

# TRADE LAW UPDATE



August 2023

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## HIGHLIGHTS FROM AUGUST

### [DHS Adds more Companies to the UFLPA Entity List](#)

The Department of Homeland Security [announced](#) on August 1, 2023, that it is adding three entities to the Uyghur Forced Labor Prevention Act (“UFLPA”) Entity List, the consolidated register of four lists required by section 2(d)(2)(B) of the UFLPA.

### [Government Agencies Request More Resources for Forced Labor/UFLPA Cases](#)

On July 26, 2023, the Forced Labor Enforcement Task Force (“FLET”) issued the first annual [update](#) to its guidelines for enforcing the Uyghur Forced Labor Prevent Act (“UFLPA”) in a Report to Congress titled “2023 Updates to the Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People’s Republic of China” (“Updated UFLPA Strategy”). This report is the first strategy update since the UFLPA came into effect a little over one year ago.

### [The Government Continues to Prioritize Export Control and Sanctions Enforcement Highlighted in New Tri-Seal Compliance Note and Cooperative Agreement Between BIS and OFAC.](#)

On Wednesday, July 26, the Departments of Commerce, Treasury, and Justice issued a [Tri Seal Compliance Note](#) detailing the voluntary self-disclosure of potential violations for export controls, sanctions, and other national security laws. The Compliance Note highlights the new changes made to the Department of Justice’s voluntary self-disclosure policy. The Note also provided an overview of recent changes to the Department of Commerce’s voluntary self-disclosure policy and generally highlighted the Department of Treasury’s policy, as well as the potential monetary benefits associated with the FinCen anti-money laundering and sanctions whistleblower program.

### [BIS Issues New Antiboycott Reporting Requirement Amid Increased Enforcement Efforts](#)

On July 27, 2023, the Department of Commerce’s Bureau of Industry and Security (BIS) [announced](#) that U.S. persons reporting boycott-related requests to its Office of Antiboycott Compliance (OAC) must now also disclose the identity of the specific party that made the request. Previously, U.S. persons were required to disclose when they had received a boycott-related request and only the country the request originated from.

## [Commerce Issues Final Determination on Circumvention of Solar Cells and Modules from Cambodia, Malaysia, Thailand, and Vietnam](#)

On August 18, 2023, the Department of Commerce (“Commerce”) [announced](#) its final determination that certain solar cells and modules exported from Cambodia, Malaysia, Thailand, and Vietnam are circumventing the antidumping (“AD”) and countervailing (“CVD”) orders on imports from [China](#) after conducting its investigation for over 18 months. Any duties will only go into effect in June 2024, subject to available certifications and exemptions. Commerce’s final determination can be found [here](#).

## U.S. DEPARTMENT OF COMMERCE DECISIONS

### Investigations

- Carbazole Violet Pigment 23 From India: On August 2, 2023, Commerce issued its [initiation](#) of countervailing duty new shipper review.
- Gas Powered Pressure Washers From the People’s Republic of China: On August 3, 2023, Commerce issued its preliminary affirmative [determination](#) of sales at less-than-fair-value, preliminary affirmative critical circumstances determination, in part, postponement of final determination, and extension of provisional measures.
- Large Power Transformers From the Republic of Korea: On August 9, 2023, Commerce issued its [initiation](#) and preliminary results of antidumping duty changed circumstances review.
- Certain Pea Protein From the People’s Republic of China: On August 7, 2023, Commerce issued its [initiation](#) of countervailing duty investigation.
- Certain Pea Protein From the People’s Republic of China: On August 7, 2023, Commerce issued its [initiation](#) of less than-fair-value investigation.
- Certain New Pneumatic Off-the-Road Tires From the People’s Republic of China: On August 15, 2023, Commerce issued its notice of third amended final [determination](#) of the results of 2012– 2013 antidumping administrative review Pursuant to court decision
- Polyethylene Terephthalate Film, Sheet, and Strip From India: On August 22, 2023, Commerce issued its [initiation](#) of antidumping duty changed circumstances review (Garware).
- Tin Mill Products From Canada: On August 22, 2023. 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.
- Tin Mill Products From Germany: On August 22, 2023, Commerce issued its preliminary affirmative [determination](#) of sales at less than fair value, preliminary negative critical circumstances determination, Postponement of final determination, and extension of provisional measures.
- Tin Mill Products From Taiwan: On August 22, 2023. Commerce issued its preliminary negative [determination](#) of sales at less than fair value, preliminary negative determination of critical circumstances, and postponement of final determination.
- Tin Mill Products From the Netherlands: On August 22, 2023, Commerce issued its preliminary negative [determination](#) of sales at less than fair value and postponement of final determination.
- Tin Mill Products From the People’s Republic of China: On August 22, 2023, Commerce issued its preliminary affirmative [determination](#) of sales at less than fair value and preliminary affirmative determination of critical circumstances.
- Tin Mill Products From the Republic of Korea: On August 22, 2023, Commerce issued its preliminary negative [determination](#) of sales at less than fair value and postponement of final determination.
- Tin Mill Products From the Republic of Turkey: On August 22, 2023, Commerce issued its preliminary negative [determination](#) of sales at less than fair value and postponement of final determination.
- Tin Mill Products From the United Kingdom: On August 22, 2023, Commerce issued its preliminary negative [determination](#) of sales at less than fair value and postponement of final determination.

- Mattresses From Indonesia: On August 23, 2023, Commerce issued its [initiation](#) of countervailing duty investigation.
- Mattresses From Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan: On August 23, Commerce issued its [initiation](#) of less-than-fair-value investigations.
- Antidumping and Countervailing Duty Orders on Certain Collated Steel Staples From the People’s Republic of China: On August 24, 2023, Commerce issued its preliminary affirmative [determinations](#) of circumvention with respect to the Kingdom of Thailand and the Socialist Republic of Vietnam.
- Corrosion-Resistant Steel Products From Taiwan: On August 25, 2023, Commerce issued its notice of third amended final [determination](#) of sales at less than fair value pursuant to court decision and partial exclusion from antidumping duty order.
- Gas Powered Pressure Washers From the Socialist Republic of Vietnam: On August 29, 2023, Commerce issued its final affirmative [determination](#) of sales at less than fair value and final affirmative determination of critical circumstances.
- Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: On August 30, 2023, Commerce issued its notice of [initiation](#) and preliminary results of antidumping duty changed circumstances review.
- Certain Frozen Warmwater Shrimp From India: On August 30, 2023, Commerce issued its notice of [initiation](#) and preliminary results of antidumping duty changed circumstances review.

## Administrative Reviews

- Certain Softwood Lumber Products From Canada: On August 1, 2023, Commerce issued its final [results](#) and final rescission, in part, of the countervailing duty administrative review (2021).
- Common Alloy Aluminum Sheet From the People’s Republic of China: On August 2, 2023, Commerce issued its final [results](#) of countervailing duty administrative review (2021).
- Welded Line Pipe From the Republic of Korea: On August 4, 2023, Commerce issued its amended final [results](#) of antidumping duty administrative review in part (2020–2021).
- Acetone From the Republic of Korea: On August 7, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2021–2022).
- Citric Acid and Certain Citrate Salts From Thailand: On August 7, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2021–2022).
- Forged Steel Fluid End Blocks From Italy: On August 9, 2023, Commerce issued its final [results](#) of countervailing duty administrative review (2020– 2021).
- Steel Concrete Reinforcing Bar From Mexico: On August 9, 2023, Commerce issued its amended final [results](#) of antidumping duty administrative review (2020–2021) correction.
- Forged Steel Fluid End Blocks From Italy: On August 14, 2023, Commerce issued its final [results](#) of the antidumping duty administrative review (2020– 2021).
- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: On August 17, 2023, commerce issued a notice of correction to the final [results](#), and amended final results of countervailing duty administrative review (2020).
- Light-Walled Rectangular Pipe and Tube From the People’s Republic of China: On August 25, 2023, Commerce issued its final [results](#) of the antidumping duty administrative review (2021–2022).
- Certain Uncoated Paper From Portugal: On August 28, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2021– 2022).
- Certain Uncoated Paper From Brazil: On August 29, 2023. Commerce issued its notice of court decision not in harmony with the results of antidumping duty administrative review; notice of amended final [results](#).

## Changed Circumstances Reviews

- Antidumping Duty Order on Wooden Bedroom Furniture From the People’s Republic of China: On August 14, 2023, Commerce issued its final [results](#) of changed circumstances review.
- Certain Softwood Lumber Products From Canada: On August 21, 2023, Commerce issued its final [results](#) of antidumping duty changed circumstances review.

## Sunset Reviews

- Foundry Coke Products From the People’s Republic of China: On August 7, 2023, Commerce issued its final [results](#) of the expedited fourth sunset review of the antidumping duty order.
- Steel Wire Garment Hangers From Taiwan and the Socialist Republic of Vietnam: On August 7, 2023, Commerce issued its final [results](#) of the expedited second sunset review of the antidumping duty orders.
- Stainless Steel Flanges From India: On August 31, 2023 Commerce issued its final [results](#) of the expedited first sunset review of the countervailing duty order.

## Scope Ruling

- Antidumping and Countervailing Duty Orders on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: On August 23, 2023, Commerce issued its final [scope](#) determination and final affirmative determinations of circumvention with respect to Cambodia, Malaysia, Thailand, and Vietnam.

## Circumvention

- Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan and Circular Welded Non-Alloy Steel Pipe From Taiwan: On August 9, 2023, Commerce issued its negative final [determinations](#) of circumvention of the antidumping duty orders.

## U.S. INTERNATIONAL TRADE COMMISSION

### Section 701/731 Proceedings

## Investigations

- Mattresses From Bosnia and Herzegovina, Bulgaria, Burma, India, Indonesia, Italy, Kosovo, Mexico, Philippines, Poland, Slovenia, Spain, and Taiwan, ITC issued its [institution](#) of antidumping and countervailing duty investigations and scheduling of preliminary phase investigations.
- Certain Icemaking Machines and Components Thereof; On August 16, 2023, ITC issued its [institution](#) of investigation.



## U.S. CUSTOMS & BORDER PROTECTION

### [EAPA Case 7459: Lionshead Specialty Tire and Wheel LLC; Tex Trail LLC; and Trailstar LLC](#)

On August 7, 2023 the CBP issued a determination stating there is substantial evidence that Lionshead Specialty Tire and Wheel LLC (Lionshead); TexTrail, Inc. (TexTral), and TRAILSTAR LLC (TRAILSTAR) (collectively, the Importers) entered merchandise covered by antidumping duty (AD) order A-570-090 and countervailing duty (CVD) order C-570-091 on steel trail wheels 12 to 16.5 inches in diameter (steel trailer wheels) from the People's Republic of China into the customs territory of the United States through evasion.

### [EAPA Case 7782: YVC USA Inc.](#)

On August 16, 2023 the CBP issued a determination stating there is substantial evidence that YVC USA, Inc. ("YVC" or "the Importer") entered merchandise covered by antidumping duty ("AD") order A-570-067 and countervailing duty ("CVD") order C-570-068 into the customs territory of the United States through evasion.

### [EAPA Case 7745: Various Importers](#)

On August 21, 2023 the CBP issued a determination stating there is substantial evidence that E-Merchant Supplies (E-Merchant Supplies), A2 Labels & Rolls Inc. (A2 Labels), POS Supply Solutions (POS Supply), Royal Paper Products (otherwise known as AmerCare Royal LLC) (collectively, AmerCare Royal), Golden Eagle Distributors LLC (Golden Eagle Distributors), Paper Roll Supplies LLC (Paper Roll Supplies), Lucky Heap Corp. (Lucky Heap), National POS Paper, Paper Roll Products, BuyRolls Inc. (Buy Rolls), Qualita Paper Products (otherwise known as Quality Paper Products) (collectively, Quality Paper), VBS Cal LLC (VBS Cal), Allied Paper Company (Allied Paper), and The Avantage Group (collectively, the Importers) entered merchandise covered by antidumping duty (AD) order A-428-850 (Germany) on thermal paper into the customs territory of the United States through evasion.

### [EAPA Case 7734: Fortress Iron, LP](#)

On August 21, 2023 the CBP issued a determination stating that there is substantial evidence that Fortress Iron, LP also referred to or doing business under the names Fortress Fence Products and Fortress Building Products ("Fortress") evaded the antidumping ("AD") and countervailing duty ("CVD") orders A-570-967 and C-570-968, respectively, on aluminum extrusions from the People's Republic of China by entering into the customs territory of the United States Chinese origin aluminum extrusions but not declaring them as subject to those AD/CVD orders. Specifically, the record of the investigation indicates that Fortress imported aluminum extrusion fence components from Chinese suppliers that did not meet the requirements of the products excluded from the aforementioned AD/CVD orders but did not declare them as subject to the orders. As a result, no cash deposits were applied to the merchandise at the time of entry.

### [EAPA Case 7509: Vanguard National Trailer Corp.](#)

On August 21, 2023 the CBP issued a determination stating there is substantial evidence that Vanguard National Trailer Corporation (Vanguard) entered merchandise covered by the antidumping duty (AD) order A-570-082 and countervailing duty (CVD) order C-570-083 on certain steel wheels 22.5 and 24.5 inches in diameter (steel wheels) from the People's Republic of China (China) into the customs territory of the United States through evasion. Substantial evidence demonstrates Vanguard imported steel wheels into the United States supplied by Asia Wheel Co., Ltd. (Asia Wheel) in Thailand that were subject to the Orders but did not report the merchandise as such. As a result, no cash deposits were applied to the merchandise at the time of entry.

### [EAPA Case 7783: Superior Commercial Solutions LLC](#)

On August 31, 2023 the CBP determined that there is substantial evidence that Superior Commercial Solutions LLC (SCS) entered merchandise covered by antidumping (AD) and countervailing (CVD) duty orders A-570-084 and C-570-085 (covered merchandise) into the customs territory of the United States through evasion. Substantial evidence demonstrates that SCS

imported quartz surface products (QSP) from the People's Republic of China (China) into the United States by undervaluation and/or transshipment through Vietnam. SCS did not declare that the merchandise was subject to the *AD/CVD Orders* on entry and, as a result, no cash deposits were collected on the merchandise.

## **COURT OF INTERNATIONAL TRADE**

### **Summary of Decisions**

#### **[Slip Op 23-112, Wheatland Tube v. United States](#)**

The Court remanded Commerce's decision to grant a constructed export price ("CEP") offset in calculating mandatory respondents' antidumping margins in its 2019-2020 administrative review of the antidumping duty order on circular welded non-alloy steel pipe from the Republic of Korea. Commerce had granted the CEP offset even though the mandatory respondents' responses to Commerce's request for information were deficient, particularly with respect to their quantitative analyses. The Court remanded for Commerce to comply with the statute governing deficient submissions, which requires providing notice of the nature of the deficiency as well as an opportunity to remedy or explain the deficiency.

#### **[Slip Op 23-113, Ellwood City Forge Co. v. United States](#)**

The Court remanded Commerce's final determination, as modified following voluntary remand, in its antidumping investigation of forged steel fluid end blocks from India. Commerce originally found that Defendant-Intervenor did not dump forged steel fluid end blocks at less than fair value, relying on unverified information from a verification questionnaire as facts otherwise available, instead of an on-site verification of Defendant-Intervenor's production cost information. In its Remand Results, Commerce determined that the response to the verification questionnaire was actually "verified" information, and that it therefore had not relied on facts otherwise available in its final determination. The Court found that Commerce had reversed its original position, which constituted new agency action requiring "(1) an explanation for why it now chooses not to do on-site verification, (2) an explanation for the range of other alternatives the agency considered within the ambit of on-site verification and why it rejected them, and (3) an explanation for why its decision to use only questionnaires did not violate any legitimate reliance interests on Plaintiffs' part." The Court remanded for Commerce to comply with these requirements.

#### **[Slip Op 23-114, Dillinger France S.A. v. United States](#)**

The Court sustained Commerce's Third Remand Results in its antidumping investigation of certain carbon and alloy steel cut-to-length plate products from France. At issue was whether Commerce could rely on Plaintiff's normal books and records to supply missing cost information in calculating antidumping duties with respect to Plaintiff's "prime" and "non-prime" plate (with the latter referring to plate products that do not meet the standards for prime plate products). The Court had upheld Commerce's reliance on Plaintiff's normal books and records in calculating normal value, but the Federal Circuit reversed and remanded to Commerce because the books and records only reflected the estimated selling price of non-prime plate, not the actual costs of production. On remand, Commerce had sent Plaintiff a supplemental questionnaire requesting production costs of its non-prime plates. Commerce determined in its First Remand Results that Plaintiff's response was insufficient and invoked facts otherwise available, using Plaintiff's normal books and records to fill the informational gap. The Court remanded for further explanation and determined that the Second Remand Results still offered insufficient reasons for Commerce's selected facts otherwise available. In upholding the Third Remand Results, the Court found that Commerce justified its reliance on Plaintiff's normal books and records, and that its reliance did not contravene governing Federal Circuit caselaw and was otherwise in accordance with the law. The Court also found that the books and records were probative of the missing cost information, such that they were reasonable to use under the circumstances.

#### **[Slip Op 23-115, United States v. Wanxiang Am. Corp.](#)**

The Court denied Wanxiang America Corporation's ("Wanxiang") motion to dismiss claims that it negligently classified certain automotive parts and as such, failed to identify those entries of wheel hub assemblies which were subject to an antidumping order. Though Wanxiang argued that its misclassification could not be the basis for a false statement under 19 U.S.C. § 1592, the Court disagreed. Instead, the Court held that even an alleged misclassification was sufficient for falsity liability under § 1592. Further, Wanxiang argued that it was not negligent in its continued use of certain classifications despite the CBP Form

29, “Notice of Action,” because the notice was non-binding. However, the Court reasoned that an importer still has a duty of reasonable care irrespective of the non-binding nature of the notice.

#### [Slip Op 23-116, Second Nature Designs Ltd. V. United States](#)

This case involved the denial of Plaintiff’s 19 U.S.C. § 1514 protest against the classification and assessment of duty on certain entries of decorative items. While the Government attempted to assert a counterclaim for underpaid duty, the Court upheld precedent that the Government could not assert a counterclaim for underpaid duty on the same merchandise which a Plaintiff claims a duty refund. However, the Court saw fit to redesignate the counterclaim as a defense pursuant to USCIT R. 8(d)(2). The Court also granted Plaintiff’s motion to sever an entry from the dispute for lack of subject matter jurisdiction where the entry was liquidated as duty-free and thus no injury or harm was suffered for the Court to redress.

#### [Slip Op 23-117, Suzano S.A. v. United States](#)

The Court ordered the Second Remand Results to be sustained and the entries at issue to be liquidated pursuant to the final court decision. In the first remand, Commerce included derivative losses in Suzano’s financial expense rate. On the second remand, Commerce took the same action noting that although Suzano’s derivative losses were not extraordinary, the facts support the conclusion that the costs are associated with Suzano’s expanded operations and should thus reflect the combination of Suzano and Fibria’s financial expenses and cost of sales.

#### [Slip Op 23-118, United States v. Am. Home Assurance Co.](#)

The Court denied the Government’s motion for summary judgment to recover on customs bonds which American Home Assurance Company’s (“AHAC”) wrote and granted the cross-motion for summary judgment. Customs petitioned the Court to award it unpaid duties plus interest for AHAC’s alleged breach of eight bonds, which secured antidumping duties owed on certain entries of mushrooms from China. However, the Court found that Custom’s claims were barred by the statute of limitations after more than a decade passed since the entries liquidated and Customs failed to act in a reasonable time.

#### [Slip Op 23-119, Nucor Corp. v. United States](#)

The Court remanded Commerce’s Remand Results filed in connection with the 2018 administrative review of the countervailing duty order on certain carbon and alloy steel cut-to-length plate from the Republic of Korea. The Court determined that Commerce had not addressed certain information submitted by plaintiff regarding its claim that the off-peak sale of electricity for less than adequate remuneration constituted a benefit to a mandatory respondent, and that Commerce did not clearly articulate a standard and an application of that standard to the entirety of the allegation. As a result, the Court ordered Commerce to reconsider or further explain on remand its determination not to investigate the alleged off-peak sale of electricity in plaintiff’s benefit allegation. In addition, Commerce did not attribute certain subsidy benefits received from an affiliated company to mandatory respondent, and the Court ordered Commerce to reconsider or further explain on remand its determination not to treat the affiliated company as a cross-owned input supplier.

#### [Slip Op 23-120, Bonney Forge Corp. v. United States](#)

The Court again remanded Commerce’s final determination in the antidumping investigation of Forged Steel Fittings from India. On remand from the Court’s decision in *Bonney Forge Corporation v. United States*, 560 F. Supp. 3d 1303 (CIT 2022), Commerce determined that the post-preliminary questionnaire it issued during the investigation satisfied Commerce’s verification requirements under the statute and concluded that neither an in-person or virtual verification was practical given COVID restrictions at the time of the investigation. The Court remanded Commerce’s decision again because the agency failed to consider (1) the reliance interests implicated by its change of policy regarding verification and (2) alternative options to further verify the information on the record under current conditions.

#### [Slip Op 23-121, Hyundai Steel Co. v. United States](#)

The Court sustained Commerce’s remand result in the 2018 countervailing duty administrative review of certain hot-rolled steel flat products from the Republic of Korea. On remand from the Court’s decision in *Hyundai Steel Co. v. United States*, 47

CIT \_\_\_, 615 F.Supp. 3d 1351 (2023), Commerce reexamined the Reduction for Sewerage Fees program, determined that the program was not countervailable, and provided further explanation for its determination that the provision of port usage rights at the Port of Incheon conferred a benefit. With respect to port usage rights, the Court concluded that Commerce reasonably conducted a revenue foregone analysis rather than an LTAR analysis because Hyundai's non-payment of port usage fees did not involve the provision of goods and services. The Court also concluded that Commerce reasonably determined that the Government of Korea's provision of the right to collect revenues from third parties using the port, conferred a benefit. With respect to the Reduction of Sewerage Fees program, the Court concluded that Commerce cited to sufficient record evidence to support the remand determination that Hyundai Steel did not receive a unique Sewerage Usage Fees reduction constituting a financial contribution and countervailable benefit.

#### [Slip Op 23-122, Far East American, Inc. v. United States](#)

The Court sustained Commerce's scope redetermination on remand for the antidumping duty and countervailing duty orders on certain hardwood plywood from the People's Republic of China. On remand, Commerce reconsidered its scope ruling and concluded that hardwood plywood produced in Vietnam using Chinese two-ply panels were not subject to the scope of the plywood orders. The Court concluded that the scope redetermination complied with the Court's order to issue a scope ruling consistent with the unambiguous terms of the scope of the plywood orders.

#### [Slip Op 23-123, Aspects Furniture Int'l, Inc. v. United States](#)

The Court sustained the final remand redetermination of U.S. Customs and Border Protection under the Enforce and Protect Act ("EAPA"). In its remand redetermination, Customs clarified that its evasion determination did not apply to entries made prior to EAPA coming into force and expressly drew an adverse inference that all of Aspects' entries made during the period of investigation contained covered merchandise. The Court concluded that the exclusion of Aspects' entries prior to the entry into force of the EAPA statute is in accordance with law and consistent with the Court's remand order. The Court also concluded that Customs' consideration of evidence concerning the destruction of documents during on-site verification was reasonable and in accordance with law. The Court agreed that it was reasonable and supported by substantial evidence for Customs to determine that the numerous and pervasive discrepancies in entry paperwork, in addition to the destruction of evidence during verification, justified the application of an adverse inference against Aspects and concluded that Customs supported its evasion determination with substantial evidence.

#### [Slip Op 23-124, ICDAS Celik Enerji Tersane Ve Ulasim Sanayi, A.S. v. United States](#)

#### [Slip Op 23-125. Noksel Celik Boru Sanayi A.S. v. United States](#)

On August 23, 2023, the CIT upheld Commerce's decision in two cases to deduct Section 232 duties from U.S. price as part of its margin calculation in the administrative reviews of the antidumping duty order on light-walled rectangular pipe and tube from Turkey and steel concrete reinforcing bars from Turkey. The Court found that no reason to deviate from the Federal Circuit's decision which authorized the deduction of section 232 duties as part of the margin calculation analysis. The responding exporters have repeatedly raised the concern that Section 232 duties should be treated as "temporary and remedial" and therefore included in U.S. price rather than deducted from U.S. price. The Court disagreed with the plaintiffs on the grounds that the Federal circuit had already opined on this same issue and there was nothing different in these two appeals sufficient to depart from the prior holdings.

With respect to the other case specific issues on appeal, in Slip Op. 23-125, the Court upheld Commerce's decision to deny plaintiff, Noksel's, duty drawback adjustment on the basis that Noksel did not satisfy the agency's two-pronged test. In the review, Commerce denied the duty drawback adjustment because both prongs were not met. The Court agreed even though the agency's practice had varied in the past but in this instance, Commerce had explained its reasoning to deny the adjustment and therefore the Court upheld the agency determination.

In Slip Op. 23-124, the Court upheld Commerce's decision to deny plaintiff, Icdas', duty drawback adjustment on the grounds that Icdas' submissions on the record did not demonstrate sufficiently that Commerce's decision was erroneous. Specifically, the Court found that there was nothing on the record to indicate that the Turkish government fails to process the documentation to timely grant drawbacks. The Court also upheld Commerce's decision not to treat Turkey as a hyperinflationary market during the review period.



### [Slip O. 23-126, Jiangsu Senmao Bamboo and Wood Industry Co. v. United States](#)

The Court remanded back to Commerce its selection of the appropriate surrogate country in the 2019-2020 administrative review of the antidumping duty order on multilayered wood flooring from China. The Court found that Commerce had not properly justified its selection of Brazil as the primary surrogate country but then relying on Malaysian data for one of the major inputs. The agency argued that it does not bear the burden to build the record, but the Court disagreed stating that it is not the Court's responsibility either to sort through the administrative record to figure out which documents support Commerce's underlying determinations. The Court stated that Commerce had not cited to any evidence to support its finding that that Brazilian log import data was "highly questionable, inadequate or unavailable," and that there was insufficient explanations on the record to justify departing from its past practice to use a single surrogate country.

The Court affirmed Commerce's decision to include transportation expenses as part of the surrogate financial ratio as well as exclude certain interest income on the grounds that the determination was supported by substantial evidence on the record as well as consistent with past practice. Finally, the Court affirmed Commerce's decision not to grant Senmao a by product offset.

### [Slip Op. 23-127, Yama Ribbons and Bows Co. v. United States](#)

The Court remanded Commerce's decision to resort to adverse inferences against plaintiff Yama Ribbons for the purported benefits it may have received under China's Export Buyer's Credit Program on the grounds that Commerce's decision was "critically flawed." The case stems from the administrative review of the countervailing duty order on woven ribbon from China. Commerce made its underlying decision on the basis that there was insufficient or "missing" information from the record that the agency never actually requested. The Court found that the record contained more than sufficient evidence, including verification of its customers' non-use of the program, to refute any finding that Yama benefitted from the EBCP. The Court also strenuously disagreed with Commerce's reasoning that unless it could verify "the non-EBCP origin of all the loans of all the customers, it could not so verify any loan of any customer," the opinion said. "In that respect, the Department's presumption that no verification was possible amounts, on the record evidence, to unsupported speculation." The Court also remanded Commerce's finding that Yama was able to acquire synthetic yarn and caustic soda for less than adequate remuneration. Commerce claimed that it forgot to put the new subsidy allegation on the record. The Court took exception to this and ordered Commerce on remand to reopen the record as well as allow comments to avoid a piecemeal approach such that the agency will be required to "reconsider its LTAR determinations for these two inputs, in the entirety, based on the supplemented record and the comments plaintiff submits."

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

### [Appeal No. 2022-1832, U.S. v. Katana Racing, Inc.](#)

The Federal Circuit reversed the trial court, in which the Government had brought a 19 U.S.C. § 1592(d) action against Katana Racing, Inc., an importer of wheels and tires that had underpaid duties and fees at entry. Katana alleged that it had revoked its waiver of the statute of limitations, because contrary to representations made by Customs that it would undertake administrative proceedings regarding potential violations of 19 U.S.C. § 1592(d), no such administrative actions were taken. The trial court dismissed the action for lack of jurisdiction, finding that plaintiff had properly revoked its waiver of the statute of limitations and that the Government's suit was untimely. On appeal, the Federal Circuit determined that the statute of limitations for bringing actions under 19 U.S.C. § 1592(d) is not jurisdictional, and that the relevant statute only provides an affirmative defense that can be waived. The Federal Circuit held that trial court erred in dismissing the action for lack of jurisdiction, and it reversed and remanded to allow plaintiff to assert its claim as an affirmative defense.