



# Trade Law Update

May 2024

## IN THIS ISSUE

- [Highlights From May](#)
- [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 MAY

### [Commerce Issues Preliminary Antidumping Determination in Aluminum Extrusions Investigations in 14 Countries; Invites Further Comments on Scope](#)

On May 1, 2024, Commerce announced affirmative preliminary determinations in the antidumping investigation of aluminum extrusions from the People’s Republic of China, Colombia, Ecuador, India, Indonesia, Italy, the Republic of Korea, Malaysia, Mexico, Taiwan, Thailand, the Republic of Türkiye, the United Arab Emirates, and the Socialist Republic of Vietnam. Commerce is conducting concurrent countervailing duty investigations on imports of aluminum extrusions from China, Indonesia, Mexico, and Türkiye, in which it announced affirmative preliminary determinations on March 5, 2024.

### [U.S. Trade Representative Releases Section 301 Review, Announces Increases in Section 301 Duties for Select Products, and Indicates that Existing Exclusions are Scheduled to Expire on May 31](#)

As previewed over the course of the last month, the Biden Administration has announced that it intends to increase Section 301 tariff rates for a host of products, including critical minerals used in battery production, solar cells and modules. The May 14, 2024 announcement comes in the context of the U.S. Trade Representative completing its four-year review of the Section 301 tariffs imposed during the Trump Administration on a broad range of imports from China.

### [Petition Summary: Disposable Aluminum Containers, Pans, and Trays from the People’s Republic of China](#)

On May 16, 2024, the Aluminum Foil Container Manufacturers Association and the following individual member companies – Durable Packaging

International, D&W Fine Pack, LLC, Handi-foil Corp., Penny Plate, LLC, Reynolds Consumer Products, LLC, Shah Foil Products, Inc., Smart USA, Inc., Trinidad/Benham Corp. (collectively “Petitioners”), filed a petition for the imposition of antidumping and countervailing duties on U.S. imports of Disposable Aluminum Containers, Pans, and Trays from the People’s Republic of China.

### [DHS Significantly Expands UFLPA Entity List](#)

On May 16, 2024, the Department of Homeland Security announced that it is adding twenty-six entities to the Uyghur Forced Labor Prevention Act (“UFLPA”) Entity List, the consolidated register of four lists required by section 2(d)(2)(B)(ii) of the UFLPA. DHS added these latest entities to section 2(d)(2)(B)(v) of the Entity List, which identifies facilities and entities that source material from Xinjiang Uyghur Autonomous Region or from persons working with the government of Xinjiang or the Xinjiang Production and Construction Corps for purposes of the “poverty alleviation” program, or the “pairing-assistance” program, or any other government labor scheme that uses forced labor. The update significantly expands the UFLPA Entity List, which now includes 65 entities in total. Inclusion in the list triggers a rebuttable presumption that the listed entities’ goods were made with forced labor and are prohibited from import into the United States.

[USTR Issues List of Proposed Section 301 Tariff Increases in Strategic Sectors, Invites Public Comment, Suggests Possible Exclusions for Equipment Used in Domestic Manufacturing, and Remains Silent on Fate of Existing Exclusions](#)

On May 22, 2024, the U.S. Trade Representative released a draft Federal Register notice containing the list of imported goods for which it proposes to increase Section 301 duty rates. USTR also announced that it was considering an exclusion process by which U.S. manufacturers may request that “particular machinery used in domestic manufacturing be temporarily excluded from Section 301 tariffs.” Finally, USTR has proposed 19 temporary exclusions for solar manufacturing equipment.

[USTR to Terminate Certain Existing Section 301 Exclusions; Extends Others for an Additional Year](#)

On May 24, 2024, the U.S. Trade Representative announced that 249 products that were eligible for exclusions from 2018 will no longer be eligible for these exclusions, effective June 14, 2024. The original expiration date was May 31, 2024, but USTR granted a grace period for U.S. importers to adjust their sourcing and supply chain decisions. USTR, however, did extend the exclusions for 180 products.

[Petition Summary: Large Top Mount Combination Refrigerator-Freezers from Thailand](#)

On May 30, 2024, Electrolux Consumer Products, Inc. (“Electrolux”) (“Petitioners”), filed a petition for the imposition of antidumping duties on imports from Thailand. Electrolux alleges that producers and exporters from Thailand are selling merchandise at less-than-fair-value. If Electrolux successfully demonstrates that unfairly priced imports are causing material injury to the domestic industry, the U.S. government will impose antidumping duties to offset the level of unfair pricing found. Parties adversely affected by this case should consider participating at an early stage, as the case is litigated before Commerce and the International Trade Commission.

## U.S. DEPARTMENT OF COMMERCE DECISIONS

### Investigations

- Aluminum Lithographic Printing Plates From the People’s Republic of China: On May 1, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination and Extension of Provisional Measures.
- Aluminum Lithographic Printing Plates From Japan: On May 1, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures.
- Certain Paper Shopping Bags From the Republic of Türkiye: On May 3, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value; Correction.
- Aluminum Extrusions From Colombia: On May 7, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures.
- Aluminum Extrusions From Ecuador: On May 7, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures.
- Aluminum Extrusions From India: On May 7, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures.
- Aluminum Extrusions From Indonesia: On May 7, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures.
- Aluminum Extrusions From Italy: On May 7, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures.
- Aluminum Extrusions From Malaysia: On May 7, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures.
- Aluminum Extrusions From Mexico: On May 7, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures.

- Aluminum Extrusions From Taiwan: On May 7, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures.
- Aluminum Extrusions From Thailand: On May 7, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures.
- Aluminum Extrusions From the People’s Republic of China: On May 7, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures.
- Aluminum Extrusions From the Republic of Korea: On May 7, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures.
- Aluminum Extrusions From the Republic of Türkiye: On May 7, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures.
- Aluminum Extrusions From the Socialist Republic of Vietnam: On May 7, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures.
- Aluminum Extrusions From the United Arab Emirates: On May 7, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures.
- Monosodium Glutamate From the People’s Republic of China: On May 15, 2024, Commerce issued its [Initiation](#) of Circumvention Inquiry on the Antidumping Duty Order.
- Mattresses From Bosnia and Herzegovina: On May 15, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances.
- Mattresses From Bulgaria: On May 15, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value.
- Mattresses From Burma: On May 15, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances.
- Mattresses From Italy: On May 15, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances.
- Mattresses From Poland: On May 15, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value.
- Mattresses From Slovenia: On May 15, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value.
- Mattresses From Taiwan: On May 15, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part.
- Mattresses From the Philippines: On May 15, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances.
- Ceramic Tile From India: On May 16, 2024, Commerce issued its [Initiation](#) of Countervailing Duty Investigation.
- Ceramic Tile From India: On May 16, 2024, Commerce issued its [Initiation](#) of Less-Than-Fair-Value Investigation.
- Certain Alkyl Phosphate Esters from the People’s Republic of China: On May 20, 2024, Commerce issued its [Initiation](#) of Countervailing Duty Investigation.
- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From Cambodia, Malaysia, Thailand, and the Socialist Republic of Vietnam: On May 20, 2024, Commerce issued its [Initiation](#) of Countervailing Duty Investigations.
- Certain Alkyl Phosphate Esters From the People’s Republic of China: On May 20, 2024, Commerce issued its [Initiation](#) of Less-Than-Fair-Value Investigation.
- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From Cambodia, Malaysia, Thailand, and the Socialist Republic of Vietnam: On May 20, 2024, Commerce issued its [Initiation](#) of Less-Than-Fair-Value Investigations.
- Certain High Chrome Cast Iron Grinding Media From India: On May 23, 2024, Commerce issued its [Initiation](#) of Countervailing Duty Investigation.
- Certain High Chrome Cast Iron Grinding Media From India: On May 23, 2024, Commerce issued its [Initiation](#) of Less-Than-Fair-Value Investigation.
- Certain Paper Shopping Bags From India: On May 24, 2024, Commerce issued its Final Affirmative Countervailing Duty [Determination](#) and Final Affirmative Critical Circumstances Determination, in Part.
- Certain Paper Shopping Bags From the People’s Republic of China: On May 24, 2024, Commerce issued its Final Affirmative Countervailing Duty [Determination](#) and Final Affirmative Determination of Critical Circumstances.

- Certain Paper Shopping Bags From Cambodia: On May 24, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part.
- Certain Paper Shopping Bags From Colombia: On May 24, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value.
- Certain Paper Shopping Bags From India: On May 24, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances.
- Certain Paper Shopping Bags From Malaysia: On May 24, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value.
- Certain Paper Shopping Bags From Portugal: On May 24, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances.
- Certain Paper Shopping Bags From Taiwan: On May 24, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part.
- Certain Paper Shopping Bags From the People’s Republic of China: On May 24, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value and Final Affirmative Critical Circumstances Determination.
- Certain Paper Shopping Bags From the Socialist Republic of Vietnam: On May 24, 2024, Commerce issued its Final Affirmative [Determination](#) of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances.
- Aluminum Extrusions From the Socialist Republic of Vietnam: On May 28, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Critical Circumstances, in Part, in the Less-Than-Fair Value Investigation.
- Aluminum Extrusions From the United Arab Emirates: On May 28, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Critical Circumstances, in Part, in the Less-Than-Fair Value Investigation.
- Frozen Warmwater Shrimp From Ecuador: On May 30, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures.
- Frozen Warmwater Shrimp From Indonesia: On May 30, 2024, Commerce issued its Preliminary Affirmative [Determination](#) of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures.

#### Administrative Reviews

- Certain Mobile Access Equipment and Subassemblies Thereof From the People’s Republic of China: On May 1, 2024, Commerce issued its Preliminary [Results](#) and Partial Rescission of Antidumping Duty Administrative Review; 2022–2023.
- Multilayered Wood Flooring From the People’s Republic of China: On May 1, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2021– 2022.
- Steel Concrete Reinforcing Bar From the Republic of Türkiye: On May 1, 2024, Commerce issued its Final [Results](#) of Countervailing Duty Administrative Review; 2021.
- Welded Line Pipe From the Republic of Korea: On May 1, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2021– 2022.
- Multilayered Wood Flooring From the People’s Republic of China: On May 7, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2021– 2022; Correction.
- Oil Country Tubular Goods From Ukraine: On May 8, 2024, Commerce issued its Notice of Amended Final [Results](#) of Antidumping Duty Administrative Review Pursuant to Settlement.
- Certain Hot-Rolled Steel Flat Products From Japan: On May 9, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2021–2022.
- Steel Concrete Reinforcing Bar From Mexico: On May 10, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2021– 2022.
- Certain Hot-Rolled Steel Flat Products From the Republic of Korea: On May 13, 2024, Commerce issued its Final [Results](#) of Countervailing Duty Administrative Review; 2021.
- Multilayered Wood Flooring From the People’s Republic of China: On May 14, 2024, Commerce issued its Final [Results](#) of Countervailing Duty Administrative Review; 2021.
- Truck and Bus Tires From the People’s Republic of China: On May 15, 2024, Commerce issued its Final [Results](#) of Countervailing Duty Administrative Review; 2022.



- 1,1,1,2-Tetrafluoroethane (R-134a) From the People’s Republic of China: On May 17, 2024, Commerce issued its Final [Results](#) of the Antidumping Duty Administrative Review; 2022–2023.
- Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes From Mexico: On May 17, 2024, Commerce issued its Amended Final [Results](#) of Antidumping Duty Administrative Review; 2021–2022.
- Prestressed Concrete Steel Wire Strand From Thailand: On May 21, 2024, Commerce issued its [Final Results](#) of Antidumping Duty Administrative Review; 2022.
- Strontium Chromate From Austria: On May 21, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2021–2022.
- Certain Stilbenic Optical Brightening Agents From Taiwan: On May 28, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Administrative Review; 2022.
- Circular Welded Carbon Steel Pipes and Tubes From Thailand: On May 29, 2024, Commerce issued its [Final Results](#) of Antidumping Duty Administrative Review; 2022–2023.

### Changed Circumstances Reviews

- Certain Frozen Warmwater Shrimp From India: On May 13, 2024, Commerce issued its Notice of [Initiation](#) and Preliminary Results of Antidumping Duty Changed Circumstances Review.
- Certain Corrosion-Resistant Steel Products From the Republic of Korea: On May 15, 2024, Commerce issued its Notice of [Initiation](#) of Countervailing Duty Changed Circumstances Review.
- Stainless Steel Flanges From the People’s Republic of China and India: On May 17, 2024, Commerce issued its Final [Results](#) of Changed Circumstances Reviews and Revocation of the Antidumping and Countervailing Duty Orders, in Part.
- Polyethylene Terephthalate Film, Sheet, and Strip From India: On May 21, 2024, Commerce issued its Final [Results](#) of Antidumping Duty Changed Circumstances Review.

### Sunset Reviews

- Common Alloy Aluminum Sheet From the People’s Republic of China: On May 7, 2024, Commerce issued its Final [Results](#) of the Expedited First Sunset Review of the Antidumping Duty Order.
- Common Alloy Aluminum Sheet From the People’s Republic of China: On May 7, 2024, Commerce issued its Final [Results](#) of the First Expedited Sunset Review of the Countervailing Duty Order.
- Large Diameter Welded Pipe From India: On May 22, 2024, Commerce issued its Final [Results](#) of the Expedited First Sunset Review of the Countervailing Duty Order.
- Large Diameter Welded Pipe From the Republic of Korea: On May 22, 2024, Commerce issued its Final [Results](#) of the Expedited First Sunset Review of the Countervailing Duty Order.
- Sodium Hexametaphosphate From the People’s Republic of China: On May 29, 2024, Commerce issued its Final [Results](#) of the Expedited Third Sunset Review of the Antidumping Duty Order.

### Scope Ruling

- None.

### Circumvention

- None.

## U.S. INTERNATIONAL TRADE COMMISSION

### *Section 701/731 Proceedings*

### Investigations

- High Chrome Cast Iron Grinding Media From India; On May 2, 2024, the ITC issued its [Institution](#) of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations.
- Paper Shopping Bags From Turkey; On May 8, 2024, the ITC issued its affirmative [determinations](#) of less-than-fair-value investigations.
- Dioctyl Terephthalate (DOTP) From Malaysia, Poland, Taiwan, and Turkey; On May 16, 2024, the ITC issued its affirmative [determinations](#) of less-than-fair-value investigations.
- Ferrosilicon from Brazil, Kazakhstan, Malaysia, and Russia; On May 17, 2024, the ITC issued its affirmative [determinations](#) of less-than-fair-value investigations.

- Disposable Aluminum Containers, Pans, and Trays From China; On May 22, 2024, the ITC issued its [Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations](#).
- 2,4-Dichlorophenoxyacetic Acid (“2,4- D”) From China and India; On May 24, 2024, the ITC issued its affirmative [determinations](#) of less-than-fair-value investigations.
- Epoxy Resins From China, India, South Korea, Taiwan, and Thailand; On May 24, 2024, the ITC issued its affirmative [determinations](#) of less-than-fair-value investigations.

## U.S. CUSTOMS & BORDER PROTECTION

None.

## COURT OF INTERNATIONAL TRADE

*Summary of Decisions*

### [Slip Op. 24-53 Jinko Solar Imp. & Exp. Co. v. United States](#)

The Court upheld Commerce’s decision to resort to adverse facts available (“AFA”) against Risen Energy Co. (“Risen”) in the 2019-2020 administrative review of the antidumping duty order on solar photovoltaic cells from China. The Court, however, remanded the case back to Commerce to further justify its methodology to calculate the AFA rate given that it did not rely on facts on the record but instead “created facts by manipulating evidence on the record.” Commerce used an average of reported quantities for various factors of production, which the Court took exception to as it was unsupported by evidence on the record. The Court also found that Commerce had failed to explain why its chosen methodology was reasonable or was accurate. The Court found that Risen had not done enough to obtain the requisite factors of production from unaffiliated producers, given that Risen had chosen to do business with uncooperative suppliers. In the Court’s view, Risen had not “undertake efforts to incentivize compliance” from its unaffiliated suppliers. In addition to its key findings, the Court also remanded the selection of surrogate values for solar glass and air freight for further explanation.

### [Slip Op. 24-54 Sahamitr Pressure Container Plc. v. United States](#)

The Court sustained Commerce’s remand redetermination in the 2019-2020 administrative review of the antidumping duty order on steel propane cylinders from Thailand. Commerce had found that plaintiff Sahamitr Pressure Container Plc. (“Sahamitr”) had reported selling expenses that were distortive, and that Sahamitr had not sufficiently disproven that determination. Commerce had required Sahamitr to report its sales expenses on a transaction specific basis and not to rely on any allocation methodologies unless it could demonstrate that an allocation basis was not distortive. Plaintiff reported its expenses related to certification fees on an allocation basis, because it could not tie the expenses to individual sales. However, Commerce found that the temporal difference between when the sale was made and when the fees were incurred created monthly fluctuations and distortions. The Court agreed with Commerce and found that as the “master of antidumping,” it has discretion to determine reporting methodologies, which it properly exercised here.

### [Slip Op. 24-55 Hyundai Steel Co. v. United States](#)

In a case challenging the 2019 countervailing duty administrative review of hot-rolled steel from Korea, the Court remanded Commerce’s finding that the allotment of emissions permits under the Emissions Trading System of Korea was *de jure* specific, on the grounds that Commerce relied on the *de facto* analysis factors in its review. The program at issue sets limits on the amount of greenhouse gas emissions each year, with each company receiving 97 percent of its allotment and in certain sectors, 100 percent of their allotment. These emission permits can be carried forward from prior years, borrowed from future years, used to earn credits for reduced emissions or used to buy permits. The Court sustained Commerce decision to countervail the additional 3 percent allotment as a benefit received by plaintiff Hyundai Steel Co. (“Hyundai”), as well as Commerce’s finding that the grant of additional permits constituted a financial contribution from the government of Korea that benefited Hyundai.

### [Slip Op. 24-56 Assan Aluminyum Sanayi ve Ticaret A.S. v. United States](#)

The Court remanded to Commerce to further explain the agency’s treatment of plaintiff Assan Aluminyum’s raw material costs and hedging revenues as part of the antidumping investigation on aluminum foil from Turkey. In addition, the Court accepted Commerce’s voluntary remand request to reexamine the denominator for the duty drawback adjustment.

### [Slip Op. 24-57 Kent Displays, Inc. v. United States](#)

In a classification dispute, the Court ruled that importer Kent Displays can recoup Section 301 duties paid on the import of kids’ erasable e-writing tablets from China. Plaintiff argued that its products should be reliquidated as “optical appliances

not otherwise specified” under Harmonized Tariff Schedule heading 9013 and subheading 9903.88.19, the latter exempting it from Section 301 duties. While CBP agreed that the displays are classified under HTSUS 9013, it disagreed that the e-writing tablets qualify for the Section 301 exclusion under subheading 9903.88.19 and liquidated the entries with a 25 percent tariff. On appeal, the Government put forth an alternative argument, stating that the goods should have been classified under heading 8543.70.9960, which carries a 2.6 percent duty, and Kent agreed to this alternative claim if its claim for the Section 301 exclusion failed. The Court agreed with the Government and found that the displays should be classified under heading 8543 and not 9013, and it ordered CBP to refund 22.4 percent of the duties, representing the difference between 25 percent Section 301 duties paid and the 2.6 percent rate under heading 8543.79.9960.

[Slip Op. 24- 58 Auxin Solar, Inc. v. United States](#)

The Court rejected motions to dismiss from the Government and nine solar cell importers and exporters in a case challenging Commerce’s pause of antidumping and countervailing duties on solar panels from various Southeast Asian countries. The Court held that it had jurisdiction to hear this case under Section 1581(i), the Court’s residual jurisdiction provisions. The Court also permitted nine solar cell importers and exporters to intervene, noting that while the companies failed to establish intervention as a matter of right, they cleared the bar for permissive intervention since they showed they would be adversely affected by a decision in the case. In addition, as part of the arguments presented, the Government conceded that the Court has the power to order reliquidation of entries covered by the duty moratorium for those entries “for which liquidation was not suspended and cash deposits were not collected.”

[Slip Op. 24-59 Best Mattresses Int’l Co. v. United States](#)

The Court sustained Commerce’s remand results in a case involving the final affirmative antidumping duty determination regarding mattresses from Cambodia. The Court had remanded for Commerce to reconsider or further explain its selection of Cambodia as the “market under consideration” under the Major Input and Transactions Disregarded Rules. On remand, Commerce stated that the “market under consideration” is chosen “on a case-by-case basis” after “analyzing the factors involved and examining the available data,” which the Court found adequate. The Court also found that Commerce adequately explained on remand its exclusion of imports from non-market economies and export-subsidizing countries in the Cambodian Trademap and six-country Global Trade Atlas (“GTA”) datasets when calculating input cost of production and market price. As for plaintiff’s argument that Commerce erred when it used a simple average, rather than a weighted average, of the six-country GTA data to calculate input cost of production values, the Court found the argument waived because plaintiff first raised it on remand. Finally, the Court found reasonable Commerce’s determination on remand that certain financial statements on which it relied to be publicly available, as well as its decision to average the financial statements with those of another respondent in its investigation.

[Slip Op. 24-60 BGH Edelstahl Siegen GmbH v. United States](#)

The Court remanded Commerce’s third remand determination in its countervailing duty investigation of forged steel fluid end blocks from Germany. Commerce concluded in its investigation that the German government offered countervailable subsidies through multiple programs, including the Konzessionsabgabenverordnung Program (“KAV Program”). In the third redetermination, however, Commerce determined under protest that the KAV program was not de jure specific. The Court found that while it was unclear from the record whether the program is sufficiently limited to establish a finding of specificity, there was enough evidence to warrant further investigation. As a result, the Court remanded for reconsideration or further explanation.

[Slip Op. 24-61 Archroma U.S., Inc. v. United States Dep’t of Com.](#)

The Court granted plaintiff’s motion for judgment on the agency record in a case involving antidumping orders on paper-whitening chemicals from Taiwan and China. The case involved Commerce’s regulation setting the deadline to provide notice of intent for an entry of appearance in a sunset review. After plaintiff filed an untimely notice, Commerce revoked the orders, on the basis that no domestic interested party responded to the sunset review notice of initiation by the applicable deadline, and it rejected plaintiff’s attempt to file substantive responses with the statutory content for such a review. The Court held that while plaintiff failed to submit a notice that was timely under Commerce’s regulatory deadline, the governing statute conferred no authority to revoke a duty order or bar participation in a sunset review on that basis, and that the regulation therefore violates the statute. The Court granted plaintiff’s motion and enjoined the agency to accept the company’s substantive responses and undertake full sunset reviews.

[Slip Op. 24-62 Cambria Co. LLC v. United States](#)

The Court remanded Commerce’s final results in the 2019–2021 administrative review of the antidumping duty order on certain quartz surface products from India. Foreign producers and exporters (collectively, “Antique Group”) challenged Commerce’s rejection of its second supplemental questionnaire response, because Commerce had set the deadline for the

submission at 10 a.m. instead of the default 5 p.m. deadline established in its regulations, and the Antique Group filed its submission after 10 a.m. The Court held that Commerce did not have a reasonable basis for departing from its regulations, and that its decision to reject Antique Group's submission constituted an abuse of discretion. The Court also found that Commerce's determination that Antique Group failed to act to the best of its ability was unsupported by substantial evidence, because it had complied with all prior deadlines, its untimely submission would have been timely under Commerce's default deadline, and it had enacted remedial measures to prevent future untimely filings. As for the adverse facts available ("AFA") rate selected for Antique Group, the Court held that Commerce's decision to corroborate the petition margin using transaction-specific margins, when those transactions all shared a distinct feature, was not supported by substantial evidence. Finally, the Court found that Commerce's departure from the expected method in calculating the non-selected company rate by relying on historical rates instead of weight-averaging the zero and *de minimis* margins and margins determined pursuant to the facts available, was not supported by substantial evidence.

[Slip Op. 24-63 United States v. Aegis Sec. Ins. Co.](#)

The Court denied the Government's motion for reconsideration of an opinion granting summary judgment to Aegis Security Insurance Company ("Aegis") in a case in which the United States attempted to recover under a customs bond that Aegis issued. In the underlying opinion, the Court found that because the Government waited eight years to make a demand to Aegis for outstanding duties, it breached an implied contractual duty to make a demand within a reasonable time. The Government's motion for reconsideration argued that: (1) the implied reasonable time requirement is inconsistent with the statutory and regulatory scheme governing customs bonds, and that (2) the Government can recover even if it breached the implied reasonable time requirement because any breach was not material. The Court denied the motion on the basis that the Government waived any arguments that the implied reasonable time requirement does not exist or does not apply here, based on counsel's concessions at oral argument, and that the Government forfeited any argument for a materiality requirement by failing to raise it in the underlying litigation.

[Slip Op. 24-64 Apiario Diamante Comercial Exportadora Ltda. v. United States](#)

The Court remanded Commerce's affirmative determination in its antidumping duty investigation of raw honey from several countries, including Brazil. Commerce had preliminarily assigned a dumping margin of 10.52 percent to plaintiffs, two mandatory respondents from Brazil, but in its final determination assigned a dumping margin of 87.5 percent, relying on adverse facts available ("AFA"). Commerce applied AFA on the basis that it could not verify plaintiffs' cost data, specifically pointing to certain discrepancies between plaintiffs' information and that submitted by its beekeeper suppliers. The Court determined that the beekeepers' records did not call into question plaintiffs' reported costs, or warrant setting aside plaintiffs' entire comparison market database as unverifiable, noting the suppliers' admission that they spent "virtually no time" on administration and record keeping. The Court also found that Commerce had not provided an opportunity to remedy any perceived discrepancies, as it first identified the discrepancies in its final issues and decision memorandum. The Court also rejected the Government's arguments pertaining to several specific allegedly deficient responses, noting that certain information identified as missing was contained in previously subparts of plaintiffs' questionnaire response, and that the record refuted Commerce's finding that screenshots of plaintiffs' journal entries failed to tie to purchases of raw materials. The Court remanded for Commerce to reconsider its determination to apply AFA and to calculate a new dumping margin for plaintiffs.

[Slip Op. 24-65 Performance Additives LLC v. United States](#)

The Court granted in part and denied in part cross-motions for summary judgment in a case challenging CBP's denial of two claims for duty drawback. At issue was a provision of the drawback statute providing for deemed liquidated drawback on entries that have liquidated and become final within one year of the filing of a claim. Plaintiff argued that the provision applied to both of its drawback claims and rendered CBP's liquidation of its entries without the benefit of drawback invalid. As for the first drawback claim, the Court found that while the entries had liquidated within one year, they had not become final because the 180-day protest period had not ended, and no drawback was warranted as a result. As for the second drawback claim, the Court found that the one-year statutory period had become a three-year period due to extensions provided by CBP, and that the entries were deemed liquidated 180 days after CBP failed to liquidate within that time. As a result, plaintiff was entitled to deemed liquidated drawback on those entries.

[Slip Op. 24-66 Coal of Am. Mfrs. Of Mobile Access Equip. Investigations or Negot. v. United States](#)

The Court sustained in part and remanded in part Commerce's final determination in its antidumping investigation into mobile access equipment from China in a case brought by the Coalition of American Manufacturers of Mobile Access Equipment (the "Coalition"). In its investigation, Commerce requested information on the cost of shipping cargo, noting its policy to select values that are publicly available, and ultimately selecting the Descartes, Freightos, and Drewry material. The Court remanded for Commerce to explain its acceptance of the designation by two mandatory respondents of their ocean freight routes as proprietary, which the Coalition argued had forced it to similarly designate its Maersk



shipping data. As to the shipping routes of defendant intervenor Zhejiang Dingli Machinery Co., Ltd. (Dingli), the Court found that Commerce's failure to recognize that the Descartes, Freightos, and Drewry data are less specific than the Maersk information was unreasonable. The Court found, however, there was nothing unreasonable in how Commerce weighed the competing considerations in the data as to cargo specificity. The Court also remanded so the agency, insofar as it again chooses to use the Descartes information again on remand, can identify the specific data in the record that supports its conclusion about what costs the brokerage and handling surrogate value includes.

The Court also remanded for Commerce to reconsider its use of certain Harmonized Tariff Schedule subheadings to value minor fabricated steel components, which the Coalition argued relate to raw steel inputs rather than manufactured products. The Court rejected the Coalition's arguments that Commerce's valuation of certain drive motors was contrary law because it overlooked their primary function, finding instead that Commerce adequately explained how these products differed from other investigated products. Finally, the Court rejected the Coalition's argument that Commerce accepted Dingli's proprietary data contrary to its regulations, as the agency reasonably explained that the data was the only means available for the company to rebut, clarify, or correct the surrogate value information on the record.

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

### *Summary of Decisions*

#### [Appeal No. 22-2181, Saha Thai Steel Pipe Public Company Limited v. U.S.](#)

The Federal Circuit reversed the trial court's decision affirming Commerce's remand results in a case involving the scope of the antidumping duty order on certain steel pipes from Thailand. At issue was whether the language covering "standard pipes" covers "dual-stenciled pipes," namely pipes certified as "standard pipes" and concurrently as "line pipes." The Federal Circuit found that Commerce reasonably interpreted the Thailand Order's scope as covering standard pipes dually stenciled as line pipes, noting that dual-stenciled pipes are certified as standard pipes, meet ASTM specifications for standard pipes, and suit the corresponding standard-pipe applications. Further, the (k)(1) materials did not support an implicit exclusion of standard pipes if they are dually stenciled as line pipes.

In a dissenting opinion, Judge Chen concluded that the plain language of the Thailand Order covers "certain circular welded carbon steel pipes and tubes . . . , which are commonly referred to in the industry as 'standard pipe' or 'structural tubing,'" and it is unclear whether the relevant industry commonly refers to dual stenciled pipes as standard pipes. Looking to the (k)(1) factors, however, Judge Chen noted substantial evidence supporting the conclusion that the order does not cover dual-stenciled pipes, including an International Trade Commission sunset review expressly stating that "dual-stenciled pipe, which for U.S. customs purposes enters as line pipe under a different tariff subheading, is not within the scope of the orders."

#### [Appeal No. 23-1162, Asociacion De Exportadores E Industriales v. U.S.](#)

The Federal Circuit affirmed the trial court's decision to sustain Commerce's finding that a countervailing duty on table olives from Spain was warranted. At issue was the section of Commerce's statute prescribing the conditions under which a subsidy on a raw agricultural product may be treated as a subsidy on the finished good (here, table olives), and specifically, the requirement that "the demand for the prior stage product is substantially dependent on the demand for the latter stage product." The Federal Circuit disagreed with the trial court's method of requiring that at least 50 percent of the prior stage product be processed into the latter-stage product, instead holding that the test should be "whether the demand for the latter stage product has a real, material, or important effect on the demand for the prior stage product." However, the standard for "substantially dependent" was met under either standard. As for Commerce's calculations, the Federal Circuit found it reasonable to focus on the percentage of olives that were ultimately processed into table olives, rather than the farmer's intentions in growing the olives, as appellants urged. While the Court found that Commerce's specific calculations were flawed, it was not in a way that prejudiced appellants, as under both the correct and flawed method roughly half of all olives from the relevant varieties are ultimately processed into table olives. Finally, the Federal Circuit found Commerce's decision to use Spanish government's data over the Agencia de Información y Control Alimentarios (the Spanish Food Information and Control Agency) for some applications was reasonable, because that data focused on how olives are used, not how olives are grown.

## EXPORT CONTROLS AND SANCTIONS

### *BIS Updates Export Controls for Certain Firearms*

In April 2024, the Bureau of Industry and Security (“BIS”) published an Interim Final Rule (“IFR”) to amend the EAR to impose additional export controls on certain firearms. The IFR went into effect on May 30, 2024. The IFR implements the following changes:

- **Increased review standards:** BIS plans to increase scrutiny on a transaction-by-transaction basis to prevent bad actors from acquiring firearms. BIS will implement regulations containing specific national security and foreign policy factors to consider when reviewing license applications.
- **Presumption of denial for commercial transactions involving high risk countries:** BIS will apply presumption of denial to license applications for nongovernmental recipients in countries listed in the [State Department memorandum](#). The countries include:
  - Bahamas, Bangladesh, Belize, Bolivia, Burkina Faso, Burundi, Chad, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Indonesia, Jamaica, Kazakhstan, Kyrgyzstan, Laos, Malaysia, Mali, Mozambique, Nepal, Niger, Nigeria, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Suriname, Tajikistan, Trinidad and Tobago, Uganda, Vietnam, and Yemen.
- **Data collection and transparency:** BIS is implementing new ECCNs to better track what firearms are being manufactured and exported abroad. The new ECCNs are as follows:
  - ECCN 0A506 controls semi-automatic rifles;
  - ECCN 0A507 controls semi-automatic pistols;
  - ECCN 0A508 controls semi-automatic shotguns; and
  - ECCN 0A509 controls certain “parts,” “components,” devices, “accessories,” and “attachments” for items controlled under ECCNs 0A506, 0A507, and 0A508.

The new ECCNs will supplement the pre-existing ECCNs which may currently control certain firearms.

- **Additional documentation for license applicants:** the general license validity period for export licenses will be reduced from 4 years to 1 year. For export licenses to countries with less-developed export controls, BIS will require additional documents from licensees before approving a license, including a purchase order and import certification.
- **Revoking current license to high-risk countries:** on July 1, 2024, BIS will revoke currently issued licenses authorizing exports of firearms to non-governmental end users in the above-mentioned countries.

### *OFAC Amends Iran Sanctions to Incorporate General License D-2*

On May 16, 2024, the U.S. Department of the Treasury’s (“Treasury”) Office of Foreign Assets Control (“OFAC”) announced amendments to the Iranian Transactions and Sanctions Regulations (“ITSR”) to incorporate General License D-2 into the regulations and publishing an associated [List of Services, Software, and Hardware Incident to Communications](#).

The most notable change from the amendments is that effective June 17, 2024, OFAC will further amend the 31 CFR § 560.540 List of Services, Software, and Hardware Incident to Communications to exclude laptops, tablets, and personal computing devices with an “Adjusted Peak Performance” (“APP”) exceeding 1 Weighted TeraFLOP (WT).

OFAC also added:

- Section 560.540(a)(7) to authorize the exportation or reexportation of certain services conducted outside Iran to install, repair, or replace hardware or software authorized for exportation, reexportation, or provision to Iran by paragraphs (a)(2) or (3). The new 31 CFR § 560.540(a)(7) authorizes such services only when the service provider is located outside Iran and does not authorize the service provider to engage in such services while in Iran.
- Section 560.540(b)(3), which incorporates paragraph (b) of GL D-2, is also being revised to clarify the restrictions related to provision of web-hosting services or of domain name registration services in Iran authorized by 31 CFR

§ 560.540(a) by specifically excluding from authorization the exportation or reexportation of web-hosting services for websites of commercial entities located in Iran or of domain name registration services for or on behalf of the Government of Iran or another person whose property and interests in property are blocked pursuant to Section 560.211 of the ITSR.

- Section 560.540(d) which sets forth the case-by-case licensing policy previously set forth in paragraph (d) of GL D-2, for additional activities that support internet freedom in Iran, such as development and hosting of anti-surveillance software by Iranian developers. Such services would also include, for example, the development and hosting of anti-censoring software by Iranian software developers and the exportation of certain software development tools to Iranians seeking to create their own anti-surveillance or anti-censorship apps and upload them to mobile app sites.

In conjunction, OFAC issued a new FAQ and amended 26 ITSR-related FAQs to reflect the amendments.

#### *OFAC Amends Cuba Sanctions to Promote Internet Freedom and Entrepreneurship*

On May 28, 2024, OFAC [announced](#) amendments to the Cuban Assets Control Regulations (“CACR”), 31 CFR 515, that aim to promote Internet freedom and private entrepreneurship in Cuba. A [final rule](#) issued on May 29, 2024 implemented the amendments that loosen restrictions on Internet accessibility and certain business activities.

The new rules will permit individuals who are Cuban nationals and “independent private sector entrepreneurs” to open, maintain, and use US bank accounts for certain transactions. This authorization is limited to private cooperatives, small businesses, and sole proprietorships in Cuba of up to 100 employees. This authorization does not and is not intended to apply to Cuban government officials or Cuban Communist Party members.

OFAC also amended the CACR to provide additional examples of authorized internet-based services. The amendment clarifies that certain services may be exported to Cuba to support the internet communications. This would include authorizations for services to “to install, repair, or replace certain items, including by removing the requirement that referenced items fall within specific export control classification parameters.”

Additionally, the new rule reverses OFAC’s previous action by re-authorizing US banks to process “U-Turn” transactions. US banks are permitted to process U-Turn transactions, provided that neither party is subject to US jurisdiction. US banks are now permitted to unblock and remit U-Turn funds previously blocked.

OFAC also issued 6 new Cuba-related FAQs and amended 8 reflect the amendments and provide additional clarification on the same.