U.S. Customs and Border Protection

19 CFR PART 177

REVOCATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A RATCHET AND PAWL CARGO SECURING DEVICE

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of revocation of one ruling letter and proposed revocation of treatment relating to the country of origin of a ratchet and pawl cargo securing device.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning tariff classification of a ratchet and pawl cargo securing device under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 58, No. 12, on March 27, 2024. One comment was received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 21, 2024.

FOR FURTHER INFORMATION CONTACT: Nataline Viray-Fung, Electronics, Machinery, Automotive, and International Nomenclature Branch, Regulations and Rulings, Office of Trade, nataline.viray-fung@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 58, No. 12, on March 27, 2024, proposing to revoke one ruling letter pertaining to the classification of a Ratchet and pawl cargo securing device. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

In New York Ruling Letter (NY) N262442, CBP classified a ratchet and pawl cargo securing device in heading 8425, HTSUS, specifically in subheading 8425.39.01, HTSUS, which provides for "Pulley tackle and hoists other than skip hoists; winches and capstans; jacks: Winches; capstans: Other." CBP has reviewed NY N262442 and has determined the ruling letter to be in error. It is now CBP's position that ratchet and pawl is properly classified in heading 8479, HTSUS, specifically in subheading 8479.89.95, HTSUS, which provides for "Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and mechanical appliances: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N262442 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter H336105 set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

GREGORY CONNOR
for
YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H336105
August 5, 2024
OT:RR:CTF:EMAIN H336105 NVF
CATEGORY: Classification
TARIFF NO.: 8479.89.95

MR. CHRISTOPHER M. KANE
SIMON GLUCK & KANE LLP
250 WEST 34TH STREET – SUITE 4615
ONE PENN PLAZA
NEW YORK, N.Y. 10119

RE: Revocation of NY N262442; Classification of a ratchet and pawl cargo securing device

DEAR MR. KANE:

On April 8, 2015, we issued New York Ruling Letter ("NY") N262442 to your client, Kinedyne Corporation ("Kinedyne"). We have since reviewed NY N262442 and are revoking it in accordance with the reasoning below.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed revocation of NY N262442 was published on March 27, 2024, in the Customs Bulletin, Volume 58, No. 12. CBP received one comment, from you, in response to the notice.

FACTS:

In NY N262442 the subject merchandise, a ratchet and pawl cargo securing device, is described as follows:

> The steel ratchet and pawl cargo securing device is designed to be used with a two inch woven polyester webbing to secure cargo and prevent it from shifting. Only the ratchet and pawl device is the subject of this ruling. The device basically consists of a frame containing toothed ratchet wheels mounted at the sides of a slotted drum, spring-loaded pawls, and a lever handle. The handle is worked back and forth in order to turn the drum and tighten the webbing. As the drum turns, the pawls engage with the teeth on the ratchet wheels to prevent the drum from rotating backwards, thus maintaining tension on the webbing. To release the tension, the pawls can be manually pulled back to disengage them from the ratchet wheels.

ISSUE:

Whether the ratchet and pawl device is classified under heading 8425, HTSUS as a winch or under heading 8479, HTSUS as a mechanical appliance with individual functions not specified elsewhere.

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation ("GRIs") and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all classification purposes.

GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

8425 Pulley tackle and hoists other than skip hoists; winches and capstans; jacks.
8479 Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof.

In Headquarter Ruling Letter (HQ) H273307 (May 5, 2023), we summarized our current position on the spectrum of cargo securing devices used with webbing or straps. Such devices range from simple steel D-rings tightened by hand to more complex winches that are housed separately and require additional cranking to tension the straps. The distinguishing factors between these goods are whether they provide the user with mechanical advantage and if so, how they provide mechanical advantage. Simple hardware, such as D rings or cams, provide no mechanical advantage in tightening the straps and merely hold tension in place and are thus not machinery of Chapter 84. "Winches," which are specifically provided for under heading 8425, HTSUS, feature a separate drum that is cranked by hand or electrically to impart tension on the straps and to provide mechanical advantage. *See also* HQ H031587 (Apr. 1, 2011) (Discussing winches of heading 8425, HTSUS). In addition to their cranking operation, winches can also be identified by a separate, stand-alone drum that is sometimes mounted on a surface for additional stability and power. *See* HQ H273307 (May 5, 2023) and HQ H031587. Finally, ratcheting straps provide mechanical advantage via a simple back and forth pumping motion. As this method of operation differs from that of winches, they are not covered by heading 8425, HTSUS, and are consequently classified under heading 8479, HTSUS. *See* HQ H273307

While the ratchet and pawl classified in NY N262442 does provide mechanical advantage, and is thus distinguishable from simple hardware like D rings or cams, it is not a winch. It does not have a separate stand-alone drum, nor does it have a handle or a crank like the winches covered by heading 8425, HTSUS. *See* HQ H031587. Rather, it has a lever or handle that the user pumps back and forth to tighten the webbing that has been threaded through its frame. Therefore, the subject ratchet and pawl is classified with the other ratchets under heading 8479, HTSUS as a machine having individual functions not specified elsewhere.

In your comment, you assert that the ratchet and pawl classified in NY N262442 is of the same class or kind as winches classified heading 8425,

HTSUS and therefore should continue to be classified under heading 8425.[1] You argue that the slackline classified in HQ H273307 (May 5, 2023) is not like the instant cargo securing device and therefore HQ H273307 is not applicable. However, the use of the slackline and the use of the cargo securing device are not pertinent to this analysis. Heading 8479, HTSUS is not a use provision and therefore does not preclude similar items that are used for different purposes. Furthermore, the tensioning device in HQ H273307 is virtually identical to the ratchet and pawl classified in NY N262442, and both are different from the winches we have classified under heading 8425, HTSUS. Therefore, the instant goods should be classified in heading 8479, HTSUS alongside the slackline tensioning device.

You also note that revocation would be inconsistent with the exclusion to the Section 301 remedy on products of China for "Ratchet winches designed for use with textile fabric strapping (described in statistical reporting number 8425.39.0100)" initially approved by the Office of the U.S. Trade Representative (USTR) on June 18, 2018 (83 Fed. Reg. 28710) and set forth in U.S. Note 20(j)(4) and U.S. Note 20(ttt)(i)(30) to Subchapter III to Chapter 99, HTSUS. While the cited exclusion is expired, we also note that the narrative phrasing of the exclusion does not govern the scope of the HTSUS provision referenced in the parenthetical. Rather, to fall under the scope of an exclusion, a product must first be classified under the heading (and be described by the statistical reporting number) referenced in the parenthetical. Then we consider whether the merchandise in question falls under narrative description of the exclusion. In other words, the fact that the cited exclusion contains the word "ratchet" does not mean that any tensioning device that incorporates a ratchet is per se classified under heading 8425, HTSUS. And in this case, the subject merchandise is not a "winch" of heading 8425, HTSUS, based on the foregoing.

HOLDING:

By application of GRIs 1 and 6, the ratchet and pawl device is classified under subheading 8479.89.95, HTSUS which provides for: Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and mechanical appliances: Other: Other. The column one rate of duty is 2.5 percent ad valorem.

Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at https://www.usitc.gov.

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[1] We observe that your application of the *Carborundum* factors in this case is not applicable. The *Carborundum* test, as derived from *United States v. The Carborundum Co*., 63 CCPA 98, 102 (1976), is used when the HTSUS heading at issue is a use provision. However, heading 8425, HTSUS is not a use provision, and therefore the *Carborundum* factors are not germane to our analysis. Your application of the doctrine of *ejusdem generis* is likewise inapposite. Per your comment, "Under the rule of *ejusdem generis*, which means "of the same kind," where an enumeration of specific things is followed by a general word or phrase, the general word or phrase is held to refer to things of the same kind as those specified. *DRI Indus.. Inc. v. United States*, 11 Ct. Int'l Trade 97, 102, 657 F. Supp. 528, 532, aff'd, 832 F.2d 155 (Fed. Cir. 1987)." Heading 8425, HTSUS, covers, in relevant, "winches and capstans," and is an eo nominee provision for precisely the articles named in the provision.

EFFECT ON OTHER RULINGS:

NY N242442, dated April 8, 2015, is REVOKED.

In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Sincerely,

GREGORY CONNOR
for

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

U.S. Court of Appeals for the Federal Circuit

PRIMESOURCE BUILDING PRODUCTS, INC., CHENG CH INTERNATIONAL CO., LTD., CHINA STAPLE ENTERPRISE CORP., DE FASTENERS INC., HOYI PLUS CO., LTD., LIANG CHYUAN INDUSTRIAL CO., LTD., TRIM INTERNATIONAL INC., UJL INDUSTRIES CO., LTD., YU CHI HARDWARE CO., LTD., ZON MON CO., LTD., Plaintiffs-Appellants v. UNITED STATES, MID CONTINENT STEEL & WIRE, INC., Defendants-Appellees

Appeal No. 2022–2128, 2022–2129

Appeals from the United States Court of International Trade in Nos. 1:20-cv-03911-MAB, 1:20-cv-03934-MAB, Chief Judge Mark A. Barnett.

Decided: August 7, 2024

BRYAN PATRICK CENKO, Mowry & Grimson, PLLC, Washington, DC, argued for plaintiff-appellant PrimeSource Building Products, Inc. Also represented by JILL CRAMER, JEFFREY S. GRIMSON, YIXIN LI, KRISTIN HEIM MOWRY, SARAH WYSS.

KELLY ALICE SLATER, Appleton Luff Pte. Ltd., Washington, DC, argued for plaintiffs-appellants Cheng Ch International Co., Ltd., China Staple Enterprise Corp., De Fasteners Inc., Hoyi Plus Co., Ltd., Liang Chyuan Industrial Co., Ltd., Trim International Inc., UJL Industries Co., Ltd., Yu Chi Hardware Co., Ltd., Zon Mon Co., Ltd.

SOSUN BAE, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, argued for defendant-appellee United States. Also represented by BRIAN M. BOYNTON, PATRICIA M. McCARTHY; VANIA WANG, Office of the Chief Counsel for Trade Enforcement and Compliance, United States Department of Commerce, Washington, DC.

ADAM H. GORDON, The Bristol Group PLLC, Washington, DC, argued for defendant-appellee Mid Continent Steel & Wire, Inc. Also represented by BENJAMIN JACOB BAY, JENNIFER MICHELE SMITH-VELUZ.

Before LOURIE, DYK, and STOLL, *Circuit Judges*.

Opinion for the court filed by *Circuit Judge* LOURIE.

Opinion concurring in part and dissenting in part filed by *Circuit Judge* DYK.

LOURIE, *Circuit Judge*.

PrimeSource Building Products, Inc. ("PrimeSource")and Cheng Ch International Co., Ltd., *et al.*[1] ("Cheng Ch" or the "non-selected respondents") separately appeal from the final judgment of the United States Court of International Trade (the "Trade Court") on the fourth administrative review of an antidumping duty order on certain steel nails from Taiwan. *PrimeSource Bldg. Prod., Inc. v. United States*,

[1] China Staple Enterprise Corporation, De Fasteners Inc., Hoyi Plus Co., Ltd., Liang Chyuan Industrial Co., Ltd. ("Liang Chyuan"), Trim International Inc., UJL Industries Co., Ltd., Yu Chi Hardware Co., Ltd., and Zon Mon Co., Ltd.

581 F. Supp. 3d 1331 (Ct. Int'l Trade 2022) ("*Decision*"). The Trade Court sustained the United States Department of Commerce's ("Commerce") use of the expected method to calculate an all-others rate for the non-selected respondents equal to the adverse facts available ("AFA") rate that was applied to all the mandatory respondents in Commerce's review. *Id.*

PrimeSource is an importer of steel nails from Taiwan and appeals Commerce's calculation and application of the all-others rate solely with respect to Liang Chyuan, one of the non-selected respondents. Cheng Ch appeals the rate with respect to the non-selected respondents, generally. Because Commerce's calculation and application of the all-others rate is supported by substantial evidence and otherwise in accordance with law, we affirm.

BACKGROUND

I

We begin with a brief overview of the statutory framework for determining antidumping duty rates.

Commerce is authorized by statute to impose antidumping duties on goods sold in the United States below fair market value. *See* 19 U.S.C. § 1673. Those duties are equal to the amount by which the normal value of the merchandise exceeds the export price, *i.e.*, the dumping margin. *Id.* at §§ 1673e(a)(1), 1677(35); *see Albemarle Corp. & Subsidiaries v. United States*, 821 F.3d 1345, 1348 (Fed. Cir. 2016).

Commerce is generally charged with calculating individual dumping margins for each exporter of the subject merchandise during an administrative review of a countervailing duty order. 19 U.S.C. §§ 1677f–1(c)(1), 1675(a); *Albemarle,* 821 F.3d at 1348. However, when it is "not practicable" to calculate a rate for each exporter because of the large number, Commerce may limit its examination to "a reasonable number" of exporters constituting a statistically representative sample of all known exporters or accounting for the largest volume of the subject merchandise from the exporting country. 19 U.S.C. § 1677f–1(c)(2). The exporters selected for individual examination are referred to as mandatory respondents. *See Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370, 1372 (Fed. Cir. 2013) ("*Bestpak*"). Commerce calculates dumping margins for the mandatory respondents based on data provided by the respondents through their responses to an antidumping questionnaire. *Id.* at 1372. However, if a respondent fails to act to the best of its ability to respond to the questionnaire, Commerce may assign it a dumping margin based on an adverse inference from the facts available in the petition or elsewhere, *i.e.*, based on AFA. 19 U.S.C. § 1677e(b).

When Commerce limits the number of individually examined exporters under § 1677f–1(c)(2), it calculates an "all-others" rate for the non-selected respondents by weight-averaging the dumping margins assigned to the mandatory respondents, excluding any margins that are zero, *de minimis*, or determined entirely based on AFA. 19 U.S.C. § 1673d(c)(1)(B), (c)(5)(A). The statute provides an exception when the dumping margins for all mandatory respondents are zero, *de minimis*, or determined entirely based on AFA; it instructs Commerce to "use any reasonable method" to calculate the all-others rate, including averaging the dumping margins for the mandatory respondents. 19 U.S.C. § 1673d(c)(5)(B). The method for calculating the all-others rate when that exception applies is the primary issue on appeal.

Additional guidance on that provision is provided in the Statement of Administrative Action ("SAA"), which is legislative history that Congress has mandated "as an authoritative expression concerning the interpretation and application of the Tariff Act." *Bestpak*, 716 F.3d at 1373; 19 U.S.C. § 3512(d). For the § 1673d(c)(5)(B) exception, the SAA provides that:

> In such situations, Commerce may use any reasonable method to calculate the all others rate. The expected method in such cases will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available. However, if this method is not feasible, or if it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, Commerce may use other reasonable methods.

SAA, accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, at 873 (1994), *reprinted in* 1994 U.S.C.C.A.N. 4040, 4201.

The statute also provides non-selected respondents the opportunity to complete the antidumping questionnaire to request individual examination as a voluntary respondent. 19 U.S.C. § 1677m(a); *Bestpak*, 716 F.3d at 1373. The voluntary respondent may submit its responses to the questionnaire by the date specified for the respondents "that were initially selected for examination." 19 U.S.C. § 1677m(a). However, Commerce may still decline to individually examine the voluntary respondent if it determines that it would be unduly burdensome to do so. *Id.*

II

We now turn to Commerce's fourth administrative review of the antidumping duty order covering steel nails from Taiwan with a July 1, 2018, to June 30, 2019 period of review. *See Certain Steel Nails From Taiwan*, 85 Fed. Reg. 76,014 (Dep't Commerce Nov. 27, 2020) ("*Final Results*"); *see also Certain Steel Nails From the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam*, 80 Fed. Reg. 39,994 (Dep't Commerce July 13, 2015). For the fourth administrative review, Commerce determined that it was necessary to limit the number of individually examined exporters in accordance with 19 U.S.C. § 1677f–1(c)(2). It chose the two largest exporters of the subject merchandise by volume as mandatory respondents: Bonuts Hardware Logistics Co., LLC, ("Bonuts") and Create Trade Co., Ltd., ("Create").[2]

Commerce issued antidumping duty questionnaires to Bonuts and Create on October 23, 2019, and October 28, 2019, respectively. Bonuts did not respond to the questionnaire, and Create submitted a letter stating that it had no reviewable sales because of Commerce's reseller policy. Commerce accepted the representations made by Create and did not require it to respond to the questionnaire. Commerce then selected Pro-Team to replace Create as a mandatory respondent because it was the next highest exporter by volume. On January 31, 2020, Pro-Team submitted a letter indicating that it would not respond to Commerce's questionnaire.

On February 3, 2020, after learning that neither mandatory respondent would respond to its antidumping duty questionnaire, Liang Chuyan submitted a letter requesting that Commerce calculate a dumping rate for it based on its own data. It did not, however, submit questionnaire responses or any data for the period of review to Commerce. If Commerce would not give it a rate calculated based on its own data, it alternatively requested that Commerce pull forward and apply its calculated rate from the previous administrative review or pull forward and apply the all-others rate from the original investigation.

Two months later, on April 6, 2020, Commerce published its preliminary results assigning both mandatory respondents an AFA rate of 78.17%, the highest margin applied in prior segments of the proceeding, due to their failure to respond to the questionnaires. *Certain Steel Nails From Taiwan*, 85 Fed. Reg. 19,138 (Dep't of Commerce

[2] The Customs and Border Protection data relied on by Commerce in the selection process indicated that Bonuts accounted for 73.67% of the entry volume of the subject merchandise for the relevant period of review. J.A. 142. Create, the second largest exporter by volume, accounted for 5.68%, and Pro-Team Coil Nail Enterprise Inc. ("Pro-Team"), the third largest exporter by volume, accounted for 4.32%. *Id.*

Apr. 6, 2020) (preliminary results); *see Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Certain Steel Nails from Taiwan; 2018–2019*, J.A. 543. Commerce then used the expected method to calculate the all-others rate for the non-selected respondents. J.A. 543–44. Because both mandatory respondents received an AFA rate of 78.17%, the weighted average of those two rates—the expected method—produced an all-others rate of 78.17%, which was equal to the AFA rate. *See id.* After considering the interested parties' letters and case briefs, Commerce issued its *Final Results* and the accompanying issues and decision memorandum on November 27, 2020. *See Final Results*, 85 Fed. Reg. at 76,014; *Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review: Certain Steel Nails from Taiwan; 2018–2019*, J.A. 612–33. It continued to assign the antidumping duty rate of 78.17% to the mandatory respondents, Bonuts and Pro-Team, and therefore to the non-selected respondents as well, including Liang Chyuan. J.A. 621–22 (citing *Albemarle*, 821 F.3d at 1352).

Commerce determined that the application of the expected method to the non-selected respondents was reasonable, despite all mandatory respondents receiving an AFA rate, because it examined the largest exporters by volume, which also accounted for the "vast majority" of total volume during the period of review. J.A. 623–24. Commerce examined the history of assigned rates in the proceedings on certain steel nails from Taiwan and found that those rates did not undermine the representativeness of the mandatory respondents. *Id.* Finally, Commerce determined that it could not deviate from the expected method to pull forward previous review-specific rates as requested by the non-selected respondents absent substantial evidence in the record to justify doing so. J.A. 628–30. It determined that such evidence did not exist and thus it continued to apply the 78.17% all-others rate produced by the expected method to the non-selected respondents. *See* J.A. 630.

Commerce further determined that Liang Chyuan was not entitled to an individual rate. J.A. 630–31. In particular, Commerce found that Liang Chyuan did not meet the requirements to be selected as a mandatory respondent because it was not the next largest producer and that Liang Chyuan had not satisfied the statutory requirements to be considered a voluntary respondent. *Id.* It explained that Liang Chyuan's letter expressing willingness to submit questionnaire responses was not an acceptable substitute for the statutory requirements to be a voluntary respondent. J.A. 631. Commerce also rejected Liang Chyuan's alternative request to pull a rate forward from an earlier review, finding that there was no record evidence supporting

Liang Chyuan's claim that it would have received the same result in the fourth review as it did in the previous review, had it been selected for individual examination. *Id.*

III

PrimeSource and Cheng Ch separately filed suit in the Trade Court to challenge the rate received by the non-selected respondents in Commerce's *Final Results*. *Decision*, 581 F. Supp. 3d at 1334. The court sustained the *Final Results*, finding that Commerce's reliance on the expected method was supported by substantial evidence and in accordance with the law. *Id.* at 1334–35. The court also rejected PrimeSource's attempt to distinguish Liang Chyuan from the other non-selected respondents. *Id.* at 1343–44.

Specifically, the court held that Commerce's use of the expected method was lawful. Examining our case law and the statutory framework, it determined that "the expected method is the default method and that the burden of proof lies with the party seeking to depart from the expected method." *Id.* at 1338. It explained that, because the largest exporters are assumed to be representative of the non-selected respondents, Commerce is expected to use the mandatory respondents' rates to determine the rate to be assigned to non-selected respondents. *Id.* at 1340.

The court then turned to whether or not the respondents had provided sufficient evidence to rebut the presumption of representativeness and thereby justify a departure from the expected method. *Id.* at 1341. The court noted that the respondents identified no evidence from the current period of review to support their assertion that the expected method was not reasonable. *Id.* It therefore reviewed Commerce's analysis of the history of dumping margins assigned in the previous reviews. *Id.* at 1342. It determined that the prior dumping margins "support Commerce's conclusion that the rates fluctuated significantly from review to review and, thus, that looking to past reviews for evidence of current dumping lacks a logical foundation." *Id.* at 1343. It found that Commerce's determination "that there was insufficient evidence on the record to rebut the presumed representativeness of the mandatory respondents' rates" was supported by substantial evidence and it therefore sustained Commerce's use of the expected method. *Id.*

Finally, the Trade Court determined that that Liang Chyuan was not entitled to a different rate than the other non-examined respondents. *Id.* at 1343. It noted that non-selected respondents are not generally entitled to individually determined rates, but that they may qualify as a voluntary respondent if they submit the necessary infor-

mation in a timely fashion. *Id.* at 1344. It found that Liang Chyuan had not submitted the necessary information and "[had] not express[ed] its willingness to participate until February 3, 2020, roughly two months after the deadlines." *Id.* The court then explained that, simply because Liang Chyuan received a calculated rate as a mandatory respondent in an earlier review, that did not entitle it to retain that rate for the present review. *Id.* The Trade Court therefore sustained Commerce's *Final Results*.

PrimeSource and Cheng Ch timely appeal. We have jurisdiction pursuant to 28 U.S.C. § 1295(a)(5).

DISCUSSION

We review decisions of the Trade Court concerning Commerce's antidumping determinations by applying the same standard of review as the Trade Court. *Bestpak*, 716 F.3d at 1377. At the same time, "'we give great weight to the informed opinion' of that court, which has expertise in international trade matters." *Chemtall, Inc. v. United States*, 878 F.3d 1012, 1018 (Fed. Cir. 2017) (quoting *Schlumberger Tech. Corp. v. United States*, 845 F.3d 1158, 1162 (Fed. Cir. 2017)). Commerce's determination will be sustained unless it is "unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B)(i). A finding is supported by substantial evidence if a reasonable mind might accept the evidence to support the finding. *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938). "An agency finding may still be supported by substantial evidence even if two inconsistent conclusions can be drawn from the evidence." *Ad Hoc Shrimp Trade Action Comm. v. United States*, 802 F.3d 1339, 1348 (Fed. Cir. 2015) (quoting *Consolo v. Fed. Mar. Comm'n*, 383 U.S. 607, 619–20 (1966)).

PrimeSource challenges Commerce's application of the all-others rate solely with respect to Liang Chyuan, while Cheng Ch challenges it with respect to all non-selected respondents. Nevertheless, they raise two similar challenges on appeal. They first argue that, even though Commerce used the "expected method" to determine the dumping margin for the non-selected respondents, Commerce was required to demonstrate that the calculated all-others rate was reasonably reflective of the non-selected respondents' potential dumping margin. They also argue that Commerce's application of the all-others rate, which was equal to the AFA rate, to the non-selected respondents was unreasonable and not supported by substantial evidence. PrimeSource additionally argues that Commerce erred by not assigning an individual rate to Liang Chyuan.

I

We first address Commerce's use of the expected method to calculate the all-others rate for the non-selected respondents. PrimeSource's arguments against Commerce's use of the expected method in the fourth administrative review focus on two issues: (1) that the statutory language places an affirmative burden on Commerce to show that its chosen method produces results reasonably reflective of the non-selected respondents' potential dumping margin, and (2) that the presumption of representativeness of the mandatory respondents was rebutted by substantial evidence on the record, thus rendering the expected method unreasonable. *See* PrimeSource Br. at 13. Cheng Ch similarly argues that (1) the statute requires Commerce to select a method that produces results reasonably reflective of the non-selected respondents dumping margin, and (2) selecting a method based solely on the AFA rate was unreasonable for the cooperative non-selected respondents. *See* Cheng Ch Br. at 8–14.

A

Regarding Commerce's burden with respect to the expected method, both appellants point to the language of 19 U.S.C. § 1673d(c)(5)(B) instructing Commerce to select "any reasonable method" to determine the all-others rate for exporters and producers not individually investigated when the rates calculated for the mandatory respondents are either zero, *de minimis*, or based entirely on AFA. PrimeSource argues that that language is "unequivocal" and that the term "reasonable" imposes a duty on Commerce to show that its chosen method, even when it is the expected method, is reasonable as applied to the facts of the case. PrimeSource Br. at 20. It continues that any reading of the SAA that does not place a burden on "Commerce to find that expected method results [are] a rate that reasonably reflects the potential dumping margins" of the non-selected respondents ignores that statutory mandate. *Id.* at 22–23. Similarly, Cheng Ch argues that it is unreasonable for Commerce to select a methodology based entirely on AFA rates. Cheng Ch Br. at 8. It argues that Commerce must undertake an examination of the non-selected respondents to show that its calculated rate reasonably reflects the non-selected respondents' actual dumping margin. *Id.* at 9–10. We disagree.

Reading the SAA as prescribing the weight average as the default or expected "reasonable method" does not contradict the statute's requirement that Commerce use "any reasonable method." The SAA is the congressionally mandated "authoritative expression" of the

Tariff Act in judicial proceedings. 19 U.S.C. § 3512(d); *Bestpak*, 716 F.3d at 1373. The SAA directly addresses § 1673d(c)(5)(B) and provides that, when all individually examined respondents receive rates of zero, *de minimis*, or based entirely on AFA:

> Commerce may use any reasonable method to calculate the all others rate. The expected method in such cases will be to weight-average the zero and de minimis margins and margins determined pursuant to the facts available, provided that volume data is available.

SAA at 4201.

The SAA echoes the language of the statute highlighted by the appellants—that Commerce "may use *any reasonable method*" to calculate the all-others for the non-selected respondents. *Id.* (emphasis added); 19 U.S.C. § 1673d(c)(5)(B). However, the SAA goes on to explain that the reasonable method Commerce is "expected" to use to calculate the all-others rate is "to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available." SAA at 4201; *Albemarle*, 821 F.3d at 1352. There is no contradiction between the statute and the SAA. The statute requires selecting "any reasonable method," 19 U.S.C. § 1673d(c)(5)(B), and the SAA merely prescribes what the default methodology is expected to be when "volume data is available," SAA at 4201.

That is equally true when all mandatory respondents receive an AFA rate. Neither the statute nor the SAA distinguishes scenarios where the examined respondents all received a zero, *de minimis*, or AFA rate, or some combination of the three. *See* 19 U.S.C. § 1673d(c)(5)(B); SAA at 4201. As such, the expected method is just that—expected—even when all mandatory respondents receive an AFA rate. *See Albemarle*, 821 F.3d at 1352 (explaining that the SAA makes it clear that Commerce is to apply the expected method even "when all individually examined respondents are assigned *de minimis* margins"); *see also Bestpak*, 716 F.3d at 1379 (explaining that "§ 1673d(c)(5)(B) and the SAA explicitly allow Commerce to factor both *de minimis* and AFA rates into the calculation methodology").

The SAA then goes on to provide additional guidance as to when Commerce may deviate from the prescribed methodology. Following the description of the expected method above, the SAA provides:

> However, if this method is not feasible, or if it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, Commerce may use other reasonable methods.

SAA at 4201.

As we explained in *Albemarle*, "Commerce may use 'other reasonable methods,' *but only* if Commerce reasonably concludes that the expected method is 'not feasible' or 'would not be reasonably reflective of potential dumping margins.'" 821 F.3d at 1352 (quoting SAA at 4201) (emphasis added); *see also id.* at 1348 n.3 (noting that "[t]he [Trade Preferences Extension Act of 2015, Pub. L. No. 114–27, 129 Stat. 362 (2015)] makes a number of changes to the antidumping duty laws, none of which is relevant to this case"). In other words, to deviate from the expected method, Commerce must affirmatively determine, based on substantial evidence, that the expected method is not feasible or would not be reasonably reflective of the potential dumping margin of the non-selected respondents. *Changzhou Hawd Flooring Co. v. United States*, 848 F.3d 1006, 1012 (Fed. Cir. 2017)("Commerce could not deviate from the expected method unless it found, based on substantial evidence, that the separate-rate firms' dumping is different from that of the mandatory respondents.")

The burden is on Commerce to justify a departure from the expected method, not to justify its use. *Id.; Albemarle*, 821 F.3d at 1353. The converse of that conclusion is also true; when Commerce applies the expected method, the party that desires Commerce to deviate from the expected method bears the burden to identify and present substantial evidence on the record that either the expected method was "not feasible" or produced results not "reasonably reflective of potential dumping margins for non-investigated exporters or producers." SAA at 4201; *see Decision* at 1338. The Trade Court therefore correctly held that "the expected method is the default method and that the burden of proof lies with the party seeking to depart from the expected method." *Decision* at 1338.

That conclusion is further bolstered by the statute's recognition of Commerce as an organization of finite resources. *See* 19 U.S.C. § 1677f–1(c)(2) (allowing Commerce to limit its investigation to a subset of the exporters or producers when the large number of exporters or producers means it is "not practicable" to determine individual dumping margins for each); 19 U.S.C. § 1677m(a) (allowing Commerce to decline to investigate a voluntary respondent when it would be "unduly burdensome" to do so). Placing an affirmative burden on Commerce to investigate the non-selected respondents and determine that the expected method produced results reasonably reflective of their dumping margin, as suggested by appellants, would contravene the purpose of those statutory provisions that allow Commerce to limit the number of parties individually investigated under certain

circumstances. *See Decision* at 1341 ("Such an interpretation would defeat the purpose of the respondent selection process.").

PrimeSource argues that our decisions in *Bestpak* and *Bosun Tools Co. v. United States*, No. 2021–1929, 2022 WL 94172 (Fed. Cir. Jan. 10, 2022), nevertheless support placing a burden on Commerce to justify the use of the expected method. PrimeSource Br. at 23–26. Those cases, however, are distinguishable.

In *Bestpak*, Commerce did not employ the expected method, and instead used "a simple average rather than a weighted average." 716 F.3d at 1378. In deviating from the expected method, Commerce was required to use "other reasonable methods." *Id.* This court determined that the administrative record lacked substantial evidence supporting a conclusion that the chosen method was reasonable as applied to the facts of that case. *Id. Bestpak* does not address Commerce's burden when it calculates the all-others rate using the expected method.

Bosun is a nonprecedential opinion which therefore does not control here. Regardless, it also does not support PrimeSource's position. *Bosun* presents a scenario similar to the one here in that Commerce used the expected method[3] to calculate an all-others rate by averaging a zero and an AFA rate. *Bosun*, 2022 WL 94172, at *3. Bosun argued that the resulting rate was not reasonably reflective of its potential dumping margin. *Id.* at *3. Commerce reviewed the history of the rates in the proceeding and came to the opposite conclusion. *Id.*at *5–6. We affirmed Commerce's decision as supported by substantial evidence. *Id.* at *6. *Bosun* thus provides only an example of a party challenging Commerce's use of the expected method and failing to meet its burden to show that the results of the expected method were not reasonably reflective of its potential dumping margin.

We therefore agree with the Trade Court's analysis and conclusion that "[n]othing in the statute, SAA, or jurisprudence suggests" that Commerce has an affirmative burden to justify its use of the expected method. *Decision* at 1341. The Trade Court thus correctly concluded that "the non-selected respondents bear the burden of providing evidence that the results of the expected method would not reasonably reflect the potential dumping margins of the non-selected respondents." *Id.*

There is no dispute that Commerce employed the expected method. There is also no contention that the expected method is not feasible.

[3] Commerce stated that it used the expected method to calculate the all-others rate despite having used a simple average rather than a weighted average. *See Bosun Tools Co. v. United States*, 493 F. Supp. 3d 1351, 1354 (Ct. Int'l Trade 2021). That was not challenged, and Commerce was therefore treated as if it had used the expected method. *See generally Bosun*, No. 2021–1929, ECF No. 18 (Appellant's opening brief on appeal.).

The remaining question is therefore whether or not substantial evidence supports Commerce's determination that the non-selected respondents failed to demonstrate that the expected method produced results not reasonably reflective of their potential dumping margins.

B

We next turn to Appellants' arguments that the record provides substantial evidence to rebut the presumption of representativeness and therefore renders the expected method unreasonable. The mandatory respondents are presumed representative of the non-selected respondents. *Changzhou Hawd Flooring*, 848 F.3d at 1012 ("The very fact that the statute contemplates using data from the largest volume exporters suggests an assumption that those data can be viewed as representative of all exporters." (quoting *Albemarle*, 821 F.3d at 1353)). That presumption is essential to the justification for calculating the "all-others" rate based on the weighted average of the mandatory respondents. *Id.* However, the presumption of representativeness is rebuttable, and a party wishing to depart from the expected method can satisfy its burden by showing that the non-examined respondents' dumping is different from the mandatory respondents. *Id.* Commerce found that "the expected method is reasonable here because the record evidence does not rebut the presumption that the mandatory respondents are representative." J.A. 620.

Appellants first point to the fact that both mandatory respondents received AFA rates rather than calculated rates in the fourth administrative review. PrimeSource argues that the presumption of representativeness has been rebutted because the mandatory respondents' rates were based entirely on AFA rates. Specifically, it argues that the use of an AFA rate creates a weak presumption of representativeness because it is "divorced from a respondents' [*sic*] contemporaneous data on the record," PrimeSource Br. at 32, and that an AFA rate based on data from the petition cannot constitute substantial evidence to support the presumption of representativeness in the fourth administrative review, *id.* at 35. Cheng Ch similarly takes issue with the application of the AFA rate to the non-selected respondents, asserting that the AFA rate has no relationship to the administrative record in the fourth administrative review and that it is merely a punitive measure for non-cooperative respondents. Cheng Ch. Br. at 11–12.

Those arguments are unpersuasive. Appellants attempt to shift the burden to Commerce to show that the mandatory respondents' AFA rate was similar to the non-selected respondents' potential dumping margin during the fourth administrative review. But as earlier

stated, it is their burden to justify a departure from the expected method. Here, they fail to point to any information from the fourth administrative review to rebut the presumption of representativeness of the mandatory respondents. Instead, they place too much weight on the fact that the mandatory respondents received AFA rates based on datafrom the original petition.

The mere fact that all mandatory respondents received an AFA rate cannot, in and of itself, undermine the presumption of representativeness. First, the respondent selection process under 19 U.S.C. § 1677f–1(c)(2) supports the presumption of representativeness based on exporters' volume, not the results of Commerce's dumping margin analysis. *Albemarle*, 821 F.3d at 1353; *Changzhou Hawd Flooring*, 848 F.3d at 1012. Additionally, as discussed above, the statute and SAA expressly require Commerce to factor in AFA rates when calculating the all-others rate using the expected method. *See* 19 U.S.C. § 1673d(c)(5)(B); SAA at 4201. Finally, under 19 U.S.C. § 1677e(b)(2), when determining an AFA rate, Commerce may rely on information from prior proceedings, including the original petition. In fact, Commerce must rely on that earlier information because receipt of an AFA rate means the respondent failed to provide adequate information to calculate a dumping margin in the current proceeding. *See* 19 U.S.C. § 1677e(b)(1). An AFA rate will therefore always be at least partially based on data that are not contemporaneous to the current proceeding. Simply pointing out the realities of the statutory framework when a respondent receives an AFA rate does nothing to undermine the presumption of representativeness of the mandatory respondents.

Furthermore, Appellants' assertion that the mandatory respondents' AFA rate is somehow punitive or divorced from any contemporaneous evidence is incorrect. Receiving an AFA rate is not a punitive measure, "[r]ather, it reflects a common sense inference that the highest prior margin is the most probative evidence of current margins because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less." *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990). Here, the respondents were aware of the 78.17% AFA rate because that rate had been applied in previous proceedings. *Decision* at 1341. The mandatory respondents' decision to not provide questionnaire responses is therefore at least circumstantial, contemporaneous evidence that their dumping margin was equal to or higher than the AFA rate during the relevant period of review. That inference is particularly strong with a respondent such as Pro-Team because it had complied in prior proceedings and previously received

lower calculated rates between 0% and 6.72%, but then chose to not provide questionnaire responses in the fourth administrative review, essentially guaranteeing that it would receive the 78.17% AFA rate. *See Decision* at 1342; J.A. 523. We therefore reject Appellants' arguments that the mandatory respondents' receipt of the AFA rate provides substantial evidence to undermine the presumption of representativeness.

Appellants next assert that the all-others rate applied to the non-selected respondents was unreasonable and not supported by substantial evidence because the history of calculated rates in the proceeding on certain steel nails from Taiwan were significantly lower than the AFA rate assigned to the mandatory respondents in the fourth administrative review. PrimeSource Br. at 42; Cheng Ch Br. at 13. Specifically, PrimeSource points to the rates assigned to individually investigated respondents from the investigation and first through third periods of review ("POR"), summarized in the chart below.

STEEL NAILS RATE CHART				
	Investigation	PORl	POR2	POR3
Ko Nails Inc./ Quick Advance Inc.	Excluded - *de rninirnis* margin			
Pro-Team	2.16%	0%	0%	6.72%
Unicatch Industrial Co. Ltd.		78.17%	6.16%	27.69%
Bonuts		78.17%	78.17%	
Liang Chyuan				2.54%

PrimeSource Br. at 39.

PrimeSource argues that rather than a trend of noncooperation, the history of rates in the proceeding demonstrates that respondents received low, calculated rates far more often than AFA rates. *Id.* at 38–40. And it argues that the history of calculated rates shows numerous zero, *de minimis*, or other low calculated rates making the application of the AFA rate to all non-selected respondents in the fourth administrative review unreasonable. *Id.* With respect to Liang Chyuan, PrimeSource argues that its offer to submit questionnaire responses in the fourth administrative review and its calculated rate of 2.54% in the third administrative review establish that its dumping margin was likely lower than the AFA rate, and therefore that Commerce's decision to apply the all-others rate to Liang Chyuan was not supported by substantial evidence. PrimeSource Br. at 40–42.

Here, Commerce considered and rejected Appellants' suggestion of a pattern of lower rates, instead finding a history of AFA rate usage

in previous reviews. *See* J.A. 624–26. Commerce "reviewed the information proffered by [respondents], which [was] a listing of the calculated rates throughout this proceeding, including the investigation" ranging from 0% to 27.69%, which respondents characterized as low margins. *Id.* at 624–25. Commerce determined that it was improper to look at only the calculated rates and ignore the AFA rates of 78.17% previously assigned in the proceeding because it "assigned AFA in three out of five segments," which was "more than half of the reviews." *Id.* at 625. It found that there was a pattern of non-cooperation and receipt of AFA rates, including from the mandatory respondents in the fourth administrative review. *Id.* Pro-Team, "a mandatory respondent in every segment, including the investigation, has been assigned margins ranging from zero to 78.17." *Id.* Additionally, it found that "Bonuts[] has a history of uncooperative behavior, having been assigned AFA in [the first and second administrative review] and this review." *Id.* Relying on that evidence, Commerce reasonably determined that examining only the calculated rates would not provide a full picture of the historical rates in the proceeding.

Commerce went on to examine the calculated rates of another frequent respondent, Unicatch. *Id.* at 626. It determined that the 27.69% calculated rate in the third administrative review was not, in fact, "low," as asserted by respondents. *Id.* Rather, it demonstrated that "the percentage increase in Unicatch's margin from [the second to third administrative review] is 350 percent." *Id.*

Commerce also noted the lack of evidence of review-specific rates for the vast majority of non-examined companies, finding that "73 of 75 of the non-examined companies have never been examined in any segment of the proceeding," and that "there is no evidence on this record or any other record that the 78.17 percent rate does not reflect their commercial reality." J.A. 626. Weighing those findings together, Commerce determined that, from its "analysis of all the assigned rates, segment to segment, it is apparent that there is no pattern of 'low' margins in this proceeding, as claimed" by the respondents. *Id.* It therefore determined that "the record does not show that the assumed representativeness (as recognized in *Albemarle*) for mandatory respondents should not apply" and that the facts did not present a situation where the use of the expected method was unreasonable. *Id.*

Commerce engaged with the evidence of record and came to the reasonable conclusion that the facts of the case did not support a departure from the expected method. Commerce's decision to apply

the expected method, resulting in a 78.17% all-others rate, to the non-selected respondents was therefore supported by substantial evidence and in accordance with the law. *See Albemarle*, 821 F.3d at 1352 ("Commerce may use 'other reasonable methods,' but only if Commerce reasonably concludes that the expected method is 'not feasible' or 'would not be reasonably reflective of potential dumping margins.'" (quoting SAA at 4201)); *Changzhou Hawd Flooring*, 848 F.3d at 1012.

PrimeSource's attempt to distinguish Liang Chyuan from the other non-selected respondents is also unpersuasive. *See* PrimeSource Br. at 41–46. Although it is true that Liang Chyuan offered to submit questionnaire responses, it did not do so until it was aware that both mandatory respondents would likely receive AFA rates, J.A. 528, and it never followed up to submit any questionnaire responses, J.A. 631. Liang Chyuan is thus no different from the other non-selected respondents in that the record contains no contemporaneous data regarding its potential dumping margin. Additionally, its rate moving from 2.74% in the third administrative review to 78.17% after the fourth administrative review is not unreasonable. As Commerce identified, Pro-Team, a mandatory respondent in the initial investigation and every administrative review received calculated rates as low as 0% but then received the AFA rate of 78.17% in the fourth administrative review. J.A. 625. In fact, similar to Liang Chyuan, Pro-Team's rate moved from a single digit rate, 6.72%, in the third review to the AFA rate in the fourth administrative review. *See Decision* at 1342. Without more information, Liang Chyuan's calculated margin of 2.74% in the third administrative review does not demonstrate that the 78.17% all-others rate in the fourth administrative review is unreasonable as "[t]here is no basis to simply assume that the underlying facts or calculated dumping margins remain the same from period to period." *Albemarle*, 821 F.3d at 1356. Commerce therefore reasonably determined that "there is no record evidence substantiating [Liang Chyuan]'s claim that it would have received the same result in this review as it did in a previous review, had it been selected for individual examination." J.A. 631.

Appellants additionally argue that pulling forward rates from earlier administrative reviews would have been a more reasonable method for calculating a dumping margin for the non-selected respondents. PrimeSource Br. at 46; Cheng Ch Br. at 13. We need not address that argument. When all mandatory respondents receive a rate that is zero, *de minimis*, or based entirely on AFA rates, Commerce's statutory obligation is to select "*any* reasonable method," not the most reasonable method. 19 U.S.C. § 1673d(c)(5)(B) (emphasis

added). The SAA dictates that that method must be the expected method unless it is not feasible or not reasonable—only then may Commerce select "other reasonable methods." *See* SAA at 4201. Here, Commerce's decision not to depart from the expected method was in accordance with the law and supported by substantial evidence. There is thus no need to evaluate Appellants' other suggested method.

II

Finally, we turn to PrimeSource's argument that Liang Chyuan was entitled to an individual rate in the fourth administrative review. PrimeSource argues that Liang Chyuan was not required to "submit a full questionnaire response to be considered a voluntary respondent." PrimeSource Br. at 48. It argues that because Liang Chyuan gave Commerce notice that it was willing to submit a response, Commerce should have used its authority to solicit information from Liang Chyuan. *Id.* at 49–50.

We disagree, as that argument is expressly foreclosed by the text of the statute.

The statute provides the requirements to be considered as a voluntary respondent. Relevant here is that the respondent "submits to the administering authority the information requested from exporters or producers selected for examination . . . by the date specified . . . for exporters and producers that were initially selected for examination." 19 U.S.C. § 1677m(a)(1). Liang Chyuan failed to satisfy that requirement. It did not submit responses to the antidumping questionnaire provided to the mandatory respondents at all, and its letter expressing willingness to submit response did not arrive until "well after the deadlines" for the initially selected mandatory respondents. J.A. 631. Furthermore, there is no requirement for Commerce to solicit information from a potential voluntary respondent. Commerce therefore correctly determined that Liang Chyuan's "'letter of willingness' to be a respondent was an unacceptable substitute for the requirements established under [§ 1677m(a)] of the Act." *Id.*

Notably, Liang Chyuan's letter did not arrive until after it was aware that all mandatory respondents were to receive an AFA rate based on their non-cooperation. *See* J.A. 527 ("[T]he dumping rates for both mandatory respondents in this proceeding could be calculated on the basis of total AFA, as they are non-cooperative. However, that does not mean that the dumping rates calculated for unsampled respondents such as [Liang Chyuan] should be based on total AFA."). The statutory directive for voluntary respondents to submit the request information "by the date specified . . . for exporters and producers that were initially selected for examination" indicates that

that type of wait-and-see approach is not sanctioned. 19 U.S.C. § 1677m(a)(1). Commerce's decision to not grant Liang Chyuan an individual rate was therefore in accordance with the law.

CONCLUSION

We have considered Appellants' remaining arguments, and do not find them persuasive. For the above reasons, we conclude that Commerce's *Final Results* decision is supported by substantial evidence and in accordance with the law. Accordingly, the Trade Court's decision sustaining Commerce's *Final Results* is affirmed.

AFFIRMED

PRIMESOURCE BUILDING PRODUCTS, INC., CHENG CH INTERNATIONAL CO., LTD., CHINA STAPLE ENTERPRISE CORP., DE FASTENERS INC., HOYI PLUS CO., LTD., LIANG CHYUAN INDUSTRIAL CO., LTD., TRIM INTERNATIONAL INC., UJL INDUSTRIES CO., LTD., YU CHI HARDWARE CO., LTD., ZON MON CO., LTD., Plaintiffs-Appellants v. UNITED STATES, MID CONTINENT STEEL & WIRE, INC., Defendants-Appellees

Appeal No. 2022–2128, 2022–2129

Appeals from the United States Court of International Trade in Nos. 1:20-cv-03911-MAB, 1:20-cv-03934-MAB, Chief Judge Mark A. Barnett.

DYK, *Circuit Judge*, concurring in part and dissenting in part.[1]

This appeal presents the question of whether Commerce can treat an adverse facts available ("AFA") rate as presumptively reasonable when calculating the all others rate for non-selected respondents, particularly where there is evidence that the AFA rate is not a reasonable approximation of the all others rate. I respectfully dissent from the majority's conclusion that an AFA rate is presumptively reasonable even though Congress in 2015 determined that an AFA rate need not be reasonable, and from its conclusion that the record fails to show that the all others rate is unreasonable.

I

Dumping margins for all importers are generally determined based on the calculation of dumping margins for the individually examined respondents (the largest importers).Those margins are generally presumed to be representative of the "all others" rates. *Albemarle Corp. & Subsidiaries v. United States*, 821 F.3d 1345, 1353 (Fed. Cir. 2016). However, a problem arises if the mandatory respondents refuse to cooperate, and Commerce cannot calculate a rate for the mandatory respondents and assigns them a so-called AFA rate. The Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act provides that the "expected method in such cases will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available." H. DOC. NO. 103–316, at 873 (1994), *reprinted in* 1994 U.S.C.C.A.N. 4040, 4201. Here there are no de minimis rates, and Commerce used an average of the two AFA rates as the all others rate. The statute gives Commerce wide discretion in calculating an AFA rate, and there is no contention in this case that the AFA rate for the mandatory respondents was not

[1] I agree with the majority that, based on this record, there is no requirement that Liang Chyuan be individually examined, and therefore join Part II of the majority opinion.

accurate. But the AFA rate calculated for mandatory respondents can only be used as an all others rate if the rate is "reasonable" under the circumstances. 19 U.S.C. § 1673d(c)(5); *see also* SAA, 1994 U.S.C.C.A.N. at 4201.

Before 2015, a presumption that the overall AFA rate was reasonable was supported by the prior version of the statute because the AFA rate itself had to be commercially reasonable. *See Gallant Ocean (Thailand) Co. v. United States*, 602 F.3d 1319, 1323 (Fed. Cir. 2010). But, as appellants point out, Cheng Ch Br. at 12, in 2015 Congress amended the statute to eliminate any such requirement. *See* Trade Preferences Extension Act of 2015, Pub. L. No. 114–27, § 502, 129 Stat. 362, 384. The purpose of the 2015 amendments was to create additional incentives to cooperate with Commerce in investigations. The 2015 amendments removed the requirement of commercial reasonableness for AFA rates in order to address situations in which "a foreign party fails to cooperate with the agency's request for information in a proceeding." S. REP. NO. 114–45, at 37 (2015). Under the 2015 amendment, when AFA rates are applied to respondents that "failed to cooperate," Commerce no longer has an obligation to demonstrate that the rate "reflects an alleged commercial reality of the interested party." 19 U.S.C. §§ 1677e(b)(1), 1677e(d)(3)(B).

In such cases after 2015, where, as here, an AFA rate is applied to the non-examined parties, there is no basis for assuming that the AFA rate is reasonable as to the non-examined parties. The 2015 amendments did not change Commerce's obligation to use a "reasonable method" to set the all others rate, which applies to cooperative non-selected parties. *See* 19 U.S.C. § 1673d(c)(5). Rather, the reasonable method requirement was left in place. Thus, while it may have been safe to assume that an AFA rate was presumptively reasonable as applied to the non-examined parties before the 2015 amendments, the 2015 amendments explicitly removed any reasonableness requirement for calculating an AFA rate.

In this case, appellants contend that the burden is on Commerce to establish reasonableness. The majority rejects that contention on the ground that the "expected method" provided in the statute is to use AFA rates if there are no other rates available. But an "expected" method is not necessarily a reasonable method. "Expected" and "reasonable" are different words carrying different requirements, and the mere fact that the method resulting in an AFA all others rate is "expected" does not render it "reasonable." In particular, the problem with the majority's reasoning is that, after the 2015 amendments, there is no basis for assuming that the expected method rate is a reasonable rate, nor any legislative history suggesting that it is pre-

sumptively reasonable for the non-examined parties. Because an AFA rate no longer must reflect commercial reality, there can be no presumption that an AFA rate resulting from the so-called "expected method" is necessarily "reasonable" for the cooperating respondents.

II

As appellants argue, there was no finding that the AFA rate of 78.17% was reasonable as applied to the non-examined parties (apart from the fact that it was the rate determined for the largest importers), and no evidence to support a finding that here the AFA rate was reasonable as applied to the non-examined parties. The AFA rate was the rate applied in each of the previous reviews to non-cooperative individually examined parties, not the rate that was applied to non-examined parties. The non-examined parties never received the 78.17% rate. In other words, the 78.17% AFA rate was itself not considered to be reasonably reflective of the all others parties' dumping margins in the prior periods. Rather, these parties received at the highest a 35.30% rate reflecting the average of the AFA rate and a calculated zero percent rate. First Review of Certain Steel Nails from Taiwan, 87 Fed. Reg. 45,758, 45,759 (July 29,2022). There is also no subsequent data to suggest that the 78.17% rate is reflective of the actual dumping margins of the all others parties. While Commerce found it pertinent that the dumping margins had increased since the first review, none of the calculated rates in prior proceedings remotely approach the 78.17% rate applied to the non-examined parties.

There is other significant evidence that the 78.17% rate was not reasonable as applied to the non-examined parties. In the initial investigation, Commerce calculated a margin of 2.16% for the only mandatory respondent found to be dumping, which "resulted in a revised rate of 2.16 percent for all other producers and exporters." Investigation of Certain Steel Nails from Taiwan, 82 Fed. Reg. 55,090 (Nov. 20, 2017). In the first review period, which applied the AFA rate to a non-cooperative mandatory respondent for the first time, Commerce calculated a margin of zero for one of the largest importers and a "rate of 35.30 percent for the non-examined companies." 87 Fed. Reg. at 45,759. Similarly, in the second and third reviews Commerce calculated margins of zero percent, 2.54%, 6.16%, 6.72%, and 27.69%, and assigned a rate of 12.90% to non-examined companies. *See* Second Review of Certain Steel Nails from Taiwan, 84 Fed. Reg. 11,506, 11,507 (Mar. 27, 2019); Third Review of Certain Steel Nails from Taiwan, 85 Fed. Reg.14,635, 14,636 (Mar. 13, 2020). Here, there is simply no basis for assuming that the AFA rate is reasonable for the non-examined parties.

As we said in *Albemarle*, outside of the AFA context "accuracy and fairness must be Commerce's primary objectives." 821 F.3d at 1354; *see also Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370, 1379 (Fed. Cir. 2013) ("An overriding purpose of Commerce's administration of antidumping laws is to calculate dumping margins as accurately as possible."). Commerce's approach here is neither accurate nor fair.

I would vacate and remand with instructions for Commerce to reconsider the all others rate.

Slip Op. 24–89

YAMA RIBBONS AND BOWS CO., LTD., Plaintiff v. UNITED STATES, Defendant, and BERWICK OFFRAY LLC, Defendant-Intervenor.

Before: Timothy C. Stanceu, Judge
Court No. 20–00059

JUDGMENT

Before the court are the *Final Results of Redetermination Pursuant to Court Remand* (June 10, 2024), ECF No. 57–1 (the "Second Remand Redetermination"), which the International Trade Administration, U.S. Department of Commerce ("Commerce") issued in response to the court's opinion and order in *Yama Ribbons and Bows Co., Ltd. v. United States*, 48 CIT __, 698 F. Supp. 3d 1255 (2024). In the Second Remand Redetermination, Commerce selected a new countervailing duty subsidy rate for the Export Buyer's Credit Program of 0.87% and, accordingly, recalculated a total subsidy rate of 22.20% for plaintiff Yama Ribbons and Bows, Co., Ltd. ("Yama"). *Second Remand Redetermination* at 6.

No party submitted substantive comments on, or otherwise objected to, the Second Remand Redetermination. Pl.'s Comments on Commerce's Final Redetermination pursuant to Court Remand (July 12, 2024), ECF No. 59; Def.-Int.'s Submission Indicating No Comments (July 15, 2024), ECF No. 60. Defendant advocates that the court sustain the Second Remand Redetermination. Def.'s Comments in Support of the Second Remand Redetermination (July 24, 2024), ECF No. 61.

The court has reviewed the Second Remand Redetermination and has determined that it complies with the opinion and order in *Yama Ribbons and Bows Co., Ltd. v. United States*, 48 CIT __, 698 F. Supp. 3d 1255 (2024). Therefore, upon consideration of the Second Remand Redetermination and all papers and proceedings had herein, upon due deliberation, and in the absence of an objection by any party, it is hereby

ORDERED that Second Remand Redetermination be, and hereby is, sustained; and it is further

ORDERED that the entries of merchandise that are at issue in this litigation shall be liquidated in accordance with the final court decision in this action.

Dated: August 5, 2024
New York, New York

/s/ Timothy C. Stanceu
TIMOTHY C. STANCEU
JUDGE

Slip Op. 24–90

KAPTAN DEMIR CELIK ENDUSTRISI VE TICARET A.S., Plaintiff, ICDAS CELIK ENERJI TERSANE VE ULASIM SANAYI, A.S., Plaintiff-Intervenor, v. UNITED STATES, Defendant, REBAR TRADE ACTION COALITION, Defendant-Intervenor.

Before: Jane A. Restani, Judge
Court No. 24–00018

[Motion to intervene and motion for statutory injunction are denied as the underlying entries have already been liquidated.]

Dated: August 8, 2024

David L. Simon, Law Office of David L. Simon, of Washington, DC, for Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S.

Leah N. Scarpelli, *Jessica R. DiPietro*, *Matthew M. Nolan*, and *Nancy A. Noonan*, ArentFox Schiff LLP, of Washington, DC, for plaintiff Kaptan Demir Celik Endustrisi ve Ticaret A.S. and plaintiff-intervenor ICDAS Celik Enerji Tersane Ve Ulasim Sanayi, A.S.

Joshua W. Moore, Commercial Litigation Branch, U.S. Department of Justice, of Washington, DC, for the defendant. With him on the brief were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, *Patricia M. McCarthy*, Director, and *L. Misha Preheim*, Assistant Director. Of counsel on the brief was *David W. Richardson*, Office of Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce, of Washington, DC.

John R. Shane, *Alan H. Price*, *Maureen E. Thorson*, and *Stephen A. Morrison*, Wiley Rein, LLP, of Washington, DC, for defendant-intervenor Rebar Trade Action Coalition.

OPINION AND ORDER

Restani, Judge:

Before the court is a motion to intervene and a motion for a statutory injunction from Habas Sinai ve Tibbi Gazlar Isihsal Endustrisi A.S. ("Habas"). Partial Consent Mot. of Habas Sinai Ve Tibbi Gazlar Istihsal Endustrisi A.S. To Intervene as a Matter of Right, ECF No. 38 (July 11, 2024) ("Mot. to Intervene"); Partial Consent Mot. of Proposed Pl.-Intervenor Habas Sinai Ve Tibbi Gazlar Istihsal Endustrisi A.S. for Statutory Inj., ECF No. 39 (July 11, 2024) ("Mot. for Inj."). Habas is a foreign producer of steel concrete reinforcing bar from the Republic of Turkey, and, while it was not a mandatory respondent, it was a party to the administrative review underlying this case. Mot. to Intervene at 2. Although Habas did not file its motion within the deadline set by USCIT R. 24(a)(3), it contends that good cause exists to grant its motion.

As a threshold matter, the court must consider whether Habas maintains an interest in this case. The Federal Circuit has held that, in the context of judicial review under 19 U.S.C. § 1516a, "once liquidation occurs the trial court is powerless to order the assessment

of duties at any different rate." *SKF USA, Inc. v. United States*, 512 F.3d 1326, 1328–29 (Fed. Cir. 2008) (citing *Zenith Radio Corp. v. United States*, 710 F.2d 806 (Fed. Cir. 1983) ("Once liquidation occurs, a subsequent decision by the trial court on the merits of [a] challenge can have no effect on the dumping duties assessed.")). Similarly, the court may not compel U.S. Customs and Border Protection ("Customs") to unliquidate unenjoined entries, nor may the court issue a backdated injunction. *See id.* at 1329.

Here, the underlying entry liquidated on June 7, 2024, although Habas plans to protest said liquidation. Mot. to Intervene at 6 n.1. Habas argues that because the liquidation is not final, "Customs has the authority to reverse the liquidation *via* a protest, and restore the entry to unliquidated status." Mot. to Intervene at 6 (emphasis in original).

Whatever Habas expects to obtain from its protest, it cannot secure the relief it seeks here. The plain language of 19 U.S.C. § 1516a requires a party to obtain an injunction of liquidation to be entitled to the benefit of a successful challenge to an unfair trade decision of Commerce; otherwise, the original decision will stand. *See* 19 U.S.C. § 1516a(e) (2018) ("If the cause of action is sustained in whole or in part . . . entries, the liquidation of which was enjoined under subsection (c)(2), shall be liquidated in accordance with the final court decision in this action.").[1]

Habas has not presented an unusual set of facts that might result in some kind of relief due to some misstep by Customs. This is a common situation—Habas failed to obtain an injunction of liquidation, and liquidation occured at the rate found by Commerce. For the foregoing reasons, the court **DENIES** the motion to intervene (ECF No. 38); **DENIES** the motion for statutory injunction (ECF No. 39); and **DISSOLVES** the Temporary Restraining Order (ECF No. 40).

Dated: August 8, 2024
New York, New York

/*s*/ *Jane A. Restani*
JANE A. RESTANI, JUDGE

[1] *See also* 19 U.S.C. § 1516a(c) ("*Unless* such liquidation is enjoined by the court under paragraph (2) of this section, entries . . . shall be liquidated in accordance with the determination of [Commerce] . . . ." 19 U.S.C. § 1516a(c) (emphasis added)).

Slip Op. 24–91

INTERNATIONAL RIGHTS ADVOCATES, Plaintiff, v. ALEJANDRO MAYORKAS, Secretary U.S. Department of Homeland Security, TROY A. MILLER, Acting Commissioner U.S. Customs and Border Protection, Defendants.

Before: Claire R. Kelly, Judge
Court No. 23–00165

[Dismissing for lack of jurisdiction plaintiff's action to compel defendants to issue decision on allegations of cocoa imported through forced child labor from the Ivory Coast in violation of 19 U.S.C. § 1307.]

Dated: August 8, 2024

Terrence P. Collingsworth, International Rights Advocates, of Washington, D.C., for plaintiff International Rights Advocates.

Aimee Lee, Assistant Director, *Marcella Powell*, Senior Trial Counsel, and *Christopher A Berridge*, Trial Attorney, U.S. Department of Justice, of New York, N.Y. and Washington D.C., for defendants Alejandro Mayorkas, Secretary U.S. Department of Homeland Security, and Troy A. Miller, Acting Commissioner U.S. Customs and Border Protection. Also on the briefs were *Justin R. Miller*, Attorney In-Charge, International Trade Field Office, *Patricia M. McCarthy*, Director, and *Brian M. Boynton*, Principal Deputy Assistant Attorney General. Of counsel were *Sabahat Chaudhary* and *Chelsea A. Reyes*, Office of the Chief Counsel, U.S. Customs and Border Protection.

OPINION AND ORDER

Kelly, Judge:

Before the Court is the motion filed by Defendants Alejandro Mayorkas, Secretary, U.S. Department of Homeland Security, and Troy A. Miller, Acting Commissioner, U.S. Customs and Border Protection ("CBP") (collectively "Defendants") seeking to dismiss the action filed by Plaintiff International Rights Advocates ("IRAdvocates") for lack of jurisdiction and failure to state a claim upon which relief can be granted. *See generally* Defs.' Mot. Dismiss, Dec. 15, 2023, ECF No. 16 ("Defs. Mot."); Defs.' Reply Memo. To Pl.'s Opp'n [Def. Mot.], May 3, 2024, ECF No. 21 ("Defs. Reply"). IRAdvocates opposes Defendants' motion. *See generally* [IRAdvocates] Opp'n [Def. Mot.], Feb. 23, 2024, ECF No. 17 ("Pl. Resp."). For the reasons that follow, Defendants' motion is granted for lack of jurisdiction.

BACKGROUND[1]

Most of the world's cocoa comes from West African countries. Côte d'Ivoire (the "Ivory Coast") is one of, if not, the largest producing countries of cocoa in the world, responsible for a bulk share of the cocoa exported from the region that makes up seventy percent of the world's cocoa supply. *See* Compl. at ¶ 9, Aug. 15, 2023, ECF No. 2 (citing Elian Peltier, *Ivory Coast Supplies the World With Cocoa. Now It Wants Some for Itself*, N.Y. Times (Aug. 13, 2022), https://www.nytimes.com/2022/08/13/world/africa/ivory-coast-chocolate.html (last visited July 29, 2024)). The United States receives a substantial portion of the total cocoa produced by the Ivory Coast. *See id.* (first citing Marius Wessel & P.M. Foluke Quist-Wessel, *Cocoa Production in West Africa, a Review and Analysis of Recent Developments*, 74–75 NJAS: Wageningen J. Life Sci. 1, 1–7 (2015), https://www.tandfonline.com/doi/epdf/10.1016/j.njas.2015.09.001?needAccess=true (last visited July 29, 2024); and then citing Vivek Voora et al., *Global Market Report: Cocoa*, Int'l Inst. For Sustainable Dev.(2019) https://www.iisd.org/system/files/publications/ssi-global-market-reportcocoa.pdf (last visited July 29, 2024)).

Forced child labor in the Ivory Coast's cocoa production is well documented and recognized not only by humanitarian organizations and nonprofits, but also by the courts and the U.S. chocolate companies themselves. *See, e.g.,* Compl. at ¶¶ 10–92 (citing sources). Despite this recognition, leading chocolate producers continue to use and profit from forced child labor in the Ivory Coast. *Id.* at ¶ 29.

On February 14, 2020, IRAdvocates, along with the Corporate Accountability Lab ("CAL") and the Civil Rights Litigation Clinic of University of California Irvine School of Law ("CRLC-UCI"), submitted a joint petition (the "Petition") to CBP seeking exclusion of cocoa produced in the Ivory Coast by means of forced or trafficked child labor pursuant to 19 U.S.C. § 1307 and 19 C.F.R. § 12.42(b). *Id.* at ¶¶ 105, 112; Exh. A: Petition at 1–24, Feb. 14, 2020, ECF No. 2–1

[1] The background is drawn from the allegations contained in IRAdvocates' complaint, which are accepted as true for the purposes of evaluating Defendants' motion to dismiss. *See Nalco Co. v. Chem-Mod, LLC*, 883 F.3d 1337, 1347 (Fed. Cir. 2018) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)); *Warth v. Seldin*, 422 U.S. 490, 501(1975) ("For purposes of ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party").

("Petition").[2] Specifically, the Petition alleged that certain cocoa imports from the Ivory Coast by certain chocolate companies[3] were produced by forced child labor and requested CBP investigate and issue a withhold release order ("WRO") on the merchandise.[4] Petition at 1–4. The Petition detailed both statistical and first-hand evidence of forced and trafficked child labor collected by IRAdvocates, as exhibited in direct accounts from IRAdvocates investigators and victims of forced child labor in the Ivory Coast. *Id.* In March of 2020, IRAdvocates and CAL met with CBP to discuss the Petition. Compl. at ¶ 105. At that meeting, CBP indicated that an investigation was underway, and that it had sent requests for information to "all of the major cocoa suppliers" regarding their supply chains. *Id.*

On March 23, 2021, CBP again met with CAL to discuss the Petition. *Id.* at ¶ 106. CBP claimed that an investigation into the underlying facts of the Petition was ongoing. *Id.* At that time, CBP did not identify any insufficiency or untimeliness with respect to the evidentiary support within the Petition. *Id.* On June 25, 2021, IRAdvocates and CAL submitted a joint supplemental allegation to CBP concerning the exclusion of cocoa produced in the Ivory Coast. *Id.* at ¶ 107; Exh. E: Supp. 307 Petition, Jun 25, 2021, ECF No. 2–5 ("Supp. Petition").[5] CBP met with IRAdvocates and CAL on September 10,

[2] CBP's regulations include a mechanism for which a third-party may submit allegations of products made by forced labor to CBP. Particularly, 19 C.F.R. § 12.42(b) allows for:

> Any person outside CBP who has reason to believe that merchandise produced [in violation of 19 U.S.C. § 1307] is being, or is likely to be, imported into the United States may communicate his belief to any port director or the Commissioner of CBP. Every such communication shall contain, or be accompanied by:
>
> (1) A full statement of the reasons for the belief;
> (2) A detailed description or sample of the merchandise;
> (3) All pertinent facts obtainable as to the production of the merchandise abroad.

In this case, the communication came in the form of the Petition sent directly to CBP. *See* Compl. at ¶ 105; Petition at 1–24.

[3] The chocolate companies include Nestlé, S.A. and Nestlé, U.S.A.; Cargill, Incorporated; Barry Callebaut AG, Barry Callebaut USA LLC; Mars, Incorporated and Mars Wrigley Confectionary; Olam International and Olam Americas, Inc.; the Hershey Company; World's Finest Chocolate, Inc.; and Blommer Chocolate Co. Petition at 1.

[4] Merchandise subject to a WRO is detained by CBP, and the importer of the detained merchandise can either re-export the detained shipments at any time or provide information to CBP showing that the merchandise was not produced in violation of 19 U.S.C. § 1307. *See Forced Labor Frequently Asked Questions*, U.S. Customs and Border Prot. (May 1, 2024), https://www.cbp.gov/trade/programs-administration/forced-labor/frequently-asked-questions (last visited July 29, 2024).

[5] The Supplemental Petition urged that CBP require the chocolate companies to provide, within 180 days, a "transparent map of [each] companies' supply chains down to the farm level," "pay the full Living Income Differential [] immediately, and move toward the Living Income price over the next 18 months" for the cocoa-producing farmers and their families, and "require that companies establish long-term contracts with cooperatives and farmers in [the Ivory Coast] over the next 18 months to ensure economic stability." Supp. Petition at 2–3.

2021, to discuss the supplemental petition. *Id.* at ¶ 108. Again, CBP failed to discuss the timeline or status of the pending investigation. *Id.* CBP failed to convey any new information regarding the investigation and gave no indication as to whether it had received the requested information from cocoa manufacturers. *Id.*

Two years after filing the initial Petition, on February 14, 2022, IRAdvocates, CAL, and CRLC-UCI authored another letter to CBP, signed by various organizations, companies, and individuals, calling on CBP to initiate a Section 1307 enforcement action on cocoa imported from the Ivory Coast based on the Petition. *See id.* at ¶ 109; Exh. B: Letter to CBP at 1–8, Feb. 14, 2022, ECF No. 2–2 ("Letter of Support"). CBP failed to directly respond to or otherwise answer the letter. Compl. at ¶ 111. Months later, another meeting between CAL and CBP took place on August 15, 2022, and IRAdvocates sent a follow-up email to CBP in October of 2022, requesting an update on the investigation. *Id.* at ¶¶ 110–111.

On December 13, 2022, CBP responded to inquiries from IRAdvocates and the co-petitioners. *Id.* at ¶ 111; Exh. F: Letter From Acting Comm'r Miller at 1, Dec. 13, 2022, ECF No. 2–6 ("Dec. 13, 2022, Letter"). CBP indicated that "the information submitted with the [Petition] was dated and did not provide a sufficient basis for CBP to move forward with enforcement action under 19 U.S.C. § 1307"—the first time any concern as to the quality of the information submitted by the petitioners was raised. Dec. 13, 2022, Letter at 1. CBP provided no further clarity on the status of the investigation and did not discuss when, or if, any action would be taken. *See generally id.* IRAdvocates and CAL were also encouraged by CBP to submit "any additional information" concerning the allegations in the Petition "should it become available." Id.

IRAdvocates responded to CBP's letter on January 17, 2023, contesting CBP's determination that the information contained in the Petition and related submissions were dated. Compl. at ¶ 112; Exh. G: Letter To Acting Comm'r Miller at 1–3, Jan. 17, 2023, ECF No. 2–7. On February 14, 2023, CAL submitted an additional supplemental petition of ongoing forced child labor practices in cocoa production in the Ivory Coast, which remains unaddressed by CBP. *See* Compl. at ¶ 113; Exh. H: 2023 307 Petition at 1–7, Jan. 14, 2023, ECF No. 2–8. At no point in the "ongoing investigation" did CBP indicate a time frame to resolve the Petition, address the merits of the allegations, or indicate whether it was going to issue a ruling of any sort. *See* Compl. at ¶¶ 105–113; Exh. G: Letter To Acting Comm'r Miller at 1–3, Jan. 17, 2023, ECF No. 2–7.

After three and a half years of unsuccessfully petitioning CBP and with no indication that CBP intended to act, IRAdvocates filed the instant action against Defendants on August 15, 2023, asserting jurisdiction under 28 U.S.C. § 1581(i) and alleging the failure to enforce the terms of Section 1307 in violation of 5 U.S.C. § 706(1). *See* Compl. at ¶¶ 115–34. Specifically, IRAdvocates asks the Court to compel CBP to act on its Petition by issuing a WRO on the cocoa products imported from the Ivory Coast, determining that the Petition lacks merit, or making "some other appropriate decision in response to the Petition." *Id.* at ¶ 134, Request for Relief at ¶¶ A–B. On December 15, 2023, Defendants moved the Court to dismiss IRAdvocates suit for lack of subject-matter jurisdiction and for failure to state a claim upon which relief can be granted. *See generally* Defs. Mot. IRAdvocates opposed Defendants' motion on February 23, 2024, to which Defendants replied on May 3, 2024. *See generally* Pl. Resp.; Defs. Reply.

On June 6, 2024, the Court granted IRAdvocates' untimely request for oral argument based on its counsel's excusable neglect. *See* Order at 1–2, June 10, 2024, ECF No. 24. On June 17, 2024, the Court requested supplemental briefing from the parties in light of the Supreme Court's decision in *Food and Drug Administration v. Alliance of Hippocratic Medicine*. *See* 602 U.S. 367, 393–96 (2024) ("*Alliance*"); *see also* Letter of the Court, June 17, 2024, ECF No. 25. On July 9 and 11, 2024, the parties submitted their supplemental briefs addressing the Court's request. *See generally* Defs.' Supp. Br., July 9, 2024, ECF No. 27 ("Defs. Supp. Br."); [Pl.'s] Corrected Supp. Br. Addressing [Letter of the Court], July 11, 2024, ECF No. 29–1 ("Pl. Supp. Br."). On July 16, 2024, the Court heard oral argument on the issues raised by the parties in response to Defendants' motion. *See generally* Oral Arg., July 16, 2024, ECF No. 33.

STANDARD OF REVIEW

The Court reviews an action brought under 28 U.S.C. § 1581(i) under the standards provided under Section 706 of the Administrative Procedure Act ("APA"), as amended. *See* 28 U.S.C. § 2640(e). Under the Section 706 of the APA, the reviewing court shall

> (1) compel agency action unlawfully withheld or unreasonably delayed; and
>
> (2) hold unlawful and set aside agency action, findings and conclusions found to be—
>
> (A)arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law

5 U.S.C. § 706(1)–(2)(A).

Whether the Court has subject-matter jurisdiction to hear an action is a "threshold" inquiry, *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94–95 (1998),[6] of which standing is a part. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 559–60 (1992). Further, a plaintiff fails to state a claim unless, when taking the facts in the complaint as true, its claim is "plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

DISCUSSION

Defendants argue this action should be dismissed for lack of subject-matter jurisdiction because IRAdvocates lacks standing to bring its claim. Defs. Mot. at 14–20. Specifically, Defendants contend that IRAdvocates fails to satisfy Article III of the U.S. Constitution because: it cannot demonstrate a concrete, particularized injury in fact, there is no causal connection between the injury alleged and CBP's conduct, and the alleged injury is not likely to be redressed by a decision in IRAdvocates' favor. *Id.*; Defs. Reply at 2–11.[7] IRAdvocates disputes Defendants' characterization of the suit, arguing that it has organizational standing under Article III to bring the action because it suffered an injury in fact that was fairly traceable to CBP's failure to act that can be redressed by a favorable decision.[8] Pl. Resp. at 9–24. Defendants' motion is granted because IRAdvocates lacks standing and therefore this Court lacks subject matter jurisdiction.[9]

Article III of the U.S. Constitution requires plaintiffs to demonstrate standing. U.S. Const. art. III, § 2; *see Lujan*, 504 U.S. at 560–61. In satisfying "[t]he irreducible constitutional minimum of standing," a plaintiff must demonstrate the three elements of injury

[6] Subject-matter jurisdiction confers the Court with the power to hear a case and cannot be waived or forfeited. *United States v. Cotton*, 535 U.S. 625, 630 (2002). A party, or the Court on its own initiative, can object to the existence of subject-matter jurisdiction at any stage in the litigation, including after trial and entry of judgment. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 506 (2006).

[7] Concerning standing, Defendants additionally assert that the action should be dismissed because IRAdvocates lacks statutory standing, as its claims are not within the "zone of interests" of the statute that IRAdvocates seeks to enforce. Defs. Mot. at 20–22; Defs. Reply at 11–15. Defendants further argue that the action should be dismissed for failure to state a claim because Section 1307 does not mandate any agency action that can be compelled under the APA, and thus the Court cannot provide declaratory relief. Defs. Mot. at 22–35.

[8] IRAdvocates also contends its interests are protected by 19 U.S.C. § 1307 and thus satisfy the criteria for statutory standing, and further that CBP has unreasonably delayed discrete and mandatory agency action on the Petition. Pl. Resp. at 18–40.

[9] IRAdvocates asserts that the Court has jurisdiction under 28 U.S.C. § 1581(i)(1)(c), providing the Court with exclusive jurisdiction over civil actions commenced against the United States concerning "embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety." Compl. at ¶ 115.

in fact, causation, and redressability. *Military-Veterans Advoc. v. Sec'y of Veterans Affs.*, 7 F.4th 1110, 1121 (Fed. Cir. 2021); *Canadian Lumber Trade All. v. United States*, 517 F.3d 1319, 1331 (Fed. Cir. 2008) (citing *Lujan*, 504 U.S. at 560). First, the plaintiff must show that it suffered an injury in fact: a concrete and particularized "invasion of a legally protected interest" that is actual or imminent rather than conjectural or hypothetical. *Lujan*, 504 U.S. at 560; *Military-Veterans Advoc.*, 7 F.4th at 1121 ("[the injury in fact requirement] ensures that the plaintiff has a 'personal stake in the outcome of the controversy'" (quoting *Warth*, 422 U.S. at 498)). Second, the plaintiff must demonstrate that the injury and conduct complained of are causally connected; that is, the injury is "fairly traceable to the defendant's actions or omissions," rather than those of a third party. *Lujan*, 504 U.S. at 560. Lastly, the plaintiff must show it is likely, rather than "merely speculative," that the injury will be redressed by a decision in the plaintiff's favor. *Id.* An organization establishes standing by demonstrating the same three components of constitutional standing required by an individual.[10] *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982) ("*Havens*"); *Alliance*, 602 U.S. at 393–94. To satisfy the injury in fact requirement, the organization must establish "a concrete and demonstrable injury to the organization's activities." *Havens*, 455 U.S. at 379.

In *Havens*, the Court explained that an organization sufficiently pleads an injury in fact when it identifies a concrete harm to the organization. *See* 455 U.S. at 378–79. In that case, Housing Opportunity Made Equal ("HOME") alleged that the defendant, Havens Realty Corporation ("Havens Realty") engaged in "racial steering"—a practice preserving and encouraging racial segregation by steering members of racial and ethnic groups to buildings primarily occupied by those of similar racial and ethnic groups—in violation of Section 804 of the Fair Housing Act ("FHA"), 42 U.S.C. § 3604. *Id.* at 368–69. HOME provided counselling services for low- and moderate-income homeseekers, as well as investigations and referral of complaints involving discriminatory housing practices. *Id.* HOME claimed that Havens Realty's actions frustrated HOME's "efforts to assist equal access to housing through counseling and other referral services," and that as a result, HOME "had to devote significant resources to identify and counteract [Havens Realty's] racially discriminatory steering practices." *Id.* at 379.

[10] An organization can establish standing in one of two ways: through organizational standing; or on behalf of its members through associational standing. *See United Food & Com. Workers Union Loc. 751 v. Brown Grp., Inc.*, 517 U.S. 544, 552–53 (1996). Here, only the former is implicated.

The Supreme Court, in finding that HOME had Article III organizational standing, emphasized that Havens Realty's racial steering practices "perceptibly impaired HOME's ability to provide counselling and referral services for low- and moderate-income homeseekers" and constituted a concrete harm. *Id.* HOME's counseling had directed its clients to Havens Realty, and Havens Realty lied about available housing to those clients and sabotaged the work HOME had accomplished. *Id.* at 368–69.[11] The Court stressed that the organization in *Havens* was not only an advocacy organization, but also operated a counseling service as a core business. *Id.* at 368. Thus, HOME's core business extended beyond advocacy. *See id.* at 368, 378–79. At issue was an asset with value—stemming from HOME's core business—rather than an abstract societal interest; Havens Realty's actions damaged that asset.[12] *See id.* at 379. In sum, *Havens* found injury in fact because the defendant's action harmed the plaintiff's asset. *See id.* (finding a perceptible injury to HOME's ability to "provide counseling and referral services").

Recently, in *Alliance* the Supreme Court applied *Havens*' rationale in the context of regulatory action. *See Alliance*, 602 U.S. 367. The plaintiff-organizations in *Alliance* challenged the Food and Drug Administration's ("FDA") approval of the drug mifepristone, used to terminate pregnancies up to ten weeks. *Id.* at 375–377. The organizations argued that the FDA's approval of mifepristone had "forced" them to "expend considerable time, energy and resources," engaging in public advocacy, conducting independent studies, and drafting civil actions, all of which constituted a concrete and particularized injury in fact. *Id.* at 394. The Court rejected the organizations' proposition that their claimed injury amounted to the same type of injury suffered by HOME in *Havens*. To the contrary, the FDA's approval of mifepristone did not obstruct a core business or "impose[] any similar impediment" to the organizations' mission. *Id.* at 395.

Inquiries into the second and third constitutional standing requirements—causation or traceability and redressability,

[11] In *Havens*, the injury to HOME also caused a "consequent drain on the organization's resources" to remedy the harm caused by the defendant. 455 U.S. at 379. However, an organization cannot "spend its way into standing simply by expending money to gather information and advocate against the defendant's action." *Alliance*, 602 U.S. at 394.

[12] Indeed, an injury that is "merely ideological" fails to satisfy first element of standing. *Alliance*, 602 U.S. at 381. Allowing alleged damages to the "special interests" of an organization to suffice would result in "no objective basis upon which to disallow a suit by any other bona fide 'special interest' organization, however small or short-lived." *Military-Veterans Advoc.*, 7 F.4th at 1129 (quoting *Sierra Club*, 405 U.S. at 739); *see also Alliance*, 602 U.S. at 382 ("The injury in fact requirement prevents the federal courts from becoming a vehicle for the vindication of the value interests of concerned bystanders" (internal quotations and citations omitted)).

respectively—often overlap. *Alliance*, 602 U.S. at 380–81 ("The second and third standing requirements—causation and redressability—are often flip sides of the same coin" (internal quotations and citations omitted)). The causation prong "examines the causal connection between the assertedly unlawful conduct and the alleged injury." *Allen*, 468 U.S. at 754 n.19. When government regulation of a third-party individual or business is purported to be the cause of injury to an unregulated plaintiff, that plaintiff must demonstrate a "predictable chain of events" stemming from the government action (or inaction) to the claimed injury. *Alliance*, 602 U.S. at 385 ("in other words, [the plaintiff must show] that the government action has caused or likely will cause injury in fact to the plaintiff"). The redressability prong "examines the causal connection between the alleged injury and the judicial relief requested." *Allen*, 468 U.S. at 754 n.19; *see also McKinney v. U.S. Dep't of Treasury*, 799 F.2d 1544, 1549–50 (Fed. Cir. 1986) (explaining that the injury caused by the defendant's actions must be "likely to be redressed should the court grant the relief requested").

Here, IRAdvocates has not met the requirements of organizational standing under Article III. The organization "advocates for and with working people around the world"—including those in the Ivory Coast—and is "committed to overcoming the problems of child labor, forced labor, and other abusive practices in the global economy." Pl. Resp. at 10; Compl. at ¶ 117. It seeks to achieve its mission by promoting the enforcement of international labor rights through "public education and mobilization, research, litigation, legislation, and collaboration with labor, government and business groups." Pl. Resp. at 10; Compl. at ¶ 117. But unlike the plaintiff in *Havens*, IRAdvocates does not identify how CBP's failure to act has harmed a core business or diminished any asset. *See* 455 U.S. at 368–69.

In contrast to *Havens*, IRAdvocates' claimed injury rests not on harm to a core business, but solely on CBP's failure to issue a WRO for cocoa imported from the Ivory Coast or to otherwise take action in response to the Petition. *See* Pl. Resp. at 11. Similar to *Alliance*, IRAdvocates would prefer specific action by CBP. Like the organizations in *Alliance*, IRAdvocates has devoted resources to persuading the agency to act in accordance with its wishes. *See* Compl. at ¶¶ 105–114; Pl. Mot. at 10–17; Pl. Supp. Br. at 3–5. Such expenses do not

constitute injury in fact.[13] *See Alliance*, 602 U.S. at 394 ("an organization that has not suffered a concrete injury caused by a defendant's action cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action").[14] IRAdvocates' frustration with the regulatory process fails, without more, to satisfy the injury in fact requirement because regulatory frustration is not injury in fact. *See Alliance*, 602 U.S. at 396 (noting plaintiffs must show "regulatory requirements likely would cause them to suffer an injury in fact"). Indeed, the federal courts are inappropriate forums for an organization to challenge a federal agency's actions based on that organization's mere ideological objection to the agency's choices. *Id.* at 396–97.

IRAdvocates' claim that it was injured by CBP's failure to act on the Petition after it was filed is also unavailing. *See* Pl. Resp. at 13; Pl. Supp. Br. at 3–5. IRAdvocates argues that the expenses it incurred as a result of CBP's delay caused the organization to "divert substantial additional resources to convince CBP to take enforcement action." Pl. Mot. at 13–14; *see also* Pl. Supp. Br. at 4–5. Specifically, IRAdvocates claims diversions of resources towards: additional resources to prepare for and participate in the March 23, 2021, September 10, 2021, and August 15, 2022, meetings at CBP's office; collecting additional evidence of trafficking and forced labor in the Ivorian cocoa industry included in the supplemental petition filed on June 25, 2021, consisting of three trips to Western Africa visiting five regions in the Ivory

[13] Moreover, IRAdvocates has not shown that its mission has been inhibited. *See Vilsack*, 808 F.3d at 919. Nothing in the filings indicate that IRAdvocates cannot continue its pursuit of achieving "just and humane treatment for workers worldwide," or that it now must spend resources in a capacity independent from its issue-advocacy functions to counteract harm that CBP has caused. To the contrary, the complaint highlights that IRAdvocates remains active in advocating for and litigating cases relating to its mission statement after submitting the Petition, such as in the Courts of Appeals for the Ninth Circuit and the D.C. Circuit, and the Supreme Court of the United States. *See, e.g.,* Compl. at ¶ 96 (describing a film highlighting IRAdvocates' work in the Ivory Coast that was released in 2022); *Nestle USA, Inc. v. Doe*, 593 U.S.628 (2021) (issuing decision on June 17, 2021); *Coubaly v. Cargill, Inc.*, 610 F. Supp.3d 173 (D.D.C. 2022) (issuing decision June 28, 2022, appeal filed July 25, 2022).

[14] IRAdvocates claims that CBP's failure to take action on the Petition poses "a direct conflict between [CBP's] conduct and [IRAdvocates'] mission." Pl. Resp. at 10–11. In support of its position, IRAdvocates cites *Abigail Alliance for Better Access to Developmental Drugs v. Eschenbach*, 469 F.3d 129, 133 (D.C. Cir. 2006). However, that case is distinguishable. Similar to *Havens*, the plaintiff-organization in *Abigail Alliance* offered counseling and educational services to assist terminally ill patients in "accessing potentially life-saving drugs." *Id.* at 132–33. The FDA's challenged regulations, which barred the organization's clients from accessing clinical trials for experimental drugs, were found to perceptibly impair and be in direct conflict with the organization's counseling services, thus conferring constitutional standing. *Id.* at 133. The court specifically found that the organization's injury was "directly attributable to FDA policies." *Id.* Here, CBP's inaction is not of the same nature as the FDA's in that case, as IRAdvocates does not challenge any regulations that CBP promulgated. Moreover, and discussed below, IRAdvocates' cannot establish that the alleged injury is "directly attributable" to CBP's inaction.

Coast in 2020 to interview and observe children subject to forced labor; preparing reports, summaries of interview, affidavits, descriptions of photos, and transcripts of video and audio recording for use in information submitted in the supplemental petition; organizing and filing the February 14, 2022, letter of support to CBP; preparing the January 17, 2023, response letter to CBP's December 13, 2022, letter; and conducting additional research and obtaining new evidence to assist the creation of CAL's unanswered supplemental petition filed on February 14, 2023. *See id.*; Compl. at ¶¶ 106–110, 112–13; Letter of Support; Dec. 13, 2022, Letter.[15]

IRAdvocates' post-Petition expenditures fall squarely within the category of resources used for advocacy, litigation, or educational purposes—the types of expenses that have been consistently rejected as a basis for Article III injury in fact. *See, e.g.*, *Alliance*, 602 U.S. at 394 ("But an organization that has not suffered a concrete injury caused by a defendant's action cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action"). Rather than relating to a business activity independent from its issue-advocacy functions, the expenditures appear to directly further IRAdvocates' claimed goal of "public education and mobilization, research, litigation, legislation, and collaboration with labor, government and business groups." *See* Compl. at ¶ 117. IRAdvocates cannot "spend its way into standing" by expending resources to gather information and advocate against forced-child labor in the Ivory Coast, be that at the outset of advocacy activities or in the middle. *See Alliance*, 602 U.S. at 394. Accordingly, IRAdvocates fails to demonstrate that it suffered any injury in fact as required to assume organizational standing under Article III.[16]

Even if IRAdvocates had suffered an injury in fact, the injury is not traceable to CBP's inaction, and a decision in IRAdvocates' favor

[15] In further support of its claimed injury in fact, IRAdvocates argues that "[o]nly organizations like IRAdvocates that have filed a lawful [Section 1307] petition and then expended funds in an effort to get CBP to take statutorily required action to enforce the law have standing to challenge CBP's inaction." Pl. Supp. Br. at 3 (emphasis omitted). However, the act of filing a petition does not legally bind CBP to take a particular enforcement pathway. Rather, enforcement action is warranted only after CBP has evaluated and determined the merits of the allegations in the Petition. *See* 19 C.F.R. § 12.42(e), (f).

[16] Concerning the three trips to Western Africa, it would appear that these expenses similarly occurred within IRAdvocates' normally expended operational costs and insufficient to constitute injury in fact. *See Vilsack*, 808 F.3d at 920. The complaint details IRAdvocates' past travels to and work in the region, listing trips to the Ivory Coast in 2018 and 2019. Compl. at ¶¶ 99–100. In light of these excursions in the previous two years, attributing the 2020 trips solely to CBP's inaction is tenuous, at best, given the release of the 2022 film documenting IRAdvocates' work in the Ivory Coast and the filing of the *Coubaly* lawsuit in the U.S. District Court for the District of Columbia in 2021. *See* Compl. at ¶¶ 96, 103; *see also Coubaly*, 610 F. Supp. 3d 173.

would not likely redress the injury. *See Lujan*, 504 U.S. at 560. As discussed, IRAdvocates' expenses resulted from CBP's inaction relate to those made in the routine operations of an organization seeking "to achiev[e] just and humane treatment for workers worldwide." Pl. Resp. at 10; *see also* Compl. at ¶ 117. Moreover, even if the Court compelled CBP to act, the agency might conclude that the Petition is without merit and refuse to impose Section 1307 exclusions on cocoa from the Ivory Coast—a possibility recognized in both IRAdvocates' complaint and brief. Compl. at ¶ 134; Pl. Resp. at 26–27.

Alternatively, a judgment in IRAdvocates' favor that compels CBP to issue a WRO would merely halt import of cocoa coming from the Ivory Coast—an outcome that fails to pass constitutional muster. *See Alliance*, 602 U.S. at 385 (clarifying that the causation element requires the plaintiff to "show a predictable chain of events leading from the government action to the asserted injury"); *Lujan*, 504 U.S. at 560–61 ("it must be likely, as opposed to merely speculative that the injury will be redressed by a favorable decision" (internal quotations and citations omitted)). There is no guarantee that action from CBP will immediately, or even eventually, put an end to forced child labor in the Ivory Coast. CBP's interference with IRAdvocates' mission "to fight to prevent the exploitation of forced child labor in cocoa harvesting" using all available avenues, including Section 1307, *see* Pl. Supp. Br. at 5, is therefore an impermissibly attenuated and speculative basis to confer constitutional standing under both the causation and redressability prongs of the analysis. *See Alliance*, 602 U.S. at 385; *Lujan*, 504 U.S. at 560–61. Thus, IRAdvocates has failed to show the causation and redressability elements of Article III standing.

Given that IRAdvocates does not have constitutional standing to bring its claim, the Court need not reach the remaining arguments made by the parties. CBP's motion to dismiss for lack of subject-matter jurisdiction is therefore granted.

CONCLUSION

IRAdvocates lacks standing to bring action against CBP to compel 19 U.S.C. § 1307 enforcement on cocoa imported from the Ivory Coast. Therefore, Defendants' motion to dismiss is granted, and IRAdvocates complaint is dismissed for lack of subject-matter jurisdiction. Judgment will enter accordingly.

Dated: August 8, 2024
New York, New York

/*s*/ *Claire R. Kelly*
CLAIRE R. KELLY, JUDGE

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