



# Trade Law Update

December 2024

## IN THIS ISSUE

- [Highlights From December](#)
- [U.S. Department of Commerce Decisions](#)
- [U.S. International Trade Commission Proceedings](#)
- [U.S. Customs & Border Protection](#)
- [Court of International Trade Decisions](#)
- [Court of Appeals for the Federal Circuit Decisions](#)
- [Export Controls and Sanctions](#)

## HIGHLIGHTS FROM NOVEMBER

### [Petition Summary: Erythritol from The People's Republic of China](#)

On December 13, 2024, Cargill, Incorporated filed a petition for the imposition of AD and CVD duties on U.S. imports of Erythritol from the People's Republic of China.

### [U.S. Launches 301 Investigation into Nicaragua's Labor and Human Rights Practices](#)

On Friday, December 13, 2024, the United States Trade Representative ("USTR") announced that it has initiated an investigation into Nicaragua's acts, policies, and practices related to labor rights, human rights, and the rule of law under Section 301 of the Trade Act of 1974. This investigation marks a historic first under Section 301, focusing on a country's treatment of its workers and alleged human rights violations. By initiating this investigation, the USTR during the last days of the Biden Administration continues to implement its "worker-centric" trade policies by using trade enforcement tools to resolve long-standing concerns about trading partners' labor practices.

### [Petition Summary: Active Anode Material from The People's Republic of China](#)

On December 18, 2024, American Active Anode Material Producers filed a petition for the imposition of AD and CVD duties on U.S. imports of Active Anode Material from the People's Republic of China. If the petition is successful, there could be significant implications for a broad range of battery manufacturers and battery consumers.

### [Petition Summary: Slag Pots from The People's Republic of China](#)

On December 31, 2024, WHEMCO-Steel Castings, Inc. filed a petition for the imposition of AD and CVD duties on U.S. imports of slag pots from the People's

Republic of China.

## U.S. DEPARTMENT OF COMMERCE DECISIONS

### Investigations

- Certain Brake Drums From the People's Republic of China: On December 3, 2024, Commerce issued its Preliminary Affirmative CVD [Determination](#) and Alignment of Final Determination With Final AD Duty Determination.
- Certain Brake Drums From the Republic of Türkiye: On December 3, 2024, Commerce issued its Preliminary Affirmative CVD Duty [Determination](#) and Alignment of Final Determination With Final AD Duty Determination.
- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules From the Socialist Republic of Vietnam: On December 4, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less

Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination and Extension of Provisional Measures.

- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From Cambodia: On December 4, 2024, Commerce issued its Affirmative Preliminary [Determination](#) of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures.
- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From Malaysia: On December 4, 2024, Commerce issued its Affirmative Preliminary [Determination](#) of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures.
- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From Thailand: On December 4, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less-Than-Fair-Value, Affirmative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures.
- Certain Alkyl Phosphate Esters From the People’s Republic of China: On December 4, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures.
- Certain Low Speed Personal Transportation Vehicles From the People’s Republic of China: On December 6, 2024, Commerce issued its Preliminary Affirmative CVD Duty [Determination](#), Preliminary Affirmative Determination of Critical Circumstances, in Part, and Alignment of Final Determination With Final AD Duty Determination.
- Certain High Chrome Cast Iron Grinding Media From India: On December 6, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures.
- Melamine From Germany: On December 9, 2024, Commerce issued its Final Affirmative CVD Duty [Determination](#).
- Melamine From Qatar: On December 9, 2024, Commerce issued its Final Affirmative CVD Duty [Determination](#) and Final Negative Critical Circumstances Determination.
- Melamine From Trinidad and Tobago: On December 9, 2024, Commerce issued its Final Affirmative [Determination](#) in the CVD Duty Investigation.
- Organic Soybean Meal From India: On December 9, 2024, Commerce issued its Final [Results](#) and Partial Rescission of AD Duty Administrative Review; 2021–2023.
- Melamine From Germany: On December 9, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value.
- Melamine From Japan: On December 9, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part.
- Melamine From Qatar: On December 9, 2024, Commerce issued its Final Negative [Determination](#) of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances.
- Melamine From the Netherlands: On December 9, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value.
- Melamine From Trinidad and Tobago: On December 9, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part.
- Refillable Stainless Steel Kegs From the People’s Republic of China: On December 10, 2024, Commerce issued its Notice of Court Decision Not in Harmony With the Final Determination of AD Investigation; Notice of Amended Final [Determination](#); and Notice of Amended AD Duty Order.
- Ferrosilicon From Malaysia: On December 11, 2024, Commerce issued its Amended Preliminary [Determination](#) of Sales at Less Than Fair Value and Amended Preliminary Negative Determination of Critical Circumstances.
- Certain Brake Drums From the People’s Republic of China: On December 12, 2024, Commerce issued its Preliminary Affirmative CVD Duty [Determination](#) and Alignment of Final Determination With Final AD Duty Determination.
- Oil Country Tubular Goods From the People’s Republic of China: On December 18, 2024, Commerce issued its [Initiation](#) of Circumvention Inquiry on the AD and CVD Duty Orders.

- 1-Hydroxyethylidene-1, 1- Diphosphonic Acid From the People’s Republic of China: On December 19, 2024, Commerce issued its [Initiation](#) of Circumvention Inquiry of the AD and CVD Duty Orders.
- Certain Tungsten Shot From the People’s Republic of China: On December 20, 2024, Commerce issued its Preliminary Affirmative CVD Duty [Determination](#) and Alignment of Final Determination With Final AD Duty Determination.
- Disposable Aluminum Containers, Pans, Trays, and Lids From the People’s Republic of China: On December 30, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less Than Fair Value, and Preliminary Affirmative Determination of Critical Circumstances

### Administrative Reviews

- Diffusion-Annealed, Nickel-Plated Flat- Rolled Steel Products From Japan: On December 3, 2024, Commerce issued its Final [Results](#) of AD Duty Administrative Review; 2022–2023.
- Citric Acid and Certain Citrate Salts From the People’s Republic of China: On December 9, 2024, Commerce issued its Final [Results](#) of AD Duty Administrative Review; 2022–2023.
- Certain Carbon and Alloy Steel Cut-to- Length Plate From the Republic of Korea: On December 10, 2024, Commerce issued its Final [Results](#) of CVD Duty Administrative Review; 2022.
- Forged Steel Fittings From the People’s Republic of China: On December 10, 2024, Commerce issued its Final [Results](#) of the AD Duty Administrative Review; 2022–2023.
- Organic Soybean Meal From India: On December 10, 2024, Commerce issued its Final [Results](#) of CVD Duty Administrative Review; 2021–2022.
- Polyethylene Terephthalate Resin From the Sultanate of Oman: On December 11, 2024, Commerce issued its Final [Results](#) of AD Duty Administrative Review; 2022–2023.
- Large Diameter Welded Pipe From the Republic of Korea: On December 13, 2024, Commerce issued its Final [Results](#) of AD Duty Administrative Review; 2022–2023.
- Pure Magnesium From the People’s Republic of China: On December 13, 2024, Commerce issued its Final [Results](#) of AD Duty Administrative Review; 2022–2023.
- Glycine From Japan: On December 16, 2024, On December 16, 2024, Commerce issued its Final [Results](#) of AD Duty Administrative Review; 2022–2023.
- Certain Aluminum Foil From the People’s Republic of China: On December 17, 2024, Commerce issued its Amended Final [Results](#) of CVD Duty Administrative; 2022.
- Certain Carbon and Alloy Steel Cut-to- Length Plate From Belgium: On December 17 2024, Commerce issued its Final [Results](#) of AD Duty Administrative Review; 2022–2023.
- Certain Collated Steel Staples From the People’s Republic of China: On December 17, 2024, Commerce issued its Final [Results](#) of CVD Duty Administrative Review; 2022.
- Certain Corrosion-Resistant Steel Products From the Republic of Korea: On December 17, 2024, Commerce issued its Final [Results](#) of AD Duty Administrative Review; 2022–2023.
- Stainless Steel Sheet and Strip in Coils From Taiwan: On December 20, 2024, Commerce issued its Final [Results](#) of AD Duty Administrative Review and Final Determination of No Shipments; 2022–2023.
- Certain Steel Nails From the Sultanate of Oman: On December 30, 2024, Commerce issued its Final [Results](#) of AD Duty Administrative Review; 2022– 2023.
- Certain Steel Nails From the United Arab Emirates: On December 30, 2024, Commerce issued its Final [Results](#) of AD Duty Administrative Review; 2022–2023.
- Polyethylene Terephthalate Film, Sheet, and Strip From India: On December 30, 2024, Commerce issued its Final [Results](#) of CVD Duty Administrative Review; 2022.
- Silicomanganese From India: On December 30, 2024, Commerce issued its Final [Results](#) and Partial Rescission of AD Duty Administrative Review; 2022–2023

## Changed Circumstances Reviews

- Circular Welded Carbon Steel Standard Pipe and Tube Products From the Republic of Türkiye; Welded Line Pipe From the Republic of Türkiye; Certain Oil Tubular Goods From the Republic of Türkiye; and Large Diameter Welded Pipe From the Republic of Türkiye: On December 4, 2024, Commerce issued its Final [Results](#) of AD Duty Changed Circumstances Reviews.
- Circular Welded Carbon Steel Standard Pipe and Tube Products From the Republic of Türkiye; Welded Line Pipe From the Republic of Türkiye; Certain Oil Tubular Goods From the Republic of Türkiye; and Large Diameter Welded Pipe From the Republic of Türkiye: On December 4, 2024, Commerce issued its Final [Results](#) of CVD Duty Changed Circumstances Reviews.
- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: On December 12, 2024, Commerce issued its Notice of Final [Results](#) of Changed Circumstances Reviews

## Sunset Reviews

- Certain Steel Wheels 12 to 16.5 Inches in Diameter From the People’s Republic of China: On December 2, 2024, Commerce issued its Final [Results](#) of the Expedited First Sunset Review of the CVD Duty Order; 2024.
- Certain Steel Wheels 12 to 16.5 Inches in Diameter From the People’s Republic of China: On December 2, 2024, Commerce issued its Final [Results](#) of the Expedited First Sunset Review of the AD Duty Order.
- Certain Steel Racks and Parts Thereof From the People’s Republic of China: On December 6, 2024, Commerce issued its Final [Results](#) of the Expedited First Sunset Review of the CVD Duty Order.
- Steel Racks and Parts Thereof From the People’s Republic of China: On December 6, 2024, Commerce issued its Final [Results](#) of the Expedited Sunset Review of the CVD Duty Order.
- Laminated Woven Sacks From the Socialist Republic of Vietnam: Final Results of Expedited First Sunset Review of the AD Duty Order.
- Laminated Woven Sacks From the Socialist Republic of Vietnam: On December 11, 2024, Commerce issued its Final [Results](#) of Expedited First Sunset Review of the AD Duty Order.
- Laminated Woven Sacks From the Socialist Republic of Vietnam: On December 11, 2024, Commerce issued its Final [Results](#) of the Expedited First Sunset Review of the CVD Duty Order.
- Steel Wire Garment Hangers From the People’s Republic of China: On December 11, 2024, Commerce issued its Final [Results](#) of the Expedited Third Sunset Review of the AD Duty Order.
- Circular Welded Carbon Quality Steel Line Pipe From the People’s Republic of China: On December 26, 2024, Commerce issued its Final [Results](#) of the Expedited Sunset Review of the CVD Duty Order.

## Scope Ruling

- Aluminum Wire and Cable From the People’s Republic of China: On December 20, 2024, Commerce issued its Final Negative [Scope Ruling](#) With Respect to the Kingdom of Cambodia; Final Negative Determination of Circumvention With Respect to the Kingdom of Cambodia

## Circumvention

- None.

## U.S. INTERNATIONAL TRADE COMMISSION

### Section 701/731 Proceedings

#### Investigations

- Truck and Bus Tires From Thailand; On December 6, 2024, the ITC issued its affirmative [determination](#) of less-than-fair-value investigations.
- Paper File Folders From Cambodia and Sri Lanka; On December 10, 2024, the ITC issued its affirmative [determination](#) of less-than-fair-value investigations.
- Silicomanganese From India, Kazakhstan, and Venezuela Determinations (Fourth Review); On December 10, 2024, the ITC issued its [determination](#) to continue the CVD and AD orders as revocation would lead to the recurrence or continuation of material injury within a reasonably foreseeable time.
- Hard Empty Capsules From Brazil, China, India, and Vietnam; On December 13, 2024, the ITC issued its affirmative [determination](#) of less-than-fair-value investigations.
- Steel Concrete Reinforcing Bar (Rebar) From Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine (Fifth Review); On December 13, 2024, the ITC issued its [determination](#) to continue the AD orders as revocation would lead to the recurrence or continuation of material injury within a reasonably foreseeable time.
- Circular Welded Carbon-Quality Steel Pipe From China; On December 17, 2024, the ITC issued its [determination](#) to continue the CVD and AD orders as revocation would lead to the recurrence or continuation of material injury within a reasonably foreseeable time.
- Frozen Warmwater Shrimp From Ecuador, India, Indonesia, and Vietnam (Final); on December 17, 2024, the ITC issued its affirmative [determination](#) of less-than-fair-value investigations.
- Overhead Door Counterbalance Torsion Springs From China and India (Preliminary); On December 19, 2024, the ITC issued its affirmative [determination](#) of less-than-fair-value investigations.
- Raw Flexible Magnets From China and Taiwan (Third Review); On December 27, 2024, the ITC issued its [determination](#) to continue the CVD and AD orders as revocation would lead to the recurrence or continuation of material injury within a reasonably foreseeable time.

## U.S. CUSTOMS & BORDER PROTECTION

### [EAPA Case 7835: Lighthouse Rock](#)

On December 9, 2024, CBP issued the notice of determination as to evasion for EAPA case 7835 based on an allegation filed by CP Kelco U.S., Inc. against U.S. importer Lighthouse Rock Consulting LLC (“Lighthouse Rock”) for evasion of AD order A-570-985 on xanthan gum from China. Specifically, record evidence shows that Lighthouse Rock 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 Lighthouse Rock 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. 24-133: Tenaris Bay City, Inc. v. United States](#)

The Court upheld Commerce’s remand redetermination in the AD and CVD investigation of oil country tubular goods (“OCTG”) from Argentina, Mexico, Korea, and Russia. Plaintiffs, a coalition of importers and exporters opposing the redetermination, argued that Commerce’s final results should be remanded for several reasons: (1) potential undercounting in Commerce’s calculations, (2) whether Commerce’s calculations account solely for heat treatment processing, rather than including threading, and (3) the completeness of the industry source data. The Court rejected all three arguments, finding that Plaintiffs failed to exhaust their administrative remedies. Additionally, regarding Plaintiffs’ claim that Commerce failed to comply with the Court’s remand order by not demonstrating the accuracy of the industry support calculation and not addressing the potential double-counting of domestically produced OCTG, the Court found that Commerce’s determination was reasonable and supported by substantial evidence. The Court noted that Commerce had properly reviewed the record evidence submitted by Plaintiffs and explained its reasoning, as was required by the Court’s previous remand order. Therefore, the Court upheld Commerce’s remand redetermination.

### [Slip. Op. 24-134: SeAH Steel VINA Corp. v. United States](#)

The Court granted Commerce’s consent motion to complete the administrative record by allowing the inclusion of a 2012 analysis memorandum in a case involving the investigation of whether Vietnam was circumventing AD duty orders on pipes and tubes from India, as well as circular welded pipe from Korea and China. At issue was whether the administrative record should include a 2012 analysis memorandum from a prior AD case, which calculated the dumping margin for SeAH Steel VINA Corp. (“SeAH Steel”), a mandatory respondent in this investigation, after the administrative record had been submitted. SeAH Steel argued that the memorandum did not need to be included in the administrative record, as both parties could continue to cite and rely on its information, just as they would with Commerce’s issues and decision memoranda. The Court, however, disagreed, siding with Commerce. It held that the 2012 memorandum should be included in the record, noting that Commerce had considered it during the current proceeding. As a result, once Commerce used the memorandum in its decision-making process, it became part of the administrative record. The Court further noted concluded that SeAH Steel would not be harmed or prejudiced by the inclusion of the 2012 memorandum. Accordingly, the Court granted Commerce’s motion.

[Slip. Op. 24-135: Hyundai Steel Co. v. United States](#)

The Court granted in part and denied in part Hyundai Steel Co.’s (“Hyundai”) motion for judgment on the agency record. Hyundai argued that the Commerce’s determination that an electricity usage program run by the Government of Korea (“GOK”) was *de facto* specific was unsupported by substantial evidence and not in accordance with law. Hyundai also challenged the Commerce’s decision to rely on facts otherwise available instead of providing the GOK with an opportunity to provide accurate data was an abuse of discretion. The Court agreed with Hyundai on the first point, holding that Commerce must explain why and how the benefits at issue are disproportionate. On remand, Commerce must also explain how the combined industries it identified benefit more than would be expected, based on their usage, from the GOK’s program. The Court ruled in favor Commerce on the second issue, supporting its decision to use facts otherwise available. GOK had already been asked to provide data four times prior but had consistently submitted incomplete information. The Court also noted that there would not have been enough time to properly review the newly provided data. As a result, the Court held that the Commerce acted within its discretion when utilizing facts otherwise available in its analysis.

[Slip. Op. 24-136: Fedmet Res. Corp. v. United States](#)

The Court again remanded Commerce’s remand redetermination involving an AD and CVD order on certain magnesia carbon bricks (the “Order”). Specifically, Fedmet Resources Corporation (“Fedmet”), an importer of refractory bricks—heat-resistant masonry used to line blast furnace walls—challenged Commerce’s determination that certain of its blocks fell within the scope of the Order. The Court agreed with Fedmet, finding that Commerce applied the wrong legal standard by using a five-percent test that included low-alumina bricks. The Court held that using a five-percent test improperly expanded the scope of the Order. As a result, the Court remanded the issue to Commerce for redetermination.

**Slip. Op. 24-137: Zhejiang Sanmei Chem. Ind. Co. v. United States**

This opinion is confidential and will be summarized once the opinion is made public.

[Slip. Op. 24-138: California Steel Indus., Inc. v. United States](#)

The Court unsealed Slip Opinion 24-127, which involved Commerce’s denial of California Steel, Inc.’s (“CSI”) requests for exclusions from Section 232 national security tariffs on imported steel slabs. U.S. Steel, affected by the unsealing, sought to redact certain portions of the opinion, arguing that it contained sensitive information about the company’s ability to supply specific steel slab products on short notice. Although the information in question was several years old, U.S. Steel argued that disclosing such details regarding its capacity to deliver certain products in specific quantities and timeframes could weaken its negotiating position. The Court, however, rejected this argument, finding that U.S. Steel had failed to demonstrate how revealing this outdated data would harm its current competitive standing. Furthermore, the Court pointed out that U.S. Steel had previously made public statements about its ability to supply slabs within eight weeks, which undermined any confidentiality claim regarding the same information. As a result, the Court dismissed all requests for redactions and ordered the full unsealing of the opinion.

[Slip Op. 24-139: Neimenggu Fufeng Biotechnologies Co. v. United States](#)

The Court partially sustained Commerce’s final results of review in the eighth administrative review of an AD order on xanthan gum from China. The plaintiff, a Chinese producer of xanthan gum, challenged the determination on four arguments: (1) Commerce erred by directly valuing energy factors of production; (2) Commerce misclassified coal inputs under HTS subheading 2701.12.9000; (3) Commerce’s use of the “Cohen’s d test” in its differential pricing methodology

was unlawful; and (4) Commerce improperly deducted Section 301 duties from its export value calculation. Regarding the first argument, the Court remanded for reconsideration of the direct valuation of energy costs, finding that Commerce failed to explain the two different methodologies it used in the preliminary and final results. On the second point, the Court remanded the classification of coal under HTS subheading 2701.12.9000, ruling that the plaintiff's failure to exhaust its challenge did not bar judicial review, and the Commerce waived opposition to the classification. Next, the Court dismissed the plaintiff's "Cohen's d test" argument for lack of standing, as plaintiff could not show harm. Lastly, the Court upheld Commerce's deduction of Section 301 duties from export value, finding no error, as Commerce appropriately followed the Federal Circuit's guidance in *Wheatland Tube Co. v. United States*, 495 F.3d 1355, 1362 (Fed. Cir. 2007).

#### [Slip. Op. 24-140: Hardware Res., Inc. v. United States](#)

The Court remanded Commerce's final scope ruling, which determined that Hardware Resources' edge-glued boards fall within the scope of the AD and CVD orders on wood mouldings and millwork products from China. Commerce based its ruling on the physical description of the subject merchandise, finding that the boards are made of wood and continuously shaped, consistent with the plain language of the orders. Hardware Resources challenged this determination, arguing that Commerce overlooked a threshold requirement in the scope description. Specifically, Hardware Resources contended that Commerce failed to first determine whether the edge-glued boards qualified as a moulding or millwork product, as required by the scope description. Only after meeting this initial requirement, Hardware Resources argued, could the physical description of the subject merchandise apply. The Court agreed with Hardware Resources that the plain language of the orders required such a determination and remanded the final scope ruling to Commerce for reconsideration. The Court, however, did not address Hardware Resources' claim regarding Commerce's interpretation of an inherent end-use limitation in the scope description, nor did it consider Commerce's application of various interpretive sources and factors under 19 C.F.R. § 351.225(k) since it remanded the final scope ruling.

#### [Slip. Op. 24-141: Ad Hoc Coal. of Am. SAP Producers v. United States](#)

The Court sustained Commerce's remand results in the less-than-fair-value investigation of superabsorbent polymers ("SAP") from Korea. The remand involved changes to the model match hierarchy, incorporating a characteristic for the ability of SAP products to retain liquid, recognized in the industry as "centrifugal retention capacity" ("CRC"), measured in grams of saline solution retained per gram of SAP ("g/g"). LG Chem argued that Commerce's reversal to the preliminary model match was unsupported by evidence. The Court rejected that argument finding that all parties had agreed that CRC is the primary physical characteristic of SAP, with CRC in 6 g/g increments being commercially significant. Accordingly, the Court concluded that substantial evidence supported Commerce's return to its preliminary model match hierarchy.

#### [Slip. Op. 24-142: Shanghai Tainai Bearing Co. v. United States](#)

The Court sustained Commerce's remand results in the thirty-third administrative review of the AD order on tapered roller bearings from China. Shanghai Tainai Bearing Co., Ltd. (Tainai), a mandatory respondent, challenged Commerce's decision to use neutral facts available when reconsidering its application of facts available with an adverse inference against a cooperating respondent on the theory that it will incentivize unaffiliated third-party suppliers to cooperate. Tainai supported Commerce's determination to use neutral facts available but objected to the specific facts chosen by Commerce, claiming they were still detrimental and not neutral. In particular, Tainai challenged how Commerce valued certain components—rollers, cups, and cages—that it uses in the production of tapered roller bearings. Tainai contended that Commerce should revise its methodology to better reflect its business model, which involves purchasing some components for further assembly. However, Commerce determined that, because both Tainai and its suppliers operated within a non-market economy, it was appropriate to apply surrogate financial ratios, regardless of whether the components were manufactured or purchased. Tainai failed to cite any legal authority to support its position, and the Court found no reason to dispute Commerce's decision. Similarly, the Court upheld Commerce's decision to exclude additional revenue that Tainai received from customers in connection with Section 301 duties. Tainai had argued that Commerce should not cap this revenue, but the Court sided with Commerce's reasoning that this revenue was incidental to the importation of the subject merchandise. Specifically, the revenue was linked to Tainai's service of moving the goods through Customs rather than the sale of the goods themselves. As a result, the Court affirmed that Commerce's exclusion of the additional revenue associated with Section 301 duties was supported by substantial evidence.

#### [Slip. Op. 24-143: Shanghai Tainai Bearing Co. v. United States](#)

In a related case to *Slip Op. 24-142*, the Court rejected the claims brought by Plaintiff Shanghai Tainai Bearing Co., Ltd. and C&U Americas, LLC (collectively, "Tainai"), challenging Commerce's remand results in the thirty-fourth administrative review of the AD order on tapered roller bearings from China. Joined by Plaintiff-Intervenor Zhejiang Jingli Bearing Technology Co., Ltd. ("Jingli"), Tainai raised several claims of error against Commerce's final determination. However, the Court found all of these claims unpersuasive. First, the Court upheld Commerce's decision to

apply a partial adverse inference due to Tainai's failure to cooperate to the best of its ability during the review. Tainai had delayed reaching out to its suppliers until well after Commerce had requested such action, and the company failed to present any evidence of earlier communication with its suppliers. Next, the Court affirmed Commerce's exclusion of additional revenue that Tainai invoiced as Section 301 duty payments from U.S. price. Finally, the Court rejected Tainai's remaining claims, noting that they presented similar legal issues to those raised in its challenge to the thirty-third administrative review. In light of its previous decision in *Shanghai Tainai Bearing Co. v. United States* (Tainai I), 47 CIT \_\_\_, 658 F. Supp. 3d 1269 (2023), the Court applied the same legal reasoning to the facts of the current case and reject them as well.

#### [Slip. Op. 24-144: Risen Energy Co. v. United States](#)

The Court sustained Commerce's remand results to recalculate the portion of the CVD rate attributable to the Export Buyer's Credit Program ("EBCP"). As no party objected, and consistent with its prior opinion, the Court approved Commerce's decision to delete the entire amount attributable to EBCP from the CVD rate.

#### [Slip. Op. 24-145: G&H Diversified Mfg. LP v. United States](#)

The Court denied G&H Diversified Manufacturing LP's ("G&H") motion for judgment on the pleadings in a case challenging CBP's denial of its protest. G&H argued that CBP improperly changed the HTSUS classification of certain steel tubes after CBP had previously affirmed the classification on multiple prior occasions. First, G&H claimed that CBP had affirmed the classification under HTSUS 7304.29.6115 when the Bureau of Industry and Security ("BIS") posted and granted G&H's exclusion request. The Court held that whether the BIS's posting and regulations could bind CBP was matter still in dispute. G&H also argued that CBP affirmed the classification by issuing a notice of liquidation, but the Court found factual and legal questions existed about whether the auto-liquidation constituted a determination by CBP. Next, regarding G&H's claim that the protest denial was issued without notice or a hearing, the Court explained that G&H had failed to pursue all its available administrative remedies and could not claim the protest denial was issued without notice or a hearing. Finally, the Court rejected G&H's claim that Customs altered a "material term" of the entry without reliquidation, noting that G&H did not cite legal authority for this argument. Consequently, the Court denied the motion for judgment.

#### [Slip. Op. 24-146: Dexter Distrib. Grp. LLC v. United States](#)

The Court denied Lionshead Specialty Tire & Wheel LLC's ("Lionshead") motion to amend a preliminary injunction, which suspended the liquidation of certain trailer wheels. The case involved AD and CVD orders on steel trailer wheels from China, with Commerce determining that "Method A" and "Method C" wheels are within the scope, while "Method B" wheels are not. Plaintiffs, including Lionshead, challenged CBP's final evasion determination under the EAPA. At the request of one of the Plaintiffs, the Court issued a preliminary injunction enjoined the liquidating entries of steel trailer wheels subject to CBP's EAPA determination. Lionshead sought to modify the injunction to allow the liquidation of wheels outside the scope of the orders. The Court rejected the modification explaining that Lionshead failed to demonstrate changed circumstances that warranted a modification. The Court noted that Lionshead did not demonstrate harm from the current injunction or that modifying it would prevent inequity, especially since Lionshead conceded that the change would not make a material difference. Finally, even if Lionshead had shown changed circumstances, the Court noted that allowing liquidation of certain wheels would effectively reverse CBP's determination that none of Lionshead's wheels are Method B wheels, an inappropriate Court action since that determination has not yet been properly challenged at this stage of the litigation.

## **COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

### *Summary of Decisions*

#### [Appeal No. 23-1550: Risen Energy Co., Ltd. v. United States](#)

The Federal Circuit on December 9, 2024, upheld Commerce's decision in the 2016-207 AD administrative review on solar cells from China. The main issue on appeal was whether Commerce's decision was supported by substantial evidence for its choice of surrogate values used to calculate normal value. The Court of International Trade had sustained Commerce's underlying administrative decision in entirety. While agreeing that Commerce had supported its use of the surrogate values for the raw material inputs for backsheet and ethyl vinyl acetate, the Court found that Commerce had not adequately supported its choices or approach in the use of surrogate financial ratios. In the underlying administrative proceeding, Commerce had recalculated the surrogate financial ratios and utilized a revised overhead ratio of 21.7% for Risen. The court disagreed with Commerce's interpretation of the footnotes to the financial statement stating that Commerce's recalculations



were not “supported by the financial statement upon which it relies.” The court sustained the CIT’s decision with respect to the valuation of the surrogate value inputs and remanded the calculation of the surrogate financial overhead ratio to be consistent with the opinion.

[Appeal No. 23-1570: Meyer Corporation, US v. United States](#)

The Federal Circuit remanded an appeal from the Court of International Trade on Meyer Corp.’s first-sale price valuation methodology. The Federal Circuit disagreed with the lower courts decision and effectively told the CIT that it had wrongly determined that Meyer’s valuation methodology was prohibited. The decision orders the CIT to reconsider whether Customs was wrong to reject the first-sale price that Meyer used on its imports as it was based on the price paid by the distributor to the manufacturer. All of whom are owned by the same parent –Meyer. In the underlying administrative decision Customs found that Meyer should have reported the value that it paid to the distributors and that is the amount that is subject to import duties. The Federal Circuit in its decision focused on the fact that when a buyer and seller are related, the Customs can still rely on that price if the relationship did not “influence the price actually paid or payable” or if those prices are at arm’s length when compared to the value of similar merchandise sold to unrelated buyers.

The Court of International trade said in both its initial decision and its second decision that Meyer International had failed to share financial documents that would enable Customs to assess if the prices reported using the costs-plus-profit analysis were consistent with being treated as a bona-fide sale. The lower court’s focus in its decisions was on the uncooperative nature of Meyer International (the ultimate parent company) even when it knew that its first-sale valuation was rejected by the court. The Federal Circuit disagreed with the CIT on the grounds that while other provisions of the statute provide for an adverse inference against uncooperative parties, the provision governing the assessment of transaction value at 19 U.S.C. § 1401a(b)(2)(B) does not. The Appellate Court found this particularly troubling because the lower court ignored other record evidence produced by the Appellant to support its claims. The appellate court also opined that the CIT should have considered both types of evidence for Meyer to justify its first-sale pricing. The case was remanded to the CIT for reconsideration.