OF INTERNATIONAL TRADE Summary of Decisions

### [22-41 Ghigi 1870 S.P.A. & Pasta Zara S.P.A. v. United States](#)

On May 4, 2022, the CIT sustained the U.S. Department of Commerce's remand results in the twenty second administrative review of pasta from Italy. Ghigi appealed the use of facts available arguing that Commerce's use of facts available and application of adverse inferences was not supported by record evidence. In its remand instructions the CIT upheld the use of facts available, but not adverse inferences and remanded the issue to Commerce to provide further support. In the remand redetermination Commerce continued to find that adverse inferences were warranted because Ghigi did not cooperate to the best of its ability with requests for verification of payment terms from Commerce. The court held that because Ghigi was an experienced respondent, knew the information that was being asked, and still did not provide it, Commerce showed that the adverse inferences were supported by substantial evidence and thus the results were valid.

### [22-43 Taizhou United Imp. & Exp. Co., Ltd. v. United States](#)

On May 10, 2022, the CIT sustained the U.S. Department of Commerce's final results in the administrative review of the countervailing duty order on aluminum extrusions from China. At issue was whether Commerce reasonably found that the suppliers of the products at issue were governmental authorities under 19 U.S.C. § 1677(5). Commerce argued that the government of China did not cooperate with the investigation by not providing complete information to its requests for ownership information. The court sided with Commerce and held that the application of facts available was supported by substantial evidence and in accordance with the law.

### [22-44 Risen Energy Co., Ltd. v. United States](#)

On May 12, 2022, the CIT partially sustained and partially remanded the U.S. Department of Commerce’s final results in the sixth administrative review of the countervailing duty order on crystalline silicon photovoltaic cells from China. Commerce requested a remand to review its decision that a subsidy was received under the Export Buyer’s Credit Program (EBCP), despite receiving verifications of non-use from Risen Energy and its customers. The court noted that, in past reviews, Commerce has repeatedly said it is not able to verify the certifications of non-use and that adverse facts available was appropriate in reaching a determination that Respondents used EBCP. In the opinion, the court stated that it has repeatedly remanded to Commerce with instructions to attempt to verify the certifications of non-use before rejecting the submissions. Rather than attempting to do so, Commerce has repeatedly removed EBCP from the calculation under protest without appeal. In this case, the court held that Commerce may remand but, if it decides to remove EBCP from the calculation under protest again and does not appeal, it “must explain on remand why the Court should not provide some form of equitable relief, such as the immediate return of deposits, or an injunction of the continued inclusion of the program with no attempt at verification that results in the temporary collection of funds that ultimately are not owed.”

### [22-46 Hyundai Steel Co. v. United States](#)

On May 13, 2022, the CIT sustained the U.S. Department of Commerce’s remand results in the remand redetermination pertaining to the administrative review of the antidumping duty order on certain cold-rolled steel flat products from the Republic of Korea. Both Hyundai and the United States asked the court to sustain the remand results and U.S. Steel argued that Commerce should have applied adverse inferences and asked for another remand. The court found that Commerce had complied with its order in the remand redetermination and there were no grounds for another remand.

### [22-49 Canadian Solar Inc., et. al. v. United States](#)

On May 19, 2022, the CIT sustained the U.S. Department of Commerce’s remand results of the fifth administrative review of the countervailing duty order on crystalline silicon photovoltaic cells from China. The remand redetermination concerned Commerce’s review of an electricity subsidy received and whether it was specific enough to be for less than adequate remuneration (LTAR). The court remanded to Commerce to align its decision with the fourth and fifth administrative reviews. Commerce found that the subsidy was for LTAR and applied adverse facts available based on the non-cooperation of the government of China. The court held that Commerce’s decision to apply facts available was supported by substantial evidence and in accordance with the law.

## **COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

### [20-2114 Hitachi Energy USA Inc. v. United States & Hyundai Heavy Industries, Hyundai Corp. USA](#)

Appellants Hyundai Heavy Industries, and Hyundai Corp. USA (collectively Hyundai) sought review of an antidumping duty order determination for large power transformers from the Republic of Korea. At issue was whether Commerce violated the provisions of 19 U.S.C. § 1677m(d), which require Commerce to “notify and permit a party to remedy or explain any deficiency in information provided during an investigation.” Commerce did not do so and subsequently applied partial facts available to Hyundai. The CAFC held that Commerce did not comply with the language of the statute and remanded to Commerce for a redetermination consistent with the opinion.

## **EXPORT CONTROLS & ECONOMIC SANCTIONS**

### [BIS Considers More Public and Expensive Consequences for Companies Violating the EAR](#)

Matthew Axelrod, the Assistant Secretary for Export Enforcement at the U.S. Department of Commerce’s Bureau of Industry and Security (“BIS”), told a conference held by the Society for International Affairs on May 16, 2022, that his agency is considering major policy changes to its administrative enforcement authorities. Axelrod said the policy

changes, expected to be rolled out in the next few months, are intended to incentivize export compliance by corporations under the Export Administration Regulations (“EAR”).

### **OFAC Issues New Sanctions Prohibiting Certain Accounting, Auditing, Corporate Formation and Management Services to Persons in Russia Effective June 7, 2022; And Additional Bank Designations and General Licenses**

On May 8, 2022 the U.S. Department of the Treasury’s (“Treasury”) Office of Foreign Assets Control (“OFAC”) further escalated U.S. sanctions against the Russian Federation (“Russia”) by [issuing](#) two Determinations, adding new individuals and entities to the Specially Designated Nationals and Blocked Persons list (“SDN List”), and issuing three new general licenses in connection with the Determinations and SDN List designations.

### **BIS Expands List of Items Subject to EAR Russia Industry Sector Sanctions Effective Immediately**

On May 9, 2022, the Bureau of Industry and Security (“BIS”) released for public inspection a [Final Rule](#) adding hundreds of new items to a list of restricted items in Supplement No. 4 to Part 746 of the U.S. Export Administration Regulations (“EAR”). BIS created the Supplement No. 4 list two months ago in March 2022 to prohibit the export, reexport, or in-country transfer to or within Russia of specified items included on the list. (Husch Blackwell has previously provided more in-depth guidance on this [here](#)) The Supplement No. 4 list is one of two (2) Russia Industry Sector Sanctions lists in the EAR, and Monday’s updates to the Supplement No. 4 list impose strict liability on any person who exports, reexports or transfers (in-country) the listed items to or within Russia.