

TRADE LAW UPDATE



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July 2022

HIGHLIGHTS FROM JULY

There are no highlights from the month of July.

U.S. DEPARTMENT OF COMMERCE DECISIONS

Investigations

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

Administrative Reviews

- Multilayered Wood Flooring From the People's Republic of China: On July 1, 2022, Commerce issued its final [results](#) of antidumping duty administrative review and final determination of no shipments (2019-2020).
- Sugar From Mexico: On July 6, 2022, Commerce issued the final [results](#) of the administrative review of the agreement suspending the countervailing duty investigation. (2020).
- Sugar From Mexico: On July 6, 2022, Commerce issued the final [results](#) of the administrative review of the agreement suspending the antidumping duty investigation. (2019-2020).
- Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: On July 7, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: On July 7, 2022, Commerce issued its final [results](#) and partial rescission of countervailing duty administrative review (2019).
- Certain Frozen Warmwater Shrimp From India: On July 7, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Refillable Stainless Steel Kegs From the People's Republic of China: On July 8, 2022, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).
- Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: On July 11, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2019-2020).
- Fine Denier Polyester Staple Fiber From India: On July 13, 2022, Commerce issued its final [results](#) of countervailing duty administrative review (2020).

- Sugar from Mexico: On July 14, 2022, Commerce issued its agreement suspending the antidumping duty investigation on and final [results](#) of the administrative review; correction (2019-2020).
- Certain Uncoated Paper From Portugal: On July 15, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Heavy Walled Rectangular Welded Steel Pipes and Tubes From Mexico: On July 22, 2022, Commerce issued its notice of court decision not in harmony with the results of antidumping administrative review and notice of amended final [results](#).
- Certain Frozen Warmwater Shrimp From India: On July 25, 2022, Commerce issued its final [results](#) of antidumping duty administrative review; correction (2020-2021).
- Citric Acid and Certain Citrate Salts From Thailand: On July 25, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Refillable Stainless Steel Kegs From the People's Republic of China: On July 29, 2022, Commerce issued it is final [results](#) of the antidumping duty administrative review; correction (2019-2020).
- Certain Steel Nails From Taiwan: On July 29, 2022, Commerce issued its notice of court decision not in harmony with the results of antidumping duty administrative review; notice of amended final [results](#).

Changed Circumstances Reviews

- Aluminum Extrusions From the People's Republic of China: On July 6, 2022, Commerce issued its final [results](#) of changed circumstances reviews, and revocation, in part, of the antidumping and countervailing duty orders.
- Finished Carbon Steel Flanges From India: On July 26, 2022, Commerce issued its final results of final [results](#) of changed circumstances review.
- Citric Acid and Certain Citrate Salts From Belgium: On July 29, 2022, Commerce issued its final [results](#) of antidumping duty changed circumstances review.

Sunset Reviews

- Stainless Steel Sheet and Strip From the People's Republic of China: On July 6, 2022, Commerce issued its final [results](#) of expedited sunset review of the antidumping duty order.
- 1,1,1,2-Tetrafluoroethane (R-134a) From the People's Republic of China: On July 7, 2022, Commerce issued its final [results](#) of the first expedited sunset review of the antidumping duty order.
- Aluminum Extrusions From the People's Republic of China: On July 7, 2022, Commerce issued its final [results](#) of the expedited second sunset review of the countervailing duty order.
- Phosphor Copper From the Republic of Korea: On July 7, 2022, Commerce issued its final [results](#) of the first expedited sunset review of the antidumping duty order.
- Stainless Steel Sheet and Strip From the People's Republic of China: On July 7, 2022, Commerce issued its final [results](#) of expedited first sunset review of the countervailing duty order.
- Aluminum Extrusions From the People's Republic of China: On July 7, 2022, Commerce issued its final [results](#) of the expedited second sunset review of the antidumping duty order.
- 1-Hydroxyethylidene-1, 1-Diphosphonic Acid From the People's Republic of China: On July 18, 2022, Commerce issued its final [results](#) of the expedited first sunset review of the antidumping duty order.
- 1-Hydroxyethylidene-1, 1-Diphosphonic Acid From the People's Republic of China: On July 18, 2022, Commerce issued its final [results](#) of the expedited first sunset review of the countervailing duty order.
- Certain Stainless Steel Wire Rods From India: On July 27, 2022, Commerce issued its final [results](#) of the expedited sunset review of the antidumping duty order.

U.S. INTERNATIONAL TRADE COMMISSION

Section 701/731 Proceedings

Investigations

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

Section 337 Proceedings

- Certain UMTS and LTE Cellular Communications Modules and Products Containing the Same: On July 12, 2022, the ITC issued its notice of a commission [determination](#) to review in part and, on review, affirm a final initial determination finding no violation of section 337; termination of investigation.
- Certain Toner Supply Containers and Components Thereof (II): On July 26, 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 July.

COURT OF INTERNATIONAL TRADE

Summary of Decisions

[22-64 Wilmar Trading Pte Ltd. v. United States](#)

The Court on July 1, 2022, remanded in part and upheld in part Commerce final determination in the antidumping duty investigation on biodiesel from Indonesia. While upholding parts of Commerce's particular market situation adjustment in the calculation of constructed value (CV), the Court ordered Commerce to further explain its legal authority to make a CV adjustment to adjust for tradeable credits issued by the U.S. Environmental Agency for Renewable Identification Numbers. Commerce based its analysis on CV rather than normal value as it rejected the plaintiff Wilmar's home market sales data on the grounds that the company received significant subsidies pursuant to the Indonesia Biodiesel Subsidy Fund whereby when Indonesian biodiesel producers make sales through the program, they get reimbursed through payments from the fund plus a government-mandated amount effectively matches the market price for petrodiesel. These were considered financial contributions in the form of grants and therefore the scheme constituted a PMS and warranted tossing home market sales made through the program. The court agreed and upheld the rejection of Wilmer's home market sales as not viable. However, the court disagreed that non-program sales should also be rejected and remanded the issue to Commerce to better explain why non-program sales should also be rejected because the price was "affected by the distorted cost of crude palm oil or that the non-Program price was not determined by the market." The Court instructed Commerce in its remand to "establish the statutory and regulatory basis for its authority to adjust constructed value (as normal value) for RINs."

[22-77 Productos Laminaows de Monterrey S.A. e C.V. v. United States](#)

On July 6, 2022, the Court upheld Commerce's decision to grant a level-of-trade (LOT) adjustment in the second administrative review of the antidumping duty order on heavy walled rectangular carbon welded steel pipes and tubes from Mexico. The Court sustained the LOT adjustment which Commerce revised upon remand which Commerce made following the judge's initial remand order. In the remand, Commerce was instructed to "reconsider its decision finding a single home market level of trade" and after a review of the record including specific factual findings, Commerce found that there were in fact two LOTs in the home market thereby reducing Prolamsa's margin to 0.89%.

[22-79 Rimco, Inc. v. United States](#)

The Court dismissed a claim by an importer challenging the assessment of antidumping and countervailing duties due to lack of subject-matter jurisdiction. The Court said that the plaintiff's Eighth Amendment claims could not proceed under Section 1581(a) since they were not properly contesting the liquidation of entries of steel wheels, which was the merchandise at issue, but rather were contesting the underlying calculation of the duty rates themselves. The Court ruled that plaintiff's claims under Section 1581(i), "residual" jurisdiction cannot stand because the importer could have requested an administrative review of the AD/CVD orders and followed the statutory and regulatory procedures as a remedy which they failed to do. The Court ruled that "Rimco failed to pursue the administrative avenue available to it and thereby missed its opportunity to challenge the rates set by Commerce," therefore. "It cannot avoid the consequences of that failure through the exercise of the court's section 1581(i) jurisdiction."

[22-82 Tau-Ken Temir LLP v. United States](#)

The Court of International Trade agreed that Commerce properly rejected Tau-Ken Temir's late filed countervailing duty questionnaire response because it was filed one hour and 41 minutes late. The challenge arose from the countervailing duty investigation on silicon metal from Kazakhstan where counsel for plaintiff was experiencing computer problems and submitted an extension request one hour and 10 minutes before the filing deadline. The Court affirmed Commerce's decision to reject the late filed response on the grounds that it was not clear as to why plaintiffs did not file an extension request earlier and also that the respondent did not put forth the maximum effort to provide Commerce with the requested information by the established deadline.

[22-83 Universal Tube and Plastic Industries v. United States](#)

The Court in an appeal of the antidumping duty administrative review on circular welded carbon-quality steel pipe from the United Arab Emirates found that Commerce failed to properly explain how it determined to have calculated a fair comparison when there were differences in levels of trade in the home market when compared to U.S. constructed export price sales. Commerce in its final determination decided to treat U.S. sales as CEP sales as they were made through two affiliated resellers and then made adjustments to the resellers price including deducting reseller profit and selling expenses. However, the court found that these adjustments resulted in a potential reduction in the level of trade in the home market comparison price that Commerce did not address and instead found a single level of trade in the home market. Plaintiffs argued on appeal that there were two distinct levels of trade in the home market and the Court agreed and remanded to Commerce to further explain and was instructed to perform the analysis laid out in the statute for a "fair comparison" and address specifically the validity of comparing the indirect sales made in the UAE with the CEP sales to the United States without factoring in a level of trade adjustment.

[22-84 Pro-Team Coil Nail enterprise v. United States](#)

On July 15, 2022, the Court upheld Commerce's third remand redetermination in the first administrative review of the antidumping duty order on steel nails from Taiwan. The Court found that Commerce properly used the expected method to calculate the non-selected respondents rate in the administrative review by weight-averaging two adverse facts available rates and a zero per cent margin. Commerce initially selected the highest dumping margin alleged in the petition. In the first remand, Commerce calculated a company-specific dumping margin of zero percent for plaintiff, Pro-Team but continued to apply total AFA of 78.17% for one of the other two respondents. In calculating the all-others rate, Commerce took a simple average of all three rates including the AFA rate resulting in a 39.09% all-others rate for the non-selected respondents. The Court in the second remand, further instructed Commerce to corroborate the petition rate used as AFA, which it did in the second remand redetermination. After corroborating the petition rate, Commerce then recalculated the non-selected respondents rate with a simple average of the three rates resulting in a 52.11% all-others rate. While the Court sustained the methodology employed to corroborate the petition, it remanded the results again to Commerce to explain its departure from the expected method of weight-averaging the respondents rates rather than using a simple average. In its third remand, Commerce used a weighted average of the respondents rates and relying on CBP entry data for one of the respondents and recalculated the all-others rate to be 35.50% which was finally

affirmed by the Court. The opinion lays out two important findings (1) that the largest exporters are representative of the non-selected respondents, and that (2) Commerce is expected to use their rates to find the margins for the non-selected respondents.

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

[21-2067 Shanxi Hairui Trade Co., LTD v. United States](#)

On July 6, 2022, CAFC affirmed the Court of International Trade's decision sustaining Commerce's dumping order regarding certain steel nails from China. Commerce used AFA rates to compute its all other rates and the rates of two mandatory respondents, Shandong Dinglong and Dezhou Hualude Hardware Products Co. (Dezhou). The CAFC determined that Commerce has authority to use AFA rates in AD reviews because the law was silent on the matter and CBP is permitted to take necessary steps to address its enforcement concerns. Appellants also argued that Dezhou's rate should not be based on Commerce's finding that its supplier engaged in a transshipment scheme. However, the Court reasoned that Dezhou's rate was reasonably set because Lingyu had a significant supplier relationship with Dezhou and Commerce had provided supporting evidence of a fraudulent transshipment scheme.

[21-2097 Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. v. United States](#)

On July 1, 2022, the CAFC dismissed an appeal by Wheatland Tube regarding the administrative review of the antidumping duty order on circular welded pipe from Turkey. In a separate controlling case, the Circuit Court in Hyundai Steel found that Commerce did not have authority to adjust the particular market situation in the sales-below-cost test. Once this ruling was made, Wheatland moved for a dismissal, asserting that the Hyundai Steel decision resolved the current case issue. The CAFC then granted the motion and dismissed the case.

[21-2153 Dong-A Steel Company v. United States](#)

On July 6, 2022, the CAFC granted a motion by Atlas Tube and other appellants to dismiss their appeals of antidumping case Dong Steel v. U.S. The Circuit Court in the Hyundai Steel case found that Commerce did not have authority to adjust the particular market situation in the sales-below-cost test. After this was decided, the appellants filed an unopposed motion which was subsequently granted.

[22-172 and 22-173 Saha Thai Steel Pipe Public Company Limited v. United States](#)

On July 12, 2022, the CAFC dismissed appeals by Wheatland Tube Co. after a precedent case, Hyundai Steel Co. v. U.S. was not petitioned to the Supreme Court. Wheatland Tube Co. initially challenged Commerce's authority to adjust the particular market situation in the sales-below-cost test when determining normal value. In Hyundai Steel, the Circuit Court found that Commerce did not have said authority, prompting Wheatland to move for a voluntary dismissal and CAFC to dismiss the appeals.

[22-1300 Husteel Co., LTD. v. United States](#)

On July 11, 2022, the CAFC dismissed an appeal by Wheatland Tube Co. after a precedent case, Hyundai Steel Co. v. U.S. was not petitioned to the Supreme Court. Wheatland Tube Co. initially challenged Commerce's authority to adjust the particular market situation in the sales-below-cost test when determining normal value. In Hyundai Steel, the Circuit Court found that Commerce did not have said authority, prompting Wheatland to move for a voluntary dismissal and CAFC to dismiss the appeal.

EXPORT CONTROLS & ECONOMIC SANCTIONS

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