

TRADE LAW UPDATE



IN THIS ISSUE

[Highlights From January](#)

[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](#)

January 2024

HIGHLIGHTS FROM JANUARY

[The Application of Force Majeure Provisions to Shipping Disputes](#)

Beginning in mid-November 2023, container ships transiting the Red Sea/Gulf of Aden region have been the target of attacks or have been involved in near-miss incidents. On January 2, 2024, A.P. Moller – Maersk announced that it intends to “pause all vessels bound for the Red Sea/Gulf of Aden” and that all Maersk vessels bound for the region “will be diverted south around the Cape of Good Hope for the foreseeable future.” German carrier Hapag-Lloyd has gone a step further, declaring that the ongoing hostilities and threats to the safety of vessels in the region are sufficient to invoke the Matters Affecting Performance—i.e., the force majeure clause—of its Sea Waybill Terms and Conditions. Hapag-Lloyd is likewise routing its vessels around the Cape of Good Hope.

[FMC Allows Rate Hikes for Carriers in Response to Red Sea Hostilities](#)

The Federal Maritime Commission (FMC) has granted special permission to ocean carriers to immediately increase the rates on containers that are being rerouted around the Cape of Good Hope in Africa or are retaining feeder vessels for pickup of cargo at high-risk ports in the Red Sea due to increased hostilities. Since mid-November 2023, Houthi rebels based in Yemen have attacked Red Sea shipping bound for Israel or linked to Israeli ports. Reported security incidents have ranged from outright attacks, approaches, and business interruptions to mere sightings..

[Petition Summary: Certain Paper Plates from the People’s Republic of China, the Kingdom of Thailand and the Socialist Republic of Vietnam](#)

On January 24, 2024, the AJM Packaging Corporation (“AJM”), Aspen Products, Inc. (“Aspen”), Dart Container Corporation (“Dart”), Hoffmaster Group, Inc. (“Hoffmaster”), Huhtamaki Americas, Inc. (“Huhtamaki”), and Unique Industries, Inc. (“Unique”), collectively known as the American Paper Plate Coalition (the “APPC” or “Petitioner”), filed a petition for the imposition of antidumping duties on imports of certain paper plates from the People’s Republic of China, the Kingdom of Thailand and the Socialist Republic of Vietnam and countervailing duties on imports of certain paper plates from the People’s Republic of China, and the Socialist Republic of Vietnam.

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 Shopping Bags From Cambodia: On January 3, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, Postponement of Final Determination, and Extension of Provisional Measures.
- Certain Paper Shopping Bags From Colombia: On January 3, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures.
- Certain Paper Shopping Bags From India: On January 3, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures.
- Certain Paper Shopping Bags From Malaysia: On January 3, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less-Than-Fair-Value.
- Certain Paper Shopping Bags From Portugal: On January 3, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, and Postponement of Final Determination, and Extension of Provisional Measures.
- Certain Paper Shopping Bags From Taiwan: On January 3, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures.
- Certain Paper Shopping Bags From the People’s Republic of China: On January 3, 2024, Commerce issued its Preliminary Affirmative [Determinations](#) of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures.
- Certain Paper Shopping Bags From the Republic of Turkey: On January 3, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less Than Fair Value.
- Certain Paper Shopping Bags From the Socialist Republic of Vietnam: On January 3, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less Than Fair Value, Preliminary Affirmative Critical Circumstances Determination, Postponement of Final Determination, and Extension of Provisional Measures.
- Mattresses From Thailand: On January 4, 2024, Commerce issued its Notice of Court Decision Not in Harmony With the Final Determination of Antidumping Investigation; Notice of Amended Final [Determination](#); Notice of Amended Order, in Part.
- Tin Mill Products From the People’s Republic of China: On January 10, 2024, Commerce issued its Final Affirmative Countervailing Duty [Determination](#) and Final Affirmative Critical Circumstances Determination, in Part.
- Tin Mill Products From Canada: On January 10, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances.
- Tin Mill Products From Germany: On January 10, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances.
- Tin Mill Products From Taiwan: On January 10, 2024, Commerce issued its Final Negative [Determination](#) of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances.
- Tin Mill Products From the Netherlands: On January 10, 2024, Commerce issued its Final Negative [Determination](#) of Sales at Less Than Fair Value.
- Tin Mill Products From the People’s Republic of China: On January 10, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less-ThanFair Value and Final Affirmative Determination of Critical Circumstances.

- Tin Mill Products From the Republic of Korea: On January 10, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value.
- Tin Mill Products From the Republic of Turkey: On January 10, 2024, Commerce issued its Final Negative [Determination](#) of Sales at Less Than Fair Value.
- Tin Mill Products From the United Kingdom: On January 10, 2024, Commerce issued its Final Negative [Determination](#) of Sales at Less Than Fair Value.
- Certain Carbon and Alloy Steel Cut-toLength Plate From the Federal Republic of Germany: On January 11, 2024, Commerce issued its Notice of Court Decision Not in Harmony With the Amended Final [Determination](#) of Antidumping Investigation; Notice of Second Amended Final Determination.
- Boltless Steel Shelving Units Prepackaged for Sale From Thailand: On January 24, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less Than Fair Value and Amended Preliminary Determination of Sales at Less Than Fair Value; Correction.
- Certain Glass Wine Bottles From the People’s Republic of China: On January 25, 2024, Commerce issued its [Initiation](#) of Countervailing Duty Investigation.
- Certain Glass Wine Bottles From Chile, the People’s Republic of China, and Mexico: On January 25, 2024, Commerce issued its [Initiation](#) of Less-Than-Fair Value Investigations.
- Phosphate Fertilizers From the Russian Federation: On January 29, 2024, Commerce issued its Notice of Court Decision Not in Harmony With the Final Determination of Countervailing Duty Investigation; Notice of Amended Final [Determination](#) and Amended Countervailing Duty Order.
- Antidumping and Countervailing Duty Orders on Certain Collated Steel Staples From the People’s Republic of China: On January 30, 2024, Commerce issued its Final Affirmative [Determinations](#) of Circumvention With Respect to the Kingdom of Thailand and the Socialist Republic of Vietnam

Administrative Reviews

- Glycine From India: On January 2, 2024, Commerce issued its Final [Results](#) of Countervailing Duty Administrative Review (2021).
- Prestressed Concrete Steel Wire Strand From Malaysia: On January 3, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review (2020–2022).
- Chlorinated Isocyanurates From the People’s Republic of China: On January 4, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review (2021–2022).
- Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From Italy: On January 10, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2021–2022.
- Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People’s Republic of China: On January 10, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2021–2022.
- Certain Oil Country Tubular Goods From the Republic of Korea: On January 12, 2024, Commerce issued its Notice of Court Decision Not in Harmony With the Results of Antidumping Duty Administrative Review; Notice of Amended Final [Results](#); Correction.
- Certain Pasta From Italy: On January 18, 2024, Commerce issued its Final [Results](#) of Countervailing Duty Administrative Review (2021).
- Large Diameter Welded Pipe From Canada: On January 18, 2024, Commerce issued its Amended Final [Results](#) of Antidumping Duty Administrative Review; 2021–2022
- Passenger Vehicle and Light Truck Tires From Thailand: On January 29, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2021–2022.
- Polyethylene Terephthalate Film, Sheet, and Strip From India: On January 29, 2024, Commerce issued its Final [Results](#) of Countervailing Duty Administrative Review; 2021

Changed Circumstances Reviews

- None

Sunset Reviews

- Stainless Steel Bar From India: On January 3, 2024, Commerce issued its Final [Results](#) of the Expedited Fifth Sunset Review of the Antidumping Duty Order.
- Large Power Transformers From the Republic of Korea: On January 3, 2024, Commerce issued its Final [Results](#) of the Expedited Second Sunset Review of the Antidumping Duty Order.

Scope Ruling

- None

Circumvention

- None

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

Investigations

- Paper Plates From China, Thailand, and Vietnam; On January 31, 2024, the ITC issued its Institution of Antidumping and Countervailing Duty [Investigations](#) and Scheduling of Preliminary Phase Investigations.

U.S. CUSTOMS & BORDER PROTECTION

[EAPA Case Number 7811: Suzhou Quality Import and Export Co.](#)

On January 23, 2024, CBP issued a Notice of Determination related to importer Suzhou Quality Import and Export Co. (“Suzhou Quality”). CBP determined there is substantial evidence that Suzhou Quality entered covered merchandise for consumption into the customs territory of the United States through evasion. Specifically, Suzhou Quality imported into the United States Chinese-origin aluminum extrusions but did not enter these extrusions as subject to the AD/CVD orders.

COURT OF INTERNATIONAL TRADE Summary of Decisions

[Slip Op. 24-1 Oman Fasteners v. United States](#)

The Court sustained Commerce’s remand redetermination in the 2020-2021 antidumping administrative review of steel nails from plaintiff Oman Fasteners. In the underlying review, Commerce rejected a questionnaire response from Oman because it was submitted 16 minutes past the deadline. The Court ruled that Commerce had abused its discretion and ordered it to consider the response for the purpose of recalculating Oman’s rate. Commerce recalculated the rate to zero, which domestic producer Mid Continent Steel & Wire challenged, on the basis that Commerce used quarterly costs instead of its standard annual costs, and because Commerce deducted Section 232 steel duties from only three of Oman entries. In both cases, the Court ruled that Commerce’s determinations were supported by substantial evidence. First, the Court found that Commerce used quarterly adjustments relied on by Oman, and substantial evidence supported Commerce’s decision to base its cost-averaging analysis on Oman’s quarterly, rather than annual, data. The Court also noted that Mid Continent cited no evidence that Oman’s pricing reflected amounts attributed to Section 232 duties, and that Commerce’s decision not to deduct Section 232 duties, except as to three entries for which Oman actually paid them, was lawful and supported by substantial evidence.

[Slip Op. 24-2 CVB v. United States](#)

The Court denied the ITC’s motion to retract an opinion issued by the Court on the basis that it contained unredacted business proprietary information (BPI). The opinion at issue affirmed the ITC’s injury determination in the AD/CVD investigation on

mattresses, and the ITC's subsequent motion to retract argued that the names of companies responding to the ITC's questionnaire, as well as the numerical approximations used by the Court to discuss the general condition of the mattress market, should be kept confidential. Noting the importance of transparency in the judicial system, the Court ruled that the company names were not BPI because the ITC failed to bracket the information, and a "voluminous" record does not excuse the ITC's non-compliance. With respect to the numerical approximations, the Court noted that general market trend information is "precisely the type of information" that the ITC's questionnaires acknowledge to be non-confidential and is freely provided to the public.

[Slip Op. 24-3 Columbia Aluminum v. United States](#)

In a case involving an EAPA affirmative determination of evasion, the Court granted the importer Columbia Aluminum Products, LLC's motion for judgment on the agency record, finding that Columbia had not evaded the AD/CVD orders on Chinese aluminum extrusion. In the underlying proceeding, CBP, based on Commerce's scope and circumvention rulings, determined that Columbia was evading the orders by importing door thresholds assembled in Vietnam using Chinese aluminum extrusions. Ruling against CBP, the Court noted that 1) there was no record evidence that Columbia transshipped the thresholds from China through Vietnam, 2) Commerce's circumvention finding does not apply to assembled goods from Vietnam where the aluminum extrusion is only one among many components, and 3) CBP erred in initiating its investigation in the first place as the orders do not apply to assembled door thresholds made in a third country.

[Slip Op. 24-4 Mosaic v. United States](#)

The Court affirmed Commerce's remand redetermination regarding the recalculation of plaintiff Phosagro PJSC, JSC Apatit's (PJSC) mining rights subsidy calculation in the CVD investigation of phosphate fertilizers from Russia. As a result of the first remand, Commerce used PJSC's "Profit Before Tax" value rather than its "Gross Profit Calculation" value. PJSC objected, arguing that Commerce should use the "Gross" value as it includes additional expenses, or that Commerce should add additional expenses to "Profit." The Court disagreed, holding that Commerce adequately explained that using the "Profit" value would include unrelated costs, and that Commerce's determination was therefore supported by substantial evidence.

[Slip Op. 24-5 SGS Sports Inc. v. United States](#)

The Court ruled that merchandise initially imported into the United States, then exported under a leasing arrangement, and subsequently reimported, qualifies for an exemption from duties under HTSUS 9801.00.20. Ordinarily, importers are required to pay duties on goods that are imported, exported, and reimported into the United States pursuant 19 C.F.R. § 141.2. However, HTSUS subheading 9801.00.20 exempts goods involved in a lease or similar contractual agreement from this requirement, and in a previous decision, the Court previously found that the goods in question were "exported from the United States under a lease or similar use agreement." Accordingly, the Court confirmed the duty-free status of the goods.

[Slip Op. 24-6 HLD v. United States](#)

The Court affirmed Commerce's determination that oil country tubular goods (oil piping) from China are circumventing the AD/CVD orders on oil piping via exports from Brunei and the Philippines. Brunei and Philippines exporters, HGDS (B) Steel SDN BHD and HLD Clark Steel Pipe Co., Inc. (together, HLD), challenged Commerce's determination, which HLD argued was, at its core, based on an inappropriate comparison of the production of the oil piping in Brunei and the Philippines and the production of hot-rolled steel inputs in China. The Court disagreed, finding that Commerce reasonably explained that the level of investment and production facilities necessary for the steel inputs in China was much larger, and the production process more complex, than for the oil piping in Brunei and the Philippines. Further, Commerce's approach was consistent with the Federal Circuit's recent decision in Al Ghurair Iron & Steel LLC v. United States. Finally, Commerce followed the relevant statutory directive in determining whether to initiate its anti-circumvention investigation.

[Slip Op. 24-7 Phoenix Metal Co. v. United States](#)

The Court denied CBP's motion for a voluntary remand in an EAPA case involving Chinese cast iron soil pipe (soil pipe). Plaintiff/importer Phoenix Metal Co. challenged CBP's determination that it was evading the soil pipe AD/CVD orders by comingling Chinese and Cambodian soil pipe. In its motion for judgment on the agency record, Phoenix argued that CBP unlawfully withheld confidential business information (CBI) in the underlying investigation, and the Government moved for

voluntary remand in light of the intervening Royal Brush decision holding that an importer has a due process right to access CBPI used against it in an EAPA investigation. The Court denied the Government's motion because it did not establish the requisite tie with "intervening events" or provide a "compelling justification" for the request. The Court also noted that the purpose of disclosing CBI pursuant to CBP's motion was "unclear," as the Court already issued a judicial protective order. The Court set a deadline for the Government and defendant-intervenor to respond to plaintiff's motion.

[Slip Op. 24-08 Fraserview Remanufacturing Inc. v. United States, Et Al.](#)

In this case, the plaintiff challenged CBP's designation of 80 entries of softwood lumber imports from Canada as "deemed liquidated." The entries were subject to Commerce's first administrative review of the AD/CVD orders on certain softwood lumber products from Canada. Plaintiff argued that the Court had subject matter jurisdiction to hear the case under 28 U.S.C. § 1581(i), the Court's residual jurisdiction provision, while the Government claimed that the Court lacked jurisdiction because plaintiff failed to timely protest the designation. The Court held that plaintiff's entries were never liquidated because the statutory requirements for deemed liquidation were not met, and that the Court had jurisdiction to hear the case. The Court further ordered CBP to correct the liquidation status of plaintiff's entries.

[Slip Op. 24-09 Ildico Inc. v. United States](#)

The Court granted a Rule 37 motion for sanctions against the plaintiff's counsel, who failed to provide during discovery photographs that contained written information not included in the documents previously produced in discovery. The Court rejected the plaintiff counsel's excuse of only recently becoming aware of the company's internal internet site, noting the commonplace nature of such corporate networks.

[Slip Op. 24-10 Spirit AeroSystems Inc. v. United States](#)

The Court upheld CBP's decision to deny plaintiff's claim for substituted unused merchandise drawback on imported aircraft parts pursuant to 19 U.S.C. § 1313(j). The Government argued that pursuant to the statute, drawback is unavailable when the 8-digit subheading under which the imported merchandise is classified begins with "other," and here, the merchandise was classified as "Other parts of airplanes or helicopters" of subheading 8803.30.00. Plaintiff claimed that the merchandise was still eligible for duty drawback because the statute mandates that drawback is available even when an 8-digit subheading starts with "other," if the imported merchandise and the exported or destroyed merchandise are classified in the same 10-digit provision, and that provision does not begin with the term "other." While the 10-digit provision here began with "other," plaintiff argued that the preceding indented text was "for use in civil aircraft," not "other." The Court rejected this argument, explaining that the statute's plain language does not consider such descriptive text and only focuses on aligned text of the actual HTSUS numerical code. Therefore, since subheading 8803.30.0030's article description begins with "other," the Court granted the Government's summary judgment motion.

[Slip Op. 24-11 New American Keg, d/b/a American Keg Company v. United States](#)

The Court held that Commerce's reopening of the record in an antidumping case to use data from countries that produce identical, as opposed to merely comparable goods, was arbitrary and capricious because there was no need for more accurate data. The Court first noted that while Commerce can use figures from countries that produce comparable products when there are "data difficulties" with countries that produce identical products, there was no such difficulty here. The Court further explained that the burden of creating an adequate record lies with the parties at interest. As such, Commerce can supplement the record only when the information on the record is inaccurate or otherwise unsuitable for calculation.

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

The Federal Circuit issued no substantive decisions in January.