



Trade Law Update

February 2024

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HIGHLIGHTS FROM FEBRUARY

[Petition Summary: Melamine from Germany, India, Japan, The Netherlands, Qatar, and Trinidad and Tobago](#)

On February 14, 2024, the Cornerstone Chemical Company filed a petition for the imposition of antidumping duties on imports from Germany, India, Japan, the Netherlands, Qatar, and Trinidad and Tobago and countervailing duties on imports of melamine from Germany, India, Qatar, and Trinidad and Tobago.

[U.S. Government Imposes over 600 Denied Parties Designations on Second Anniversary of Russia's War on Ukraine.](#)

On February 23, 2024, the Treasury Department's Office of Foreign Assets Control and Department of State together announced more than 500 sanctions designations targeting government officials, companies, and individuals in Russia and beyond. The sanctions, which the U.S. stated were intended to mark the two-year anniversary of Russia's invasion of Ukraine and the death of opposition politician Aleksey Navalny, target Russian government officials responsible for Navalny's death, entities in Russia's military-industrial base, and those providing revenue to the Russian government to support its war effort. The sanctions also target companies and individuals throughout Europe, Asia, and the Middle East considered to be aiding Russia in its efforts to evade sanctions.

[What Do Importers and Shippers Need to Know about the FMC's New Rule on D&D Invoices](#)

On February 23, 2024, the Federal Maritime Commission issued a Final Rule intended to add clarify to invoicing requirements outlined in the Ocean Shipping Reform Act of 2022. In particular, the Final Rule provides minimum information for demurrage and detention (D&D) invoices and procedures for disputing charges. D&D invoices have created a host of issues for importers and shippers throughout the economy, especially as they relate to the lack of information provided on the invoices.

U.S. DEPARTMENT OF COMMERCE DECISIONS

Investigations

- **Mattresses From Indonesia:** On January 2, 2024, Commerce issued its Preliminary Negative Countervailing Duty [Determination](#) and Alignment of Final Determination with the Final Antidumping Duty Determination.
- **Boltless Steel Shelving Units Prepackaged for Sale From Thailand:** On January 2, 2024, Commerce issued its Amended Preliminary [Determination](#) of Sales at Less-Than-Fair-Value.

- Certain Paper Plates From the People’s Republic of China and the Socialist Republic of Vietnam: On February 21, 2024, Commerce issued its [Initiation](#) of Countervailing Duty Investigations.
- Circular Welded Carbon Steel Standard Pipe and Tube Products From the Republic of Turkey; Welded Line Pipe From the Republic of Turkey; Certain Oil Tubular Goods From the Republic of Turkey; and Large Diameter Welded Pipe From the Republic of Turkey: On February 26, 2024, Commerce issued its Notice of [Initiation](#) of Antidumping Duty and Countervailing Duty Changed Circumstances Reviews.
- Certain Paper Plates From the People’s Republic of China, Thailand, and the Socialist Republic of Vietnam: On February 26, 2024, Commerce issued its [Initiation](#) of Less-Than-Fair-Value Investigations.

Administrative Reviews

- Certain Corrosion-Resistant Steel Products From the Republic of Korea: On February 1, 2024, Commerce issued its Final [Results](#) and Partial Rescission of Countervailing Duty Administrative Review; 2021.
- Passenger Vehicle and Light Truck Tires From the Republic of Korea: On February 5, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2021–2022.
- Polyethylene Terephthalate Film, Sheet, and Strip From India: On February 5, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; Second Correction 2021–2022.
- Certain Steel Nails From Malaysia: On February 6, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2021–2022.
- Certain Walk-Behind Lawn Mowers and Parts Thereof From the People’s Republic of China: On February 6, 2024, Commerce issued its Final [Results](#) of Countervailing Duty Administrative Review; 2020–2021.
- Strontium Chromate From France: On February 6, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2021–2022.
- Wooden Bedroom Furniture From the People’s Republic of China: On February 6, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2022.
- Thermal Paper From the Republic of Korea: On February 7, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2021– 2022.
- Certain Metal Lockers and Parts Thereof From the People’s Republic of China: On February 9, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2021– 2022.
- Electrolytic Manganese Dioxide From the People’s Republic of China: On February 9, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2021–2022.
- Finished Carbon Steel Flanges From India: On February 13, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2021– 2022; Correctionn
- Certain Metal Lockers and Parts Thereof From the People’s Republic of China: On February 14, 2024, Commerce issued its Final [Results](#) of Countervailing Duty Administrative Review; 2020– 2021.
- Polyethylene Retail Carrier Bags From Malaysia: On February 15, 2024, Commerce issued its Final [Results](#) of the Antidumping Duty Administrative Review; 2021–2022.
- Finished Carbon Steel Flanges From India: On February 20, 2024, Commerce issued its Final [Results](#) of Countervailing Duty Administrative Review; 2021.
- Certain Cold-Rolled Steel Flat Products From the Republic of Korea: On February 23, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2021–2022.
- Steel Propane Cylinders From Thailand: On February 23, 2024. Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2021– 2022.
- Multilayered Wood Flooring From the People’s Republic of China: On February 28, 2024, Commerce issued its Notice of Court Decision Not in Harmony With the Results of Antidumping Duty Administrative Review; Notice of Amended Final [Results](#).

Changed Circumstances Reviews

- None

Sunset Reviews

- Xanthan Gum From the People’s Republic of China: On February 2, 2024, Commerce issued its Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order.
- Sodium Gluconate, Gluconic Acid, and Derivative Products From the People’s Republic of China: On February 2, 2024, Commerce issued its Final Results of the Expedited First Sunset Review of the Countervailing Duty Order.
- Sodium Gluconate, Gluconic Acid, and Derivative Products From the People’s Republic of China: On February 2, 2024, Commerce issued its Final Results of Expedited First Sunset Review of the Antidumping Duty Order.
- Certain Steel Nails From the Republic of Korea: On February 2, 2024, Commerce issued its Final Results of Antidumping Duty Administrative Review; 2021– 2022.

Scope Rulings

- None

Circumvention

- None

U.S. INTERNATIONAL TRADE COMMISSION

Section 701/731 Proceedings

Investigations

- Gas Powered Pressure Washers From China: On February 9, 2024, the ITC issued its affirmative [determination](#) of less-than-fair-value investigation.
- Glass Wine Bottles From Chile, China, and Mexico: On February 16, 2024, the ITC issued its affirmative [determination](#) of less-than-fair-value investigation.
- Melamine From Germany, India, Japan, Netherlands, Qatar, and Trinidad and Tobago; On February 21, 2024, the ITC issued its [Institution](#) of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations
- Tin Mill Products From Canada, China, Germany, and South Korea; On February 29, 2024, the ITC issued its affirmative [determination](#) of less-than-fair-value investigation for Canada, China and Germany.

U.S. CUSTOMS & BORDER PROTECTION

[EAPA Case Number 7846: Shari Pharmachem \(USA\) LLC](#)

On February 9 2024, CBP issued a Notice of Determination as to Evasion related to importer Legion Furniture, Inc. (Legion). CBP has determined there is substantial evidence that Legion entered merchandise covered by antidumping and countervailing duty orders on quartz surface products (QSP) from China into the United States through evasion. Substantial evidence demonstrates that Legion imported countertops consisting of Chinese-origin QSP attached to wooden furniture (WF) from Vietnam without declaring the QSP as Chinese-origin. Legion declared the merchandise as Vietnamese-origin WF without declaring that the QSP components were subject to the Orders on entry and, as a result, no cash deposits were applied to the covered merchandise at the time of entry.

[EAPA Case Number 7846: Shari Pharmachem \(USA\) LLC](#)

On February 14 2024, CBP issued a Notice of Initiation of Investigation related to importer Shari Pharmachem (USA) LLC (Shari Pharmachem USA). CBP is investigating whether Shari Pharmachem USA evaded the antidumping and countervailing duty orders on glycine from China by entering into the United States Chinese-origin glycine that was transhipped through India, and not declaring the glycine as subject to the aforementioned AD/CVD orders. Based on a

review of information on the record, CBP has determined there is reasonable suspicion of evasion of AD/CVD duties by Shari Pharmachem USA.

COURT OF INTERNATIONAL TRADE

Summary of Decisions

[Slip Op. 24-12 Norca Industrial Co. v. United States](#)

The Court upheld CBP's finding that Norca Industrial Co. and International Piping & Procurement Group did not evade the antidumping duty order on pipe fittings from China. CBP had initially determined that plaintiffs had evaded the AD order, on the assumption that the goods were transshipped through Vietnam. However, after Norca filed its appeal, CBP said it became aware of information from the foreign manufacturer BW Fittings that was not previously on the record and asked for a remand to add this data. CBP subsequently found that it could not determine whether the goods were subject to the AD order and subsequently referred the matter to Commerce. As part of the referral, Commerce evaluated all stages of the manufacturing process and determined that since the second and third stage of the manufacturing process occurred in Vietnam, the pipe fittings were outside the scope of the AD order. The Court found that CBP's final negative evasion finding was supported by substantial evidence and comported with the Court's remand instructions.

[Slip Op. 24-13 American Manufacturers of Multilayered Wood Flooring v. United States](#)

The Court sustained Commerce's finding that an exporter that refused to participate in the antidumping duty review of multilayered wood flooring was still eligible for a separate rate. Commerce made this determination under protest, as the Court had previously ordered Commerce on remand to grant a non-participating respondent a separate rate, because to not do so in the Court's opinion was to treat this respondent differently than other similarly situated companies which had filed separate rate certifications. However, this resulted in the separate rate respondents' rates going from zero to 42.57%.

[Slip Op. 24-14 Matra Americas v. United States](#)

The Court remanded in part and sustained in part Commerce's final determination in the antidumping duty investigation on thermal paper from Germany. Specifically, the Court sustained Commerce's decision to include the exporter Koehler's "Blue4est" product within the scope of the investigation. The Court remanded the coding of the static sensitivity product characteristic, classification of Koehler's accrued interest expenses as a cost of production and the use of the Cohen's d test to root out "masked" dumping, staying the case until the U.S. Court of Appeals for the Federal Circuit issues a decision in Stupp Corp. v. U.S. Finally, the Court remanded the downward price adjustments that Commerce made to Koehler's home market prices for further explanation.

[Slip Op. 24-15 Mid Continent Steel & Wire, Inc. v. United States](#)

The Court upheld Commerce's use of a simple average in the Cohen's d test in its fourth remand results in the antidumping investigation of certain steel nails from Taiwan. The Cohen's d test involves comparing the prices of "test groups" of a respondent's sales to a "comparison group." Commerce calculates the means and standard deviations of the test and comparison groups, and then calculates a d coefficient which must be equal to or greater than the "large threshold," or .8, for the observations within that group to "pass" the Cohen's d test. In the fourth remand results, Commerce explained its use of the simple average in the Cohen's d denominator, noting that although the academic literature most often employs a weighted average, the literature uses a simple average when the sample sizes are equal, because equal-sized samples have equal reliability. The Court found Commerce's explanation for its use of a simple average reasonable.

[Slip Op. 24-16 Euro SME Sdn Bhd v. United States](#)

The Court upheld Commerce's final results in its 2019-2020 administrative review of the antidumping duty order on retail bags from Malaysia. In its investigation, Commerce had collected cost and sales data to compare the weighted average of plaintiff Euro SME's sales prices in the home country to the weighted average of sales prices in the United States. At

verification, discrepancies in Euro SME’s data emerged, and Commerce determined that because Euro SME’s actual weight and inland freight data was unverifiable, it could not perform the margin calculation. Commerce therefore applied adverse inferences to fill the gaps in the record but limited its finding of non-cooperation to specific discrepancies in Euro SME’s submission. The Court upheld the application of adverse inferences, and found that in applying differential treatment, whereby one discrepancy is found not to demonstrate a lack of cooperation while a similar discrepancy with another data set warrants the drawing of an adverse inference, Commerce considered all relevant factors, drew a rational distinction based on the relative size of the discrepancies, and supported its determination with substantial evidence. The Court also rejected plaintiff’s challenge to an error by Commerce that it claimed to be “ministerial,” and that plaintiff had challenged at the administrative level. The Court agreed with Commerce that plaintiff’s challenge of that error had been untimely, and that the error was not properly characterized as “ministerial.”

[Slip Op. 24-17 Govt’ of Canada v. United States](#)

In a case involving the right to intervene before the Court of International Trade, the Court upheld the established principle that parties who file a request for administrative review satisfy the statutory standing requirement under U.S.C. § 2631(j)(1)(B), even without filing an administrative case brief. The government contended that companies not selected for review lack the right to intervene in appeals before the Court unless they have submitted administrative briefs containing factual information. The Court rejected the government’s position, explaining that allowing parties to intervene comports with decades of agency practice and court precedent, and is consistent with Congressional intent that “party to the proceeding” is “any person who participated in the administrative proceeding,” as well as Congress’ desire to expand access to the Court to a greater number of litigants.

[Slip Op. 24-18 Trijicon, Inc. v. United States](#)

The Court upheld CBP’s classification of subject imports referred to as Tritium Sight Inserts, Tritium Lamps, or Triglamps, which contain a gaseous tritium light source and can be used for aiming firearms and for other lighting purposes. CBP classified the products at issue as “[l]amps or other lighting fittings” of subheading 9405.50.40, HTSUS, which carries a six percent duty rate. The importer, Trijicon, contended that the items should be classified as “[a]pparatus based on the use of alpha, beta or gamma radiations” of subheading 9022.29.80, HTSUS, which is a duty free provision. In ruling in CBP’s favor, the Court found that the products at issue do not meet the definition of “apparatuses” for tariff classification purposes, observing that Trijicon itself referred to the imports as lamps in its own documentation.

[Slip Op. 24-19 PT. Zinus Glob. Indonesia](#)

The Court sustained in part and remanded in part Commerce’s final results of redetermination in its antidumping duty investigation of mattresses from Indonesia. The Court found that Commerce’s inclusion of mattresses in transit as facts otherwise available in the determination of the constructed export price was unsupported by evidence and did not follow the statutory requirements outlined in 19 U.S.C. § 1677e and 19 U.S.C. § 1677m(d). The Court pointed out that Commerce failed to give plaintiff Zinus notice about the missing information and neglected to provide it with an opportunity to address or clarify the missing data. Further, the Court remanded the case because Zinu’s parent company’s exclusion of selling expenses from the calculation of normal value involvement was not supported by substantial evidence because Zinu’s parent might have taken a more active role in selling merchandise. However, the Court upheld Commerce’s usage of Indonesian Global Trade Atlas (GTA) import data to determine the value of inputs purchased from a related supplier in a non-market economy situation. The Court agreed that the decision was supported by substantial evidence since the record reflected an available reasonable market price, thereby negating the need for Commerce to investigate alternative measures, like averaging data from other countries’ GTAs.

[Slip Op. 24-20 Zhejiang Amerisun Tech. Co. v. United States](#)

The Court remanded Commerce’s final scope ruling that R210-S engines are included in the antidumping and countervailing duty orders on certain vertical shaft engines between 99cc and up to 255cc and parts from China. The dispute focused on whether R210-S engines are vertical engines. Plaintiff argued that the engines contain a newly design

horizontal shaft that is outside the scope of the order, whereas the government argued that the engines fall within the order because horizontal shaft engines are merely modified vertical engines. The Court remanded the case to Commerce for further consideration, finding its determination unsupported by substantial evidence and not in accordance with law, in part due to Commerce's reliance on Wikipedia as an evidentiary source. The Court also found that reliance on petitioner's scope ruling request for general information on engines was insufficient.

[Slip Op. 24-21 Meihua Grp. Int'l Trading \(Hong Kong\) Ltd. v. United States](#)

The Court remanded Commerce's final results for a second time in the administrative review of the anti-dumping duty order on xanthan gum from China. The Court determined that applying total adverse facts available against plaintiff Meihua Group Int'l Trading (Hong Kong) Ltd was not supported by substantial evidence, as Meihua Group had submitted the requested information with ample time for Commerce to review and analyze the data provided. The Court also reviewed Commerce's determination to apply a separate rate to consolidated plaintiffs Jianlong and Deosen, ordering Commerce to against reconsider the separate rate in light of any changes made to Meihua's dumping margin rate on second remand. Finally, the Court directed Commerce to perform an up-to-date analysis on whether to treat consolidated plaintiffs' multiple entities as one, specifically for the review period 2019-2020, rather than relying on an outdated analysis from 2017-2018.

[Slip Op. 24-22 NEXCO S.A. v. United States](#)

The Court's opinion remains confidential as of the date of this newsletter and a summary will be provided in the March Trade Law Update.

[Slip Op. 24-23 Catfish Farmers of Am. v. United States](#)

The Court remanded Commerce's final results in the fifteenth administrative review of certain imported fish from Vietnam. The Court explained that a surrogate does not need to be at the "same" level of economic development as the non-market economy under investigation, only a "comparable" level, and it remanded for Commerce to determine if Indonesia is "comparable" to Vietnam. The Court also disagreed with Commerce's reasoning that Indian data are superior to Indonesian, stating that the Indian data must be compared viz-a-viz the Indonesian data before such a conclusion can be drawn. The Court also opposed Commerce's reliance on the Fishing Chimes study to represent a "broad market average" because it misleadingly stated that it was based on estimates from 300 villages, but only 46 were in the two counties of interest. Further, the Court rejected Commerce's valuation of labor inputs because it used 2006 Indian labor data, despite being required to use "contemporaneous" data. In addition, the Court disagreed with Commerce's reasoning to reject plaintiffs' proposed studies on live fish because it did not participate in or observe them. Finally, the Court agreed with Commerce and defendant-intervenor, NTSF, regarding the plaintiff's Catfish Farmer's contention that NTSF overstated the amount of water and understated the number of fish it produces based on data reported on its product labels since the customer, not NTSF, specifies what information is printed on the label, and nothing in the record shows how the customer determines what is to appear.

[Slip Op. 24-24 Ninestar Corp. v. United States](#)

In a case challenging Ninestar Corporation's addition to the Uyghur Forced Labor Prevention Act (UFLPA) entity list, the Court denied Ninestar's preliminary injunction motion seeking to stay the listing decision. The court found Ninestar unlikely to succeed on the merits, rejecting arguments that the interagency Forced Labor Enforcement Task Force (FLETF) failed to explain its action, pointing to a Department of Homeland Security memo in the record explaining that the listing was based on corroborated information from an informant. The Court also rejected arguments that FLETF exceeded its statutory authority by using the reasonable cause burden of proof, explaining that this standard best coheres with Congress's intent of promoting effective enforcement of forced labor prohibitions. The Court rejected arguments that FLETF exceeded its statutory authority by applying the UFLPA's provisions retroactively, as information on the record supported a finding of post-enactment violations.

The Court also determined that Ninestar had not demonstrated irreparable harm, that the balance of equities favored the Government, and that the public interest was best protected by denying injunctive relief, noting that the hardships claimed by Ninestar (financial loss, reputational harm, etc.) were hardships that were “entirely predictable consequences that were likely foreseen by Congress, rather than unexpected or extraordinary byproducts, of an adverse listing.” Finally, the Court found that Ninestar was not obligated to administratively challenge its addition to the UFLPA entity list prior to bringing a court action. An exception to the exhaustion requirement applied, because Ninestar did not receive “timely access to the confidential record” or even an explanation of why it was listed, and an administrative challenge therefore would have been futile.

[Slip Op. 24-25 Risen Energy Co. v. United States](#)

The Court affirmed Commerce’s final results in its eighth administrative review of the countervailing duty order on crystalline silicon photovoltaic cells from China. Only consolidated plaintiff JA Solar offered comments in support of the remand results. The Court noted Commerce’s voluntary decision not to attempt verification in this case, aligning with the Court’s earlier warning to avoid verification procedures that may “overly burden voluntary participants.”

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

The Federal Circuit issued no substantive decisions in February.