

TRADE LAW UPDATE



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January 2023

HIGHLIGHTS FROM JANUARY

[Petition Summary: Certain Tin Mill Products from Canada, China, Germany, Netherlands, South Korea, Taiwan, Turkey and the United Kingdom](#)

On January 18, 2023, Cleveland-Cliffs Inc. and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, collectively known as (“Petitioners”), filed a petition for the imposition of antidumping duties on imports of Certain Tin Mill Products from Canada, China, Germany, Netherlands, South Korea, Taiwan, Turkey and the United Kingdom and for the imposition of countervailing duties on imports from China.

[International Trade Law: 2022 Year in Review & Outlook for 2023](#)

We are pleased to announce that our team’s fourth-annual international trade law year-in-review report was published just before the New Year. In it, we take a detailed look at how 2022 played out and explore how 2023 might develop. As companies continue to work through the challenges associated with supply chain dislocations, geopolitical turmoil, and evolving trade policy, regulation, and enforcement, we hope the framework presented in our report will help your business maximize potential cost savings and minimize potential risks.

U.S. DEPARTMENT OF COMMERCE DECISIONS

Investigations

- Sodium Nitrite From India: On January 6, 2023, Commerce issued its final affirmative countervailing duty [determination](#).
- Barium Chloride From India: On January 6, 2023, Commerce issued its final affirmative countervailing duty [determination](#).
- Barium Chloride From India: On January 6, 2023, Commerce issued its final negative [determination](#) of sales at less than fair value.
- Sodium Nitrite From India: On January 6, 2023, Commerce issued its final affirmative [determination](#) of sales at less than fair value.

Administrative Reviews

- Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From India: On January 3, 2023 Commerce issued its final [results](#) of countervailing duty administrative review (2020); Correction.
- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: On January 5, 2023, Commerce issued its notice of court decision not in harmony with the results of antidumping administrative review; notice of amended final [results](#).
- Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From India: On January 9, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Certain Quartz Surface Products From India: On January 9, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2019-2021).
- Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From Italy: On January 10, 2023, Commerce issued its final [results](#) of antidumping duty administrative review and final determination of no shipments (2020-2021).
- Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: On January 10, 2023, Commerce issued its final [results](#) of review (2020-2021).
- Chlorinated Isocyanurates From the People's Republic of China: On January 11, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Circular Welded Carbon Steel Standard Pipe and Tube Products From Turkey: On January 17, 2023, Commerce issued its amended final [results](#) of antidumping duty administrative review (2020-2021).
- Emulsion Styrene-Butadiene Rubber From Mexico: On January 20, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Prestressed Concrete Steel Wire Strand From the Republic of Turkey: On January 20, 2023, Commerce issued its final [results](#) of countervailing duty administrative review.
- Certain Carbon and Alloy Steel Cut-to-Length Plate From Italy: On January 26, 2023, Commerce issued its amended final [results](#) of antidumping duty administrative review (2020-2021).

Changed Circumstances Reviews

- Certain Corrosion Inhibitors From the People's Republic of China: On January 10, 2023, Commerce issued its note of final [results](#) of antidumping duty changed circumstances review.

Sunset Reviews

- Brass Sheet and Strip From France, Germany, Italy, and Japan: On January 3, 2023, Commerce issued its final [results](#) of the expedited fifth sunset review of the antidumping duty orders.
- Uranium From the Russian Federation: On January 3, 2023, Commerce issued its final [results](#) of the expedited fifth sunset review of the suspension agreement.
- High Pressure Steel Cylinders From the People's Republic of China: On January 20, 2023, Commerce issued its final [results](#) of sunset reviews and revocation of orders.

Scope Ruling

- There are no scope ruling updates for the month of January.

Circumvention

- There are no circumvention updates for the month of January.

U.S. INTERNATIONAL TRADE COMMISSION

Section 701/731 Proceedings

Investigations

- Steel Nails from India, Thailand, and Turkey: On January 25, 2023, the ITC [determined](#) that a U.S. Industry is not materially injured or threatened with material injury by reason of imports of steel nails from India, Thailand, and Turkey that the U.S. Department of Commerce (Commerce) has determined are sold in the United States at less than fair value.

Section 337 Proceedings

- There are no Section 337 proceeding updates for the month of January.



U.S. CUSTOMS & BORDER PROTECTION

[EAPA Case 7782: YVC USA Inc.](#)

On January 19, 2023, CBP commenced a formal EAPA investigation against YVC USA Inc. (“YVC” or “the importer”). CBP is investigating whether the Importer evaded antidumping and countervailing duty orders on Chinese-origin forged steel fittings (“FSF”). CBP has found that reasonable suspicion exists that the Importer entered covered merchandise into the customs territory of the United States through evasion, and therefore CBP has imposed interim measures.

[EAPA Cons. Case 7745: Various Importers](#)

On January 24, 2023, CBP commenced a formal EAPA investigation against importers EMerchant Supplies, A2 Labels & Rolls, POS Supply Solutions, Royal Paper Products (otherwise known as AmerCare Royal LLC), Golden Eagle Distributors LLC, Paper Roll Supplies LLC, Lucky Heap, National POS Paper, Paper Roll Products, BuyRolls Inc., Qualita Paper Products (otherwise known as Quality Paper Products), VBS Cal LLC, Allied Paper Company, and The Advantage Group (collectively, the Importers). CBP is investigating whether the Importer evaded antidumping and countervailing duty orders on thermal paper. CBP has found that reasonable suspicion exists that the Importer entered covered merchandise into the customs territory of the United States through evasion, and therefore CBP has imposed interim measures.

[EAPA Case 7734: Fortress Iron, LP](#)

On January 24, 2023, CBP commenced a formal EAPA investigation against Fortress Iron, LP, also referred to or doing business under the names Fortress Fence Products and Fortress Building Products (“Fortress”). CBP is investigating whether the Importer evaded antidumping and countervailing duty orders on aluminum extrusions from the People's Republic of China. CBP has found that reasonable suspicion exists that the Importer entered covered merchandise into the customs territory of the United States through evasion, and therefore CBP has imposed interim measures.

COURT OF INTERNATIONAL TRADE

Summary of Decisions

[Slip Op. 23-1 Sea Shepherd New Zealand v. United States](#)

The Court denied the Government of New Zealand’s move to delay a preliminary injunction barring the import of certain fish from New Zealand’s West Coast North Island. The New Zealand government filed its motion claiming that it needed time to set up a tracing system and that a stay of the preliminary injunction would offer it sufficient time to do so. The

court ruled that setting up a traceability system did not constitute a changed circumstance sufficient to permit a modification of the preliminary injunction. The case stemmed from the Marine Mammal Protection Act which bans the importation of fish or fish products that failed to provide comparable levels of protection of marine mammal species as the United States. The Court had granted a preliminary injunction in November 2022 while the case proceeded on its merits.

[Slip Op. 23-2 Wuxi Tianran Photovoltaic Co., Ltd. v. United States](#)

The Court upheld Commerce's remand results in the 2018 administrative review of the countervailing duty order on solar cells from China. In its remand results, Commerce argued that since one of plaintiff's customers did not participate in the virtual verification examining the Export Buyer's Credit Program that the agency did not have sufficient information on the record to confirm that it did not benefit from the program and therefore continued to apply adverse facts available. Due to the fact that Wuxi conceded that Commerce had complied with the Court's instructions on remand, the court upheld Commerce's remand redetermination.

Commerce had requested a voluntary remand in the case and issued questionnaires to Wuxi in order to re-examine the use of the EBCP program. While respondent and most of its customers participated, one customer did not and therefore enabled Commerce to continue to find that it could verify non-use of the program stating that Commerce requires all of the respondents U.S. importers and customers to confirm non-use.

[Slip Op. 23-3 Hyundai Electric & Energy Systems Co., Ltd. v. United States](#)

The court upheld Commerce's use of total adverse facts available against Hyundai Electric & Energy Systems in the 2017-2018 administrative review of the antidumping duty order on large power transformers from Korea. Commerce had resorted to total adverse facts available because of plaintiff's failure to report certain service-related revenue on its U.S. sales and also for failure to pass the completeness test at the on-site verification. In the original appeal, plaintiff had requested and the Court permitted it to supplement the record with documentation that it had originally presented at verification. Commerce took a voluntary remand to supplement the record with this information and examined it on remand. While the Court found that the first remand results were not sufficient, it did affirm the use of AFA with respect to the above two issues. In its second remand, Commerce once again found that total AFA was warranted not only for the failure to report the service-related revenue on U.S. sales and the failure of the completeness test, but also because of the failure to report certain parts as outside the scope of the order. The court then found that because Commerce had supported the use of total AFA, it was affirming the remand results.

[Slip Op. 23-4 SMA Surfaces, Inc. v. United States](#)

The Court upheld Commerce's scope determination that two out of the three types of glass surface products produced by plaintiff, SMA Surfaces, were properly within the scope of the antidumping and countervailing duty orders on quartz surface products from China. While the Court affirmed Commerce's finding with respect to the two products, it remanded the matter back to Commerce again on the basis that Commerce needs to further support its determination by substantial evidence. The case turned on the glass scope exclusion in the scope of the order and focused on the distance between the glass pieces larger than one centimeter. Commerce examined the products and found that while SMA's products met the first three criteria of the glass scope exclusion it failed to meet the fourth criteria. The court refused to substitute its judgment for Commerce's and remanded the case back to Commerce to further support its findings with respect to the third by of glass surface product.

[Slip Op. 23-5 Aluminum Extrusions Fair Trade Committee v. United States](#)

The Court affirmed Commerce's determination that window wall system kits imported by Reflection Window and Wall were properly excluded from the antidumping and countervailing duty orders on aluminum extrusions from China. The court in its opinion held that the window wall systems fell within the finished goods kit exclusion and were distinguished

from curtain walls. The Court found that Commerce's findings were consistent with past scope rulings on finished goods kits and its specific determinations excluding window wall systems.

[Slip Op 23-6 Nucor Tubular Products Inc. v. United States](#)

The Court remanded Commerce's decision to reject plaintiff, Nucor's, ministerial error comments as untimely, in the 2019 antidumping duty administrative review of heavy walled rectangular welded carbon steel pipes and tubes from Mexico. The Court ruled that Nucor's comments had to be considered by Commerce because the unintentional errors in Commerce's programming only became evident upon issuance of the Final Results. Accordingly, plaintiff should have been permitted to submit its ministerial error comments and instructed Commerce on remand to consider the error and "respond accordingly." In its final results, Commerce calculated normal value for one of the respondents Maquilacero by using programming language that was unrelated to Maquilacero's costs or questionnaire responses. When alerted to this error by Nucor, Commerce rejected the comments as untimely, while still acknowledging the error in the programming language. Given that these errors did not exist in the preliminary results, the court ruled that Nucor's comments related to the programming errors qualified for the need for timely filed comments given that the error in the final results was not present in the preliminary results.

[Slip Op. 23-7 NLMK Pennsylvania, LLC v. United States](#)

The Court remanded Commerce's rejection of Plaintiff, NLMK's, request for exclusion from the Section 232 steel and aluminum tariffs on the grounds that Commerce could not substantially support its finding that objectors to the exclusions requests could provide suitable substitutes as well as make the subject steel slabs in sufficient quantities. NLMK had sought two separate exclusions for 10-inch thick and 8-inch thick finished stainless steel slabs from Russia. Commerce rejected the exclusion requests on the basis that domestic industry steel producers were capable of making the slab sizes in quantities sufficient to serve NLMK's orders. The basis of NLMK's appeal was that Commerce did not provide a thorough enough analysis to support its denial of the exclusion requests. The court remanded the matter back to Commerce to explain first whether NLMK could make coils from a substitute product and second to support its reliance on the expert opinion of an industry expert which NLMK had no chance to question on the suitability of a substitute product. Finally, the court also remanded to Commerce to explain its reasoning as to how it determined that the objectors could provide NLMK with sufficient quantities of slab.

[Slip Op. 23-8 Leco Supply Inc. v. United States](#)

The Court upheld Customs and Border Protection's affirming finding of evasion under the Enforce and Protect Act. The case concerned the imports by Leco Supply which allegedly evaded the antidumping and countervailing duty orders on wire hangers from Vietnam. Customs' Trade Remedy Law Enforcement Directorate found Leco guilty of evasion because the entries at issue claimed that the country of origin was Laos. After the appeal and litigation commenced, Customs found that there were certain documents missing from the record and requested a voluntary remand to reconsider its decision as well as the public summaries of business confidential information.

In its remand, Customs was able to determine that it did not release any confidential information and that its public summaries satisfied the requirements such that it did not violate the plaintiff's due process rights. The court held that Customs legally initiated the investigation, was able to support its evasion decision with substantial evidence on the record, and protected the plaintiff's due process rights. The court focused on the fact that plaintiff had access to all the confidential information as part of the litigation record and did not raise any arguments that they otherwise would have been prevented from raising at the agency level.

[Slip Op. 23-9 Gujarat Fluorochemicals Limited v. United States](#)

The Court issued a remand to Commerce with instructions to not find countervailable a provision of land to an affiliate by Gujarat Fluorochemicals. The case stems from the countervailing duty investigation on granular

polytetrafluoroethylene from India where at the conclusion of the original investigation GFL received a 31.89% margin of which 26.50% was attributable to the single subsidy related to the grant of a 30 year lease of land to GFL's affiliate for less than adequate remuneration. The court found that Commerce should not have countervailed the subsidy because it failed to correctly interpret the regulations governing the relationship between subsidies for inputs to the downstream product. Specifically, the court found that Commerce failed to conduct an upstream subsidy analysis to determine whether the input in question conferred a competitive benefit or had a significant effect on the final product cost. The court not only directed Commerce to delete the 26.50% estimated subsidy rate from the overall rate in the remand redetermination but also instructed Commerce to "reconsider the entirety of the decision to include" the provision of land as being for less than adequate remuneration.

[Slip Op. 23-10 J.D. Irving, Ltd. v. United States](#)

The court dismissed an appeal of the final results of the 2019 administrative review of the antidumping duty order on softwood lumber from Canada with respect to plaintiff's challenge to Commerce's cash deposit instructions to Customs. The court stated that it did not have jurisdiction to adjudicate the case under Section 1581(i) which is the court's "residual jurisdiction" given that jurisdiction would have been available under Section 1581(c) as the core issue in the case was a challenge to the administrative decision in the final results and not the cash deposit instructions.

Plaintiff was a non-selected respondent and its entries were liquidated at a rate of 1.57% at the conclusion of the first review, but said that once the second review rates become final at a rate of 11.59% that the higher rate would be the future cash-deposit rate. Plaintiff filed its case under Section 1581(i) because while it stated that it normally would file under Section 1581(c), just two days before it filed its appeal, the other parties in the case requested a binational panel review under the USMCA which gives the panel "exclusive review", as a result, J.D. Irving had no choice but to file under Section 1581(i) jurisdiction at the CIT.

[Slip Op. 23-11 Grupo Acerero S.A. de C.V. v. United States](#)

The Court permitted Commerce to supplement the record of the administrative review of the antidumping duty order on steel concrete reinforcing bars from Mexico with its deficiency analysis memo because it was a fundamental part of the agency's final analysis and not including this memorandum would "frustrate judicial review." The court also found that Commerce's omission in placing this memorandum on the record was not in bad faith. In the underlying administrative proceeding, Simec, one of the mandatory respondents, submitted its questionnaire responses but repeatedly asked for extensions of time. As a result, after submitting its questionnaire responses, Simec asked for permission to add additional relevant factual information and Commerce rejected this request and ultimately assigned adverse facts available at a rate of 66.57% to Simec.

Commerce had prepared a memorandum detailing the deficiencies on the record for Simec and this was the basis upon which Commerce determined the AFA rate for Simec but did not place this memorandum with its analysis on the record. The government moved to add the document claiming it had plaintiff's consent, which it did not, and plaintiffs opposed to motion on the grounds that the agency did not give parties the chance to submit comments on the memorandum. The court, however, permitted the agency to add the deficiencies analysis to the record on the grounds that the issues and decision memorandum accompanying the final results references the analysis extensively. The opinion issued by the court states that the "statute offers no reason to conclude that a document that is part of the record cannot be added to correct the record for review when mistakenly omitted." The court also stated that plaintiffs were not prejudiced by the late addition of the document because there is no opportunity for parties to comment on the final results.

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

[22-1077 Pokarna Engineered Stone Limited v. United States](#)

The Federal Circuit ruled that the Department of Commerce properly initiated the antidumping and countervailing duty investigations on quartz surface products from India. The Court ruled that Commerce correctly defined the industry

support threshold by not including quartz surface product fabricators within the definition of what constitutes a “producer” by basing its decision on the six-factor production related activities test. The court also found that the appellant had failed to point to any basis upon which the court could find that Commerce’s determination was unreasonable. The court further went on to explain that the record contained substantial evidence detailing the differences between producers and fabricators sufficient to support Commerce’s findings.

[22-1329 Trinity Manufacturing v. United States](#)

The Federal Circuit upheld the Court of International Trade’s decision affirming the Commerce Department’s rejection of an untimely filed request for a sunset review in the antidumping duty order on chloropicrin from China. The Court held that Commerce did not abuse its discretion when enforcing the filing deadline. The facts of the case stem from Commerce’s revocation of the order when no party responded to its notice of initiation but later on three domestic industry producers tried to file an extension request based upon claims of internet issues and medical issues the precluded it from timely filing comments by the deadline set by Commerce. Commerce rejected these extension requests and enforced the deadlines.

[22-1408 PT. Kenertec Power System v. United States](#)

The Federal Circuit upheld the Court of International Trade’s ruling in an appeal of the countervailing duty investigation on utility scale wind towers from Indonesia. In the underlying appeal at the Court of International Trade, on remand the Department of Commerce found that Indonesian exporters of utility scale wind towers did not receive countervailable subsidies and rescinded the order. The CIT ruled on Commerce’s remand results that a joint venture between a private South Korean steel company and the Indonesian government owned respondent was not an authority or directed by an authority such that it could bestow countervailable benefits. With respect to a second examined program, the CIT had ruled that the Rediscount Loan Program was not contingent on exports and therefore did not constitute an upstream subsidy. With both these decisions affirmed on remand by the CIT, there were no countervailable subsidy benefits and therefore Commerce rescinded the order.

EXPORT CONTROLS & ECONOMIC SANCTIONS

There are no export controls and economic sanctions updates for the month of January.