

# TRADE LAW UPDATE



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April - May 2023

## HIGHLIGHTS FROM APRIL & MAY

### [Petition Summary: Boltless Steel Shelving Units Prepackaged For Sale From India, Malaysia, Taiwan, Thailand, And Vietnam](#)

On April 25, 2023, Edsal Manufacturing Co., Inc (“Petitioners”), filed a petition for the imposition of antidumping duties on imports of Boltless Steel Shelving Units Prepackaged For Sale from India, Malaysia, Taiwan, Thailand, And Vietnam.

### [Petition Summary: Brass Rod from Brazil, India, Israel, Mexico, South Africa, and South Korea](#)

On April 27, 2023 American Brass Rod Fair Trade Coalition (“Coalition”), Mueller Brass Co. (“Mueller”) and Wieland Chase LLC (“Wieland”) (collectively, “Petitioners”), filed a petition for the imposition of antidumping duties on imports of brass rod from Brazil, India, Israel, Mexico, South Africa, and South Korea, as well as the imposition of countervailing duties on imports of brass rod from India, Israel, and South Korea.

### [Petition Summary: Non-refillable steel cylinder from India.](#)

On April 27, 2023, on behalf of Worthington Industries (“Worthington”) (“Petitioner”) filed a petition for the imposition of antidumping and countervailing duties on imports of certain non-refillable steel cylinders from India.

### [BIS Levies Record Penalty for Export Control Violations related to Huawei Shipments](#)

Recently, the U.S. Department of Commerce’s Bureau of Industry and Security (“BIS”) announced the issuance of a \$300 million penalty against Seagate Technology LLC and its Singapore affiliate, Seagate Singapore International Headquarters Pte. Ltd., (collectively, “Seagate”) to resolve apparent violations of the Huawei foreign direct product rule (the “Huawei FDP Rule”). BIS stated this case represented “the largest standalone administrative penalty in BIS history.”

### [BIS Implements Additional Export Controls and Entity List Additions Targeting Russia to Align with Allies and Partners](#)

On May 19, 2023, the Department of Commerce’s Bureau of Industry and Security (“BIS”) [announced](#) new export controls and Entity List additions during President Biden’s G7 visit in Japan. In conjunction with the G7 meetings, BIS

stated these new restrictions are designed to better align U.S. controls with those of its partner and ally countries, who have committed to further restricting Russia's ability to obtain items needed to support Russia's military in its war efforts against Ukraine. Under Secretary of Commerce for Industry and Security Alan F. Estevez indicated that the Global Export Control Coalition "will continue to impose costs on the Kremlin for continuing this war both by further restricting their access to additional items, as well as through aggressive enforcement in concert with our allies and partners."

### [OFAC and U.S. Department of State Issue New Sanctions and Designates More Than 300 Russian Federation Individuals and Companies Aiding Russia's War Efforts](#)

On Friday, May 19, 2023, the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC") [announced](#) the addition of more than 300 Russian Federation individuals and companies as well as other individuals and companies alleged to be aiding Russia's war efforts to the Specially Designated Nationals and Blocked Persons ("SDN") List. Simultaneously, the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") announced new export control measures targeting Russia and those assisting Russia, all of which are discussed [here](#).

### [Podcast: The Latest on Russia Sanctions](#)

Check out the latest episode of [The Justice Insiders](#)—a podcast hosted by Husch Blackwell partner [Gregg Sofer](#)—where we explore the intersection of international trade law and government investigations and enforcement, particularly in connection with Russia.

### [Petition Summary: Paper Shopping Bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, Turkey, and Vietnam](#)

On May 30, 2023, the Coalition for Fair Trade in Shopping Bags (the "Coalition") ("Petitioner") filed a petition for the imposition of antidumping duties on imports of certain paper shopping bags from Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, Turkey, and Vietnam and the imposition of countervailing duties on imports of certain paper shopping bags from China and India.

## U.S. DEPARTMENT OF COMMERCE DECISIONS

### Investigations

#### April

- None

#### May

- Certain Freight Rail Couplers and Parts Thereof From Mexico: On May 3, 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.
- Utility Scale Wind Towers From the Socialist Republic of Vietnam: On May 12, 2023, Commerce issued its notice of court decision not in harmony with the final [determination](#) of countervailing duty investigation.
- Stainless Steel Wire Rod From the Republic of Korea: On May 26, 2023, Commerce issued its final negative [determination](#) of circumvention of the antidumping duty order.
- Certain Freight Rail Couplers and Parts Thereof From the People's Republic of China: On May 30, 2023, Commerce issued its final affirmative [determination](#) of sales at less-than-fair-value and final affirmative determination of critical circumstances.
- Paper File Folders From the People's Republic of China: On May 31, 2023, Commerce issued its postponement of final [determination](#) in the less-than-fair-value investigation.

## Administrative Reviews

### April

- Certain Large Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof From the People's Republic of China: On April 4, 2023, Commerce issued its final [results](#) of the antidumping duty administrative review (2020–2022).
- Finished Carbon Steel Flanges From India: On April 4, 2023 Commerce issued its final [results](#) of antidumping duty administrative review (2020–2021) correction.
- Certain Cold-Rolled Steel Flat Products From the Republic of Korea: On April 5, 2023. Commerce issued its final [results](#) of antidumping duty administrative review (2020–2021).
- Certain Steel Racks and Parts Thereof From the People's Republic of China: On April 10, 2023, Commerce issued its final [results](#) and partial rescission of countervailing duty administrative review (2020).
- Forged Steel Fittings From the People's Republic of China: On April 10, 2023, Commerce issued its final [results](#) of countervailing duty administrative review (2020).
- Monosodium Glutamate From the Republic of Indonesia: On April 10, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2020–2021).
- Strontium Chromate From Austria: On April 10, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2020–2021).
- Certain Cold-Rolled Steel Flat Products From the Republic of Korea: On April 11, 2023, Commerce issued its final [results](#) and partial rescission of countervailing duty administrative review (2020).
- Certain Lined Paper Products From India: On April 12, 2023, Commerce issued its final [results](#) of antidumping duty administrative review and final determination of no shipments (2020–2021).
- Magnesium Metal From the People's Republic of China: On April 12, 2023, Commerce issued final [results](#) of antidumping duty administrative review (2021–2022).
- Ripe Olives From Spain: On April 12, 2023, Commerce issued its final results of countervailing duty administrative review (2020) correction.
- Forged Steel Fittings From the People's Republic of China: On April, 19, 2023, Commerce issued its final [results](#) of antidumping duty administrative review and final determination of no shipments (2020–2021).
- Refillable Stainless Steel Kegs From the People's Republic of China: On April 19, 2023, Commerce issued its final [results](#) of countervailing duty administrative review (2020).
- Certain Hot-Rolled Steel Flat Products From the Republic of Korea: On April 20, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2020–2021).
- Pure Magnesium From the People's Republic of China: On April 21, 2023, Commerce issued final results of antidumping duty administrative review (2021–2022).

### May

- Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: On May 4, 2023, Commerce issued its final [results](#) and final determination of no shipments of antidumping duty administrative review (2021-2022).
- Certain Hot-Rolled Steel Flat Products From Japan: On May 4, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021).
- Certain Lined Paper Products From India: On May 4, 2023, Commerce issued its amended final [results](#) of antidumping duty administrative review (2020-2021).
- Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: On May 4, 2023, Commerce issues its final [results](#) of antidumping duty administrative review (2020-2021).
- Common Alloy Aluminum Sheet From India: On May 5, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2022).
- Common Alloy Aluminum Sheet From Spain: On May 5, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2022).
- Certain Hot-Rolled Steel Flat Products From the Republic of Korea: On May 8, 2023, Commerce issued its final [results](#) of antidumping duty administrative review in part (2020-2021).

- Certain Hot-Rolled Steel Flat Products From the Republic of Korea: On May 9, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2020).
- Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: On May 12, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2020-2021); correction.
- Light-Walled Rectangular Pipe and Tube From Mexico: On May 12, 2023, Commerce issued its amended final [results](#) of antidumping duty administrative review (2020-2021).
- Certain Steel Racks and Parts Thereof From the People’s Republic of China: On May 16, 2023, Commerce issued its amended final [results](#) of countervailing duty administrative review in part (2020).
- Large Residential Washers From Mexico: On May 18, 2023, Commerce issued its final [results](#) of antidumping duty administrative review (2021-2022).
- Steel Concrete Reinforcing Bar From the Republic of Turkey: On May 26, 2023, Commerce issued its final [results](#) of countervailing duty administrative review and rescission, in part (2020).
- Multilayered Wood Flooring From the People’s Republic of China: On May 31, 2023, Commerce issued its final [results](#) of countervailing duty administrative review (2020).
- 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

### April

- Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People’s Republic of China: On April 19, 2023. Commerce issued its [final results](#) of changed circumstances review and continuation of the order.

### May

- **None**

## Sunset Reviews

### April

- Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From the People’s Republic of China: On April 3, 2023, Commerce issued its final [results](#) of the expedited first sunset review of the antidumping duty order.
- Certain Softwood Lumber Products From Canada: On April 3, 2023, Commerce issued its final [results](#) of the expedited sunset review of the countervailing duty order.
- Biodiesel From Argentina and Indonesia: On April 4, 2023 Commerce issued its final [results](#) of expedited sunset reviews of the antidumping duty orders.
- Multilayered Wood Flooring From the People’s Republic of China: On April 4, 2023, Commerce issued its final [results](#) of expedited second sunset review of the antidumping duty order.
- Biodiesel From Argentina and Indonesia: On April 5, 2023, Commerce issued its final [results](#) of expedited first sunset reviews of the countervailing duty orders.
- Carbon and Alloy Steel Wire Rod From the Republic of Turkey: On April 5, 2023, Commerce issued its final [results](#) of the expedited first sunset review of the countervailing duty order.
- Certain Hardwood Plywood Products From the People’s Republic of China: On April 5, 2023, Commerce issued its final [results](#) of the expedited sunset review of the antidumping duty order.
- Multilayered Wood Flooring From the People’s Republic of China: On April 5, 2023, Commerce issued its final [results](#) of expedited second sunset review of the countervailing duty order.
- Certain Softwood Lumber Products From Canada: On April 6, 2023, Commerce issued its final [results](#) of the expedited first sunset review of the antidumping duty order.

- Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From India: On April 20, 2023, Commerce issued its final [results](#) of the expedited first sunset review of the countervailing duty order.
- Circular Welded Carbon Steel Pipes and Tubes From Turkey: On April 24, 2023, Commerce issued its final [results](#) of the expedited sunset review of the countervailing duty order.

## Scope Ruling

### April

- Stainless Steel Sheet and Strip From the People’s Republic of China: On April 24, 2023, Commerce issued its final scope ruling and final affirmative [determination](#) of circumvention for exports from the socialist republic of Vietnam correction.

### May

- None

## Circumvention

### April

- None

### May

- Stainless Steel Wire Rod From the Republic of Korea: On May 26, 2023, Commerce issued its final negative [determination](#) of circumvention of the antidumping duty order.

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

## Investigations

### April

- None

### May

- Certain Light-Based Physiological Measurement Devices and Components Thereof: On May 19, 2023, Commerce issued its notice of a commission determination to review in part a final initial [determination](#); request for written submissions on the issues under review and on remedy, the public interest, and bonding.



## Section 337 Proceedings

### May

- Certain Replacement Automotive Lamps: On May 17, 2023 Commerce issued its notice of commission determination to review a final initial [determination](#) finding a violation of Section 337; schedule for filing written submission on remedy, the public interest, and bonding; extension of the target date.
- Certain Replacement Automotive Lamps II: On May 17, 2023 Commerce issued its notice of commission determination to review a final initial [determination](#) finding a violation of Section 337; schedule for filing written submission on remedy, the public interest, and bonding; extension of the target date.

## U.S. CUSTOMS & BORDER PROTECTION

### [EAPA Cons. Case 7796 and EAPA Case 7799: Exquis Inc., Lollicup USA Inc., and Sanster Corporation](#)

On May 9, 2023, CBP commenced a formal investigation against Exquis, Inc., Lollicup USA Inc., and Sanster Corporation (collectively, the Importers). CBP is investigating whether the importers evaded antidumping duty and countervailing duty orders on lightweight thermal paper by entering into the United States Chinese origin thermal paper that was transshipped through Taiwan. Additionally CBP is investigating whether Exquis is evading antidumping duty by entering into the United States Korean-origin thermal paper that was transshipped through Taiwan.

### [EAPA Case 7794: Colony Gums Inc.](#)

On May 15, 2023, CBP commenced a formal investigation against Colony Gums Inc. (Colony Gums). CBP is investigating whether Colony Gums evaded antidumping orders on xanthan gum from the People's Republic of China. CBP has found that reasonable suspicion exists that Colony Gums entered covered merchandise into the customs territory of the United States through evasion, and CBP has imposed interim measures.

### [CAPA Cons. Case 7724: WHP Associates LLC](#)

On May 1, 2023, CBP issued a Notice of Determination as to Evasion against WHP Associates ZLLC (WHP or the Importer) CBP has determined there is substantial evidence that Importer entered merchandise covered by antidumping duty orders on thermal paper from China, Germany, and the Republic of Korea and countervailing duty orders on thermal paper from China into the customs territory of the United States through evasion. Substantial evidence demonstrates reported manufacturer Actan (Malaysia) SDN BHD (Actan) transshipped South Korean-origin thermal paper through Malaysia, which was imported by Importer into the United States with a claimed country of origin of Malaysia.

### [EAPA Cons. Case 7737: Gorilla Paper, Inc. and Gorilla Supply](#)

On May 12, 2023, the CBP issued a Notice of Determination as to Evasion against Gorilla Paper, Inc. and Gorilla Supply (collectively, Gorilla Paper or, the Importer). CBP has determined there is substantial evidence that Importer entered merchandise covered by antidumping duty orders on thermal paper into the customs territory of the United States through evasion. Substantial evidence demonstrates that Dor Etiket San. Ve. Tic. Ltd, Sti (Dor Etiket), Engin Kagit Mamulleri San Tic. Ltd. (Engin Kagit), and Umur Basim Sanayi Ve Tic. A.S. (Umur Basim) exported and transshipped thermal paper of German origin and of South Korean origin to the United States with a claimed country-of-origin (COO) Turkey. Additionally, substantial evidence demonstrates that the Importer misclassified thermal paper of South Korean origin as carbon paper.

### [EAPA Case 7711: Pitts Enterprises, Inc.](#)

On May 23, 2023, CBP issued a Notice of Determination as to Evasion against Pitts Enterprises, Inc. (Pitts). CBP has reached a determination as to whether Pitts entered merchandise covered by antidumping duty and countervailing duty orders on certain chassis and subassemblies from the People's Republic of China. CBP determined there is substantial evidence that importer Pitts entered covered merchandise for consumption into the customs territory of the United States through evasion.

## COURT OF INTERNATIONAL TRADE

### Summary of Decisions

#### [Slip Op. 23-45 Mid Continent Steel & Wire v. United States](#)

The Court remanded for the third time Commerce's redetermination in the antidumping duty investigation on steel nails from Taiwan. In the first remand, the Court of Appeals for the Federal Circuit (Federal Circuit) sent back the underlying administrative decision for Commerce's failure to fully explain its decision to use a simple average instead of a weighted average to calculate the denominator in the Cohens' d test for its targeted dumping analysis. In the second remand, Commerce did not explain itself and justify the use of the simple average versus a weighted average but instead argued that published literature supported the use of a simple average when sampling was not used. In this third remand, the Court found that Commerce still did not explain (1) how pricing behaviors were factored into the analysis; or (2) additional support for its analysis and assertions. As a result, the Court found that the academic arguments presented by Commerce were not supportable based upon the facts on the record and remanded the issue again for further explanation.

#### [Slip Op. 23-46 Nagase & Co. v. United States](#)

The Court ordered Commerce to revise portions of its determination in the antidumping duty administrative review of glycine from Japan. The issue on remand was whether Commerce correctly categorized an expense as a general and administrative expense for purposes of its margin calculation. The Court found that Commerce failed to explain its decision to include Nagase's "compensation for payment" as a G&A expense, as the record indicated that the expense was associated with ceased production and the disposal of existing inventory. The Court agreed that Commerce had correctly categorized plaintiff's R&D expenses as a general expense, as it was incurred prior to the period of review and was not associated with a specific product.

#### [Slip Op. 23-48 Risen Energy Co. v. United States](#)

The Court sent back, yet again, Commerce's decision to resort to adverse facts available in the sixth countervailing duty administrative review on solar cells from China, due to Commerce's continued finding that adverse facts available were warranted with respect to plaintiff Risen's alleged use of the China Export Buyer's Credit Program. The Court found that on remand, Risen had provided sufficient information for approximately 95% of its sales to demonstrate that it did not avail of benefits under the EBCP program. Specifically, Risen provided Commerce information including financial, loan and record information, relating to six of its 12 customers, which accounted for close to 95% of its sales during the period of review. The Court found that the information satisfied Commerce's reporting requirements, and that "it is unreasonable for Commerce to require perfection." The Court also remanded the use of Thai land benchmark data for further explanation as to why Commerce continues to use "stale data from Thailand" when an alternative, contemporaneous source exists.

#### [Slip Op. 23-49 Environment One Corp. v. United States](#)

The Court dismissed plaintiff Environment One's suit seeking to enforce a Section 301 tariff exclusion on 31 entries under Section 1581(a) and 1581(i). For 8 entries, plaintiff either untimely protested or did not protest the liquidation of the entries at all, and the Court dismissed the related claims for lack of subject matter jurisdiction because they were time-barred. For the remaining 23 entries, the Court found that the complaint failed to allege "(1) the HTSUS classification or tariff description of the subject merchandise at issue; (2) the specific errors Customs allegedly made in the contested protest denials; and (3) [whether] the section 301 exclusion plaintiff alleges is applicable to the subject imports." The Court dismissed the claims related to these 23 entries for failure to state a claim. Because the dismissal was without prejudice, plaintiff filed an amended complaint which the government has since answered.

### [Slip Op. 23-50 Hangzhou Ailong Metal Products v. United States](#)

The Court upheld Commerce's decision in the 2019-2020 antidumping duty administrative review on light-walled rectangular pipe and tube from China. The key issue in the case was the choice of the appropriate surrogate value for the raw steel tube. The Court found that Commerce's use of Malaysian data was supported by substantial evidence on the record.

### [Slip Op. 23-51 SXP Schulz Xtruded Products v. U.S.](#)

The Court dismissed importer SXP Schulz's challenge to Customs' decision not to apply a Section 232 duty exclusion on its imports of steel forged and turned bars. The Court found that plaintiff should have filed for an extension of liquidation, or filed a protest while it was waiting for Commerce to correct an exclusion decision, which would have provided relief under Section 1581(a). However, plaintiff filed the case under Section 1581(i), the Court's residual jurisdiction provision, on the grounds that it had no valid basis to file a protest. In examining the record, the Court found that there were inconsistencies in SXP's argument because the importer filed a protest on another entry with the same issue. The Court determined that since jurisdiction would have been properly available under 28 U.S.C. §1581(a) if SXP had filed a timely protest, its failure to invoke the proper remedy precluded it from filing a case under Section 1581(i), and therefore the Court lacks subject matter jurisdiction to hear the case.

### [Slip Op. 23-52 Nexteel Co. v. United States](#)

The Court affirmed Commerce's finding that a particular market situation did not exist in the antidumping review of oil country tubular goods from Korea, but it remanded for Commerce

to explain the 0.8 threshold of the Cohen's d test. The Cohen's d test part of Commerce's differential pricing analysis utilized to determine if there is "masked" dumping. The Court stated that the use of this threshold did not comport with the questions raised by the Federal Circuit with respect to certain statistical assumptions when using the Cohen's d test. The Court also ordered Commerce to reconsider certain academic literature cited by plaintiff SeAH, because Commerce had previously relied on the cited materials, effectively making them part of the administrative record.

### [Slip Op. 23-53 Meihua Group v. United States](#)

The Court remanded Commerce's decision in the antidumping duty review on xanthan gum from China. The Court ordered Commerce to reconsider its decision to resort to adverse facts available when it calculated the separate rate for Meihua; to reconsider its use of a simple average in its separate rate calculation; and to determine whether Deosen Biochemical Ltd. should be combined into a single entity with Deosen Biochemical (Ordos) Ltd. First, in examining each of the issues on appeal, the Court found that Commerce failed to fulfill its obligation to swiftly inform Meihua of any deficiencies and provide an opportunity to remedy its error before it resorted to total AFA of 154.07%. Second, it found that separate rate applicant Jianlong could continue to present arguments with respect to its separate rate calculation even though it did not exhaust its administrative remedies, because it was incorporating by reference another party's administrative argument. Finally, the Court found that Commerce erred when it failed to conduct a collapsing analysis for Deosen, and that the failure was an abuse of discretion.

### [Slip Op. 23-54 Nucor Corp. v. United States](#)

The Court upheld Commerce's determination that while the government of South Korea provided electricity for less than adequate remuneration, there was no benefit conferred, as the prices paid for electricity were based on market principles in the 2019 review on corrosion-resistant steel from South Korea. The Federal Circuit previously found that Commerce had considerable leeway in making its Tier 3 benchmark determinations, and the Court of International Trade therefore upheld Commerce's determination.



### [Slip Op. 23-55 Nucor Corp. v. United States](#)

In a parallel case to the Court's decision in Slip Op. 23-55, the Court again sustained Commerce's determination that the Government of South Korea does not provide electricity for less than adequate remuneration and that no benefit was conferred in the 2019 countervailing duty administrative review on cold-rolled steel from Korea.

### [Slip Op. 23-56 Suzano S.A. v. United States](#)

The Court remanded back to Commerce its determination in the 2018-2019 antidumping duty administrative review of uncoated paper from Brazil. In the underlying administrative review, the Court found that Commerce's treatment of all costs associated with a merger as a normal cost and not an extraordinary cost was made without "citing to agency practice or court precedent, or any accounting principles supporting its position." The respondent, Suzano, had reported and claimed that its losses associated with acquiring another entity were investment-related expenses, and therefore extraordinary expenses, and should be excluded from the reported costs of production for the subject merchandise. This was the second remand on the same issue, and while Commerce supported its decision to treat the losses as non-investment-related based upon Brazilian generally accepted accounting principles, Commerce had continued to fail to explain why it did not treat the expenses as extraordinary.

### [Slip Op. 23-57 Dalian Meisen Woodworking Co. v. United States](#)

On remand from the countervailing duty investigation final determination on wooden cabinets and vanities from China, the Court found that Commerce does not have the authority to use total adverse facts available on a countervailing duty respondent for the alleged use of the Export Buyer's Credit program when the respondents provided the required loan information for most, if not all customers. The Court ruled that perfection is not the standard for verification of non-use of the program. In its initial remand, the Court had instructed Commerce to find a viable and practical solution for verifying the non-use of the EBCP. As part of the remand, Commerce issued questionnaires requiring the submission of all loan information for its U.S. customer, and respondent Ancientree provided all the loan information, but respondent Dalian Meisen did not. The Court then upheld the use of adverse facts available on Meisen but not on Ancientree.

### [Slip Op. 23-58 Vietnam Finewood Co., et al. v. United States](#)

The Court remanded Commerce's scope determination in a case arising from a scope referral related to an Enforce and Protect Act investigation concerning possible evasion of the orders. The Court held that Commerce was incorrect in finding ambiguity in the scope of the antidumping and countervailing duty orders on hardwood plywood from China, and that the scope unambiguously covers products of three or more plies. The Court remanded to Commerce to make a finding consistent with 19 C.F.R. §351.225(k)(1) sources and with the Court's opinion. The Court also upheld Commerce's rejection of additional arguments and ordered that the case be dismissed with respect to plaintiff Vietnam Finewood, as the company was dissolved in 2019.

### [Slip Op. 23-59 La Molisana v. United States](#)

In an appeal of the administrative review of the antidumping duty order on Certain Pasta from Italy, the Court affirmed Commerce's product characteristic hierarchy and the thresholds for distinguishing between different protein content. Plaintiff La Molisana argued that Commerce's 12.5% threshold was not a reflection of market reality and that the threshold should be increased to 13.5% protein content. The Court found that the information placed on the record by the plaintiff was "unreliable and insufficient" and upheld Commerce's decision.

### [Slip Op. 23-60 Dalian Meisen Woodworking Co. v. United States](#)

The Court upheld Commerce's redetermination on remand and the continued application of total adverse facts available in the original investigation on wooden cabinets and vanities from China. In its initial remand instructions, the Court ordered Commerce to reexamine its determination on the basis that plaintiff Meisen did not fail to report the physical

characteristics of wooden cabinets and vanities made of birch. However, on remand Commerce found that Meisen failed to provide full and accurate information with respect to its U.S. affiliates and continued to utilize total adverse facts available. The Court affirmed this redetermination on remand.

#### [Slip Op. 23-61 Ad Hoc Shrimp Trade Enforcement Committee v. United States](#)

The Court upheld Customs' remand redetermination that importer MSeafood Corp. did not evade antidumping duties on frozen warmwater shrimp from India by transshipping the products through Vietnam. The Court had remanded on the grounds that Customs relied on a single instance of evasion to conclude that the importer had evaded duties for an entire year. In reviewing the record, the Court found that Customs had overlooked key evidence that demonstrated that the exporter had a tracking system in place to ensure that Vietnamese and Indian shrimp were not commingled prior to export, and that this system was audited multiple times by NOAA's Seafood Import Monitoring Program.

#### [Slip Op. 23-62 Kaptan Demir Celik Endustrisi ve Ticaret v. United States](#)

The Court remanded Commerce's decision to treat a ship building company as a cross-owned affiliate of the respondent Kaptan Demir in its 2018 administrative review of the countervailing duty order on rebar from Turkey. The Court found that Commerce erroneously relied on case precedent in determining that scrap is an input which is primarily dedicated to the production of downstream products, given that the prior court decision was fact specific and concerned different entities. The Court instructed Commerce to further explain why the input scrap is primarily dedicated to the production of downstream products, given that the scrap may have been utilized to produce non-subject merchandise.

#### [Slip Op. 23-63 Wind Tower Trade Coalition v. United States](#)

The Court upheld Commerce's remand results related to its 2018 administrative review of the countervailing duty order on utility scale wind towers from Vietnam. On remand, Commerce was able to adequately explain and support its decision that (1) the tolling arrangements between CS Wind Vietnam and its parent were not sudden but the continuation of a "preexisting business arrangement"; (2) an affiliate acting as an importer of record was not evidence of the manipulation of the sales value; and (3) that the steel utilized by CS Wind Vietnam was not imported and therefore no benefits were received under the Import Duty Exemption program.

#### [Slip Op. 23-64 Nucor Corp. v. United States](#)

In a third case covering the same South Korean program, the Court determined that the Government of South Korea does not provide a countervailable subsidy to the steel industry via the provision of electricity for less than adequate remuneration. This appeal stemmed from the 2019 countervailing duty administrative review of the order on carbon and alloy cut-to-length plate. The Court found that Commerce validly exercised its discretion in analyzing the provision of electricity and determined that the electricity was provided at rates set by market principles.

#### [Slip Op. 23-65 Corinth Pipeworks Pipe Industry v. United States](#)

Plaintiff Corinth appealed Commerce's final results of the first administrative review of large diameter welded pipe from Greece, in which Commerce resorted to total adverse facts available. The Court sustained Commerce's results on the grounds that Corinth had failed to reconcile its reported costs to its normal books and records during the administrative review. Corinth attempted to argue that Commerce was required under 19 U.S.C. §1677m(g) to provide an additional opportunity to comment prior to issuing the final results. The Court disagreed with plaintiffs on the basis that the statute does not require Commerce to collect additional information when calculating margins beyond what Commerce itself generates, and there is no statutory requirement that necessitates that Commerce issue a post-preliminary decision other than the final results of review.

### [Slip Op. 23-66 Carbon Activated Tianjin Co., et al. v. United States](#)

The Court sustained Commerce’s remand results in the appeal of the administrative review of the antidumping duty order on activated carbon from China. The Court found that Commerce’s explanation on remand with respect to its selection of surrogate values for coal-based carbonized materials and the surrogate financial statements were supported by substantial evidence on the record.

### [Slip Op. 23-67 Bioparques de Occidente v. United States](#)

The Court found that plaintiffs have a right to appeal, and that the Court has jurisdiction to hear an appeal challenging Commerce’s determination to restart the original investigation on tomatoes from Mexico after termination of the suspension agreement. While the Federal Circuit has held that challenges on the resumption of investigations are invalid unless they are part of a challenge to a final determination, the challenge here was valid because it was tied to a final determination to terminate the suspension agreement and then restart the original investigation.

### [Slip Op. 23-68 ME Global v. United States](#)

In a tariff classification appeal, the Court found that heat-treated forged steel rods imported by ME Global were properly classified under HTSUS subheading 7228.40.00 as “other bars and rods, not further worked than forged.” Plaintiff ME Global argued that the heat-treated forged steel rods should be classified under HTSUS subheading 7326.11.00 as “other articles of iron or steel: forged or stamped, but not further worked: ... grinding balls and similar articles for mills.” The Court based its determination on an examination of the articles in question as well as the fact that HTSUS heading 7228 covers “other bars and rods.”

### [Slip Op. 23-69 CEK Group v. United States](#)

The Court upheld Customs’ evasion finding under the Enforce and Protect Act based on the “totality of the circumstances” and Customs’ finding that plaintiff CEK had transshipped Chinese wire hangers from Thailand and evaded antidumping duties with the help of both the Thai exporter and manufacturer. The Court found that Customs initiated the investigation based on sufficient record evidence. Furthermore, during the investigation process, CEK and the importer failed to respond to Customs’ requests for information, which justified the use of adverse inferences.

### [Slip Op. 23-70 American Manufacturers of Multilayered Wood Flooring v. United States](#)

In the appeal of the seventh administrative review of the antidumping duty order on multilayered wood flooring from China, the Court remanded in part and sustained in part Commerce’s final results. The Court remanded for further explanation of Commerce’s decision to use 24 working days per month as part of its surrogate value calculations for labor and the surrogate financial ratio for calculating the manufacturing overhead ratios. The Court also sustained the surrogate value for glue.

### [Slip Op. 23-71 BGH Edelstahl Siegen v. United States](#)

The Court upheld in part and remanded in part Commerce’s remand redetermination in the countervailing duty investigation on fluid end blocks from Germany. The Court found that on remand, Commerce reasonably found that it does not have to factor in and offset the cost of complying with Germany’s electricity and energy tax acts in calculating the subsidy rate for the program, given that the law only provides for the deduction or offset of “application fees, deposits, or similar payments” paid by the respondent to qualify for or receive benefits under a particular program. In this instance, Commerce found that the compliance fees do not qualify as offsets, and the Court affirmed. The second issue on appeal related to whether the KAV program was de jure specific. For this program, the Court found that Commerce had failed to fully explain how the program criteria were not economic in nature or horizontal in application to support its conclusion that the subsidy was countervailable. The Court remanded this issue back to Commerce for further explanation.

### [Slip Op. 23-72 Shantou Red Garden Food Processing Co. v. United States](#)

On May 12, 2023, the Court upheld Commerce's finding that respondent Shantou Red Garden Food Processing Co. was not the successor-in-interest to Red Garden Food Processing Co., and therefore plaintiff Shantou's exports were subject to antidumping duties pursuant to the order on frozen warmwater shrimp from China. The Court focused on the extent to which plaintiff had undergone changes to its business operations during the period, focusing on the exporter's management structure, its production facilities, common suppliers, customer base, as well as additional factors. The issue of whether Red Garden was the successor to Shantou Processing arose because of a WTO Section 129 proceeding in which Shantou Processing claimed that Red Garden should be able to benefit from Shantou's status as a company that was not subject to antidumping duties. A secondary issue in the case was the methodology employed by Commerce in conducting its analysis as to whether it properly adjusted the U.S. price by deducting freight costs from invoice price when the freight costs were refunded. The Court concluded that the adjustments were a "wash" and did not substantially affect the margin calculation.

### [Slip Op. 23-73 Eregli Demir ve Celik Fabrikalari v. International Trade Commission](#)

The Court found that plaintiff Eregli Demir failed to show cause as to why it should not permit four U.S. steel producers to intervene in Erdemir's challenge to the injury determination for the original investigation on hot-rolled steel from Turkey. The Court continued to deny U.S. Steel Corp.'s request to intervene on the grounds that it had failed to demonstrate how the Court's decision would adversely affect it. For the other remaining four defendant intervenors, the Court found that they had fully participated in the underlying ITC proceedings and continued to have a significant interest in the case, given that they would be adversely affected by the Court's decision.

### [Slip Ops 23-74, 23-77 and 23-78 Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States](#)

The Court sustained Commerce's final determination for administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes from Turkey, entering judgment in three cases without an opinion. The cases challenged Commerce's treatment of Section 232 tariffs on steel and aluminum as regular import duties when calculating U.S. export price, as it resulted in a lower export price, an increased dumping margin and higher antidumping duties. The Court had stayed all three cases pending the outcome of *Boru Sanayi ve Ticaret A.S. v. United States* in the Federal Circuit, which involved the same issue on an earlier administrative review of the same antidumping duty order. In March 2023, the Federal Circuit held that Commerce can legally treat Section 232 duties as regular import duties when calculating U.S. export price to determine the final antidumping duty margin. The parties in the three stayed cases agreed that judgment should be entered in accordance with that decision.

### [Slip Op. 23-75 China Manufacturers Alliance v. United States](#)

The Court on May 16, 2023, upheld Commerce's decision to apply the China-wide rate to plaintiff, Double Coin, because it had failed to rebut the presumption of government control in the antidumping duty administrative review of off-the-road tires from China. While the Court agreed that the issue of government control was not adjudicated by the Federal Circuit in its prior appeal, the Court still instructed Commerce to assign the China-wide rate to Double Coin so that it could enter final judgment.

### [Slip Op 23-79 Guizhou Tyre Co., Ltd. And Guizhou Tyre Import and Export Co., Ltd., et. al. v. United States](#)

The Court sustained Commerce's second remand redetermination related to an antidumping duty administrative review of certain off-the-road tires from China. The remand results reconsidered whether respondents rebutted the presumption of government control needed for separate rate status and concluded that although respondents satisfied two prongs of Commerce's four-criteria test, they failed to demonstrate autonomous selection of management, and for one respondent, independent decision-making regarding disposition of profits. The Court found that Commerce applied reasonable methodology in requiring respondents to satisfy all four prongs of its independence test. The Court also

found that substantial evidence supported Commerce's findings that government-owned shareholders controlled the selection of respondents' board members and senior management, and for one respondent, the distribution of profits.

#### [Slip Op. 23-80 Guizhou Tyre Co. v. United States](#)

The Court denied plaintiff Guizhou's challenge related to the recalculation of the China-wide rate in the 2015-2016 antidumping duty administrative review on off-the-road tires from China. While the Court seemed to sympathize with plaintiff's predicament, the Court declined to remand the issue for further reconsideration because plaintiff had requested a remand of its status of a separate rate respondent but did not request remand or review of the China-wide rate.

#### [Slip Op 23-81 Guizhou Tyre Co., Ltd., et. al. v. United States](#)

The Court sustained Commerce's final less-than-fair-value determination in an antidumping duty investigation of certain truck and bus tires from China, as well as the resulting antidumping duty order. Plaintiffs, producers and exporters of truck and bus tires, challenged Commerce's determination not to apply a separate rate on the basis that they failed to rebut the presumption of government control. As in the Guizhou Tyre decision issued the prior week, the Court found that Commerce applied reasonable methodology with respect to its independence test, and that it based its findings on sufficient record evidence. The Court also ordered Commerce to amend the antidumping duty order to account for its premature issuance prior to the International Trade Commission's affirmative injury determination.

#### [Slip Op. 23-82 Nature's Touch Frozen Foods \(West\) v. U.S.](#)

In a classification appeal, the Court found that fourteen different types of frozen fruit mixtures, five of which also contain vegetable ingredients, were properly classified under HTSUS heading 0811 as "fruit...frozen" rather than in HTSUS heading 2106 as "food preparations." At the subheading level, the Court found the mixtures properly classifiable in HTSUS subheading 0811.90.80 as "other" frozen fruits and subject to 14.5 percent duties after examining the heading, subheading and General Rules of Interpretation 3(b). As a result, the Court ordered Customs to reclassify plaintiff's entries under subheading 0811.90.80 but only ordered Customs to reliquidate any unliquidated entries.

#### [Slip Op. 23-83 List Industries Inc. v. United States](#)

The CIT remanded back to Commerce its decision to include four specific income categories when calculating the surrogate financial ratios in the antidumping duty investigation on metal lockers from China. The court instructed Commerce to further explain for each of the categories why those income categories related to other real operating income. The court, however, upheld Commerce's selection of Turkey as the primary surrogate country as well as the selected financial statements.

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

#### [Fed. Cir. # 22-1199 Al Ghurair Iron & Steel v. United States](#)

The Federal Circuit upheld Commerce's determination that corrosion-resistant steel from the United Arab Emirates circumvented the antidumping and countervailing duty orders on corrosion-resistant steel from China. The court evaluated Commerce's analysis and found that Commerce had properly supported its decision based upon information on the record related to patterns of trade, level of investment, nature of the production process in the UAE, and the extent of the production facilities. The court also found that Commerce's process and procedures were not arbitrary as plaintiff-appellee claimed and furthermore, the court stated that it could not reexamine or reweigh the evidence due to the fact that Commerce made a country-wide circumvention finding.

### [Fed. Cir. # 21-2257 Zhejiang Machinery Import & Export Corp. v. United States](#)

The Federal Circuit upheld both the Court of International Trade's ruling and Commerce's finding that plaintiff-appellee Zhejiang Machinery failed to rebut the presumption that it was under Chinese government control, as required to warrant receiving a separate rate. The Court based its finding on the fact that a labor union that was ultimately under the control and direction of the Chinese government was a majority shareholder of the company, and the company therefore met the criteria for being considered de jure controlled by the Chinese government.

### [Fed. Cir. # 22-1021 Committee Overseeing Action for Lumber International Trade Investigations or Negotiations v. United States](#)

The Court ruled that Commerce has the statutory authority to conduct expedited countervailing duty reviews. Canadian softwood lumber exporters had requested expedited review after receiving the all-others rate, and upon conclusion of the expedited review, received a de minimis rate exempting them from the countervailing duty order on certain softwood lumber products. The U.S. domestic industry challenged Commerce's ability to conduct an expedited review, and the Court of International Trade found that Commerce lacked statutory authority. The Federal Circuit reversed on appeal, finding that Section 1677f-1(e) authorized expedited countervailing duty reviews and that the Uruguay Round Agreements Act specifically amended the Tariff Act of 1930 to permit such reviews.

### [Fed. Cir. # 22-1298 Carbon Activated Tianjin Co. v. United States](#)

The Federal Circuit upheld the Court of International Trade's ruling as well as Commerce's underlying administrative determination, sustaining the use of a secondary surrogate country in the 2017-2018 administrative review of antidumping duties for activated carbon from China. The Court found that the use of an alternative surrogate country of Romania to value one of the bituminous coal inputs, as opposed to valuing both bituminous coal inputs using the primary surrogate country of Malaysia, was supported by substantial evidence on the record. Similarly, the use of Romanian data to value the surrogate financial ratios was also supported by substantial evidence on the record.

### [Fed. Cir. # 22-2017, Byungmin Chae v. Janet Yellen, Secretary of the Treasury et. al.](#)

The Federal Circuit upheld Customs' denial of Mr. Chae's application for a Customs broker license, which requires a passing grade of at least 75 percent on the Customs Broker License Examination. Mr. Chae sought review of three exam questions for which Customs had denied credit. The Court found that Customs should have granted credit for one additional question, but it did not raise Mr. Chae's score above 75 percent, and the Court therefore affirmed the Court of International Trade decision denying Mr. Chae's customs broker license application.

### [Fed Cir. # 23-1109 and 23-1657, Seah Steel Corp. et. al. v. United States et. al.](#)

Exporters moved to voluntarily dismiss two appeals before the Federal Circuit challenging Commerce's remand results related to an administrative review of the antidumping duty order on certain oil country tubular goods from Korea. The appeals sought reversal of a Court of International Trade decision affirming Commerce's application of its differential pricing analysis in calculating antidumping duty margin, as well as its inclusion of inventory valuation losses in calculating exporters' expense ratio. The court granted exporters' motion and dismissed the two appeals.

### [Fed. Cir. # 20-2162 Canadian Solar International Limited v. United States](#)

The Federal Circuit reversed the Court of International Trade's decision upholding Commerce's rescission of the antidumping duty review on solar cells from China. The Court stated in its opinion that if a company is unable to demonstrate and prove that it has entries that enable it to obtain a separate rate, then Commerce cannot automatically find that it had no shipments and rescind the review with respect to that company. Commerce originally denied the exporter Qixin a separate rate because it did not have sales during the review, and Qixin argued that Commerce should have rescinded the review rather than denying the entity the separate rate and then lumping the company into the

China-wide entity. Qixin did not properly participate in the briefing process at the Court of International Trade but then attempted to supplement briefing after identifying that it had five entries during the period of review. The Court of International Trade did not permit Qixin to file this new information out of time and ultimately upheld Commerce's original decision.

## EXPORT CONTROLS & ECONOMIC SANCTIONS

### [BIS Levies Record Penalty for Export Control Violations related to Huawei Shipments](#)

Recently, the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") announced the issuance of a \$300 million penalty against Seagate Technology LLC and its Singapore affiliate, Seagate Singapore International Headquarters Pte. Ltd., (collectively, "Seagate") to resolve apparent violations of the Huawei foreign direct product rule (the "Huawei FDP Rule"). BIS stated this case represented "the largest standalone administrative penalty in BIS history."

According to BIS, Seagate committed 429 violations of the U.S. Export Administration Regulations ("EAR") by selling more than 7 million controlled hard disk drives ("HDDs") to Huawei and its affiliates between August 2020 and September 2021. The U.S. government has long sought to restrict Huawei's access to U.S. technology based on its determination of reason to believe the company is engaged in activities contrary to U.S. national security or foreign policy interests.

### [BIS Implements Additional Export Controls and Entity List Additions Targeting Russia to Align with Allies and Partners](#)

On May 19, 2023, the Department of Commerce's Bureau of Industry and Security ("BIS") announced new export controls and Entity List additions during President Biden's G7 visit in Japan. In conjunction with the G7 meetings, BIS stated these new restrictions are designed to better align U.S. controls with those of its partner and ally countries, who have committed to further restricting Russia's ability to obtain items needed to support Russia's military in its war efforts against Ukraine. Under Secretary of Commerce for Industry and Security Alan F. Estevez indicated that the Global Export Control Coalition "will continue to impose costs on the Kremlin for continuing this war both by further restricting their access to additional items, as well as through aggressive enforcement in concert with our allies and partners."

In addition, BIS added 71 entities to its Entity List and issued a joint supplemental alert with the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) urging additional due diligence by U.S. financial institutions against Russia's evasion efforts. Separately, the Treasury's Office of Foreign Assets Control ("OFAC") issued more than 300 sanctions against Russian individuals and companies and others aiding Russia's war efforts, which we discuss in full here.

### [OFAC and U.S. Department of State Issue New Sanctions and Designates More Than 300 Russian Federation Individuals and Companies Aiding Russia's War Efforts](#)

On Friday, May 19, 2023, the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC") [announced](#) the addition of more than 300 Russian Federation individuals and companies as well as other individuals and companies alleged to be aiding Russia's war efforts to the Specially Designated Nationals and Blocked Persons ("SDN") List. Simultaneously, the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") announced new export control measures targeting Russia and those assisting Russia, all of which are discussed [here](#).