

TRADE LAW UPDATE



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October 2023

HIGHLIGHTS FROM OCTOBER

[Petition Summary: Aluminum Extrusions from Colombia, the Dominican Republic, Ecuador, India, Indonesia, Italy, Malaysia, Mexico, the People’s Republic of China, South Korea, Taiwan, Thailand, Turkey, the United Arab Emirates and Vietnam](#)

On October 4, 2023, U.S. Aluminum Extruders Coalition (“the Coalition”) and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (“United Steelworkers” or “USW”) (collectively, “Petitioners”) filed a petition for the imposition of antidumping duties on Aluminum Extrusions from Colombia, the Dominican Republic, Ecuador, India, Indonesia, Italy, Malaysia, Mexico, the People’s Republic of China, South Korea, Taiwan, Thailand, Turkey, the United Arab Emirates and Vietnam and countervailing duties on Aluminum Extrusions from China, Indonesia, Mexico and Turkey.

[Petition Summary: Imports of Truck and Bus Tires from Thailand](#)

On October 17, 2023, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (“USW”) (collectively “Petitioners”) filed a petition for the imposition of antidumping duties on truck and bus tires from Thailand.

[Petition Summary: Imports of Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and the Socialist Republic of Vietnam](#)

On October 25, 2023, the American Shrimp Processors Association (“ASPA” or “Petitioner”) filed a petition for the imposition of antidumping duties on frozen warmwater shrimp from Ecuador and Indonesia as well as the imposition of countervailing duties on frozen warmwater shrimp from Ecuador, India, Indonesia, and the Socialist Republic of Vietnam.

U.S. DEPARTMENT OF COMMERCE DECISIONS

Investigations

- Paper File Folders From India: On October 5, 2023, Commerce issued its final affirmative countervailing duty [determination](#).
- Stainless Steel Bar From India: On October 5, 2023, Commerce issued its [initiation](#) of antidumping duty new shipper review.
- Paper File Folders From India: On October 5, 2023, Commerce issued its final affirmative [determination](#) of sales at less than fair value.
- Paper File Folders From the People's Republic of China: On October 5, 2023, Commerce issued its final affirmative [determination](#) of sales at less-than fair value.
- Paper File Folders From the Socialist Republic of Vietnam: On October 5, 2023, Commerce issued its final affirmative [determination](#) of sales at less-than fair value investigation.
- Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China: On October 10, 2023, Commerce issued its final [determination](#) of covered merchandise inquiry.
- Certain Metal Lockers and Parts Thereof From the People's Republic of China: On October 12, 2023, Commerce issued its notice of court decision not in harmony with the final determination of antidumping duty investigation; notice of amended final [determination](#).
- Aluminum Wire and Cable From the People's Republic of China: On October 19, 2023, Commerce issued its [initiation](#) of scope and circumvention inquiries of the antidumping duty and countervailing duty orders
- Aluminum Lithographic Printing Plates From the People's Republic of China: On October 25, 2023, Commerce issued its [initiation](#) of countervailing duty investigation.
- Aluminum Lithographic Printing Plates From the People's Republic of China and Japan: On October 25, 2023, Commerce issued its [initiation](#) of less-than fair-value investigations.
- Granular Polytetrafluoroethylene Resin From India: Notice of Court Decision Not in Harmony With the Final Determination of Countervailing Duty Investigation; On October 30, 2023, Commerce issued its notice of amended final [determination](#) and amended countervailing duty order.
- Hydrofluorocarbon Blends From the People's Republic of China: On October 30, 2023, Commerce issued its [initiation](#) of circumvention inquiry on the antidumping duty order.
- Raw Honey From the Socialist Republic of Vietnam: On October 30, 2023, Commerce issued its [initiation](#) of antidumping duty changed circumstances review.
- Aluminum Extrusions From the People's Republic of China, Indonesia, Mexico, and the Republic of Turkey: On October 31, 2023, Commerce issued its [initiation](#) of countervailing duty investigations.
- Aluminum Extrusions From the People's Republic of China, Colombia, the Dominican Republic, Ecuador, India, Indonesia, Italy, the Republic of Korea, Malaysia, Mexico, Taiwan, Thailand, the Republic of Turkey, the United Arab Emirates, and the Socialist Republic of Vietnam: On October 31, 2023, Commerce issued its [initiation](#) of less than-fair-value investigations.

Administrative Reviews

- Certain New Pneumatic Off-the-Road Tires From India: On October 3, 2023, Commerce issued its final [results](#) of countervailing duty administrative review (2021).
- Certain Magnesia Carbon Bricks From the People's Republic of China: On October 5, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2021–2022).
- Certain Corrosion Inhibitors From the People's Republic of China: On October 5, 2023, Commerce issued its final [results](#) and partial rescission of countervailing duty administrative review (2020–2021).
- Certain Corrosion Inhibitors From the People's Republic of China: On October 10, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2020–2022).
- Certain New Pneumatic Off-the-Road Tires From India: On October 12, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2021–2022).
- Certain Uncoated Paper From Brazil: On October 12, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2021–2022).

- Difluoromethane From the People’s Republic of China: On October 12, 2023, Commerce issued its final [results](#) of antidumping duty administrative review and partial rescission (2020– 2022).
- Welded Line Pipe From the Republic of Korea: On October 12, 2023, Commerce issued its notice of court decision not in harmony with the final results of the antidumping duty administrative review; notice of amended final [results](#).
- Large Diameter Welded Pipe From the Republic of Korea: On October 18, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2021–2022).

Changed Circumstances Reviews

- Certain Frozen Warmwater Shrimp From India: On October 18, 2023, Commerce issued its notice of final [results](#) of antidumping duty changed circumstances review.

Sunset Reviews

- Certain Folding Gift Boxes From the People’s Republic of China: On October 5, 2023, Commerce issued its final [results](#) of the expedited sunset review of the antidumping duty order.
- Certain Tin Mill Products From Japan: On October 5, 2023, Commerce issued its final [results](#) of the expedited fourth sunset review of the antidumping duty order.
- Low Melt Polyester Staple Fiber From the Republic of Korea and Taiwan: On October 19, 2023, Commerce issued its final [results](#) of the expedited first sunset reviews of antidumping duty orders.
- Drawn Stainless Steel Sinks From the People’s Republic of China: On October 20, 2023, Commerce issued its final [results](#) of the expedited second sunset review of the countervailing duty order.

Scope Ruling

- None

Circumvention

- None

U.S. INTERNATIONAL TRADE COMMISSION Section 701/731 Proceedings

Investigations

- Aluminum Lithographic Printing Plates From China and Japan; On October 4, 2023, ITC issued its [institution](#) of antidumping and countervailing duty investigations and scheduling of preliminary phase investigations.
- Aluminum Extrusions From China, Colombia, Dominican Republic, Ecuador, India, Indonesia, Italy, Malaysia, Mexico, South Korea, Taiwan, Thailand, Turkey, United Arab Emirates, and Vietnam; On October 13, 2023, ITC issued its [institution](#) of antidumping and countervailing duty investigations and scheduling of preliminary phase investigations.
- Truck and Bus Tires From Thailand; On October 30, 2023, ITC issued its [institution](#) of antidumping duty investigation and scheduling of preliminary phase investigation.
- Frozen Warmwater Shrimp From Ecuador, India, Indonesia, and Vietnam; On October 31, 2023, ITC issued its [institution](#) of antidumping and countervailing duty investigations and scheduling of preliminary phase investigations.

U.S. CUSTOMS & BORDER PROTECTION

[EAPA Case 7785: LDL Trading Company](#)

On October 30, 2023, the CBP issued a Notice of Determination as to Evasion. The CBP determined there is substantial evidence that LDL Trading Company (LDL) entered merchandise covered by antidumping duty (AD) and countervailing duty (CVD) orders A-570-079 and C-570-080, respectively, on cast iron soil pipe (CISP) from the People's Republic of China (China)

and AD and CVD orders A-570-062 and C-570-063, respectively, on cast iron soil pipe fittings (CISPF) from China into the customs territory of the United States through evasion. Substantial evidence demonstrates that LDL imported Chinese-origin CISP and CISPF (collectively, covered merchandise) into the United States that was transshipped through Malaysia. Additionally, substantial evidence demonstrates that LDL misclassified covered merchandise entered into the United States as not subject to the AD/CVD orders on CISP and CISPF from China. As a result, no cash deposits were applied to the merchandise at the time of entry.

COURT OF INTERNATIONAL TRADE

Summary of Decisions

[Slip Op 23-145 Fusong Jinlong Wooden Group et al. v. United States](#)

The Court partially vacated its previous order instructing Commerce to conduct a remand redetermination regarding the sixth administrative review of the antidumping duty order on multilayered wood flooring from China. In that review, Commerce selected the highest-transaction-specific dumping margin of one respondent and applied that margin to another respondent as an adverse facts available (AFA) rate for the review. The Court previously held that Commerce's use of one respondent's highest transaction-specific margin as an AFA rate for another respondent was not authorized by the statute, and the Court remanded the matter for Commerce's reconsideration. In the instant opinion, in response to the United States' motion for reconsideration, the Court ordered that Commerce's selection of an AFA rate was lawful and that Commerce did not need to conduct a remand redetermination on the matter.

The Court will issue a subsequent opinion addressing the remaining issues upon which it previously reserved decision.

[Slip Op 23-146 Southern Cross Seafoods LLC v. United States et. al.](#)

In a case challenging the denial of plaintiff's preapproval application for imports of Patagonian toothfish harvested north of Antarctica, the Court denied plaintiff's motion to supplement the administrative record concerning five categories of documents. Defendants had already provided two of the categories in response to plaintiff's motion, including documents relied on by the National Marine Fisheries Services (a federal agency within the National Oceanic and Atmospheric Administration, "NOAA") in rendering its decision. For the other three categories, including documents related to an email from NOAA regarding the prohibition on importing toothfish, the Court determined that the record was already complete. A sixth category of requested documents concerned an outside legal opinion, and the Court ordered defendants to explain a potential inconsistency between its inclusion of this opinion in the initial administrative record and defendants' assertion that it did not rely on unsolicited external legal opinions.

[Slip Op 23-147 Linyi Chengen et al. v. United States](#)

After five remands, the Court upheld Commerce's assignment of an antidumping rate of 0 percent to the fully cooperating respondents that were not selected for individual review, *i.e.*, the "separate rate applicants." In the underlying investigation, Commerce selected two mandatory respondents for review, one of which was found to be part of the China-wide rate. Commerce calculated the other mandatory respondent's dumping rate at 183.36 percent and assigned that rate to the separate rate applicants.

In response to the ensuing litigation and the first remand, in the second remand, Commerce reviewed certain record information anew and recalculated the non-China-wide mandatory respondent's rate from 183.36 percent to 0 percent. Commerce then assigned the fully cooperating separate rate applicants a rate based on a simple average of the 0 percent and the China-wide rate. Through the fourth and fifth remands, Commerce argued, *inter alia*, that this calculation methodology for the cooperating separate rate applicants was reasonable.

In sustaining the fifth remand redetermination, the Court noted that a simple averaging of the China-wide rate and the 0 percent rate was "unreasonable as applied to fully cooperating separate rate applicants." Under protest, Commerce assigned the 0 percent rate to the fully cooperating separate rate applicants. As a result, Commerce excluded from the order fully cooperating separate rate applicants, *i.e.*, those that were assigned the 0 percent rate, and included in the order the separate rate applicants whose cooperation with the investigation did not fully satisfy all of Commerce's request for information assigning these respondents the China-wide rate.

[Slip Op 23-148 Risen Energy et al. v. United States](#)

In this opinion concerning the eighth administrative review of the countervailing duty order on crystalline silicon photovoltaic cells from China, the Court affirmed, remanded, and sustained certain of the Commerce's determinations. First, the Court granted the Government's voluntary remand to review its determination to apply adverse facts available (AFA) to two mandatory respondents regarding their use of the Export Buyer's Credit Program (EBCP), a program that provides financial aid for consumers of certain Chinese industries. The first respondent provided a non-use certification from its sole U.S. importer while the second respondent provided the same for its four U.S. importers, one of which Commerce determined was untimely. Commerce also requested that the Chinese government provide a list of "all partner/correspondent bank involved..." which it declined to do, after which Commerce applied AFA in finding that the respondents benefited from the EBCP program. The Court granted the voluntary remand, cautioning Commerce that if it found a respondent's responses to be incomplete, it was required under statute to inform the respondent of the deficiency and provide the respondent with an opportunity to supplement the record.

The Court also remanded Commerce's determination that Article 26(2) program was *de jure* specific and therefore a countervailable subsidy, because the relevant statute's *de jure* criteria instructs that the benefit must be expressly limited to a business, industry, or group of business or industries, whereas the Article 26(2) program in question, is open to all industries.

In the underlying administrative review, Commerce also examined benefits conferred from certain land leases. The Court remanded to Commerce to reconsider the data used in its benchmarks calculations in light of a recent Court opinion involving the same respondent. As to the benefit stream determined by Commerce, the Court declined to re-open the record because respondent had not raised its objections during the administrative proceedings.

Finally, Commerce utilized two benchmarks to value the respondents' ocean freight. The Government requested, and the Court granted, a voluntary remand to assess appropriateness of one of these benchmarks as Commerce has examined the benchmark in a recent administrative review of solar cells from China.

[Slip Op. 23-149 Siemens Gamesa v. United States](#)

The Court again remanded for Commerce to review its first remand redetermination (*Remand I*). In the underlying antidumping (AD) less than fair value investigation of utility scale wind towers from Spain, Commerce selected a single mandatory respondent who later informed Commerce that it would not participate in the investigation. Commerce assigned an adverse facts available (AFA) rate to this company along with the companies that did not respond to its Quantity and Value (Q&V) questionnaire used to select mandatory respondent exporters. Commerce also assigned a non-AFA rate to six of the remaining companies that did respond to the Q&V, the "separate rate" respondents.

In *Remand I*, Commerce selected the plaintiff as a mandatory respondent in response to the Court noting that "generally more than one" mandatory respondent is reasonable. Having selected the new mandatory respondent, Commerce then "collapsed" the exporter with six wholly owned subsidiaries which it treated as a single respondent. Commerce then again assigned the AFA rate to the seven entities, arguing that the plaintiff's supplier did not respond to the Q&V questionnaire in the investigation. The Court found that the application of the rate to collapsed entities "is consistent with extensive agency practice."

In the instant remand order, the Court noted, *inter alia*: (1) that the remand rendered the AFA rate null and void wherein the Court did not sustain the AFA rate; (2) the adverse collateral affect, from the plaintiff's supplier to the plaintiff, was unlawful in these circumstances as it had no shipments to report as established by the plaintiff; and (3) the plaintiff did not fail to cooperate in Commerce's additional request for information and Commerce therefore had sufficient information to determine a respondent-specific AD margin. The Court ordered Commerce to submit a second redetermination in accordance with this opinion within 90 days.

[Slip Op. 23-150 Pao TMK v. United States](#)

The Court remanded the International Trade Commission's (the "Commission") determination that imports from Russia met the statutory negligibility threshold in its AD/CVD investigation of seamless pipe imports from Czechia, South Korea, Russia, and Ukraine. Specifically, plaintiff TMK challenged the Commission's failure to "capture all imports from Germany and Mexico in its negligibility analysis," pointing to Customs data contradicting the Commission's negligibility determination. The Court

rejected the Government’s argument that TMK had waived its right to challenge that determination, because up until the final decision, the Commission’s calculations were based on all imports from Mexico and Germany, and the company therefore had no opportunity to challenge the course change. The Court ordered the Commission to consider the Customs data on remand, but it rejected other grounds upon which TMK challenged the Commission’s determination, including that it had unlawfully declined to determine which imports correspond to the “domestic like product.”

[Slip Op. 23-151 Gujarat Fluorochemicals v. United States](#)

The Court affirmed the Commerce Department’s remand redetermination in the countervailing duty (CVD) investigation of imported granular polytetrafluoroethylene (PTFE) resin from India. In the investigation, Commerce assigned the plaintiff/exporter a subsidy rate of 31.89 percent. Of this, 26.50 percent stemmed from a government land lease and associated electricity provided to the plaintiff’s affiliate, which the Court determined was not countervailable because electricity is not primarily decided to the production of the downstream product, as required by Commerce’s regulations. On remand, Commerce removed the program from its subsidy calculation. Defendant-intervenor opposed the remand, on the basis that the Court is not permitted to outright reverse a Commerce decision. Accordingly, the defendant-intervenor argued, the CIT should have allowed Commerce to “reconsider or more fully explain its original determination.” In sustaining the remand, the Court explained that Commerce’s interpretation of its regulation was erroneous, and thus legally impermissible, and that a second remand would therefore not produce a result differing from the CIT’s order.

[Slip Op. 23-152 Seneca Foods Corp. v. United States](#)

The Court remanded Commerce’s eight denials of requests for exclusions from Section 232 national security tariffs on steel. In its exclusion requests, plaintiff submitted statements of its inability to source the steel products domestically, as well evidence that domestic producer U.S. Steel (USS) could not meet its needs. USS submitted rebuttal comments arguing, *inter alia*, that the 232 exclusions are prospective rather than retrospective, that it could accommodate plaintiff’s needs, and that USS had provided steel products to plaintiff in the preceding two years. Plaintiff argued that USS’ claims were plainly false.

In denying the exclusion requests, Commerce determined for the first six requests, USS’ products were identical to plaintiff’s needs, and that the record evidence did not contract USS’ objections. For the remaining two, where USS only stated that it had the current capacity to supply spot shipments, Commerce requested a remand to further review the requests.

With respect to the first six denials, the Court found Commerce’s determinations to be arbitrary and capricious as they did not “examine the relevant data and articulate a satisfactory explanation for [its] action.” With respect to the remaining two denials, the Court granted Commerce’s request for voluntary remand. Upon remand, the Court ordered Commerce to articulate and potentially reconsider USS’ statements regarding “spot sale” capacity in light of plaintiff’s evidence.

[Slip Op. 23-153 Qingdao Ge Rui v. United States](#)

The Court sustained Commerce’s final results in its second administrative review of the countervailing duty (CVD) order on truck and bus tires from China. Plaintiff, a mandatory respondent, contested Commerce’s application of adverse fact available (AFA) in its analysis of the Export Buyer’s Credit Program (EBCP), a program that provides financial assistance to consumers of certain Chinese goods.

Commerce preliminarily determined to apply AFA to the plaintiff for the EBCP on the basis that the Government of China did not provide information requested by Commerce to analyze the program, and because plaintiff did not provide non-use declarations from its U.S. customers.

Contesting the final results, plaintiff argued its Vice President and Assistant General Counsel had submitted a certified statement that its sole U.S. custom and majority owner did not use the program, and that this constituted a customer non-use certification “as a practical matter.”

The Court, however, ruled that plaintiff’s reference to the certified record evidence was a mere “mentioning [of] a broad issue” and insufficient to exhaust its administrative remedies on this issue.

In addition, with respect to the petitioner’s claim that Commerce erred in not determining whether the petitioner and its U.S. customer benefited from the EBCP, the Court ruled that the argument is premised on claimed non-use, which Commerce has rejected. Finally, with respect to the petitioner’s claim that Commerce failed to verify plaintiff’s non-use, the Court ruled that

Commerce determined that the plaintiff did not provide non-use certifications from its U.S. customers and, therefore, Commerce had nothing to verify.

[Slip Op. 23-155 PrimeSource Building Products, Inc. v. United States](#)

The Court denied PrimeSource's enforcement of a judgment in its challenge of Section 232 steel duties on "derivative" products instituted by the Trump Administration in 2020, while the appeal is pending before the U.S. Supreme Court. A three-judge panel concluded that PrimeSource "has not met its burden of demonstrating its entitlement to a different outcome than that reached by" the U.S. Court of Appeals for the Federal Circuit when that court denied a similar stay by the importer. In a concurring opinion Judge Baker further clarified that PrimeSource's stay bid was practically an injunction which would seek to stop CBP from liquidating the entries in question and that the Court has "zero authority to grant any such relief."

The case has a long history stemming from when the Court first found that expanding the 2018 steel and aluminum tariffs to include derivative products in 2020 was impermissible. The Federal Circuit reversed that decision and found that the President may take out-of-time action. PrimeSource petitioned for a *writ of certiorari* at the Supreme Court which was denied on November 1, 2023, and at the same time moved for a stay of the Federal Circuit decision pending appeal. The Court deferred to the Federal Circuit's decision not to grant the stay on the grounds that PrimeSource had failed to adequately show irreparable harm.

[Slip Op. 23-156 American Manuf. of Multilayered Wood Flooring v. United States](#)

The Court affirmed Commerce's remand redetermination in the 2017-2018 administrative review of the antidumping duty order on multilayered wood flooring from China. In the redetermination, Commerce recalculated the surrogate value for the manufacturing overhead ratio and further explained the adjustments. In addition, Commerce substantiated its surrogate value calculation for labor by placing on the record of the review the source it utilized, which had been missing from the record as part of the underlying administrative proceeding. As neither the plaintiff nor the defendant intervenor filed any comments, the Court affirmed Commerce's redetermination without additional briefing.

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

[Appeal No. 2022-1525 Posco v. United States](#)

The Federal Circuit (CAFC) upheld the Court of International Trade's (CIT) judgment affirming Commerce's remand redetermination regarding the countervailing duty (CVD) administrative review of cut-to-length steel plates from Korea. In the administrative review, Commerce analyzed whether Korea was subsidizing electricity by applying a "preferential rate" approach, by which it compared the rate the foreign producer received to the rates other consumers received for the same good or service. In light of the 1994 Uruguay Round Agreements Act (URAA), which established that "less than fair value" (LTFV) should be measured "by assessing whether government price is consistent with market principles," rather than what other consumers are paying, the CIT remanded Commerce's determination.

In its remand redetermination, Commerce requested and considered additional information that demonstrated electricity in Korea was sold at prevailing market conditions, *i.e.*, Commerce conducted an analysis beyond a "preferential rate" analysis. Commerce continued to find that electricity in Korea was not provided at LTFV, and the CIT affirmed. Citing CAFC precedent, the appellant-defendant appealed the CIT's affirmation arguing that Commerce's remand redetermination analysis consisted, in part, on a "preferential rate analysis," and that the CIT therefore erred in sustaining its redetermination. The CAFC noted that, while it has ruled that the "preferential rate" analysis is inconsistent with the URAA, it did not rule that Commerce may never consider it as part of its analysis. Here, Commerce satisfied the URAA "LTFV" analysis requirement by evaluating, in addition to "preferential rates," prevailing market principles. The CAFC additionally held that Commerce's remand redetermination was supported by substantial evidence as it requested and evaluated information from Korea regarding pricing and generation costs.

EXPORT CONTROLS AND SANCTIONS

No new updates for October.