



# Trade Law Update

April 2024

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## IN THIS ISSUE

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

## HIGHLIGHTS FROM APRIL

### [Petition Summary: Certain Epoxy Resins from China, India, South Korea, Taiwan, and Thailand](#)

On April 2, 2024, U.S. Epoxy Resin Producers Ad Hoc Coalition filed a petition for the imposition of antidumping and countervailing duties on U.S. imports of certain epoxy resins from China, India, South Korea, Taiwan, and Thailand.

### [Commerce Issues New Antidumping and Countervailing Duty Regulations](#)

On March 22, 2024, Commerce released its anticipated new final countervailing duty regulations authorizing the agency to investigate subsidies provided by third country governments to manufacturers in the country under investigation. From 1997 to the present, Commerce limited its examination of subsidies to those programs and benefits provided by the investigated country to exporters within that investigated country. This new provision grants leeway to examine “transnational subsidies,” which casts serious uncertainty as to what constitutes a “countervailable” subsidy, as the regulations lack procedural and other specific factual guidance on how these third-party government subsidies will be examined and addressed as part of investigations and reviews. Commerce’s new rules went into effect on April 24, 2024.

### [Petition Summary: Certain Tile from India](#)

On April 19, 2024, the Coalition for Fair Trade in Ceramic Tile filed a petition for the imposition of antidumping and countervailing duties on U.S. imports of ceramic tile from India.

### [Customs to Allow Administrative Protective Orders in EAPA Investigations](#)

Effective April 17, 2024, CBP has amended its regulations implementing the Enforce and Protect Act of 2015. The amendments were issued in a final rule of March 18, 2024, and they are the first since CBP issued interim regulations following EAPA’s enactment.

### [Petition Summary: Certain Alkyl Phosphate Esters from the People’s Republic of China](#)

On April 23, 2024, ICL-IP America, Inc., a subsidiary of the ICL Group, filed a petition for the imposition of antidumping and countervailing duties on U.S. imports of certain alkyl phosphate ester from China.

### [New AD/CVD Petition Filed on Imports of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from Cambodia, Malaysia, Thailand, and Vietnam](#)

On April 24, 2024, a coalition of four U.S. producers of crystalline silicon photovoltaic cells and modules filed an antidumping and countervailing duty petition on imports of crystalline silicon photovoltaic cells, whether or not assembled into modules, from Cambodia, Malaysia, Thailand, and Vietnam. The Petitioning entities are: (1) Convalt Energy, (2) First Solar, Inc., (3) Hanwha Q CELLS USA, Inc., and (4) Mission Solar Energy LLC. This new AD/CVD case is a follow-on to prior AD/CVD proceedings covering imports of solar cells and modules from China, as well as certain

imports from Southeast Asia found to be circumventing the AD/CVD orders from China because they included Chinese inputs.

### [Petition Summary: Certain Chrome Cast Iron Grinding Media from India](#)

On April 26, 2024, Magotteaux Inc. filed a petition for the imposition of antidumping and countervailing duties on U.S. imports of certain high chrome cast iron grinding media from India.

## U.S. DEPARTMENT OF COMMERCE DECISIONS

### Investigations

- Frozen Warmwater Shrimp From Ecuador: On April 1, 2024, Commerce issued its Preliminary Affirmative Countervailing Duty [Determination](#), and Alignment of Final Determination With the Final Antidumping Duty Determination.
- Frozen Warmwater Shrimp From India: On April 1, 2024, Commerce issued its Preliminary Affirmative Countervailing Duty [Determination](#), and Alignment of Final Determination With Final Antidumping Duty Determination.
- Frozen Warmwater Shrimp From Indonesia: On April 1, 2024, Commerce issued its Preliminary Negative Countervailing Duty [Determination](#), and Alignment of Final Determination With the Final Antidumping Duty Determination.
- Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: On April 1, 2024, Commerce issued its Preliminary Affirmative Countervailing Duty [Determination](#), and Alignment of Final Determination With Final Antidumping Duty Determination.
- Mattresses From India: On April 1, 2024, Commerce issued its Amended Preliminary [Determination](#) of Less-Than-Fair-Value Investigation.
- Frozen Warmwater Shrimp From Ecuador: On April 2, 2024, Commerce issued its Preliminary Affirmative Countervailing Duty [Determination](#), and Alignment of Final Determination With the Final Antidumping Duty Determination.
- Certain Collated Steel Staples From the People’s Republic of China: On April 3, 2024, Commerce issued its Preliminary [Determination](#) of No Shipments and Partial Rescission of Administrative Review; 2022–2023.
- Aluminum Lithographic Printing Plates From the People’s Republic of China: On April 8, 2024, Commerce issued its Preliminary [Determination](#) of Critical Circumstances, in Part, in the Countervailing Duty Investigation.
- Frozen Warmwater Shrimp From Ecuador: On April 9, 2024, Commerce issued its Preliminary Affirmative Countervailing Duty [Determination](#) and Alignment of Final Determination With Final Antidumping Duty Determination; Withdrawal.
- Antidumping Duty Order on Hydrofluorocarbon Blends From the People’s Republic of China: On April 11, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Circumvention With Respect to R– 410B, R– 407G, and a Certain Custom Blend From the People’s Republic of China.
- Aluminum Extrusions From Mexico: On April 15, 2024, Commerce issued its Preliminary Affirmative Countervailing Duty [Determination](#) and Alignment of Final Determination With Final Antidumping Duty Determination; Correction and Retraction.
- Aluminum Lithographic Printing Plates From the People’s Republic of China: On April 15, 2024, Commerce issued its Preliminary [Determination](#) of Critical Circumstances, in Part, in the Countervailing Duty Investigation; Correction.
- Boltless Steel Shelving Units Prepackaged for Sale From India: On April 19, 2024, Commerce issued its Final Negative [Determination](#) of Sales at Less Than Fair Value.
- Boltless Steel Shelving Units Prepackaged for Sale From Malaysia: On April 19, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less-Than-Fair Value.
- Boltless Steel Shelving Units Prepackaged for Sale From Taiwan: On April 19, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value.
- Boltless Steel Shelving Units Prepackaged for Sale From Thailand: On April 19, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value.
- Boltless Steel Shelving Units Prepackaged for Sale From the Socialist Republic of Vietnam: On April 19, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less-Than-Fair-Value.
- Brass Rod From the Republic of Korea: On April 22, 2024, Commerce issued its Final Affirmative Countervailing Duty [Determination](#).

- Certain Non-Refillable Steel Cylinders From India: On April 22, 2024, Commerce issued its Final Affirmative Countervailing Duty [Determination](#).
- Brass Rod From Brazil: On April 22, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value.
- Brass Rod From India: On April 22, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value.
- Brass Rod From Mexico: On April 22, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value.
- Brass Rod From South Africa: On April 22, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value.
- Brass Rod From the Republic of Korea: On April 22, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value.
- Certain Non-Refillable Steel Cylinders From India: On April 22, 2024, Commerce issued its Final Affirmative [Determination](#) in investigation of sales at Less-Than-Fair-Value.
- Dioctyl Terephthalate From Malaysia, Poland, Taiwan, and the Republic of Turkiye: On April 22, 2024, Commerce issued its [Initiation](#) of Less-Than-Fair Value Investigations.
- Ferrosilicon From Brazil, Kazakhstan, Malaysia, and the Russian Federation: On April 24, 2024, Commerce issued its [Initiation](#) of Countervailing Duty Investigations.
- Ferrosilicon From Brazil, Kazakhstan, Malaysia, and the Russian Federation: On April 24, 2024, Commerce issued its [Initiation](#) of Less-Than-Fair-Value Investigations.
- Frozen Warmwater Shrimp From Ecuador: On April 25, 2024, Commerce issued its Amended Preliminary [Determination](#) of Countervailing Duty Investigation.
- Certain Epoxy Resins From the People’s Republic of China, India, the Republic of Korea, and Taiwan: On April 29, 2024. Commerce issued its [Initiation](#) of Countervailing Duty Investigations.
- Certain Epoxy Resins From the People’s Republic of China, India, the Republic of Korea, Taiwan, and Thailand: On April 29, 2024, Commerce issued its [Initiation](#) of Less-Than-Fair Value Investigations.
- 2,4-Dichlorophenoxyacetic Acid From the People’s Republic of China and India: On April 30, 2024, Commerce issued its [Initiation](#) of Countervailing Duty Investigations.
- 2,4-Dichlorophenoxyacetic Acid From the People’s Republic of China and India: On April 30, 2024, Commerce issued its [Initiation](#) of Less-Than-Fair Value Investigations

## Administrative Reviews

- Carbon and Certain Alloy Steel Wire Rod From Mexico: On April 1, 2024, Commerce issued its Final [Results](#) and Partial Rescission of the Antidumping Duty Administrative Review; 2021– 2022.
- Utility Scale Wind Towers From the Republic of Korea: On April 1, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2021–2022; Correction.
- Forged Steel Fittings From the Republic of Korea: On April 4, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2021–2022.
- Certain Hot-Rolled Steel Flat Products From Japan: On April 8, 2024, Commerce issued its Notice of Court Decision Not in Harmony With the Final [Results](#) of the Antidumping Duty Administrative Review; Notice of Amended Final Results.
- Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes From Mexico: On April 9, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2021– 2022.
- Certain Steel Racks and Parts Thereof From the People’s Republic of China: On April 10, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2021– 2022.
- Methionine From Spain: On April 10, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2021–2022.
- Hydrofluorocarbon Blends From the People’s Republic of China: On April 11, 2024, Commerce issued its Amended Final [Results](#) of Antidumping Duty Administrative Review; 2021–2022.
- Refillable Stainless Steel Kegs From the People’s Republic of China: On April 11, 2024, Commerce issued its Final [Results](#) of the Countervailing Duty Administrative Review; 2021.
- Refillable Stainless Steel Kegs From the People’s Republic of China: On April 11, 2024, Commerce issued its Final [Results](#) of the Antidumping Duty Administrative Review; 2021–2022.
- Mattresses From Thailand: On April 12, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2022–2023.
- Certain Lined Paper Products From India: On April 15, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2021– 2022.

- Certain Passenger Vehicle and Light Truck Tires From the People’s Republic of China: On April 15, 2024, Commerce issued its Amended Final [Results](#) of Antidumping Duty Administrative Review; 2021–2022.
- Polyester Textured Yarn From India: On April 18, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2022.

### Changed Circumstances Reviews

- Certain Metal Lockers and Parts Thereof From the People’s Republic of China: On April 1, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Changed Circumstances Reviews, and Revocation of the Antidumping and Countervailing Duty Orders, in Part.
- Common Alloy Aluminum Sheet From Germany: On April 17, 2024, Commerce issued its Final [Results](#) of Changed Circumstances Review and Revocation of the Antidumping Duty Order, in Part.
- Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Oil Country Tubular Goods From the Republic of Korea; Welded Line Pipe From the Republic of Korea; and Large Diameter Welded Pipe From the Republic of Korea: On April 25, 2024, Commerce issued its Notice of [Initiation](#) of Antidumping Duty Changed Circumstances Reviews.

### Sunset Reviews

- Truck and Bus Tires From People’s Republic of China: On April 25, 2024, Commerce issued its Final [Results](#) of the Expedited First Sunset Review of the Countervailing Duty Order.
- Truck and Bus Tires From the People’s Republic of China: On April 25, 2024, Commerce issued its Final [Results](#) of the Expedited First Sunset Review of the Antidumping Duty Order.

### Scope Ruling

- None.

### Circumvention

- Antidumping Duty Order on Prestressed Concrete Steel Wire Strand From Mexico: On April 2, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Circumvention.

## U.S. INTERNATIONAL TRADE COMMISSION

### *Section 701/731 Proceedings*

### Investigations

- Dioctyl Terephthalate (“DOTP”) From Malaysia, Poland, Taiwan, and Turkey; On April 1, 2024, the ITC issued its Notice of [Institution](#) of Antidumping Duty Investigations and Scheduling of Preliminary Phase Investigations.
- Ferrosilicon From Brazil, Kazakhstan, Malaysia, and Russia; On April 3, 2024, the ITC issued its Notice of [Institution](#) of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations.
- Melamine From Germany, India, Japan, Netherlands, Qatar, and Trinidad and Tobago; On April 4, 2024, the ITC issued its affirmative [determinations](#) of less-than-fair-value investigations.
- Epoxy Resins From China, India, South Korea, Taiwan, and Thailand; On April 9, 2024, the ITC issued its [Institution](#) of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations.
- Ceramic Tile From India; On April 25, 2024, the ITC issued its Notice of [Institution](#) of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations.
- Alkyl Phosphate Esters From China; On April 30, 2024, the ITC issued its [Institution](#) of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations.
- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From Cambodia, Malaysia, Thailand and Vietnam; On April 30, 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 7841: BMF Imports, LLC](#)

CBP commenced a formal investigation under the Enforce and Protect Act (EAPA) for U.S. importer BMF Imports, LLC (BMF Imports). CBP is investigating whether BMF Imports evaded antidumping duty order A-570-985 on xanthan gum from China. CBP found reasonable suspicion exists that BMF Imports entered covered merchandise into the customs territory of the United States by transshipping Chinese-origin xanthan gum through India.

### [EAPA Case 7818: AMVC-Midwest LLC aka Midwest Livestock Systems, LLC](#)

On April 9, 2024, CBP issued the notice of determination as to evasion against U.S. importer AMVC-Midwest LLC, also known as Midwest Livestock Systems, LLC (Midwest Livestock), for evasion of AD/CVD orders A-570-947 and C-570-948 on steel grating from China. CBP determined that evidence on the record indicates that Midwest Livestock misclassified steel gratings from China as farrowing crates and gestation pens.

### [EAPA Case 7813: Ebuy Enterprises Limited and Highland USA International, Inc.](#)

On April 24, 2024, CBP issued a notice of determination that there is substantial evidence that importers Ebuy Enterprises Limited and Highland USA International, Inc. entered merchandise covered by antidumping duty order A-570-985 on xanthan gum from China into the customs territory of the United States through evasion by transshipping the merchandise through Malaysia.

### [EAPA Case 7810: CIMC Intermodal Equipment LLC](#)

On April 25, 2024, CBP issued a notice of determination stating that the record does not contain substantial evidence that CIMC Intermodal Equipment LLC (“CIE”) entered merchandise covered by antidumping duty and countervailing duty orders A-570-135 and C-570-136 on certain chassis and subassemblies from China into the customs territory of the United States through evasion. CBP also determined that substantial evidence does not exist to determine that Dee Siam Manufacturing Co., Ltd transshipped and exported certain chassis and subassemblies of Chinese-origin through Thailand.

## COURT OF INTERNATIONAL TRADE

### *Summary of Decisions*

#### [Slip Op. 24-37 Sea Shepherd New Zealand v. United States](#)

The Court approved the unopposed motion by the New Zealand government to lift the preliminary injunction that had prohibited the importation of nine seafood types from New Zealand. The injunction was originally put in place amid allegations by plaintiffs that the fishing methods employed by New Zealand fishers led to the incidental capture of the Maui dolphin species in violation of the Marine Mammal Protection Act’s (“MMPA”) standards. The revocation follows a determination by the National Oceanic and Atmospheric Administration that New Zealand’s fisheries have adequate measures for reducing the bycatch of Maui dolphins to satisfy the MMPA standards.

#### [Slip Op. 24-38 KG Dongbu Steel Co. v. United States](#)

The Court remanded for a second time the final results of Commerce’s fourth administrative review regarding countervailing duties on certain corrosion-resistant steel products from Korea. The remand was based on four grounds. First, the Court explained that it was arbitrary for Commerce, without presenting new evidence, to seek a reversal of findings made in its prior three administrative reviews in relation to private investor participation in debt-to-equity restructurings of KG Dongbu Steel Co., Ltd., Dongbu Steel Co., Ltd., and Dongbu Incheon Steel Co., Ltd. (collectively known as “KG Dongbu”). Second, the Court questioned Commerce’s presumption, which was based on KG Dongbu’s failure to submit the CIO Appendix, that the benefits from the first three debt-to-equity restructurings passed through to KG Dongbu, despite a change in ownership. Specifically, the Court noted that KG Dongbu had no reason to submit the CIO Appendix because it was unforeseeable for Commerce to attempt to reverse the conclusions of prior administrative reviews without additional evidence. Third, the Court challenged the final decision because Commerce’s methodology for establishing the uncreditworthiness benchmark was inconsistent with its own regulations, which required the term of the restructured long-term loans and bonds, and the term of the loan and default rates used in the calculation, to match. Finally, the Court remanded because Commerce did not offer a clear rationale for choosing an alternative approach over the one explicitly outlined in its regulations to determine the discount rate for calculating non-recurring expenses.

[Slip Op. 24-39 Kaptan Demir Celik Endustrisi ve Ticaret A.S. v. United States](#)

The Court affirmed the final determinations in the administrative review of an antidumping duty order on steel concrete reinforcing bars from Turkey. Plaintiffs challenged Commerce’s decision to use the invoice date as the sale date, asserting that it was not supported by substantial evidence and was otherwise in violation of the law. Contrary to plaintiff’s position, the Court found that Commerce’s decision was justifiable given that the sales process remained unchanged from the previous review where the invoice date was used. Second, the decision was reasonable because the contracts allowed for changes to be made to material terms after the contract date. Additionally, the Court endorsed the decision further on account of a substantial discrepancy between the quantities listed on the invoices and those specified in the contracts. The Court also noted that even if plaintiffs had presented further evidence favoring the use of the contract date, it wouldn’t alter the fact that Commerce, backed by substantial evidence and established presumptions, did not break from its established practice of using the invoice date.

[Slip Op. 24-40 Far East Am., Inc. v. United States](#)

The Court sustained CBP’s remand redetermination to revoke its initial affirmative finding of evasion in an EAPA investigation. This reversal came after CBP concluded that plaintiffs had not imported “covered merchandise” that would be under the scope of any antidumping or countervailing duty orders. There were no substantive objections to the remand redetermination, which the Court sustained.

[Slip Op. 24-41 Garg Tube Exp. LLP v. United States](#)

The Court sustained in part and remanded in part Commerce’s final results and remand redetermination in a case challenging the antidumping duty order on welded carbon steel standard pipes and tubes from India. Plaintiff Garg Tube Exp. LLP (“Grag”) challenged the reasonableness of Commerce’s decision to (1) rely on an adverse inference when selecting from facts available with respect to the missing cost of production information from Garg’s unaffiliated supplier, and (2) employ its differential pricing methodology. The Court remanded the first issue because Commerce failed to clearly articulate the statutory basis— 19 U.S.C. § 1677e(a) or 19 U.S.C. § 1677e(b)—for its decision. The Court also noted that Commerce did not sufficiently explain how the chosen statute applied to the specific details of the case. On the other hand, the Court sustained Commerce’s decision to differential pricing methodology because Greg failed to exhaust its administrative remedies, thereby precluding judicial review of the issue.

[Slip Op. 24-42 Blue Sky the Color of Imagination, LLC v. United States](#)

The Court classified certain notebooks containing calendars as “diaries” for tariff classification purposes instead of “calendars” or “[o]ther paper products” as contented by the parties. The merchandise in dispute featured full-page monthly calendars followed by weekly segments with spaces designated for notetaking. Plaintiff described these items as designed “to note future appointments,” pointing out their spiral-bound format similar to standard notebooks, as well as supplementary pages allotted for addresses and phone numbers. Plaintiff insisted that the items should be classified as “calendars of any kind,” whereas CBP argued that they should be classified as “[o]ther paper products.” After careful review of English and French dictionary definitions and the Explanatory Notes, the Court concluded that the tariff term “diary” means “a book in which you write things that you must remember to do.” Accordingly, the Court determined that the subject merchandise classified as “diaries,” rejecting the classifications suggested by both parties.

[Slip Op. 24-43 Yama Ribbons & Bows Co. v. United States](#)

The Court upheld plaintiff Yama Ribbons and Bows, Co., Ltd. (“Yama”) challenge to Commerce’s determination in a countervailing duty proceeding on narrow woven ribbons with woven selvage from China. Specifically, Yama disputed Commerce’s use of the coated paper loan program as a basis to determine an adverse fact available (AFA) rate for the Export Buyer’s Credit Program (“EBCP”), consistent with Commerce’s hierarchy for selecting AFA rates in CVD proceedings. The Court sided with Yama, finding that the evidence on record did not substantiate that the coated paper loan program operated analogously to the EBCPs, particularly regarding their functioning as short-term or medium-term loans. As a result, the Court remanded this issue for further examination. Moreover, concerning Yama’s second challenge to the suitability of the AFA rate assigned, the Court deferred consideration pending a response to the remand.

[Slip Op. 24-44 Assan Aluminioyum Sanayi ve Ticaret A.S. v. United States](#)

The Court remanded Commerce’s remand results, which recalculated a duty drawback adjustment for Assan Aluminioyum Sanayi ve Ticaret A.S. (“Assan”), a Turkish producer of subject merchandise. An association of U.S. aluminum producers (the “Association”), among others, objected to Commerce’s updated methodology for recalculating duty drawbacks since it had the effect of reducing Assan’s dumping margin to a de minimis level. The Association asserted that the revised methodology did not sufficiently reflect the Turkish exemption regime, and the Court agreed. It found that Commerce’s recalibrated methodology might have unlawfully expanded Assan’s export price beyond what was

allowable under 19 U.S.C. § 1677a(c)(1)(B). Moreover, the Court recognized the need for a remand given that Commerce did not provide adequate explanations in its redetermination to address the Association's two arguments concerning the requirement to adjust the calculations to incorporate the Turkish Inward Processing Regime ("IPR"), which waives duty liability on imported input materials if certain exporter criteria are met. Accordingly, the Court remanded the issues back to Commerce.

[Slip Op. 24-45 Bioparques de Occidente, S.A. de C.V. v. United States](#)

The Court remanded Commerce's final determination in a case involving a resumed antidumping investigation on tomatoes from Mexico, ruling that Commerce must use the original period of investigation. The original investigation period was 1995-1996, but after the preliminary determination, Commerce and the Mexican growers and exporters reached an agreement to suspend the investigation. During the course of the suspension agreement, the investigation was paused, and when the suspension agreement concluded and Commerce resumed the investigation, it chose to examine the period 2018-2019. Plaintiffs challenged the use of the 2018-2019 time period for the resumed investigation, and the Court ruled that the statute and congressional intent are clear that when Commerce restarts an investigation after a period of suspension, it must stick with the original investigatory period.

[Slip Op. 24-46 Green Farms Seafood Joint Stock Co. v. United States Catfish Farmers of America v. United States](#)

The Court remanded Commerce's final results in its administrative review of the antidumping duty order on catfish from Vietnam, based on its failure to support and explain its reasoning for the selection of the surrogate country. Both the mandatory respondents in the review qualified for and received separate rates. Green Farms was able to demonstrate that it qualified for a separate rate and received the simple average of the two mandatory respondents' rates. Green Farms then challenged the final results on several grounds, including with respect to whether the mandatory respondents qualified for a separate rate. The Court found that Commerce did not sufficiently explain its reasoning of the *de jure* and *de facto* criteria required for this determination. The Court also found that Commerce did not provide any analysis of its own, and that its discussion was "conclusory." Plaintiff also challenged the methodology used to calculate its own rate, which was a simple average of the zero rate and the AFA rate. The Court agreed that the methodology was unreasonable and remanded the issue to Commerce to support its determination. The Court also remanded Commerce's decision to use India as the primary surrogate country, given that it solicited comments for the selection of the appropriate country at a comparable level of economic development as Vietnam.

[Slip Op. 24-47 Jiangsu Senmao Bamboo & Wood Indus. Co. v. United States](#)

The Court remanded for the second time the issue of the selection of the surrogate country and surrogate values in the antidumping duty administrative review of multilayered wood flooring from China. In the administrative review, Commerce selected Brazil as the primary surrogate country and Malaysia as the secondary surrogate country. However, the Court found that Commerce failed to properly support its decision and cite to record evidence supporting its conclusion that the Brazilian and Malaysian data was "publicly available, contemporaneous with the period of review, representative of a broad market average, tax and duty-exclusive, and specific to the inputs being valued." In addition, the case was remanded for further explanation as to why Commerce adjusted the data and removed Spanish import data. The Court had previously remanded this same issue, and Commerce had continued to use Brazil as the primary surrogate. The Court took issue with Commerce's remand on the grounds that it did not cite to record evidence to support the agency's conclusion. The Court had previously remanded Commerce's decision to remove Spanish import data, as the agency had not cited to evidence on the record to support the adjustment, and on remand attempted to prove that it was justified in eliminating the Spanish import data. The Court disagreed and remanded the issue again to Commerce to demonstrate with record evidence that the adjustment was proper and necessary.

[Slip Op. 24-48 Tenaris Bay City, Inc. v. United States](#)

The Court sent back the International Trade Commission's (ITC) final decision to cumulate imports related to the investigation of oil country tubular goods from Argentina, Mexico, Russia, and South Korea. The Court took issue with the ITC's failure to consider the effect that U.S. sanctions had on Russia to determine whether it was at the same level of competition as OCTG from other countries, as it lost its American Petroleum Institute (API), which effectively excluded Russian OCTG imports for the latter months of the investigatory period. The Court also remanded the ITC's final affirmative injury finding to reassess whether it properly cumulated South Korean OCTG imports, which included both subject and non-subject goods.

[Slip Op. 24-49 Nucor Co. v. United States](#)

The Court remanded in part Commerce's second remand redetermination filed in connection with the 2018 administrative review of the countervailing duty order on certain carbon and alloy steel cut-to-length plate from Korea.

Plaintiff Nucor Corporation (“Nucor”) challenged Commerce’s determination not to initiate an investigation into the alleged provision of off-peak electricity determination, and that mandatory respondent POSCO and its affiliate POSCO Plantec (“Plantec”) do not meet the requirements necessary to find a cross-owned input supplier relationship. With respect to off-peak electricity pricing, Commerce claimed that Nucor offered insufficient evidence for Commerce to reconsider its prior determination that the Korean electricity market is consistent with market principles or to demonstrate that the off-peak pricing schedule is inconsistent with market principles. The Court disagreed, determining that Commerce failed to address certain allegations raised by Nucor with respect to off-peak electricity pricing, and again remanding for Commerce to either explain why Nucor’s allegations constituted insufficient evidence of a benefit, or to reconsider its decision not to conduct such an investigation. As to the second challenge, the Court sustained Commerce’s determination not to attribute subsidies received by Plantec. Although POSCO retained its majority ownership of Plantec, Commerce based its decision on POSCO’s inability to control Plantec by virtue of the debt workout program into which Plantec entered. The Court determined that administrative exhaustion precluded Nucor from challenging Commerce’s view of the record on this issue, and it therefore sustained the determination.

[Slip Op. 24-50 Comm. Overseeing Action for Lumber Int’l Trade Investigations or Negot. v. United States](#)

The Court sustained in part and remanded in part Commerce’s final results in the countervailing duty expedited review of certain softwood lumber products from Canada. The Committee Overseeing Action for Lumber International Trade Investigations or Negotiations (the “Coalition”) challenged three aspects of the final results: Commerce’s treatment of the de minimis companies, Commerce’s decision not to attribute supplier subsidies to respondents, and Commerce’s adjustment to the benchmark used to calculate the benefit from the Government of New Brunswick’s property tax program. As to the first challenge, the Court determined that read together, 19 C.F.R. § 351.214(k)(3)(iii) and (iv) demonstrate that entities that receive a zero or de minimis rate in a CVD expedited review are to be excluded from the underlying order. As to the second challenge, the Court held that Commerce’s decision to require an upstream subsidy allegation to determine the countervailability of subsidies received by unaffiliated upstream suppliers, and thereby its treatment of the so-called respondent-remanufacturers as the producers and exporters of subject merchandise, failed to address the type of “minor” activities that may constitute “remanufacturing.” The Court determined that if, on remand, Commerce continues to find that the respondent-remanufacturers are the producers of the subject merchandise, it must reconsider or further explain its determination to require an upstream subsidy allegation. As to the third issue, the Coalition argued that Commerce erred by countervailing certain tax credits. The Court confirmed Commerce’s determination with respect to one respondent, finding that it reasonably concluded that “the logging tax credits are not flowing through an intermediary” to effectuate a transfer of funds to the Government of Quebec, but are instead tax credits provided by the federal and provincial governments. The Court ordered Commerce to further explain its determination with respect to another respondent, specifically its use of the company’s 2014 tax returns to determine benefits during the period of review, when the date of payment in question fell in 2015.

[Slip Op. 24-51 Columbia Aluminum Products, LLC v. United States](#)

The Court sustained CBPs’ remand redetermination in a case challenging its affirmative finding of evasion in an EAPA investigation involving Columbia Aluminum Products’ (“Columbia”) door thresholds. In its remand redetermination, CBP concluded that Columbia’s door thresholds do not evade the AD/CVD orders on aluminum extrusions from China, and that it would discontinue interim measures. Columbia argued that the Court should sustain CBP’s determination with respect to evasion, but objected to the extent its remand redetermination did not result in the immediate liquidation of affected imports. The Court disagreed, noting that it was unclear whether liquidation would moot a possible appeal by the government to the Federal Circuit. In addition, Columbia had not shown any prejudice, as any refunds it would be entitled to after a final judgment would be paid with interest. The Court entered judgment to sustain the remand redetermination.

[Slip Op. 24-52 Grupo Simec S.A.B. de C.V. v. United States](#)

The Court remanded Commerce’s final results in its administrative review of the antidumping orders steel concrete reinforcing bar (rebar) from Mexico. During Commerce’s investigation, one Mexican respondent, Simec S.A.B. de C.V. (“Simec”) suffered the deaths of three key accountants, and the intubation of a fourth, due to the ongoing COVID pandemic. Simec argued that Commerce abused its discretion in denying its extension requests and rejecting certain information, and from drawing adverse inferences from the missing information that resulted. The Court agreed that Commerce’s abused its discretion in refusing to grant Simec additional time. The Court also rejected Commerce’s cited justifications of the need for finality and the burden of accepting late-filed information, noting that Commerce waited nearly three months after denying Simec’s request for additional time to release its preliminary results. The Court also held that Commerce’s determination was not supported by substantial evidence, as it did not account for the novel circumstances underlying Simec’s request. The Court ordered Commerce to reopen the record to accept additional information from Simec, and to conduct a new analysis to determine if facts available or adverse inferences are warranted.



## COURT OF APPEALS FOR THE FEDERAL CIRCUIT

### *Summary of Decisions*

#### [Appeal No. 22-2079, Rimco Inc. v. US](#)

The Federal Circuit affirmed the Court of International Trade’s dismissal for lack of subject matter jurisdiction of a case involving the AD/CVD orders on certain steel wheels from China. After issuing the orders in 2019, no interested party requested an administrative review, including plaintiff-appellant Rimco Inc. (“Rimco”). In 2021, Rimco filed a protest on CBP’s assessment of AD/CVD duties on its entries of subject merchandise, claiming that the duties constituted “excessive fines in contravention of the Eight Amendment.” The Court of International Trade determined, and the Federal Circuit affirmed, that CBP’s assessment of AD/CVD duties was not a protestable decision, as the agency merely plays a ministerial role in this process, and the true nature of Rimco’s challenge was to Commerce’s rate determination. The Court also determined that relief was unavailable under the Court’s residual jurisdictional provision, because relief that was not manifestly inadequate would have been available to Rimco under another provision of the Court’s jurisdictional statute, but Rimco failed to pursue the proper administrative remedy by not requesting administrative review of the AD/CVD orders. Finally, the Federal Circuit rejected Rimco’s constitutional challenges to the assessed AD/CVD rates, noting that “Commerce could have removed the constitutional issue by addressing the statutory appropriateness of its rate determinations,” and that administrative review was the proper remedy for the constitutional challenges as well.

#### [Appeal No. 22-2078, United States Steel Corporation v. US](#)

The Federal Circuit sustained Commerce’s determination that an Australian producer and exporter of hot-rolled steel did not reimburse its affiliated U.S. importer for antidumping duties on hot-rolled steel from Australia. The case arose from a challenge to Commerce’s calculation of constructed export price in its administrative review of the antidumping order. Specifically, United States Steel Corporation objected to Commerce’s determination that the importer had not been reimbursed for antidumping duties, such that it was not required to subtract any reimbursement from the calculated export price. The Court of International Trade had sustained Commerce’s determination based on the importer’s non-reimbursement certificate, the parties’ supply agreement, and record evidence that the importer paid antidumping duties on the subject steel. The Federal Circuit agreed that substantial evidence supported Commerce’s determination and affirmed the lower court’s decision.

## EXPORT CONTROLS AND SANCTIONS

### *2024 BIS Annual Conference Recap*

The Bureau of Industry and Security (“BIS”) held its annual conference in Washington D.C. on March 27, 28, and 29. During the conference, Matt Axelrod, the Assistant Secretary for the Office of Export Enforcement, addressed the attendees and emphasized the importance of understanding that US businesses are on the front lines of protecting US interests and that the government cannot achieve its goals without cooperation with the private sector. Assistant Secretary Axelrod highlighted how seriously BIS is taking its enforcement responsibilities by stating that 2023 saw a record number of convictions, post-conviction denial orders, and penalties issued against companies for violating US export controls. The message from Assistant Secretary Axelrod, and others throughout the conference, was clear: US companies can either pay to enact robust compliance efforts upfront or pay for it in the form of penalties if BIS finds violations.

Assistant Secretary Axelrod also announced several new updates to help companies with compliance, including:

- Updated guidance for freight forwarders including updated red flags to assist in preventing evasion;
- Updated “Don’t Let This Happen to You” case examples to reflect recent cases such as Seagate Technology LLC, By Trade Ou, Spectra Equipment, Inc. and its owner Johnny Tourino; and
- A new list, which will be updated quarterly, of more than 150 entities in a number of countries who have been identified to the Office of Antiboycott Compliance as having made boycott-related requests to companies.

Assistant Secretary Axelrod also detailed BIS’s efforts to send “red flag” letters to US manufacturers and distributors. In the red flag letters, BIS detailed over 600 foreign parties suspected by BIS to be diverting goods to Russia. Receiving these letters does not indicate that the US company has violated the regulations; instead, it puts the company on notice that some parties involved in its supply chain may be diverting their products to Russia or Belarus in violation of the Export Administration Regulations (“EAR”) so the company may adjust accordingly. This list of 600 parties believed to be diverting goods to Russia or Belarus is not publicly available.

In several sessions, the BIS team referred to its partnerships with other government agencies, such as the Department of Justice, FBI, Homeland Security, CBP, and others. Because BIS is a small agency within the government it is leveraging other agencies with more personnel to assist with investigations and enforcement actions. BIS made clear that it is committed to enforcing compliance with US export controls and will initiate enforcement actions against companies for failing to comply.