

TRADE LAW UPDATE



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July 2023

HIGHLIGHTS FROM JULY

[Bipartisan Group of Senators Calls on Trade Community for Input on Modernizing Customs Laws](#)

On June 13, 2023 a bipartisan group of Senators on the Finance Committee released an [open letter](#) requesting input from the trade community on how to modernize U.S. customs laws to ensure the U.S. remains competitive in the global market. The letter highlights four specific topics on which they are seeking feedback: (1) improving trade facilitation, (2) enhancing key security programs, (3) balancing security/enforcement and trade facilitation, and (4) economic benefits from the suggested improvements for trade facilitation. Responses are due by July 11, 2023, and Congress will use the input to help inform its future deliberations.

[U.S. and India Agree to terminate Six Outstanding Disputes at The World Trade Organization](#)

On June 22, 2023, the United States Trade Representative (USTR) [announced](#) that the United States and India reached an agreement to terminate ongoing disputes at the World Trade Organization (WTO). Additionally, India agreed to remove retaliatory tariffs implemented against certain U.S. products in response to the U.S.'s institution of Section 232 tariffs on steel and aluminum in 2018.

[Petition Summary: Import of Certain Pea Proteins from China](#)

On June 12, 2023, PURIS Proteins, LLC (“Petitioner”) filed a petition for the imposition of antidumping duties and countervailing duties on U.S. imports of certain pea protein from China.

[Petition Summary: Imports of Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Indonesia, Italy, Kosovo, Mexico, Philippines, Poland, Slovenia, Spain and Taiwan](#)

On July 28, 2023, Brooklyn Bedding LLC; Carpenter Co., Corsicana Mattress Company; Future Foam, Inc.; FXI, Inc.; Kolcraft Enterprises, Inc.; Leggett & Platt, Incorporated; Serta Simmons Bedding, LLC; Southerland, Inc.; Tempur Sealy International; the International Brotherhood of Teamsters, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO (“USW”) (collectively, the “Mattress Petitioners”) filed a petition for the imposition of antidumping duties on U.S. imports of mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India,

Italy, Kosovo, Mexico, Philippines, Poland, Slovenia, Spain, and Taiwan, as well as the imposition of countervailing duties on subsidized imports of mattresses from Indonesia.

U.S. DEPARTMENT OF COMMERCE DECISIONS

Investigations

- Hydrofluorocarbon Blends From the People’s Republic of China: On July 7, 2023, Commerce issued its [initiation](#) of circumvention inquiries on the antidumping duty order.
- Alloy and Certain Carbon Steel Threaded Rod From the People’s Republic of China; Carbon and Alloy Steel Threaded Rod From the People’s Republic of China: On July 12, 2023, Commerce issued its [initiation](#) of circumvention inquiries on the antidumping duty order and countervailing duty order.
- Common Alloy Aluminum Sheet From the People’s Republic of China: On July 13, 2023, Commerce issued its [initiation](#) of circumvention inquiry of the antidumping and countervailing duty orders; aluminum sheet further processed in the Republic of Korea.
- Certain Frozen Warmwater Shrimp From India: On July 21, 2023, Commerce issued its notice of [initiation](#) of antidumping duty changed circumstances review.
- Certain Softwood Lumber From Canada: On July 27, 2023, Commerce issued its [notice](#) of initiation of changed circumstances review.
- Common Alloy Aluminum Sheet From Germany: On July 31, 2023, Commerce issued its [notice](#) of initiation of changed circumstances review, and consideration of revocation, in part, of the antidumping duty order.
- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: On July 31, 2023, Commerce issued its [notice](#) of initiation of changed circumstances reviews, and consideration of revocation of the antidumping and countervailing duty orders, in part.
- Prestressed Concrete Steel Wire Strand From Mexico: On July 31, 2023, Commerce issued its [initiation](#) of circumvention inquiry on the antidumping duty order.

Administrative Reviews

- Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From India: On July 3, 2023, Commerce issued its final [results](#) of antidumping duty administrative reviews of Goodluck India Limited (2017–2019 and 2019– 2020) correction.
- Certain Frozen Warmwater Shrimp From Thailand: On July 5, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2021–2022).
- Common Alloy Aluminum Sheet From Croatia: On July 7, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2020– 2022).
- Common Alloy Aluminum Sheet From Slovenia: On July 7, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2020– 2022).
- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: On July 7, 2023, Commerce issued its final [results](#) of antidumping duty administrative review and final determination of no shipments (2020– 2021).
- Agreement Suspending the Antidumping Duty Investigation on Sugar From Mexico: On July 10, 2023, Commerce issued its final [results](#) of the 2020–2021 administrative review.
- Agreement Suspending the Countervailing Duty Investigation on Sugar From Mexico: On July 10, 2023, Commerce issued its final [results](#) of the 2021 administrative review.
- Certain Passenger Vehicles and Light Truck Tires From the People’s Republic of China: On July 10, 2023, Commerce issued its final [results](#) of countervailing duty administrative review and rescission, in part (2021).
- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: On July 11, 2023, Commerce issued its final [results](#) and partial rescission of countervailing duty administrative review (2020).

- Truck and Bus Tires From the People’s Republic of China: on July 12, 2023, Commerce issued its final [results](#) and partial rescission of countervailing duty administrative review (2021).
- Certain Stilbenic Optical Brightening Agents From Taiwan: On July 17, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2021–2022).
- Diamond Sawblades and Parts Thereof, From the People’s Republic of China: On July 21, 2023, Commerce issued its notice of court decision not in harmony with the final [results](#) of antidumping administrative review; notice of amended final results.
- Prestressed Concrete Steel Wire Strand From Thailand: On July 24, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2021).
- Forged Steel Fluid End Blocks From India: On July 27, 2023, Commerce issued its final [results](#) of countervailing duty administrative review (2020– 2021).
- Welded Stainless Pressure Pipe From India: On July 27, 2023, Commerce issued its amended final [results](#) of antidumping duty administrative review (2020–2021).
- Steel Concrete Reinforcing Bar From Mexico: On July 28, 2023, Commerce issued its amended final [results](#) of antidumping duty administrative review (2020–2021).

Changed Circumstances Reviews

- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: On July 3, Commerce issued its final [results](#) of changed circumstances reviews, and intent to revoke the antidumping and countervailing duty orders, in part.
- Crystalline Silicon Photovoltaic Products From the People’s Republic of China: On July 3, 2023, Commerce issued its final [results](#) of changed circumstances reviews, and intent to revoke the antidumping and countervailing duty orders, in part.

Sunset Reviews

- Steel Wire Garment Hangers From the Socialist Republic of Vietnam: On July 10, 2023, Commerce issued its final [results](#) of the expedited sunset review of the countervailing duty order.

Scope Ruling

- Certain Hardwood Plywood Products From the People’s Republic of China: On July 20, 2023, Commerce issued its final [scope](#) determination and affirmative final determination of circumvention of the antidumping and countervailing duty orders

Circumvention

- Common Alloy Aluminum Sheet From the People’s Republic of China: On July 27, 2023, Commerce issued its affirmative final [determination](#) of circumvention of the antidumping and countervailing duty orders (4017 Aluminum Sheet).

U.S. INTERNATIONAL TRADE COMMISSION

Section 701/731 Proceedings

Investigations

- Certain Semiconductor Devices, and Methods of Manufacturing Same and Products Containing the Same; On July 3, 2023, ITC issued its [institution](#) of investigation.
- Tool Chests and Cabinets From China and Vietnam; On July 12, 2023, the ITC issued its [determinations](#) (correction)
- Certain Pea Protein From China; On July 18, 2023, ITC issued its [institution](#) of antidumping and countervailing duty investigations and scheduling of preliminary phase investigations.



U.S. CUSTOMS & BORDER PROTECTION

[EAPA Case 7730 – Double L Group, LLC and Manufacturing Network Inc.](#)

On July 21, 2023, CBP issued a notice of determination as to evasion against Double L Group, LLC (“Double L”) and Manufacturing Network Inc. (“MNI”) (collectively the “Importers”). CBP is investigating whether Importers evaded antidumping duty and countervailing duty orders (“Orders”) on steel grating from the People’s Republic of China. Specifically the allegation suggested that Importers evaded Orders by entering Chinese-origin steel grating into the United States and misclassifying it as non-covered merchandise. As a result, no cash deposits were applied to the steel grating at the time of entry.

[EAPA Case 7718 – Zinus Inc.](#)

On July 21, 2023, CBP issued a notice of determination as to evasion stating that there is substantial evidence that Zinus Inc. (USA) (“Zinus US”) entered merchandise covered by antidumping (“AD”) duty order (A-570-890) on wooden bedroom furniture (“WBF”) from the People’s Republic of China into the customs territory of the United States through evasion. Specifically, CBP determined that there is substantial evidence that Zinus US imported Chinese-origin WBF by using a general product description and also misclassified the WBF as a non-covered merchandise not subject to the AD duty order. Additional evidence also indicates that while Zinus US provided certain accurate identifying information on entry documents, the company failed to file the entries as type “03” for merchandise subject to the Order, and instead filed type “01” entries without listing the appropriate AD Order. As a result, no cash deposits were applied to the merchandise at the time of entry.

COURT OF INTERNATIONAL TRADE

Summary of Decisions

[Slip Op 23-96, GreenFirst Forest Products et. al. v. United States](#)

The Court remanded Commerce’s decision not to conduct a changed circumstances review to determine whether GreenFirst was a successor-in-interest to an acquired company subject to the countervailing duty order on certain softwood lumber products from Canada. While Commerce has a practice of not conducting successor-in-interest changed circumstances reviews when there is evidence of significant changes to the company, the Court found that Commerce had not adequately explained why this practice applied in this case, because the predecessor company had not been individually examined and there was no inherited “calculated” rate.

[Slip Op 23-97, Catfish Farmers of America et. al. v. United States](#)

The Court partially remanded Commerce’s final determination in its administrative review of the antidumping duty order on certain frozen fish fillets from Vietnam. The Court found that Commerce applied the wrong legal standard in selecting India as the primary surrogate country, and that including Indonesia as a country with an economy “comparable” to Vietnam, based on per capita gross national income “via unspecified means,” was not supported by substantial evidence. The Court upheld Commerce’s decision to apply the Vietnam-wide rate to a company that had not provided questionnaire responses during the administrative review, as well as its decision to apply a separate rate to a company that did not report all of its affiliated companies or demonstrate that they were free from government influence. Finally, the Court found that Catfish Farmers cannot object to Commerce’s methodology for calculating the rate applied to defendant-intervenor, because it did not raise the issue before Commerce and therefore did not exhaust its administrative remedies.

[Slip Op 23-98, KG Dongbu Steel Co., Ltd., et. al. v. United States](#)

The Court remanded Commerce’s final determination in its administrative review of the countervailing duty order on certain corrosion-resistant steel products from Korea. At issue was Commerce’s finding that three debt-to-equity restructurings provided a countervailable subsidy to plaintiffs, when Commerce had previously found that no countervailable subsidy existed. The Court found that Commerce departed from its established practice for reexamining the countervailability of equity infusions by not providing a sufficient explanation or citing new information on the record. The Court also remanded the issues of whether Commerce’s determination that the benefits from the restructurings passed through to KG Dongbu despite a change in ownership, and whether its uncreditworthy benchmark rate and unequityworthy discount rate determinations, were supported by substantial evidence.

[Slip Op 23-99, The Mosaic Company et. al. v. United States](#)

The Court partially sustained and partially remanded Commerce’s remand results in the countervailing duty investigation of phosphate fertilizers from Russia. First, the Court found that Commerce sufficiently explained that its tier-three benchmark calculation for natural gas did not include the import-specific 20% VAT and 5% import duty in calculating the benefit received by mandatory respondents, because the dataset used as a proxy for a market-determined price already included European export VAT and other taxes. The Court also found that Commerce complied with its remand order by determining, under protest, that subsidies in the Russian economy before Russia was designated a market economy were measurable. In addition, the Court found that Commerce’s exclusion of certain expenses related to unused mining licenses, and its inclusion of intercompany sales of phosphate rock in its benefit calculation for one of the plaintiffs were supported by substantial evidence on the record. However, while affirming several aspects of Commerce’s remand, the Court remanded to Commerce to further explain how cost data submitted by one respondent could be reconciled with its financial statements, and to address objections that information submitted by another respondent was in Russian and untranslated, included products as costs that did not appear related to phosphate production, and used calculations that lacked an explained methodology.

[Slip Op 23-100, Danyang Weiwang Tools Manufacturing Co., Ltd. et. at. v. United States](#)

The Court sustained Commerce’s remand results on its administrative review of the antidumping duty order covering diamond sawblades from China. Plaintiffs had challenged the application of the 82.05 percent China-wide rate to the separate rate respondents, on the basis that Commerce unreasonably included adverse facts available in the averaged margin assigned to cooperative non-selected respondents. The Court had previously stayed the case pending resolution of *Bosun Tools Co., Ltd. v. United States*, Consol. Ct. No. 18-102, in which the Court ordered Commerce to reconsider the rate applicable to mandatory respondents for the previous administrative review of the same antidumping duty orders. On remand, Commerce revised the separate rate from 82.05 percent to 41.03 percent, and the Court of Appeals for the Federal Circuit (“Federal Circuit”) affirmed. Defendants moved to consider the effects of *Bosun* and on remand, determined that the appropriate rate to apply to plaintiffs is 41.03 percent.

[Slip Op 23-101, PrimeSource Building Products, Inc. v. United States et. al.; Slip Op. 102, Oman Fasteners, LLC, et. al. v. United States et. al.](#)

On July 5, 2023, the Federal Circuit issued its mandate in the consolidated appeal *PrimeSource Building Products, Inc. v. United States et. al.*, Appeal No. 21-2066 and *Oman Fasteners, LLC, et. al. v. United States et. al.*, Appeal No. 21-2252, in accordance with its judgment entered on February 7, 2023. On February 7, 2023, the Federal Circuit also issued its opinion in the consolidated appeal, finding that former President Trump permissibly expanded the scope of the Section 232 tariffs to include steel and aluminum derivative products outside of the temporal deadlines articulated in the statute. Following the mandate from the Federal Circuit, the Court of International Trade ordered plaintiffs' claims against the President dismissed with prejudice, denied its motion for summary judgment, entered judgment for the United States and ordered the liquidation of the entries affected by the case in accordance with the Federal Circuit's decision.

[Slip Op 23-103, NEXTEEL Co., Ltd. et. al. v. United States](#)

The Court sustained Commerce's second remand redetermination in its administrative review of the antidumping duty order on welded line pipe from Korea, in which Commerce explained why it classified certain costs associated with suspended production lines as general and administrative expenses, not as costs of goods sold ("COGS") in calculating constructed value. Plaintiff objected to the classification of the suspension costs because it contradicted its internal recordkeeping, and Commerce normally calculates costs based on a respondent's records unless they do not reasonably reflect the cost of production. On remand, Commerce explained that if the costs of suspension were treated as part of the COGS, the per-unit production costs would be unreasonably high, because the cost of the suspended lines would be added on top of the normal operating costs, resulting in double counting. In addition, plaintiff admitted that it does not attribute the cost of the suspended production lines to specific products. The Court determined that Commerce adequately explained why its allocation of the suspension costs was reasonable.

[Slip Op 23-104, Nucor Tubular Products, Inc. v. United States](#)

The Court sustained Commerce's remand determination in its administrative review of the antidumping duty order on heavy walled rectangular welded carbon steel pipes and tubes from Mexico. On remand, Commerce revised the weighted-average dumping margin for defendant-intervenors, as well as for the non-selected companies, by eliminating a ministerial error and analyzing only the relevant cost data from the period of review. Commerce also revised its calculation formula to address several currency conversation mistakes.

[Slip Op 23-105, China Manufacturers Alliance, LLC et. al. v. United States](#)

The Court upheld Commerce's remand redetermination in a case involving an administrative review of the antidumping duty order on certain off-road pneumatic tires from China. The Court had previously held that plaintiffs did not rebut Commerce's presumption of control over export activities by the Government of China and that plaintiffs must therefore be assigned the China-wide rate of 105.31%, and the Court had ordered Commerce to issue a new determination in accordance with its findings.

[Slip Op 23-106, Target Corporation v. United States](#)

The Court granted the government's motion to dismiss in a case challenging the Court's authority to order the reliquidation of entries outside of the 90-day statutory window for voluntary reliquidation by CBP. Following a previous case involving the antidumping duty margin of imports of metal-top iron tables from China, CBP erroneously reliquidated the entries in question at the original cash deposit rate instead of at the rate set by the court. The agency initiated this case to obtain a court order for reliquidation, since it otherwise lacked statutory authority to do so outside of the 90-day window. The Court ordered the reliquidation of the entries, and the importer, Target, challenged the lawfulness of that order. The Court held that the case involved a purely legal question that could be resolved on a motion to dismiss and that it had inherent power under Article III of the United States Constitution to order reliquidation to enforce its orders and judgments. As a result, it granted the government's motion and dismissed the case.

[Slip Op 23-107, Brooklyn Bedding, LLC. et. al. v. United States](#)

The Court granted plaintiffs' motion for judgment on the agency record with a separate remand order to follow. Plaintiffs in the case challenged aspects of Commerce's application of antidumping duties in an investigation involving mattresses from Thailand, including Commerce's failure to verify portions of a mandatory respondent's data on which it relied in changing from total to partial adverse facts available. The Court found that Commerce's reliance on unverified data was contrary to law and instructed it to undertake verification on remand. The Court also found that Commerce's failure to explain why it did not follow its longstanding practice of applying the transactions disregarded and/or major input rules in considering affiliated-party transactions was arbitrary, capricious and an abuse of discretion.

[Slip Op 23-108, Norca Engineered Products, LLC v. United States](#)

The Court upheld CBP's classification of cast iron counterweights for self-propelled mini or compact excavators under subheading 8431.49.9044 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The parties agreed on classification up to the eight-digit level of the HTSUS, but disagreed on the ten-digit level, which controls whether section 301 duties apply. At issue was whether the counterweights are a part of a machine that should be classified as an "excavator" or a "backhoe" for tariff purposes. The Court found that the machine at issue "has an articulated arm that digs towards the vehicle, which is the dictionary definition of a backhoe," and that plaintiff's view of backhoes "as a narrow subtype of excavators that excludes mini excavators is at odds with the structure of the HTSUS."

[Slip Op 23-109, Carbon Activated Tianjin Co., Ltd. et. al. v. United States](#)

The Court sustained Commerce's final results in its administrative review of the antidumping duty order on certain activated carbon from China, in which Commerce used Malaysia as a surrogate market economy. Plaintiffs challenged Commerce's selection of surrogate values, its valuation of carbonized material, coal tar, hydrochloric acid, steam, ocean freight and bituminous coal, and its reliance on the consumption of bituminous coal reported by respondents. For its selection of surrogate values, the Court found that Commerce's determination that the financial ratios of two Malaysian producers of activated carbon were the best available information, on the basis that they were the only significant producers of comparable merchandise, was supported by substantial evidence. The Court also determined that Commerce provided a reasonable explanation for all of its challenged valuations. Finally, the Court upheld Commerce's acceptance of respondents' reporting of bituminous coal consumption because respondents had clarified discrepancies in the reported figures during the administrative proceedings, and Commerce's acceptance of the explanation provided was supported by substantial evidence.

[Slip Op 23-110, Ellwood City Forge Co. et. al. v. United States](#)

The Court granted Commerce's request for voluntary remand in a case involving the antidumping investigation of forged steel fluid end blocks from Germany. Plaintiff alleged that Commerce erred in calculating the variable cost difference used to determine the dumping margin, following Commerce's removal of a market situation adjustment in accordance with the Federal Circuit's decision in *Hyundai Steel Co. v. United States*, 19 F.4th 1346, 1352 (Fed. Cir. 2021). Plaintiff alleged that Commerce made a significant error by not removing the adjustment from the denominator in its equation, and Commerce requested a voluntary remand to review the alleged calculation error. The Court found remand appropriate in light of Commerce's substantial and legitimate concerns. Plaintiffs also challenged Commerce's refusal to address their request for consideration of alternative pathways to a particular market situation adjustment, and the Court ordered Commerce to provide an adequate explanation on remand.

[Slip Op 23-111, Diamond Tools Technology LLC v. United States](#)

The Court sustained CBP's second remand redetermination in an EAPA case involving alleged evasion of the antidumping duty order on certain diamond sawblades and parts thereof from China. The Court had remanded CBP's final affirmative evasion determination, ordering CBP to explain how plaintiff entered covered merchandise on the basis of statements that were material and false, when plaintiff had relied on a directive issued by Commerce. On remand, CBP determined, under protest, that in light of the Court's interpretation of Commerce's directive, plaintiff did not evade antidumping duties.

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

[Appeal No. 2023-1355, Amsted Rail 2 Company, Inc. et. al. v. International Trade Commission et. al.](#)

The Federal Circuit dismissed this appeal after the parties filed a joint stipulation of voluntary dismissal. The case arose from a challenge to the U.S. International Trade Commission's ("Commission") determination to grant access to business confidential information to a certain attorney and law firm under an administrative protective order ("APO") in an AD/CVD investigation. Plaintiff sought revocation of the APO access and disqualification of the law firm in the Court of International Trade ("CIT") because the attorney and law firm had a conflict stemming from their prior representation of a party to the investigation. While plaintiff successfully moved the CIT for a temporary restraining order, the Court ultimately dismissed the case, holding that it lacked subject matter jurisdiction under its residual jurisdictional provision because the AD/CVD proceedings were still underway, and jurisdiction under a different provision would be appropriate once the Commission issued a reviewable determination.

[Appeal No. 2022-2000, Taizhou United Imp. & Exp. Co. Ltd. et. al. v. United States et. al.](#)

The Federal Circuit affirmed the CIT in a case involving Commerce's administrative review of the countervailing duty order on aluminum extrusions from China. The CIT had upheld Commerce's remand results in which the agency explained why it had determined that subsidized purchases of glass and aluminum extrusions were countervailable. The CIT found that Commerce acted reasonably in determining that the Government of China failed to act to the best of its ability and withheld necessary information on the record. Accordingly, the CIT sustained as reasonable Commerce's finding that the application of adverse facts available was warranted, as well as Commerce's determination that all the producers that produced the glass and aluminum extrusions purchased by plaintiffs during the period of review are "authorities" under the applicable statute. The Federal Circuit affirmed the CIT without issuing an opinion.

[Appeal No. 2022-1226, Royal Brush Manufacturing, Inc. v. United States et. al.](#)

The Federal Circuit reversed the CIT's finding that in Enforce and Protect Act ("EAPA") proceedings, due process only requires CBP to provide importers adequate summaries of business confidential information. The CIT had previously upheld CBP's reasoning that neither EAPA, nor its regulations, authorize the disclosure of business confidential information under an APO, even when CBP relies on the information in a final evasion determination, as it did in this case. The Federal Circuit explained that even though EAPA does not explicitly provide for APOs, this does not change the application of the constitution's due process requirements. CBP has inherent authority in EAPA proceedings to release business confidential information to importers under an APO, even without an explicit statutory authorizing. As a result, CBP's reliance on factual information that was not provided to importer Royal Brush in making its final evasion determination was a clear violation of due process. The Federal Circuit remanded to the CIT with instructions for CBP to provide Royal Brush access to the redacted information and allow it to submit a rebuttal in light of the new factual information.