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## Top News

### Trade Court Judge Remands Cost Calculation in Brazilian Paper Case to Commerce

The Court of International Trade on Aug. 16 [remanded](#) the Commerce Department's cost calculations for a Brazilian paper manufacturer during the third administrative review of the antidumping duty order on uncoated paper from Brazil (*Suzano S.A. v. United States*, CIT #21-00069).

The case concerns the review of an AD order covering certain uncoated paper from Brazil issued by Commerce in 2016. In March 2018, the first month of the review period, Suzano announced plans to acquire Fibria Celulose S.A. As part of its submissions to Commerce during the review, Suzano calculated its combined financial expense ratio based on consolidated 2018 financial statements for both Suzano and Fibria.

In 2020, Commerce instructed Suzano to recalculate its financial expense ratio based on the audited 2018 consolidated financial statements of Suzano alone. Suzano submitted two revised calculations of its financial expense ratio and requested that Commerce adopt the second calculation, which included its derivative losses.

Commerce published the final results of its administrative review in January 2021. In its final results, Commerce relied upon Suzano’s first revised expense ratio, noting that it was obligated to “rely on the findings of Suzano’s auditors and not exclude a portion of Suzano’s financial expenses from [its] calculations.” Commerce similarly declined to exclude the derivative losses, or to include Fibria’s cost of sales. Suzano argued that Commerce’s failure to exclude certain of its derivative losses from its calculation of the financial expense ratio was unsupported by evidence (see [2109290054](#))

CIT Judge Gary Katzmman noted that the central issue was whether the 2018 audited consolidated financial statements constituted “substantial evidence” that Suzano’s derivative expenses were neither investment-related nor extraordinary. In his ruling, the judge concluded that Commerce did not adequately address the question and so did not support its determination with substantial evidence. “While there is no statutory requirement that ... [Commerce] explicitly discuss every piece of record evidence that is put before it,” Katzmman said, “Commerce is nevertheless required to discuss issues material to its determination.” He remanded to Commerce the issue of its inclusion of Suzano’s derivative expenses in its cost of production.

(*Suzano S.A. v. United States*, Slip Op. 22-95, CIT #21-00069, dated 06/08/22, Judge Gary Katzmman. Attorneys: Craig Lewis of Hogan Lovells for plaintiff Suzano; Antonia Soares for defendant U.S. government; Daniel Schneiderman of King & Spalding for defendant-intervenor Domtar Corporation.)  
— **Ben Perkins**

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## Top Trade Law Daily Articles You May Have Missed

*Trade Law Daily* is providing readers with the top stories from last week in case you missed them. All articles can be found by searching on the title or by clicking on the hyperlinked reference number.

Article	Reference #
Changes to Section 301 Tariffs Remain Possible Following Remand Results	<a href="#">2208030071</a>
Surety Co. Says It Can’t Prove Prejudice Over Delayed Action Seeking Late Collected AD Duties	<a href="#">2208030070</a>
CBP’s Aug. 10 Customs Bulletin Has 1 Ruling Notices	<a href="#">2208110029</a>
Commerce Remand Results Again Apply AFA for EBCP, Despite Responses From Exporters	<a href="#">2208100061</a>
Importer Bergan and US Agree to Pet Carriers Classification	<a href="#">2208040044</a>
Hyundai, DOJ Oppose Rehearing of CAFC Decision Reversing AFA for Transformers	<a href="#">2208100008</a>
CBP Affirms Previous Determination Importer Engaged in Evasion by Transshipping Via Malaysia	<a href="#">2208080033</a>
Law Firm Set to Again Ask Trade Court to Withdraw Representation From Unresponsive Client	<a href="#">2208110047</a>
White House Nominates Sidley Austin Partner to Serve as International Bank Official	<a href="#">2208040068</a>
AD Petitioners Rail Against Use of Turkish Lira to Value Home Market Sales Over USD	<a href="#">2208030072</a>

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## Litigation

### Commerce Finds Adverse Facts Still Warranted in Remand Results on Korean Power Transformers

Adverse facts available applied to Hyundai's reporting of parts in an antidumping duty administrative review on Korean power transformers are still warranted despite a previous court remand, the Commerce Department said in the [results](#) of a remand published Aug. 15 (*Hyundai Electric & Energy Systems Co. v. United States*, CIT #20-00108). Commerce said that although facts available are not justifiable with respect to Hyundai's reporting of parts and components, it will still apply total adverse facts available to Hyundai.

The case concerns the final results in the 2017-2018 administrative review of the antidumping duty order on large power transformers from Korea. Commerce initially assigned Hyundai Electric & Energy Systems Co. Ltd. a final dumping margin of 60.81% based on total AFA.

During the case, CIT granted Hyundai's motion to "supplement the record with two documents that Hyundai presented at verification. At Commerce's request, the Court remanded the final results of the review for Hyundai to allow Commerce to consider the two documents. Commerce filed its first remand results in 2021.

CIT again remanded, this time based on Commerce's use of AFA related to the reporting of certain unnamed parts as being not in scope (see [2205180064](#)). In response to Commerce's draft redetermination, circulated in July, Hyundai filed comments arguing that its failure to report service-related revenues "and its completeness test failure at verification are not such 'pervasive and persistent deficiencies' that justify the use of total AFA."

In its final remand results, Commerce said that it reconsidered its application of facts available with respect to Hyundai's reporting and did not have a sufficient basis to determine that Hyundai misclassified the parts in question. Therefore, Commerce said, it did not find that Hyundai's reporting warrants the application of facts available with respect to this issue. "However, based on other failures by Hyundai to provide



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complete information ...,” Commerce said, it “continues to find that ... the application of total AFA is warranted.” Specifically, Commerce pointed to “Hyundai’s reporting of service-related revenue and Hyundai’s failure of the completeness test at verification” as reasons for continued applications of AFA.

Commerce said that because of Hyundai’s failure to report information, it was unable to account for the value of service-related revenue, in that the value was not provided by Hyundai, and then to ensure that that revenue was properly treated in calculating the U.S. price—because Hyundai offered no explanation as to whether the unreported service-related revenue was included or excluded from the U.S. price. Commerce’s overall ability to calculate an accurate dumping margin was thus also impeded by lack of reported information. “Thus, contrary to Hyundai’s argument, the failure was not discrete; rather, it was pervasive.”

Commerce found that “the combination of the failure to report service-related revenues, and the failure to report one U.S. sale, is a reasonable basis for the application of total AFA.” —**BP**

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## Trade Court Sets New Briefing Schedule in Section 301 Litigation

Lawyers for the Section 301 test-case plaintiffs HMTX Industries and Jasco Products have until Sept. 14 to file their response to the Aug. 1 remand results on the lists 3 and 4A tariffs from the Office of the U.S. Trade Representative, said an Aug. 15 [scheduling order](#) from the three-judge panel at the Court of International Trade. DOJ’s reply is due 44 days later, by Oct. 28, the order said. The two sides, in a [joint status report](#), had agreed on the Sept. 14 date for the plaintiffs to respond to USTR’s remand results, but the government asked for 60 days to Nov. 14 to file its reply, while the plaintiffs asked for the government’s reply within 30 days, by Oct. 14.

The court also granted the plaintiffs until Nov. 14 to respond to the government’s reply, rejecting DOJ’s request to deny the plaintiffs the opportunity for a response. The court “will determine if oral argument is necessary” on USTR’s remand results after briefing is complete, the order said. The plaintiffs had requested oral argument, and the government took no position on the request. —**PG**

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## Trade-Related Court Cases Recently Filed

The following lawsuits were recently filed at the Court of International Trade:

America’s Collectibles Network, Inc. (dba Jewelry Television), challenging lists 3 and 4A Section 301 tariffs on products from China. #22-00237. Filed Aug. 14.

RH US LLC and Restoration Hardware, Inc., challenging lists 3 and 4A Section 301 tariffs on products from China. #22-00238. Filed Aug. 15. —**JK**

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## Customs Rulings

### Lawmakers Should Clarify Drug Paraphernalia Import Provisions, Says Lawyer

Congress should provide clarity around imports of products that can be used both as drug paraphernalia and for legitimate purposes, Harris Bricken lawyer Fred Rocafort said in a [blog post](#). The current approach under the Controlled Substances Act results in CBP relying on marketing materials and social media posts to determine whether or not a product will be used lawfully, Rocafort said. “There is something unsettling in CBP’s approach,” he said. “On the one hand, the agency requires importers to demonstrate that their products are intended for lawful use, even when potential legal uses are obvious.” For example, a 2008 [ruling](#) found that grinders were considered drug paraphernalia. “Those grinders that were the subject of the ruling letter *could* be used to grind tobacco or tea, as the importer contended, and this is something that CBP did not deny,” he said. “Yet CBP will go out of its way to find evidence that supports a finding that an item is drug paraphernalia.”

Adding to the complicated situation, “the legalization of hemp by the 2018 Farm Bill adds a further layer of capriciousness to the application of drug paraphernalia laws to items that have both lawful and unlawful uses,” he said. “Following the enactment of that law, some cannabis is lawful, period. Trying to ascertain if a product’s primary intended use is with hemp or marijuana is an even greater fool’s errand than trying to distinguish between tobacco and cannabis products. As with so many other issues that plague our



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legal system, the real solution to this absurd state of affairs is in the hands of the U.S. Congress. It is high time that lawmakers took a massive pair of scissors to the CSA's drug paraphernalia provisions, and relieve our overworked law enforcement officers from the long hours they must spend sifting through Insta posts. #smdh"

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## AD/CVD

### Free-Standing 'Shampoo Cabinet' Subject to AD/CV Duties Because Plumbing Required

A free-standing wooden cabinet used as a shampoo station by hair stylists and barbers that requires attachment to plumbing is subject to antidumping and countervailing duties on wooden cabinets and vanities from China, the Commerce Department said in a recent [scope ruling](#). However, a similar model that is not attached to plumbing is not covered by the AD/CVD, the agency said.

Both cabinets, imported by AYC, were of wooden construction, and sold only with hardware for assembling the stations, rather than for attaching them to a wall. The “styling station” had a drawer and appliance holders for use by barbers and stylists. The “shampoo cabinet” required access to water to be functional, though if not attached it could be moved with the hair professional, Commerce said.

The scope of the AD/CVD orders on wooden cabinets and vanities covers cabinets that are for permanent installation, “including floor mounted, wall mounted, ceiling hung or by attachment of plumbing.” Because the shampoo cabinet requires water to be functional, “we find that this product requires permanent installation by attachment of plumbing,” Commerce said. “Thus, it falls within the scope of the Orders as a cabinet for permanent installation.”

On the other hand, the “styling station” is “freestanding furniture, which is not permanently installed to the floor, wall, or ceiling or by attachment of plumbing,” Commerce said.

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### Antidumping and Countervailing Duty Notices for Aug. 17

The Commerce Department and the International Trade Commission published the following *Federal Register* notices Aug. 17 on AD/CVD proceedings:

- **Corrosion-Resistant Steel Products** from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan (A-533-863/C-533-864; A-475-832/C-475-833; A-570-026/C-570-027; A-580-878/C-580-879): Continuation of the Antidumping and Countervailing Duty Orders ([here](#))
- **Sodium Nitrite** from India (A-533-906): Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures ([here](#))
- **Barium Chloride** from India (A-533-908): Preliminary Negative Determination of Sales at Less Than Fair Value, Postponement of Final Determination ([here](#)).

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