

TRADE LAW UPDATE



October 2022

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HIGHLIGHTS FROM OCTOBER

[Petition Summary: Paper File Folders From China, India, and Vietnam](#)

On October 12, 2022, Smead Manufacturing Company (“Smead”) and TOPS Products LLC (“TOPS”), collectively known as (“Petitioners”), filed a petition for the imposition of antidumping and countervailing duties on imports of Paper File Folders from China, India, and Vietnam.

[USTR Releases Draft Questionnaire for Section 301 Economic Impact Analysis](#)

On November 1, 2022, the United States Trade Representative (“USTR”) released the questionnaire it is requesting interested parties to submit for its consideration related to the economic impact of the Section 301 tariffs. The portal to submit responses to the questionnaire will open on November 15, 2022 and will remain open until January 17, 2023. The questionnaire has multiple pages of questions and similar to the comments it solicited in 2018, USTR is including specific sections which will permit parties to comment on and address concerns related to specific HTSUS codes.

U.S. DEPARTMENT OF COMMERCE DECISIONS

Investigations

- Certain Superabsorbent Polymers From the Republic of Korea: On October 27, 2022, Commerce issued its final [determination](#) of sales at less than fair value.

Administrative Reviews

- Certain Hot-Rolled Steel Flat Products From the Republic of Korea: On October 3, 2022, Commerce issued its [notice](#) of court decision not in harmony with the results of countervailing duty review; notice of amended final results.
- Carbon and Alloy Steel Wire Rod From the Republic of Korea: On October 4, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).

- Circular Welded Carbon Steel Pipes and Tubes From Thailand: On October 6, 2022, Commerce issued its final [results](#) of antidumping duty administrative review and final determination of no shipments (2020-2021).
- Certain Softwood Lumber Products From Canada: On October 11, 2022, Commerce issued its [notice](#) of amended final results of countervailing duty administrative review (2020).
- Certain Steel Nails From the United Arab Emirates: On October 12, 2022, Commerce issued its final [results](#) of antidumping duty administrative review; (2020-2021).
- Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: On October 12, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Certain Magnesia Carbon Bricks From the People's Republic of China: On October 13, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Quartz Surface Products From India: On October 18, 2022, Commerce issued its final [results](#) of countervailing duty administrative review (2019-2020).
- Certain Steel Nails From Taiwan: On October 18, 2022, Commerce issued its final [results](#) of antidumping duty administrative review and final determination of no shipments (2020-2021).
- Finished Carbon Steel Flanges From Spain: On October 25, 2022, Commerce issued its final [results](#) of administrative review (2020-2021).
- Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From Taiwan: On October 26, 2022, Commerce issued its final [results](#) of antidumping duty administrative review and final determination of no shipments (2020-2021).
- Stainless Steel Flanges From India: On October 31, 2022, Commerce issued its final [results](#) of countervailing duty administrative review (2020).

Changed Circumstances Reviews

- Certain Cold-Rolled Steel Flat Products and Certain Corrosion-Resistant Steel Products From the Republic of Korea: On October 21, 2022, Commerce issued its final [results](#) of antidumping and countervailing duty changed circumstances reviews.

Sunset Reviews

- Steel Concrete Reinforcing Bar From the Republic of Turkey, Taiwan, and Japan: On October 4, 2022, Commerce issued its final [results](#) of first expedited sunset reviews of the antidumping duty orders.
- Gray Portland Cement and Cement Clinker From Japan: On October 4, 2022, Commerce issued its final [results](#) of expedited sunset review of the antidumping duty order.
- Steel Concrete Reinforcing Bar From the Republic of Turkey: On October 5, 2022, Commerce issued its final [results](#) of the expedited first sunset review of the countervailing duty order.
- Light-Walled Welded Rectangular Carbon Steel Tubing From Taiwan: On October 25, 2022, Commerce issued its final [results](#) of the expedited sunset review of the antidumping duty order.
- Welded ASTM A-312 Stainless Steel Pipe From the Republic of Korea and Taiwan: On October 31, 2022, Commerce issued its final [results](#) of expedited fifth sunset reviews of the antidumping duty orders.

Scope Ruling

- Certain Quartz Surface Products From the People's Republic of China: On October 21, 2022, Commerce issued its final scope [ruling](#) on Malaysian processed quartz slab and recission of the circumvention inquiry.

U.S. INTERNATIONAL TRADE COMMISSION

Section 701/731 Proceedings

Investigations

- There were no updates in investigations in the ITC for the month of October.

Section 337 Proceedings

- Certain Polycrystalline Diamond Compacts and Articles Containing Same: On October 7, 2022, the ITC issued its [notice](#) of the commission's final determination finding no violation of section 337; termination of the investigation.
- On October 12, 2022, the ITC issued its [notice](#) of commission determination to review in part a final determination to review in part a final initial determination finding no violation of section 337 and two related orders.
- Certain Artificial Eyelash Extension Systems, Products, and Components Thereof: On October 14, 2022, the ITC issued its [notice](#) of the commission's final determination finding no violation of section 337; termination of the investigation.



U.S. CUSTOMS & BORDER PROTECTION

[EAPA Cons. Case 7724: WHP Associates LLC](#)

On October 3, 2022, CBP has commenced a formal EAPA investigation against WHP Associates LLC (“WHP Associates”). CBP is investigating whether WHP Associates evaded antidumping duty orders on thermal paper from China, Germany, and the Republic of Korea, respectively and/or countervailing duty order on thermal paper from China. CBP has found that reasonable suspicion exists that WHP Associates entered covered merchandise into the customs territory of the United States through evasion, and therefore CBP has imposed interim measures.

[EAPA Case 7718: Zinus Inc](#)

On October 24, 2022, CBP has commenced a formal EAPA investigation against Zinus Inc. (USA) (“Zinus”). CBP is investigating whether Zinus evaded antidumping duty orders on wooden bedroom furniture from China, by entering into the United States Chinese-origin wooden bedroom furniture through the use of a general product description and misclassification as non-covered merchandise not subject to the antidumping order. CBP has found reasonable suspicion of evasion of antidumping duties by Zinus, and therefore CBP has imposed interim measures.

[EAPA Case 7711: Pitts Enterprises, Inc.](#)

On October 25, 2022, CBP has commenced a formal EAPA investigation against Pitts Enterprises, Inc. (“Pitts”). CBP is investigating whether Pitts evaded antidumping and countervailing duty orders on certain chassis and subassemblies from the People’s Republic of China. CBP found reasonable suspicion of Pitts entering covered merchandise for consumption into the customs territory of the United States through evasion, and therefore CBP has imposed interim measures.

[EAPA Consolidated Case 7730: Double L Group, LLC and Manufacturing Network Inc.](#)

On October 26, 2022, CBP has commenced a formal EAPA investigation against Double L Group, LLC (“Double L”) and Manufacturing Network Inc. (“MNI”) (collectively referred to as the “Importers”) evaded antidumping and countervailing duty orders on steel grating from the People’s Republic of China by entering into the United States

Chineses-origin steel grating that was misclassified as non-covered merchandise. CBP has found reasonable suspicion of evasion of AD/CVD duties by the Importers, and therefore CBP has imposed interim measures.

COURT OF INTERNATIONAL TRADE **Summary of Decisions**

[Nucor Corporation v. United States, Slip Op. 22-116](#)

The CIT upheld in part and remanded in part Commerce’s final results in the countervailing duty administrative review on carbon and alloy cut-to-length plate from South Korea. The key issue in the case was whether the Korean Electric Power Corporation which is the only supplier of electricity provided electricity to the respondent for less than adequate remuneration because the electricity supplier sets a price through a formula rather than at market prices. In its opinion, the Court stated that Commerce must reconsider or further explain its reasoning as to why it chose not to investigate off-peak electricity for less than adequate remuneration because the analysis provided was “cursory” and did not fully examine the allegations placed on the record by the petitioner Nucor. The court also remanded for further explanation Commerce’s failure to attribute subsidies received by the mandatory respondent’s affiliated entity for the purchase of steel scrap and fixed assets that were used for the production of steel based upon the fact that Commerce engaged in post-hoc rationalization. The Court, however, upheld other portions of Commerce’s final results related to the provision of services, raw materials, and other fixed assets.

[BGH Edelstahl Siegen v. United States, Slip P. 22-117](#)

The Court of International Trade remanded for further explanation, Commerce’s final determination in the countervailing duty investigation on forged steel fluid end blocks from Germany. The main issue in the case was whether a concession fee for public transport routes is a specific subsidy. The Court disagreed with Commerce’s findings and stated that its specificity determination was unsupported by substantial evidence on the record. On remand, the Court instructed Commerce to explain in further detail as to why it determined that the concession program that sets specific rates for special contract customers favors certain industries over other industries. Commerce has 90 days from the date of the order to file its remand results with the Court.

[Oman Fasteners v. U.S., Slip Op. 22-119](#)

A three judge panel ordered the U.S. Government to permit plaintiff Oman Fasteners to once again secure its entries of steel nails subject to Section 232 derivative tariffs of 25% through a bond until Oman and the U.S. government can reach an agreement that comports with the Court’s opinion. Oman Fasteners had challenged the government’s denial of its request to post bonds and to continue to require it to secure its entries by paying cash deposits while the appeal was pending given that the Court had already instructed the parties to reach an agreement which they did. The Court while affirming Oman Fastener’s right under the terms of the agreement to post bonds in lieu of cash deposits, instructed the parties that the bonding requirement will remain until the defendants move for an obtain a modification of the Court’s original opinion and order, or until Oman Fasteners voluntarily enters into an agreement with the U.S. government to modify the requirements.

[Garg Tube Exports LLP v. United States, Slip Op. 22-120](#)

The Court upheld Commerce’s second remand redetermination in the antidumping duty administrative review of welded carbon steel standard pipes and tubes from India. In its original order, the Court had instructed Commerce to explain why a particular market situation existed in India for the purchase of hot-rolled coil which is an input for the production of carbon steel pipes. On remand, and under “protest”, Commerce dropped the PMS adjustment and the court therefore upheld the final remand results.

The CIT in a strong opinion rejected Commerce's arguments as to why it denied plaintiff's late filed response and applied adverse facts available. The case was an appeal of the antidumping duty administrative review on circular welded carbon steel pipes and tubes from the United Arab Emirates. In March 2020, the plaintiff and counsel had issues resulting from the world-wide COVID lockdowns and shifts to work-from-home that resulted in its response being filed approximately one hour and fifty minutes late. Commerce rejected the late filed response on the grounds that Plaintiff did not timely file an extension or alert it to any difficulties. Commerce then cited to COVID related difficulties and problems with a shift to a work-from-home environment and tolled the deadlines in the review twice. The Court rejected Commerce's arguments that Plaintiff should have properly filed for an extension request and explained its difficulties because of the fact that the extra time taken by Ajmal was far exceeded by the extensions and tolling of deadlines that Commerce granted itself. The Court found that Commerce abused its discretion and called Commerce's reasoning for denying Plaintiffs an extension of time due to COVID related difficulties "a difference {that} is one without meaning." The Court then remanded the case to Commerce to "accept and consider Ajmal's Section A filing and complete the review."

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

There are no updates on the Court of Appeals for the Federal Circuit for the Month of October.

EXPORT CONTROLS & ECONOMIC SANCTIONS

There are no updates on Export Controls & Economic Sanctions for the Month of October.