

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](#)

HIGHLIGHTS FROM JANUARY

[DHS Requests Comments to Inform Implementation of the Uyghur Forced Labor Prevention Act](#)

Today, the U.S. Department of Homeland Security (“DHS”) issued a request for comments to assist the Forced Labor Enforcement Task Force (“FLET”) with implementation of the Uyghur Forced Labor Prevention Act (“UFLPA”). The UFLPA, signed by President Biden on December 23, 2021, creates a rebuttable presumption that goods manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region (“Xinjiang”) or produced by an entity on a number of lists to be produced, will be denied entry into the U.S. under section 307 of the Tariff Act of 1930 (19 U.S.C. 1307). The UFLPA was passed in response to the alleged use of forced labor of Uyghurs, Kazakhs, Kyrgyz, Tibetans, and other persecuted groups in China. Readers can learn more about the UFLPA and the rebuttable presumption, which goes into effect on June 21, 2022, in our previous post following the UFLPA’s enactment.

[USMCA Panel Announces Win for US in Dairy TRQ Dispute with Canada](#)

In early January, a decision was released in a dispute between the US and Canada related to Canada’s dairy tariff-rate quotas (TRQ) under the United States-Mexico-Canada Agreement (USMCA). The dispute settlement panel

found that certain Canadian restrictions on use of the TRQs are in violation of its obligations under the free trade agreement. Specifically, the Panel found that Canada has breached its USMCA Article 3.A.2.11(b) commitments by “reserving TRQ pools exclusively for the use of processors.” This is the first dispute settlement panel proceeding brought under the USMCA.

U.S. DEPARTMENT OF COMMERCE DECISIONS

Investigations

- Pentafluoroethane (R-125) From the People’s Republic of China: On January 10, 2022, Commerce issued its affirmative final [determination](#) in the antidumping duty investigations. Commerce also issued its final [determination](#) in the countervailing duty investigations.

Administrative Reviews

- Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: On January 3, 2022, Commerce issued its final [results](#) of the countervailing duty administrative review (2019).
- Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Italy: On January 3, 2022, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).
- Certain Frozen Warmwater Shrimp from Thailand: On January 3, 2022, Commerce issued its final [results](#) of the antidumping administrative review (2019-2020).
- Finished Carbon Steel Flanges from Spain: On January 6, 2022, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).
- Certain Aluminum Foil from the People’s Republic of China: On January 7, 2022, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).
- Tapered Roller Bearing and Parts Thereof, Finished and Unfinished from the People’s Republic of China: On January 10, 2022, Commerce issued its final [results](#) of the antidumping administrative review (2019-2020).
- Certain Steel Nails from the Republic of Korea: On January 19, 2022, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).
- Glycine from India: On January 19, 2022, Commerce issued its final [results](#) of the countervailing duty administrative review (2019-2019).
- Certain Corrosion-Resistant Steel Products from the Republic of Korea: On January 19, 2022, Commerce issued its final [results](#) of the countervailing duty administrative review (2019).
- Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: On January 27, 2022, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).
- Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Final Results of Antidumping Duty Administrative Review: On January 31, 2022, Commerce issued its final [results](#) of the antidumping administrative review (2019-2020).

Circumvention Inquiries

- There were no final results of circumvention inquiries during the month of January 2022.

Changed Circumstances Reviews

- Steel Propane Cylinders from the People’s Republic of China: On January 4, 2022, Commerce issued its final [results](#) of the antidumping duty changed circumstances review.
- Certain Uncoated Paper from Brazil: On January 11, 2022, Commerce issued its final [results](#) of the antidumping duty changed circumstances review.

Sunset Reviews

- Certain Cold-Rolled Steel Flat Products of Brazil: On January 3, 2022, Commerce issued its final [results](#) of the expedited first sunset review of the countervailing duty order.
- Certain Hot-Rolled Steel Flat Products From the Republic of Korea: On January, 5, 2022, Commerce issued its final [results](#) of the expedited first sunset review the countervailing duty order.
- Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: On January 6, 2022, Commerce issued its final [results](#) in the expedited first sunset review of the antidumping duty order.
- Certain Hot-Rolled Steel Flat Products of Brazil: On January 6, 2022, Commerce issued its final [results](#) of the expedited first sunset review of the countervailing duty order.
- Chlorinated Isocyanurates from Spain and the People’s Republic of China: On January 31, 2022, Commerce issued its final [results](#) in the expedited third sunset review of the antidumping duty orders.

U.S. INTERNATIONAL TRADE COMMISSION

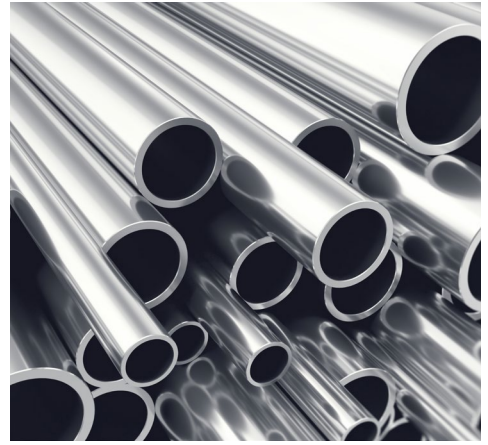
Section 701/731 Proceedings

Investigations

- There have been no final 701/731 investigation decisions from the ITC during the month of January 2022.

Sunset Review Decisions

- Uncoated Paper from Australia, Brazil, China, Indonesia, and Portugal: On January 11, 2022, the ITC issued its final affirmative [decision](#) to continue the antidumping duty orders as revocation would lead to the recurrence or continuation of material injury within a reasonably foreseeable time.
- Carbon Steel Butt-Weld Pipe Fittings from Brazil, China, Japan, Taiwan, and Thailand: On January 20, 2022, the ITC issued its final affirmative [decision](#) to continue the antidumping duty orders as revocation would lead to the recurrence or continuation of material injury within a reasonably foreseeable time.
- Stainless Steel Wire Rod from Japan, Korea, and Taiwan: On January 28, 2022, the ITC issued its final affirmative [decision](#) to continue the antidumping duty orders as revocation would lead to recurrence of continuation of material injury within a reasonably foreseeable time.



Section 337 Proceedings

- There have been no Section 337 decisions from the ITC during the month of January 2022.

U.S. CUSTOMS & BORDER PROTECTION

- This month, CBP's overseeing department, the U.S. Department of Homeland Security ("DHS") issued a request for comments to assist the Forced Labor Enforcement Task Force ("FLETF") with implementation of the Uyghur Forced Labor Prevention Act ("UFLPA"). The UFLPA, signed by President Biden on December 23, 2021, creates a rebuttable presumption that goods manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region ("Xinjiang") or produced by an entity on a number of lists to be produced, will be denied entry into the U.S. under section 307 of the Tariff Act of 1930 (19 U.S.C. 1307). The UFLPA was passed in response to the alleged use of forced labor of Uyghurs, Kazakhs, Kyrgyz, Tibetans, and other persecuted groups in China.

COURT OF INTERNATIONAL TRADE

Summary of Decisions

[22-01 Husteel Co., Ltd. v. United States](#)

On January 3, the CIT sustained Commerce's second remand redetermination in the review of the antidumping duty order on welded line pipe from the Republic of Korea. Commerce recalculated consolidated plaintiff NEXTEEL's constructed value to use the actual costs reflected in NEXTEEL's books and records, rather than estimated sales value. The court found that this calculation was supported by substantial evidence and was in accordance with the law.

[22-03 POSCO v. United States](#)

On January 13, 2022, the CIT sustained Commerce's Remand Results in the countervailing duty investigation of certain CTL plate from Korea that were ordered following the Federal Circuit's decision in POSCO v. United States. Commerce determined that POSCO did not receive electricity for less than adequate remuneration by

analyzing KEPCO's standard pricing and costing and whether it exercised preferential pricing. The CIT found this was in accordance with law. The CIT found that Commerce's cost recovery analysis was supported by substantial evidence and was in accordance with the law when Commerce reasonably relied on data outside the POI and adequately considered the role of the Korean Power Exchange on the Korean electricity market.

[22-06 Guizhou Tyre Co., Ltd. v. United States](#)

On January 24, 2022, the CIT remanded Commerce's less-than-fair-value determination of the antidumping duty investigation of certain truck and bus tires from China. The CIT ordered Commerce to reconsider its decision to not grant a separate rates status to the two groups of plaintiffs and its decision that Guizhou did not rebut the presumption of control.

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

[20-1046 Kyocera Senco Indus. Tools Inc. v. ITC & Koki Holdings Am. Ltd.](#)

On January 21, 2022 the CAFC vacated and remanded the ITC's decision in the investigation into Koki's alleged violations of Section 337 to reevaluate 5 distinct issues concerning patent construction and interpretation. The ALJ conducted an evidentiary hearing about whether Koki violated certain patents. The ALJ issued an initial determination finding that Koki's products did not infringe certain claims of one of the patents and based on that, Kyocera did "not press direct infringement" on the other patents. The parties appealed the ALJ's decision to the ITC. The ITC reviewed the ALJ's decision that Koki's products did not infringe on the patent and remanded to the ALJ to address "whether the accused products met the unaddressed claim limitations and whether Koki induced its customers to infringe." The ALJ complied and found that even if infringement were found, Kyocera failed to prove the intent to induce infringement. The parties, again, appealed the ALJ's decision to the ITC. The ITC reversed the ALJ's finding of noninfringement and that Koki induced infringement. Both parties appealed to the CAFC. The court found that (1) the ALJ abused its discretion by admitting expert testimony from a person who lacked the requisite skill, (2) that the patent clearly defined "driven position," (3) that the patent did not clearly define "lifter member" and the ALJ's interpretation was inconsistent with caselaw, (4) that "safety contact element" and "fastener drive mechanism" are separate things, and (5) the ALJ's decision concerning the meaning of "main storage chamber" is "supported by substantial evidence and is consistent with the agreed-upon construction." The court has vacated the ITC's decision and remanded for further proceedings consistent with court's findings.

[21-1434 Canadian Solar, Inc. et.al. v. United States](#)

On January 28, 2022, the CAFC affirmed the CIT's decision to side with Commerce. At issue were regionally specific electricity subsidies subject to countervailing duties that Canadian Solar received from the Chinese government. Throughout the investigation, the government of China did not cooperate with Commerce. As a result, Commerce applied adverse facts available to determine that the electricity program was a regionally specific subsidy. Canadian Solar argued that the price differentiation between the provinces of China was due to commercial or market considerations. Commerce disagreed and found that the differences in prices by province were for development purposes and set by the government in Beijing. The CIT

found that Commerce's decision that Canadian Solar received electricity subsidies was supported by substantial evidence and in accordance with law. The CAFC affirmed.

EXPORT CONTROLS & ECONOMIC SANCTIONS

- In mid-January, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") designated four (4) current and former Ukrainian officials under Executive Order ("EO") 14024 dated April 15, 2021. OFAC asserted the Russian Federal Security Service ("FSB") "recruit[s] Ukrainian citizens in key positions to gain access to sensitive information, threaten the sovereignty of Ukraine, and then leverage these Ukrainian officials to create instability in advance of a potential Russian invasion." OFAC also noted that Russian agents have sought to influence U.S. elections since at least 2016.
- In an October 21, 2021 interim final rule ("IFR"), the Bureau of Industry and Security ("BIS") published long-awaited "cybersecurity items" controls in Categories 4 (Computers) and 5, Pt. 1 (Telecommunications) of the Commerce Control List ("CCL") and followed the IFR up on November 12, 2021 with relevant FAQs. The IFR will impose new export controls on certain "cybersecurity items" that relate to "intrusion software" or "IP network communications surveillance." The IFR, originally scheduled to become effective on January 19, 2022, will now become effective on March 7, 2022. In the January 12, 2022 notice announcing the delay, BIS stated it "may consider some modifications for the final rule" and indicated it would "provide the public with additional guidance."