

TRADE LAW UPDATE



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PRESIDENTIAL ACTIONS

[The Dynamic of the Chassis Quandary Today in Ocean Shipping in the United States](#)

A new level of frustration has arisen from the ocean shipper ranks during this “post-COVID” period. Shipments from Asia to the U.S. are experiencing extreme difficulties in getting their cargo delivered, mainly due to the acute shortage of chassis to effect delivery of their containers on the U.S. side. The painful example of this is the BNSF current experience with Lot W. Aside from the impact to the importer in not being able to access its cargo and experiencing serious damage to its business, it is also likely to face serious demurrage charges from the ocean carrier. This is on top of having just experienced a quadrupling (or more) of the base FAK per container rates, and the ocean carrier choices to leave agricultural commodities sitting at West Coast U.S. ports, favoring the shipment of empty containers opting to position equipment for the lucrative Asia to U.S. trade.

[The Ocean Shipping Pandemic Moves to the Rails: The Lot “W” Metaphor in Chicago](#)

As a result of the contagious ocean carrier saga, recently the subject of a Presidential Executive Order dealing with anti-competitive developments in ocean shipping, the contagion has now fixated on rail ramps where intermodal deliveries of ocean freight moves have come to a virtual standstill. At least that

is the case at Lot W. A supposed well-intentioned rail company on May 26, 2021, issued a public notice intended to assuage container unloading train delays at Logistics Park Chicago (“LPC”) caused by strong volumes, longer dwell times, and chassis shortages. (Emphasis is on the last item). The Notice, among other things, was to create an additional stacked container area where containers could be quickly ferried from the LPC to create room for incoming import cargo from the West Coast. This area is the now infamous “Lot W” in Chicago. There are currently thousands of containers stacked at that location (obviously not on chassis), and they seem to have gone to the mythical elephant graveyards to die. The publicized information by the rail company was that no containers from Lot W would be available there for driver pick-ups, nor would they provide notification for pick-ups of these containers. They were intended to be moved to Lot S where four new stacking cranes were to be moving cargo at a fast clip. Nonetheless, the containers at Lot W have been there for months with no immediate sign of resurrection.

U.S. DEPARTMENT OF COMMERCE DECISIONS

Investigations

- Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Russia: On July 2, Commerce issued its final affirmative determination in the [antidumping](#) and [countervailing](#) duty investigations.
- Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine: On July 2, Commerce issued its final affirmative [determination](#) in the antidumping duty investigation.
- Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Korea: On July 2, Commerce issued its final affirmative determination in the [antidumping](#) and [countervailing](#) duty investigations.
- Certain Metal Lockers and Parts Thereof from China: On July 7, Commerce issued its final affirmative determination in the [antidumping](#) and [countervailing](#) duty investigations.
- Passenger Vehicle and Light Truck Tires from Thailand: On July 19, Commerce issued its amended final affirmative [determination](#) in the antidumping duty investigation.
- Methionine from [Japan](#) and [Spain](#): On July 23, Commerce issued its final affirmative determination in the antidumping duty investigations.

Administrative Reviews

- Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Korea: On July 1, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2018-2019).
- Ripe Olives from Spain: On July 1, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2018-2019).
- Ripe Olives from Spain: On July 2, 2021, Commerce issued its final [results](#) of the countervailing duty administrative review (2017-2018). Commerce issued a [correction](#) on July 20, 2021.
- Certain Frozen Fish Fillets from Vietnam: On July 8, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2018-2019).
- Magnesium Metal from China: On July 9, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2019-2020).
- Fresh Garlic from China: On July 20, 2021, Commerce issued its final [results](#) of the 25th antidumping duty administrative review (2018-2019).
- Monosodium Glutamate from Indonesia: On July 22, 2021, Commerce issued its final [results](#) of the antidumping duty administrative review (2018-2019).
- Corrosion-Resistant Steel Products from Korea: On July 22, 2021, Commerce issued its amended final [results](#) of the antidumping duty administrative review (2018-2019).
- Narrow Woven Ribbons with Woven Selvedge from China: On July 28, 2021, Commerce issued its amended final [results](#) of the countervailing duty administrative review (2018).
- Certain Cold-Rolled Steel Flat Products from Korea: On July 28, 2021, Commerce issued its amended final [results](#) of the countervailing duty administrative review (2018).
- Certain Cold-Rolled Steel Flat Products from Korea: On July 29, 2021, Commerce issued its amended final [results](#) of the antidumping duty administrative review (2018-2019).
- Certain Oil Country Tubular Goods from Korea: On July 30, 2021, Commerce issued its amended final [results](#) of the antidumping duty administrative review (2018-2019).

Changed Circumstances Reviews

- There have been no final results of changed circumstances from Commerce during the month of July 2021.

Sunset Reviews

- Polyethylene Retail Carrier Bags from China, Indonesia, Malaysia, Taiwan, Thailand, and Vietnam: On July 6, 2021, Commerce issued its final [results](#) of the expedited antidumping duty sunset reviews.
- Petroleum Wax Candles from China: On July 12, 2021, Commerce issued its final [results](#) of the expedited antidumping duty sunset review.

- Polyethylene Terephthalate Resin from China and India: On July 23, 2021, Commerce issued its final [results](#) of the expedited first countervailing duty sunset reviews.
- Polyethylene Terephthalate Resin from Canada, China, India, and Oman: On July 30, 2021, Commerce issued its final [results](#) of the expedited first antidumping duty sunset reviews.

U.S. INTERNATIONAL TRADE COMMISSION

Section 701/731 Proceedings

Investigations

- Methionine from France: On July 7, 2021, the ITC issued its affirmative final [decision](#) in the antidumping duty investigation.
- Chassis and Subassemblies from China: On July 8, 2021, the ITC issued its affirmative final [decision](#) in the antidumping duty investigation.
- Walk-Behind Lawn Mowers from China and Vietnam: On July 9, 2021, the ITC issued its affirmative final [decision](#) in the antidumping and countervailing duty investigations.
- Passenger Vehicle and Light Truck Tires from Korea, Taiwan, Thailand, and Vietnam: On July 16, 2021, the ITC issued its affirmative final [decision](#) in regard to Korea, Taiwan, and Thailand in the antidumping investigation and Vietnam in the countervailing duty investigation. The ITC made a negative determination regarding Vietnam in the antidumping duty investigation.
- Utility Scale Wind Towers from Malaysia: On July 30, 2021, the ITC issued its affirmative final [decision](#) in the countervailing duty investigation.



Sunset Review Decisions

- Melamine from China: On July 6, 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.
- Potassium Phosphate Salts from China: On July 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.

Section 337 Proceedings

- Certain Mobile Devices with Multifunction Emulators: On July 22, 2021, the ITC issued its [determination](#) finding no violation of Section 337.
- Certain Smart Thermostats, Smart HVAC Systems, and Components Thereof: On July 26, 2021, the ITC issued its [determination](#) to review and affirm its initial finding of no violation of Section 337.

U.S. CUSTOMS & BORDER PROTECTION

- CBP [modified](#) its Withhold Release Order (WRO) on imports of carpets and hand-knotted wool products from Nepal, effective July 23, 2021. CBP removed the Nepalese producer Annapurna Carpet Industries Pvt. Ltd. from the WRO. The companies Kumar Carpet Pvt. Ltd., Singhe Carpet Pvt. Ltd., and Valley Carpet Pvt. Ltd. remain active on the WRO.
- CBP issued an affirmative EAPA circumvention [determination](#) on July 21, 2021, finding that BGI Group Inc. dba U.S. Cabinet Depot circumvented the AD/CVD orders on wooden cabinets and vanities from China by claiming Cambodian origin.

COURT OF INTERNATIONAL TRADE

Summary of Decisions

[21-82 IDI International Development and Investment Corp. v. United States](#)

On July 6, 2021, the CIT sustained Commerce's decision to deny IDI International Development and Investment Corporation's separate rate application in the antidumping duty investigation of certain frozen fish fillets from Vietnam. IDI failed to demonstrate the lack of *de facto* government control over the selection of management. Commerce found that a Vietnamese government official and Communist Party member represented the Vietnamese government on the board of IDI and its parent company, and that there was no record evidence supporting the notion that the board of IDI ever acted against the government official. As a result, Commerce will not calculate a separate rate for IDI and IDI will instead be subject to a Vietnam-wide rate.

[21-83 Garg Tube Export LLP and Garg Tube Ltd. v. United States](#)

On July 9, 2021 the CIT remanded Commerce's final determination in the antidumping duty administrative review of carbon steel standard pipes and tubes from India. The court remanded for further explanation or reconsideration Commerce's adjustment to reported costs to account for a cost-based particular market situation. While Commerce may use any reasonable methodology to determine constructed value where a cost-based PMS interferes with its calculations under 19 § U.S.C. 1677b(e), it does not empower Commerce to make such an adjustment while relying on home market or third country market sales to determine normal value. Additionally, the CIT found that to the extent that Commerce applies 19 USC § 1677a(e) and 19 USC § 1677e(b) against Garg, it must do more to support its determination.

[21-86 Midwest Fastener Corp. v. United States](#)

On July 12, 2021, the CIT sustained Commerce's third remand redetermination finding that strike anchors are not within the scope of the antidumping duty order on certain steel nails from China. The Court of Appeals for the Federal Circuit ordered the CIT to reconsider its ruling in *Midwest I* in accordance with the Court of Appeal's decision in *OMG, Inc. v. United States* (which dealt with a similar scope issue pertaining to the AD order covering nails from Vietnam). In accordance with the Court of Appeals' decision in *OMG*, Commerce's finding that Midwest's strike pin anchors are not "nails...constructed of two or more pieces" and are therefore not covered by the PRC Nails Order was

reasonable, as Midwest's and OMG's anchors are substantially similar.

[21-87 Ancientree Cabinet Co., Ltd. v. United States](#)

On July 12, 2021, the CIT remanded Commerce's final determination for further explanation in the antidumping duty investigation of wooden cabinets and vanities from China. The CIT found that Commerce's selection of Romania as the primary surrogate country was supported by substantial evidence and Commerce's selection of surrogate value was supported by substantial evidence and sufficiently specific. The CIT found that Commerce's financial ratio calculation for the Romanian wooden cabinets manufacturer was arbitrary and capricious.

[21-88 Hyundai Steel Company v. United States](#)

On July 19, 2021, the CIT remanded Commerce's second remand results in the antidumping duty administrative review of circular welded non-alloy steel pipe from Korea. The CIT found that Section 1677b(b)(1) does not authorize Commerce to apply a cost-based particular market situation adjustment for the purpose of the sales-below-cost test. According to the court, Commerce made an unlawful particular market situation determination that was not in accordance with the law. The court remanded the PMS determination and adjustment to the agency for reconsideration.

[21-90 Shelter Forest International Acquisition, Inc. et al v. United States](#)

On July 21, 2021, the CIT sustained Commerce's remand results in the antidumping and countervailing duty anticircumvention inquiry of hardwood plywood from China. The CIT found that Commerce's determination that Shelter Forest's majority urea-formaldehyde glue met the criteria of the inquiry merchandise and that the inquiry merchandise was not later-developed merchandise per 19 U.S.C. § 1677j(d) was supported by substantial evidence. The court also sustained Commerce's determination that Shelter Forest's product was commercially available within the meaning of 19 U.S.C. § 1677j(d) prior to the issuance of AD/CVD orders.

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

[20-2157 Transpacific Steel LLC et al v. United States et al](#)

On July 13, 2021, the CAFC reversed and remanded a decision of the CIT and ruled that the President may modify Section 232 tariffs beyond the 105-day procedural deadline laid out in 19 U.S.C. § 1862. In this instance, the CAFC found the President's increase in import duties from 25% to 50% in August 2018 (Proclamation 9772) to be lawful, because the President did not depart from the Secretary's report of a national-security threat. The CAFC concluded that Proclamation 9772 did not violate equal protection under the Fifth Amendment of the Constitution based on the rational-basis standard.

[20-1857 Stupp Corporation et al v. United States](#)

On July 15, 2021, the CAFC affirmed in part and vacated and remanded in part a decision of the CIT affirming Commerce's final determination in the antidumping duty investigation of welded line pipe from Korea. The CAFC found that the evidence presented calls into question whether Commerce's application of the *Cohen's d* test to the data in this case violated the assumptions of normality, sufficient observation size, and roughly equal variances associated with that test. Thus, the court remanded the case to give Commerce an opportunity to explain whether the limits on the use of the *Cohen's d* test were satisfied in this case or whether those limits need not be observed when Commerce uses the *Cohen's d* test in less-than-fair-value adjudications.

[20-2014 Borusan Mannesman Boru Sanayi ve Ticaret AS v. American Cast Iron Pipe Co. et al](#)

On July 20, 2021, the CAFC reversed a judgment by the CIT involving a post-sale price adjustment in the antidumping duty investigation of large diameter welded pipe from Turkey. The CIT had remanded to Commerce with instructions to grant the post-sale price adjustment and to recalculate the AD duty margins. The CAFC concluded that Commerce's original post-sale price adjustment was supported by substantial evidence and in accordance with law and reversed the CIT's decision.

EXPORT CONTROLS & ECONOMIC SANCTIONS

[U.S. Adds Chinese Entities to BIS Entity List and Updates Xinjiang Supply Chain Business Advisory](#)

Earlier this month, the US Government updated its ongoing response to what the Department of Commerce ("Commerce") [described](#) as "Beijing's campaign of repression, mass detention, and high-technology surveillance against Uyghurs, Kazakhs, and members of other Muslim minority groups in the Xinjiang Uyghur Autonomous Regions of China ("XUAR"), where the [People's Republic of China] continues to commit genocide and crimes against humanity." Commerce's Bureau of Industry and Security ("BIS") [added](#) twenty-four (24) China-based entities to the Entity List on July 12th, thereby prohibiting the export, reexport, or in-country transfer of commodities, software, and technology subject to the Export Administration Regulations ("EAR") to those entities without a license. Then, on July 13th, a group of agencies including Commerce, the Office of the U.S. Trade Representative ("USTR"), and the Departments of Homeland Security, Labor, State, and Treasury [updated](#) its Xinjiang Supply Chain Business Advisory (the "Advisory") to highlight the increasing legal and reputational risks to companies who maintain supply chains with links to Xinjiang.

[US Government Adds 4 Military-Connected Entities in Burma to Entity List and Sanctions 22 Burmese Individuals](#)

Effective July 2, 2021, as part of the U.S. Government's ongoing response to the military coup in Burma (Myanmar), the Department of Commerce's Bureau of Industry and Security [added four entities](#) to the Entity List and the Department of Treasury's Office of Foreign Assets Control ("OFAC") [added twenty-two individuals](#) to the Specially Designated Nationals & Blocked Persons List.