

# TRADE LAW UPDATE



March 2023

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## HIGHLIGHTS FROM MARCH

[UFLPA Region Alert and Postal Code Requirements Set to Deploy March 18, 2023](#)

U.S. Customs and Border Protection (CBP) is expected to deploy the Uyghur Forced Labor Prevention Act (UFLPA) regional alert and postal code requirement on Friday, March 18, 2023.

According to CBP, the goal of the new measures is to provide an early notification to importers and their representatives that goods may have been produced in the Xinjiang Uyghur Autonomous Region (XUAR) and are possibly at risk for exclusion under the UFLPA law.

[U.S. Trade Remedies: Leveling the Playing Field Act of 2.0](#)

The House of Representatives recently passed the America Creating Opportunities for Manufacturing, Pre-Eminence in Technology and Economic Strength (COMPETES) Act of 2022, H.R. 4521, 117th Cong. (2021-2022). The bill includes provisions from U.S. Senator Sherrod Brown's (D-OH) Leveling the Playing Field 2.0 (Leveling 2.0) which aims specifically to strengthen the U.S. trade remedies laws. According to Senator Brown's website, the law would, among other items, "{crack}down on repeat offenders, by blocking the 'whack-a-mole' problem that occurs when trade remedy orders are put

in place on imports from one country, and as a result the U.S. market is flooded with dumped or subsidized imports of that same product from a different country." The bill itself would shield, from judicial review, determinations by the Commerce Department and the International Trade Commission that are based on selecting "facts otherwise available" or using an inference that are adverse to foreign companies subject to U.S. trade remedy laws.

## U.S. DEPARTMENT OF COMMERCE DECISIONS

### Investigations

- Paper File Folders From India: On March 20, 2023, Commerce issued its preliminary affirmative countervailing duty [determination](#) and alignment of final determination with the final antidumping duty determination.
- Certain Preserved Mushrooms From the Netherlands: On March 27, 2023, Commerce issued its final affirmative [determination](#) of sales at less than fair value.

- Certain Preserved Mushrooms From Poland: On March 27, 2023, Commerce issued its final affirmative [determination](#) of sales at less than fair value.
- Certain Preserved Mushrooms From Spain: On March 27, 2023, Commerce issued its final affirmative [determination](#) of sales at less than fair value

## Administrative Reviews

- Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Korea: On March 2, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Utility Scale Wind Towers From the Republic of Korea: On March 3, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Certain Corrosion-Resistant Steel Products From Taiwan: On March 6, 2023, Commerce issued its amended final [results](#) of antidumping duty administrative review (2020-2021).
- Stainless Steel Flanges From India: On March 7, 2023, Commerce issued its final [results](#) of antidumping duty administrative review and final determination of no shipments (2020-2021).
- Strontium Chromate From France: On March 8, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Low Melt Polyester Staple Fiber From the Republic of Korea: On March 8, 2023, Commerce issues its final [results](#) of antidumping duty administrative review (2020-2021).
- Steel Propane Cylinders From Thailand: On March 8, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Ripe Olives From Spain: On March 9, 2023, Commerce issued its final [results](#) of countervailing duty administrative review (2020).
- Certain Hot-Rolled Steel Flat Products From the Republic of Turkey: On March 10, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: On March 10, 2023, Commerce issued its notice of court [decision](#) not in harmony with the results of antidumping administrative review; notice of amended final results; correction.
- Utility Scale Wind Towers From Indonesia: On March 10, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Passenger Vehicle Light Truck Tires (PVLТ) From China: On March 13, 2023, Commerce issued its final [results](#) of countervailing duty administrative review (2020).
- Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes From Mexico: On March 13, 2023, Commerce issued its final [results](#) of the 2020-2021 administrative review.
- Certain Steel Nails From Malaysia: On March 14, 2023, Commerce issued its amended final [results](#) of antidumping duty administrative review (2020-2021).
- Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: On March 14, 2023, Commerce issued its final [results](#) of antidumping duty administrative review and final determination of no shipments (2020-2021).
- Light-Walled Rectangular Pipe and Tube From Mexico: On March 14, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Finished Carbon Steel Flanges From India: On March 14, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Light-Walled Rectangular Pipe and Tube From the People's Republic of China: On March 14, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Circular Welded Carbon Quality Steel Pipe From the United Arab Emirates: On March 14, 2023, Commerce issued its notice of court decision not in harmony with the [results](#) of antidumping administrative review; notice of amended final results.
- Large Power Transformers From the Republic of Korea: On March 16, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).

- Common Alloy Aluminum Sheet From the People's Republic of China: On March 20, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2021-2022).
- Certain Crystalline Silicon Photovoltaic Products From Taiwan: On March 23, 2023, Commerce issued its notice of court [decision](#) not in harmony with the final results in the antidumping duty administrative review; notice of amended final results.
- Oil Country Tubular Goods From Ukraine: On March 23, 2023 Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Alloy and Certain Carbon Steel Threaded Rod From the People's Republic of China: On March 27, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2021-2022).
- Light-Walled Rectangular Pipe and Tube From the People's Republic of China: On March 29, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021) correction.

## Changed Circumstances Reviews

- There are no changed circumstances review updates for the month of March.

## Sunset Reviews

- Certain Hardwood Plywood Products From the People's Republic of China: On March 6, 2023, Commerce issued its final [results](#) of the expedited first sunset review of the countervailing duty order.
- Stainless Steel Butt-Weld Pipe Fittings From Italy, Malaysia, and the Philippines: final [results](#) of the expedited fourth sunset review of the antidumping duty orders.
- Certain Tool Chests and Cabinets From the People's Republic of China and the Socialist Republic of Vietnam: On March 14, 2023, Commerce issued its final [results](#) of the expedited sunset reviews of the antidumping duty orders.
- Carbon and Certain Alloy Steel Wire Rod From Belarus, Italy, the Republic of Korea, the Russian Federation, the Republic of South Africa, Spain, the Republic of Turkey, Ukraine, the United Arab Emirates, and the United Kingdom: On March 15, 2023, Commerce issued its final [results](#) of expedited first sunset reviews of antidumping duty orders
- Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From the People's Republic of China, the Federal Republic of Germany, India, Italy, the Republic of Korea, and Switzerland: On March 20, 2023, Commerce issued its final [results](#) of the expedited first sunset review of the antidumping duty orders.
- Carbon and Alloy Steel Wire Rod From Italy: On March 28, 2023, Commerce issued its final [results](#) of the expedited first sunset review of the countervailing duty order.
- Certain Tool Chests and Cabinets From the People's Republic of China: On March 30, 2023, Commerce issued its final [results](#) of the expedited first sunset review of the countervailing duty order.

## Scope Ruling

- Stainless Steel Sheet and Strip From the People's Republic of China: On March 29, 2023, Commerce issued its final scope ruling and final affirmative [determination](#) of circumvention for exports from the socialist republic of Vietnam
- Stainless Steel Sheet and Strip From the People's Republic of China: On March 30, 2023, Commerce issued its final scope ruling and final affirmative [determination](#) of circumvention for exports from the socialist republic of Vietnam.

## Circumvention

- Certain Welded Carbon Steel Standard Pipes and Tubes From India: On March 1, 2023, Commerce issues its final negative [determinations](#) of circumvention of the antidumping duty order.
- Stainless Steel Sheet and Strip From the People's Republic of China: On March 29, 2023, Commerce issued its final scope ruling and final affirmative [determination](#) of circumvention for exports from the socialist republic of Vietnam

- Stainless Steel Sheet and Strip From the People's Republic of China: On March 30, 2023, Commerce issued its final scope ruling and final affirmative [determination](#) of circumvention for exports from the socialist republic of Vietnam.

## U.S. INTERNATIONAL TRADE COMMISSION

### Section 701/731 Proceedings

#### Investigations

- Certain Silicon Photovoltaic Cells and Modules With Nanostructures, and Products Containing the Same: On March 3, 2023, the ITC issued its notice of commission [determination](#) to review in part and, on review, to affirm a final initial determination finding no violation; termination of the investigation.

#### Section 337 Proceedings

- Certain Fitness Devices, Streaming Components Thereof, and Systems Containing Same: On March 14, 2023, the ITC issued its notice of the commission's final [determination](#) finding a violation of section 337; issuance of a limited exclusion order and cease and desist orders; termination of the investigation
- Certain Flocked Swabs, Products Containing Flocked Swabs, and Methods of Using Same: On March 23, 2023, the ITC issued its notice of a commission [determination](#) to review in part a final initial determination; and, on review, to find no violation of section 337; termination of the investigation.
- Certain Robotic Floor Cleaning Devices and Components Thereof: On March 27, 2023, Commerce issued its notice of commission final [determination](#) finding a violation of section 337; issuance of a limited exclusion order and cease and desist orders; termination of the investigation.



## U.S. CUSTOMS & BORDER PROTECTION

### [CBP Unveils New Interactive Dashboard at UFLPA Technical Expo](#)

At the highly anticipated forced labor expo, Customs and Border Protection (CBP) unveiled its new Uyghur Forced Labor Prevention Act (UFLPA) Statistics Dashboard aimed at providing transparency for UFLPA enforcement. The interactive dashboard was expected to be released on March 31st, but was unveiled ahead of time on CBP's website at CBP.gov. The dashboard provides users with select views to obtain specific details on forced labor regarding shipments subjected to UFLPA reviews and enforcement actions to date.

## COURT OF INTERNATIONAL TRADE

### Summary of Decisions

### [Slip Op. 23-26, Assan Alüminyum Sanayi ve Ticaret A.S. v. United States](#)

The Court of International Trade remanded Commerce's decision not to resort to total adverse facts available in the antidumping duty investigation on common alloy aluminum sheet from Turkey. The primary issue was whether Plaintiff had accurately reported two different billing adjustments on its U.S. constructed export price sales. Assan had originally reported two separate adjustments in one variable even though one was an upward adjustment and one was a downward adjustment. Commerce required Assan to segregate the adjustment and report them in two different variables which it did. However, Commerce rejected the adjustments due to the fact that plaintiff had failed to provide supporting documentation to justify the adjustments but continued to use the respondents own information on the grounds that it had responded to the best of its ability. The court disagreed and remanded the case back to Commerce

for its failure to explain its reasoning and providing merely “conclusory statements.” Two other adjustments for duty drawback and a rebate adjustment were also remanded for further explanation.

#### [Slip Op. 23-27, Ajmal Steel Tubes & Pipes Industries v. United States](#)

The Court upheld Commerce’s remand results in the antidumping duty administrative review on circular welded carbon steel pipes and tubes from the United Arab Emirates. Commerce in the administrative review submitted its Section A questionnaire response one hour and 50 minutes after the 5pm deadline. Commerce rejected the response and assigned total adverse facts available to Ajmal. The Court remanded the rejection of the submission and on remand, Commerce accepted the filing and calculated an antidumping rate of 0.57%.

#### [Slip Op. 23-29, AA Metals, Inc. v. United States](#)

The Court affirmed Commerce’s ruling that a particular type of aluminum sheet imported from Turkey by the plaintiff was within the scope of the antidumping and countervailing duty orders on common alloy aluminum sheet from China. The case stemmed from a scope ruling that was part of an Enforce and Protect Act investigation on the potential transshipment of Chinese aluminum turned on whether there was sufficient information on the record to support AA Metal’s claims. The court found that Commerce had conducted its analysis and relied on the record information and more importantly that there was no deficiency on the record with respect to information submitted by AA Metals such that Commerce was not required to allow them to correct information simply because it was not favorable to AA Metals.

#### [Slip Op. 23-30, JA Solar International Ltd. v. United States](#)

The court affirmed Commerce’s remand redetermination finding that it had properly included sales of certain solar sells to JA Solar International. Given that no party commented or otherwise contested Commerce’s remand results, the court affirmed the decision reducing the antidumping duty margin to 7.42%.

#### [Slip Op. 23-31, Printing Textiles, LLC v. United States](#)

The Court rejected plaintiff’s appeal of CBP’s inaction with respect to two protests on the grounds that it did not have jurisdiction to hear the case under Section 1581(i) on the grounds that the plaintiff had not shown why it would not be more appropriate to hear the case under Section 1581(a). The case involved Customs inaction with respect to two protests which were assessed antidumping duties under the order on artist canvas from China.

#### [Slip Op. 23-32, Shamrock Building Materials, Inc. v. United States](#)

The court affirmed CBP’s ruling that steel conduit tubing imported from Mexico by plaintiff did not have the physical characteristics sufficient to be classified as insulated fittings and therefore were subject to Section 232 tariffs at a rate of 25%.

#### [Slip Op. 23-33, Teknik Aluminyum Sanayi v. United States](#)

The Court upheld Commerce’s decision in the countervailing duty investigation on aluminum sheet to issue questionnaires in lieu of verification instead of conducting an on-site verification during the COVID-19 pandemic. The court also upheld Commerce’s use of partial facts available for the respondent’s failure to submit sufficient supporting screenshots of its financial statements and accounting ledgers.

#### [Slip Op. 23-34, MTD Products Inc. v. United States](#)

The court upheld the retroactive application of antidumping and countervailing duties in the investigation of imports of small vertical shaft engines from China on the grounds that the ITC supported its decision to find that critical circumstances existed. The court was very clear that it would not “second-guess” the ITC’s decision given that the



agency based its findings on all the specified factors required by the statute to support its decision that imports threatened to undermine the orders' remedial effect.

#### [Slip Op. 23-35, In Re Section 301 Cases](#)

The three-judge panel conclusively ruled that the Office of the U.S. Trade Representative (USTR) adequately followed the Administrative Procedures Act when evaluating and then instituting Section 301 tariffs under Lists 3 and List 4A. The court found that USTR's remand did not consist of pot-hoc explanations and were in compliance with APA requirements. The decision therefore keeps in place the Section 301 List 3 and List 4A tariffs which were put in place in September 2018.

#### [Slip Op. 23-36, Bral Corporation v. U.S.](#)

The court denied two motions for summary judgment filed by plaintiff Bral Corporation on the grounds that the plaintiff had not sufficiently demonstrated that its imported plywood was defective and should therefore have been assigned a lower value at the time of entry. At issue in the case was whether plaintiff had sufficiently met the requirements of 19 C.F.R. §158.12(a) which permits the valuation of goods damaged at the time of import to be valued in the condition as imported with an allowance for any damage incurred. However, to satisfy the requirements of the regulation, the court ruled that the importer must show that it had a contract for defect-free merchandise, and it needs to link the defects to the specific entries in question. In this instance, the court found that the importer Bral had failed to make that connection and therefore there was a genuine issue of material fact as to whether the merchandise in question was defective.

#### [Slip Op. 23-37, Marmen Inc. v. United States](#)

The Court upheld Commerce's determinations in the antidumping duty investigation on utility scale wind towers from Canada where Commerce denied plaintiff's adjustment for exchange gains and losses. The court also upheld Commerce's use of the Cohen's d test to identify any instances of masked dumping. In reviewing the underlying agency decision, the Court found that Commerce had supported its findings on substantial evidence on the record.

#### [Slip Op. 23-38, Pirelli Tyre Co. v. United States](#)

In a challenge related to the antidumping duty administrative review of certain passenger vehicle and light truck tires from China, the court upheld Commerce's application of the China-wide rate for Pirelli Tyre on the grounds that it did not sufficiently rebut the presumption of government control. Pirelli claimed that because there was only a minority interest by government-controlled entities in its business that there should be a lower burden of proof based upon Commerce's prior practice. The court disagreed and affirmed Commerce's practice that the respondent bears the burden of adequately demonstrating that there is no government control in non-market economy proceedings.

#### [Slip Op. 23-39, PT. Zinus Global Indonesia v. United States](#)

The court remanded in part and affirmed in part Commerce's decision in the antidumping duty investigation on mattresses from Indonesia. The case involved multiple specific challenges to the Department's cost calculation and sales calculation methodologies. The court in each instance evaluated the specific facts examined by the Department and found that with respect to the use of quarterly ratios and surrogate financial information that there was substantial evidence on the record to support Commerce's findings. Other specific calculational issues were remanded back to Commerce to provide further explanation.

#### [Slip Op. 23-40, Repwire LLC v. United States](#)

In the administrative review on aluminum wire and cable from China, Commerce had originally issued a separate rate questionnaire to Jin Tiong Electrical Material Manufacturer but then withdrew the questionnaire after two weeks

because it had mistakenly issued the questionnaire. Jin Tiong still continued to file a response which Commerce then rejected as untimely. The court affirmed Commerce's rejection of Jin Tiong's response on the grounds that it was an unsolicited response, and that Commerce had the requisite discretion to reject such responses. In addition, because the response by Jin Tiong was not filed within the 30-day deadline specified in Commerce's initiation notice, Commerce's decision to assign it the China-wide rate was also supported by substantial evidence on the record.

[Slip Op. 23-41, Jiangsu Zhongji Lamination Materials Co. v. United States](#)

The court remanded back to Commerce to further explain and address comments and questions raised by respondent Jiangsu Zhongji with respect to benchmarks related for certain land use programs in the administrative review of the countervailing duty order on aluminum foil from China. The court instructed Commerce to reconsider in its analysis on remand the contemporaneity of the data used in the underlying administrative review for determining whether certain land was received for less than adequate remuneration. The court also remanded for reconsideration and explanation the benchmarks used by Commerce for the valuation of the aluminum plate/sheet program. Another issue in the case focused on the timing of the submission of benchmark data. During the early stages of the COVID-19 pandemic in April 2020, Commerce had tolled all deadlines in the ongoing review and Plaintiff assumed that this tolling of deadlines also applied to the deadline to submit benchmark data, but the agency rejected the information as untimely on the grounds that the tolling of deadlines by 50 days only applied to pending deadlines for actions by parties. The decision was upheld by the court as reasonable on the grounds that the agency has broad discretion to establish its own rules.

[Slip Op. 23-42, Kent International, Inc. v. United States](#)

The court found that CBP's classification or treatment of a good through a single port can constitute treatment on "a national basis" provided that CCBP has been consistent in that treatment over a two-year period. In this case, CBP consistently found that child safety seats for bicycles were to be classified as seats rather than bicycle parts and it did so repeatedly on imports through the Ports of New York/Newark. The issue of consistent treatment has been the subject of five prior court decisions. The court in this instance found that in 14 protests covering 35 entries and an additional 9 entries covered by post-entry amendments that CBP had acted consistently.

[Slip Op. 23-43, Otter Products, LLC v. United States](#)

The Court dismissed Otter Products suit challenging Customs failure to pay interest on overpayments based on a lack of jurisdiction. The court ruled that there was no specific waiver of immunity related to overpayments on monies tendered in conjunction with prior disclosures and that the Administrative Procedures Act waiver of sovereign immunity only applies to instances where interest is not paid on deposits on liquidated entries. In this instance the entries in question, monies related to the payment of duties were tendered by Otter in order to limit its potential penalty exposure. Although Otter won its suit at the CIT on the proper classification of its phone cases, after appeals, Customs did not pay interest on the overpayments submitted as part of Otter's prior disclosures.

[Slip Op. 23-44, United States v. Zhe "John" Liu](#)

The court again ruled that the statute of limitations for customs penalties runs from the date of entry and not from the date on which the importer directed the violation to occur. Given that the statute states that the period of the statute of limitations is five years from the date of entry, the Court found the date cannot be otherwise altered.

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

[Fed. Cir. #21-2097, Borusan Mannesmann Boru Sanayi ve Ticaret v. United States](#)

The Federal Circuit ruled that the Department of Commerce can legally deduct Section 232 duties when calculating U.S. export price to determine the final antidumping duty margin. The case was on appeal challenging Commerce's decision in the antidumping duty administrative review of the order on circular welded pipe and tube from Turkey. The court

determined that the proclamation issued in 2018 made clear that the Section 232 tariffs on steel and aluminum were meant to be added to antidumping duties but limited this finding only those section 232 duties on appeal and not to all presidential actions taken under Section 232. In the underlying administrative proceeding Commerce had found that the Section 232 tariffs were akin to regular import duties and not remedial in nature. The Court of International Trade affirmed Commerce's decision as did the Federal Circuit.

#### [Fed. Cir. #22-1345, China Custom Manufacturing Inc. v. United States](#)

The Federal Circuit affirmed Commerce's scope ruling dating back to 2020 finding that solar panel mounts did not qualify for the finished kit exclusion under the antidumping and countervailing duty orders on aluminum extrusions from China. The court affirmed both the agency determination and the Court of International Trade's decision stating that subassemblies are not finished kits at the time of entry. The court relied on the appellate court's prior decision in *Shenyang Yuanda Aluminum Indus. Eng'g Co. v. United States*, which said a "part or subassembly ... cannot be a finished product." In the instant case, the solar panel mount system required additional components in addition to the roof mounts in order to mount the panels. As such they did not constitute finished merchandise and were therefore not excluded from the orders.

## **EXPORT CONTROLS & ECONOMIC SANCTIONS**

#### [DOJ Continues Pursuit of Export Control Violations](#)

On March 6, our team published a client alert exploring recent statements made by Deputy Attorney General Lisa Monaco in connection with the Department of Justice's continued efforts to investigate and prosecute individuals for violating economic sanctions, export controls, and other similar economic crimes. The statements—made at an American Bar Association event last week—demonstrate that export controls continue to rank highly among DOJ's priorities.