

# TRADE LAW UPDATE



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## IN THIS ISSUE

[Presidential Actions](#)

[U.S. Department of  
Commerce Decisions](#)

[U.S. International Trade  
Commission Proceedings](#)

[U.S. Customs & Border  
Protection Decisions](#)

[Court of International Trade  
Decisions](#)

[Federal Court of Appeals  
Decisions](#)

[Export Controls and  
Sanctions](#)

## PRESIDENTIAL ACTIONS

### [Biden Administration's Recent Actions Related to Products from China's Xinjiang Region](#)

The Biden Administration has taken [new actions](#) related to forced labor in the Xinjiang region that may affect the supply for material critical for solar panels: U.S. Customs and Border Protection (CBP) issued a Withhold Release Order (WRO), the Department of Commerce (Commerce) updated its Entity List, and the Department of Labor (Labor) updated its “List of Goods Produced by Child Labor or Forced Labor.” These updates are part of an increased emphasis on both forced labor issues and a crackdown on goods from China’s Xinjiang province, and come on the heels of the G7 Summit that was held in mid-June. The White House indicated that the Administration’s actions are a “translation” of the commitments made at the G7 denouncing forced labor in the Xinjiang region.

### [US-EU Suspend Large Civil Aircraft Tariffs and Take Aim at China in Framework Addressing Non-Market Practices](#)

The United States and European Union (“EU”) [announced](#) a “[cooperative framework](#)” to address and potentially resolve their long-running dispute over large civil aircraft subsidies, also commonly known as the Boeing–Airbus or Large Civil Aircraft disputes. As part of the new understanding, the U.S. and EU will suspend their respective WTO-authorized tariff countermeasures, which

affected a total value of \$11.5 billion in trade. The U.S.-EU announcement is an initial step towards potentially resolving the 17-year transatlantic dispute over aircraft subsidies

### [White House Issues Final Report on Supply Chain Risks and Considers Section 232 Investigation into Imports of Neodymium Magnets](#)

President Biden issued [Executive Order](#) (“EO”) 14017 titled “America’s Supply Chains” on February 24, 2021, ordering 100-day and 1-year reviews of certain critical supply chains. On June 8, 2021, a [final report](#) was published, officially marking the end of the 100-day reviews under EO 14017. The White House’s final report covers a range of topics and includes many domestic manufacturing initiatives. Though some of the topics are clearly from a strategic, long-term outlook on the future of U.S. trade, such as securing “an end-to-end domestic supply chain for advanced batteries” and building supply chain “resilience,” the report also included more specific policy recommendations which can be taken in the near term. For example, the U.S. Department of Commerce will evaluate whether to initiate an investigation into imports of neodymium magnets under Section 232 of the Trade Expansion Act of 1962. If initiated, a Section 232 investigation could result in the imposition of national security tariffs on imports of neodymium magnets into the United States. These rare earth magnets are important components in smartphones, motors, and other devices, and are almost exclusively sourced from China.

## U.S. DEPARTMENT OF COMMERCE DECISIONS

### Investigations

- Utility Scale Wind Towers from Malaysia: On June 9, 2021, Commerce issued its final affirmative [determination](#) in the countervailing duty investigation.
- Passenger Vehicle and Light Truck Tires from Taiwan: On June 10, Commerce issued a [correction](#) to its final affirmative [determination](#) in the antidumping duty investigation.
- Standard Steel Wire Mesh from Mexico: On June 9, 2021, Commerce issued its final affirmative [determination](#) in the antidumping duty investigation.
- Silicon Metal from Malaysia: On June 24, 2021, Commerce issued its final affirmative [determination](#) in the antidumping duty investigation.
- Seamless Refined Copper Pipe and Tube from Vietnam: On June 24, 2021, Commerce issued its final affirmative [determination](#) in the antidumping duty investigation.
- Utility Scale Wind Towers from Spain: On June 25, 2021, Commerce issued its final affirmative [determination](#) in the antidumping duty investigation.

### Administrative Reviews

- Certain Corrosion-Resistant Steel Products from Korea: On June 1, 2021, Commerce issued its final [results](#) of the countervailing duty administrative review (2018).
- Fine Denier Polyester Staple Fiber from India: On June 1, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2018-2019).
- Agreement Suspending the Antidumping Investigation of Certain Cut-to-Length Carbon Steel Plate From Ukraine: On June 2, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2018).
- Polyethylene Terephthalate Film, Sheet, and Strip from India: On June 7, 2021, Commerce issued a [correction](#) to its final [results](#) of the countervailing duty administrative review (2018).
- 1,1,1,2-Tetrafluoroethane (R-134a) from China: On June 8, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).
- Emulsion Styrene-Butadiene Rubber from Brazil: On June 9, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2018-2019).
- Large Power Transformers from Korea: On June 10, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2018-2019).
- Certain Frozen Warmwater Shrimp from China: On June 11, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).
- Certain Steel Nails from China: On June 24, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2018-2019).
- Finished Carbon Steel Flanges from India: On June 24, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).
- Light-Walled Rectangular Pipe and Tube from Mexico: On June 25, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2018-2019).

### Circumvention Inquiries

- Certain Corrosion-Resistant Steel Products from China: On June 7, 2021, Commerce issued its final negative [determination](#) of antidumping and countervailing duty circumvention involving South Africa, but issued an affirmative [determination](#) of circumvention involving Malaysia.
- Certain Corrosion-Resistant Steel Products from Taiwan: On June 7, 2021, Commerce issued its final affirmative [determination](#) of antidumping duty circumvention involving Malaysia.

### Changed Circumstances Reviews

- Certain Hardwood Plywood Products from China: On June 2, 2021, Commerce issued its final [results](#) of the changed circumstances reviews.

## Sunset Reviews

- Certain Uncoated Paper from Indonesia: On June 1, 2021, Commerce issued its final [results](#) of the expedited first countervailing duty sunset review.
- Uncoated Paper from Australia, Brazil, China, Indonesia, and Portugal: On June 1, 2021, Commerce issued its final [results](#) of the expedited first antidumping duty sunset review.
- Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from China: On June 2, 2021, Commerce issued its final [results](#) of the expedited second countervailing duty sunset review.
- Pressure Sensitive Plastic Tape from Italy: On June 7, 2021, Commerce issued its final [results](#) of the antidumping duty sunset review.
- Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from China: On June 7, 2021, Commerce issued its final [results](#) of the expedited third antidumping duty sunset review.
- Potassium Permanganate from China: On June 7, 2021, Commerce issued its final [results](#) of the expedited fifth antidumping duty sunset review.
- Certain Uncoated Paper from China: On June 7, 2021, Commerce issued its final [results](#) of the countervailing duty sunset review.
- Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from China: On June 7, 2021, Commerce issued its final [results](#) of the expedited antidumping duty sunset review.

## U.S. INTERNATIONAL TRADE COMMISSION

### Section 701/731 Proceedings

#### Investigations

- There have been no final 701/731 investigation decisions from the ITC during the month of June 2021.

#### Sunset Review Decisions

- Barium Chloride from China: On June 7, 2021, the ITC issued its affirmative final [decision](#) to continue the antidumping duty order as revocation would lead to the recurrence or continuation of injury.
- Carbazole Violet Pigment 23 from China and India: On June 7, 2021, the ITC issued its affirmative final [decision](#) to continue the antidumping and countervailing duty orders as revocation would lead to the recurrence or continuation of injury.
- Certain Welded Line Pipe from Korea and Turkey: On June 24, 2021, the ITC issued its affirmative final [decision](#) to continue the antidumping and countervailing duty orders as revocation would lead to the recurrence or continuation of injury.
- Cut-to-Length Carbon Steel Plate from China, Russia, and Ukraine: On June 30, 2021, the ITC issued its affirmative final [decision](#) to continue the antidumping duty order as revocation would lead to the recurrence or continuation of injury.



#### Section 337 Proceedings

- There have been no Section 337 decisions from the ITC during the month of June 2021.

## U.S. CUSTOMS & BORDER PROTECTION

- CBP issued a Withhold Release Order against silica-based products made by Hoshine Silicon Industry Co., Ltd., and its subsidiaries. The WRO is based on information reasonably indicating that the company used forced labor to manufacture silica-based products. As a result, CBP personnel at all U.S. ports of entry have been instructed to begin detaining shipments that contain silica-based products made by Hoshine, or materials and goods derived from or produced using those silica-based products.

## COURT OF INTERNATIONAL TRADE

### Summary of Decisions

#### [21-68 Carpenter Technology Corp. et al v. United States](#)

On June 2, 2021, the CIT sustained Commerce's final remand redetermination in the antidumping duty administrative review of stainless-steel bar from India. The CIT concluded that Commerce did not exceed the scope of its remand order because the court used broad language in issuing such order and the changes are directly related to Commerce's application of its methodology. The CIT also found that Commerce's margin calculation was in accordance with the law, as it is well established that Commerce can rely on adverse facts available to induce respondents to cooperate. The CIT further explains that "Commerce's reference to a possible inducement effect of its selection of AFA does not, by itself, suggest a punitive or otherwise inappropriate basis for Commerce's changes to the margin calculation program and the court will not infer an improper motive solely on the basis of the result."

#### [21-69 Fine Furniture \(Shanghai\) Ltd. et al v. United States](#)

On June 2, 2021, the CIT remanded to Commerce to calculate antidumping duty rates for certain separate rate respondents in the first antidumping duty administrative review of multilayered wood flooring from China. The order came as the previously ordered stay pending a decision from the Court of Appeals in *Changzhou Hawd Flooring Co., Ltd.*, is no longer in effect now that the decision has become final.

#### [21-70 Husteel Co., Ltd. v. United States](#)

On June 7, 2021, the CIT sustained in part and remanded in part Commerce's corrected remand redetermination in the 2016-2017 antidumping duty administrative review of welded line pipe from Korea. The court sustained Commerce's reliance on SeAH's third country sales to Canada to calculate normal value and to calculate NEXTEEL's constructed value profit. The court also sustained Commerce's reclassification of NEXTEEL's suspended production losses, its reliance on SeAH's annual weighted-average costs, its treatment PPA's general and administrative expenses to calculate SeAH's constructed export price, and its ministerial correction to SeAH's dumping margin. The CIT remanded for further explanation or reconsideration Commerce's decision to adjust NEXTEEL's prime and non-prime costs.

#### [21-71 Xi'an Metals & Minerals Import & Export Co., Ltd. v. United States](#)

On June 9, 2021, the CIT sustained Commerce's final results in the antidumping duty administrative review of certain steel nails from China. The court found that Commerce's use of adverse facts available was justified because Pioneer was or should have been aware of Commerce's longstanding reporting requirements, Commerce's multiple requests for CONNUM-specific FOP information, and Pioneer's refusal to develop a later native reporting methodology. The court also found that Commerce's sample rate calculation for separate rate respondents was not unreasonably high and was reflective of the separate rate respondents' dumping margins. Specifically, the court relied on Commerce's findings that the respondents' dumping behavior was different than that of Stanley and thus Commerce did not act unreasonably in calculating a sample rate that exceeded the individual rate assigned to Stanley.

#### [21-72 Oman Fasteners, LLC et al v. United States et al](#)

On June 10, 2021, the CIT denied Defendants' motion to dismiss and granted Plaintiff's unopposed motion for summary judgment in light of the Court's decision in *Primesource II*. This challenge concerned the Section 232 tariffs on steel and aluminum derivative products imposed by the President's Proclamation 9980 of January 2020. As a result of the CIT's decision, Plaintiffs will be refunded duties previously paid.

#### [21-74 Mid Continent Steel & Wire, Inc. v. United States](#)

On June 14, 2021, the CIT sustained Commerce's final results in the second antidumping duty administrative review of steel nails from Oman. The court concluded that substantial evidence supported Commerce's decision to rely on a financial statement from Amatei, a Japanese nail manufacturer, to construct value for profit and indirect selling expenses. Plaintiffs contended that Commerce should have used a financial statement from Astrotech, an Indian nail manufacturer. The court rejected this because Commerce's selection of the financial statement was reasonable. The court stated it would not reweigh the record evidence and sustained Commerce's final results.

#### [21-76 Asociacion de Exportadores e Industriales de Aceitunas de Mesa et al v. United States](#)

On June 17, 2021, the CIT remanded Commerce's remand results in the countervailing duty investigation of ripe olives from Spain. The court concluded that Commerce's interpretations of *de jure* specificity under Section 1677(5A), and of the meaning of "prior stage product" under Section 1677-2 were unreasonable and not in

accordance with law. The court rejected Commerce's interpretation of *de jure* specificity based on the unambiguous language of the statute. Commerce also unreasonably interpreted Section 1677-2 because the interpretation rendered certain portions of the statute superfluous.

#### [21-77 Maple Leaf Marketing, Inc. v. United States et al](#)

On June 22, 2021, the CIT dismissed Maple Leaf's challenge to the timeliness of the imposition of Section 232 duties on imports of steel products from Canada. The court concluded that the President was timely in adjusting steel imports from Canada under Proclamation 9705. Proclamation 9705 imposed a 25 percent tariff on subject steel products and exempted the duties from operation on steel from Canada pending the outcome of ongoing negotiations. Therefore, the CIT dismissed Maple Leaf's complaint for failure to state a claim.

#### [21-78 Zhejiang Machinery Import & Export Corp. v. United States](#)

On June 23, 2021, the CIT affirmed Commerce's remand results in the antidumping duty administrative review of tapered roller bearings and parts thereof (finished or unfinished) from China. On remand, Commerce continued to find that Plaintiff failed to demonstrate the absence of *de facto* government control over its export activities. The court concluded that Commerce's remand results were supported by substantial evidence due to the fact that Commerce had specifically explained the All-China Federation of Trade Unions' (ACFTU's) ability to exercise

control over labor unions and individual members. The ACFTU in China possesses a 'legal monopoly on all trade union activities,' according to Commerce, and "the Chinese government prohibits independent unions." Additionally, record evidence demonstrated complete overlap between membership of the labor union of Zhejiang Sunny Import and Export Corp.—the parent company of the Plaintiff—and its employee stock ownership committee (ESOC). Commerce stated that Plaintiff failed to demonstrate how individuals on the ESOC could not act in the interests of the ACFTU when acting on behalf of the ESOC. Accordingly, the Court affirmed the remand results.

#### [21-79 Dong-A Steel Company v. United States](#)

On June 24, 2021, the CIT affirmed Commerce's remand results in the antidumping duty administrative review of heavy walled rectangular welded carbon steel pipes and tubes from Korea. The court concluded that Commerce's determination finding no particular market situation and its subsequent recalculation of DOSCO's AD rate were supported by substantial evidence and in accordance with law, and complied with the court's order in *Dong-A Steel I*. The court also affirmed Commerce's calculation of Consolidated Plaintiff Kukye's review-specific average rate and found that Commerce properly declined to recalculate HiSteel's weighted-average dumping margin to reflect the absence of a PMS on remand.

## COURT OF APPEALS FOR THE FEDERAL CIRCUIT

#### [20-1476 SC Johnson & Son Inc. v. United States](#)

On June 2, 2021, the CAFC affirmed the CIT's decision to sustain CBP's classification of Ziploc® brand sandwich bags under HTSUS subheading 3923.21.00, covering "articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics: Sacks and bags (including cones): Of polymers of ethylene." The CIT had found that the sandwich bags were *prima facie* classifiable under either HTSUS subheading 3923.21.00 or 3924.90.56, covering "tableware, kitchenware, or other household articles and hygienic or toilet articles, of plastics," which is the subheading SC Johnson proposed in its denied protest. As a result, the CIT applied General Rule of Interpretation 3, which holds that goods should be classified under the heading which provides the most specific description. SC Johnson appealed to the CAFC, which noted that the product was classifiable under either heading but ultimately affirmed the CIT's conclusion that 3923 describes the article "with a greater degree of accuracy and certainty."

#### [20-1159 China Manufacturers Alliance, LLC et al v. United States](#)

On June 10, 2021, the CAFC reversed and remanded the CIT's decision in an appeal of an AD administrative review of certain new pneumatic off-the-road tires from China. The CIT held that Commerce could not apply an existing China-wide AD rate to Double Coin Holdings, Ltd. The CAFC found that Commerce was justified in assigning the 105.31% PRC-wide entity rate to Double Coin, because Double Coin failed to demonstrate the absence of *de facto* government control over its export activities.

## EXPORT CONTROLS & ECONOMIC SANCTIONS

### [After 9th Circuit Mandate, BIS Formally Assumes Jurisdiction Over 3D Printed Firearms Technology and Software](#)

On January 23, 2020, the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") and the U.S. Department of State issued two final rules, available [here](#) and [here](#). The final rules outlined the removal of specifically-identified firearms, ammunition, accessories, and associated technical data from the United States Munitions List ("USML") and the creation of new Export Control Classification Numbers ("ECCNs") to classify those same items under the Commerce Control List ("CCL"). While most of the transfer of jurisdiction from State to Commerce proceeded on the original effective date of March 9, 2020, the jurisdictional transfer of International Traffic in Arms Regulations ("ITAR") "technical data" files for 3D-printed firearms to BIS was enjoined the same day by the U.S. District Court for the Western District of Washington in a suit brought by 20 states and the District of Columbia.