

TRADE LAW UPDATE



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September 2022

HIGHLIGHTS FROM SEPTEMBER

[Biden Administration Pauses New Solar Anticircumvention Tariffs with Final Regulations Related to Imports of Solar Panels](#)

On September 16, 2022, the Biden Administration announced the final rule regarding a two-year pause on the imposition of new anticircumvention duties on imports of solar cells and modules from Cambodia, Malaysia, Thailand and Vietnam. This decision was in response to significant opposition from importers of solar panels who have been expressing concerns about the levy of antidumping and countervailing duties on solar cells and panels from these South East Asian countries effectively halt numerous solar projects in the United States and thus prevent the adoption of solar energy in the United States.

[Petition Summary: Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China and the United Mexican States](#)

On September 28, 2022, the Coalition of Freight Coupler Producers ("CFCP" or "Petitioner"), filed a petition for the imposition of antidumping duties pursuant to section 731 of the tariff act of 1930 on imports of Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China and the United Mexican States and for the imposition of countervailing

duties pursuant to section 701 of the tariff act of 1930 on imports of Certain Freight Rail Couplers and Parts Thereof from the People's Republic of China.

U.S. DEPARTMENT OF COMMERCE DECISIONS

Investigations

- Sodium Nitrite From the Russian Federation: On September 12, 2022, Commerce issued its final affirmative [determination](#) of sales at less than fair value.
- Oil Country Tubular Goods From the Republic of Korea: On September 29, 2022, Commerce issued its final affirmative countervailing duty [determination](#).

Administrative Reviews

- Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea: On September 1, 2022, Commerce issued its final [results](#), and rescission, in part, of countervailing duty administrative review (2020).
- Certain Steel Nails From the People's Republic of China: On September 2, 2022, Commerce issued its final [results](#) of the antidumping duty administrative review and final determination of no shipments (2020-2021).
- Common Alloy Aluminum Sheet From the People's Republic of China: On September 6, 2022, Commerce issued its final [results](#) of countervailing duty administrative review (2020).
- Certain Cased Pencils From the People's Republic of China: On September 8, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Stainless Steel Bar From India: On September 8, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Common Alloy Aluminum Sheet From the People's Republic of China: On September 8, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Certain Oil Country Tubular Goods From the Republic of Korea: On September 9, 2022, Commerce issued its notice of court decision not in harmony with the results of antidumping duty administrative review; notice of amended final [results](#).
- Certain Oil Country Tubular Goods From the Republic of Korea: On September 9, 2022, Commerce issued its notice of court decision not in harmony with the results of antidumping duty administrative review; notice of amended final [results](#).
- Carbon and Alloy Steel Threaded Rod From India: On September 9, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2019-2021).
- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: On September 12, 2022 Commerce issued its final [results](#) and partial rescission of countervailing duty administrative review (2019) and notice of amended final results of countervailing duty review (2019); Corrections.
- Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From India: On September 12, 2022, Commerce issued its final [results](#) of countervailing duty administrative review (2020).
- Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: On September 13, 2022, Commerce issued its final [results](#) of antidumping duty administrative review; final determination of no shipments (2020-2021).
- Circular Welded Carbon Steel Pipes and Tubes From Thailand: On September 14, 2022, Commerce issued its notice of court decision not in harmony with the final results of antidumping administrative review; notice of amended final [results](#) of antidumping administrative review (2016-2017).
- Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: On September 14, 2022, Commerce issued its final [results](#) of countervailing duty administrative review (2020).
- Circular Welded Carbon Steel Pipes and Tubes From Thailand: On September 14, 2022, Commerce issued its notice of court decision not in harmony with the final results of antidumping administrative review; notice of amended final [results](#) of antidumping administrative review (2017-2018).
- Certain Passenger Vehicles and Light Truck Tires From the People's Republic of China: On September 19, 2022, Commerce issued its notice of court decision not in harmony with the results of antidumping administrative review; notice of amended final [results](#); correction.
- Certain Hot-Rolled Steel Flat Products From Australia: On September 19, 2022, Commerce issued its notice of court decision not in harmony with the results of antidumping administrative review; notice of amended final [results](#).
- Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: On September 20, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Forged Steel Fittings From the People's Republic of China: On September 26, 2022, Commerce issued its notice of court decision not in harmony with the results of countervailing duty administrative review; notice of amended final [results](#).
- Common Alloy Aluminum Sheet From the People's Republic of China: On September 29, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021); correction.

Changed Circumstances Reviews

- Multilayered Wood Flooring From the People's Republic of China: On September 9, 2022, Commerce issued its final [results](#) of antidumping duty changed circumstances review.
- Oil Country Tubular Goods From the Russian Federation: On September 29, 2022, Commerce issued its final affirmative countervailing duty [determination](#) and final negative critical circumstances determination.
- Antidumping Duty Order on Certain Large Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof From the People's Republic of China: On September 29, 2022, Commerce issued its final [results](#) of changed circumstances review; correction.
- Oil Country Tubular Goods From Mexico: On September 29, 2022, Commerce issued its final affirmative [determinations](#) of sales at less than fair value and critical circumstances.
- Oil Country Tubular Goods From the Russian Federation: On September 29, 2022, Commerce issued its final affirmative [determination](#) of sales at less than fair value, and final affirmative critical circumstances determination, in part.
- Oil Country Tubular Goods From Argentina: On September 29, 2022, Commerce issued its final affirmative [determination](#) of sales at less than fair value and final negative determination of critical circumstances.

Sunset Reviews

- Finished Carbon Steel Flanges From India: On September 1, 2022, Commerce issues its final [results](#) of the expedited first sunset review of the countervailing duty order
- Certain Frozen Warmwater Shrimp From the People's Republic of China, India, Thailand, and the Socialist Republic of Vietnam: On September 6, 2022, Commerce issued its final [results](#) of expedited third sunset review of antidumping duty orders.

Scope Ruling

- Circular Welded Carbon Steel Pipes and Tubes From Thailand: On September 8, 2022, Commerce issued its notice of court [decision](#) not in harmony with final scope ruling and notice of amended final scope ruling pursuant to court decision.
- Circular Welded Carbon Steel Pipes and Tubes From Thailand: On September 12, 2022, Commerce issued its [notice](#) of court decision not in harmony with final scope ruling and notice of amended final scope ruling pursuant to court decision.
- Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China: On September 20, 2022, Commerce issued its [notice](#) of court decision not in harmony with final scope ruling and notice of amended final scope ruling pursuant to court decision.

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

Investigations

- Certain Portable Battery Jump Starters and Components Thereof: On September 2, 2022, the ITC issued its notice of the commission's final [determination](#) with respect to defaulting respondents; issuance of a limited exclusion order; and termination of the investigation.

Section 337 Proceedings

- Certain Electrical Connectors and Cages, Components Thereof, and Products Containing the Same: On September 14, 2022, the ITC issued its notice of a commission final [determination](#)



finding a violation of section 337; issuance of a limited exclusion order and cease and desist orders; termination of the investigation.

- Certain Plant-Derived Recombinant Human Serum Albumins (“rHSA”) and Products Containing Same: On September 16, 2022, the ITC issued its notice of the commission's final determination finding a violation of section 337; issuance of a limited 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 September.

COURT OF INTERNATIONAL TRADE Summary of Decisions

[Slip Op. 22-103 *The Mosaic Company v. United States*](#)

The Court upheld in part and remanded in part, Commerce’s final determination in the countervailing duty investigation on phosphate fertilizers from Russia. The Court found that Commerce had erred by adjusting the benchmark price for natural gas by adding both a 20% VAT and 5% import duty and remanded the issue for further explanation. The Court further remanded the calculation of Eurochem’s total sales as it found that Commerce had incorrectly included sales from eight other producers and input suppliers. The remand also sent back to Commerce for reconsideration the cutoff date for the measurement of subsidies. The Court affirmed Commerce’s use of adverse facts available as to whether a cross-owned affiliate was a government authority based on the fact that the record showed that the Russian government failed to provide the requisite information requested by Commerce. Also affirmed was Commerce’s finding that the provision of natural gas to the agrochemical industry was a *de facto* specificity subsidy based upon the fact that the record demonstrated that the industry was a predominant user. Commerce’s tier-three benchmarks to assess the value of natural gas was affirmed on the grounds that the record demonstrated that the majority of gas production was attributable to companies that were managed directly by the Russian government. The court disagreed with Commerce’s treatment of the benchmark price as equivalent to the price that a firm would pay for an imported product. The Court while questioned Commerce’s analysis and found that “[t]here appears to be no reason to treat the hypothetical market price here as an import price. Although the regulations give Commerce little guidance on how to conduct a tier-three analysis, it is important that Commerce’s choices do not result in an unreasonable comparison between the benchmark price and the government price. It is unreasonable to rely only on a regulation pertaining to tier-one and tier-two benchmarks to adjust a tier-three benchmark price without some compelling reason.”

[Slip Op. 22-104 *Vandewater Int’l Inc. v. United States*](#)

The Court on September 8, 2022, that Commerce correctly included plaintiff Vanderwater’s branches under the scope of the antidumping duty order on carbon steel butt-weld pipe fittings from China. In reviewing Commerce’s scope ruling, the Court found that Commerce had adequately explained and supported its reasons for including the branch outlets under each of the regulatory factors found in 19 C.F.R. §351.225(k)(2). This case stems from an October 2020 decision where the Court remanded to Commerce to fully explain its reasons for including the entities within the scope of the AD order.

[Slip Op. 22-105 *Both-Well \(Taizhou\) Steel Fittings, Co. v. United States*](#)

The Court upheld Commerce’s remand redetermination in the countervailing duty administrative review on forged steel fittings from China. The Court had instructed the agency to support its use of adverse facts available with respect to the Export Buyer’s Credit Program and specifically warned Commerce that if it wishes to continue using AFA it had to verify the non-use of the program by examining evidence from both the exporter and its U.S. customers. In its remand results, Commerce dropped its AFA finding with respect to the export buyer’s credit program and found that the respondent Both-Well (Taizhou) did not benefit from the program.

[Slip Op. 22-106 *New Am. Keg v. United States*](#)

The Court found that Commerce failed to adequately explain why it chose on remand to inflate the Mexican labor rate it was relying on as a surrogate value by using Brazilian data. The Commerce Department did not properly explain why it was appropriate to inflate a Mexican labor wage rate using Brazilian data in the antidumping duty investigation on refillable stainless-steel kegs from China. Commerce requested a voluntary remand with respect to this issue and admitted to the court that it not adequately explained its decision. At issue in the case was also the separate rate assigned by Commerce to another exporter. Of concern was whether Commerce had properly examined the affiliations between several entities. On remand, Commerce examined the record evidence and continued to find that there was no affiliation. However, the Court found that Commerce analysis was insufficient and remanded the issue back to the agency to “identify the evidence in the administrative record that supports granting Ulix a separate rate.”

[Slip Op 22-107 *Fukian Yinfeng Imp. & Exp. Trading Co. v. United States*](#)

The Court in a recent decision stemming from the countervailing duty investigation on wood mouldings and millwork products from China supported Commerce’s use of adverse facts available and affirmed Commerce’s determination that the Chinese government and by extension the Chinese respondent failed to submit the requisite information to support its non-use of the Export Buyers Credit Program (“EBCP”). The Court in reviewing Commerce’s underlying decision found that it had explained and supported on the record the reasons why it needed the requisite information to verify that the respondents and its U.S. customers did not use the EBCP. Commerce had required two pieces of information from the Chinese government which were (1) the threshold over which loans were made pursuant to the EBCP program, and (2) which banks participate and cooperate with China’s Export Import Bank to issue the loans. In the underlying investigation, the Chinese government had failed to provide the requisite information and Commerce assigned the respondent Yinfeng AFA and the court specifically found that Commerce had provided a “thorough explanation” as to why the information was needed and therefore found that Commerce’s decision was supported by substantial evidence on the record.

[Slip Op. 22-108 *ASOCIACIÓN DE EXPORTADORES, et. al. v. United States*](#)

The Court affirmed Commerce’s second remand redetermination and results in the countervailing duty investigation on ripe olives from Spain. At issue was whether Commerce had properly examined the specificity of certain subsidy programs. On remand, the Court determined that Commerce had properly relied upon evidence from the petition with respect to the specificity of the program because the Government of Spain had failed to provide the required information in response to Commerce’s questionnaire related to the subsidy programs and that its determinations were supported by substantial evidence on the record.

[Slip Op. 22-109 *Hyundai Steel Co. v. United States*](#)

On September 19, 2022, the Court affirmed Commerce’s remand results in the 2017 administrative review of the countervailing duty order on hot-rolled steel flat products from South Korea. At issue was Commerce’s use of facts available for South Korea’s port usage rights program. Because of Commerce no longer relying on facts available the recalculated final results were *de minimis* and the Court did not continue to examine the issue of whether the program itself was countervailable because it “would have no practical significance and is mooted.”

[Slip Op 22-112 *KAPTAN DEMIR CELIK ENDUSTRISI VE TICARET A.S., v. United States*](#)

The Court on September 22, 2022, denied Plaintiff’s motion to stay its challenge to the 2019 countervailing duty administrative review on steel concrete reinforcing bar from Turkey pending resolution of a prior case in the previous administrative review. The Plaintiff argued that its claims were virtually identical in both reviews. However, the court disagreed because a stay would not promote judicial economy as both cases were before the Court of International Trade and therefore the court could not issue an opinion on a “common legal issue”. The court further stated that

Plaintiff had not put forth a “pressing need” for the stay and also commented that there is no “talismanic formula” for finding when a stay is appropriate and the court needs to weigh the factors in each case.

[Slip Op 22-113 HiSteel Co. v. United States](#)

In a challenge to the antidumping review on heavy walled rectangular welded carbon steel pipes and tubes from Korea, a respondent Dong-A-Steel Co. sought to intervene in an appeal brought by the other mandatory respondent HiSteel. The court ruled that Dong-A has “piggyback standing” to intervene as both it and plaintiff sought the same relief and that the exporter can intervene “as a right” because Dong-A was “an interested party who was a party to the proceeding.”

[Slip Op. 22-114 AG der Dillinger Hüttenwerke v. United States](#)

The Court remanded Commerce’s decision in the antidumping duty investigation on carbon and alloy steel cut-to-length plate from Germany for a second time. The key issue on appeal was what was considered the best information available on the record for determining the proxy for an offset for the price differential between prime and non-prime merchandise when the costs of the non-prime merchandise were not submitted on the record. The court sent back the decision to Commerce given a recent Federal Circuit decision and instructed Commerce to find the actual cost of production for both prime and non-prime cut-to-length plate. The Court instructed Commerce that in the event it continues to use facts otherwise available, then it must further explain how the likely selling price ensures that it “reasonably reflect the cost of producing the merchandise under consideration.”

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

[21-2176 ARP Materials v. United States and The Harrison Steel Castings Company v. United States](#)

The Federal Circuit affirmed the CIT’s right to dismiss an appeal from two importers which sought to retroactively apply Section 301 tariff exclusions for a lack of subject matter jurisdiction because the importers had not filed a protest. The CIT in its underlying opinion held that it did not have “residual” jurisdiction under Section 1581(i) because if the two plaintiffs had filed protests, it would have had subject matter jurisdiction pursuant to Section 1581(a). The Federal Circuit on appeal agreed because the fundamental issue in the case was Customs and Border Protections assessment of duties and not the United States Trade Representative’s decision to grant the exclusion itself. Both plaintiffs had filed protests but not within the 180 days required by the statute.

[21-2180 N. Am. Interpipe v. United States / 21-2181 Evraz v. U.S., 21-2192 AM/NS Calvert v. United States/ 21-2183 Valbruna Slater Stainless v. United States/ 21-2185 Voestalpine High Performance Metals v. United States](#)

The Federal Circuit reversed an appeal from the Court of International Trade holding that a group of domestic steel producers does not have the right to intervene in challenges related to denied Section 232 steel and aluminum tariff exclusions because the intervenors did not establish standing. The CIT stated that the intervenors failed to identify a legally cognizable and protected interest sufficient to qualify as intervenors under the CIT’s rules. In the underlying case at the CIT, the CIT held that an intervenor must demonstrate a legally protected interest in the transaction at issue; have a direct relationship with the appeal such that the intervenor will gain or lose as a direct result of the court’s judgment, or show that its interests will not be adequately expressed by the defendant, United States. The CIT had found that the intervenors failed to meet all three of the requirements.

The Federal Circuit, however, reversed the CIT’s decision and found that “[b]ecause in each of these cases the proposed intervenors’ requested relief is largely identical to the government’s prayer for relief, the proposed intervenors have

established piggyback standing.” The Federal Circuit did not grant intervenors motion because they did not participate substantively at the agency level. The Court said that while the domestic steel manufacturers had a legally protected interest, exercising that simply as an administrative participant was not sufficient. The court said that just because the plaintiffs had objected to the exclusion requests at the agency level that type of administrative participation is not enough to be a legally protected interest in judicial appeals.

[21-2205 Xi'An Metals & Minerals Import & Export Co. v. United States](#)

The Federal Circuit upheld Commerce’s use of total adverse facts available against respondent Shanxi Pioneer Hardware Industrial for its failure to report all of its factor of production data on a CONNUM specific basis. The Court stated that the requirement to report CONNUM specific factors of production is not a rule that requires a notice-and-comment period but is an interpretive one. The appeal stemmed from the 10th antidumping duty administrative review on steel nails from China. In the third administrative review, Commerce had announced that respondents would be required to report all factors of production data on a CONNUM-specific basis. Pioneer had participated in the initial investigation and received a separate rate, but it was only in the 10th administrative review that Pioneer was selected as a mandatory respondent making it the first time that Pioneer had been required to report its factors of production. Pioneer failed to submit its data on a CONNUM-specific basis and Commerce resorted to total adverse facts available, a determination which was upheld by the Court of International Trade and on appeal by the Federal Circuit.

EXPORT CONTROLS & ECONOMIC SANCTIONS

There are no updates on Export Controls & Economic Sanctions for the month of September.