



Trade Law Update

October 2024

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HIGHLIGHTS FROM OCTOBER

[Potentially “Freezing the Clock” on D&D Amid ILA Strike](#)

As the International Longshoreman’s Association (ILA) strike commenced yesterday morning, our team received word from a source with knowledge of operations at the Port of New York and New Jersey (NYNJ) that, one by one, NYNJ terminals decided to “freeze the clock” on detention and demurrage (D&D) charges for the duration of the ILA strike. To the extent that these reports are accurate and that NYNJ exerts influence within the seaport community, other ports could follow, especially as ocean carriers lobby key decisionmakers on D&D charges.

[Petition Summary: Thermoformed Molded Fiber Products from the People’s Republic of China and Socialist Republic of Vietnam](#)

On October 8, 2024 Genera, Inc., Tellus Products, LLC, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO (“USW”) (collectively, the “American Molded Fiber Coalition,” “Coalition,” or “Petitioners”), filed a petition for the imposition of antidumping and countervailing duties on U.S. imports of thermoformed molded fiber products from the People’s Republic of China (“China”) and the Socialist Republic of Vietnam (“Vietnam”).

[Understanding the New Steel Import Regulations: What You Need to Know](#)

In a move to regulate steel imports more stringently, the U.S. government has introduced [new requirements](#) that will affect importers of steel and derivative steel products. As of November 21, 2024, importers must comply with specific reporting mandates regarding the origins of their steel products, especially imports of steel and steel derivative products originating in Mexico.

[Petition Summary: Paper File Folders from Cambodia and Sri Lanka](#)

On October 21, 2024, the Coalition of Domestic Folder Manufacturers which is comprised of Smead Manufacturing Company (“Smead”) and (2) TOPS Products LLC (“TOPS”) (collectively the “Coalition” or “Petitioner”), filed a petition for the imposition of antidumping duties on U.S. imports of paper file folders from Cambodia and Sri Lanka and the imposition of countervailing duties on Cambodia.

[Petition Summary: Hard Empty Capsules from Brazil, China, India and Vietnam](#)

On October 24, 2024, Lonza Greenwood LLC (“Lonza” or “Petitioner”), filed a petition for the imposition of antidumping and countervailing duties on U.S. imports of hard empty capsules from Brazil, China, India and Vietnam.

[Petition Summary: Overhead Door Counterbalance Torsion Springs from China and India](#)

On October 29, 2024, IDC Group, Inc., Iowa Spring Manufacturing, Inc., and Service Spring Corp. (collectively “Petitioners”), filed a petition for the imposition of antidumping and countervailing duties on U.S. imports of overhead door counterbalance torsion springs from the People’s Republic of China and India.

U.S. DEPARTMENT OF COMMERCE DECISIONS

Investigations

- Certain Corrosion-Resistant Steel Products From Australia, Brazil, Canada, Mexico, the Netherlands, South Africa, Taiwan, the Republic of Türkiye, the United Arab Emirates, and the Socialist Republic of Vietnam: On October 2, 2024, Commerce issued its [Initiation](#) of Less-Than-Fair-Value Investigations.
- Certain Corrosion-Resistant Steel Products From Brazil, Canada, Mexico, and the Socialist Republic of Vietnam: On October 2, 2024, Commerce issued its [Initiation](#) of Countervailing Duty Investigations.
- Aluminum Extrusions From Indonesia: On October 3, 2024, Commerce issued its Final Affirmative Countervailing Duty [Determination](#).
- Aluminum Extrusions From Mexico: On October 3, 2024, Commerce issued its Final Affirmative Countervailing Duty [Determination](#).
- Aluminum Extrusions From the People's Republic of China: On October 3, 2024, Commerce issued its Final Affirmative Countervailing Duty [Determination](#).
- Aluminum Extrusions From the Republic of Türkiye: On October 3, 2024, Commerce issued its Final Affirmative Countervailing Duty [Determination](#).
- Aluminum Extrusions From Colombia: On October 3, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value.
- Aluminum Extrusions From Ecuador: On October 3, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value.
- Aluminum Extrusions From India: On October 3, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value.
- Aluminum Extrusions From Indonesia: On October 3, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value.
- Aluminum Extrusions From Italy: On October 3, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value.
- Aluminum Extrusions From Malaysia: On October 3, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value.
- Aluminum Extrusions From Mexico: On October 3, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value.
- Aluminum Extrusions From Taiwan: On October 3, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value.
- Aluminum Extrusions From Thailand: On October 3, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value.
- Aluminum Extrusions From the People's Republic of China: On October 3, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value.
- Aluminum Extrusions From the Republic of Korea: On October 3, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value.
- Aluminum Extrusions From the Republic of Türkiye: On October 3, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value.
- Aluminum Extrusions From the Socialist Republic of Vietnam: On October 3, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part.
- Aluminum Extrusions From the United Arab Emirates: On October 3, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part.
- Certain Alkyl Phosphate Esters From the People's Republic of China: On October 4, 2024, Commerce issued its Preliminary Affirmative Countervailing Duty [Determination](#) and Alignment of Final Determination With Final Antidumping Duty Determination.
- Certain High Chrome Cast Iron Grinding Media From India: On October 4, 2024, Commerce issued its Preliminary Affirmative Countervailing Duty [Determination](#), and Alignment of Final Determination With Final Antidumping Duty Determination.
- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From Malaysia: On October 4, 2024, Commerce issued its Preliminary Affirmative Countervailing Duty [Determination](#) and Alignment of Final Determination With Final Antidumping Duty Determination.
- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From Thailand: On October 4, 2024, Commerce issued its Preliminary Affirmative Countervailing Duty [Determination](#), Preliminary Affirmative

Critical Circumstances Determination, in Part, and Alignment of Final Determination With Final Antidumping Duty Determination.

- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules From the Kingdom of Cambodia: On October 4, 2024, Commerce issued its Preliminary Affirmative Countervailing Duty [Determination](#) and Alignment of Final Determination With Final Antidumping Duty Determination.
- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the Socialist Republic of Vietnam: On October 4, 2024, Commerce issued its Preliminary Affirmative Countervailing Duty [Determination](#), Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination With Final Antidumping Duty Determination.
- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From Malaysia: On October 14, 2024, Commerce issued its Preliminary Affirmative Countervailing Duty [Determination](#) and Alignment of Final Determination With Final Antidumping Duty Determination.
- Truck and Bus Tires From Thailand: On October 17, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part.
- Disposable Aluminum Containers, Pans, Trays, and Lids From the People’s Republic of China: On October 28, 2024, Commerce issued its Preliminary Affirmative Countervailing Duty [Determination](#), Preliminary Affirmative Determination of Critical Circumstances, and Alignment of Final Determination With Final Antidumping Duty Determination.
- Frozen Warmwater Shrimp From Ecuador: On October 28, 2024, Commerce issued its Final Affirmative Countervailing Duty [Determination](#).
- Frozen Warmwater Shrimp From India: On October 28, 2024, Commerce issued its Final Affirmative Countervailing Duty [Determination](#).
- Frozen Warmwater Shrimp From Indonesia: On October 28, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less-Than- Fair Value.
- Frozen Warmwater Shrimp From Indonesia: On October 28, 2024, Commerce issued its Final Negative Countervailing Duty [Determination](#).
- Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: On October 28, 2024, Commerce issued its Final Affirmative Countervailing Duty [Determination](#).
- Frozen Warmwater Shrimp From Ecuador: On October 28, 2024, Commerce issued its Final Negative [Determination](#) of Sales at Less Than Fair Value.
- Aluminum Extrusions From the Socialist Republic of Vietnam: On October 28, 2024, Commerce issued its Amended Final Affirmative [Determination](#) of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances.

Administrative Reviews

- Multilayered Wood Flooring From the People’s Republic of China: On October 4, 2024, Commerce issued its Notice of Court Decision Not in Harmony With the Results of Antidumping Administrative Review; Notice of Amended [Final Results](#).
- Stainless Steel Flanges From India: On October 2, 2024, Commerce issued its Notice of Amended [Final Results](#) of Antidumping Duty Administrative Review Pursuant to Settlement.
- Certain Carbon and Alloy Steel Cut-to- Length Plate From the Federal Republic of Germany: On October 9, 2024 Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2022–2023.
- Mattresses From Serbia: On October 9, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2022–2023.
- Granular Polytetrafluoroethylene Resin From India: On October 10, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2021–2023.
- Carbon and Alloy Steel Threaded Rod From India: On October 14, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review, and Partial Rescission; 2022– 2023.
- Certain Corrosion Inhibitors From the People’s Republic of China: On October 14, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review, 2022–2023.
- Lightweight Thermal Paper From the People’s Republic of China: On October 14, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2022–2023.
- Narrow Woven Ribbons With Woven Selvedge From the People’s Republic of China: On October 16, 2024, Commerce issued its Final [Results](#) of Countervailing Duty Administrative Review; 2022.
- Certain New Pneumatic Off-the-Road Tires From India: On October 17, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2022–2023.
- Non-Refillable Steel Cylinders From the People’s Republic of China: On October 17, 2024, Commerce issued its Final [Results](#) and Partial Rescission of the Antidumping Duty Administrative Review; 2022–2023.

- Carbon and Alloy Steel Wire Rod From the Republic of Korea: On October 18, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2022–2023.
- Large Diameter Welded Pipe From the Republic of Türkiye: On October 18, 2024, Commerce issued its Final [Results](#) of Countervailing Duty Administrative Review; 2022.
- Certain New Pneumatic Off-the-Road Tires From India: On October 22, 2024, Commerce issued its Final [Results](#) of Countervailing Duty Administrative Review; 2022.
- Certain Quartz Surface Products From India: On October 23, 2024, Commerce issued its Notice of Amended Final [Results](#) of Antidumping Duty Administrative Review Pursuant to Settlement.
- Wood Mouldings and Millwork Products From the People’s Republic of China: On October 24, 2024, Commerce issued its Amended Final [Results](#) of Antidumping Duty Administrative Review; 2022–2023.
- Large Diameter Welded Pipe From Canada: On October 31, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2022– 2023.
- Stainless Steel Plate in Coils From Belgium: On October 31, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2022– 2023.

Changed Circumstances Reviews

- None

Sunset Reviews

- Certain Quartz Surface Products From the People’s Republic of China: On October 4, 2024, Commerce issued its Final [Results](#) of the Expedited First Sunset Review of the Antidumping Duty Order.
- Non-Malleable Cast Iron Pipe Fittings From the People’s Republic of China: On October 8, 2024 Commerce issued its Final [Results](#) of Expedited Fourth Sunset Review of Antidumping Duty Order.
- Certain Quartz Surface Products From the People’s Republic of China: On October 9, 2024, Commerce issued its Final [Results](#) of the Expedited First Sunset Review of the Countervailing Duty Order.
- Raw Flexible Magnets From the People’s Republic of China: On October 11, 2024, Commerce issued its Final [Results](#) of the Expedited Third Sunset Review of the Countervailing Duty Order.

Scope Ruling

- Certain Vertical Shaft Engines Between 99cc and Up to 225cc and Parts Thereof From the People’s Republic of China: On October 14, 2024, Commerce issued its Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended [Final Scope Ruling](#) Pursuant to Court Decision.
- Wooden Cabinets and Vanities and Components Thereof From the People’s Republic of China: On October 23, 2024, Commerce issued its Final Scope [Determination](#), Certification Requirements, and Recission of Circumvention Inquiries on the Antidumping and Countervailing Duty Orders; Correction

Circumvention

- None.

U.S. INTERNATIONAL TRADE COMMISSION

Section 701/731 Proceedings

Investigations

- Sodium Hexametaphosphate From China (Third Review): On October 2, 2024, the ITC issued its final [determination](#) to continue the antidumping duty order as revocation would lead to the recurrence or continuation of material injury within a reasonably foreseeable time.
- Large Residential Washers From Mexico (Second Review): On October 9, 2024, the ITC issued its final [determination](#) to continue the antidumping duty order as revocation would lead to the recurrence or continuation of material injury within a reasonably foreseeable time.
- Glass Wine Bottles From China: On October 16, 2024, the ITC issued its final negative [determination](#) that an industry is not materially injured or threatened with material injury.
- Utility Scale Wind Towers From China and Vietnam (Second Review): On October 17, 2024, the ITC issued its final [determination](#) to continue the countervailing duty order on utility scale wind towers from China and antidumping orders on utility scale wind towers from China and Vietnam as revocation would lead to the recurrence or continuation of material injury within a reasonably foreseeable time.
- Cast Iron Soil Pipe From China Determinations: On October 24, 2024, the ITC issued its final [determination](#) to continue the antidumping and countervailing duty orders as revocation would lead to the recurrence or continuation of material injury within a reasonably foreseeable time.
- Corrosion-Resistant Steel Products From Australia, Brazil, Canada, Mexico, Netherlands, South Africa, Taiwan, Turkey, United Arab Emirates, and Vietnam: On October 25, 2024, the ITC issued its affirmative [determination](#) of less-than-fair-value investigations.

U.S. CUSTOMS & BORDER PROTECTION

[EAPA Case 7907: Sinoboom North America, LLC](#)

On October 1, 2024, CBP issued its Notice of Initiation of Investigation and Interim Measures as to evasion by Sinoboom North America, LLC (Sinoboom NA) in EAPA Investigation 7907. This investigation is examining the evasion of AD/CVD orders A-570-139 and C-570-140 on mobile access equipment (MAE) from China. CBP found there was a reasonable suspicion that Sinoboom NA entered Chinese-origin MAE for consumption into the customs territory of the United States through evasion by claiming Poland as the country of origin for the merchandise.

[EAPA Case 7844: Guy and O'Neill Inc.](#)

On October 18, 2024, CBP issued its Notice of Determination as to Evasion by Guy and O'Neill, Inc. (the Importer) in EAPA investigation 7844, examining the evasion of AD order A-570-985 on xanthan gum from China. Based on the record of the investigation, CBP found there was substantial evidence that the Importer entered covered merchandise from China that was transshipped through Israel.

[EAPA Case 7850: Mak Chemicals, Inc.](#)

On October 22, 2024, CBP issued the notice of determination as to evasion for EAPA case 7850 filed by CP Kelco U.S., Inc., against U.S. importer, Mak Chemicals, Inc. (Mak Chemicals) for evasion of the applicable AD order A-570-985 (the Order) on xanthan gum from China. Specifically, substantial evidence demonstrates that Mak Chemicals evaded the Order by importing Chinese-origin xanthan gum from China that had been transshipped through Indonesia. CBP has determined that there is substantial evidence of evasion of AD duty by Mak Chemicals and, therefore, CBP issued a formal notice of determination as to evasion and has taken enforcement actions.

[EAPA Case 7841: BMF Imports, LLC.](#)

On October 24, 2024, CBP issued the notice of determination as to evasion for EAPA case 7841 based on an allegation filed by CP Kelco U.S., Inc. against U.S. importer BMF Imports, LLC (BMF Imports) for evasion of AD order A-570-985 on xanthan gum from China. Specifically, record evidence shows that BMF Imports entered Chinese-origin xanthan gum into the United States that was transshipped through India. CBP has determined there is substantial evidence of evasion of AD duties by BMF Imports and, therefore, CBP issued a formal notice of determination as to evasion and has taken enforcement actions.

COURT OF INTERNATIONAL TRADE

Summary of Decisions

[Slip. Op. 24-104: Zhejiang Amerisun Tech. Co. v. United States](#)

The Court sustained Commerce's final results of redetermination holding that Chaongqing Rato Technology Co., Ltd's R210-S engines are excluded from the scope of the AD/CVD orders on certain vertical shaft engines between 99cc and up to 225cc and parts thereof from China. Both plaintiff and Commerce sought to sustain the final results, but plaintiff disagreed with Commerce's characterization of the R210-S engine as a "modified vertical shaft engine." Commerce, on the other hand, argued that language was intended to ensure administrative consistency between the scope inquiry and the final results. The Court upheld Commerce's final results, explaining that the choice of terminology did not affect the outcome that the engines were not covered by the orders.

[Slip. Op. 24-105: Chandan Steel Ltd. v. United States](#)

The Court denied a motion filed by plaintiff Chandan Steel Limited ("Chandan") for reconsideration of the Court's previous decision to uphold an antidumping duty rate of 145.25%. Contrary to Chandan's arguments, the Court explained that substantial record evidence supported Commerce's adverse inference findings because, despite been given two chances, Chandan failed to submit its comparison market sales database in the form and manner requested. Chandan made a final attempt to submit a corrected database 11 months after the preliminary results were published. Commerce, however, rejected the submission as untimely and indicated that there was no record evidence that the database is not missing the window period. Accordingly, the Court rejected Chandan's motion for reconsideration because substantial record evidence supported Commerce's decision to use total adverse facts available to calculate the dumping margin.

[Slip. Op. 24-106: Glock, Inc. v. United States](#)

The Court granted in part and denied in part plaintiff's, Glock Inc.'s motion to deem admitted its requests for admission and to compel other discovery responses from CBP in an action to contest the liquidation, appraisal, and valuation by CBP of a single entry of pistol component parts imported as kits. Specifically, the Court granted all requests for admission other than those seeking a conclusion of law or hypotheticals. Moreover, with regards to production of documents, the Court explained that CBP must produce all the requested information even if the information is easily available from a public source, like documents, training materials, manuals, or instructions discussing or relating to the applicability of the Internal Revenue Code and Internal Revenue Service regulations for customs valuation determinations. However, CBP does not need to produce requests that are overbroad and not limited to information and documents relevant to this case, such as emails concerning entries other than plaintiff that were unrelated and irrelevant to the case.

[Slip. Op. 24-107: Maquilacero S.A. de C.V. v. United States](#)

The Court remanded Commerce's final results in the 2020-2021 administrative review of the AD order on light-walled rectangular pipe and tubes from Mexico. The plaintiffs, Mexican manufacturers, argued that their products were not within the scope of the order, claiming they were either downstream or automotive out-of-scope products. Commerce contended that the order included automotive parts due to the absence of exclusionary language. The Court rejected this argument, stating that silence or lack of exclusionary language does not automatically bring items within the order's scope. The Court also noted that Commerce failed to assess whether significant processing transformed the in-scope products into "finished products" outside the order's scope. Moreover, because the Court remanded Commerce's scope determination, the Court also remanded the issues of: (1) whether the plaintiffs' products are similar or identical under a collapsing analysis, (2) whether the SAS programming should include a manufacturer code and further processing variable, (3) Commerce's determination to treat sales made through an IMMEX program as sales made in the home market. The Court deferred ruling on the plaintiffs' challenge to the differential pricing methodology pending remand.

[Slip. Op. 24-108: Keystone Auto. Operations, Inc. v. United States](#)

The Court denied cross-motions for summary judgment, finding that a trial is necessary to determine whether the subject merchandise qualifies as "side protective attachments" under U.S. Note 20(iii)(213) to Subchapter III of Chapter 99 of the HTSUS and is therefore exempt from additional 25 percent Section 301 duties. The Court explained that the undisputed facts were insufficient to fully evaluate whether the merchandise qualified as "side protective attachments," such as whether the merchandise is used in the same way as the described side protective attachments, the economic feasibility of such use, the expectations of the ultimate purchasers, and how the merchandise is recognized in the trade. Accordingly, the Court ruled that neither party is entitled to summary judgment.

[Slip. Op. 24-109: InterGlobal Forest LLC v. United States](#)

The Court denied InterGlobal Forest LLC’s (“IGF”) Equal Access to Justice Act (“EAJA”) application for attorney’s fees related to challenging CBP’s affirmative evasion determination regarding AD/CVD orders on certain hardwood plywood from China. Initially, CBP made an affirmative evasion determination. However, in a separate litigation challenging Commerce’s scope determination, Commerce reversed its original scope determination on remand, finding the subject merchandise out-of-scope. CBP then requested a voluntary remand, after which it reversed its own affirmative evasion determination. Despite CBP’s negative evasion determination, the Court ruled that IGF did not meet the EAJA requirements because it was not a prevailing party. The Court explained that being a prevailing party requires a finding of agency error, which did not occur here, as CBP voluntarily requested the remand. Additionally, IGF failed to show that CBP’s position lacked substantial justification, as CBP had reasonably relied on Commerce’s initial affirmative scope determination. Therefore, the Court denied IGF’s application for attorney’s fees.

[Slip Op. 24-110: Printing Textiles, LLC v. United States](#)

The Court denied Printing Textiles, LLC’s motion for judgment on the agency record, asserting that its imports of Canvas Banner Matisse (“CBM”) are not within the scope of the antidumping duty order on certain artist canvas from China. Printing Textiles raised two claims. First, it argued that Commerce misapplied the (k)(1) factors and failed to apply (k)(2) factors. Second, it claimed the order was unconstitutionally vague. The Court disagreed, finding that Commerce correctly applied the (k)(1) factors to clarify the order’s language, and the determination was supported by substantial evidence. The Court also noted that Printing Textiles did not provide evidence of unreasonableness, and Commerce was not required to consider the (k)(2) factors. Regarding the alleged vagueness, the Court explained that if there was doubt about whether the product was within the order’s scope, the scope ruling procedure under Commerce’s regulations was available and utilized by Printing Textiles. Therefore, the Court denied the motion for judgment on the agency record.

[Slip. Op. 24-111: United States v. Koehler Oberkirch GmbH](#)

The Court denied a motion filed by Koehler Oberkirch GmbH (“Koehler GmbH”) and Koehler Paper SE (“Koehler SE”) (collectively, “Koehler”) to certify an order for immediate appeal and to stay the case. Koehler sought to stay an order permitting service on the defendants through their U.S.-based counsel, pending a motion to certify in the Federal Circuit. Additionally, Koehler moved to stay the case involving Commerce’s effort to recover approximately \$200 million in unpaid antidumping duties, pending the outcome of the motion to certify. The Court denied both motions, finding them unwarranted, as an interlocutory appeal from the alternative service order would not “materially advance” and would, in fact, delay “the ultimate termination of the litigation” as required by the governing statute.

[Slip. Op. 24-112: Nippon Steel Corp. v. United States](#)

The Court granted in part and denied in part Nippon Steel Corporation’s (“Nippon Steel”) motion for judgment on the agency record in the third administrative review of the AD order on hot-rolled steel products from Japan. Nippon Steel contested Commerce’s use of adverse facts in response to its failure to provide requested sales data, citing Japanese antitrust law as the reason for non-disclosure. The Court agreed with Nippon Steel, remanding the issue to Commerce to address Nippon Steel’s arguments concerning (1) the applicability of Japanese antitrust law and (2) whether Commerce had taken sufficient steps to ensure affiliate compliance. However, with respect to Nippon Steel’s challenge regarding Commerce’s deduction of Section 232 duties from its U.S. prices in the calculation of dumping margins, the Court found that (1) Nippon Steel forfeited the argument because it raised it for the first time in its supplemental brief to this Court, (2) the Court lacked the authority to review Federal Circuit decisions, (3) the Court could not resolve conflicts between federal law and the General Agreement on Tariffs and Trade. Accordingly, the Court rejected this part of the motion.

[Slip Op. 24-113: PT. Asia Pacific Fibers Tbk v. United States](#)

The Court upheld Commerce’s final remand redetermination in the antidumping investigation of polyester textured yarn from Indonesia, which assigned a 9.20% duty rate to the plaintiff, after neither party raised any objections regarding the rate or the methodology used by Commerce.

[Slip. Op. 24-114: Cozy Comfort Co. v. United States](#)

The Court partially granted plaintiff Cozy Comfort Company, LLC’s motions in limine to exclude certain witness testimony and denied CBP’s motion in limine to exclude another witness’ testimony. The motions were brought prior to trial in a case challenging CBP’s tariff classification of the Comfy® under heading 6110 of the U.S. Harmonized Tariff Schedule, which covers “[s]weaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted.” Specifically, the Court excluded a fashion industry professional’s testimony on the scientific aspects of the product’s cold protection due to a lack of expertise but allowed her to testify on marketing matters. The Court also limited CBP’s National Import Specialist’s testimony to general responsibilities and non-privileged information, barring opinions formed during the CBP

classification process. Lastly, the Court denied CBP's motion to exclude Plaintiff's witness, finding him qualified as an expert based on his experience designing patents and trademarks for outerwear and outdoor gear.

[Slip. Op. 24-115: Kumho Tire \(Vietnam\) Co. v. United States](#)

The Court sustained in part and remanded in part Commerce's final determination in the CVD investigation on passenger vehicle and light truck tires from Vietnam. At issue was whether (1) the acquisition of land-use rights by plaintiff Kumho Tire (Vietnam) Co., Ltd. ("KTV") at preferential rent rates was a countervailable subsidy; and (2) whether Vietnam's currency undervaluation constituted a countervailable subsidy. The Court found that Commerce's determination regarding land-use rights was supported by substantial evidence, because KTV first acquired such rights after Vietnam acceded to the World Trade Organization, the cut-off date before which subsidies could not be considered countervailable in Vietnam, a non-market economy.

As for the second issue, the Court determined that the text of the CVD statute authorizes Commerce to determine whether a currency undervaluation program is a countervailable subsidy. The Court also determined that the exchange of currency in this case was a direct transfer of funds that constituted a financial contribution. However, the Court was unable to ascertain whether substantial evidence supported Commerce's determination regarding specificity, which was based on its finding that the traded goods sector was the predominant user of the currency undervaluation subsidy. Commerce had requested, but did not receive, data from the Government of Vietnam, and instead used available data regarding US dollar ("USD") inflows to Vietnam as a proxy for USD currency conversions. With this alternative data, Commerce estimated the total proportion of USD inflows Vietnam received in the period of review through four major channels of exchange: (a) exports of goods, (b) exports of services, (c) various forms of portfolio and direct investment, and (d) earned income from abroad. The Court remanded for Commerce to explain what it considered missing from the record and how the missing information led Commerce to identify and rely upon the four major channels of exchange.

[Slip. Op. 24-116: Kaptan Demir Celik Endustrisi ve Ticaret A.S. v. United States](#)

The Court remanded the final results of the 2020 administrative review of the CVD order on rebar from Turkey. Plaintiff challenged Commerce's determination that Turkey's foreign currency exchange tax exemption was "specific," as required to countervail a benefit, as well as Commerce's estimation of the value of the government-owned land that plaintiff's affiliate used for free. As for the specificity argument, the Court found that the record contained a series of provisions of Turkish law that did not appear to limit the tax exemption to an enterprise or industry, and the benefit instead appeared generally available and widely distributed. The Court also found that Commerce did not adequately explain its reliance on a report by Colliers International as a benchmark for the value of state-owned land, as it did not address concerns relating to the geographic focus and reliability of that report.

[Slip. Op. 24-117: Seneca Foods Corp. v. United States](#)

The Court sustained Commerce's denial of eight requests for exclusion from the 25 percent Section 232 tariffs made by Seneca Foods Corp. ("Seneca") for imported tin mill products ("TMP"). Seneca argued that TMP was not produced in the United States in sufficient amounts. However, the Court determined that Commerce's denials were not arbitrary and capricious, because they were based upon record evidence showing that suppliers could meet Seneca's demands, Commerce had reasonably focused on prospective evidence of steel production, and the denials were consistent with Commerce's regulations and reasonable practice.

[Slip. Op. 24-118: The Ancientree Cabinet Co. v. United States](#)

The Court sustained Commerce's final results in the AD administrative review on wooden cabinets and vanities and components thereof from China. Ancientree Cabinet Co. ("Ancientree"), a producer and exporter of subject merchandise, was a mandatory respondent who received a preliminary weighted-average dumping margin of 7.71, after Commerce determined not to adjust the U.S. price to account for export subsidies countervailed in the accompanying CVD order, specifically from the Export Buyers Credit Program ("EBCP"). However, Ancientree failed to raise the issue of a possible EBCP offset until its ministerial error comments before Commerce. The Court found that Commerce acted within its discretion in declining to address errors untimely alleged, and that the doctrine of administrative exhaustion applies.

[Slip. Op. 24-119: PAO TMK v. United States](#)

The Court sustained the remand determination in a case challenging the ITC's finding that imports of seamless pipe from Russia exceeded the statutory negligibility threshold, for purposes of a material injury determination. The Court had previously remanded the determination for the ITC to address CBP data contradicting the conclusion that only Company A obtained seamless pipe from Germany, and only Company B did so from Mexico. The discrepancy was important because it could potentially increase the total volume of sales of subject merchandise, thereby reducing Russia's relative share. On remand, the Commission reached the same conclusion, explaining that CBP's data included purchases that were both in and out of the relevant AD/CVD orders' scope, which did not precisely align with the applicable HTS codes, and that Commerce instead relied on questionnaire responses as reasonable estimates of overall volume of in-scope imports from Germany and Mexico. The Court found that ITC's reliance on questionnaires was reasonable, and that plaintiff had failed to timely request that the record be reopened.

[Slip. Op. 24-120: Retractable Techs., Inc. v. United States](#)

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

[Slip. Op. 24-121: Inspired Ventures LLC v. United States](#)

The Court denied the Government's motion to dismiss in a case challenging CBP's exclusion of two entries of rubber tires from China. CBP had placed the entries on hold upon deeming them at high risk for tariff evasion, and it later detained the entries for possible Department of Transportation violations. The National Highway Traffic Safety Administration ("NHTSA") confirmed that the tires were non-compliant with several NHTSA requirements, after which CBP seized both entries. The Court found that CBP had vested authority to make the relevant admissibility determination with NHTSA, and it therefore rejected the Government's argument that the exclusions were based on NHTSA's admissibility authority. The Court also found that it had subject matter jurisdiction over the case, because plaintiff had not received a notice of seizure prior to filing its complaint and was therefore challenging an exclusion, not a seizure that would have been subject to the district courts' original jurisdiction.

[Slip. Op. 24-122: American Kitchen Cabinet All. v. United States](#)

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

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Summary of Decisions

[Appeal No. 23-1532: Worldwide Door Components, Inc. v. United States](#)

The Federal Circuit reversed the CIT's second remand order and all subsequent opinions in a case involving the AD/CVD orders on aluminum extrusions from China. Commerce held in its original scope ruling that door thresholds imported by appellees are not covered by the orders. The CIT remanded that determination, finding that the goods are not aluminum extrusions as they merely contain an aluminum extrusion as a component in an assembly, and that Commerce failed to consider whether the goods could be excluded from the orders as finished merchandise. On remand, Commerce found that the door thresholds are subassemblies incorporated into a downstream product and therefore cannot be excluded from the orders as finished merchandise. The CIT remanded a second time for Commerce to comply with its instruction to fully consider the finished merchandise exclusion, and it later remanded a third time due to other substantive and procedural errors. Commerce's final redetermination, issued under protest, found that the door thresholds are finished merchandise excluded from the scope of the orders. On appeal, the Federal Circuit found that any defects in Commerce's challenged scope ruling were cured in its first remand redetermination, as it thoroughly analyzed how Commerce defined a subassembly and reviewed record evidence to conclude that the goods in question meet that definition. The Federal Circuit disagreed that Commerce was required to consider the finished merchandise exception, because in *China Custom Mfg. Inc. v. United States*, 61 F.4th 956, 960 (Fed. Cir. 2023), the Court made clear that "parts or subassemblies are not finished products and thus cannot qualify for the finished merchandise exclusion."

[Appeal No. 23-1652: J.D. Irving, LTD. v. United States](#)

The Federal Circuit affirmed the trial court’s dismissal for lack of subject matter jurisdiction of a case challenging the second administrative review of the antidumping order on certain softwood lumber products from Canada. A Canadian producer, exporter and importer of subject merchandise brought the case under the trial court’s residual jurisdiction provision. The trial court held, and the Federal Circuit agreed, that jurisdiction under this provision was not available, because jurisdiction under another statutory provision could have been invoked, specifically, the statute that codifies the binational panel review process set forth in USMCA Article 10.12.

[Appeal No. 23-1648: Shamrock Building Materials, INC. v. United States](#)

The Federal Circuit affirmed the trial court’s grant of summary judgment confirming CBP’s classification of steel tubing with an interior coating of epoxy, melamine, and silicone additives. CBP classified the steel tubing under heading 7306 of the U.S. Harmonized Tariff Schedule, which covers “[o]ther tubes, pipes . . . of iron or nonalloy steel,” and which carries a 25 percent import duty pursuant to Section 232 of the Trade Expansion Act of 1962. The importer argued the goods should be classified in heading 8547 instead, which covers “electrical conduit tubing . . . of base metal lined with insulating material.” The trial court held, and the Federal Circuit agreed, that the goods cannot be classified in this provision because it requires commercially significant insulation, which the imported goods did not contain.

EXPORT CONTROLS AND SANCTIONS

BIS Issues Guidance to Financial Institutions on Complying with Export Regulations

Commerce’s Bureau of Industry and Security (“BIS”) recently issued new [guidance](#) to financial institutions on best practices for complying with the U.S. Export Administration Regulations (“EAR”) and preventing inadvertent violations of General Prohibition 10.

While recognizing that exporters typically have more information about their transactions and whether an item is “subject to the EAR,” BIS urged financial institutions to understand that under General Prohibition 10 of the EAR, all persons, including financial institutions, and regardless of location, country of incorporation, or nationality, are prohibited from financing or servicing any item that is “subject to the EAR” with knowledge that a violation of the EAR has occurred, is about to occur, or is intended to occur in connection with the item.

BIS’s expectations for financial institutions’ compliance responsibilities under the EAR have greatly increased following BIS’s imposition of significant export controls related to both Russia and China. BIS’s guidance thus emphasizes the importance of ongoing due diligence, transaction monitoring, and real-time screening in export-related transactions on the part of financial institutions to minimize the risk of violating U.S. export control laws via General Prohibition 10.

OFAC Issues Compliance Guidance to Maritime Shipping Industry

The U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) similarly issued a [Compliance Communique](#) to aid “maritime sector stakeholders” in identifying common signs of illicit sanctions evasion. Parties that may be affected by the communique include commodities brokers, insurers, ship management service providers, shipbroking companies, and port authorities.

OFAC provides several specific scenarios highlighting the ways in which certain parties are increasingly trying to deceive service providers and evade sanctions. These include manipulating vessel location data, falsifying shipping and other documents, and obfuscating a vessel’s ownership. OFAC’s guidance also offers recommendations on conducting counterparty due diligence and best practices to promote sanctions compliance for both U.S. and foreign persons.