

TRADE LAW UPDATE



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November 2022

HIGHLIGHTS FROM NOVEMBER

[Commerce Soliciting Comments on Changes to Particular Market Situation in Antidumping Duty Proceedings](#)

The Department of Commerce (“Commerce”) published a notice seeking comments from interested parties on steps Commerce should take to modify its application of a “particular market situation” (“PMS”) analysis in antidumping duty cases after a series of decisions by both the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of International Trade curtailing Commerce’s discretionary authority. Commerce over the years has expanded its use of the PMS analysis but recently has had a series of pushbacks from the Courts, including several decisions where Commerce’s determinations were reversed.

[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

- Emulsion Styrene-Butadiene Rubber From the Czech Republic: On November 17, 2022, Commerce issued its final affirmative [determination](#) of sales at less than fair value.
- Emulsion Styrene-Butadiene Rubber From the Russian Federation: On November 17, 2022, Commerce issued its final affirmative [determination](#) of sales at less than fair value and classification of the Russian federation as a non-market economy.

- Oil Country Tubular Goods From Argentina, Mexico, and the Russian Federation: On November 21, 2022, Commerce issued its antidumping duty orders and amended final affirmative antidumping duty [determination](#) for the Russian Federation.
- Certain Preserved Mushrooms From France: On November 28, 2022, Commerce issued its final affirmative [determination](#) of sales at less than fair value.

Circumvention

- Certain Uncoated Paper From Australia: On November 10, 2022, Commerce issued its negative final [determination](#) of circumvention of the antidumping duty order for certain uncoated paper rolls.

Administrative Reviews

- Welded Carbon Steel Standard Pipes and Tubes From India: On November 1, 2022, Commerce issued its [notice](#) of court decision not in harmony with the final results of antidumping administrative review and notice of amended final results.
- Large Diameter Welded Pipe From the Republic of Korea: On November 3, 2022, Commerce issued its final [results](#) of countervailing duty administrative review (2020).
- Carbon and Alloy Steel Threaded Rod From the People's Republic of China: On November 7, 2022, Commerce issued its final [results](#) of countervailing duty administrative review (2019-2020).
- Certain Pasta From Italy: On November 10, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Glycine From India: On November 10, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Citric Acid and Certain Citrate Salts From Colombia: On November 10, 2022, Commerce issued its final results of antidumping duty administrative review (2020-2021).
- Welded Line Pipe From the Republic of Turkey: On November 15, 2022, Commerce issued its final [results](#) of antidumping duty administrative review and final determination of no shipments (2020-2021).
- Large Diameter Welded Pipe From the Republic of Korea: On November 16, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Prestressed Concrete Steel Wire Strand From the Republic of Turkey: On November 16, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2022).
- Citric Acid and Certain Citrate Salts From Belgium: On November 16, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Carbon and Alloy Steel Threaded Rod From the People's Republic of China: On November 22, 2022, Commerce issued its notice of final [results](#) of countervailing duty administrative review (2019-2020); Correction.
- Large Diameter Welded Pipe From Canada: On November 23, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).

Changed Circumstances Reviews

- There are no updates for Changed Circumstances Reviews for the month of November.

Sunset Reviews

- Furfuryl Alcohol From the People's Republic of China: On November 2, 2022, Commerce issued its final [results](#) of expedited fifth sunset review of antidumping duty order.
- Dioctyl Terephthalate From the Republic of Korea: On November 3, 2022, Commerce issued its final [results](#) of expedited first sunset review of antidumping duty order.
- Certain Cased Pencils From the People's Republic of China: On November 23, 2022, Commerce issued its final [results](#) of the expedited fifth sunset review of the antidumping duty order.

- Emulsion Styrene-Butadiene Rubber From Brazil, the Republic of Korea, Mexico, and Poland: On November 29, 2022, Commerce issued its final [results](#) of the expedited first sunset reviews of the antidumping duty orders.

Scope Ruling

- There are no updates for Scope Rulings for the month of November.

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

Investigations

- Certain Electrolyte Containing Beverages and Labeling and Packaging Thereof: On November 7, 2022, the ITC issued its notice of commission final [determination](#) to issue a limited exclusion order and termination of the investigation.

Section 337 Proceedings

- There are no updates for Section 337 Proceedings for the month of November.



U.S. CUSTOMS & BORDER PROTECTION

[CBP Posts Details on Upcoming Chinese Postal Code Requirement](#)

CBP has issued draft ACE requirements and a trade information notice on an upcoming requirement of the Chinese Postal Code. This new requirement will be required when China is a manufacturer's country of origin for an entry, or when China is the manufacturer's country of origin on a new or updated manufacturer ID, CBP said in the trade information [notice](#) issued Nov. 2. CBP will be setting up a Trade Support Network. CBP is seeking feedback on challenges with the proposed implementation of the requirement and "proposed alternative implementation approaches to mitigate these concerns," as well as time needed by the trade community for testing in the ACE certification environment and the date that should be set for deployment to ACE production. CBP may limit participation in the working group. Requests to participate are due by Nov. 10, CBP said. "Previously created MID's will not need to be updated. However, when the manufacturer country is China, the system will generate an error message for the user to transmit postal code," CBP said. CBP released a draft [update](#) to the ACE Cargo Release CBP and Trade Automated Interface Requirements (CATAIR) document on Nov. 2 to include the new postal code requirement.

[EAPA Cons. Case 7737: Gorilla Paper, Inc. and Gorilla Supply](#)

On November 3, 2022, CBP commenced a formal EAPA investigation against Gorilla Paper, Inc. and Gorilla Supply (collectively, Gorilla Paper). CBP is investigating whether Gorilla Paper evaded antidumping duty orders on thermal paper from Germany and South Korea. CBP has found that reasonable suspicion exists that Gorilla Paper entered covered merchandise into the customs territory of the United States through evasion, and therefore CBP has imposed interim measures.

[EAPA Consolidated Case 7657: Various Importers](#)

On November 7, 2022, CBP issued its notice of determination that there is substantial evidence that the importers under investigation entered merchandise covered by the antidumping and countervailing duty orders on quartz surface products from China. Evidence demonstrates that Big D LLC (Big D), Colorquartz New York Inc. (Colorquartz), Cumberland

Cabinet and Design Inc. (Cumberland), Durian Kitchen Depot Inc. (Durian), Flowery Stone Inc. (Flowery Stone), Kat Specialties Inc. (Kat), Kingway Construction Supplier Inc. (Kingway), Nio Kitchen Depot Inc. (Nio), Nomadic Barthers Inc. (Nomadic), and Opaly USA LLC (Opaly), as well as several of their doing-business-as (DBA) names, Artist Kitchen and Stone Inc. (Artist Kitchen), MS Stone Co. Ltd. (MS Stone), and Nio Home Depot Inc. (Nio Home Depot) (collectively referred to as the “Importers”), imported Chinese-origin QSP into the United States and misrepresented the country of origin as Malaysia, or misclassified products as non-covered merchandise. As a result, no cash deposits were applied to the merchandise at the time of entry.

[EAPA Case 7722: Vanguard Trading Company LLC](#)

On November 17, 2022, CBP commenced a formal EAPA investigation against Vanguard Trading Company LLC (the Importer). CBP is investigating whether Vanguard Trading Company LLC evaded antidumping and countervailing duty orders on quartz surface products from China when importing to the United States. CBP has found that reasonable suspicion exists that Vanguard Trading Company LLC entered covered merchandise into the customs territory of the United States through evasion, and therefore CBP has imposed interim measures.

COURT OF INTERNATIONAL TRADE

Summary of Decisions

[Ellwood City Forge Co. v. U.S., Slip Op. 22-122](#)

In an appeal challenging the antidumping duty investigation on forged steel fluid end blocks from Germany, the Court found that plaintiff had failed to preserve its right to appeal because it had failed to exhaust its administrative remedies. Plaintiff’s challenged Commerce’s use of a “Questionnaire in Lieu of Verification” during the COVID-19 travel restrictions, but since they failed to object to the verification methodology during the administrative proceeding even though it had multiple chances to do so. Plaintiff, Ellwood City, argued that it did not raise the issue as it would have been futile to do so, but the court did not agree and found that “‘{t}he mere fact that an adverse decision may have been likely does not excuse a party from a statutory or regulatory requirement that it exhaust administrative remedies.’” The second significant issue in the case, was a challenge to Commerce’s particular market situation analysis, that given the Federal Circuit precedential decision, the CIT remanded to Commerce to reexamine its use of a particular market situation analysis for the sales-below-cost test.

[Ellwood City Forge Co. v. United States, Slip Op. 22-123](#)

In a motion for rehearing, plaintiffs again challenged the final determination in the antidumping duty administrative review on forged steel fluid end blocks from Italy. The plaintiffs sought reconsideration and rehearing of Commerce’s decision not to conduct an on-site verification. However, the court ruled that since plaintiffs had failed to raise the issue at the administrative level during the pendency of the proceeding at Commerce, it had failed to satisfy the requirement to exhaust administrative remedies. In its rehearing brief, plaintiffs argued that it did not raise the issue at Commerce because it would have been futile to do so. The Court disagreed and rejected the motion for hearing.

[Amsted Rail Company, Inc. et al. v. United States International Trade Commission Slip Op 22-124](#)

The Court dismissed the conflict-of-interest case brought by Amsted against its former counsel for a lack of subject-matter jurisdiction. The court in its public order indicated that upon conclusion of the administrative proceeding, parties may appeal the agency decision under Section 1581(c), but there is no basis to review the matter under the court’s “residual” jurisdiction under Section 1581(i) at this time.

[Dongkuk S&C Co. v. United States, Slip Op. 22-125](#)

The case concerns the appeal of the antidumping duty investigation final determination on utility scale wind towers from South Korea. The issue before the court was whether Commerce correctly examined Dongkuk's reported steel plate costs and supported its finding on remand that the reported costs do not reasonably reflect the cost of manufacturing wind towers. The court affirmed Commerce's final determination that the reported costs were significantly different between markets was supported by evidence on the record. Therefore, Commerce properly relied on constructed value and SeAH Steel Holdings Corp.'s 2018 consolidated financial statement as a proxy for Dongkuk's profit and selling expenses. The concern that arose in the case was that the reported CONNUM specific costs varied significantly between the Japanese and U.S. markets such that it did not reasonably reflect cost differences that were solely attributable to the differences in physical characteristics. In the court's first option, it found that Commerce's analysis relied more on the timing of the steel plate purchases rather than the physical characteristics of the finished wind towers. On remand, Commerce adjusted Dongkuk's reported costs to address distortions not related to the physical characteristics and weight averaged the reported costs for all reported CONNUMs. The court after further review, found that Commerce complied with the court's instructions on remand and provided sufficient support to demonstrate that the agency's decision-making process is "reasonable given the circumstances provided by the record as a whole."

[GreenFirst Forest Products v. United States, Slip Op. 22-126](#)

The court remanded the case to Commerce to reconsider or explain why it denied plaintiff's request for a successor-in-interest changed circumstances review of the countervailing duty order on softwood lumber from Canada. GreenFirst claimed that it was the successor-in-interest to another entity and requested that Commerce assign GreenFirst the "non-selected" cash deposit rate that was assigned to the previous entity at a CVD cash deposit rate of 7.42% instead of the 14.19% "all-others" rate. Commerce denied GreenFirst's request and Commerce claimed that its "significant change" practice precludes it from initiating a review. Under Commerce's rule the agency will not start a changed circumstances review where there is evidence of a significant change that could have affected the nature of subsidization. The court disagreed and found that it was unclear why the practice applied since the successor entity did not have an individually calculated rate. The court instructed Commerce on remand to either reconsider or further explain the basis for its determination that its "significant changes practice applies where the predecessor company was not individually examined."

[Star Pipe Products v. United States, Slip Op. 22-127](#)

[MCC Holdings v. United States, Slip Op. 22-128](#)

On November 18, 2022, the court rejected two scope ruling remand redeterminations of the antidumping duty order on ductile iron flanges from China because the remands were "not in a form in which the court could sustain" them. Commerce's remand redeterminations effectively stated that if the court affirms the remand then it will issue a revised scope ruling. The court denied Commerce's request because effectively the remand was not a scope decision but rather was "preliminary to such a decision" and the court was concerned that Commerce would "escape direct judicial review." The court then issued further remand instructions that required Commerce to file remand redeterminations that similar to "original agency determination[s] ... [are] scope ruling[s] or determination[s] for the court's review that would go into effect if, following judicial review, [they are] sustained."

[HiSteel Co., Ltd. v. United States, Slip Op. 22-129](#)

The Court upheld Commerce's decision to drop a particular market situation adjustment to the cost of production and the sales below cost test to comply with the recent Federal Circuit decision in Hyundai Steel Co., v. U.S.

[Aspects Furniture International v. United States, Slip Op. 22-132](#)

On November 28, 2022, the court upheld in part and remanded in part CBP's finding of evasion under the Enforce and Protect Act ("EAPA") of antidumping duties on wooden bedroom furniture from China. The two main issues on appeal

were (1) whether CBP had the authority to retroactively cover entries made before the EAPA statute was entered into force; and (2) whether the failure by CBP to provide sufficient public summaries of confidential filings deprived the plaintiff of due process by imposing interim measures before it could review and respond to the allegations.

The court remanded the issue of CBP's failure to provide adequate public summaries to CBP given that importers have a protected interest in ensuring the proper assessment of duties on goods that have already been imported. Given that CBP relies on the verification report it prepares to support its evasion finding, the court said the plaintiff, AFI, has a "statutory and regulatory rights to appropriate process under the EAPA statute and its regulation." With respect to the opportunity to contest the evasion allegation, the court said that CBP's regulations governing the EAPA proceedings provided various opportunities to participate via written submissions and therefore the plaintiff was not deprived of due process with respect to this aspect of the proceeding.

The court did agree with Plaintiff that CBP improperly and illegally applied the EAPA statute and regulations retroactively to entries made prior to the statute's effective date. This was a novel issue and a case of first impression for the court. The concluded, that because the EAPA statute specified an effective date of August 22, 2016, CBP's retroactive application to entries made prior to the effective date was unlawful. Finally, the court disagreed with CBP and found that the agency cannot disregard Commerce's Final Scope Ruling that Customs itself requested pursuant to EAPA and most importantly Customs cannot "substitute itself as the administering authority contrary to statute, simply because Customs disagrees with Commerce's Final Scope Ruling." As a result, the court remanded to CBP with specific instructions to only include merchandise within the scope of the order in the EAPA investigation.

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

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

EXPORT CONTROLS & ECONOMIC SANCTIONS

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