

# TRADE LAW UPDATE



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August 2022

## HIGHLIGHTS FROM AUGUST

### [Opportunity to Request Administrative Review](#)

On August 2, 2022, the Department of Commerce (“Commerce”) announced in the [Federal Register](#) the opportunity to request an annual administrative review for products that are currently subject to antidumping and countervailing duties. The products and countries that have been listed in the Federal Register

### [Opportunity to Request Administrative Review](#)

On September 1, 2022, the Department of Commerce (“Commerce”) announced in the [Federal Register](#) the opportunity to request an annual administrative review for products that are currently subject to antidumping and countervailing duties. The products and countries that have been listed in the Federal Register notice

### [Commerce Initiates 5-Year Sunset Reviews](#)

On September 1, 2022, the U.S. Department of Commerce published a [notice](#) that it is automatically initiating five-year Sunset Reviews for antidumping duty (AD) and countervailing duty (CVD) orders

## U.S. DEPARTMENT OF COMMERCE DECISIONS

### Investigations

- There were no investigations initiated during the month of August.

### Administrative Reviews

- Certain Hardwood Plywood Products From the People's Republic of China: On August 8, 2022, Commerce issued its final [results](#) of antidumping duty administrative review and final determination of no shipments (2020).
- Prestressed Concrete Steel Wire Strand From Thailand: On August 8, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2020).

- Certain Softwood Lumber Products From Canada: On August 9, 2022, Commerce issued its final [results](#) and final rescission, in part, of the countervailing duty administrative review (2020).
- Certain Softwood Lumber Products From Canada: On August 9, 2022, Commerce issued its final [results](#) of antidumping duty administrative review and final determination of no shipments (2020).
- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: On August 10, 2022, Commerce issued its amended final [results](#) of antidumping duty administrative review (2019-2020).
- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: On August 15, 2022, Commerce issued its notice of amended final [results](#) of countervailing duty administrative review (2019).
- Certain Steel Nails From India: On August 22, 2022, Commerce issued its final affirmative countervailing duty [determination](#).
- Certain Steel Nails From the Sultanate of Oman: On August 22, 2022, Commerce issued its final affirmative countervailing duty [determination](#).
- Certain Steel Nails From Sri Lanka: On August 22, 2022, Commerce issued its final affirmative countervailing duty [determination](#).
- Certain Steel Nails From the Republic of Turkey: On August 22, 2022, Commerce issued its final affirmative countervailing duty [determination](#).
- Certain Steel Nails From Thailand: On August 22, 2022, Commerce issued its final negative countervailing duty [determination](#).
- Certain Stilbenic Optical Brightening Agents From Taiwan: On August 23, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Wooden Cabinets and Vanities and Components Thereof From the People's Republic of China: On August 24, 2022, Commerce issued its final [results](#) and partial rescission of countervailing duty administrative review (2019-2020).
- Truck and Bus Tires From the People's Republic of China: On August 25, 2022, Commerce issued its amended final [results](#) of countervailing duty administrative review in part (2020).
- Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: On August 31, 2022, Commerce issued its notice of court decision not in harmony with the results of antidumping administrative review; notice of amended final [results](#).

## Changed Circumstances Reviews

- Antidumping Duty Order on Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof From the People's Republic of China: On August 24, 2022, Commerce issued its final [results](#) of changed circumstances review.
- Monosodium Glutamate From the Republic of Indonesia: On August 26, 2022, Commerce issued its final [results](#) of changed circumstances review.
- Non-Oriented Electrical Steel From the Republic of Korea, Certain Corrosion-Resistant Steel Products From the Republic of Korea, Certain Cold-Rolled Steel Flat Products From the Republic of Korea, Certain Hot-Rolled Steel Flat Products From the Republic of Korea, Certain Carbon and Alloy Steel Cut-to-Length Plate From the Republic of Korea, and Carbon and Alloy Steel Wire Rod From the Republic of Korea: On August 30, 2022, Commerce issued its final [results](#) of antidumping duty changed circumstances review.

## Sunset Reviews

- Ferrovandium From the Republic of Korea: On August 8, 2022, Commerce issued its final [results](#) of the expedited sunset review of the antidumping order.
- Finished Carbon Steel Flanges From India, Italy, and Spain: On August 30, 2022, Commerce issued its final [results](#) of the expedited first sunset review of the antidumping duty orders.

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

### Investigations

- There were no investigation determinations issued during the month of August.

### Section 337 Proceedings

- Certain Toner Supply Containers and Components Thereof (I): On August 5, 2022, the ITC issued its notice of commission final [determination](#) finding a violation of section 337; issuance of a general exclusion order and cease and desist orders; termination of the investigation.



## U.S. CUSTOMS & BORDER PROTECTION

There are no updates on U.S. Customs & Border Protection for the month of August.

## COURT OF INTERNATIONAL TRADE Summary of Decisions

### [22-88 Mid Continent Steel & Wire Inc v United States](#)

The Court of International Trade sustained Commerce's third remand results in the antidumping duty administrative review on steel nails from Oman. Commerce on remand selected an alternative surrogate company with which to calculate constructed value profit in its margin calculation. Commerce made the change based upon the fact that while both surrogate companies had received subsidies, it chose the company which was contemporaneous as required by the statute. The trade court found Commerce justified its switch on remand between surrogate companies, despite calls from the exporter under review to use a different company.

### [22-89 Carbon Activated Tianjin Co v United States](#)

The Court remanded Commerce's surrogate value calculations in the antidumping duty review on activated carbon from China. While CIT sustained five of the seven surrogate values at issue on appeal, it specifically found that the agency failed to explain its surrogate value for carbonized material as well as the financial statements to calculate the surrogate financial ratios. The Court stated that "Commerce is within its discretion to choose among imperfect datasets; however, Commerce's decision-making must take into account the facts on the record and reflect a well-reasoned application of its methodology to the situation," Accordingly, the court found that "Commerce has failed to explain its choice between two imperfect datasets and the court remands that selection for further explanation or reconsideration." Similarly, the Court found that Commerce did not adequately justify the selection of a Malaysian company to determine the required surrogate financial ratios. Due to the fact that there was insufficient explanation on the record as to why Commerce chose to use a Malaysian company's financial statements to a more complete financial statements from companies in other countries. Therefore, while the "court does not require Commerce to choose any particular financial statement or reject Bravo Green's 2018 financial statements. Commerce must, however, fairly weigh the available options and explain its decision in light of its selection criteria, addressing any shortcomings."

### [22-91 Worldwide Door Components Inc v. United States/ 22-92 Columbia Aluminum Prods. LLC v United States](#)

The Court issued two decisions indicating that the remand redeterminations submitted by Commerce are not final agency decisions that can be sustained by the CIT as to do so would circumvent the CIT's judicial review. The Court rejected both remand results in a case involving a scope ruling on door thresholds. The remand filed by Commerce stated that the agency would, under protest, only issue a future "revised scope ruling" in the event the trade court sustains the remand. The Court stated that "[b]ecause it is not the actual scope ruling or determination Commerce

plans to issue, it would not be self-effectuating should the court sustain it, and the agency decision that would follow if it were sustained would escape direct judicial review.”

Commerce had initially found that the door thresholds at issue were subject to the AD/CVD orders on aluminum extrusions from China, but in its first opinion, the Court had questioned Commerce’s reliance on prior decisions and had instructed Commerce to explain why the thresholds cannot qualify for the “finished merchandise” exemptions. The court indicated in these opinions that Commerce misunderstood the court’s instructions and presented no reasoning or analysis as to why the thresholds were found to be outside the scope in the remand redetermination other than to indicate that the Court instructed Commerce to do so. The Court stated that Commerce misinterpreted its decision and once again remanded to Commerce to provide an explanation and reasoning for its finding such that can be submitted for the court’s review and that “it must be in a form that would go into effect if sustained upon judicial review.”

#### [22-95 Suzano S A v United States](#)

The CIT remanded to Commerce to explain its cost calculations in the third antidumping duty administrative review of uncoated paper from Brazil. The issue on appeal is whether Commerce correctly utilized the financial ratios based upon the audited statement and did not exclude derivative losses that resulted from the acquisition of another entity. Plaintiff argues that Commerce’s refusal to include the derivative losses from the calculation of the financial expense ratio was not supported by record evidence. The CIT found that Commerce did not adequately explain or address the question of whether the derivative expenses were investment related or extraordinary in nature and instructed Commerce to further explain based upon record evidence.

#### [22-97 Dillinger France S A v United States](#)

The CIT partially affirmed Commerce’s remand results in the antidumping duty investigation on carbon and alloy steel cut to length plate from France to apply facts available to Plaintiff Dillinger’s costs of production for failure to distinguish between costs for its prime and non-prime merchandise but remanded for further explanation the use of sales prices as a proxy for the cost of production. The Court found that Commerce still had not fully or adequately explained why it continued to rely on sales data to determine the costs for non-prime plate. The Federal Circuit had found that a reliance on sales prices in lieu of costs does not address the legal requirement that the exporter’s records reasonably reflect the costs associated with production and sale of the merchandise and had sent the case back to Commerce on remand. The court found that Commerce had “inadequately explained its reliance on Dillinger’s normal books and records as facts otherwise available to supply missing cost information,” and therefore, the court “remands to Commerce for further explanation or reconsideration consistent with this opinion.”

#### [22-98 Hyundai Steel Co v United States](#)

The Court on August 24, 2022, affirmed the fourth remand results in the antidumping duty administrative review of circular welded non-alloy steel pipe from Korea. In its final results of review, Commerce found that a particular market situation existed such that it made an upward adjustment to plaintiff’s cost of production based upon the subsidy rate on the input of hot-rolled steel coil. On appeal, the Court found that Commerce had not supported its PMS determination based upon substantial evidence on the record. Commerce on remand found again that a PMS existed and continued to make an upward adjustment to the reported costs. On remand again, the Court found that Commerce’s adjustment was not in accordance with law. Under protest, Commerce eliminated the adjustment and recalculated Hyundai’s margin but continued to apply a PMS adjustment to the second respondent SeAH steel which the court remanded for Commerce to explain based upon substantial evidence. In its fourth remand, Commerce recalculated the rate for SeAH based upon the average of the other respondents’ average rates which the Court affirmed.

## [22-100 SeAH Steel Corp. v. United States](#)

The Court upheld Commerce remand in the administrative review of the antidumping duty order on oil country tubular goods from South Korea. On remand, Commerce reversed its decisions finding that a particular market situation existed for a key input for the production of OCTG and adjusted respondent Nexteel Co.'s reported costs for the value of non-prime products based upon the sales price of the non-prime products. Commerce in its first remand continued to find that a PMS situation existed but the court had found Commerce's reasoning unconvincing resulting in Commerce dropping its PMS finding in its second remand. Commerce on remand adjusted its analysis and relied on the actual costs of prime and non-prime products and did not rely on the sales price of non-prime products which was also upheld by the Court. Other issues such as the calculation of G&A expenses were also upheld by the Court.

## [22-101 SeAH Steel Corporation v. United States](#)

The Court upheld Commerce's remand in the 2017-2018 administrative review of the antidumping duty order on OCTG from Korea. The primary issue on appeal was whether Commerce adequately supported its finding that a particular market situation (PMS) existed for inputs used in the production of OCTG. In its remand, the Court had instructed Commerce to support its decision to find that a PMS existed, however, Commerce reversed its decision on remand and found that no PMS existed. A secondary issue as to the Cohen's d test related to the Department's margin analysis became moot once Commerce reversed its PMS decision resulting in a de minimis margin for the plaintiff.

## [22-102 BlueScope Steel v. United States](#)

The Court affirmed Commerce's remand determination reversing its decision in the first administrative review of hot-rolled steel from Australia resorting to adverse facts available by disregarding the quantity and value information submitted by Blue Scope. The court instructed Commerce that these were invalid ground upon which to resort to AFA and instructed Commerce on remand to reexamine its findings. On remand, Commerce decided not to rely on AFA and instead relied on the information that was on the record of the review related to Blue Scope's U.S. sales quantity and value that were made through affiliates.

# COURT OF APPEALS FOR THE FEDERAL CIRCUIT

## [21-1988 Vicentin S.A.I.C v United States](#)

The Federal Circuit reviewing on appeal the final determination of the antidumping duty investigation on biodiesel from Argentina. The challenge focusses on whether Commerce's adjustment to LDC's export price that effectively neutralized the value of renewable identification numbers (RINs) in calculating the U.S. price for U.S. biodiesel sales. A RIN is a tradeable tax credit issued by the EPA created by the import and domestic production of renewable fuels. The Federal Circuit affirmed the CIT's decision and continued to hold that tradeable tax credits fall within the definition of a "price adjustment," under Commerce's regulations and therefore Commerce properly deducted those credits from the respondent's export price to calculate the dumping margin. The Court went on to indicate that these RINs are similar to a rebate and while the parties do not expressly negotiate this rebate an adjustment is warranted given that the regulations require that the adjustment was appropriate. In addition, the Court found that the use of an international market price for soybeans in the calculation of constructed value biodiesel does not count as a double remedy, even though the U.S. imposed countervailing duties on Argentine soybeans.

## [21-2312 Hyundai Electric & Energy Systems v United States](#)

The Federal Circuit affirmed the Court of International Trade's ruling that minor reporting issues with respect to its home market sales are not a sufficient basis to warrant or justify the use of adverse facts available. More importantly the Federal Circuit found that an exporter's supposed lack of cooperation in a prior review does not give Commerce the authority or permission to apply AFA. The Court said that the errors in Plaintiff's reporting "were inadvertent and were

corrected without undue difficulty,” and Commerce should not have resorted to an AFA rate of 60.81% which on remand, Commerce dropped and calculated a zero percent AD duty rate.

#### [21-1489 YC Rubber, et al. v. United States](#)

The Federal Circuit issued a decision stating that Commerce cannot select just one mandatory respondent in an antidumping review where multiple exporters have requested a review. The case stems from the second administrative review of the antidumping duty order on passenger vehicle and light-truck tires from China. The decision reverses the CIT’s finding on the basis that Commerce’s interpretation of the statute that it can use only one respondent runs “contrary to the statute’s unambiguous language.” The Court stated that it is not reasonable to calculate an all-others rate based solely on the calculated rate of a single respondent.

Forty-two exporters originally requested to be reviewed, of which Commerce selected only two: Zhaoqing Junhong and Shandong Haohua Tire. Shortly into the review, Haohua withdrew, and the agency did not select a second mandatory respondent and reviewed only a single respondent Junhong which resulted in a 64.57% margin that was then applied to all other exporters.

The CIT had found that it was within Commerce’s discretion to pick a single respondent, but the Federal Circuit disagreed and reversed the CIT finding that no such discretion exists and that Commerce’s interpretation was contrary to the statute’s unambiguous language. Specifically, the court looked at the criterion for what a “reasonable number” of respondents would be and concluded the law generally requires this number to be greater than one.

## **EXPORT CONTROLS & ECONOMIC SANCTIONS**

There are no updates on export controls & economic sanctions for the month of August.