Trade Law Update

July 2024

IN THIS ISSUE

HIGHLIGHTS FROM JULY

Petition Summary: Certain Tungsten Shot from the People's Republic of China

On July 10, 2024, Tungsten Parts Wyoming, Inc. ("TPW") filed a petition for the imposition of antidumping and countervailing duties on imports from China. TPW alleges that producers and exporters from China are selling merchandise at less-than-fair-value and are subsidized by the Chinese government. If TPW successfully demonstrates that unfairly traded imports are causing material injury to the domestic industry, the U.S. government will impose antidumping and countervailing duties. Parties adversely affected by this case should consider participating at an early stage as the case is litigated before Commerce and the ITC.

Biden Administration Increases Tariffs on Imports of Aluminum and Steel

On July 10, 2024, the Biden Administration announced tariff increases on imports of aluminum and steel products. The tariff increases are the latest measure to combat the circumvention of Section 301 duties imposed against Chinese origin products by shipping the products through third countries. The modifications apply to goods entered or withdrawn for consumption on or after July 10, 2024.

FLETF Identifies New High-Priority Sectors in Updated UFLPA Strategy: Polyvinyl Chloride (PVC), Aluminum, and Seafood

On July 9, 2024, the Forced Labor Enforcement Task Force ("FLETF") issued its annual update to its guidelines enforcing the Uyghur Forced Labor Prevention Act ("UFLPA") in a Report to Congress titled "2024 Updates to the Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China." This report is the second strategy update since the UFLPA came into effect in June 2022. Since publication of the first strategy update published on July 26, 2023, FLETF has significantly expanded the UFLPA Entity List and designated three additional high-priority sectors for enforcement: polyvinyl chloride, aluminum, and seafood.

Commerce Department Bans Kaspersky Software in First ICTS Prohibition, Signals Increased Risk of Using Certain Foreign Software and Technology

On June 20, 2024, Commerce's Bureau of Industry and Security ("BIS") issued a Final Determination prohibiting the sale of certain cybersecurity products, anti-virus software, and related services to U.S. persons by Kaspersky Lab, Inc., the U.S. subsidiary of Russian cybersecurity provider AO Kaspersky Lab.

This Final Determination represents the first such action by BIS under Executive Order 13873 ("Securing the Information and Communications Technology and Services Supply Chain") and the ICTS implementing regulations issued on June 19, 2021.

U.S. DEPARTMENT OF COMMERCE DECISIONS

Investigations

- Certain Paper Plates From the People's Republic of China: On July 1, 2024, Commerce issued its Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Determination of Critical Circumstances, in Part, and Alignment of Final Determination With Final Antidumping Duty Determination.
- Certain Paper Plates From the Socialist Republic of Vietnam: On July 1, 2024, Commerce issued its Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Determination of Critical Circumstances, in Part, and Alignment of Final Determination With Antidumping Duty Determination.
- Vanillin From the People's Republic of China: On July 1, 2024, Commerce issued its Initiation of Countervailing Duty Investigation.
- Vanillin From the People's Republic of China: On July 1, 2024, Commerce issued its Initiation of Less-Than-Fair-Value Investigation.
- Certain Pea Protein From the People's Republic of China: On July 5, 2024, Commerce issued its Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination.
- Certain Pea Protein From the People's Republic of China: On July 5, 2024, Commerce issued its Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstances Determination.
- Certain Low Speed Personal Transportation Vehicles From the People's Republic of China: On July 16, 2024, Commerce issued its Initiation of Countervailing Duty Investigation.
- Certain Low Speed Personal Transportation Vehicles From the People's Republic of China: On July 16, 2024, Commerce issued its Initiation of Less-Than-Fair-Value Investigation.
- Large Top Mount Combination Refrigerator-Freezers From Thailand: On July 16, 2024, Commerce issued it Initiation of Less-Than-Fair-Value Investigation.
- Certain Brake Drums From the People's Republic of China and the Republic of Tu¨rkiye: On July 17, 2024, Commerce issued its Initiation of Countervailing Duty Investigations.
- Certain Brake Drums From the People's Republic of China and the Republic of Tu¨rkiye: On July 17, 2024, Commerce issued its Initiation of Less-Than-Fair-Value Investigations.
- Mattresses From Indonesia: On July 22, 2024, Commerce issued its Final Negative Countervailing Duty Determination.
- Melamine From Germany: On July 22, 2024, Commerce issued its Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination.
- Melamine From India: On July 22, 2024, Commerce issued its Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Determination With the Final Antidumping Duty Determination.
- Melamine From Qatar: On July 22, 2024, Commerce issued its Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Determination of Critical Circumstances, and Alignment of Final Determination With Final Antidumping Duty Determination.
- Melamine From Trinidad and Tobago: On July 22, 2024, Commerce issued its Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination.
- Mattresses From India: On July 22, 2024, Commerce issued its Final Affirmative Determination of Sales at Less Than Fair Value.
- Mattresses From Kosovo: On July 22, 2024, Commerce issued its Final Affirmative Determination of Sales at Less-Than-Fair Value.
- Mattresses From Mexico: On July 22, 2024, Commerce issued its Final Affirmative Determination of Sales at Less-Than-Fair Value.
- Mattresses From Spain: On July 22, 2024, Commerce issued its Final Affirmative Determination of Sales at Less Than Fair Value.
- Large Top Mount Combination Refrigerator-Freezers From Thailand: On July 24, 2024, Commerce issued its Initiation of Less-Than-Fair-Value Investigation; Correction.

Administrative Reviews

- Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: On July 5, 2024, Commerce issued its Final Results and Final Partial Rescission of Antidumping Duty Administrative Review; and Final Determination of No Shipments; 2021– 2022.

- Certain Frozen Warmwater Shrimp From India: On July 10, 2024, Commerce issued its Final Results of Antidumping Duty Administrative Review; 2022–2023.
- Utility Scale Wind Towers From Malaysia: On July 10, 2024, Commerce issued its Final Results of Antidumping Duty Administrative Review; 2021– 2022.
- Carbon and Alloy Steel Threaded Rod From the People's Republic of China: On July 12, 2024, Commerce issued its Final Results of Countervailing Duty Administrative Review; 2022.
- Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: On July 12, 2024, Commerce issued its Final Results of Antidumping Duty Administrative Review; 2021–2022.
- Citric Acid and Certain Citrate Salts From Belgium: On July 24, 2024, Commerce issued its Final Results of Antidumping Duty Administrative Review; 2022–2023.
- Finished Carbon Steel Flanges From Spain: On July 29, 2024, Commerce issued its Final Results of Administrative Review; 2022–2023.

Changed Circumstances Reviews

- Certain Frozen Warmwater Shrimp From India: On July 3, 2024, Commerce issued its Final Results of Antidumping Duty Changed Circumstances Review.

Sunset Reviews

- Certain Pasta From Italy and the Republic of Tu¨rkiye: On July 9, 2024, Commerce issued its Final Results of the Expedited Fifth Sunset Reviews of the Countervailing Duty Orders.
- Certain Pasta From Italy and Tu¨rkiye: On July 11, 2024, Commerce issued its Final Results of Expedited Fifth Sunset Reviews of the Antidumping Duty Orders.
- Large Residential Washers From Mexico: On July 24, 2024, Commerce issued its Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order.
- Utility Scale Wind Towers From the People's Republic of China: On July 26, 2024, Commerce issued its Final Results of Expedited Second Sunset Review of the Countervailing Duty Order.

Scope Ruling

- Wooden Cabinets and Vanities and Components Thereof From the People's Republic of China: On July 17, 2024, Commerce issued its Final Scope Determination, Certification Requirements, and Recission of Circumvention Inquiries on the Antidumping and Countervailing Duty Orders.

Circumvention

- Antidumping Duty Order on Hydrofluorocarbon Blends From the People's Republic of China: On July 11, 2024, Commerce issued its Final Affirmative Determination of Circumvention With Respect to R-410B From the Republic of Turkiye.
- Antidumping Duty Order on Hydrofluorocarbon Blends From the People's Republic of China: On July 2, 2024, Commerce issued its Preliminary Negative Determination of Circumvention With Respect to R-410B From Mexico.
- Antidumping Duty Order on Hydrofluorocarbon Blends From the People's Republic of China: On July 11, 2024, Commerce issued its Final Affirmative Determination of Circumvention With Respect to R-410A From the Republic of Turkiye.
- Antidumping Duty Order on Hydrofluorocarbon Blends From the People's Republic of China: On July 11, 2024, Commerce issued its Final Affirmative Determination of Circumvention With Respect to R-410B, R-407G, and a Certain Custom Blend From the People's Republic of China.

U.S. INTERNATIONAL TRADE COMMISSION

Section 701/731 Proceedings

Investigations

- Mattresses From Bosnia and Herzegovina, Bulgaria, Burma, Italy, Philippines, Poland, Slovenia, and Taiwan; On July 5, 2024, the ITC issued its affirmative Determinations of less-than-fair-value investigations.

- Disposable Aluminum Containers, Pans, Trays, and Lids From China; On July 8, 2024, the ITC issued its affirmative Determinations of less-than-fair-value investigations.
- Paper Shopping Bags From Cambodia, China, Colombia, India, Malaysia, Portugal, Taiwan, and Vietnam; On July 10, 2024, the ITC issued its affirmative Determinations of less-than-fair-value investigations.
- Large Top Mount Combination Refrigerator-Freezers From Thailand; On July 26, 2024, the ITC issued its affirmative Determination of less-than-fair-value investigations.
- Vanillin From China; On July 26, 2024, Commerce issued its affirmative Determination of less-than-fair-value investigations.

U.S. CUSTOMS & BORDER PROTECTION

EAPA Case 7950: Various Importers

CBP issued its notification of initiation of investigation and interim measures as to evasion by CPF Legacy, LLC ("CPF"), doing business as C. Pacific Foods; Handylee Enterprises (USA) Corp ("Handylee").; Jefi Enterprise (USA) Inc. ("Jefi"), and Highland USA International Inc ("Highland USA"). CBP is investigating whether the importers evaded antidumping duty order A-570-992 on monosodium glutamate ("MSG") from China and/or antidumping duty order A-560-826 on MSG from Indonesia. CBP found there was a reasonable suspicion that CPF, Handylee, Jefi and Higland USA had been entering MSG from China by transshipment.

EAPA Case 7830: ADI ChemTech LLC

CBP issued the notice of determination in EAPA Case 7830 as to evasion by U.S. importer, ADI ChemTech LLC ("ADI ChemTech") of antidumping order A-570-985 on xanthan gum from China. CBP has determined that there is substantial evidence of evasion of antidumping duties by ADI ChemTech and, therefore, CBP issued a formal notice of determination as to evasion and has taken enforcement actions.

COURT OF INTERNATIONAL TRADE

Summary of Decisions

Slip Op. 24-72 Aluminum Extrusions Fair Trade Comm. v. United States

The Court sustained CBP's negative EAPA determination that defendant-intervenor Kingtom Aluminio S.R.L. ("Kingtom"), an aluminum extrusion producer in the Dominican Republic, had imported Chinese-origin aluminum extrusions into the US by transshipping them through the Dominican Republic. After CBP's Trade Remedy Law Enforcement Directorate ("TRLED") issued its affirmative evasion determination, Kingtom appealed and CBP's Office of Rules and Regulations ("R&R") reversed the decision. Plaintiffs challenged R&R's negative evasion determination on three grounds. First, plaintiffs contested R&R's decision not to use adverse inferences, noting that Kingtom intimidated its workers and did not follow proper recordkeeping practices. Plaintiffs also maintained that R&R failed to acknowledge that TRLED relied on the record evidence of Kingtom's ties to China as part of its application of adverse inferences. Finally, plaintiff contended that R&R acted arbitrarily by arriving at a different conclusion than was reached in the two prior investigations involving Kingtom. Regarding the first argument, the Court explained that R&R reasonably declined use of adverse inferences because, irrespective of the intimidation and recordkeeping allegations, there was nothing in the record to indicate that Customs failed to obtain the requested information at any point during the investigation. Concerning the second point, the Court sided with Kingtom in finding that any connections with China were not material since, other than small anomalies, the onsite verification showed capacity to produce aluminum extrusions in the quantities that it sold and exported to the US, and there was no record evidence of any imports by Kingtom from China to the Dominican Republic during the relevant period of investigation. Finally, regarding the alleged inconsistency with the prior two determinations, the Court noted that unlike in the prior investigations, (1) the investigation under review was the only one with an on-site verification, and (2) for both other investigations, while initially finding evasion, CBP ultimately reversed itself. Accordingly, the Court upheld R&R's negative evasion determination.

24-73 H&E Home, Inc. v. United States

The Court decided another EAPA case on the same day as *Aluminum Extrusions Fair Trade Comm. v. United States*, this one involving allegations of evasion by importers of aluminum extrusions produced by Kingstom. The Court sustained CBP's results of redetermination after voluntary remand. On remand, CBP reconsidered Kingstom's production data, and determined that substantial evidence did not support a finding that certain US aluminum importers evaded duties on aluminum extrusions from China by importing aluminum produced by Kingtom. A coalition of U.S. aluminum extrusion producers (the "Committee") opposed the remand results on two grounds. First, the Committee argued that R&R's

remand decision was arbitrary, capricious, and an abuse of discretion because the agency relied on most, if not all, of the same evidence that it initially found to support a finding of evasion. Second, the Committee asserted that R&R acted arbitrarily when it declined to apply adverse inferences to importers that failed to provide public summaries of confidential information in compliance with CBP's regulations. As to the first argument, the Court found that R&R could reinterpret the evidence so long as it adequately explained its reasons, as it did here. Regarding the Committee's second point, the Court held that R&R rightfully did not apply adverse inferences because the importers' failure to provide a public summary did not create an informational gap in the record, since all parties had access to confidential information.

Slip Op. 24-76 Ninestar Corp. v. United States

The Court granted in part and denied in part a motion to unseal and unredact portions of the administrative record, in a case involving Ninestar Corporation's ("Ninestar") challenge to its placement on the UFLPA entity list. The Court's opinion involved multiple issues related to the confidential administrative record ("CAR"), the informant privilege, and disclosure pursuant to the Freedom of Information Act ("FOIA"), First, the Court ordered that while much of the CAR was properly designated as confidential, it ordered the unsealing of one document detailing FLETF's standard operating procedures, for which the government failed to meet its burden of demonstrating that the information was law enforcement sensitive or similarly sensitive government information. The Court also denied a request that any confidential information be redesignated "Ninestar Confidential Information," which would have allowed information "for attorneys' eyes only" to also be accessed by plaintiffs' directors and officers, because resignation would have made the information susceptible to demands by the Chinese government. Next, the Court ordered a partial unredaction of documents, finding that while the informant privilege applies to certain portions of the CAR, it excludes (i) references to years which fall outside the privilege's scope, and (ii) generalized information about Uyghur workers, which is essential to a fair determination of plaintiffs' Administrative Procedure Act causes of action. The Court also ordered the unredaction of an "identifying word" referring to an informant, based on an inadvertent disclosure by the State Department in response to a FOIA request. The Court then ordered the destruction of all productions that Ninestar obtained through its FOIA request, which inadvertently contained information that was confidential in the case, to preserve the administrative protective order's ("APO") integrity. Finally, the Court denied the government's request to redact statements made during the preliminary injunction hearing, since they did not violate the APO by clearly revealing sealed contents of the CAR.

Slip Op. 24-77 Jiangsu Alcha Aluminum Co. v. United States

The Court sustained Commerce's final determination in the administrative review of the countervailing duty order on aluminum sheet from China, in which it assessed mandatory respondents a subsidy rate of 17.8 percent. Mandatory respondents challenged two aspects of the final results: (1) Commerce's determination that mandatory respondents benefitted from China's Export Buyer's Credit Program; and (2) Commerce's determination that they purchased primary aluminum at a value added tax rate of seventeen percent. As to the first issue, the Court determined that mandatory respondents failed to place any certified statements on the record regarding their non-use of the program, and China refused to participate in the administrative review. The Court also found that Commerce appropriately drew an adverse inference against China concerning the Export Buyer's Credit Program due to China's refusal to participate in the proceedings, and that the collateral harm to the cooperating mandatory respondents did not prevent drawing such inferences. As to the second issue, the Court found that Commerce properly used the seventeen percent rate on the record, rather than the lower rate submitted by mandatory respondents, as that rate was impermissibly based on purchases of domestically produced aluminum, not imported aluminum as required by Commerce's regulations.

Slip Op. 24-78 SEKO Customs Brokerage, Inc. v. United States

The Court denied Seko Customs Brokerage, Inc.'s ("Seko's") application for temporary restraining order and motion for preliminary injunction arising from a challenge to CBP's suspension of Seko from the Customs-Trade Partnership Against Terrorism ("CTPAT") and the Automated Commercial Environment Entry Type 86 Test ("T86") (collectively "the programs"), which allowed Seko to streamline the processing of filing de minimis entries. CBP suspended Seko from the programs due to inconsistent data in T86 entry filings and corresponding manifests submitted by Seko, which CBP found to pose a risk to "revenue and admissibility." Seko challenged the suspension under the Court's residual jurisdiction provision, after which CBP granted Seko's administrative request to reconsider the suspension and granted Seko a 90-day conditional reinstatement into both programs. Following its conditional reinstatement, Seko amended its motion to request that the Court order the government to "unconditionally reinstate Seko's privileges unless and until the government proves it case." The Court denied the motion for failure to demonstrate irreparable harm, noting that Seko's allegations of lost business and inability to retain future business due to reputational harm were either moot or speculative.

Slip Op. 24-79 Giorgio Foods, Inc. v. United States

The Court sustained in part and remanded for reconsideration in part Commerce's finding that importer Prochamp B.V. ("Prochamp") did not dump mushrooms in the United States, in its final determination in an antidumping investigation on mushrooms from the Netherlands. In its investigation, Commerce selected Germany as the comparison market, because the sales in Prochamp's home market were below the five percent threshold required to use that market to calculate normal value. The domestic producer who had requested the investigation challenged Commerce's selection of Germany, as well as its refusal to apply adverse facts to Prochamp's reporting of financial information. The Court found that while Commerce reasonably weighed the competing considerations of product similarity and sales volume in selecting a comparison market, it remanded for Commerce to reconsider whether Prochamp's exports to Germany were "significantly" larger than those to France, given that the ostensible German sales were made to a multinational retailer that received them at a warehouse outside of German, and Commerce had simply assumed that all of the mushrooms were ultimately sold inside of Germany. The Court also held that substantial evidence supported Commerce's determination not to use facts otherwise available as to its market-comparison choice and Prochamp's financial reporting.

Slip Op. 24-80 Elysium Tiles, Inc. v. United States

The Court remanded Commerce's final scope ruling finding that tiles imported by Elysium Florida Tile, Inc ("Elysium") were covered by the AD/CVD orders on ceramic tile from China. Elysium had asserted that the marble layer on its tiles was more than mere decoration, after Commerce ruled that it was a "decorative feature" within the scope of the orders. The Court held that the issue was not whether the tile was decorative, but whether the procedure used by Elysium of guiding and splitting tiles was a "minor operation." Elysium also challenged Commerce's ex parte meeting with a domestic tile producer as improper, and its summary memorandum as inadequate. The Court agreed and held that Elysium need not show how it was prejudiced by the meeting, as such a task would be impossible given the material information missing from Commerce's memorandum. The Court remanded to Commerce for a determination consistent with its opinion.

Slip Op. 24- 81 Ereğli Demir ve Çelik Fabrikalari T.A.Ş. v. United States Int'l Trade Comm'n

The Court granted the ITC's motion to dismiss for lack of subject matter jurisdiction and failure to state a claim, in a case involving a Turkish producer's challenge to the ITC's denial of its request for a reconsideration or for a changed circumstances review, in proceedings involving AD/CVD orders on hot-rolled steel from multiple countries. In granting the ITC's motion, the Court held that it lacked jurisdiction under its residual jurisdiction provision, because an adequate remedy was available under another provision, 19 U.S.C. § 1581(c). The Court explained that the true nature of plaintiff's claim was the ITC's computing of total imports from Turkey, which resulted in a finding of non-negligibility. Plaintiff could have challenged the ITC's final material injury determination under 19 U.S.C. § 1581(c), and relief would not have been manifestly inadequate because a successful challenge would have resulted in the subject imports falling below the negligibility threshold. As a result, relief was unavailable under the Court's residual jurisdiction provision.

Slip Op. 24-82 Ereğli Demir ve Çelik Fabrikalari T.A.Ş. v. United States Int'l Trade Comm'n

In another opinion issued the same day as Slip Op. 24-81 and involving the same Turkish producer and same AD order, the Court granted defendant's motion to dismiss plaintiff's challenge to the ITC's refusal to conduct a changed circumstances review ("CCR") to reconsider whether the volume of its imports of hot-rolled steel from Turkey is above the negligibility threshold. The Court found that it lacked jurisdiction under 28 U.S.C. § 1581(c), the jurisdictional statute invoked by plaintiff, because the ITC had instituted a sunset review of the AD order in question, which rendered plaintiff's request for a CCR moot. As the Court explained, the sunset review accorded the same potential remedy that plaintiff could have received pursuant to a CCR. In addition, the Court found that plaintiff had received full consideration in the sunset review of the issues raised in its CCR request, as the ITC concluded that the governing statute does not permit use of a CCR to reconsider the non-negligibility finding.

Slip Op. 24-83 Dalian Meisen Woodworking Co. v. United States

The Court remanded Commerce's final results in its CVD investigation of wooden cabinets and vanities from China. The central issue was Commerce's determination that due to difficulties in confirming U.S. customers' non-use of a Chinese subsidy program aimed at boosting exports (the "Program"), there were significant uncertainties in the record concerning the Program's actual application. This uncertainty led Commerce to rely on adverse facts available in determining a subsidy rate, which plaintiff-intervenor contested. The Court agreed with plaintiff-intervenor, ordering Commerce on remand to distinguish between sales to customers who had confirmed non-use in the Program and those for whom non-use could not be established, consistent with § 1677e(a)(2)(D)'s requirements for applying "facts otherwise available."

Slip Op. 24-84 Acquisition 362, LLC v. United States

The Court granted CBP's motion to dismiss for lack of subject matter jurisdiction in a case in which plaintiff challenged the liquidation of its entries with the assessment of antidumping duties, even though it was not a party to the suit challenging Commerce's administrative review of the AD order in question. Plaintiff argued that CBP made a protestable decision when it declined to extend to plaintiff's entries the statutory injunction covering entries by other importers, who were parties in the case challenging Commerce's administrative review. The Court, however, held that CBP's actions were not protestable since Customs was not empowered to expand the court-issued statutory injunction or Commerce's instructions beyond their respective terms. Noting that plaintiff did not cite any relevant case law to the contrary, the Court dismissed plaintiff's action for lack of subject matter jurisdiction.

Slip Op. 24-85 Universal Tube and Plastic Indus., Ltd. v. United States

The Court remanded Commerce's final results in the 2020–2021 antidumping duty review of circular welded carbon-quality steel pipe from the United Arab Emirates, because it was not in accordance with the law. Plaintiffs argued that there was an internal inconsistency with the final results, because Commerce correctly applied one methodology to compare costs in one segment of the case, yet failed to apply that same methodology in another segment of the case. The Court agreed with plaintiff that Commerce did not explain why it was reasonable to apply the "inter-quarter comparison" and the "same-quarter comparison" in the same administrative review, and that the final results were therefore not in accordance with the law.

Slip Op. 24-86 Meihua Grp. Int'l Trading (Hong Kong) Ltd. V. United States

The Court sustained Commerce's second remand redetermination of the 2019–2020 administrative review of the antidumping duty order on xanthan gum from China. The Court had remanded for Commerce to reconsider the application of total adverse facts available and the dumping margin assigned to plaintiffs Meihua Group International Trading (Hong Kong) Limited and Xinjiang Meihua Amino Acid Co., Ltd. (collectively, "Mehua") pursuant to Commerce's statutory obligation under 19 U.S.C. § 1677m(d), and for Commerce to reconsider the separate rate based on any changes made to Meihua's dumping margin. The Court also remanded for Commerce to conduct a new collapsing analysis of plaintiffs Deosen Biochemical (Ordos) Ltd. and Deosen Biochemical Ltd. Upon remand, Commerce (1) lowered the duty rate for all plaintiffs from 154.07% to 0%; (2) found that Deosen Biochemical Ltd. and Deosen Biochemical (Ordos) Ltd. did not comprise a single entity; and (3) determined that the administrative review for Deosen Biochemical Ltd. should be rescinded. Plaintiffs filed an unopposed motion to forego the comment period and requested that the Court affirm Commerce's redetermination, which the Court granted.

Slip Op. 24-87 Nagase & Co. v. United States

The Court affirmed Commerce's decision on remand during the initial administrative assessment of the antidumping duty on glycine exported from Japan. Plaintiff, Nagase & Co., LTD ("Nagase"), contested Commerce's computation of the duty assessment rate and sought a re-evaluation with updated figures. The Court, however, dismissed Nagase's claims, explaining that Commerce derived its calculations from the data submitted by Nagase itself, and that it was barred from now challenging the figures used based on the principle of administrative exhaustion and Federal Circuit precedent. Consequently, the court upheld Commerce's determination on remand.

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Summary of Decisions

Appeal No. 23-2105 Adee Honey Farms v. U.S.

The Federal Circuit upheld the trial court's judgments in the appeal of three separate cases involving the distribution of interest associated with AD/CVD duties under the Continued Dumping and Subsidy Offset Act of 2000 ("CDSOA"). The CDSOA provides for the distribution of all funds, including interest earned on the funds, from assessed AD/CVD duties received in the preceding fiscal year to affected domestic producers. Plaintiffs-appellants were affected domestic producers that claimed a right to distributions under CDSOA, specially of delinquency interest that accrues after the issuance of a bill for payment of duties, fees and interest following the liquidation of an entry. The trial court dismissed plaintiffs-appellants' claims for distributions received more than two years prior to filing suit because they were time-barred under the two-year statute of limitations for claims brought under court's residual jurisdiction provision. For the remaining claims, the trial court ruled in favor of the government, holding that the CDSOA does not require CBP to include delinquency interest in its distributions under the CDSOA. The Federal Circuit upheld the trial court on both accounts. First, the Court held that the 2001 Final Rule implementing the CDSOA gave adequate notice that CBP interpreted the CDSOA as excluding delinquency interest from distributions, and as a result, the only claims that were not time-barred were those that accrued from annual CDSOA distributions in the two years prior to filing suit. The Federal Circuit also held that the text and structure of the CDSOA and the broader Tariff Act demonstrate that delinquency

interest is excluded from CSDOA distributions, because delinquency interest is only assessed and charged upon liquidation and is not part of the assessment of AD/CVD duties.

EXPORT CONTROLS AND SANCTIONS

OFAC Issues Guidance Document for Extending Statute of Limitations

On July 22, 2024, the Office of Foreign Assets Control ("OFAC") issued a **Guidance Document** outlining the implications of 10-year statute of limitations change implemented in April 2024. According to the guidance, OFAC may now initiate a civil enforcement action based on the International Emergency Economic Powers Act ("IEEPA") or the Trading with the Enemy Act ("TWEA") within 10 years of the latest date of the violation if such date was after April 24, 2019. To align with the 10-year statute of limitation provided, OFAC intends to publish an interim final rule extending the statute of limitations to 10 years for the recordkeeping requirements codified at 31 C.F.R. § 501.601.

BIS Issues Final Determination Related to Kaspersky Lab, Inc.

On June 20, 2024, BIS issued a Final Determination prohibiting the sale of certain cybersecurity products, anti-virus software, and related services to U.S. persons by Kaspersky Lab, Inc. ("Kaspersky"), the U.S. subsidiary of Russian cybersecurity provider AO Kaspersky Lab.

In response to the Final Determination, Kaspersky announced that on July 20, 2024 it would gradually begin closing its U.S. operations because business in the U.S. was no longer viable following the ban.

For a complete discussion of the Final Determination and implications please see Husch Blackwell's blog post on the topic located **here**.

BIS Issues New Guidance to Combat Russia Diversion Risks and Highlights Recent Enforcement Actions

On July 10, 2024, BIS issued new guidance to exporters intended to further assist BIS in its efforts to crack down on third-party diversion to Russia.

Specifically, BIS's recent guidance outlines the various mechanisms it has employed—outside of its usual public screening lists (*i.e.,* the Unverified List, Entity List, Military End-User List, and Denied Persons List)—to notify companies and universities of parties that present risks of diversion to Russia. According to BIS, it has obtained information supporting the below-described notifications through a variety of sources, including information from the exporting community, government data, news reports, and other open-source resources. The specific mechanisms utilized by BIS to help prevent exporters from unknowingly exporting items to parties of concern include:

- **"Supplier List" Letters** identify parties presenting diversion risks that are not on public screening lists but have been identified by BIS as having exported to or facilitated transactions with destinations or end users of concern. BIS may send "Supplier List" letters to companies and institutions that have had no prior dealings with the foreign parties identified therein. Further, BIS encourages recipients of such letters to carefully examine transactions with the named parties for any potential red flags.

- **Project Guardian Requests** advise companies and institutions to monitor or "be on the lookout" for transactions with specific parties or for inquiries about specific items. BIS may also advise recipients to deny or suspend any such transactions or inquiries and to contact the local Export Enforcement field office for guidance.

- **"Red Flag" Letters** indicate to companies that one of their customers may have engaged in possible violations of the Export Administration Regulations ("EAR") regarding the same item a company previously exported to that customer. "Red Flag" letters indicate a "high probability" that a future export violation may occur based on the customer's reexport or transfer history. Recipients of "Red Flag" letters should conduct additional due diligence to be certain they can overcome the red flag identified by BIS before proceeding.

- **"Is Informed" Letters** impose licensing requirements on specific items destined to specific entities or destinations, in addition to specific U.S. person activities. Companies and universities must comply with these requirements to avoid violating the EAR, as non-compliance with an "Is Informed" letter is equivalent to non-compliance with any other export licensing requirement for enforcement purposes. While BIS has reemphasized the use of such letters, they are not new.

Importantly, BIS will consider as an aggravating factor in any enforcement action a company or university's decision to proceed with a transaction (without obtaining an export license) when the company or university knew or had reason to know or believe that a red flag exists which could not be affirmatively addressed or explained.

Screening Against Trade Integrity Project Website

Beyond the above notifications, BIS also increased due diligence expectations for exporters dealing with Common High Priority List ("CHPL") items, which the U.S. government and its allies have identified as items Russia seeks to procure for its weapons programs. For transactions involving CHPL items, BIS strongly recommends screening against the list provided by the Trade Integrity Project ("TIP"), a non-government U.K. entity that monitors military and dual-use trade with Russia and has identified parties in third countries with a recent history of exporting CHPL items to Russia. For transactions involving CHPL items and parties identified on the TIP list, BIS states that companies should conduct additional due diligence to spot potential red flags before proceeding with any such transactions.

Recent BIS Enforcement Actions

In addition to the new guidance, BIS released an updated version of its Don't Let This Happen to You! report, which includes case examples of recent BIS criminal and administrative enforcement actions. New actions involve violations of the antiboycott regulations, firearm exports, exports related to China and Iran, non-compliance with a BIS settlement agreement, as well as a voluntary self-disclosure from a university. BIS urges exporters to review this publication to understand the types of activities and missteps that lead to enforcement actions and to avoid violations of the EAR.