

# TRADE LAW UPDATE



February 2022

## 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 FEBRUARY

### [U.S. and Japan Agree to Eliminate Section 232 Tariffs on Steel Imports](#)

On February 7, 2022, the United States and Japan [announced](#) that both countries had agreed to a tariff-rate quote (“TRQ”) for steel imports from Japan. The agreement will eliminate the Section 232 25% tariff on imports of steel from Japan that fall within the quota, effective April 1, 2022. Commerce Secretary Gina M. Raimondo and United States Trade Representative Katherine Tai issued a [joint statement](#) that the renegotiated steel measures will “strengthen America’s steel industry and ensure its workforce stays competitive, while also providing more access to cheaper steel.”

### [Commerce Trade Missions Set to Resume in March 2022](#)

The U.S. Department of Commerce (“Commerce”) announced on Friday that it was set to resume trade missions starting as early as March 2022. Trade missions are government-led programs where members of the trade can meet directly with foreign industries and officials to explore potential business opportunities. The COVID-19 pandemic brought these missions to a sudden halt in March 2020 and no trade missions have occurred in the past 24 months. The International Trade Administration (“ITA”) is now

preparing to resume in-person trade missions, where possible.

### [Commerce Requesting Public Comments on Section 232 Exclusion Process](#)

On February 10, 2022, the Department of Commerce published a [Federal Register notice](#) requesting public comments on the Section 232 exclusions process. The notice follows the agreement reached between the U.S. and the EU related to the tariff rate quotas for steel and aluminum articles from EU member countries and the President’s January 3, 2022 [Proclamation 10328](#) (*Adjusting Imports of Steel Into the United States*).

## U.S. DEPARTMENT OF COMMERCE DECISIONS

### Investigations

- Certain Mobile Access Equipment and Subassemblies Thereof From the People's Republic of China: On February 22, 2022, Commerce issued its final affirmative [determination](#) of sales at less than fair value.

## Administrative Reviews

- Polyethylene Terephthalate Film, Sheet, and Strip from India: On February 1, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2019-2020).
- Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: On February 1, 2022, Commerce issued its final [results](#) of countervailing duty administrative review (2019).
- Polyethylene Terephthalate Film, Sheet, and Strip from India: On February 1, 2022, Commerce issued its final [results](#) of countervailing duty administrative review and rescission, in part (2019).
- Large Diameter Welded Pipe From the Republic of Korea: On February 2, 2022, Commerce issued its final [results](#) of countervailing duty administrative review (2018-2019).
- Carbon and Alloy Steel Wire Rod From the Republic of Korea: On February 2, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2019-2020).
- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: On February 2, 2022, Commerce issued its final [results](#) of antidumping duty administrative review and final determination of no shipments (2018-2019) Correction.
- Certain Steel Nails From Malaysia: On February 2, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2019-2020).
- Certain Steel Nails From the Republic of Korea: On February 3, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2019-2020) Correction.
- Carbon and Alloy Steel Cut-to-Length Plate From the Republic of Korea: On February 4, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2019-2020).
- Certain Carbon and Alloy Steel Cut-To-Length Plate From Italy: On February 4, 2022, Commerce issued its final [results](#) of antidumping duty administrative review and final determination of no shipments (2019-2020).
- Large Diameter Welded Pipe From Canada: On February 4, 2022, Commerce issued its final [results](#) of antidumping duty administrative review and final determination of no shipments (2018-2020).
- Common Alloy Aluminum Sheet From the People's Republic of China: On February 4, 2022, Commerce issued its amended final [results](#) of antidumping duty administrative review (2018-2020).
- Certain Carbon and Alloy Steel Cut-to-Length Plate From the Republic of Korea: On February 7, 2022, Commerce issued its final [results](#) and partial rescission of countervailing duty administrative review (2019).
- Certain Steel Nails From the United Arab Emirates: On February 7, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2019-2020).
- Aluminum Extrusions From the People's Republic of China: On February 8, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2019-2020).
- Xanthan Gum From the People's Republic of China: On February 8, 2022, Commerce issued its final [results](#) of antidumping duty administrative review and final determination of no shipments (2019-2020).
- Certain Corrosion-Resistant Steel Products From Taiwan: On February 8, 2022, Commerce issued its final [results](#) of the antidumping duty administrative review and final determination of no shipments (2019-2020).
- Certain Carbon and Alloy Steel Cut-To-Length Plate From Belgium: On February 8, 2022, Commerce issued its final [results](#) of antidumping duty administrative review and final determination of no shipments (2019-2020).
- Steel Concrete Reinforcing Bar From the Republic of Turkey: On February 8, 2022, Commerce issued its final [results](#) of antidumping duty administrative review and final determination of no-shipments (2019-2020).
- Large Diameter Welded Pipe From Greece: On February 8, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2019-2020).
- Aluminum Extrusions From the People's Republic of China: On February 9, 2022, Commerce issued its final [results](#) of countervailing duty administrative review and rescission of review, in Part (2019).
- Magnesium Metal From the People's Republic of China: On February 9, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Emulsion Styrene-Butadiene Rubber From Mexico: On February 10, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2019-2020).
- Certain Hot-Rolled Steel Flat Products From the Republic of Korea: On February 10, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2016-2017); Certain Hot-Rolled Steel Flat Products From

the Republic of Korea: amended final results of antidumping duty administrative review (2016-2017); and Certain Hot-Rolled Steel Flat Products From the Republic of Korea: final results of antidumping duty administrative review and rescission of administrative review, in Part (2017-2018); Correction.

- Oil Country Tubular Goods From Ukraine: On February 10, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2019-2020).
- Circular Welded Carbon Steel Standard Pipe and Tube Products From Turkey: On February 16, 2022, Commerce issued its final [results](#) of antidumping duty administrative review and final determination of no shipments (2019-2020).
- Certain Aluminum Foil From the People's Republic of China: On February 17, 2022, Commerce issued its amended final [results](#) of antidumping duty administrative review (2019-2020).
- Pure Magnesium From the People's Republic of China: On February 22, 2022, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Multilayered Wood Flooring From the People's Republic of China: On February 24, 2022, Commerce issued its notice of court decision not in harmony with final [results](#) of antidumping duty administrative review; notice of amended final results.
- Steel Concrete Reinforcing Bar From the Republic of Turkey: On February 24, 2022, Commerce issued its final [results](#) of antidumping duty administrative review and final determination of no-shipments (2019-2020); Correction.

### **Circumvention Inquiries**

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

### **Changed Circumstances Reviews**

- There were no final results of changed circumstances reviews during the month of February 2022.

### **Sunset Reviews**

- Welded Stainless Pressure Pipe From India: On February 1, 2022, Commerce issued its final [results](#) of the expedited first sunset review of the countervailing duty order
- Welded Stainless Pressure Pipe From India: On February 1, 2022, Commerce issued its final [results](#) of expedited sunset review of the antidumping duty order.
- Circular Welded Carbon-Quality Steel Pipe From Oman, Pakistan, and the United Arab Emirates: On February 18, 2022, Commerce issued its final [results](#) of expedited sunset reviews of 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 February 2022.

### **Sunset Review Decisions**

- There have been no final sunset review decisions from the ITC during the month of February 2022.

### **Section 337 Proceedings**

- Certain Electronic Stud Finders, Metal Detectors and Electrical Scanners: On February 22, the ITC issued its notice of a final [determination](#) finding no violation of section 337; termination of the investigation.



## U.S. CUSTOMS & BORDER PROTECTION

[EAPA Consolidated Case 7657: Big D LLC, Colorquartz New York Inc., Cumberland Cabinet and Design Inc., Durian Kitchen Depot Inc., Flowery Stone Inc., Kat Specialties Inc., Kingway Construction Supplier Inc., Nio Kitchen Depot Inc., Nomadic Barbers Inc., and Opaly USA LLC](#)

- On February 8, 2022, CBP initiated an investigation on the above importers for evading antidumping duty order A-570-084 and countervailing duty order C-570-085 by entering the United States Chinese-origin quartz surface products that were transhipped through Malaysia or not declaring the correct entry type. CBP has reasonable suspicion of AD/CVD duties and has therefore launched the investigation.

[EAPA Cons. Case 7607: Splendid Trading Co., Superior Granite and Marble By Vivaldi LLC](#)

- On February 23, 2022, CBP determined that the above importers evaded and entered merchandise covered by antidumping duty and countervailing duty orders A-570-106 and C-570-107 on wooden cabinets and vanities from the People's Republic of China into the United States. Since there was a lack documentation related to production records and import data that supports the wooden cabinets and vanities were covered merchandise. The US importers did not declare the merchandise which resulted in no cash deposits being collected at the time of entry..

[EAPA Case 7550: Kingtom Aluminio SRL](#)

- On February 4, 2022, CBP determined that there was evidence that the above importer evaded duties and entered merchandise covered by antidumping duty order A-570-967 and countervailing duty C-570-978 on aluminum extrusions from China into the United States. CBP stated that there was evidence the importer imported products that were co-mingled or transhipped to the United States with a claimed country of origin of the Dominican Republic which resulted in no cash deposits being collected at the time of entry.

[EAPA Case 7583: CNC Associates](#)

- On January 31, 2022, CBP determined there is evidence that the above importer evaded and entered merchandise covered by antidumping and countervailing duty orders A-570-106 and C-570-107 into the United States. Evidence shows that the importer entered wooden cabinets and vanities from the People's Republic of China into the United States through Malaysia and as a result no cash deposit or other records were collected.

[EAPA Case 7604: Simpli Home, Ltd.](#)

- On January 25, 2022, CBP determined that is evidence that the above importer evaded and entered products covered by antidumping duty and countervailing duty orders A-570-084 and C-570-085 from the People's Republic of China into the United States. There is evidence that points to the Chinese-origin products were attached to vanities to the United States with a claimed country of origin of Vietnam which resulted in no cash deposits being applied at the time of entry.

[EAPA Cons. Investigation Number 7252: Certain Hardwood Plywood from the People's Republic of China](#)

- On January 28, 2022, CBP determined that there is evidence that importers evaded with merchandise covered under antidumping and countervailing duty orders A-570-051 and C-570-052 and entering the United States. There is evidence that points to the Chinese-origin hardwood plywood which resulted in no cash deposits being applied at the time of entry.

- On January 27, 2022, CBP determined that there is evidence that the above importer evaded antidumping and countervailing duty orders A-570-106 and C-570-107 on wooden cabinets and vanities from the People's Republic of China by entering these products into the United States through evasion. Evidence shows these imported Chinese-origin products misrepresented Vietnam as the country of origin. This resulted in no cash deposits being applied at the time of entry.

## **COURT OF INTERNATIONAL TRADE**

### **Summary of Decisions**

#### [22-14 Taizhou United Imp. & Exp. Co. v. United States](#)

On February 18, 2022, the CIT rejected plaintiff's arguments that Commerce could not countervail subsidies received on non-subject material inputs used to manufacture aluminum extrusions. The Court found that plaintiff's arguments were mainly conclusory and not supported by evidence and affirmed Commerce's remand determination where it continued to find that the glass inputs were countervailable. The court found that it was plaintiffs burden to demonstrate and prove that the inputs were used for the production of non-subject merchandise which it determined was not met.

#### [22-12](#) and [22-13](#) *Celik Halat ve Tel Sanayi v. United States*

On February 15, 2022, the CIT issued a pair of opinions finding that Commerce abused its discretion by rejecting responses in antidumping and countervailing duty investigations on prestressed concrete steel wire strand from Turkey. The filings in question were submitted 21 and 87 minutes late on Commerce's electronic filing platform ACCESS due to filing difficulties experienced by respondent's counsel. The Court called Commerce's rejection of the submissions coupled with a total facts available determination as a "draconian penalty" resulting from an "inadvertent technical error by its counsel that had no appreciable effect" on Commerce's ability to conduct the investigations. The court was very clear that "not every failure to comply with a filing deadline will result in authority to use an adverse inference against an interested party," and that Commerce needs to "be mindful of the limitations on the exercise of its statutory and regulatory powers." In the court's view this was a "technical violation could not conceivably have impeded the investigation," because Commerce had in its possession the timely filed BPI Not Final version which was permitted under the regulations and the only missing information for Commerce's analysis was what information was bracketed and what was not.

#### [22-10 Both-Well \(Taizhou\) Steel Fittings, Co. v. United States](#)

On February 8, 2022, the CIT once again struck down Commerce's adverse facts available determination on the grounds that Commerce had not shown why certain information is required by the Chinese government, exporters, and U.S. importers to demonstrate that it did not use the Export Buyers Credit Program. Commerce in the underlying proceeding insisted that the Chinese government provide two specific pieces of information to verify non-use of the program. When the Chinese government did not provide the information, Commerce assigned an adverse facts available rate of 10.54% for the use of the EBCP. The CIT had already ruled against the practice which Commerce did not appeal to the Federal Circuit. The court instructed Commerce that if it must devise "some other alternative means of verifying the non-use certifications."

#### [22-8 Bonney Forge v. United States](#)

The Court on February 2, 2022, found that Commerce must conduct verification either in person or virtually or more fully explain why it did not or could not conduct a virtual verification when requested to do so by petitioners. The Court cited to other agency and senior officials having recently conducted "mission-critical" trips to India and remanded the case with instructions to Commerce for it to either "do its job and perform some type of verification," or "explain why its decision to fail to verify is both legal and not an abuse of discretion."



## COURT OF APPEALS FOR THE FEDERAL CIRCUIT

There are no Court of Appeals for the Federal Circuit for the month of February.

### EXPORT CONTROLS & ECONOMIC SANCTIONS

#### [New U.S. Sanctions and Export Controls Aim to Impose "Devastating Costs" on Russia](#)

On February 24, 2022, the United States imposed a combination of extensive and complex trade sanctions and export controls against the Russian Federation ("Russia") in response to its invasion of Ukraine. These sanctions and export controls do not impose a full embargo on trade with Russia; however, U.S. companies doing business with Russia will be subject to extensive restrictions going forward, and many of those companies will need to terminate their transactions or activities immediately. These restrictions will be especially onerous for companies that produce U.S. export-controlled items. Even if your company's transactions with Russia continue to be permissible, these new sanctions that target the Russian economy and financial system may make it difficult (or, in some instances, impossible) to make or receive payments associated with those transactions.

#### [OFAC Imposes "First Tranche" of Russia Sanctions Aimed at Russian Banks and Oligarchs](#)

On February 22, 2022, one day after the Russian Federation formally recognized the Donetsk People's Republic ("DNR") and Luhansk People's Republic ("LNR") of Ukraine as "independent states" and the Biden Administration responded by [imposing a sanctions embargo against the DNR and LNR regions](#), the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") took further action against Russia by imposing new sanctions against the Russian financial services sector, Russian oligarchs and their family members. OFAC imposed these additional sanctions using Executive Order 14024 ("EO 14024"), which [was issued on April 15, 2021](#) and which authorizes OFAC to sanction operators in Russia's technology and defense sectors as well as other sectors as determined by the U.S. Secretary of the Treasury in consultation with the U.S. Secretary of State. Simultaneous with these sanctions actions, U.S. Secretary of the Treasury Janet L. Yellen issued a [Determination](#) which officially designated the financial services sector of the Russian economy as a sector that is subject to potential sanctions under EO 14024. The Biden Administration also issued a [Fact Sheet](#) which described these sanctions as a "first tranche of sanctions". The Fact Sheet also noted the Russian Parliament's recent action to authorize the deployment of additional Russian forces into the DNR and LNR regions and foreshadowed likely additional sanctions with a statement that "Russia will pay an even steeper price if it continues its aggression".

#### [Sanctions on Donetsk and Luhansk People's Republics in Ukraine](#)

On February 21, 2022, U.S. President Joseph R. Biden Jr. issued an [Executive Order](#) (the "Ukraine Order") in response to action taken earlier in the day by Russian Federation President Vladimir Putin to recognize the Donetsk People's Republic ("DNR") and Luhansk People's Republic ("LNR") of Ukraine as "independent states". The DNR and LNR are two separatist bodies which have asserted governmental authority over the Donetsk and Luhansk regions of Ukraine, respectively, without authorization from the Government of Ukraine. In 2014, the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") added the DNR and LNR to its Specially Designated Nationals and Blocked Persons List (the "SDN List") in their capacities as individual entities. Since then, OFAC has also added multiple officials associated with the DNR and LNR to the SDN List. The new Ukraine Order extends those sanctions to the entire DNR and LNR regions of Ukraine. OFAC issued a number of General Licenses to authorize certain transactions and activities which would otherwise be prohibited under the Ukraine Order.

#### [AES Now Requires Consistency with EAR Destination-Based Controls; Census Will Not Remove Domestic EEI Requirement for Puerto Rico & U.S. Virgin Islands Shipments](#)

Effective January 13, 2022, the U.S. Census Bureau's ("Census") Automated Export System ("AES") began issuing a response code 66Q notifying Electronic Export Information ("EEI") filers whenever they enter an export control classification number ("ECCN") and destination combination that is prohibited under the Export Administration

Regulations' ("EAR") destination-based controls. For now, such mismatches in filings will merely result in Compliance Alerts, but **beginning on or around July 13, 2022**, Census plans for the ECCN/destination mismatch to result in a "Fatal Error" that, if left uncorrected, will subject the principal party or authorized agent to penalties under the Foreign Trade Regulations ("FTR"). EEI filings are required by both the EAR administered by the Bureau of Industry and Security ("BIS") and by the FTR administered by Census and enforced by U.S. Customs and Border Protection ("CBP"). Notably, the Census [bulletin](#) announcing the change directed questions to a BIS email address, suggesting BIS may be increasing its surveillance of the treasure trove of data provided in EEI filings. Time will tell.