U.S. Customs and Border Protection

PROPOSED REVOCATION OF TWO RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF INSULATED STAINLESS STEEL BEVERAGE CONTAINERS

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

ACTION: Notice of proposed revocation of four ruling letters, and proposed revocation of treatment relating to the tariff classification of insulated stainless steel beverage containers.

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) intends to revoke New York ("NY") Ruling Letters N297758, N297169, N254461 and N264760, concerning the tariff classification of insulated steel beverage containers 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. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before April 9, 2021.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Erin Frey, Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. Due to the COVID-19 pandemic, CBP is also allowing commenters to submit electronic comments to the following email address: 1625Comments@cbp.dhs.gov. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number and date of publication. Due to the relevant COVID-19-related restrictions, CBP has limited its on-site public inspection of public comments to 1625 notices. Arrangements to inspect submitted comments should be made in advance by calling Ms. Erin Frey at (202) 325–1757.

FOR FURTHER INFORMATION CONTACT: Claudia Garver, Chemicals, Petroleum, Metals and Miscellaneous Articles Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325–0024.

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), this notice advises interested parties that CBP is proposing to revoke four ruling letters pertaining to the tariff classification of insulated steel beverage containers. Although in this notice, CBP is specifically referring to New York ("NY") Ruling Letter N297758, dated July 9, 2018 (Attachment A), NY N297169, dated June 15, 2018 (Attachment B), NY N254461, dated September 10, 2014 (Attachment C), and NY N264760, dated June 16, 2015 (Attachment D), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the two identified. No further rulings have been found. 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 advise CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this 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 the final decision on this notice.

In NY N297758, NY N297169, NY N254461 and NY N264760, CBP classified double-walled insulated stainless steel beverage containers with a vacuum between the two walls in heading 7323, HTSUS, specifically in subheading 7323.93.00, HTSUS, which provides for "Table, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel: other: of stainless steel." CBP has reviewed NY N297758, NY N297169, NY N254461 and NY N264760 and has determined the ruling letters to be in error. It is now CBP's position that the containers at issue are properly classified in heading 9617, HTSUS, specifically in subheading 9617.00.10, HTSUS, which provides for "Vacuum flasks and other vacuum vessels, complete with cases; parts thereof other than glass inners: Vessels: Having a capacity not exceeding 1 liter."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N297758, NY N297169, NY N254461 and NY N264760, and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H303684, set forth as Attachment E to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

CRAIG T CLARK,
Director
Commercial and Trade Facilitation Division

Attachments

HQ H303684
OT:RR:CTF:CPMM H303684 CKG
CATEGORY: Classification
TARIFF NO.: 9617.00.10

MS. MARYANN LARKIN
GLOBE EXPRESS SERVICES
1550 E. GLENN CURTISS STREET
CARSON, CA 90746

RE: Revocation of NY N297758, NY N297169, NY N254461 and NY N264760; classification of insulated stainless steel beverage containers

DEAR MS. LARKIN:

This is to inform you that U.S. Customs and Border Protection ("CBP") has reconsidered New York ("NY") Ruling Letters NY N297758 and NY N297169, issued to you on July 9, 2018, and June 15, 2018, concerning the classification of insulated stainless steel beverage containers. After reviewing the aforementioned rulings, we believe that they are in error. We have also reconsidered NY N254461, dated September 10, 2014, and NY N264760, dated June 16, 2015. For the reasons set forth below, we hereby revoke NY N297758, NY N297169, NY N254461 and NY N264760.

FACTS:

The merchandise at issue in NY N297758 was described as follows:

> [F]our, 12 oz. tumblers. The tumblers are beverage containers that are designed to carry hot or cold beverages. They feature bodies with a wider, rounded bottom that taper to a smaller top opening. The tumblers are made of double-walled stainless steel with a partial vacuum between the walls to serve as a barrier preventing heat transfer. Each item has a flat bottom that enables it to be placed on a flat surface such as a table. None of the items has a protective outer casing. Each item has a plastic lid designed to seal the container and keep the liquids inside from spilling. These items will be imported under item numbers 01976, 01987, 01988 and 10041. Item number 01976 is an assortment of four colors. Item number 10041 is an assortment of three colors. Item numbers 01987 and 01988 are only one color per item number. All items are identical except for color.

The merchandise at issue in NY N297169 was described as follows:

> [F]ive, 40 oz. bottles. The bottles are beverage containers designed to hold cold or hot beverages. They feature cylindrical bodies made of double-walled stainless steel with a partial vacuum between the walls to serve as a barrier preventing heat transfer. Each item has a flat bottom that enables it to be placed on a flat surface such as a table. None of the items has a protective outer casing. Each item has a lid designed to seal the container and keep the liquids inside from spilling. The lid also equipped with a carabiner top that makes it easy to hook on or carry. These items will be imported under item numbers 01840, 01841, 01842, 01843 and 01844. All items are identical except for color.

The merchandise at issue in NY N254461 was described as follows:

> Each of the samples were identified as the CamelBak Forge 16 oz. Black Smoke, Style Number 57002. It consists of a black cylindrical stainless

steel beverage bottle with a black, plastic screw-on lid. There is a lever on the side of the lid that, when depressed, exposes a sipping aperture on the top of the lid. The side of the lid is embossed with the raised letters "Camelbak." The bottom of the base of the item has the depressed letters "Camelbak Forge". The sample measures approximately 8½" in height, including the lid, 7¼" in height, not including the lid and 2¾" in diameter.

The bottle is a double walled container with a space separating the walls that provides a partial vacuum to serve as an insulating barrier to heat transfer. However, there is no protective outer casing around the double walled construction.

At issue in NY N264760 were five items, described as follows:

The five submitted illustrations depict items that are described as beverage containers that are designed to carry hot or cold beverages. They feature bodies made of double-walled stainless steel with a partial vacuum between the layers and each item has a flat bottom that enables it to be placed on a flat surface such as a table. None of the items have a protective outer casing. Each item has a plastic lid with features designed to seal the container and keep the liquids inside from spilling. The items are further described as follows:

Autoseal Westloop Stainless Travel Mug – This item is imported in 16, 20, and 24 ounce capacity sizes.

Extreme Stainless Travel Mug – This item holds 16 fluid ounces of liquid, incorporates a carry-handle that is attached to one side of the body and features a band of rubber around the middle to serve as a grip.

Snapseal Byron Stainless Travel Mug – This item is imported in 16 and 20 ounce capacity sizes. It has a band of rubber around the middle which serves as a grip.

Astor Stainless Travel Mug – This item holds 16 fluid ounces of liquid.

Autoseal Scout Kids Stainless Bottle – This item holds 12 fluid ounces of liquid.

ISSUE:

Whether the instant stainless steel beverage containers are classified as table, kitchen, or other household articles of steel in heading 7323, HTSUS, or as vacuum vessels of heading 9617, HTSUS.

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS, in accordance with the General Rules of Interpretation ("GRIs"). GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. Pursuant to GRI 6, classification at the subheading level uses the same rules, mutatis mutandis, as classification at the heading level.

The HTSUS provisions under consideration are as follows:

9617:	Vacuum flasks and other vacuum vessels, *complete with cases*; parts thereof other than glass inners
7323:	Table, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel:

Note 1(m) to Section XV provides as follows:

(m) Hand sieves, buttons, pens, pencil-holders, pen nibs, monopods, bipods, tripods and similar articles or other articles of chapter 96 (miscellaneous manufactured articles);

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the HTSUS. While not legally binding or dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The EN to heading 9617 provides as follows:

This heading covers : (1) Vacuum flasks and other similar vacuum vessels, provided they are *complete with the cases*. This group includes vacuum jars, jugs, carafes, etc., designed to keep liquids, food or other products at fairly constant temperature, for reasonable periods of time. These articles consist of a double-walled receptacle (the inner), generally of glass, with a vacuum created between the walls, and *a protective outer casing* of metal, plastics or other material, sometimes covered with paper, leather, leather cloth, etc. The space between the vacuum container and the outer casing may be packed with insulating material (glass fibre, cork or felt). *The heading also includes double-walled stainless steel vacuum insulated thermal flasks without a protective outer case, which perform temperature retention.*

* * * *

The rulings under reconsideration classified various stainless steel water bottles having vacuum properties in heading 7323, HTSUS, as table, kitchen or other household articles of iron or steel. We have reconsidered these rulings, and it is now our position that this merchandise is properly classified in heading 9617, HTSUS, as vacuum flasks or other vacuum vessels.

Heading 9617, HTSUS, provides for vacuum flasks and other vacuum vessels, "*complete with cases*" (emphasis added). Heading 9617 does not specify what is meant by "complete with cases." The Explanatory Note to heading 9617 clarify that "[t]hese articles consist of a double-walled receptacle (the inner), generally of glass, with a vacuum created between the walls, and a protective outer casing of metal, plastics or other material." The EN does not clearly state that the outer casing cannot be the same as the outer wall.

The containers at issue in NY N297758, NY N297169, NY N254461 and NY N264760 feature an insulating, double-walled construction with a partial vacuum in between the two walls. However, the bottles lack an additional outer casing beyond the second stainless steel wall. CBP determined that the lack of an outer protective casing on the beverage containers at issue precluded their classification in heading 9617, HTSUS. We do not believe that this position is supported by the legal text or the ENs to heading 9617. Neither heading 9617 nor the EN to heading 9617 clearly state that the outer

casing cannot be the same as the outer wall. In addition, the EN to heading 96.17 were revised in 2017 to explicitly clarify that "the heading also includes double-walled stainless steel vacuum insulated thermal flasks without a protective outer case, which perform temperature retention." Thus, we find that the scope of heading 9617 is not limited to containers having both a double walled vacuum construction and an additional outer casing. The instant containers have a double-walled construction which performs temperature retention; therefore, the products meet the terms of heading 9617 whether they have an additional outer casing or not.

Note 1(m) to Section XV excludes products of Chapter 96 from classification in Chapters 72–83. As the instant merchandise is *prima facie* classifiable in heading 9617, it cannot be classified in heading 7323. The beverage containers at issue in NY N254461 and NY N264760 are therefore classified in heading 9617, subheading 9617.00.10, HTSUS.

This conclusion is consistent with prior CBP rulings (see e.g., NY I82229, dated September 3, 2022, NY K80408, dated December 10, 2003, NY N057957, dated July 2, 2009, and HQ 962648, dated November 9, 1999, classifying similar beverage containers with double-walled construction and vacuum properties in heading 9617, HTSUS), and with the decision by the Harmonized System Committee (HSC) of the World Customs Organization to classify a similar product in heading 9617, as reflected in the WCO Compendium of Classification Opinions (C.O.) at C.O. 961700/1 ("Double-walled stainless steel vacuum insulated thermal flask"). In classifying the stainless steel vacuum flask in heading 96.17, the HSC likewise considered that the outer layer could be regarded as an "outer casing of metal" and, that being so, the product was in conformity with the legal text and the Explanatory Note to heading 96.17 despite the lack of an additional outer casing.

HOLDING:

Pursuant to GRIs 1 and 6, the stainless steel containers at issue are classified in heading 9617, specifically subheading 9617.00.10, HTSUS., which provides for "Vacuum flasks and other vacuum vessels, complete with cases; parts thereof other than glass inners: Vessels: Having a capacity not exceeding 1 liter." The 2021 column one, general rate of duty is 7.2% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N297758, dated July 9, 2018, NY N297169, dated June 15, 2018, NY N254461, dated September 10, 2014, and NY N264760, dated June 16, 2015, are hereby revoked.

Sincerely,

CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

CC:

Ms. Deborah B. Stern, Esq.
Sandler, Travis, & Rosenberg, P.A.
Attorneys at Law
1000 NW 57th Court
Suite 600
Miami, FL 33126–3281

Mr. Daniel Cannistra
Crowell & Moring LLP
1001 Pennsylvania Avenue NW
Washington, DC 20004

N297758

July 9, 2018
CLA-2–73:OT:RR:NC:N4:422
CATEGORY: Classification
TARIFF NO.: 7323.93.0080

MS. MARYANN LARKIN
GLOBE EXPRESS SERVICES
1550 E. GLENN CURTISS STREET
CARSON, CA 90746

RE: The tariff classification of insulated stainless steel beverage tumblers from China.

DEAR MS. LARKIN:

In your letter dated June 10, 2018, on behalf of Base Brands LLC, you requested a tariff classification ruling.

You submitted a photograph and detailed description of four, 12 oz. tumblers. The tumblers are beverage containers that are designed to carry hot or cold beverages. They feature bodies with a wider, rounded bottom that taper to a smaller top opening. The tumblers are made of double-walled stainless steel with a partial vacuum between the walls to serve as a barrier preventing heat transfer. Each item has a flat bottom that enables it to be placed on a flat surface such as a table. None of the items has a protective outer casing. Each item has a plastic lid designed to seal the container and keep the liquids inside from spilling. These items will be imported under item numbers 01976, 01987, 01988 and 10041. Item number 01976 is an assortment of four colors. Item number 10041 is an assortment of three colors. Item numbers 01987 and 01988 are only one color per item number. All items are identical except for color.

You have submitted a photograph and detailed description of the fifth item, an assortment of three 20 oz. tumblers, identified as item number 10049. The tumblers are beverage containers that are designed to carry hot or cold beverages. They feature tapering cylindrical bodies made of double-walled stainless steel with a partial vacuum between the walls to serve as a barrier preventing heat transfer. Each item has a flat bottom that enables it to be placed on a flat surface such as a table and is designed to fit in most standard size cup holders. None of the items has a protective outer casing. Each item has a plastic lid designed to seal the container and keep the liquids inside from spilling. All items are identical except for color.

The applicable subheading for item numbers 01976, 01987, 01988, 10041 and 10049 will be 7323.93.0080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Table...articles...of...steel...: other: of stainless steel...other." The rate of duty will be 2 percent ad valorem.

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

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Sandra Carlson at sandra.carlson@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

N297169

June 15, 2018
CLA-2–73:OT:RR:NC:N4:422
CATEGORY: Classification
TARIFF NO.: 7323.93.0080

MS. MARYANN LARKIN
GLOBE EXPRESS SERVICES
1550 E. GLENN CURTISS STREET
CARSON, CA 90746

RE: The tariff classification of insulated stainless steel beverage bottles from China.

DEAR MS. LARKIN:

In your letter dated May 20, 2018, on behalf of Base Brands, you requested a tariff classification ruling.

You submitted a photograph and detailed description of five, 40 oz. bottles. The bottles are beverage containers designed to hold cold or hot beverages. They feature cylindrical bodies made of double-walled stainless steel with a partial vacuum between the walls to serve as a barrier preventing heat transfer. Each item has a flat bottom that enables it to be placed on a flat surface such as a table. None of the items has a protective outer casing. Each item has a lid designed to seal the container and keep the liquids inside from spilling. The lid also equipped with a carabiner top that makes it easy to hook on or carry. These items will be imported under item numbers 01840, 01841, 01842, 01843 and 01844. All items are identical except for color.

You have suggested that these items are correctly classified under 7323.93.0080 and we agree.

The applicable subheading for item numbers 01840, 01841, 01842, 01843 and 01844 will be 7323.93.0080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Table...articles...of...steel...: other: of stainless steel...other." The rate of duty will be 2 percent ad valorem.

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

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Sandra Carlson at sandra.carlson@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

N254461
September 10, 2014
CLA-2–73:OT:RR:NC:N4:422
CATEGORY: Classification
TARIFF NO.: 7323.93.0080

MS. DEBORAH B. STERN, ESQ.
SANDLER, TRAVIS, & ROSENBERG, P.A.
ATTORNEYS AT LAW
1000 NW 57TH COURT
SUITE 600
MIAMI, FL 33126–3281

RE: The tariff classification of an insulated stainless steel lidded beverage bottle from China

DEAR MS. STERN:

In your letter dated June 12, 2014, on behalf of Camelbak Products, LLC, you requested a tariff classification ruling. Samples were sent to our US Customs and Border Protection Laboratory for analysis. Laboratory analysis has now been completed.

Three sample were submitted to this office and two of those samples were, in turn, submitted to the Customs Laboratory. Each of the samples were identified as the CamelBak Forge 16 oz. Black Smoke, Style Number 57002. It consists of a black cylindrical stainless steel beverage bottle with a black, plastic screw-on lid. There is a lever on the side of the lid that, when depressed, exposes a sipping aperture on the top of the lid. The side of the lid is embossed with the raised letters "Camelbak." The bottom of the base of the item has the depressed letters "Camelbak Forge". The sample measures approximately 8½" in height, including the lid, 7¼" in height, not including the lid and 2¾" in diameter.

The bottle is a double walled container with a space separating the walls that provides a partial vacuum to serve as an insulating barrier to heat transfer. However, there is no protective outer casing around the double walled construction. You have suggested that this item is correctly classified in subheading 7323.93.0080 and we agree.

The applicable subheading for Style Number 57002 will be 7323.93.0080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for table...articles...of...steel...: other: of stainless steel...other. The rate of duty will be 2 percent ad valorem.

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

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Gary Kalus at gary.kalus@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER
Director
National Commodity Specialist Division

N264760
June 16, 2015
CLA-2–73:OT:RR:NC:N4:422
CATEGORY: Classification
TARIFF NO.: 7323.93.0080

MR. DANIEL CANNISTRA
CROWELL & MORING LLP
1001 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20004

RE: The tariff classification of stainless steel beverage bottles from an undetermined country

DEAR MR. CANNISTRA:

In your letter dated May 15, 2015, on behalf of Ignite USA, LLC, you requested a tariff classification ruling.

The five submitted illustrations depict items that are described as beverage containers that are designed to carry hot or cold beverages. They feature bodies made of double-walled stainless steel with a partial vacuum between the layers and each item has a flat bottom that enables it to be placed on a flat surface such as a table. None of the items have a protective outer casing. Each item has a plastic lid with features designed to seal the container and keep the liquids inside from spilling. The items are further described as follows:

Autoseal Westloop Stainless Travel Mug – This item is imported in 16, 20, and 24 ounce capacity sizes.

Extreme Stainless Travel Mug – This item holds 16 fluid ounces of liquid, incorporates a carry-handle that is attached to one side of the body and features a band of rubber around the middle to serve as a grip.

Snapseal Byron Stainless Travel Mug – This item is imported in 16 and 20 ounce capacity sizes. It has a band of rubber around the middle which serves as a grip.

Astor Stainless Travel Mug – This item holds 16 fluid ounces of liquid.

Autoseal Scout Kids Stainless Bottle – This item holds 12 fluid ounces of liquid.

You have suggested that these items are all correctly classified in subheading 7323.93.0080 and we agree.

The applicable subheading for the Autoseal West Loop Stainless Travel Mug, the Extreme Stainless Travel Mug, the Snapseal Byron Stainless Travel Mug, the Astor Stainless Travel Mug and the Autoseal Scout Kids Stainless Bottle will be 7323.93.0080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for table...articles...of...steel...: other: of stainless steel...other. The rate of duty will be 2 percent ad valorem.

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

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Gary Kalus at gary.kalus@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER
Director
National Commodity Specialist Division

PROPOSED REVOCATION OF FOUR RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF BRASS DRAINS

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

ACTION: Notice of proposed modification of four ruling letters and proposed revocation of treatment relating to the tariff classification of brass drains.

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) intends to revoke NY N267667, dated August 31, 2015, NY N267669, dated August 31, 2015, NY N262071, dated March 16, 2015, and NY N262072, dated March 9, 2015, concerning the tariff classification of brass drains 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. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before April 9, 2021.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Erin Frey, Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. Due to the COVID-19 pandemic, CBP is also allowing commenters to submit electronic comments to the following email address: 1625Comments@cbp.dhs.gov. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number and date of publication. Due to the relevant COVID-19-related restrictions, CBP has limited its on-site public inspection of public comments to 1625 notices. Arrangements to inspect submitted comments should be made in advance by calling Ms. Erin Frey at (202) 325–1757.

FOR FURTHER INFORMATION CONTACT: Claudia Garver, Chemicals, Petroleum, Metals and Miscellaneous Classification Branch, Regulations and Rulings, Office of Trade, at (202) 325–0024.

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), this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the tariff classification of a plastic sink basket strainer. Although in this notice, CBP is specifically referring to NY N267667, dated August 31, 2015 ((Attachment A), NY N267669, dated August 31, 2015 (Attachment B), NY N262071, dated March 16, 2015 (Attachment C), and NY N262072, dated March 9, 2015 (Attachment D), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. 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 advise CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this 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 the final decision on this notice.

In NY N267667, NY N267669, NY N262071 and NY N262072, CBP classified bath and sink drains of brass in heading 7419, HTSUS, specifically in subheading 7419.99.50, HTSUS, which provides for "Other articles of copper: Other: Other: Other: Other: Brass plumbing

goods not elsewhere specified or included." CBP has reviewed NY N267667, NY N267669, NY N262071 and NY N262072 and has determined the ruling letters to be in error. It is now CBP's position that the subject drains are properly classified in heading 7418, HTSUS, specifically subheading 7418.20.10, HTSUS, which provides for "Table, kitchen or other household articles and parts thereof, of copper; pot scourers and scouring or polishing pads, gloves and the like, of copper; sanitary ware and parts thereof, of copper: Sanitary ware and parts thereof: Of copper-zinc base alloys (brass)."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N267667, NY N267669, NY N262071 and NY N262072 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H306046, set forth as Attachment E to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

Attachments

HQ H306046
OT:RR:CTF:CPMM HQ H306046 CKG
CATEGORY: Classification
TARIFF NO.: 7418.20.10

MS. DANIELLE SEBRING
GLOBAL COMPLIANCE AND LOGISTICS MANAGER
OATEY COMPANY
4675 WEST 160TH STREET
CLEVELAND, OH 44135

RE: Revocation of NY N267667, NY N267669, NY N262071 and NY N262072; classification of brass drains

DEAR MS. SEBRING:

This is to inform you that U.S. Customs and Border Protection ("CBP") has reconsidered New York ("NY") Ruling Letters N267667 and N267669, issued to Oatey Company on August 31, 2015, regarding the classification under the Harmonized Tariff Schedule of the United States ("HTSUS") of brass drains in heading 7419, HTSUS. After reviewing these rulings in their entirety, we believe that they are in error. We have also reconsidered related rulings on brass drains, specifically NY N262071, dated March 16, 2015 and NY N262072, dated March 9, 2015. For the reasons set forth below, we hereby revoke NY N267667, NY N267669, NY N262071 and NY N262072.

FACTS:

At issue in NY N267667 were drains identified as Oatey part numbers 42393 and 42394. Part number 42393 is composed of a chrome plated brass adjustable drain barrel, a square chrome plated brass strainer, four stainless steel collar bolts, and an ABS reversible clamping ring and drain base. Part number 42394 is composed of a chrome plated brass adjustable drain barrel, a square chrome plated brass strainer, four stainless steel collar bolts, and a PVC reversible clamping ring and drain base.

In NY N267669, the Oatey drains were identified as part numbers 42218 and 42219. Part number 42218 is composed of a chrome plated brass adjustable drain barrel, a round stainless steel strainer, four stainless steel collar bolts, and an ABS reversible clamping ring and drain base. Part number 42219 is composed of a chrome plated brass adjustable drain barrel, a round stainless steel strainer, four stainless steel collar bolts, and a PVC reversible clamping ring and drain base.

In NY N262071, the merchandise at issue was identified as "Model ITD35 - Island Tub Drain" and the "Model SDB47 - Tub & Shower Brass Side Discharge Pan Drain – Round Grate." The Model ITD35 drain consisted of an 18 gauge epoxy coated metal deck flange (stainless steel), 2 x 17G brass tailpieces (fine thread and flanged), ABS adapter kit, an Island Drain Assembly with 1–1/2" DWV ABS tailpiece, and a 2" x 1–1/2" ABS reducing bushing. All of the items included in the Model ITD35 - Island Tub Drain will be used to complete the bath tub drain.

The Model SDB47 drain consists of a low profile brass base, extra-long ABS body, reversible ABS collar, 3 solid brass bolts and a stainless steel grate...It is most commonly used as a shower drain. All of the items that comprise the Model SDB47 - Tub & Shower Brass Side Discharge Pan Drain – Round

Grate will be packaged together in a cardboard box ready for retail sale prior to importation into the United States.

Finally, in NY N262072, the product under consideration was identified as the Model 3600WC 1–1/4" Lavatory Drain Plug & Chain, consisting of a rubber plug & chain stopper, chrome finish, cast brass, 17 gauge 1–1/4" x 8–3/8" brass tailpiece, locknut, heavy rubber gasket, forged brass strainer, and cast brass elbow." All of the essential components in the Model 3600WC 1–1/4" Lavatory Drain Plug & Chain make up the lavatory drain, with the plug and chain being the closure.

ISSUE:

Whether the brass waste shoe is classified in heading 7418, HTSUS, as sanitary ware of copper, or in heading 7419, HTSUS, as other articles of copper.

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS, in accordance with the General Rules of Interpretation ("GRIs"). GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. Pursuant to GRI 6, classification at the subheading level uses the same rules, mutatis mutandis, as classification at the heading level.

The HTSUS provisions under consideration are as follows:

7418:	Table, kitchen or other household articles and parts thereof, of copper; pot scourers and scouring or polishing pads, gloves and the like, of copper; sanitary ware and parts thereof, of copper:
7418.20:	Sanitary ware and parts thereof:
7418.20.10:	Of copper-zinc base alloys (brass)...
7419:	Other articles of copper:
	Other:
7419.99:	Other:
	Other:
7419.99.50:	Other...

* * * *

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the HTSUS. While not legally binding or dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The Explanatory Note to heading 7418 provides, in pertinent part, as follows:

> The Explanatory Notes to headings *73.21, 73.23* and *73.24* apply, *mutatis mutandis*, to this heading.

This heading covers, *inter alia*, copper cooking or heating apparatus of a kind used for domestic purposes, e.g., small appliances such as petrol, paraffin, spirit stoves, as normally used for travelling, camping, etc. and for certain household uses. The heading also covers domestic apparatus of the kind described in the Explanatory Note to heading *73.22*.

EN 39.22 provides, in pertinent part:

This heading covers fittings designed to be permanently fixed in place, in houses, etc., normally by connection to the water or sewage systems. It also covers other sanitary ware of similar dimensions and uses, such as portable bidets, baby baths and camping toilets.

EN 69.10 provides, in pertinent part:

This heading covers fittings designed to be **permanently fixed in place**, in houses, etc., normally by connection to the water or sewage systems. They must therefore be made impervious to water by glazing or by prolonged firing (e.g., stoneware, earthenware, fire-clay sanitary ware, imitation porcelain, or vitreous china). In addition to the fittings specified, the heading includes such items as lavatory cisterns.

Ceramic flushing cisterns remain classified in this heading, **whether or not** equipped with their mechanisms.

The heading **does not**, however, **include** small accessory bathroom or sanitary fittings, such as soap dishes, sponge baskets, tooth-brush holders, towel hooks and toilet paper holders, even if of a kind designed for fixing to the wall, nor portable sanitary articles such as bed pans, urinals and chamber-pots; these goods fall in **heading** *69.11* or *69.12*.

EN 73.24 provides:

This heading comprises a wide range of iron or steel articles, **not more specifically covered** by other headings of the Nomenclature, used for sanitary purposes.

These articles may be cast, or of iron or steel sheet, plate, hoop, strip, wire, wire grill, wire cloth, etc., and may be manufactured by any process (moulding, forging, punching, stamping, etc.). They may be fitted with lids, handles or other parts or accessories of other materials **provided** that they retain the character of iron or steel articles.

The heading includes, baths, bidets, hip-baths, foot-baths, sinks, wash basins, toilet sets; soap dishes and sponge baskets; douche cans, sanitary pails, urinals, bedpans, chamber-pots, water closet pans and flushing cisterns whether or not equipped with their mechanisms, spittoons, toilet paper holders.

EN 74.19 provides, in pertinent part:

This heading covers all articles of copper **other than** those covered by the preceding headings of this Chapter or by Note 1 to Section XV, or articles specified or included in **Chapter 82** or **83**, or more specifically covered elsewhere in the Nomenclature.

* * * *

In NY N267667, NY N267669, NY N262071, and NY N262072, CBP classified various shower or bath drain assemblies of brass in heading 7419,

HTSUS, as other articles of copper. We have reconsidered these rulings, and find that the subject drains are properly classified in heading 7418, HTUSS, as sanitary ware.

As a preliminary matter, we note that heading 7419, HTSUS, only covers "other" articles of copper, not more specifically described elsewhere in the Nomenclature. Therefore, classification in heading 7419, HTSUS, is precluded if the merchandise is covered more specifically in heading 7418, HTSUS.

In NY N267667 and NY N267669, CBP specifically considered and discarded classification in heading 7418, HTSUS, as sanitary ware of copper, because the drains were not similar in kind to the exemplars of sanitary ware listed in the Explanatory Note to heading 7418. However, lists of examples such as the types of sanitary ware that may be included in the heading are illustrative only, and cannot narrow or broaden the scope of the heading.

Heading 7418, HTSUS, provides for, *inter alia*, sanitary ware of copper. "Sanitary ware" is not defined in the HTSUS or Explanatory Notes; we therefore turn to the common and commercial meaning of the term for guidance. *See Nippon Kogasku (USA) Inc. v. United States*, 69 C.C.P.A. 89, 92–93 (1982); *C.J. Towers & Sons v. United States*, 69 C.C.P.A. 128, 133–134 (1982). The Macmillan Dictionary, available at www.macmillandictionary.com, defines "sanitary" as "relating to people's health, especially to the system of supply water and dealing with human waste." "Sanitary ware" is also defined at www.dictionary.reference.com as: "plumbing fixtures, as sinks or toilet bowls, made of ceramic material or enameled metal." The Explanatory Notes to headings 3922 and 6910 further specify that "sanitary ware" covers "fittings designed to be permanently fixed in place, in houses, etc., normally by connection to the water or sewage systems.

We have further consulted the standards jointly developed by the American Society of Mechanical Engineers (ASME) and the Canadian Standards Association (CSA) regarding plumbing supply fittings (ASME A112.18.1/CSA B125.1), which can be found on the ASME website at www.asme.org. The scope of the ASME A112.18.1/CSA B125.1 standard for plumbing supply fittings can be found in Part 1, Section 1.1, which states that the standard applies to plumbing supply fittings and accessories located between the supply line stop and the terminal fitting, including, in relevant part, "(b) bath and shower supply fittings". Part 3, entitled "Definitions and abbreviations", at Section 3.1 Definitions, states, in relevant part: "The following definitions apply in this Standard:

> Accessory—a component that can, at the discretion of the user, be readily added, removed, or replaced, and that, when removed, will not prevent the fitting from fulfilling its primary function. Note: Examples include aerators, hand-held shower assemblies, shower heads, and in-line flow controls (emphasis added).
>
> * * *
>
> Fixture—a device for receiving water, waste matter, or both and directing these substances into a sanitary drainage system

"Sanitary ware" for the purposes of heading 7418, HTSUS, therefore covers permanent fixtures such as toilets and baths typically connected to the building's plumbing system and used for the removal of waste from the home, as well as small, portable articles such as toilet paper holders.

As the instant drains connect to the home's water system in order to receive and direct wastewater into a sanitary drainage system, they are within the scope of the above definitions of sanitary ware and plumbing fixtures.

The instant drains can also be distinguished from accessories of plumbing systems such as showerheads, which CBP has consistently classified as other than sanitary; unlike the instant drains, showerheads are easily replaceable, are not permanently installed in walls or floors, and do not receive water or waste matter and direct it to a sanitary drainage system. *See e.g.*, HQ H092556, dated July 10, 2015; NY N246906, dated November 18, 2013; NY N033873, dated August 21, 2008; NY I81474, dated May 22, 2002; NY H80605, dated June 5, 2001; and NY G85952, dated January 17, 2001.

The instant drains are sanitary ware provided for specifically in heading 7418, HTSUS. Because they are specified elsewhere in the Nomenclature, they are precluded from classification in heading 7419, HTSUS, as other articles of copper.

HOLDING:

Pursuant to GRI 1, the brass drain products at issue are classified in heading 7418, HTSUS, specifically subheading 7418.20.10, HTSUS, which provides for "Table, kitchen or other household articles and parts thereof, of copper; pot scourers and scouring or polishing pads, gloves and the like, of copper; sanitary ware and parts thereof, of copper: Sanitary ware and parts thereof: Of copper-zinc base alloys (brass)." The 2021 column one, general rate of duty is 3% ad valorem.

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

EFFECT ON OTHER RULINGS:

NY N267667, dated, August 31, 2015, NY N267669, dated, August 31, 2015, NY N262071, dated March 16, 2015 and NY N262072, dated March 9, 2015, are hereby revoked.

Sincerely,

CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

N267667
August 31, 2015
CLA-2–74:OT:RR:NC:N1:113
CATEGORY: Classification
TARIFF NO.: 7419.99.5010

MS. DANIELLE SEBRING
GLOBAL COMPLIANCE AND LOGISTICS MANAGER
OATEY COMPANY
4675 WEST 160TH STREET
CLEVELAND, OH 44135

RE: The tariff classification of drains with strainers from Taiwan

DEAR MS. SEBRING:

In your letter dated August 5, 2015, on behalf of Oatey Supply Chain Services, you requested a tariff classification ruling on drains with strainers. You submitted a sample for our review which will be returned to you.

The drains under consideration are identified as Oatey part numbers 42393 and 42394. Part number 42393 is composed of a chrome plated brass adjustable drain barrel, a square chrome plated brass strainer, four stainless steel collar bolts, and an ABS reversible clamping ring and drain base. Part number 42394 is composed of a chrome plated brass adjustable drain barrel, a square chrome plated brass strainer, four stainless steel collar bolts, and a PVC reversible clamping ring and drain base.

You stated in your letter that the subject drains are "imported fully manufactured and assembled". Based upon our examination of the submitted drain and the information provided to our office, in its condition as imported the product is made up of different components that are attached to each other to form a practically inseparable whole. Since each drain is imported as a single article which is fully manufactured and assembled, part numbers 42393 and 42394 are considered composite articles.

The composite articles consist of brass, stainless steel and ABS or PVC components that are classified in different headings. Classification of merchandise under the Harmonized Tariff Schedule of the United States (HTSUS) is in accordance with the General Rules of Interpretation (GRIs), taken in order. GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Since no one heading in the tariff schedules covers the brass, stainless steel and ABS or PVC components of the subject drains in combination, GRI 1 cannot be used as a basis for classification. GRI 3(b) provides that mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale shall be classified as if they consisted of the material or component which gives them their essential character.

As the drains with strainers are composite goods, we must apply rule GRI 3(b), which provides that composite goods are to be classified according to the component that gives the goods their essential character. EN VIII to GRI 3(b) explains that "the factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or the use of the goods." We must determine whether the metal components or the ABS and PVC components impart the essential character to the drains in question. It is the role of the constituent materials or components in relation to the use of the good that imparts the essential character. In this case, it is the

opinion of our office that the metal components impart the essential character to the drain. In accordance with GRI 3(b), the drains under consideration will be classified as articles of metal.

You stated in your letter that the drains are composed of more than one base metal. The drains are composed of brass and stainless steel. Section XV, Note 7 of the HTSUS, states that the classification of composite articles of base metal containing two or more base metals are to be treated as articles of the base metal that predominates by weight over each of the other metals. Based on the information provided to our office, the metal in the subject drains that predominates by weight is brass. Therefore, the drains in question are classifiable in chapter 74, HTSUS, which provides for copper and articles thereof.

You proposed classification for the drains under heading 7418, HTSUS, which provides for sanitary ware and parts thereof, of copper. The Explanatory Notes to heading 74.18 provides examples of articles classified in this heading, however, the subject drains are not similar in kind to these exemplars. Consequently, the instant drains are not classified in heading 7418, HTSUS, as sanitary ware. The drains under consideration will be classified as other articles of their constituent metal in heading 7419, HTSUS, which provides for other articles of copper.

The applicable subheading for the drains with strainers, Oatey part numbers 42393 and 42394, will be 7419.99.5010, HTSUS, which provides for other articles of copper, other...brass plumbing goods not elsewhere specified or included. The rate of duty will be free.

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

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Ann Taub at Ann.Taub@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER
Director
National Commodity Specialist Division

N267669
August 31, 2015
CLA-2–74:OT:RR:NC:N1:113
CATEGORY: Classification
TARIFF NO.: 7419.99.5010

MS. DANIELLE SEBRING
GLOBAL COMPLIANCE AND LOGISTICS MANAGER
OATEY COMPANY
4675 WEST 160TH STREET
CLEVELAND, OH 44135

RE: The tariff classification of drains with strainers from China

DEAR MS. SEBRING:

In your letter dated August 5, 2015, on behalf of Oatey Supply Chain Services, you requested a tariff classification ruling on drains with strainers. You submitted a sample for our review which will be returned to you.

The drains under consideration are identified as Oatey part numbers 42218 and 42219. Part number 42218 is composed of a chrome plated brass adjustable drain barrel, a round stainless steel strainer, four stainless steel collar bolts, and an ABS reversible clamping ring and drain base. Part number 42219 is composed of a chrome plated brass adjustable drain barrel, a round stainless steel strainer, four stainless steel collar bolts, and a PVC reversible clamping ring and drain base.

You stated in your letter that the subject drains are "imported fully manufactured and assembled". Based on our examination of the submitted drain and the information provided to our office, in its condition as imported the product is made up of different components that are attached to each other to form a practically inseparable whole. Since each drain is imported as a single article which is fully manufactured and assembled, part numbers 42218 and 42219 are considered composite articles.

The composite articles consist of brass, stainless steel and ABS or PVC components that are classified in different headings. Classification of merchandise under the Harmonized Tariff Schedule of the United States (HTSUS) is in accordance with the General Rules of Interpretation (GRIs), taken in order. GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Since no one heading in the tariff schedules covers the brass, stainless steel and ABS or PVC components of the subject drains in combination, GRI 1 cannot be used as a basis for classification. GRI 3(b) provides that mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale shall be classified as if they consisted of the material or component which gives them their essential character.

As the drain with strainers are composite goods, we must apply rule GRI 3(b), which provides that composite goods are to be classified according to the component that gives the goods their essential character. EN VIII to GRI 3(b) explains that "the factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or the use of the goods." We must determine whether the metal components or the ABS and PVC components impart the essential character to the drains in question. It is the role of the constituent materials or components in relation to the use of the good that imparts the essential character. In this case, it is the

opinion of this office that the metal components impart the essential character to the drains. In accordance with GRI 3(b), the drains under consideration will be classified as articles of metal.

You stated in your letter that the drains are composed of more than one base metal. The drains are composed of brass and stainless steel. Section XV, Note 7 of the HTSUS, states that the classification of composite articles of base metal containing two or more base metals are to be treated as articles of the base metal that predominates by weight over each of the other metals. Based on the information provided to our office, the metal in the subject drains that predominates by weight is brass. Therefore, the articles in question are classifiable in chapter 74, HTSUS, which provides for copper and articles thereof.

You proposed classification for the drains under heading 7418, HTSUS, which provides for sanitary ware and parts thereof, of copper. The Explanatory Notes to heading 74.18 provides examples of articles classified in this heading, however, the subject drains are not similar in kind to these exemplars. Consequently, the instant drains are not classified in heading 7418, HTSUS, as sanitary ware. The drains under consideration will be classified as other articles of their constituent metal in heading 7419, HTSUS, which provides for other articles of copper.

The applicable subheading for the drains with strainers, Oatey part numbers 42218 and 42219, will be 7419.99.5010, HTSUS, which provides for other articles of copper, other...brass plumbing goods not elsewhere specified or included. The rate of duty will be free.

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

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Ann Taub at Ann.Taub@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER
Director
National Commodity Specialist Division

N262071
March 16, 2015
CLA-2–73:OT:RR:NC:N1:113
CATEGORY: Classification
TARIFF NO.: 7326.90.8588; 7419.99.5010

MS. JENNIFER MITCHELL
HOC GLOBAL SOLUTIONS
3245 AMERICAN DRIVE
MISSISSAUGA, ONTARIO CANADA L4V 1B8

RE: The tariff classification of a tub drain and a tub and shower side discharge pan drain from an unspecified country

DEAR MS. MITCHELL:

In your letter dated February 20, 2015, on behalf of Oakville Stamping & Bending Limited, you requested a tariff classification ruling. Samples and illustrative literature/pictures for the subject tub drain and the tub and shower side discharge pan drain were submitted for our review.

The first product under consideration is identified as the Model ITD35 - Island Tub Drain Free Standing. You indicated that the items that comprise the Island Tub Drain will be imported as a kit with installation instructions included. You stated in your letter that the "Model ITD35 - Island Tub Drain consists of an 18 gauge epoxy coated metal deck flange (stainless steel), 2 x 17G brass tailpieces (fine thread and flanged), ABS adapter kit, an Island Drain Assembly with 1–1/2" DWV ABS tailpiece, and a 2" x 1–1/2" ABS reducing bushing ." All of the items included in the Model ITD35 - Island Tub Drain will be used to complete the bath tub drain. The subject stainless steel deck flange, brass tailpieces, ABS adapter kit, Island Drain Assembly with DWV ABS tailpiece and ABS reducing bushing that comprise the Model ITD35 - Island Tub Drain Free Standing will be packaged together in a cardboard box ready for retail sale prior to importation into the United States.

The second product under consideration is identified as the Model SDB47 - Tub & Shower Brass Side Discharge Pan Drain – Round Grate. You indicated that that the subject Tub & Shower Brass Side Discharge Pan Drain will be imported as a kit. You stated in your letter that the "Model SDB47 - Tub & Shower Brass Side Discharge Pan Drain – Round Grate consists of a low profile brass base, extra-long ABS body, reversible ABS collar, 3 solid brass bolts and a stainless steel grate...It is most commonly used as a shower drain." All of the items that comprise the Model SDB47 - Tub & Shower Brass Side Discharge Pan Drain – Round Grate will be packaged together in a cardboard box ready for retail sale prior to importation into the United States.

The General Rules of Interpretation (GRIs) set forth the legal framework in which merchandise is to be classified under the Harmonized Tariff Schedule of the United States Annotated (HTSUS). GRI 1 requires that classification be determined first according to the terms of the headings of the tariff and any relative section or chapter notes. Goods that cannot be classified in accordance with GRI 1 are to be classified in accordance with subsequent GRIs taken in order.

GRI 3(b) covers goods put up in sets for retail sale. Such goods: (a) consist of at least two different articles that are classifiable in different headings, (b)

consist of products put up together to meet a particular need or carry out a specific activity, and (c) are put up in a manner suitable for sale directly to users without repacking.

The Model ITD35 - Island Tub Drain Free Standing, in our opinion, meets the criteria for sets as the terms are defined. Having determined that the subject items constitute a set for tariff classification purposes, we must decide the essential character for the set. Essential character may be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods. The Island Tub Drain under consideration consists of stainless steel, brass and plastic articles. In this case, based on the function of the stainless steel deck flange to allow and direct the flow of liquid into the drain, it is the opinion of this office that the stainless steel component imparts the essential character of the set. In accordance with GRI 3(b), the Model ITD35 - Island Tub Drain Free Standing is classified under heading 7326, HTSUS, as an other article of steel, which is the heading that applies to the stainless steel component.

The Model SDB47 - Tub & Shower Brass Side Discharge Pan Drain – Round Grate, in our opinion, meets the criteria for sets as the terms are defined. Having determined that the subject items constitute a set for tariff classification purposes, we must decide the essential character. The Tub & Shower Brass Side Discharge Pan Drain in question consists of stainless steel, brass and plastic items. In this case, the brass items which include the base, hub connection and bolts are the principle components in terms of function, weight and value. Therefore, it is the opinion of this office that the brass components impart the essential character of the set. In accordance with GRI 3(b), the Model SDB47 - Tub & Shower Brass Side Discharge Pan Drain – Round Grate is classified under heading 7419, HTSUS, as an other article of copper, which is the heading that applies to the brass components.

The applicable subheading for the Model ITD35 - Island Tub Drain Free Standing will be 7326.90.8588, HTSUS, which provides for other articles of iron or steel, other...other. The rate of duty will be 2.9 percent ad valorem.

The applicable subheading for the Model SDB47 - Tub & Shower Brass Side Discharge Pan Drain – Round Grate will be 7419.99.5010, HTSUS, which provides for other articles of copper, other, other, other, other, brass plumbing goods not elsewhere specified or included. The general rate of duty will be free.

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

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Ann Taub at ann.taub@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER
Director
National Commodity Specialist Division

N262072
March 9, 2015
CLA-2–74:OT:RR:NC:N1:113
CATEGORY: Classification
TARIFF NO.: 7419.99.5010

MS. JENNIFER MITCHELL
HOC GLOBAL SOLUTIONS
3245 AMERICAN DRIVE
MISSISSAUGA, ONTARIO CANADA L4V 1B8

RE: The tariff classification of the Lavatory Drain Plug & Chain from an unspecified country

DEAR MS. MITCHELL:

In your letter dated February 20, 2015, on behalf of Oakville Stamping & Bending, you requested a tariff classification ruling. A sample and illustrative literature/pictures for the subject drain plug and chain were submitted for our review.

The product under consideration is identified as the Model 3600WC 1–1/4" Lavatory Drain Plug & Chain. You indicated that that the Lavatory Drain Plug & Chain will be imported as a kit with installation instructions included. You stated in your letter that the "Model 3600WC 1–1/4" Lavatory Drain Plug & Chain consists of a rubber plug & chain stopper, chrome finish, cast brass, 17 gauge 1–1/4" x 8–3/8" brass tailpiece, locknut, heavy rubber gasket, forged brass strainer, and cast brass elbow." All of the essential components in the Model 3600WC 1–1/4" Lavatory Drain Plug & Chain make up the lavatory drain, with the plug and chain being the closure. The components that comprise the Lavatory Drain Plug & Chain will be packaged together in a cardboard box ready for retail sale prior to importation into the United States.

The General Rules of Interpretation (GRIs) set forth the legal framework in which merchandise is to be classified under the Harmonized Tariff Schedule of the United States Annotated (HTSUS). GRI 1 requires that classification be determined first according to the terms of the headings of the tariff and any relative section or chapter notes. Goods that cannot be classified in accordance with GRI 1 are to be classified in accordance with subsequent GRIs taken in order.

GRI 3(b) covers goods put up in sets for retail sale. Such goods: (a) consist of at least two different articles that are classifiable in different headings, (b) consist of products put up together to meet a particular need or carry out a specific activity, and (c) are put up in a manner suitable for sale directly to users without repacking.

The Model 3600WC 1–1/4" Lavatory Drain Plug & Chain, in our opinion, meets the criteria for sets as the terms are defined. Having determined that the subject items constitute a set for tariff classification purposes, we must decide the essential character. Essential character may be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods. The Lavatory Drain Plug & Chain under consideration consists of both brass and rubber articles. In this case, the brass articles which include the tailpiece, locknut, strainer and elbow are the majority of the components that comprise the Lavatory Drain Plug & Chain. We note that the brass predominates by both weight and value over the rubber. Therefore, it is the opinion of this

office that the brass components impart the essential character of the set. In accordance with GRI 3(b), the set is classified under heading 7419, HTSUS, as an other article of copper, which is the heading that applies to the brass components.

The applicable subheading for the Model 3600WC 1–1/4" Lavatory Drain Plug & Chain, will be 7419.99.5010, HTSUS, which provides for other articles of copper, other, other, other, other, brass plumbing goods not elsewhere specified or included. The general rate of duty will be free.

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

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Ann Taub at ann.taub@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER
Director
National Commodity Specialist Division

PROPOSED MODIFICATION OF ONE RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE COUNTRY OF ORIGIN FOR MARKING PURPOSES OF AN ELECTRONIC DRUM KIT

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

ACTION: Notice of proposed modification of one ruling letter, and proposed revocation of treatment relating to the country of origin for marking purposes of an electronic drum kit.

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) intends to modify one ruling letter concerning the country of origin for marking purposes of an electronic drum kit. Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before April 9, 2021.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Erin Frey, Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. Due to the COVID-19 pandemic, CBP is also allowing commenters to submit electronic comments to the following email address: 1625Comments@cbp.dhs.gov. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number and date of publication. Due to the relevant COVID-19-related restrictions, CBP has limited its on-site public inspection of public comments to 1625 notices. Arrangements to inspect submitted comments should be made in advance by calling Ms. Erin Frey at (202) 325–1757.

FOR FURTHER INFORMATION CONTACT: Marie Durane, Food, Textiles, and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0984.

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), this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the country of origin for marking purposes of an electronic drum kit. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N202375, dated February 28, 2012 (Attachment A), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. 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 advise CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this 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 the final decision on this notice.

In NY N202375, CBP determined that the electronic drum kit, made of parts from China, Taiwan, and Sweden, and packaged together in Sweden without the need for further processing, was a product of China for country of origin marking purposes. It is now CBP's position that the country of origin marking of the electronic drum kit is China, Taiwan, and Sweden.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY N202375 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H309494, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

Attachments

N202375
February 28, 2012
CLA-2–92:OT:RR:NC:N4:428
CATEGORY: Classification
TARIFF NO.: 9207.90.0080

MS. CAROLYN LESKI
BCB INTERNATIONAL
1010 NIAGARA STREET
BUFFALO, NY 14213

RE: The tariff classification and country of origin determination of an electronic drum kit from China.

DEAR MS. LESKI:

In your letter dated January 23, 2012, you requested a tariff classification ruling on behalf of your client, Efkay USA Music Ltd.

The merchandise under consideration is the 2box DrumIt Five, item number 11000. The DrumIt Five is an electronic drum kit comprised of various integrated components, including drum pads, cymbals, pedals, stands, and a control unit. From the information you provided, the user strikes the drum pads and other components as one would an analog drum kit; however, this signal is sent through wires to the control unit, referred to as the "Brain Box," and is made audible through headphones and/or other audio output connected to the Brain Box. The Brain Box also allows the user to choose the sounds each component plays when struck, as well as providing a practice metronome and various other customizable options. You state that the complete drum kit will be imported in an unassembled condition.

Classification of goods under the Harmonized Tariff Schedule of the United States (HTSUS) is governed by the General Rules of Interpretation (GRIs). 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 may then be applied. Under GRI 2(a), "any reference to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), entered unassembled or disassembled." By application of GRI 2(a), the unassembled electronic drum kit has the essential character of an electronic musical instrument.

The applicable subheading for the 2box DrumIt Five, item number 11000, will be 9207.90.0080, HTSUS, which provides for "Musical instruments, the sound of which is produced, or must be amplified, electrically...: Other: Other." The general rate of duty will be 5 percent ad valorem.

You also inquire as to the correct country of origin for the 2box DrumIt Five. In your ruling request and in subsequent email correspondence dated February 17, 2012, you provided a price and component list and a country of origin breakdown for the individual part numbers of which the DrumIt Five is comprised. You state that part number 10021 10" DrumIt drum pad Mk2, part number 10014 12" DrumIt drum pad Mk2, part number 10026 14" DrumIt kick assembly Mk2, part number 10144 DrumIt stand w/o pedals

Mk2, part number 10250 upgrade standkit to Mk2, part number 10203 cymbal set, which includes part numbers 10222 Hi-hat cymbal and 10200 ride cymbal, and part number 11002 cable set of 4x4 pcs are all made in China, while part number 10246 pedal set with snare stand is made in Taiwan, and part number 11001 DrumIt Five Unit Brain is made in Sweden. Also included is a power source made in China for which a part number is not given. You state that all of these components will be packaged together as an unassembled drum kit, with no further processing, in Sweden before being sent to the United States.

As per 19 Code of Federal Regulations (CFR) §102.18, for purposes of identifying the material that imparts the essential character to a good under §102.11, the only materials that shall be taken into consideration are those domestic or foreign materials that are classified in a tariff provision from which a change in tariff classification is not allowed under the §102.20 specific rule or other requirements applicable to the good. The specific rule for goods of 9207, HTSUS, includes a change to any other good of heading 9201 through 9208 from any other heading, including another heading within that group, except from heading 9209 when that change is pursuant to General Rule of Interpretation 2(a). Because the DrumIt Five is classified according to GRI 2(a) as an unassembled electronic drum kit, its essential character is imparted by those components which consistently remain classified in 9207, HTSUS, and 9209, HTSUS, without undergoing a change in tariff classification. From the information provided, these components include part numbers 10021, 10014, 10026, 10144, 10250 and 10203, which are made in China, and part number 10246 which is made in Taiwan. When two or more materials impart the essential character to a good under §102.11, various factors may be examined, including the nature of each material, such as its bulk, quantity, weight or value, and the role of each material in relation to the use of the good. Of the part numbers listed above, the greater quantity and value is provided by those components made in China. Therefore, pursuant to 19 CFR §102.11(b)(i), the country of origin of the 2box DrumIt Five has been determined to be China.

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

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Nicole Sullivan at (646) 733–3028.

Sincerely,

THOMAS J. RUSSO
Director
National Commodity Specialist Division

HQ H309494
OT:RR:CTF:FTM H309494 MJD
CATEGORY: Origin

MS. CAROLYN LESKI
BCB INTERNATIONAL
1010 NIAGARA STREET
BUFFALO, NY 14213

Re: Modification of NY N202375; Country of origin of an electronic drum kit

DEAR MS. LESKI:

This is in reference to New York Ruling Letter ("NY") N202375, dated February 28, 2012, which was issued to you, on behalf of your client, Efkay USA Music Ltd. In that ruling, U.S. Customs and Border Protection ("CBP") found that the 2box DrumIt Five, item number 11000, electronic drum kit, was classified in subheading 9207.90.0080, Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"), which provides for "[m]usical instruments, the sound of which is produced, or must be amplified, electrically (for example, organs, guitars, accordions): Other: Other." CBP also found that pursuant to the application of the North American Free Trade Agreement ("NAFTA") Marking Rules, contained in 19 C.F.R. Part 102, the country of origin of the electronic drum kit was China.

We have reviewed NY N202375, and determined that it contains an error pertaining to the country of origin of the electronic drum kit, since the country of origin for marking purposes should not have been determined under the NAFTA Marking Rules. This ruling serves to modify NY N202375 with regard to the country of origin. CBP's determination with respect to the classification of the electronic drum kit in NY N202375 is not affected by this action.

FACTS:

NY N202375 described the electronic drum kit as follows:

> The merchandise under consideration is the 2box DrumIt Five, item number 11000. The DrumIt Five is an electronic drum kit comprised of various integrated components, including drum pads, cymbals, pedals, stands, and a control unit. From the information you provided, the user strikes the drum pads and other components as one would an analog drum kit; however, this signal is sent through wires to the control unit, referred to as the "Brain Box," and is made audible through headphones and/or other audio output connected to the Brain Box. The Brain Box also allows the user to choose the sounds each component plays when struck, as well as providing a practice metronome and various other customizable options.

The electronic drum kit consist of various parts that are packaged together in Sweden without the need for further processing. The instrument is imported to the United States from Sweden unassembled. The electronic drum kit consist of the following parts from China, Taiwan, and Sweden:

> [The] part number 10021 10" DrumIt drum pad Mk2, part number 10014 12" DrumIt drum pad Mk2, part number 10026 14" DrumIt kick assembly Mk2, part number 10144 DrumIt stand w/o pedals Mk2, part number 10250 upgrade standkit to Mk2, part number 10203 cymbal set, which includes part numbers 10222 Hi-hat cymbal and 10200 ride cymbal, and

part number 11002 cable set of 4x4 pcs are all made in China, while part number 10246 pedal set with snare stand is made in Taiwan, and part number 11001 DrumIt Five Unit Brain is made in Sweden. Also included is a power source made in China for which a part number is not given.

In NY N202375, CBP found that the country of origin of the electronic drum kit was China by applying the NAFTA Marking Rules set forth in 19 C.F.R. Part 102. As the electronic drum kit is made primarily from Chinese, Taiwanese, and Swedish components, packaged together as an unassembled drum kit in Sweden, the NAFTA Marking Rules do not apply to this case. Instead, Part 134, Customs Regulations (19 C.F.R. Part 134), implementing the country of origin marking requirements and exceptions of section 304 of the Tariff Act of 1930, as amended (19 U.S.C. § 1304), provide the appropriate rules in determining the country of origin marking of the electronic drum kit. Accordingly, since 19 C.F.R. Part 102 applies only to goods from Mexico, Canada, and the United States, we are modifying NY N202375.

ISSUE:

What is the country of origin marking of the electronic drum kit in question?

LAW AND ANALYSIS:

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. § 1304) provides that, unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such a manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. § 1304 was that the ultimate purchaser should be able to know by an inspection of the markings on the imported goods the country of which the good is the product. "The evident purpose is to mark the goods so at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will." *United States v. Friedlaender & Co.*, 27 C.C.P.A. 297 at 302 (1940).

The country of origin marking requirements and the exceptions of 19 U.S.C § 1304 are set forth in Part 134, Customs Regulations (19 C.F.R. Part 134). Section 134.1(b), Customs Regulations (19 C.F.R. § 134.1 (b)), defines "country of origin" as "the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" within the meaning of this part." A substantial transformation is said to have occurred when an article emerges from a manufacturing process with a name, character, and use, which differs from the original material subjected to the process. *United States v. Gibson-Thomsen Co.,* 27 C.C.P.A. 267 (C.A.D. 98) (1940); *Texas Instruments v. United States*, 681 F.2d 778, 782 (1982).

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of the operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States*, 6 CIT

204, 573 F. Supp. 1149 (1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). If the manufacturing or combining process is a minor one that leaves the identity of the imported article intact, a substantial transformation has not occurred. *Uniroyal, Inc. v. United States*, 3 CIT 220, 542 F. Supp. 1026 (1982), *aff'd*, 702 F.2d 1022 (Fed. Cir. 1983). In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, or use are primary considerations in such cases. No one factor is determinative.

In the instant case, all of the components of the electronic drum set are made in China except for the part number 10246 pedal set with snare stand made in Taiwan, and part number 11001 DrumIt Five Unit Brain which is made in Sweden. The electronic drum kit is packaged together in Sweden as an unassembled drum kit without further processing. These components are not assembled. Mere packaging of components does not substantially transform any of the components. As such, the main components from China, Taiwan, and Sweden are not substantially transformed in Sweden as they do not emerge with a new name, character, and use. Thus, each component retains its original origin. *See* Headquarters Ruling Letter ("HQ") H309106, dated April 15, 2020; HQ 733301, dated August 8, 1990 (". . . packaging alone is not a substantial transformation . . . ."); and, HQ 733729, dated January 2, 1991. Therefore, we find that the country of origin marking of the electronic drum kit is China, Taiwan, and Sweden.

HOLDING:

Based on the facts provided, the country of origin marking of the unassembled electronic drum set, packaged in Sweden, are China, Taiwan, and Sweden.

EFFECT ON OTHER RULINGS:

NY N202375, dated February 28, 2012, is hereby MODIFIED.

Sincerely,

FOR

CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

PROPOSED MODIFICATION OF TWO RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF COTTON CORE-SPUN YARNS

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

ACTION: Notice of proposed modification of two ruling letters, and proposed revocation of treatment relating to the tariff classification of cotton core-spun yarns.

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) intends to modify two ruling letters concerning the tariff classification of cotton core spun yarns 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. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before April 9, 2021.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Erin Frey, Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. Due to the COVID-19 pandemic, CBP is also allowing commenters to submit electronic comments to the following email address: 1625Comments@cbp.dhs.gov. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number and date of publication. Due to the relevant COVID-19-related restrictions, CBP has limited its on-site public inspection of public comments to 1625 notices. Arrangements to inspect submitted comments should be made in advance by calling Ms. Erin Frey at (202) 325–1757.

FOR FURTHER INFORMATION CONTACT: Marie Durane, Food, Textiles, and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0984.

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), this notice advises interested parties that CBP is proposing to modify two ruling letters pertaining to the tariff classification of cotton core-spun yarns. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N304396, dated June 12, 2019 (Attachment A), and NY N304440, dated June 17, 2019 (Attachment B), this notice also covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the two identified. No further rulings have been found. 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 advise CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this 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 the final decision on this notice.

In NY N304396, CBP classified cotton core-spun yarn in heading 5606, HTSUS, specifically in subheading 5606.00.00, HTSUS, which provides for "[g]imped yarn, and strip and the like of heading 5404 or 5405, gimped (other than those of heading 5605 and gimped horsehair yarn); chenille yarn (including flock chenille yarn); loop wale-

yarn." CBP has reviewed NY N304396 and has determined the ruling letter to be in error. It is now CBP's position that cotton core-spun yarn is properly classified in heading 5205, HTSUS, specifically in subheading 5205.12.10, HTSUS, which provides for "[c]otton yarn (other than sewing thread), containing 85 percent or more by weight of cotton, not put up for retail sale: Single yarn, of uncombed fibers: Exceeding 14 nm but not exceeding 43 nm: Unbleached, not mercerized."

In NY N304440, CBP classified cotton core-spun yarn in heading 5606, HTSUS, specifically in subheading 5606.00.00, HTSUS, which provides for "[g]imped yarn, and strip and the like of heading 5404 or 5405, gimped (other than those of heading 5605 and gimped horsehair yarn); chenille yarn (including flock chenille yarn); loop wale-yarn." CBP has reviewed NY N304440 and has determined the ruling letter to be in error. It is now CBP's position that cotton core-spun yarn is properly classified in heading 5206, HTSUS, specifically in subheading 5206.32.00, HTSUS, which provides for "c]otton yarn (other than sewing thread), containing less than 85 percent by weight of cotton, not put up for retail sale: Multiple (folded) or cabled yarn, of uncombed fibers: Exceeding 14 nm but not exceeding 43 nm per single yarn."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY N304396 and NY N304440 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H311461, set forth as Attachment C to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

Attachments

N304396
June 12, 2019
CLA-2–56:OT:RR:NC:N3:351
CATEGORY: Classification
TARIFF NO.: 5606.00.0010

MIGUEL ARISTIZABAL
FABRICATO S. A.
CARRERA 50 # 38–320
BELLO
COLOMBIA

RE: The tariff classification and status under the United States-Colombia Trade Promotion Agreement (CTPA) of a gimped yarn from Colombia

DEAR MR. ARISTIZABAL:

In your original letter dated April 3, 2019 and your follow up letter, dated May 16, 2019, you requested a ruling on the classification of a gimped yarn under the CTPA.

You submitted detailed literature and a sample of a yarn put up on an industrial cone support. According to the terms of Note 4 to Section XI, Harmonized Tariff Schedule of the United States (HTSUS), the yarn does not meet the definition of "put up for retail sale." You describe the yarn as a polyurethane elastomeric yarn core covered with either natural, synthetic or artificial fibers or their blends. The yarn is composed of 2–12 percent of polyurethane elastomeric (spandex) fibers and 88 - 98 percent of natural, synthetic or artificial fibers. The gimped yarn is used in the production of fabrics for jeans, sports and outdoor apparel.

The Explanatory Note (EN) to 56.06 states the following, in relevant part: (A) GIMPED YARN, AND STRIP AND THE LIKE OF HEADING 54.04 OR 54.05, GIMPED (OTHER THAN THOSE OF HEADING 56.05 AND GIMPED HORSEHAIR YARN): Products composed of a core, usually one or more textile yarns, around which other yarn or yarns are wound spirally. Based on the submitted schematic drawing and physical sample, the yarn meets the definition of gimped yarn found in the EN to heading 56.06, HTSUS.

The applicable subheading for the gimped yarn will be 5606.00.0010, of HTSUS, which provides for gimped yarn, containing elastomeric filaments. The rate of duty will be 8 percent ad valorem.

You have described the manufacturing and assembly of the gimped yarn as follows:

- The core yarn, polyurethane elastomeric (spandex) filament, is spun in the United States.
- The fibers for the yarn that covers the core yarn (cotton, synthetic and/or artificial) are obtained either in Colombia or the United States
- The covering (single core spinning) of the filament yarn takes place in Colombia.
- The gimped yarn is exported to the US directly from Colombia.

The finished yarn is wound on industrial cones of a pre-determined weight to be used in the production of woven and knit fabrics.

General Note 34, HTSUS, sets forth the criteria for determining whether a good is originating under the CTPA. General Note 34(b), HTSUS, (19 U.S.C. §1202) states, in pertinent part, that

For the purposes of this note, subject to the provisions of subdivisions (c), (d), (n) and (o) thereof, a good imported into the customs territory of the United States is eligible for treatment as an originating good of Colombia or of the United States under the terms of this note if–

(i) the good is wholly obtained or produced entirely in the territory of Colombia or of the United States, or both;

(ii) the good is produced entirely in the territory of Colombia or of the United States, or both, and—

(A) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in subdivision (o) of this note; or

(B) the good otherwise satisfies any applicable regional value-content or other requirements set forth in such subdivision (o);

and satisfies all other applicable requirements of this note and of applicable regulations; or

(iii) the good is produced entirely in the territory of Colombia or of the United States, or both, exclusively from materials described in subdivisions (i) or (ii), above.

Based on the facts provided, the gimped yarn qualifies for CTPA preferential treatment, because it meets the requirements of HTSUS General Note 34(b)(iii). The gimped yarn was produced entirely in the territory of one or more the parties to the Agreement exclusively from originating materials. The merchandise will therefore be entitled to a free rate of duty under the CTPA upon compliance with all applicable laws, regulations, and agreements

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

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, please contact National Import Specialist Adleasia Lonesome via email at adleasia.a.lonesome@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

N304440
June 17, 2019
CLA-2–56:OT:RR:NC:N3:351
CATEGORY: Classification
TARIFF NO.: 5606.00.0010

MIGUEL ARISTIZABAL
FABRICATO S. A.
CARRERA 50 # 38–320
BELLO
COLOMBIA

RE: The tariff classification and status under the United States-Colombia Trade Promotion Agreement (CTPA) of a gimped yarn from Colombia

DEAR MR. ARISTIZABAL:

In your original letter dated April 3, 2019 and your follow up letter, dated May 17, 2019, you requested a ruling on the classification of a gimped yarn under the CTPA.

You submitted detailed literature and a sample of a yarn put up on an industrial cone support. According to the terms of Note 4 to Section XI, Harmonized Tariff Schedule of the United States (HTSUS), the yarn does not meet the definition of "put up for retail sale." You describe the yarn as a blend of polybutylene terephalate (PBT) and polyurethane elastomeric filament yarn core covered with either natural, synthetic or artificial fibers or their blends. The yarn is composed of 4 percent of polyurethane elastomeric (spandex) fibers combined with 16 percent PBT fibers, and 80 percent of natural, synthetic or artificial fibers. The gimped yarn is used in the production of fabrics for jeans, sports and outdoor apparel.

The Explanatory Note (EN) to 56.06 states the following, in relevant part: (A) GIMPED YARN, AND STRIP AND THE LIKE OF HEADING 54.04 OR 54.05, GIMPED (OTHER THAN THOSE OF HEADING 56.05 AND GIMPED HORSEHAIR YARN): Products composed of a core, usually one or more textile yarns, around which other yarn or yarns are wound spirally. Based on the submitted schematic drawing and physical sample, the yarn meets the definition of gimped yarn found in the EN to heading 56.06, HTSUS.

The applicable subheading for the gimped yarn will be 5606.00.0010, of HTSUS, which provides for gimped yarn, containing elastomeric filaments. The rate of duty will be 8 percent ad valorem.

You have described the manufacturing and assembly of the gimped yarn as follows:

- The core yarn, PBT and polyurethane elastomeric (spandex) filaments, are spun in the United States.
- The fibers for the yarn that covers the core yarn (cotton, synthetic and/or artificial) are obtained either in Colombia or the United States
- The covering (dual core spinning) of the PBT and spandex filament yarn takes place in Colombia.
- The gimped yarn is exported to the US directly from Colombia.

The finished yarn is wound on industrial cones of a pre-determined weight to be used in the production of woven and knit fabrics.

General Note 34, HTSUS, sets forth the criteria for determining whether a good is originating under the CTPA. General Note 34(b), HTSUS, (19 U.S.C. §1202) states, in pertinent part, that

For the purposes of this note, subject to the provisions of subdivisions (c), (d), (n) and (o) thereof, a good imported into the customs territory of the United States is eligible for treatment as an originating good of Colombia or of the United States under the terms of this note if–

(i) the good is wholly obtained or produced entirely in the territory of Colombia or of the United States, or both;

(ii) the good is produced entirely in the territory of Colombia or of the United States, or both, and—

(A) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in subdivision (o) of this note; or

(B) the good otherwise satisfies any applicable regional value-content or other requirements set forth in such subdivision (o);

and satisfies all other applicable requirements of this note and of applicable regulations; or

(iii) the good is produced entirely in the territory of Colombia or of the United States, or both, exclusively from materials described in subdivisions (i) or (ii), above.

Based on the facts provided, gimped yarns qualifies for CTPA preferential treatment, because it meets the requirements of HTSUS General Note 34(b)(iii). The gimped yarns were produced entirely in the territory of one or more of the parties to the Agreement exclusively from originating materials. The merchandise will therefore be entitled to a free rate of duty under the CTPA upon compliance with all applicable laws, regulations, and agreements

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

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, please contact National Import Specialist Adleasia Lonesome via email at adleasia.a.lonesome@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

HQ H311461
OT:RR:CTF:FTM H311461 MJD
CATEGORY: Classification
CLASSIFICATION: 5205.12.10; 5206.32.00

MR. MIGUEL ARISTIZABAL
FABRICATO S. A.
CARRERA 50 # 38–320
BELLO
COLOMBIA

RE: Modification of NY N304396 and NY N304440; tariff classification of yarn

DEAR MR. ARISTIZABAL,

This is to inform you that U.S. Customs and Border Protection ("CBP") has reconsidered New York Ruling Letter ("NY") N304396, issued to you on June 12, 2019, and NY N304440, issued to you on June 17, 2019, regarding the tariff classification of certain yarn from Colombia. In these rulings, CBP determined the yarns were gimped yarns, classified in subheading 5606.00.0010, Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"), which provides for "[g]imped yarn, and strip and the like of heading 5404 or 5405, gimped (other than those of heading 5605 and gimped horsehair yarn); chenille yarn (including flock chenille yarn); loop wale-yarn: Containing elastomeric filaments." CBP also found that the yarn in NY N304396 and NY N304440, qualified for preferential tariff treatment under the United States-Colombia Trade Promotion Agreement ("CTPA").

We have reviewed NY N304396 and NY N304440, and determined that it contains an error pertaining to the classification of the yarn in both rulings. This ruling serves to modify NY N304396 and NY N304440 with regard to the classification of the yarns. CBP's determination with respect to the preferential tariff treatment of the yarns under the CTPA is not affected by this action.

FACTS:

In NY N304396, the yarn is described as follows:

> [A] polyurethane elastomeric yarn core covered with either natural, synthetic or artificial fibers or their blends. The yarn is composed of 2–12 percent of polyurethane elastomeric (spandex) fibers and 88 - 98 percent of natural, synthetic or artificial fibers. The gimped yarn is used in the production of fabrics for jeans, sports and outdoor apparel.

In NY N304440, the yarn is described as follows:

> [A] blend of polybutylene terephalate (PBT) and polyurethane elastomeric filament yarn core covered with either natural, synthetic or artificial fibers or their blends. The yarn is composed of 4 percent of polyurethane elastomeric (spandex) fibers combined with 16 percent PBT fibers, and 80 percent of natural, synthetic or artificial fibers. The gimped yarn is used in the production of fabrics for jeans, sports and outdoor apparel.

Subsequent to the issuance of NY N304396 and NY N304440, CBP sent samples of the yarns from these two rulings to the CBP New York Laboratory. Laboratory report no. NY20200232, dated April 7, 2020, for the sample submitted with NY N304440, indicated the following regarding the sample:

> The sample, a core-spun yarn marked FABRICATO S.A., has a linear density of 581.8 dTex, and is constructed of non-twisted spandex monofilament wrapped with non-bleached cotton fibers that do not appear to be combed or mercerized. There is no apparent evidence of ring or compact spinning.

The overall fiber content by weight:

	Percent
Cotton	96.4
Spandex	3.6

. . .

The NY laboratory amended laboratory report no. NY20200232 with the issuance of laboratory report no. NY20200232A, dated May 29, 2020, indicating the following regarding the sample:

> The sample, a yarn marked FABRICATO S.A., has a linear density of 581.8 Dtex or 17.18 Nm.
>
> It is constructed of one spandex monofilament that is wrapped with one multifilament polyester yarn. This spandex/polyester yarn is then wrapped with cotton fibers that do not appear to be combed, bleached or mercerized. There is no apparent evidence of ring or compact spinning.

The overall fiber content by weight:

	Percent
Cotton	79.4
Polyester	17.0
Spandex	3.6

Lastly, CBP laboratory report no. NY20200233, dated April 7, 2020, for the sample submitted with NY N304396, indicated the following regarding the sample:

> The sample, a core-spun yarn marked FABRICATO S.A., has a linear density of 401.1 dTex, and is constructed of a non-twisted spandex monofilament wrapped with unbleached cotton fibers that do not appear to be combed or mercerized. There is no apparent evidence of ring or compact spinning.

The overall fiber content by weight:

	Percent
Cotton	93.8
Spandex	6.2

. . .

ISSUE:

What is the proper classification under the HTSUS for the subject merchandise?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States ("HTSUS") is made in accordance with the General Rules of Interpretation ("GRI"). GRI 1 provides that the classification of goods 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 may then be applied.

The 2019 HTSUS provisions under consideration are as follows:

5205	Cotton yarn (other than sewing thread), containing 85 percent or more by weight of cotton, not put up for retail sale.
5206	Cotton yarn (other than sewing thread), containing less than 85 percent by weight of cotton, not put up for retail sale.
5606	Gimped yarn, and strip and the like of heading 5404 or 5405, gimped (other than those of heading 5605 and gimped horsehair yarn); chenille yarn (including flock chenille yarn); loop wale-yarn.

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the "official interpretation of the Harmonized System" at the international level. *See* 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989). While neither legally binding nor dispositive, the ENs "provide a commentary on the scope of each heading" of the HTSUS and are "generally indicative of [the] proper interpretation" of these headings. *See id.*

The EN to 56.06 states in pertinent part, the following:

> These products are composed of a core, usually of one or more textile yarns, around which other yarn or yarns are wound spirally. Most frequently the covering threads completely cover the core, but in some cases the turns of the spiral are spaced; in the latter case, the product may have somewhat the appearance of certain multiple (folded), cabled or fancy yarns of **Chapters 50 to 55**, but may be distinguished from them by the characteristic of gimped yarn that the core does not itself undergo a twisting with the cover threads.
>
> The core of the gimped yarn of this heading is usually of cotton, other vegetable fibres or man-made fibres and the covering threads are usually finer and more glossy (e.g., silk, mercerised cotton or man-made fibres).
>
> Gimped yarns with cores of other materials are not necessarily excluded **provided** the product has the essential character of a textile article.
>
> Gimped yarns are used as a trimming and also very largely for the manufacture of such trimmings. Some, however, are also suitable for other uses, for example, as buttonhole cord, in embroidery or for tying parcels.

In NY N304396 and NY N304440, CBP classified the yarns in subheading 5606.00.0010, HTSUSA, which provides for "[g]imped yarn, and strip and the like of heading 5404 or 5405, gimped (other than those of heading 5605 and gimped horsehair yarn); chenille yarn (including flock chenille yarn); loop wale-yarn: Containing elastomeric filaments." Upon further consideration, we have found this classification to be incorrect and that the yarns are instead classified as cotton core-spun yarns.

CBP has held that gimped yarns and core-spun yarns are different and should be classified in different headings. *See* NY 866313, dated August 28, 1991 (stating the core spun yarns are not considered to be gimped yarns). Pursuant to EN to 56.06, a gimped yarn consists of a yarn, around which is wrapped spirally another yarn or filament or strip. It is distinguished from a twisted yarn in that the core yarn does not twist with the yarn that is wrapped around it; the surrounding yarn could be unwrapped and the core yarn would remain intact.

Core-spun yarns are often confused with gimped yarns. They differ in that they consist of a core (usually a monofilament or multifilament yarn), around which fibers (not yarns) are wrapped. A common example is a spandex filament core with a wrapping of cotton fibers. Since it is sometimes difficult for the unaided eye to distinguish fibers wrapped around a core from yarn wrapped around a core, it may be necessary to request laboratory analysis to identify such yarns. Core-spun yarns are not classified as gimped yarns but rather as basic yarns in the appropriate provisions in chapters 50–55 (depending on chief weight, generally). *See* CBP's Informed Compliance Publication ("ICP"), What Every Member of the Trade Community Should Know About: Classification of Fibers and Yarns under the HTSUS, dated September 2011. The Dictionary of Fiber & Textile Technology also describes core-spun yarn as "a yarn made by twisting fibers around a filament or a previously spun yarn, thus concealing the core." *See* Dictionary of Fiber & Textile Technology, 44 (1999).

The difference between gimped yarn and core-spun yarn is that core-spun yarn consist of a core (usually a monofilament or multifilament yarn), around which fibers (not yarns) are wrapped. The laboratory report no. NY20200233, which tested the sample from NY N304396, stated that the yarn is a core spun yarn constructed of 93.8 percent cotton and 6.2 percent spandex, and that the "non-twisted spandex monofilament [is] wrapped with unbleached cotton fibers." Moreover, the laboratory report stated that the yarn is not bleached, combed, mercerized, or has any evidence of ring or compact spinning. Therefore, based on the laboratory test, we find that the yarn from NY N304396 is a cotton core-spun yarn classified in heading 5205, HTSUS, specifically subheading 5205.12.1000, HTSUSA, which provides for "[c]otton yarn (other than sewing thread), containing 85 percent or more by weight of cotton, not put up for retail sale: Single yarn, of uncombed fibers: Exceeding 14 nm but not exceeding 43 nm: unbleached, not mercerized."

Similarly, the amended laboratory report no. NY20200232A for the yarn in NY N304440, states that the yarn, constructed of 79.4 percent cotton, 17.0 percent polyester, and 3.6 percent spandex, has "one spandex monofilament that is wrapped with one multifilament polyester yarn," and the "spandex/polyester yarn is then wrapped with cotton fibers that do not appear to be combed, bleached or mercerized." This, like the sample in NY N304396, is in line with the definition of a core-spun yarn. Furthermore, the laboratory report stated that the yarn has "unbleached cotton fibers that do not appear to be combed or mercerized," and "there is no apparent evidence of ring or compact spinning." As a result, based on the laboratory test, we find that the yarn in NY N304440 is classified in heading 5206, HTSUS, specifically subheading 5206.32.0000, HTSUSA, which provides for "[c]otton yarn (other than sewing thread), containing less than 85 percent by weight of cotton, not put up for retail sale: Multiple (folded) or cabled yarn, of uncombed fibers: Exceeding 14 nm but not exceeding 43 nm per single yarn (300)."

Accordingly, based on CBP laboratory test results, we find that the yarns in NY N304440 and NY N304396 were incorrectly classified as gimped yarns in heading 5606, HTSUS. Instead, the yarns in NY N304440 and NY N304396 are cotton core-spun yarns classified in heading 5206, HTSUS, and heading 5205, HTSUS, respectively.

HOLDING:

By application of GRI 1 and 6, the yarn in NY N304440 is classified in heading 5206, HTSUS, specifically subheading 5206.32.0000, HTSUSA, which provides for "[c]otton yarn (other than sewing thread), containing less than 85 percent by weight of cotton, not put up for retail sale: Multiple (folded) or cabled yarn, of uncombed fibers: Exceeding 14 nm but not exceeding 43 nm per single yarn (300)." The yarn in NY N304396 is classified in heading 5205, HTSUS, specifically subheading 5205.12.1000, HTSUSA, which provides for "[c]otton yarn (other than sewing thread), containing 85 percent or more by weight of cotton, not put up for retail sale: Single yarn, of uncombed fibers: Exceeding 14 nm but not exceeding 43 nm: unbleached, not mercerized."

EFFECT ON OTHER RULINGS:

NY N304396, dated June 12, 2019, and NY N304440, dated June 17, 2019 are hereby **MODIFIED** in accordance with the above analysis.

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

Sincerely,

FOR

CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF ONE RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF ORGANIC DATE JUICE CONCENTRATE OR DATE SYRUP

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

ACTION: Notice of proposed revocation of NY N307283 ruling letter and proposed revocation of treatment relating to the tariff classification of Organic Date Juice Concentrate or Date Syrup.

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) intends to revoke one ruling letter concerning tariff classification of Organic Juice Concentrate 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. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before April 9, 2021.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Erin Frey, Commercial and Trade Facilitation Division, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. Due to the COVID-19 pandemic, CBP is also allowing commenters to submit electronic comments to the following email address: 1625Comments@cbp.dhs.gov. All comments should reference the title of the proposed notice at issue and the *Customs Bulletin* volume, number and date of publication. Due to the relevant COVID-19-related restrictions, CBP has limited its on-site public inspection of public comments to 1625 notices. Arrangements to inspect submitted comments should be made in advance by calling Ms. Erin Frey at (202) 325–1757.

FOR FURTHER INFORMATION CONTACT: Michael J. Dearden, Food, Textiles and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0101.

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), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of Organic Date Juice Concentrate. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N307283, dated November 22, 2019 (Attachment A), this notice also covers any rulings on this merchandise, which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. 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 advise CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this 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 the final decision on this notice.

In NY N307283, CBP classified Organic Date Juice Concentrate in heading 2009, HTSUS, specifically in subheading 2009.89.7091, HTSUSA, which provides for "Fruit juices (including grape must) and vegetable juices, not fortified with vitamins or minerals, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter: Juice of any other single fruit or

vegetable: Other: Other." CBP has reviewed NY N307283 and has determined the ruling letter to be in error. It is now CBP's position that Organic Date Juice Concentrate is properly classified in heading 1702, HTSUS, specifically in subheading 1702.40.4000, HTSUSA, which provides for "Other sugars, including chemically pure lactose, maltose, glucose and fructose, in solid form; sugar syrups not containing added flavoring or coloring matter; artificial honey, whether or not mixed with natural honey; caramel: Glucose and glucose syrup, containing in the dry state at least 20 percent but less than 50 percent by weight of fructose, excluding invert sugar: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N307283 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H312829, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

Attachments

N307283
November 22, 2019
CLA-2–20:OT:RR:NC:N2:232
CATEGORY: Classification
TARIFF NO.: *2009.89.7091*

CARLA GRACA
ALL-WAYS FORWARDING INTL INC.
701 NEWARK AVENUE
ELIZABETH, NJ 07208

RE: The tariff classification of Organic Date Juice Concentrate from Belgium

DEAR MS. GRACA:

In your letter dated November 1, 2019 on behalf of your client Soleil Foods LLC, you requested a tariff classification ruling.

The subject merchandise is Organic Date Juice Concentrate. The product consist of 72 percent dates and 28 percent water. The Organic Date Juice Concentrate will be used in the food industry for energy preparations such as cereal bars. The product will be imported in 25 kg bags.

The applicable subheading for the Organic Date Juice Concentrate will be *2009.89.7091*, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Fruit juices (including grape must) and vegetable juices, not fortified with vitamins or minerals, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter: Juice of any other single fruit or vegetable: Other: Other. The general rate of duty will be 0.5 cents per liter.

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

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act) which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at telephone number (301) 575–0156, or at the website www.fda.gov/oc/bioterrorism/bioact.html.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Frank Troise at frank.l.troise@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

HQ H312829
OT:RR:CTF:FTM H312829 MD
CATEGORY: Classification
TARIFF NO.: 1702.40.4000

MS. CARLA GRACA
ALL-WAYS FORWARDING INTL INC.
701 NEWARK AVENUE
ELIZABETH, NEW JERSEY 07208

RE: Revocation of NY N307283; Tariff Classification of "Organic Date Juice Concentrate" or Date Syrup

DEAR MS. GRACA:

On November 22, 2019, U.S. Customs and Border Protection ("CBP") issued New York Ruling Letter ("NY") N307283 to you, which you filed on behalf of your client Soleil Foods LLC. The ruling letter pertained to the tariff classification of "Organic Date Juice Concentrate" from Belgium under the Harmonized Tariff Schedule of the United States ("HTSUS"). In NY N307283, CBP classified the product at issue under subheading 2009.89.7091, HTSUSA, which provides for "Fruit juices (including grape must) and vegetable juices, not fortified with vitamins or minerals, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter: Juice of any other single fruit or vegetable: Other: Other." The general rate of duty is 0.5 cents per liter.

We have since reviewed NY N307283 at the request of our National Commodity Specialist Division ("NCSD") and determined it to be in error. For the reasons set forth below, we hereby revoke NY N307283. It is now CBP's position that the product described as "Organic Date Juice Concentrate" in NY N307283 is classified under subheading 1702.40.4000, HTSUSA. The general rate of duty is 5.1% *ad valorem*.

FACTS:

In NY N307283, the organic date juice concentrate was described as follows:

> The product consist[s] of 72 percent dates and 28 percent water. The Organic Date Juice Concentrate will be used in the food industry for energy preparations such as cereal bars. The product will be imported in 25 kg bags.

The product information was also submitted with the original request for a ruling, which indicated the presence of fructose, glucose, and sucrose in the product, but this fact was not addressed in NY N307283. Additionally, in requesting a binding ruling on the classification of the "Organic Date Juice Concentrate," you stated that to your knowledge, there were no issues or requests for advice, concerning this commodity. However, in 2018, this product, imported by Soleil Foods LLC, was subject to CBP's verification concerning its tariff classification. In CBP New York Laboratory ("CBP Laboratory") Report no. NY20181570, dated January 2, 2018, the "Organic Date Juice Concentrate" was analyzed and described as:

> The sample is [a] dark brown viscous liquid described as date syrup in a glass jar. The jar is labeled "Concentré de dates BIO; Organic Date Juice Concentrate; LOT: M 18 01 00047; Brix: 75°; Batch: 16.01.2018; Made by

Siroperic Meurens SA" and contains 18.4% fructose, 20.2% glucose, and 38.1% sucrose, all on a dry basis, and 21.1% of water. No lactose or maltose was observed.

In light of the fact that NY N307283 failed to account for the presence of fructose, glucose, and sucrose, the analysis provided by CBP Laboratory Report No. NY20181570, and other precedential rulings, it is now CBP's position that the product described as "Organic Date Juice Concentrate" was incorrectly classified in NY N307283. While previously classified under subheading 2009.89.7091, HTSUSA, CBP now believes that the proper classification of the "Organic Date Juice Concentrate" is under subheading 1702.40.4000, HTSUSA.

ISSUE:

Whether the "Organic Date Juice Concentrate" at issue is classified under subheading 2009.89.7091, HTSUSA, or subheading 1702.40.4000, HTSUSA.

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States ("HTSUS") is determined in accordance with the General Rules of Interpretation ("GRI"). GRI 1 provides that the classification of goods 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. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and, mutatis mutandis, to GRIs 1 through 5.

The 2020 HTSUS provisions under review are as follows:

1702	Other sugars, including chemically pure lactose, maltose, glucose and fructose, in solid form; sugar syrups not containing added flavoring or coloring matter; artificial honey, whether or not mixed with honey; caramel:
	* * *
1702.40	Glucose and glucose syrup, containing in the dry state at least 20 percent but less than 50 percent by weight of fructose, excluding invert sugar:
1702.40.4000	Other
	* * *
2009	Fruit juices (including grape must) and vegetable juices, not fortified with vitamins or minerals, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter:
	Juice of any other single fruit or vegetable:
	* * *
2009.89	Other:
	Fruit Juice:
	* * *
2009.80.70	Other:
	Berry Juice:

2009.80.7091	Other

* * *

In addition, the Explanatory Notes ("EN") to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The EN to heading 1702, states, in pertinent part, the following:

> This heading covers other sugars in solid form, sugar syrups and also artificial honey and caramel.
>
> * * *
>
> (B) **SUGAR SYRUPS**
>
> This part covers syrups of all sugars (including lactose syrups and aqueous solutions **other than** aqueous solutions of chemically pure sugars of **heading *29.40***), **provided** they do not contain added flavouring or colouring matter (see Explanatory Note to heading *21.06*).
>
> In addition to the syrups referred to in Part (A) above (i.e., glucose (starch) syrup, fructose syrup, syrup of malto-dextrins, inverted sugar syrup as well as sucrose syrup), this heading includes:
>
> (1) **Simple syrups** obtained by dissolving sugars of this Chapter in water.
>
> (2) **Juices and syrups** obtained during the extraction of sugars from sugar beet, sugar cane, etc. These may contain pectin, albuminoidal substances, mineral salts, etc., as impurities.
>
> (3) **Golden syrup**, a table or culinary syrup containing sucrose and invert sugar. Golden syrup is made from the syrup remaining during sugar refining after crystallisation and separation of refined sugar, or from cane or beet sugar, by inverting part of the sucrose or by the addition of invert sugar.
>
> * * *

Classification under heading 1702 is proper for all sugars, other than chemically pure sugars of heading 2902, given that these sugars contain neither added flavoring nor coloring materials. Visual and laboratory analysis confirms that the "Organic Date Juice Concentrate" meets both requirements. The CBP Laboratory report conspicuously identified that the "Organic Date Juice Concentrate" consists of three component sugars – fructose, glucose, and sucrose – each of which is among those sugars individually excluded from classification under heading 2902. The same report neither indicates nor identifies the presence of any added flavoring or coloring materials within the product.

Subheading 1702.40, HTSUS, specifically refers to "[g]lucose and glucose syrup, *containing in the dry state at least 20 percent but less than 50 percent by weight of fructose.*" Turning to the CBP Laboratory analysis, we find that the "Organic Date Juice Concentrate" satisfies this criteria. CBP Laboratory Report no. NY20181570 supports classification of the "Organic Date Juice Concentrate" under subheading 1702.40, HTSUS, by conspicuously identifying the product's component ingredients in a percentile format. Namely, the laboratory report identified that the "Organic Date Juice Concentrate" consists of "*18.4% fructose*, *20.2% glucose*, and 38.1% sucrose, *all on a dry basis*, and 21.1% of water." For a product to be considered a "[g]lucose or glucose sugar" classifiable under subheading 1702.40, HTSUS, it must consist of at

least 20% glucose. Here, the "Organic Date Juice Concentrate" consists of 20.2% glucose, satisfying the classification threshold. Classification under 1702.40, HTSUS, also requires that the product also consist of less than 50% fructose. The "Organic Date Juice Concentrate" consists of 18.4% fructose, satisfying the second necessary prong for classification under the subheading. With specific identification of the component ingredients of the product, and their necessity in determining its classification, CBP Laboratory Report no. NY20181570 supports the classification of the "Organic Date Juice Concentrate" under subheading1702.40, HTSUS; specifically, 1702.40.4000, HTSUSA.

Classification of the "Organic Date Juice Concentrate" under subheading 1702.40, HTSUS, is further supported by NY N287187, dated January 4, 2018, concerning the classification of "Date Syrup from the United Arab Emirates." The date syrup in NY N287187 was manufactured via a heat process and was intended to be used as "a sweetening alternative" in the industrial food service production of "bakery and confectionary products, juice bars, etc." alongside retail sale. CBP classified the date syrup under subheading 1702.40.4000, HTSUSA. The basis for this classification were the results of CBP Laboratory Report no. 20170925, dated December 21, 2017. Analysis of the date syrup found that it was "a brown paste packaged in a [labelled] plastic bottle" and that "[t]he product contain[ed] 32.1 percent fructose (*41.4% on a dry basis*), 17.4 percent glucose (*22.5% on a dry basis*) and 22.5 percent water."

The "Organic Date Juice Concentrate" (NY N307283) and the "Date Syrup" (NY N287187) both meet the percentile requirements for classification under 1702.40, HTSUS. Additionally, both the "Organic Date Juice Concentrate" and "Date Syrup" were intended to be used in the food industry. While the former was intended to be used for "energy preparations such as cereal bars", the latter was to be used for "bakery and confectionary products, juice bars, etc." Implicitly and explicitly, both products serve as a "sweetening alternative" within the food industry. Accordingly, it is now CBP's position that the "Organic Date Juice Concentrate" is properly classified in heading 1702, HTSUS, and specifically in subheading 1702.40.4000, HTSUSA.

HOLDING:

Under the authority of GRIs 1 and 6, the "Organic Date Juice Concentrate" is classified under subheading 1702.40.4000, HTSUSA, which provides for "Other sugars, including chemically pure lactose, maltose, glucose and fructose, in solid form; sugar syrups not containing added flavoring or coloring matter; artificial honey, whether or not mixed with natural honey; caramel: Glucose and glucose syrup, containing in the dry state at least 20 percent but less than 50 percent by weight of fructose, excluding invert sugar: Other." The 2020 general rate of duty is 5.1 percent *ad valorem*.

EFFECT ON OTHER RULINGS:

NY N307283, dated November 22, 2019, is hereby REVOKED.

Sincerely,

FOR

CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

DATES AND DRAFT AGENDA OF THE SIXTY-SEVENTH SESSION OF THE HARMONIZED SYSTEM COMMITTEE OF THE WORLD CUSTOMS ORGANIZATION

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security, and U.S. International Trade Commission.

ACTION: Publication of the dates and draft agenda for the 67th session of the Harmonized System Committee of the World Customs Organization.

SUMMARY: This notice sets forth the dates and draft agenda for the next session of the Harmonized System Committee of the World Customs Organization.

DATE: February 18, 2021

FOR FURTHER INFORMATION CONTACT: Joan A. Jackson, *joan.a.jackson@cbp.dhs.gov*, Paralegal Specialist, Office of Trade, Regulations and Ruling, U.S. Customs and Border Protection (202–325–0010), or Dan Shepherdson, Attorney Advisor, Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission (202–205–2598).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The United States is a contracting party to the International Convention on the Harmonized Commodity Description and Coding System ("Harmonized System Convention"). The Harmonized Commodity Description and Coding System ("Harmonized System"), an international nomenclature system, forms the core of the U.S. tariff, the Harmonized Tariff Schedule of the United States. The Harmonized System Convention is under the jurisdiction of the World Customs Organization (established as the Customs Cooperation Council).

Article 6 of the Harmonized System Convention establishes a Harmonized System Committee ("HSC"). The HSC is composed of representatives from each of the contracting parties to the Harmonized System Convention. The HSC's responsibilities include issuing classification decisions on the interpretation of the Harmonized System. Those decisions may take the form of published tariff classification opinions concerning the classification of an article under the Harmonized System or amendments to the Explanatory Notes to the Harmonized System. The HSC also considers amendments to the legal text of the Harmonized System. The HSC meets twice a year in

Brussels, Belgium. Due to the disruptions caused by the COVID-19 pandemic, the next session of the HSC, the 67th, will be held virtually April 12 – 30, 2021.

In accordance with section 1210 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), the Department of Homeland Security, represented by U.S. Customs and Border Protection, the Department of Commerce, represented by the Census Bureau, and the U.S. International Trade Commission ("ITC"), jointly represent the U.S. The Customs and Border Protection representative serves as the head of the delegation at the sessions of the HSC.

Set forth below is the draft agenda for the next session of the HSC. Copies of available agenda-item documents may be obtained from either U.S. Customs and Border Protection or the ITC. Comments on agenda items may be directed to the above-listed individuals.

GREGORY CONNOR
Chief,
Electronics, Machinery, Automotive,
& International Nomenclature Branch

Attachment

WORLD CUSTOMS ORGANIZATION
ORGANISATION MONDIALE DES DOUANES

Established in 1952 as the Customs Co-operation Council
Créée en 1952 sous le nom de Conseil de coopération douanière

HARMONIZED SYSTEM
COMMITTEE

-

67th Session

-

NC2761Ea

Brussels, 15 February 2021.

DRAFT AGENDA FOR THE 67TH SESSION OF THE HARMONIZED SYSTEM COMMITTEE

From : Monday, 12 April 2021

To : Friday, 30 April 2021

N.B.: The Presessional Working Party (to examine the questions under Agenda Item VII) will be held with a CLiKC session Tuesday 30 to Wednesday 31 March 2021 and two KUDO sessions on Thursday 8 (12:00 – 15:00) and Friday 9 April 2021 (12:00 – 15:00).

Monday April 2021: Adoption of the Report of the 58nd Session of the HS Review Sub-Committee.

I. ADOPTION OF THE AGENDA

1.	Draft Agenda	NC2761Ea
2.	Draft timetable	

II. REPORT BY THE SECRETARIAT

1.	Position regarding Contracting Parties to the HS Convention, HS Recommendations and related matters; progress report on the implementation of HS 2017	NC2696Eb CSH/65
2.	Report on the last meetings of the Policy Commission (82nd Session) and the Council (135rd /136th Sessions)	NC2697Ea CSH/65
3.	Report on the last meetings of Policy Commission (83nd Session) and the Council (137th session)	
4.	Approval of decisions taken by the Harmonized System Committee at its 64th Session	NG0259E NC2693E
5.	Approval of decisions taken by the Harmonized System Committee at its 66th Session	
6.	Capacity building activities of the Nomenclature and Classification Subdirectorate	NC2698Ea CSH/65
7.	Co-operation with other international organization	NC2699Ea CSH/65
8.	New information provided on the WCO Web site	NC2700Eb CSH/65
9.	Progress report on the use of working languages for HS-related matters	NC2701Ea CSH/65

	10. Preparation and timing of HS 2022 publications	NC2702Ea CSH/65
	11. Questionnaire on national practices regarding the Advance Rulings	NC2713Ea CSH/65
	12. Other	
III.	GENERAL QUESTIONS	
	1. Scope of the Seventh Harmonized System Review Cycle	NC2705Ea CSH/65
	2. Consultation on the possible strategic review of the HS	NC2706Ea CSH/65
	3. Study on the interpretation of the expression "simple majority" as used in Rule 19 of the HSC's Rules of Procedure	
	4. Implementation of HS 2022 – Status and challenges	
	5. Amendment to the Compendium of Classification Opinions consequential to the Article 16 Council Recommendation of 28 June 2019	
	6. Draft corrigendum amendments to the Harmonized System and Draft HS Article 16 Recommendation concerning the amendment of the Harmonized System	
	7. Correlation between the Harmonized System and the product coverage of selected international Conventions (amendments consequential to the Article 16 Recommendation of 28 June 2019)	
IV.	RECOMMENDATIONS	
	1. Recommendation of the Customs Cooperation Council on the use of standard units of quantity to facilitate the collection, comparison and analysis of international statistics based on the Harmonized System (14 July 2016)	
V.	REPORT OF THE SCIENTIFIC SUBCOMMITTEE	
	1. Report of the 35th Session of the Scientific Sub-Committee	NS0456Eb NS0456EAB1b
	2. Matters for decision	NC2708Ea CSH/65
	3. Possible amendment of the Explanatory Notes to Chapter 29 in respect to the list of narcotic drugs, psychotropic substances and precursors (Proposal by the Secretariat)	NC2738Ea CSH/65
	4. Report of the 36th Session of the Scientific Sub-Committee	NS0471Eb NS0471EAB1b
	5. Matters for decision	
	6. Possible amendments to the Explanatory Notes to clarify the scope of vaccines	
	7. Possible amendment to subheading 2939.7 for the HS 2027 Nomenclature	
VI.	REPORT OF THE REVIEW SUBCOMMITTEE	
	1. Report of the 58th Session of the HS Review Sub-Committee	

2. Matters for decision

VII. REPORT OF THE PRESESSIONAL WORKING PARTY

Possible amendments to the Compendium of Classification Opinions and the Explanatory Notes consequential to the decisions taken by the Committee at its 64th Session	NC2714Ea NC2714EAB1a CSH/65
1. Amendment to the Compendium of Classification Opinions to reflect the decision to classify propolis in heading 04.10 (HS code 0410.00)	PRESENTATION_ Annexe_A_
2. Amendment to the Compendium of Classification Opinions to reflect the decision to classify a product called,“ ” in heading 18.06 (subheading 1806.32)	PRESENTATION_ Annexe_B_
3. Amendment to the Compendium of Classification Opinions to reflect the decision to classify three vitamin products (“ ” and “ ” in heading 21.06 (subheading 2106.90)	PRESENTATION_ Annexe_C_
4. Amendment to the Compendium of Classification Opinions to reflect the decision to classify a tobacco product called “ ” in heading 240.3 (subheading 2403.99)	PRESENTATION_ Annexe_D_
5. Amendment to the Compendium of Classification Opinions to reflect the decision to classify two kinds of tobacco stems (“Cut rolled expanded stem tobacco (CRES)” and “Expanded tobacco stems (ETS)”) in heading 24.03 (subheading 2403.99)	PRESENTATION_ Annexe_E_
6. Amendment to the Compendium of Classification Opinions to reflect the decision to classify liquefied petroleum gas (LPG) in heading 27.11 (subheading 2711.19)	PRESENTATION_ Annexe_F_
7. Amendment to the Compendium of Classification Opinions to reflect the decision to classify a product called “Overflow fusion glass plate” in heading 70.04 (subheading 7004.90)	PRESENTATION_ Annexe_G_
8. Amendment to the Compendium of Classification Opinions to reflect the decision to classify two hot-rolled steel plates in heading 72.08 (subheading 7208.52 for Product A and subheading 7208.51 for Product B)	PRESENTATION_ Annexe_H_
9. Amendment to the Compendium of Classification Opinions to reflect the decision to classify two “Braided cables (guaya) (Slings)” (Product 1 and Product 3) in heading 73.12 (subheading 7312.10)	PRESENTATION_ Annexe_IJ_
10. Amendment to the Compendium of Classification Opinions to reflect the decision to classify an “outdoor unit for variable refrigerant flow (VRF) system for cooling and heating” in heading 84.15 (subheading 8415.90)	PRESENTATION_ Annexe_K_
11. Amendment to the Compendium of Classification Opinions to reflect the decision to classify a “ ” tap serving instant boiling and chilled filtered water in heading 84.21 (subheading 8421.21)	PRESENTATION_ Annexe_L_

	12. Amendment to the Compendium of Classification Opinions to reflect the decision to classify Solid Oxide Fuel Cells (SOFC) called " " in heading 85.01 (subheading 8501.62) (Postponed)	PRESENTATION_ Annexe_M_
	13. Amendment to the Compendium of Classification Opinions to reflect the decision to classify an apparatus called " " in heading 85.17 (subheading 8517.12)	PRESENTATION_ Annexe_N_
	14. Amendment to the Compendium of Classification Opinions to reflect the decision to classify a " " Camper Pop-Top " " in heading 87.08 (subheading 8708.99)	PRESENTATION_ Annexe_O_
	15. Amendment to the Compendium of Classification Opinions to reflect the decision to classify a motorized flying inflatable boat, model " " in heading 88.02 (subheading 8802.20)	PRESENTATION_ Annexe_P_
	16. Amendment to the Compendium of Classification Opinions to reflect the decision to classify an emergency kit for motor vehicles in heading 90.26 (subheading 9026.20)	PRESENTATION_ Annexe_Q_
	17. Amendment to the Compendium of Classification Opinions to reflect the decision to classify "dissolved gas analysis (DGA) monitors" in heading 90.27 (subheading 9027.20)	PRESENTATION_ Annexe_R_
	18. Amendment to the Compendium of Classification Opinions to reflect the decision to classify a "single phase electricity smart meter box" in heading 90.28 (subheading 9028.90)	PRESENTATION_ Annexe_S_
	19. Amendment to the Compendium of Classification Opinions to reflect the decision to classify polyurethane anti-stress figures in the shape of footballs in heading 95.03 (HS cede 9503.00)	PRESENTATION_ Annexe_T_
VIII.	REQUESTS FOR RE-EXAMINATION (RESERVATIONS)	
	1. Re-examination of the classification of certain dietary sip feeds (Products 1 to 5) (Request by the United States)	NC2715Ea CSH/65
	2. Re-examination of the classification of a device called " GPS running watch with wrist-based heart rate monitor" (Requests by the United States and Japan)	NC2716Ea CSH/65
	3. Re-examination of the classification of an apparatus called "Sterilizer Formaldehyde " (Request by Ukraine)	NC2717Ea CSH/65
	4. Re-examination of the classification of two products called "RF Generators and RF Matching Networks" (Request by Korea)	NC2718Ea NC2745Eb NC2747Ea CSH/65
IX.	FURTHER STUDIES	
	Questions arising and postponed from the HSC/64	

1.	Possible amendment of the Explanatory Note to heading 27.11 to clarify the classification of liquefied petroleum gas (LPG) (Proposal by the Secretariat)	NC2720Ea NC2720EAB1a CSH/65
2.	Amendment of the Explanatory Notes to Rule 3 (b) to clarify the classification of sets	NC2721Ea CSH/65
3.	Possible amendment of the Explanatory Note to heading 91.02	NC2722Ea NC2722FAB1 a CSH/65
4.	Possible amendment of the Explanatory Note to heading 87.03 in relation to micro hybrid vehicles	NC2723Ea NC2723EAB1a CSH/65
5.	Classification of mild hybrid vehicles	NC2724Ea CSH/65
6.	Classification of a product called “ ” (Request by Ecuador)	NC2725Ea CSH/65
7.	Possible amendment of the Explanatory Note to heading 95.03 (Proposal by the EU)	NC2667E HSC/64 NC2667EA
8.	Possible amendment of the Explanatory Note to heading 95.05 (Proposal by the EU)	NC2668E HSC/64 NC2668EA
9.	Classification of certain essential oils put up for retail sale (Request by Costa Rica)	NC2672E HSC/64
10.	Classification of two floor polishers called “ ” and “ ” (Request by Costa Rica)	NC2673E HSC/64
11.	Classification of a “Self-Propelled Articulated Boom Lift” (Request by Korea)	NC2674E HSC/64
12.	Classification of certain food preparations (Request by the United States)	NC2676E HSC/64 NC2742Ea
13.	Classification of a “cutter/ripper” (Request by the Russian Federation)	NC2677E HSC/64
14.	Classification of certain new pneumatic tyres, of rubber, intended for vehicles used for the transportation of goods in construction, mining or industry (Request by the Russian Federation)	NC2678E HSC/64 NC2748Ea
15.	Classification of certain preparations of a kind used in animal feeding (Request by Canada)	NC2679E HSC/64 NC2743Ea
16.	Classification of a product called “Tracing Light Box” (Request by Japan)	NC2681E HSC/64
17.	Classification of an electronic speed controller called “ ” (Request by Tunisia)	NC2682E HSC/64
18.	Possible amendment of the Explanatory Note to heading 27.10 (Proposal by Japan)	NC2641E NC2641EA CSH/64 NC2739Ea
19.	Possible misalignment between the English and French texts in the Explanatory Note to heading 85.01	NC2688E HSC/64

	New and additional questions postponed from the HSC/65	
	20. Classification of certain on-street garbage containers (Request by Tunisia)	NC2726Ea CSH/65
	21. Classification of certain food preparations in liquid form (Request by Tunisia)	NC2727Ea CSH/65
	22. Classification of two products containing cannabidiol (CBD) called " " and " " (Request by the Secretariat)	NC2728Ea CSH/65
	23. Classification of dried fish subsequently treated with water (rehydrated dried fish) (Request by Norway)	NC2729Ea CSH/65
	24. Classification of certain steam boiling generators for steam rooms (Request by Egypt)	NC2730Ea CSH/65
	25. Classification of a product called "Soy bean flakes" (Request by Madagascar)	NC2731Ea NC2731FAB1a NC2731FAB2a CSH/65
	26. Classification of a 2-burner ethanol stove (Request by Kenya)	NC2732Ea CSH/65
	27. Classification of an interactive kiosk for receiving complaints (Request by Egypt) question was withdrawn by Egypt	NC2733Ea NC2733EAE1a CSH/65
	28. Classification of a product called "baby corn cobs" (Request by the EU)	NC2736Ea CSH/65
	29. Classification of a diesel power generating set with dual power rating (Request by Ghana)	NC2737Ea CSH/65
	30. Classification of a TFT-LCD module (Request by Korea)	NC2740Ea CSH/65
	31. Deletion of Classification Opinions 8528.69/1 et 8528.69/2	NC2741Ea CSH/65
	32. Classification of a product called "partially defatted coconut powder" (Request from EU)	NC2746Ea CSH/65
X.	NEW QUESTIONS	
	NEW QUESTIONS (HSC/66)	
	1. Possible amendment of the Explanatory Notes to headings 73.18, 81.08 and 90.21 (Proposal by the EU)	
	2. Classification of certain "Plastic clothes hangers" (Request by Ukraine)	
	3. Possible amendment of the Explanatory Note to heading 73.23 to clarify the classification of certain "Clothes hangers" (Proposal by Ukraine)	
	4. Classification of "heat-resistant glass lids" (Request by Ukraine)	
	5. Classification of a "System for the production of animal feed in pellet form" (Request by Colombia)	
	6. Classification of certain "Edible collagen casings for sausages" (Request by Peru)	
	7. Classification of a product called " " (Request by Tunisia)	

NEW QUESTIONS (HSC/67)

8. Classification of a product called “ ” (Request by Tunisia)
9. Classification of a product called “Coffee Makers” (Request by Guatemala)
10. Classification of a product called “Quilt bag” (Request by Republic of North Macedonia)
11. Classification of a product called “Shampoo & gel 2 in 1” (Request by Uzbekistan)
12. Classification of a product called “digital smart pen (smart pen) “ ” (Request by the Russian Federation)

XI. ADDITIONAL LIST

XII. AMENDMENT TO THE EXPLANATORY NOTES CONSEQUENTIAL TO THE ARTICLE 16 COUNCIL RECOMMENDATIONS OF 28 JUNE 2019 AND 20 JUNE 2020 (FULL TEXT)

XIII. OTHER BUSINESS

1. List of questions which might be examined at a future session — NC2735Ea CSH/65

XIV. DATES OF NEXT SESSIONS

COMMERCIAL CUSTOMS OPERATIONS ADVISORY COMMITTEE (COAC)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: Committee management; notice of Federal Advisory Committee Meeting.

SUMMARY: The Commercial Customs Operations Advisory Committee (COAC) will hold its quarterly meeting on Wednesday, March 17, 2021. The meeting will be open to the public via webinar only. There is no on-site, in-person option for this quarterly meeting.

DATES: The COAC will meet on Wednesday, March 17, 2021, from 1:00 p.m. to 5:00 p.m. EDT. Please note that the meeting may close early if the committee has completed its business. Comments must be submitted in writing no later than March 16, 2021.

ADDRESSES: The meeting will be held via webinar. The webinar link and conference number will be provided to all registrants by 5:00 p.m. EDT on March 16, 2021. For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Florence Constant-Gibson, Office of Trade Relations, U.S. Customs and Border Protection, at (202) 344–1440 as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Florence Constant-Gibson, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.5A, Washington, DC 20229; or Ms. Valarie M. Neuhart, Designated Federal Officer at (202) 344–1440.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the authority of the Federal Advisory Committee Act, 5 U.S.C. Appendix. The Commercial Customs Operations Advisory Committee (COAC) provides advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within the Department of Homeland Security and the Department of the Treasury.

Pre-registration: For members of the public who plan to participate via webinar, please register online at *https://teregistration.cbp.gov/index.asp?w=219* by 5:00 p.m. EDT by March 16, 2021. For members of the public who are pre-registered to attend the webinar and later need to cancel, please do so by March 15, 2021 utilizing the following link: *https://teregistration.cbp.gov/cancel.asp?w=219*.

Please feel free to share this information with other interested members of your organization or association.

To facilitate public participation, we are inviting public comment on the issues the committee will consider prior to the formulation of recommendations as listed in the Agenda section below.

Comments must be submitted in writing no later than March 16, 2021, and must be identified by Docket No. USCBP–2021–0006, and may be submitted by one (1) of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Email: tradeevents@cbp.dhs.gov.* Include the docket number in the subject line of the message.

• *Mail:* Ms. Florence Constant-Gibson, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.5A, Washington, DC 20229.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number (USCBP–2021–0006) for this action. Comments received will be posted without alteration at *http://www.regulations.gov.* Please do not submit personal information to this docket.

Docket: For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* and search for Docket Number USCBP–2021–0006. To submit a comment, click the "Comment Now!" button located on the top-right hand side of the docket page.

There will be multiple public comment periods held during the meeting on March 17, 2021. Speakers are requested to limit their comments to two (2) minutes or less to facilitate greater participation. Please note that the public comment period for speakers may end before the time indicated on the schedule that is posted on the CBP web page, *http://www.cbp.gov/trade/stakeholder-engagement/coac.*

Agenda

The COAC will hear from the current subcommittees on the topics listed below and then will review, deliberate, provide observations, and formulate recommendations on how to proceed:

1. The Next Generation Facilitation Subcommittee will provide an update on the following working groups: The Unified Entry Processes Working Group will provide an update on the current status of the development of objectives for the future entry environment to enable faster and more secure entry processing; the Emerging Technologies Working Group will provide an update on the University of Houston's block chain assessment report; and, the One U.S. Government Working Group will provide an update on several key projects, including

the Partner Government Agency Disclaim Handbook and the automation of currently required original/hard copy documents at time of entry.

2. The Rapid Response Subcommittee will provide an update on the progress of the Broker Exam Modernization Working Group efforts to improve the testing experience for the April 2021 exam, as well as future broker exams. The U.S.-Mexico-Canada Agreement (USMCA) Working Group has reconvened and will provide an update regarding its goals and objectives.

3. The Intelligent Enforcement Subcommittee will provide updates on the following Working Groups: The Bond Working Group will report on the continued work with CBP on the Monetary Guidelines of Setting Bond Amounts as part of a larger risk-based bonding initiative; the Anti-Dumping and Countervailing Duty (AD/CVD) Working Group will report on the discussions surrounding non-resident importers and the impact this has on AD/CVD enforcement along with recommended solutions; the Intellectual Property Rights (IPR) Process Modernization Working Group will provide updates on development of several recommendations put forth during the April 2020 COAC meeting and will submit recommendations furthering the modernization of the IPR Process; and, the Forced Labor Working Group will provide a summary of the areas of focus that will be in its scope for the upcoming quarter.

4. The Secure Trade Lanes Subcommittee will present updates on the following Working Groups: The Trusted Trader Working Group's progress in developing the CBP White Paper for the Implementation of C– TPAT Trade Compliance Requirements for Forced Labor; the In-Bond Working Group's ongoing work with the technical enhancements that have been shared with the Trade Support Network, as well as the review of regulatory recommendations for future development; the Export Modernization Working Group's progress in developing the Export Operations for the 21st Century White Paper mentioned during the October 7, 2020 COAC meeting; and, the Remote and Autonomous Cargo Processing Working Group's progress reviewing the various modes of conveyance and automation opportunities.

Meeting materials will be available by March 15, 2021, at: *http://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings.*

Dated: February 15, 2021.

VALARIE M. NEUHART,
Deputy Executive Director,
Office of Trade Relations.

[Published in the Federal Register, February 19, 2021 (85 FR 10330)]

PRE-SCREENING INTERVIEW QUESTIONNAIRE FORM

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

ACTION: 60-Day notice and request for comments; new collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than April 23, 2021) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–NEW in the subject line and the agency name. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov.*

Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Pre-Screening Interview Questionnaire Form

OMB Number: 1651–NEW.

Form Number: CBP Form 75.

Current Actions: New.

Type of Review: New.

Affected Public: Individuals.

Abstract: The CBP Office of Professional Responsibility (OPR), Personnel Security Division (PSD), conducts employment Background Investigations (BI), and periodic reinvestigations, to support determinations of an individual's suitability for employment or continued employment, eligibility to occupy a national security position, eligibility for access to classified information, eligibility for unescorted access to DHS/ CBP facilities, or access to DHS/CBP information technology systems. OPR PSD conducts these investigations whether the individual is an applicant or employee, and these terms apply to both federal and contractor employees and selectees.

The Anti-Border Corruption Act of 2010 requires that all CBP law enforcement officers successfully complete a polygraph examination before entering on duty.[1] CBP polygraph resources are limited and CBP seeks to schedule candidates who have the best probability of successfully completing the exam. Prior to a polygraph exam, CBP employs a number of touchpoints where applicants may be screened out based on disqualifying responses to suitability or eligibility questions.

In response to these concerns, and following an audit by the Department of Homeland Security's Office of the Inspector General (DHSOIG), OPR PSD created a plan to conduct Pre-Screening Interviews for all law enforcement candidates prior to scheduling a mandatory polygraph examination.

[1] *See* Public Law 111–376, 124 Stat. 4104, section 3; 6 U.S.C. 221(a).

Type of Information Collection: CBP Form 75
Estimated Number of Respondents: 20,000.
Estimated Number of Annual Responses per Respondent: 10.
Estimated Number of Total Annual Responses: 200,000.
Estimated Time per Response: 2 minutes.
Estimated Total Annual Burden Hours: 6,667.

Dated: February 17, 2021.

SETH D. RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

[Published in the Federal Register, February 22, 2021 (85 FR 10594)]

19 CFR CHAPTER I

NOTIFICATION OF TEMPORARY TRAVEL RESTRICTIONS APPLICABLE TO LAND PORTS OF ENTRY AND FERRIES SERVICE BETWEEN THE UNITED STATES AND CANADA

AGENCY: Office of the Secretary, U.S. Department of Homeland Security; U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: Notification of continuation of temporary travel restrictions.

SUMMARY: This document announces the decision of the Secretary of Homeland Security (Secretary) to continue to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border. Such travel will be limited to "essential travel," as further defined in this document.

DATES: These restrictions go into effect at 12 a.m. Eastern Standard Time on February 22, 2021 and will remain in effect until 11:59 p.m. Eastern Daylight Time (EDT) on March 21, 2021.

FOR FURTHER INFORMATION CONTACT: Stephanie Watson, Office of Field Operations Coronavirus Coordination Cell, U.S. Customs and Border Protection (CBP) at 202–325–0840.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2020, the Department of Homeland Security (DHS) published notice of its decision to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to "essential travel," as further defined in that document.[1] The document described the developing circumstances regarding the COVID–19 pandemic and stated that, given the outbreak and continued transmission and spread of the virus associated with COVID–19 within the United States and globally, DHS had determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Canada posed a "specific threat to human life or

[1] 85 FR 16548 (Mar. 24, 2020). That same day, DHS also published notice of its decision to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to "essential travel," as further defined in that document. 85 FR 16547 (Mar. 24, 2020).

national interests." DHS later published a series of notifications continuing such limitations on travel until 11:59 p.m. EST on February 21, 2021.[2]

DHS continues to monitor and respond to the COVID–19 pandemic. As of the week of February 14, 2021, there have been over 108.2 million confirmed cases globally, with over 2.3 million confirmed deaths.[3] There have been over 27.6 million confirmed and probable cases within the United States,[4] over 820,000 confirmed cases in Canada,[5] and over 1.9 million confirmed cases in Mexico.[6]

Notice of Action

Given the outbreak and continued transmission and spread of COVID–19 within the United States and globally, the Secretary has determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Canada poses an ongoing "specific threat to human life or national interests."

U.S. and Canadian officials have mutually determined that non-essential travel between the United States and Canada poses additional risk of transmission and spread of the virus associated with COVID–19 and places the populace of both nations at increased risk of contracting the virus associated with COVID–19. Moreover, given the sustained human-to-human transmission of the virus, returning to previous levels of travel between the two nations places the personnel staffing land ports of entry between the United States and Canada, as well as the individuals traveling through these ports of entry, at increased risk of exposure to the virus associated with COVID–19. Accordingly, and consistent with the authority granted in

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[2] *See* 86 FR 4969 (Jan. 19, 2021); 85 FR 83432 (Dec. 22, 2020); 85 FR 74603 (Nov. 23, 2020); 85 FR 67276 (Oct. 22, 2020); 85 FR 59670 (Sept. 23, 2020); 85 FR 51634 (Aug. 21, 2020); 85 FR 44185 (July 22, 2020); 85 FR 37744 (June 24, 2020); 85 FR 31050 (May 22, 2020); 85 FR 22352 (Apr. 22, 2020). DHS also published parallel notifications of its decisions to continue temporarily limiting the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to "essential travel." *See* 86 FR 4969 (Jan. 19, 2021); 85 FR 83433 (Dec. 22, 2020); 85 FR 74604 (Nov. 23, 2020); 85 FR 67275 (Oct. 22, 2020); 85 FR 59669 (Sept. 23, 2020); 85 FR 51633 (Aug. 21, 2020); 85 FR 44183 (July 22, 2020); 85 FR 37745 (June 24, 2020); 85 FR 31057 (May 22, 2020); 85 FR 22353 (Apr. 22, 2020).

[3] WHO, Coronavirus disease 2019 (COVID–19) Weekly Epidemiological Update (Feb. 16, 2021), available at *https://www.who.int/publications/m/item/weekly-epidemiological-update-16-february- 2021*.

[4] CDC, COVID Data Tracker (accessed Feb. 18, 2021), available at *https://covid.cdc.gov/covid-datatracker/*.

[5] WHO, COVID–19 Weekly Epidemiological Update (Feb. 16, 2021).

[6] *Id.*

19 U.S.C. 1318(b)(1)(C) and (b)(2),[7] I have determined that land ports of entry along the U.S.-Canada border will continue to suspend normal operations and will only allow processing for entry into the United States of those travelers engaged in "essential travel," as defined below. Given the definition of "essential travel" below, this temporary alteration in land ports of entry operations should not interrupt legitimate trade between the two nations or disrupt critical supply chains that ensure food, fuel, medicine, and other critical materials reach individuals on both sides of the border.

For purposes of the temporary alteration in certain designated ports of entry operations authorized under 19 U.S.C. 1318(b)(1)(C) and (b)(2), travel through the land ports of entry and ferry terminals along the United States-Canada border shall be limited to "essential travel," which includes, but is not limited to—

- U.S. citizens and lawful permanent residents returning to the United States;
- Individuals traveling for medical purposes (*e.g.,* to receive medical treatment in the United States);
- Individuals traveling to attend educational institutions;
- Individuals traveling to work in the United States (*e.g.,* individuals working in the farming or agriculture industry who must travel between the United States and Canada in furtherance of such work);
- Individuals traveling for emergency response and public health purposes (*e.g.,* government officials or emergency responders entering the United States to support federal, state, local, tribal, or territorial government efforts to respond to COVID–19 or other emergencies);
- Individuals engaged in lawful cross-border trade (*e.g.,* truck drivers supporting the movement of cargo between the United States and Canada);

[7] 19 U.S.C. 1318(b)(1)(C) provides that "[n]otwithstanding any other provision of law, the Secretary of the Treasury, when necessary to respond to a national emergency declared under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) or to a specific threat to human life or national interests," is authorized to "[t]ake any . . . action that may be necessary to respond directly to the national emergency or specific threat." On March 1, 2003, certain functions of the Secretary of the Treasury were transferred to the Secretary of Homeland Security. *See* 6 U.S.C. 202(2), 203(1). Under 6 U.S.C. 212(a)(1), authorities "related to Customs revenue functions" were reserved to the Secretary of the Treasury. To the extent that any authority under section 1318(b)(1) was reserved to the Secretary of the Treasury, it has been delegated to the Secretary of Homeland Security. *See* Treas. Dep't Order No. 100–16 (May 15, 2003), 68 FR 28322 (May 23, 2003). Additionally, 19 U.S.C. 1318(b)(2) provides that "[n]otwithstanding any other provision of law, the Commissioner of U.S. Customs and Border Protection, when necessary to respond to a specific threat to human life or national interests, is authorized to close temporarily any Customs office or port of entry or take any other lesser action that may be necessary to respond to the specific threat." Congress has vested in the Secretary of Homeland Security the "functions of all officers, employees, and organizational units of the Department," including the Commissioner of CBP. 6 U.S.C. 112(a)(3).

• Individuals engaged in official government travel or diplomatic travel;

• Members of the U.S. Armed Forces, and the spouses and children of members of the U.S. Armed Forces, returning to the United States; and

• Individuals engaged in military-related travel or operations.

The following travel does not fall within the definition of "essential travel" for purposes of this Notification—

• Individuals traveling for tourism purposes (*e.g.,* sightseeing, recreation, gambling, or attending cultural events).

At this time, this Notification does not apply to air, freight rail, or sea travel between the United States and Canada, but does apply to passenger rail, passenger ferry travel, and pleasure boat travel between the United States and Canada. These restrictions are temporary in nature and shall remain in effect until 11:59 p.m. EDT on March 21, 2021. This Notification may be amended or rescinded prior to that time, based on circumstances associated with the specific threat.[8]

The Commissioner of U.S. Customs and Border Protection (CBP) is hereby directed to prepare and distribute appropriate guidance to CBP personnel on the continued implementation of the temporary measures set forth in this Notification. The CBP Commissioner may determine that other forms of travel, such as travel in furtherance of economic stability or social order, constitute "essential travel" under this Notification. Further, the CBP Commissioner may, on an individualized basis and for humanitarian reasons or for other purposes in the national interest, permit the processing of travelers to the United States not engaged in "essential travel."

ALEJANDRO N. MAYORKAS,
Secretary,
U.S. Department of Homeland Security.

[Published in the Federal Register, February 23, 2021 (85 FR 10815)]

[8] DHS is working closely with counterparts in Mexico and Canada to identify appropriate public health conditions to safely ease restrictions in the future and support U.S. border communities.

19 CFR CHAPTER I

NOTIFICATION OF TEMPORARY TRAVEL RESTRICTIONS APPLICABLE TO LAND PORTS OF ENTRY AND FERRIES SERVICE BETWEEN THE UNITED STATES AND MEXICO

AGENCY: Office of the Secretary, U.S. Department of Homeland Security; U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: Notification of continuation of temporary travel restrictions.

SUMMARY: This document announces the decision of the Secretary of Homeland Security (Secretary) to continue to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border. Such travel will be limited to "essential travel," as further defined in this document.

DATES: These restrictions go into effect at 12 a.m. Eastern Standard Time on February 22, 2021 and will remain in effect until 11:59 p.m. Eastern Daylight Time (EDT) on March 21, 2021.

FOR FURTHER INFORMATION CONTACT: Stephanie Watson, Office of Field Operations Coronavirus Coordination Cell, U.S. Customs and Border Protection (CBP) at 202–325–0840.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2020, the Department of Homeland Security (DHS) published notice of its decision to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to "essential travel," as further defined in that document.[1] The document described the developing circumstances regarding the COVID–19 pandemic and stated that, given the outbreak and continued transmission and spread of the virus associated with COVID–19 within the United States and globally, DHS had determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Mexico posed a "specific threat to human life or

[1] 85 FR 16547 (Mar. 24, 2020). That same day, DHS also published notice of its decision to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to "essential travel," as further defined in that document. 85 FR 16548 (Mar. 24, 2020).

national interests." DHS later published a series of notifications continuing such limitations on travel until 11:59 p.m. EST on February 21, 2021.[2]

DHS continues to monitor and respond to the COVID–19 pandemic. As of the week of February 14, 2021, there have been over 108.2 million confirmed cases globally, with over 2.3 million confirmed deaths.[3] There have been over 27.6 million confirmed and probable cases within the United States,[4] over 820,000 confirmed cases in Canada,[5] and over 1.9 million confirmed cases in Mexico.[6]

Notice of Action

Given the outbreak and continued transmission and spread of COVID–19 within the United States and globally, the Secretary has determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Mexico poses an ongoing "specific threat to human life or national interests."

U.S. and Mexican officials have mutually determined that non-essential travel between the United States and Mexico poses additional risk of transmission and spread of the virus associated with COVID–19 and places the populace of both nations at increased risk of contracting the virus associated with COVID–19. Moreover, given the sustained human-to-human transmission of the virus, returning to previous levels of travel between the two nations places the personnel staffing land ports of entry between the United States and Mexico, as well as the individuals traveling through these ports of entry, at increased risk of exposure to the virus associated with COVID–19. Accordingly, and consistent with the authority granted in

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[2] *See* 86 FR 4967 (Jan. 19, 2021); 85 FR 83433 (Dec. 22, 2020); 85 FR 74604 (Nov. 23, 2020); 85 FR 67275 (Oct. 22, 2020); 85 FR 59669 (Sept. 23, 2020); 85 FR 51633 (Aug. 21, 2020); 85 FR 44183 (July 22, 2020); 85 FR 37745 (June 24, 2020); 85 FR 31057 (May 22, 2020); 85 FR 22353 (Apr. 22, 2020). DHS also published parallel notifications of its decisions to continue temporarily limiting the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to "essential travel." *See* 86 FR 4969 (Jan. 19, 2021); 85 FR 83432 (Dec. 22, 2020); 85 FR 74603 (Nov. 23, 2020); 85 FR 67276 (Oct. 22, 2020); 85 FR 59670 (Sept. 23, 2020); 85 FR 51634 (Aug. 21, 2020); 85 FR 44185 (July 22, 2020); 85 FR 37744 (June 24, 2020); 85 FR 31050 (May 22, 2020); 85 FR 22352 (Apr. 22, 2020.

[3] WHO, Coronavirus disease 2019 (COVID–19) Weekly Epidemiological Update (Feb. 16, 2021), available at *https://www.who.int/publications/m/item/weekly-epidemiological-update---16-february-2021.*

[4] CDC, COVID Data Tracker (accessed Feb. 18, 2021), available at *https://covid.cdc.gov/covid-data-tracker/*.

[5] WHO, COVID–19 Weekly Epidemiological Update (Feb. 16, 2021).

[6] *Id.*

19 U.S.C. 1318(b)(1)(C) and (b)(2),[7] I have determined that land ports of entry along the U.S.-Mexico border will continue to suspend normal operations and will only allow processing for entry into the United States of those travelers engaged in "essential travel," as defined below. Given the definition of "essential travel" below, this temporary alteration in land ports of entry operations should not interrupt legitimate trade between the two nations or disrupt critical supply chains that ensure food, fuel, medicine, and other critical materials reach individuals on both sides of the border.

For purposes of the temporary alteration in certain designated ports of entry operations authorized under 19 U.S.C. 1318(b)(1)(C) and (b)(2), travel through the land ports of entry and ferry terminals along the United States-Mexico border shall be limited to "essential travel," which includes, but is not limited to—

- U.S. citizens and lawful permanent residents returning to the United States;
- Individuals traveling for medical purposes (*e.g.,* to receive medical treatment in the United States);
- Individuals traveling to attend educational institutions;
- Individuals traveling to work in the United States (*e.g.,* individuals working in the farming or agriculture industry who must travel between the United States and Mexico in furtherance of such work);
- Individuals traveling for emergency response and public health purposes (*e.g.,* government officials or emergency responders entering the United States to support federal, state, local, tribal, or territorial government efforts to respond to COVID–19 or other emergencies);
- Individuals engaged in lawful cross-border trade (*e.g.,* truck drivers supporting the movement of cargo between the United States and Mexico);

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[7] U.S.C. 1318(b)(1)(C) provides that "[n]otwithstanding any other provision of law, the Secretary of the Treasury, when necessary to respond to a national emergency declared under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) or to a specific threat to human life or national interests," is authorized to "[t]ake any . . . action that may be necessary to respond directly to the national emergency or specific threat." On March 1, 2003, certain functions of the Secretary of the Treasury were transferred to the Secretary of Homeland Security. *See* 6 U.S.C. 202(2), 203(1). Under 6 U.S.C. 212(a)(1), authorities "related to Customs revenue functions" were reserved to the Secretary of the Treasury. To the extent that any authority under section 1318(b)(1) was reserved to the Secretary of the Treasury, it has been delegated to the Secretary of Homeland Security. *See* Treas. Dep't Order No. 100–16 (May 15, 2003), 68 FR 28322 (May 23, 2003). Additionally, 19 U.S.C. 1318(b)(2) provides that "[n]otwithstanding any other provision of law, the Commissioner of U.S. Customs and Border Protection, when necessary to respond to a specific threat to human life or national interests, is authorized to close temporarily any Customs office or port of entry or take any other lesser action that may be necessary to respond to the specific threat." Congress has vested in the Secretary of Homeland Security the "functions of all officers, employees, and organizational units of the Department," including the Commissioner of CBP. 6 U.S.C. 112(a)(3).

• Individuals engaged in official government travel or diplomatic travel;

• Members of the U.S. Armed Forces, and the spouses and children of members of the U.S. Armed Forces, returning to the United States; and

• Individuals engaged in military-related travel or operations.

The following travel does not fall within the definition of "essential travel" for purposes of this Notification—

• Individuals traveling for tourism purposes (*e.g.,* sightseeing, recreation, gambling, or attending cultural events).

At this time, this Notification does not apply to air, freight rail, or sea travel between the United States and Mexico, but does apply to passenger rail, passenger ferry travel, and pleasure boat travel between the United States and Mexico. These restrictions are temporary in nature and shall remain in effect until 11:59 p.m. EDT on March 21, 2021. This Notification may be amended or rescinded prior to that time, based on circumstances associated with the specific threat.[8]

The Commissioner of U.S. Customs and Border Protection (CBP) is hereby directed to prepare and distribute appropriate guidance to CBP personnel on the continued implementation of the temporary measures set forth in this Notification. The CBP Commissioner may determine that other forms of travel, such as travel in furtherance of economic stability or social order, constitute "essential travel" under this Notification. Further, the CBP Commissioner may, on an individualized basis and for humanitarian reasons or for other purposes in the national interest, permit the processing of travelers to the United States not engaged in "essential travel."

ALEJANDRO N. MAYORKAS,
Secretary,
U.S. Department of Homeland Security.

[Published in the Federal Register, February 23, 2021 (85 FR 10816)]

[8] DHS is working closely with counterparts in Mexico and Canada to identify appropriate public health conditions to safely ease restrictions in the future and support U.S. border communities.

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS
(No. 12 2020)

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

SUMMARY: The following copyrights, trademarks, and trade names were recorded with U.S. Customs and Border Protection in December 2020. A total of 253 recordation applications were approved, consisting of 23 copyrights and 230 trademarks. The last notice was published in the Customs Bulletin Vol. 55

Corrections or updates may be sent to: Intellectual Property Rights Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street, NE., 10th Floor, Washington, D.C. 20229–1177, or via email at *iprrquestions@cbp.dhs.gov*.

FOR FURTHER INFORMATION CONTACT: Christopher Hawkins, Paralegal Specialist, Intellectual Property Rights Branch, Regulations and Rulings, Office of Trade at (202) 325–0295.

ALAINA VAN HORN
Chief,
Intellectual Property Rights Branch
Regulations and Rulings, Office of Trade

CBP IPR RECORDATION — DECEMBER 2020

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 01–00106	12/01/2020	08/29/2030	WALKING MACHINES	CATERPILLAR INC.	No
TMK 01–00453	12/30/2020	07/11/2030	CHRISTIAN DIOR	CHRISTIAN DIOR COUTURE, S.A.	No
TMK 02–00616	12/16/2020	12/20/2030	PING	KARSTEN MANUFACTURING CORPORATION	No
TMK 03–00418	12/29/2020	12/26/2030	TOMMY	TOMMY HILFIGER LICENSING LLC	No
TMK 03–00577	12/29/2020	02/07/2031	ADJUST-A-ROLL	Republic Tobacco, L.P.	No
TMK 04–00023	12/17/2020	10/16/2022	Blue Tablet design	UPJOHN US 1 LLC	No
TMK 04–00752	12/29/2020	12/20/2030	TIFFANY BLUE COLOR MARK ON BOXES	TIFFANY (NJ) LLC	No
TMK 05–00509	12/23/2020	04/02/2021	PILOT & Design	KABUSHIKI KAISHA PILOT CORPORATION A/T/A PILOT CORPORATION	No
TMK 07–00066	12/30/2020	12/18/2030	GE Monogram & Design	GENERAL ELECTRIC	No
TMK 07–00275	12/02/2020	03/19/2031	PREVNAR	WYETH LLC	No
TMK 09–00974	12/16/2020	11/08/2010	Configuration of a Hinge	KASON INDUSTRIES, INC.	No
TMK 10–00312	12/09/2020	12/22/2029	M MOROCCANOIL & DESIGN	MOROCCANOIL, INC.	No
TMK 10–01183	12/03/2020	01/28/2031	LEVI STRAUSS & CO.SAN FRANSISCO-,CAL. ORIGINAL RIVETED QUALITY CLOTHING. X X PATENTED MAY 20 1873 & DESIGN	Levi Strauss & Co.	No
TMK 11–00196	12/08/2020	05/15/2021	SOMIC AMERICA	Somic America, Inc.	No

CBP IPR RECORDATION — DECEMBER 2020

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 11–00361	12/07/2020	05/20/2026	EPIPHONE	GIBSON BRANDS, INC.	No
TMK 11–00432	12/07/2020	07/11/2025	KRAMER	GIBSON BRANDS, INC.	No
TMK 11–00433	12/07/2020	08/16/2029	LES PAUL	GIBSON BRANDS, INC.	No
TMK 11–00453	12/07/2020	10/23/2022	ES	Gibson Guitar Corp.	No
TMK 11–00454	12/07/2020	01/29/2023	EXPLORER	Gibson Guitar Corp.	No
TMK 11–00456	12/07/2020	10/23/2022	FV	Gibson Guitar Corp.	No
TMK 11–00471	12/30/2020	09/13/2030	POKÉMON	Nintendo of America Inc.	No
TMK 11–00478	12/16/2020	09/13/2030	POKEMON	Nintendo of America Inc.	No
TMK 11–00480	12/17/2020	09/06/2030	POKÉMON	Nintendo of America Inc.	No
TMK 11–00481	12/17/2020	09/13/2030	POKÉMON	Nintendo of America Inc.	No
TMK 11–00787	12/23/2020	01/14/2031	GUCCI	Gucci America, Inc.	No
TMK 11–01225	12/23/2020	01/02/2031	EMPORIO ARMANI GA & Design	GIORGIO ARMANI S.P.A	No
TMK 12–00422	12/29/2020	06/01/2031	FLYING COLORS	Global Fashion Works, LLC	No
TMK 12–00701	12/07/2020	10/25/2030	John Deere and Design	DEERE & COMPANY	No
TMK 12–00949	12/23/2020	12/19/2030	HUGO	HUGO BOSS TRADE MARKS MANAGEMENT GMBH & CO. KG	No
TMK 14–00742	12/30/2020	12/21/2030	SOBELLINA	Sobel Westex CORPORATION	No
TMK 15–00240	12/01/2020	12/07/2030	TRANSTEC	Freudenberg-NOK	No
TMK 15–00757	12/16/2020	09/27/2026	SHRM LEARNING SYSTEM	Society for Human Resource Management CORPORATION	No

CBP IPR RECORDATION — DECEMBER 2020

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 17–00170	12/29/2020	03/19/2031	TRUMP	DTTM OPERATIONS LLC	No
TMK 18–00145	12/29/2020	12/28/2030	FAT GRIPZ	Extreme Iron, Inc.	No
TMK 19–00226	12/23/2020	04/04/2021	D-BACKS	AZPB Limited Partnership	No
TMK 19–00537	12/23/2020	09/22/2030	MEDELA	Medela Holding AG	No
TMK 19–00673	12/07/2020	12/08/2025	HALEY AND THE HOUND	BOOTH PARKER, LLC	No
TMK 19–00674	12/07/2020	06/15/2026	Lab Silhouette Design	BOOTH PARKER, LLC	No
TMK 19–00763	12/02/2020	12/07/2030	NIGHT OWL	NIGHT OWL SP, LLC	No
TMK 20–00640	12/23/2020	07/14/2030	Rain Drop Design	VYNE PHARMACEUTICALS LTD	No
TMK 20–00641	12/23/2020	06/30/2030	AMZEEQ	VYNE PHARMACEUTICALS LTD	No
TMK 20–00666	12/17/2020	01/05/2031	AFREZZA	MannKind Corporation	No
TMK 20–01085	12/01/2020	05/01/2021	DB (Stylized)	AZPB Limited Partnership	No
TMK 20–01086	12/01/2020	02/27/2029	BIO EXPERT	Unique Sales and Marketing	No
TMK 20–01087	12/01/2020	12/22/2030	JABBERIN' JACK	Mindscope Products	No
TMK 20–01088	12/01/2020	10/24/2028	GERM OUT	Unique Sales and Marketing	No
TMK 20–01089	12/01/2020	05/19/2029	AMERICAN GILSONITE COMPANY & Design (color logo)	American Gilsonite Company	No
TMK 20–01090	12/01/2020	01/27/2031	MAGICAL PLACENTA	Raca, Henry V. & Race, Mary Jane R	No
TMK 20–01091	12/01/2020	05/19/2029	AMERICAN GILSONITE COMPANY & DESIGN (black and white logo)	American Gilsonite Company	No
TMK 20–01092	12/01/2020	02/11/2029	HAJMOLA	Dabur India Limited	No

CBP IPR RECORDATION — DECEMBER 2020

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 20–01093	12/02/2020	01/06/2031	KYRA	Kyra Medical, Inc.	No
TMK 20–01094	12/02/2020	01/08/2030	RAM MOUNTS	National Products, Inc.	No
TMK 20–01095	12/02/2020	02/26/2030	POLICE HOMELAND SECURITY INVESTIGATIONS US SPECIAL AGENT IGUARDIANS SPECIAL AGENT FIREWIRE POLICE & DESIGN	U.S. Department of Homeland Security	No
TMK 20–01096	12/02/2020	06/24/2030	GO BEYOND^	United States Department of Homeland Security AKA DHS	No
TMK 20–01097	12/02/2020	01/20/2031	TSA PRECHECK	United States Department of Homeland Security AKA DHS	No
TMK 20–01098	12/02/2020	06/03/2030	APPVET	U.S. Department of Homeland Security	No
TMK 20–01099	12/02/2020	09/25/2029	EXIS	U.S. Department of Homeland Security	No
TMK 20–01100	12/02/2020	02/08/2022	ARIZONA (STYLIZED)	AZPB Limited Partnership	No
TMK 20–01101	12/02/2020	02/10/2031	J:CUBED JAZZ TO THE 3RD POWER: COOL, SMOOTH AND HOT!	Smith, Karl	No
TMK 20–01102	12/02/2020	04/23/2028	MB (Stylized) and Baseball Design	Milwaukee Brewers Baseball Club, Limited Partnership	No
TMK 20–01103	12/02/2020	10/15/2024	VUSA	United States Department of Homeland Security	No

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TMK 20–01104	12/03/2020	12/22/2030	5RD & DESIGN	United States Department of Homeland Security	No
TMK 20–01105	12/03/2020	06/03/2030	APPVET (Stylized)	U.S. Department of Homeland Security	No
TMK 20–01106	12/03/2020	08/19/2030	BLUE LIGHTNING INITIATIVE END HUMAN TRAFFICKING & DESIGN	United States Department of Homeland Security	No
TMK 20–01107	12/03/2020	09/26/2028	P25 CAP DEPARTMENT OF HOMELAND SECURITY COMPLIANCE ASSESSMENT PROGRAM & DESIGN	U.S. Department of Homeland Security	No
TMK 20–01108	12/03/2020	08/20/2024	SOYLENT	SOYLENT NUTRITION, INC.	No
TMK 20–01109	12/03/2020	12/08/2030	Blue and Black Color Mark on Handles of Hand Tools	iFixit	No
TMK 20–01110	12/03/2020	07/15/2028	NY (STYLIZED)	New York Yankees Partnership	No
TMK 20–01111	12/03/2020	03/31/2024	A HIGHER LIGHT FORM	Brilliance Led, LLC	No
TMK 20–01112	12/04/2020	12/08/2030	MILWAUKEE (STYLIZED)	Milwaukee Brewers Baseball Club, Limited Partnership	No
TMK 20–01113	12/04/2020	06/10/2030	Configuration of the conical connector between top and base of a mobile device grip	PopSockets LLC	No
TMK 20–01114	12/04/2020	06/10/2030	Configuration of a mobile device grip (top, base, and conical connector)	PopSockets LLC	No
TMK 20–01115	12/04/2020	09/27/2029	GIBSON	GIBSON BRANDS, INC.	No

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TMK 20–01116	12/04/2020	11/28/2028	MINNESOTA TWINS BASEBALL CLUB & DESIGN	Minnesota Twins, LLC	No
TMK 20–01117	12/07/2020	03/18/2023	BRILLIANCE LED	Brilliance LED, LLC	No
TMK 20–01118	12/07/2020	12/08/2030	AUTOMATION FACTORY	Itential, LLC	No
TMK 20–01119	12/07/2020	12/08/2030	NUVISION	Refractive Surgery and Diagnostic Center, PLLC DBA Parkhurst Nuvision	No
TMK 20–01120	12/07/2020	11/25/2030	DON SAUL	Rubio Enterprises, LLC	No
TMK 20–01121	12/07/2020	07/21/2030	NEW PHONE, WHO DIS?	What Do You Meme, LLC	No
TMK 20–01122	12/07/2020	02/03/2030	NATIONAL LEAGUE CHAMPIONS	Office of the Commissioner of Baseball	No
TMK 20–01123	12/07/2020	09/23/2029	NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS SINCE 1876 & DESIGN	Office of the Commissioner of Baseball	No
TMK 20–01124	12/07/2020	05/12/2023	KINSMART and Design	KINTOY DIE-CASTING MANUFACTORY LIMITED	No
TMK 20–01125	12/07/2020	11/03/2030	METS (Stylized)	Sterling Mets, L.P.	No
TMK 20–01126	12/07/2020	07/12/2021	NEW YORK (Stylized)	Sterling Mets, L.P.	No
TMK 20–01127	12/07/2020	12/08/2030	WEALTHVEST: THE WEEKLY BULL & BEAR	Wealthvest Marketing, Inc.	No
TMK 20–01128	12/07/2020	07/12/2023	A'S (Stylized)	ATHLETICS INVESTMENT GROUP LLC	No

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TMK 20–01129	12/07/2020	07/12/2021	OAKLAND (Stylized)	Athletics Investment Group LLC DBA The Oakland Athletics Baseball Company	No
TMK 20–01130	12/07/2020	03/01/2026	Pirate Design	Pittsburgh Associates	No
TMK 20–01131	12/07/2020	09/10/2024	Pirate Design	Pittsburgh Associates	No
TMK 20–01132	12/08/2020	07/29/2028	FELCO	Flisch Holding SA	No
TMK 20–01133	12/08/2020	11/30/2021	SPRING TRAINING	Major League Baseball Properties, Inc.	No
TMK 20–01134	12/08/2020	10/10/2028	Trophy Design	Office of the Commissioner of Baseball	No
TMK 20–01135	12/08/2020	01/25/2022	TAMPA BAY RAYS DESIGN	Tampa Bay Rays Baseball Ltd.	No
TMK 20–01136	12/08/2020	01/28/2025	SAN FRANCISCO (Stylized)	SAN FRANCISCO GIANTS BASEBALL CLUB LLC	No
TMK 20–01137	12/08/2020	01/02/2028	SF (Stylized)	SAN FRANCISCO GIANTS BASEBALL CLUB LLC	No
TMK 20–01138	12/08/2020	12/17/2023	CARDS	St. Louis Cardinals, LLC	No
TMK 20–01139	12/08/2020	12/22/2030	Fish Design	Marlins Teamco LLC	No
TMK 20–01140	12/08/2020	09/30/2029	Bell Design	The Phillies	No
TMK 20–01141	12/08/2020	07/07/2030	MIAMI and Design	Marlins Teamco LLC	No
TMK 20–01142	12/08/2020	07/07/2030	M and Design	Marlins Teamco LLC	No
TMK 20–01143	12/08/2020	08/21/2029	ASTROS	Houston Astros, LLC	No
TMK 20–01144	12/09/2020	06/11/2028	A (Stylized)	AZPB Limited Partnership	No

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TMK 20–01145	12/09/2020	09/02/2029	AMERICAN LEAGUE & Design	Office of the Commissioner of Baseball UNINCORPORATED ASSOCIATION	No
TMK 20–01146	12/09/2020	08/23/2027	GORILLA	CHUBBY GORILLA, INC. CORPORATION	No
TMK 20–01147	12/09/2020	06/12/2025	FELCO & DESIGN	FLISCH HOLDING S.A.	No
TMK 20–01148	12/09/2020	09/02/2029	AMERICAN LEAGUE CHAMPIONS	Office of the Commissioner of Baseball UNINCORPORATED ASSOCIATION	No
TMK 20–01149	12/09/2020	11/06/2023	PITTSBURGH (Stylized)	Pittsburgh Associates	No
TMK 20–01150	12/09/2020	12/08/2030	PICKUP	Pickup Brand Coffee, LLC	No
TMK 20–01151	12/10/2020	01/23/2028	SAN DIEGO (Stylized)	Padres L.P.	No
TMK 20–01152	12/10/2020	03/26/2027	SD (STYLIZED)	Padres L.P. Padres, Inc	No
TMK 20–01153	12/10/2020	06/13/2028	CARDINALS & Design	St. Louis Cardinals, LLC	No
TMK 20–01154	12/10/2020	01/13/2026	Cardinal Design	St. Louis Cardinals, LLC	No
TMK 20–01155	12/10/2020	02/25/2029	ATHLETICS (STYLIZED)	Athletics Investment Group LLC DBA The Oakland Athletics Baseball Company	No
TMK 20–01156	12/10/2020	03/08/2031	CHAMELEON	Crazy Aaron Enterprises, Inc.	No
TMK 20–01157	12/10/2020	03/08/2029	NERDS	FERRARA CANDY COMPANY	No
TMK 20–01158	12/10/2020	12/10/2023	NERDS (STYLIZED)	FERRARA CANDY COMPANY	No
TMK 20–01159	12/10/2020	12/10/2023	RAINBOW NERDS (Stylized)	FERRARA CANDY COMPANY	No
TMK 20–01160	12/10/2020	08/22/2028	PHYSIX GEAR SPORT	The Sultans Warehouse Ltd	No

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TMK 20–01161	12/10/2020	08/05/2029	SHRM SOCIETY FOR HUMAN RESOURCE MANGEMENT (Stylized & Design)	Society for Human Resource Management	No
TMK 20–01162	12/10/2020	07/23/2029	RANGERS & DESIGN	Rangers Baseball LLC	No
TMK 20–01163	12/10/2020	11/18/2030	MIAMI (Stylized)	Marlins Teamco LLC	No
TMK 20–01164	12/10/2020	09/11/2023	MIAMI MARLINS	MARLINS TEAMCO LLC	No
TMK 20–01165	12/10/2020	04/15/2028	ASTROS (STYLIZED)	HOUSTON ASTROS, LLC	No
TMK 20–01166	12/10/2020	02/06/2028	YANKEES	New York Yankees Partnership	No
TMK 20–01167	12/11/2020	12/22/2025	DRONE ZONE	Hanscom, Eric	No
TMK 20–01168	12/11/2020	05/07/2027	TORONTO BLUE JAYS & DESIGN	Rogers Blue Jays Baseball Partnership	No
TMK 20–01169	12/11/2020	12/16/2023	FRONTLINE PLUS	BOEHRINGER INGELHEIM ANIMAL HEALTH	No
TMK 20–01170	12/11/2020	07/30/2023	TORONTO BLUE JAYS & DESIGN	Rogers Blue Jays Baseball Partnership	No
TMK 20–01171	12/16/2020	09/16/2029	RED SOX NATION	Boston Red Sox Baseball Club Limited Partnership	No
TMK 20–01172	12/16/2020	01/20/2031	VICTORY POINT GAMES	Tabletop Tycoon, Inc.	No
TMK 20–01173	12/16/2020	11/04/2030	CALACATTA LAZA	M S International, Inc.	No
TMK 20–01174	12/16/2020	01/20/2031	Victory Point Games Logo & DESIGN	Tabletop Tycoon, Inc.	No
TMK 20–01175	12/16/2020	01/02/2028	P (stylized)	Pittsburgh Associates LIMITED PARTNERSHIP	No

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TMK 20–01176	12/16/2020	01/02/2028	PIRATES	Pittsburgh Associates	No
TMK 20–01177	12/16/2020	02/06/2028	PADRES (STYLIZED)	Padres L.P.	No
TMK 20–01178	12/16/2020	07/30/2029	W (stylized)	Chicago Cubs Baseball Club, LLC	No
TMK 20–01179	12/16/2020	04/15/2028	STAR DESIGN	HOUSTON ASTROS, LLC	No
TMK 20–01180	12/16/2020	05/11/2030	Let's Go Eevee! Logo	NINTENDO OF AMERICA INC.	No
TMK 20–01181	12/16/2020	08/14/2023	BLUE JAYS (Stylized)	Rogers Blue Jays Baseball Partnership general partnership	No
TMK 20–01182	12/16/2020	07/02/2023	Blue Jay Design	Rogers Blue Jays Baseball Partnership	No
TMK 20–01183	12/16/2020	09/21/2026	MAPLE LEAF DESIGN	Rogers Blue Jays Partnership	No
TMK 20–01184	12/16/2020	05/12/2028	BRAVES & Design	ATLANTA NATIONAL LEAGUE BASE-BALL CLUB, LLC	No
TMK 20–01185	12/16/2020	10/19/2021	HAPPY NAPPERS	JAY AT PLAY INTERNATIONAL HONG KONG LIMITED	No
TMK 20–01186	12/16/2020	07/16/2029	NINTENDO LABO & Design	NINTENDO OF AMERICA INC.	No
TMK 20–01187	12/16/2020	08/29/2027	Tapered Oval and dots Design	Crank Brothers, Inc.	No
TMK 20–01188	12/16/2020	12/04/2022	CRANKBROTHERS	Crank Brothers, Inc	No
TMK 20–01189	12/16/2020	02/10/2031	BD BENJAMINDAVID (Stylized) and Design	ForceFaction Limited LLC DBA Benjamin David Golf	No
TMK 20–01190	12/17/2020	07/24/2028	PUFA	American International Materials Inc.	No
TMK 20–01191	12/17/2020	02/06/2029	MACMILLAN LEARNING	Macmillan Holdings, LLC	No

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TMK 20–01192	12/18/2020	03/11/2028	MILWAUKEE BREWERS & DESIGN	Milwaukee Brewers Baseball Club, Limited Partnership	No
TMK 20–01193	12/18/2020	03/11/2028	TB & STINGRAY DESIGN	Tampa Bay Rays Baseball Ltd. LIMITED PARTNERSHIP	No
TMK 20–01194	12/18/2020	10/20/2026	Socks & baseball Design	BOSTON RED SOX BASEBALL CLUB LIMITED PARTNERSHIP	No
TMK 20–01195	12/18/2020	10/31/2030	PIRATES (Stylized)	PITTSBURGH ASSOCIATES LIMITED PARTNERSHIP	No
TMK 20–01196	12/23/2020	10/14/2030	HAPPY NAPPERS	Jay At Play International Hong Kong Limited DBA	No
TMK 20–01197	12/23/2020	03/01/2031	BACON WITHOUT THE OINK!	ATLAST FOOD CO.	No
TMK 20–01198	12/23/2020	10/28/2030	MIAMI (STYLIZED)	Marlins Teamco LLC	No
TMK 20–01199	12/23/2020	10/28/2030	MIAMI & DESIGN	Marlins Teamco LLC	No
TMK 20–01200	12/23/2020	10/28/2030	MARLINS (STYLIZED)	Marlins Teamco LLC	No
TMK 20–01201	12/23/2020	04/14/2024	H HOUSTON ASTROS & DESIGN	Houston Astros, LLC	No
TMK 20–01202	12/23/2020	11/30/2025	JUSTICE	TWEEN BRANDS INVESTMENT, LLC	No
TMK 20–01203	12/23/2020	07/20/2030	HOUSTON OPEN FIVE-POINT STAR DESIGN	HOUSTON ASTROS, LLC	No
TMK 20–01204	12/23/2020	01/13/2031	FOR THE ART OF BEER	An Acquired Taste, LLC	No

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TMK 20–01205	12/23/2020	03/15/2031	Three intersecting pebble-shaped rings design	VYNE PHARMACEUTICALS LTD	No
TMK 20–01206	12/23/2020	09/12/2030	LA (STYLIZED)	ANGELS BASEBALL L.P.	No
TMK 20–01207	12/23/2020	07/18/2027	Colorado Rockies Mountain and Baseball Design	Colorado Rockies Baseball Club, LTD	No
TMK 20–01208	12/23/2020	09/13/2029	INDIANS (STYLIZED)	CLEVELAND INDIANS BASEBALL COMPANY, LLC	No
TMK 20–01209	12/23/2020	07/01/2028	NIKE	Nike, Inc.	No
TMK 20–01210	12/23/2020	11/13/2023	CINCINNATI (Stylized)	The Cincinnati Reds LLC	No
TMK 20–01211	12/23/2020	11/13/2023	CINCINNATI (Stylized)	The Cincinnati Reds LLC	No
TMK 20–01212	12/23/2020	12/20/2021	REDS (Stylized)	The Cincinnati Reds LLC	No
TMK 20–01213	12/23/2020	08/01/2028	BUMP AND BEYOND DESIGNS	Eichholtz, Ashley E DBA Bump and Beyond Designs	No
TMK 20–01214	12/23/2020	10/28/2029	ULTRATECH	Microtech Knives, Inc.	No
TMK 20–01215	12/23/2020	05/19/2029	SOCOM ELITE	Microtech Knives, Inc.	No
TMK 20–01216	12/23/2020	02/27/2028	TROODON	Microtech Knives, Inc.	No
TMK 20–01217	12/23/2020	02/06/2028	SOX & Design	Chicago White Sox, Ltd.	No
TMK 20–01218	12/29/2020	04/28/2030	AGROPUR INGREDIENTS & DESIGN	Agropur Cooperative	No
TMK 20–01219	12/29/2020	07/18/2029	TWINS (STYLIZED)	MINNESOTA TWINS, LLC	No
TMK 20–01220	12/29/2020	06/13/2028	Bear Holding a Bat Logo	Chicago Cubs Baseball Club, LLC	No

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TMK 20–01221	12/29/2020	01/01/2030	CROSSHAIR	Microtech Knives, Inc.	No
TMK 20–01222	12/29/2020	04/12/2026	DOC	Microtech Knives, Inc.	No
TMK 20–01223	12/29/2020	01/01/2030	CURRAHEE	Microtech Knives, Inc.	No
TMK 20–01224	12/29/2020	03/15/2031	Hat Liner Logo (My Hot Head)	Weems, Lori	No
TMK 20–01225	12/29/2020	04/14/2030	OFF, ON, SELECT, START, A, B, PHONES & DESIGN (Image of Game Boy as Logo)	NINTENDO OF AMERICA INC.	No
TMK 20–01226	12/30/2020	09/20/2027	OGIO	Ogio International, Inc.	No
TMK 20–01227	12/30/2020	12/01/2030	Marlin Design	Marlins Teamco LLC	No
TMK 20–01228	12/30/2020	10/28/2030	M & Design	Marlins Teamco LLC	No
TMK 20–01229	12/30/2020	08/08/2022	LOS DOYERS	Los Angeles Dodgers LLC	No
TMK 20–01230	12/30/2020	06/20/2028	ANGELS & Design	Angels Baseball LP	No
TMK 20–01231	12/30/2020	07/20/2030	H & Design	HOUSTON ASTROS, LLC	No
TMK 20–01232	12/30/2020	07/17/2027	ASTROS (Stylized)	HOUSTON ASTROS, LLC	No
TMK 20–01233	12/30/2020	02/06/2023	JUSTICE	Tween Brands Investment, LLC	No
TMK 20–01234	12/30/2020	05/01/2031	HOUSTON (Stylized)	HOUSTON ASTROS, LLC	No
TMK 20–01235	12/30/2020	03/15/2031	Intersecting Pebble-Shaped Rings Design	VYNE PHARMACEUTICALS LTD	No
TMK 20–01236	12/30/2020	07/10/2024	PADRES	PADRES, L.P.	No
TMK 20–01237	12/30/2020	04/09/2030	CA (STYLIZED)	ANGELS BASEBALL L.P.	No
TMK 20–01238	12/30/2020	02/19/2027	CA & DESIGN	ANGELS BASEBALL L.P.	No

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TMK 20–01239	12/30/2020	06/17/2025	NIKE	Nike, Inc.	No
TMK 20–01240	12/30/2020	06/17/2025	Swoosh Design	Nike, Inc.	No
TMK 20–01241	12/30/2020	03/08/2031	Gold Stripe Design	Leupold & Stevens, Inc.	No
TMK 20–01242	12/30/2020	01/28/2029	C & DESIGN	The Cincinnati Reds LLC	No
TMK 20–01243	12/30/2020	07/26/2021	DETROIT (Stylized)	Detroit Tigers, Inc.	No
TMK 20–01244	12/30/2020	03/08/2031	No Fetus Tissue Used & Design	Menzel, William	No
TMK 20–01245	12/30/2020	06/24/2030	WARCOM	Microtech Knives, Inc.	No
TMK 20–01246	12/30/2020	05/01/2021	XELEMENT MOTORCYCLE GEAR	NANAL, INC.	No
TMK 20–01247	12/30/2020	11/28/2022	HAWK HELMETS	NANAL, INC.	No
TMK 20–01248	12/30/2020	03/01/2031	EVETTE DORTHEA VINE	Vine, Evette Dorthea INDIVIDUAL	No
TMK 20–01249	12/30/2020	08/28/2029	DIRAC	Microtech Knives, Inc.	No
TMK 20–01250	12/30/2020	10/11/2027	AGROPUR	AGROPUR COOPERATIVE	No
TMK 20–01251	12/30/2020	05/25/2030	HELLHOUND	Microtech Knives, Inc.	No
TMK 20–01252	12/30/2020	12/08/2030	MY HOT HEAD	Blocks Hot Head LLC	No
TMK 20–01253	12/30/2020	03/09/2029	ASSAILANT	Microtech Knives, Inc.	No
TMK 20–01254	12/30/2020	01/27/2031	PANAVEX	Niche Marketing, Inc.	No
TMK 20–01255	12/30/2020	07/09/2029	MED-E-LERT	Robert Lee Garland Jr	No
TMK 20–01256	12/30/2020	09/20/2027	Bosma Enterprises Logo & Design	Bosma Industries for the Blind, Inc.	No
TMK 20–01257	12/30/2020	09/20/2027	BOSMA MEDICAL	Bosma Industries for the Blind, Inc. aka Bosma Enterprises	No

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TMK 20–01258	12/30/2020	09/20/2027	Bosma Medical Logo & Design	Bosma Industries for the Blind, Inc.	No
TMK 20–01259	12/30/2020	03/31/2030	SBD	Microtech Knives, Inc.	No
TMK 20–01260	12/30/2020	10/14/2030	HARDEDGE	Microtech Knives, Inc.	No
TMK 20–01261	12/30/2020	09/23/2030	CT-D	Microtech Knives, Inc.	No
TMK 20–01262	12/30/2020	07/17/2028	TACHYON	Microtech Knives, Inc.	No
TMK 20–01263	12/30/2020	03/08/2031	L.U.D.T.	Microtech Knives, Inc.	No
TMK 20–01264	12/30/2020	04/02/2028	CYPHER	Microtech Knives, Inc.	No
TMK 20–01265	12/30/2020	04/02/2028	SPARTAN MEADOW VIPER	Microtech Knives, Inc.	No
TMK 20–01266	12/30/2020	04/02/2028	MATRIX	Microtech Knives, Inc.	No
TMK 20–01267	12/30/2020	09/06/2027	BOSMA ENTERPRISES	Bosma Industries for the Blind, Inc. AKA Bosma Enterprises	No
TMK 20–01268	12/30/2020	09/07/2026	CLOSER	Microtech Knives, Inc.	No
TMK 20–01269	12/30/2020	07/12/2026	UTX-70	Microtech Knives, Inc.	No
TMK 20–01270	12/30/2020	08/24/2026	A. MARFIONE	Microtech Knives, Inc.	No
TMK 93–00429	12/23/2020	12/25/2030	BOSS HUGO BOSS	HUGO BOSS TRADE MARK MANAGEMENT GMBH & CO. KG	No
TMK 98–00782	12/17/2020	09/02/2028	VIAGRA	UPJOHN US 1 LLC	No
COP 20–00067	11/04/2020	11/02/2040	FUME EXTRA PRODUCT LINE	FUME LLC	No
COP 20–00068	11/05/2020	11/04/2040	CRITTS Logo.	Ryan Waugh	No
COP 20–00069	11/12/2020	01/09/2037	Windows Server 2016 Essentials	Microsoft Corporation	No

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COP 20–00070	11/12/2020	11/19/2038	Office Professional Plus 2019	Microsoft Corporation	No
COP 20–00071	11/13/2020	11/12/2040	Windows Server 2019	Microsoft Corporation	No
COP 20–00072	11/13/2020	11/12/2040	Microsoft 365 for Home	Microsoft Corporation	No
COP 20–00073	11/18/2020	11/13/2036	Realtree Edge Camouflage Pattern	Jordan Outdoor Enterprises, Ltd.	No
COP 20–00074	11/23/2020	06/24/2039	Realtree Edge Pink Camouflage Pattern	Jordan Outdoor Enterprises, Ltd.	No
COP 20–00075	11/27/2020	11/27/2040	Pop Packaging Art Lush Ice	Pop Vapor Co, LLC,	No
COP 20–00076	11/27/2020	11/27/2040	Sakura Falls	Artistic Tile, Inc.	No
COP 20–00077	11/30/2020	11/30/2040	“Sakura” Tile Design	Artistic Tile, Inc.	No

U.S. Court of International Trade

Slip Op. 21–19

SHELTER FOREST INTERNATIONAL ACQUISITION, INC., et al., Plaintiffs, and IKEA SUPPLY AG, Consolidated Plaintiff, and TARACA PACIFIC, INC. et al., Plaintiff-Intervenors, v. UNITED STATES, Defendant, Coalition FOR FAIR TRADE IN HARDWOOD PLYWOOD, Defendant-Intervenor.

Before: Jane A. Restani, Judge
Consol. Court No. 19–00212

[Commerce's determination that inquiry merchandise constitutes later-developed merchandise circumventing the Orders under 19 U.S.C § 1677j(d) is remanded for reconsideration consistent with this opinion.]

Dated: February 18, 2021

Daniel L. Porter, Curtis, Mallet-Prevost, Colt & Mosle LLP, of Washington, DC, for Plaintiffs Shelter Forest International Acquisition, Inc., Xuzhou Shelter Import & Export Co., Ltd., and Shandong Shelter Forest Products Co., Ltd.

Kristen S. Smith and *Sarah E. Yuskaitis,* Sandler, Travis & Rosenberg, PA of Washington, DC, for Consolidated Plaintiff IKEA Supply AG.

Jeffrey S. Grimson, Mowry & Grimson, PLLC, of Washington, DC, for Plaintiff-Intervenors Taraca Pacific, Inc., Liberty Woods International, Inc., MJB Wood Group, Inc., and Patriot Timber Products, Inc. With him on the brief were *Bryan P. Cenko*, *Jill A. Cramer*, *Kristin H. Mowry* and *Sarah M. Wyss.*

Gregory S. Menegaz, deKieffer & Horgan, PLLC, of Washington, DC, for Plaintiff-Intervenors Shanghai Futuwood Trading Co., Ltd., Linyi Glary Plywood Co., Ltd., and Far East American, Inc. With him on the brief were *J. Kevin Horgan* and *Alexandra H. Salzman*.

Sonia M. Orfield, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, DC, for the Defendant. With her on the brief was *Savannah R. Maxwell*, Of Counsel, Office of the Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce.

Timothy C. Brightbill, Wiley Rein LLP, of Washington, DC, for Defendant-Intervenor Coalition for Fair Trade in Hardwood Plywood. With him on the brief were *Elizabeth S. Lee*, *John A. Riggins*, *Maureen E. Thorson*, *Stephanie M. Bell*, and *Tessa V. Capeloto*.

OPINION

Restani, Judge:

This action concerns the United States Department of Commerce's ("Commerce") affirmative determination that certain merchandise constitutes later-developed merchandise and is circumventing the antidumping and countervailing duty orders on hardwood plywood

from China under 19 U.S.C § 1677j(d).[1] Consolidated Plaintiffs, Shelter Forest International Acquisition Inc., et. al. ("Shelter Forest") and IKEA Supply AG., et al. ("IKEA"), and Plaintiff-Intervenors, Shanghai Futuwood Trading Co., et. al. ("Futuwood") and Taraca Pacific Inc., et al. (the "Importer's Alliance"), challenge Commerce's affirmative anticircumvention determination.[2] The Government and Defendant-Intervenor, the Coalition for Fair Trade in Hardwood Plywood (the "Coalition"), maintain that Commerce's determination is supported by substantial evidence and in accordance with law.[3]

Before the court are six issues: (1) whether Commerce's affirmative circumvention determination that inquiry merchandise constitutes later-developed merchandise within the meaning of 19 U.S.C. § 1677j(d) is supported by substantial evidence and in accordance with law, (2) whether Commerce's refusal to review Shelter Forest's submission of new factual information was reasonable, (3) whether Commerce's application of the China-wide rate as the cash deposit rate was reasonable, (4) whether Commerce's decision to apply the results of its determination as of the signature date, not the publication date, of the initiation of the inquiry was lawful pursuant to 19 C.F.R. § 351.225(l)(2), (5) whether Commerce was required to notify the U.S. International Trade Commission ("ITC") prior to its determination, and (6) whether Commerce reasonably rejected IKEA's rebuttal case brief for containing untimely affirmative argument.

For the following reasons, the court remands this case for reconsideration consistent with this opinion.

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[1] *See Certain Hardwood Plywood Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders*, 84 Fed. Reg. 65,783 (Dep't Commerce Nov. 29, 2019) ("*Final Determination*"), and accompanying *Issues and Decision Memorandum for the Final Determination of the Anti-Circumvention Inquiry: Certain Hardwood Plywood Products from the People's Republic of China*, A-570–051, C-570–052, P.R. 240 (Dep't Commerce Nov. 22, 2019) ("*I & D Memo*").

[2] *See* Pls. Shelter Forest's Br. in Supp. of their R. 56.2 Mot. for J. on the Agency R., ECF No. 50–1 (Apr. 24, 2020) ("Shelter Forest Br."); IKEA Supply AG's Mem. of P. & A. in Supp. of its R. 56.2 Mot. for J. on the Agency R., ECF No. 51 (Apr. 24, 2020) ("IKEA Br."); Mem. of P. & A. in Supp. of R. 56.2 Mot. for J. on the Agency R. by Pl-Intervenors and Consolidated Pls.' Taraca Pacific, Inc., Liberty Woods Int'l, Inc., MJB Wood Group, Inc. AKA MJB Wood Group, LLC, Patriot Timber Products, Inc., ECF No. 47–1 (Apr. 24, 2020) ("Importers Alliance Br."); Consolidated Pls' Shanghai Futuwood Trading Co., Ltd., Linyi Glary Plywood Co., Ltd., and Far East American, Inc. R. 56.2 Mem. in Supp. of Mot. for J. upon the Agency R., ECF No. 46 (April 24, 2020) ("Futuwood Br."). Unless addressing an argument specific only to a certain plaintiff or plaintiff-intervenor, this opinion refers to Consolidated Plaintiffs and Plaintiff-Intervenors collectively as "Plaintiffs."

[3] *See* Def.'s Resp. to Consolidated Pls.' R. 56.2 Mots. for J. on the Agency R., ECF No. 56 (Aug. 6, 2020) ("Gov. Br."); Coalition for Fair Trade in Hardwood Plywood Resp. to Mots. for J. on the Agency R., ECF No. 58 (Aug. 7, 2020) ("Coalition Br.").

BACKGROUND

In January 2018, Commerce issued orders on certain hardwood plywood products from China. In relevant part, the Orders[4] cover:

> ...hardwood and decorative plywood, and certain veneered panels as described below. For purposes of this proceeding, hardwood and decorative plywood is defined as a generally flat, multilayered plywood or other veneered panel, consisting of two or more layers or plies of wood veneers and a core, with the face and/or back veneer made of non-coniferous wood (hardwood) or bamboo. The veneers, along with the core may be glued or otherwise bonded together. ...
>
> ...For purposes of [the Orders,] a "veneer" is a slice of wood regardless of thickness which is cut, sliced or sawed from a log, bolt, or flitch. The face and back veneers are the outermost veneer of wood on either side of the core irrespective of additional surface coatings or covers as described below. The core of hardwood and decorative plywood consists of the layer or layers of one or more material(s) that are situated between the face and back veneers. The core may be composed of a range of materials, including but not limited to hardwood, softwood, particleboard, or medium-density fiberboard (MDF).

AD Order, 83 Fed. Reg. at 512; *CVD Order*, 83 Fed. Reg. at 515.

In June 2018, the Coalition requested Commerce conduct an anti-circumvention inquiry pursuant to 19 U.S.C. § 1677j(c)-(d) and 19 CFR § 351.225(i)-(j). *See Letter from Petitioner, Certain Hardwood Plywood Products from the People's Republic of China: Request for Anti-Circumvention Inquiry* at 2–4, P.R. 1–4 (June 26, 2018) ("*Petitioner's Request*"). Plaintiffs provided comments to Commerce opposing this request.[5] In September 2018, Commerce initiated an anti-circumvention inquiry pursuant to 19 U.S.C. § 1677j(d) with respect to

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[4] *See Certain Hardwood Plywood Products from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 83 Fed. Reg. 504 (Dep't Commerce Jan. 4, 2018) ("*AD Order*"); *Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Order*, 83 Fed. Reg. 513 (Dep't Commerce Jan. 4, 2018) ("*CVD Order*") (collectively, the "Orders").

[5] *See Letter on Behalf of Importers Alliance to Commerce, Objection to Second Request for Anti-Circumvention Inquiry*, P.R. 30–32 (June 26, 2018); *FEA & Chinese Exporters, Comments in Opposition to Request for Anti-Circumvention Inquiry*, P.R. 35 (July 16, 2018); *Letter on Behalf of IKEA to Commerce, Petitioners' Second Anti-Circumvention Inquiry Request*, P.R. 36 (July 16, 2018); *Shelter Forest, Comments on Certain U.S. Producers' Request for Anti-Circumvention Inquiry*, P.R. 37–39 (July 16, 2018).

later-developed merchandise. *See Certain Hardwood Plywood Products from the People's Republic of China: Initiation of Anti-Circumvention Inquiry on the Antidumping Duty and Countervailing Duty Orders*, 83 Fed. Reg. 47,883 (Dep't Commerce Sept. 21, 2018) ("*Initiation Notice*"). This inquiry sought to determine whether: (1) certain plywood with face and back veneers made of radiata and/or agathis pine (2) "[h]as a Toxic Substances Control Act (TSCA) or California Air Resources Board (CARB) label certifying that it is compliant with TSCA/CARB requirements; and (3) is made with a resin, the majority of which is comprised of one or more of the following three product types—urea formaldehyde, polyvinyl acetate, and/or soy" ("inquiry merchandise") is later-developed merchandise circumventing the Orders. *Id*. at 47,883, 47,885.

In initiating this inquiry, Commerce examined the Coalition's claims that inquiry merchandise was not commercially available prior to the initiation of the investigations, but was developed, produced and marketed after the Orders as "a direct substitute for merchandise subject to the Orders." *Id*. at 47,883, 47,885–86. Commerce identified 43 Chinese exporters of inquiry merchandise, but due to resource constraints ostensibly limited individual examination to three mandatory respondents who account for the largest exports by volume: Lianyungang Yuantai International Co., Ltd. ("Yuantai"), Linyi Glary Plywood Co., Ltd. ("Glary"), and Shanghai Futuwood Trading Co., Ltd. ("Futuwood"). *See Anti-Circumvention Inquiry of Certain Hardwood Plywood Products from the People's Republic of China: Respondent Selection*, at 2–6, P.R. 128 (Nov. 9, 2018) ("*Respondent Selection Memo*"). Commerce issued inquiry (and supplemental) questionnaires to the three exporters.[6] Commerce received responses from the three exporters as well as a sua sponte response to some of the questions raised in a supplemental questionnaire from Shelter Forest. *Shelter Forest, Response to Supplemental Questionnaire*, P.R. 159 (Feb. 12, 2019).

Commerce issued a preliminary affirmative determination, finding that inquiry merchandise "constitutes later-developed merchandise that is circumventing, and should be included within, the scope of the Orders." *Preliminary Decision Memorandum for the Anti-Circumvention Inquiry on the Antidumping and Countervailing Duty Orders on Certain Hardwood Plywood Products from the People's Republic of China* at 21, A-570–051, C-570–052, P.R. 166, (Dep't

[6] *See Department of Commerce, Questionnaire to Shanghai Futuwood Trading Company Ltd.,* P.R. 129 (Nov. 9, 2018); *Department of Commerce, Questionnaire to Lianyungang Yuantai International Trade Co., Ltd.*, P.R. 130 (Nov. 9, 2018); *Department of Commerce, Questionnaire to Linyi Glary Plywood Co. Ltd.*, P.R. 131 (Nov. 9, 2018).

Commerce June 4, 2019) ("*PDM*"). In its review of the evidence submitted, Commerce determined that: (1) the inquiry merchandise was not commercially available at the time of the initiation of the investigations of the Orders, *PDM* at 9–17, (2) applying the statutory criteria, inquiry merchandise is similar to subject merchandise such that it should be included within the scope of the Orders, *see id.* at 17–21; *see also* 19 U.S.C. § 1677j(d)(1), and (3) the merchandise under consideration did not incorporate a significant technological advance or alteration of an earlier product requiring Commerce to notify the ITC under 19 U.S.C. § 1677j(e)(1)(C), *PDM* at 21.

Commerce directed U.S. Customs and Border Protection ("CBP") to "suspend liquidation and to require a cash deposit of estimated duties on unliquidated entries of inquiry merchandise that were entered, or withdrawn from warehouse, for consumption on or after September 18, 2018[.]" *Certain Hardwood Plywood Products From the People's Republic of China: Preliminary Affirmative Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders*, 84 Fed. Reg. 27,081, 27,082 (Dep't Commerce June 11, 2019). The parties dispute whether the signature date (September 18, 2018) or the publication date in the Federal Register (September 21, 2018) is the proper date for Commerce to rely on as the date of initiation, pursuant to 19 C.F.R. § 351.225(l)(2). *See* Gov. Br. at 53–56; Coalition Br. at 47–50; Shelter Forest Br. at 47–53; Importers Alliance Br. at 34–43; *I & D Memo* at 41–43.

In response to the preliminary determination, Shelter Forest submitted information regarding the composition of its glue, which Commerce rejected as untimely new factual information ("NFI") pursuant to 19 C.F.R. § 351.301 and 19 C.F.R. § 351.302. *See Letter from Shelter Forest, Response to the Department's Question Regarding E0 Glue*, *P.R. 183* (July 3, 2019) ("*Shelter Forest July 3 Letter Submission*"); *Certain Hardwood Plywood Products from the People's Republic of China: Anti-Circumvention Inquiry – Rejection of Submission,* P.R. 188 (July 10, 2019) ("*Commerce Rejection of Shelter Forest Submission")*. Following Shelter Forest's request, Commerce further declined to solicit the NFI. *See Letter from Shelter Forest, Response to Commerce's Letter Dated July 10, 2019, and Request for Commerce to Solicit Necessary New Factual Information*, P.R. 193 (July 11, 2019) ("*Shelter Forest NFI Request*"); *Commerce's Denial of Request to Solicit New Factual Information*, P.R. 199 (July 17, 2019) ("*Commerce Denial of NFI Request*").

Following the preliminary determination, Commerce received case briefs and rebuttal briefs from Plaintiffs and other interested parties.[7] Commerce rejected IKEA's rebuttal brief first for containing "untimely new factual information," *see Rejected IKEA Rebuttal Brief*; *Commerce's Original Rejection of IKEA's Rebuttal Brief* at 1, P.R. 222 (Aug. 12, 2019), and then in a subsequent letter, Commerce corrected its reason for rejecting a portion of the brief for raising untimely new affirmative argument. *See IKEA Resubmission of Rebuttal Brief*; *Commerce's Clarified Rejection of IKEA's Rebuttal Brief*, P.R. 227 (August 15, 2019) ("*Commerce Clarified IKEA Rejection*"); *IKEA Response to Commerce's Second Rejection of IKEA's Rebuttal Brief*, P.R. 229 (Aug. 20, 2019). IKEA contends that this rejection was improper. *See* IKEA Br. at 35.

Commerce issued its final determination in November 2019, finding inquiry merchandise was later-developed merchandise and was circumventing the Orders. *See Final Determination*, 84 Fed. Reg. at 65,783; *I & D Memo* at 36, 44. The parties dispute whether this affirmative determination is supported by substantial evidence and otherwise in accordance with law. *See* Gov. Br. at 13–43; Coalition Br. at 13–37; Shelter Forest Br. at 22–42; Futuwood Br. at 13–31; Importers Alliance Br. at 8–34; IKEA Br. at 20–29. It is also disputed whether Commerce was required to notify the ITC prior to its determination, *see* Gov. Br. at 56–58; Coalition Br. at 46–47; IKEA Br. at 31–33; *I & D Memo* at 36–41, and whether Commerce's application of the China-wide rate as the cash deposit rate was lawful, *see* Gov. Br. at 51–53; Shelter Forest Br. at 42–47.

JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction pursuant to 28 U.S.C. § 1581(c) and 19 U.S.C. § 1516a(a)(2)(B)(vi). The court "hold[s] unlawful any determination, finding, or conclusion found . . . to be unsupported by substantial evidence on the record, or otherwise not in accordance with law[.]" 19 U.S.C. § 1516a(b)(1). To determine whether Commerce's actions are supported by substantial evidence, the court assesses whether Commerce's actions are reasonable on the record as a whole.

[7] Plaintiffs' submitted case briefs including: *Importers Alliance Case Br.*, P.R. 201 (July 18, 2019); *IKEA Case Br.*, P.R. 202 (July 18, 2019); *Shelter Forest Case Br.*, P.R. 203 (July 18, 2019); *Shelter Forest Resubmission of Case Br.*, P.R. 211 (July 29, 2019); *Glary and Futuwood Case Br.*, P.R. 204 (July 18, 2019). IKEA, Shelter Forest, the Importer's Alliance and the Coalition submitted rebuttal briefs, some of which were rejected by Commerce. *See Rejected IKEA Rebuttal Brief*, P.R. 213 (July 31, 2019); *IKEA Resubmission of Rebuttal Brief*, P.R. 225 (Aug. 14, 2019); *IKEA Objection to Rejection*, P.R. 226 (Aug. 14, 2019); *Coalition Rebuttal Brief*, P.R. 216 (July 31, 2019); *Commerce's Rejection of Shelter Forest Rebuttal Brief*, P.R. 220 (Aug. 12, 2019); *Commerce's Rejection of Importers Alliance Rebuttal Brief*, P.R. 221 (Aug. 12, 2019).

See Nippon Steel Corp. v. United States, 458 F.3d 1345, 1351 (Fed. Cir. 2006).

DISCUSSION

To prevent the circumvention of an antidumping or countervailable duty order, Section 781(d) of the Tariff Act of 1930 (the "Act") provides that Commerce may consider whether merchandise developed after an investigation was initiated is within the scope of such order. 19 U.S.C. § 1677j(d)(1); *see also* 19 C.F.R. § 351.225(j) ("In determining whether later-developed merchandise is within the scope of an antidumping or countervailing duty order, [Commerce] will apply section 781(d) of the Act."). Commerce must consider the statutory factors and "take into account any advice provided by the [ITC]" in making this determination. 19 U.S.C. § 1677j(d)(1).[8] If later-developed merchandise "incorporates a significant technological advance or significant alteration of an earlier product[,]" Commerce must notify the ITC prior to making its determination. 19 U.S.C. § 1677j(e)(1). For the reasons described below, the court holds that Commerce's affirmative circumvention determination regarding inquiry merchandise constituting later-developed merchandise is not supported by substantial evidence.[9]

I. Commerce's determination that inquiry merchandise constitutes later-developed merchandise pursuant to 19 U.S.C. § 1677j(d) is unsupported by substantial evidence.

The question before Commerce in this anticircumvention inquiry was whether inquiry merchandise qualified as later-developed merchandise under 19 U.S.C. § 1677j(d). *See I & D Memo* at 6. Commerce's affirmative determination is not supported by substantial evidence for three reasons.

First, Commerce defined inquiry merchandise narrowly, adopting the exact definition proposed by the Coalition, that imposed almost impossible requirements on the Plaintiffs to show that inquiry mer-

[8] The statutory factors include whether the later-developed merchandise and the merchandise subject to the original orders have the same general physical characteristics, the same expectations of the ultimate purchasers, the same ultimate use, are sold through the same channels of trade, and are advertised and displayed in a similar manner. 19 U.S.C. § 1677j(d)(1). These factors are not the focus of this action. Rather, Plaintiffs challenge the threshold question of whether the merchandise at issue is later-developed at all.

[9] Plaintiffs do not dispute Commerce's application of a "commercial availability" standard to assess whether inquiry merchandise was later-developed. Gov. Br. at 13–14; *see also* Shelter Forest Br. at 22–25; Importers Alliance Br. at 12; IKEA Br. at 23–28; Futuwood Br. at 8, 25–26. This standard, however, is not in the statute and appears to have derived from Commerce past practice. *Id.*; 19 U.S.C. § 1677j(d). Regardless of the contours of this standard, it is unreasonable for Commerce to apply it so narrowly as to preclude the consideration of probative evidence, as it has done here.

chandise was commercially available prior to December 8, 2016. *Compare Petitioner's Request*, at 7–9; *with Initiation Notice*, 83 Fed. Reg. at 47,883, 47,885. Such near impossibility is reflected in Commerce's requirement that respondents provide evidence of the actual TSCA or CARB label adhered to the product to demonstrate compliance, as opposed to accepting other evidence that could equally indicate the product met CARB or TSCA specifications. *I & D Memo* at 3, 19–21, 26. The lack of a reasoned basis for the labeling requirement undermines Commerce's determination that Glary and Yuantai did not produce inquiry merchandise prior to December 8, 2016.

Glary submitted CARB certified labels for plywood dated after December 8, 2016, but CARB certificates only for the years 2013–2018. *Id.* at 10, 19. Glary also submitted sales documentation, including purchase orders and invoices from prior to December 2016, which show requests for "CARB certified" labels. *Id.* Invoices and packing lists appear to confirm that the merchandise complied with the label requirement. *Id.*[10] Glary contends that CARB certification only applies to product lines and not specific sales so it cannot provide further evidence of its compliance with the label requirement. *Id.* at 10, 19.

Commerce has not provided a sound basis for why it is reasonable to require evidence of the actual labels or why it cannot accept other evidence that a producer is certified and able to fulfill sales requests with CARB compliant labels. *See id.* at 19. The Government points to no evidence that respondents would keep the required label information in the normal course of business. Without an explanation as to why it is reasonable to require evidence of the actual labels in Commerce's assessment of later-developed merchandise, the court cannot determine whether Commerce properly concluded that the CARB certificates and supporting sales documentation submitted by Glary were insufficient to demonstrate that inquiry merchandise was commercially available prior to December 8, 2016. On remand, Commerce should consider whether it may accept other evidence that indicates TSCA or CARB product compliance or otherwise explain why evidence of the actual labels is required for its assessment.

Second, Commerce's determination that no respondent met the glue requirement for inquiry merchandise is not supported by substantial evidence. Commerce appears to have placed unreasonable expectations on respondents regarding the evidence required to demonstrate a product "is made with a resin, the majority of which is comprised of

[10] Similarly, Yuantai provided a purchase order requesting CARB compliant plywood, supported by its supplier's CARB certificate. *I & D Memo* at 26. Commerce also found this evidence insufficient because Yuantai did not demonstrate the plywood product was actually labeled CARB compliant. *Id.*

one or more of the following three product types—urea formaldehyde, polyvinyl acetate, and/or soy" to show inquiry merchandise was commercially available prior to December 8, 2016. *See id.* at 3, 11–15, 21, 23–26. Shelter Forest submitted two sworn statements to support its claim that inquiry merchandise was commercially available prior to December 8, 2016, both of which stated its plywood was made with a "urea formaldehyde base."[11] *Id.* at 24. Commerce concluded that because these statements described the glue as "urea formaldehyde base" and did not include the word "majority", the glue did not meet the third criteria of inquiry merchandise. *Id.* at 24–25. The natural reading of "base" in this context is that the *majority* of the composition is urea formaldehyde. Commerce suggests that it would have been convinced only by documentation demonstrating "the exact composition of [Shelter Forest's] resin to demonstrate that the majority was of urea formaldehyde[,]" *see id.* at 24, but did not ask Shelter Forest for supplemental information and refused to review it once Shelter Forest submitted it. *See Commerce Rejection of Shelter Forest Submission*; *Commerce Denial of NFI Request*. This determination was unreasonable, as discussed further in Section II *infra*.

Glary, however, after providing its glue recipe, photographs of its present-day glue production and CARB certificates from 2013–2018 showing certification to produce plywood which required urea formaldehyde glue, still failed in Commerce's view to demonstrate it met the resin criteria of inquiry merchandise. *I & D Memo* at 21.[12] Commerce concluded that Glary only demonstrated that it *could* make inquiry merchandise, not that it *did* actually produce it. *Id*. Thus, it concluded inquiry merchandise had not been shown to be commercially available prior to December 8, 2016. *Id*. Once again, Commerce applied strict requirements for historical evidence. Taken as a whole, Commerce's determination that respondents did not meet the resin criteria of inquiry merchandise is not supported by substantial evi-

[11] Shelter Forest's two sworn declarations stated as follows:

(1) "[In] Shelter Forest's Q&V Response, Zhang FangMu, the General Manager of Shelter Forest's China operations states, '{t}he resin was specified as E0 urea formaldehyde base with an emissions standard of less than .04ppm of Formaldehyde, and therefore can be CARB certified . . . "

(2) "With Shelter Forest's Initiation Comments, Ryan Loe states that the '{s}pecification confirms that the glue used [for its plywood] is eZERO (Melamine Fortified), which is a glue made from a urea formaldehyde base."

I & D Memo at 24.

[12] Futuwood and Glary argue that plywood must be bonded with urea formaldehyde glue to be CARB certified. *I & D Memo* at 11. Commerce determined that in order to show this, an interested party must "provide[ ] an exhaustive list identifying all CARB compliant glues, identifying urea formaldehyde as the only CARB compliant glue." *Id.* at 23–24. No party points to evidence showing whether CARB certification requires or makes evident certain glue use, but Commerce's conclusions on this point are unsubstantiated.

dence. On remand, Commerce shall explain what evidence it specifically requires with regard to the resin requirement of inquiry merchandise, explain why that evidence is required, identify any deficiencies in respondents' evidence, and to the extent necessary, provide respondents an opportunity to submit the supplemental information it requires.

Finally, Commerce's determination that Yuantai did not meet the specific wood requirements for inquiry merchandise is not supported by substantial evidence. Commerce appears to have unreasonably concluded that Yuantai's submission of a plywood purchase contract was entirely unreliable because of a translation error and refused to allow for correction or explanation. *Id.* at 25–26, 29–30. The parties dispute whether the error was minor, whether it made the entire document unreliable and whether Commerce was obligated to give Yuantai an opportunity to explain the error. *Id.* at 13, 25–26, 29–30; Importers Alliance Br. at 27–31; Gov. Br. at 32–38; Coalition Br. at 30–32. Commerce concedes that the plywood purchase contract clearly shows the purchase of plywood with radiata pine veneers. *I & D Memo* at 26. The contract also shows CARB compliant merchandise with E0 glue. *Id*. By not giving Yuantai an opportunity to correct or explain the error, the court cannot determine whether Commerce acted reasonably in not considering the purchase contract. On remand, Commerce shall provide Yuantai with the opportunity to correct or explain the error and either consider the document or explain why the error makes the entire document unreliable.

II. Commerce's rejection of Shelter Forest's July 3 submission was unreasonable

The parties dispute whether Shelter Forest's July 3 letter submission regarding the composition of its glue was untimely NFI such that Commerce was justified in rejecting it.[13] The Government contends that Commerce's rejection of this submission as untimely NFI is lawful and within its discretion pursuant to 19 C.F.R. §§ 351.301, 351.302 and 351.204(c). Gov. Br. at 43–51; *Commerce Denial of NFI Request* at 2–3; *Commerce Rejection of Shelter Forest Submission* at 2; *see also* Coalition Br. at 37–43. The Government also argues that Commerce was not required to solicit additional factual information from Shelter Forest. Gov. Br. at 49–51. Shelter Forest counters that Commerce's refusal to consider its letter submission was unlawful and an abuse of discretion because Commerce's regulations permit

[13] *See Shelter Forest July 3 Letter Submission; Commerce Rejection of Shelter Forest Submission*; *Shelter Forest NFI Request*; *Commerce Denial of NFI Request* at 2–3.

the acceptance and review of NFI at any time during the proceeding. Shelter Forest Br. at 10–22 (citing 19 C.F.R. §§ 351.301(a), 351.302(b), (d)(1)); *see also* IKEA Br. at 29–31 (arguing that Commerce's refusal to accept or solicit the additional information from Shelter Forest was unfair and arbitrary). For the reasons stated *infra*, the court holds that Commerce abused its discretion in not considering Shelter Forest's submission regarding the content of its glue.

The purpose of this anticircumvention inquiry is to determine accurately whether inquiry merchandise is later-developed such that it should be considered "within the scope of an outstanding antidumping or countervailing duty order issued[.]" 19 U.S.C.§ 1677j(d). As a part of this investigation, Commerce must give respondents notice when it identifies deficiencies in submissions and provide parties with an opportunity to respond. *See* 19 U.S.C. § 1677m(d). Commerce's argument that it acted within its discretion in not considering Shelter Forest's submission fails for three reasons: (1) the nature of later-developed merchandise inquiries is such that Commerce should be very accepting of volunteers, not distinguish strictly between mandatory and voluntary respondents as Commerce purported to do here, particularly when there is only one voluntary respondent, which had already met the other two criteria for inquiry merchandise; (2) Commerce reviewed and considered Shelter Forest's submissions in its later-developed merchandise analysis, creating an impression that it was accepted as a respondent, without providing any notice to Shelter Forest of any deficiencies until the *PDM*; and (3) an interest in fairness and accuracy outweighs any burden placed on Commerce in reviewing Shelter Forest's submission under the facts of this case.

19 U.S.C. § 1677j(d) is silent on procedures for identifying or selecting potential respondents for individual examination. The Government argues that Commerce was not required to consider Shelter Forest's submission because it limited its inquiry to the three mandatory respondents. Gov. Br. at 49–51. Commerce found no established practice when "forced to limit its examination due to the large number of potential respondents relative to its resource constraints." *Respondent Selection Memo* at 3. As a result, Commerce used guidance provided by section 777A(c) of the Act, codified as 19 U.S.C. §1677f-1(c),[14] which allows Commerce to limit its individual exami-

[14] 19 C.F.R. § 351.204, which sets out procedures "regarding the selection of persons to be examined, [and] the treatment of voluntary respondents that are not selected for individual examination" refers Commerce to Section 77A of the Act for an appropriate method by which Commerce may limit an investigation. Section 77A(c) provides:

> If it is not practicable to make individual weighted average dumping margin determinations under paragraph (1) because of the large number of exporters or producers involved in the investigation or review, the administering authority may determine the

nations to a reasonable number of exporters in an antidumping review if it determines that "it is not practicable to make individual weighted average dumping margin determinations . . ." for all known exporters or producers "because of the large number of exporters or producers involved in the investigation or review[.]" 19 U.S.C. § 1677f-1(c)(2); *see also Respondent Selection Memo* at 2–4. Section 1677f-1 is silent on what constitutes a "large number of exporters or producers." 19 U.S.C. § 1677f-1(c)(2). Commerce construed 43 Chinese exporters of inquiry merchandise as a large number, and considering its resources and statutory obligations, limited its individual examinations to the three largest exporters. *Respondent Selection Memo* at 3–6.

Commerce has some discretion to consider its resources and limit an investigation, but the court concludes that it has abused this discretion by limiting its investigation in such a way to preclude Shelter Forest's submission. Where possible, Commerce should accept volunteers in a later-developed merchandise inquiry to achieve an accurate result. Shelter Forest was the only voluntary respondent, and Commerce had already determined Shelter Forest had met the other two criteria of inquiry merchandise. *I & D Memo* at 24. Rejecting Shelter Forest's letter submission was inconsistent with Commerce's duty to accurately examine the market and determine whether a particular product was not previously commercially available and therefore, is later-developed merchandise under 19 U.S.C.§ 1677j(d).

Further, Commerce abused its discretion by rejecting Shelter Forest's submission as untimely when it had not provided notice to Shelter Forest regarding any deficiencies, as required by 19 U.S.C. §1677m(d).[15] The Government argues that Shelter Forest was aware

> weighted average dumping margins for a reasonable number of exporters or producers by limiting its examination to—
>
> (A) a sample of exporters, producers, or types of products that is statistically valid based on the information available to the administering authority at the time of selection, or
>
> (B) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined.

19 U.S.C. § 1677f-1(c)(2).

[15] 19 U.S.C. § 1677m(d) provides the following:

> If the administering authority or the Commission determines that a response to a request for information under this subtitle does not comply with the request, the administering authority or the Commission (as the case may be) shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of investigations or reviews under this subtitle. If that person submits further information in response to such deficiency and either—
>
> (1) the administering authority or the Commission (as the case may be) finds that such response is not satisfactory, or

that Commerce had doubts about the content of its glue because (1) Shelter Forest responded to a supplemental questionnaire issued to mandatory respondents that requested information about the content of the glue, (2) in that response, Shelter Forest did not submit the additional information regarding the content of its glue, and (3) despite "ample opportunity" otherwise, Shelter Forest did not place the additional factual information regarding its glue on the record, whereas other mandatory respondents did. Gov. Br. at 47–48; *see, e.g., Department of Commerce, Supplemental Questionnaire to Linyi Glary Plywood Co. Ltd.*, P.R. 145 (Dec. 19, 2018); *Linyi Glary, Response to Supplemental Questionnaire* at 6–7, 17–18, 21–22, Ex. SQ1–8, C.R. 125–130, P.R. 158 (February 12, 2019); *c.f. Shelter Forest, Response to Supplemental Questionnaire* at 2, 5, 7. For the following reasons, these arguments fail.

Commerce's regulations prescribe time limits for the submission of factual information, requiring submission 30 days before the scheduled date of the preliminary determination. *See* 19 C.F.R. § 351.301(c)(1), (c)(3)(i)–(ii).[16] Commerce's reliance on these regulations to reject Shelter Forest's submission, however, is unreasonable. Assuming arguendo the filings were untimely, the tardiness resulted from Commerce's failure to notify Shelter Forest of any deficiencies in its submissions until Commerce released its preliminary determination memo. *PDM* at 16–17.

Section 1677m(d) mandates that Commerce provide parties with notice of deficiencies in submissions and where practicable, an opportunity to correct or explain those deficiencies. 19 U.S.C. § 1677m(d). Shelter Forest's access to supplemental questionnaires seeking additional information from the mandatory respondents did not provide adequate notice that its glue evidence was deficient. Until Commerce identified this deficiency in the *PDM*, Shelter Forest did not have an opportunity to provide additional evidence regarding the content of

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(2) such response is not submitted within the applicable time limits,

then the administering authority or the Commission (as the case may be) may, subject to subsection (e), disregard all or part of the original and subsequent responses.

[16] In general, time limits regarding the submission of new factual information have been found to be both necessary and reasonable for Commerce to accomplish its work. *Hyosung Corp. v. United States*, 35 CIT 343, 347 (2011). Where reasonable, Commerce may set and enforce deadlines by rejecting untimely filings. *See* 19 C.F.R. §§ 351.301, 351.302; but *see NTN Bearing Corp. v. United States*, 74 F.3d 1204, 1207 (Fed. Cir. 1995) ("a regulation which is not required by statute may, in appropriate circumstances, be waived and must be waived where failure to do so would amount to an abuse of discretion."); *ArcelorMittal USA LLC v. United States*, 399 F. Supp. 3d 1271, 1279–82 (CIT 2019) ("[s]trict enforcement of time limits and other requirements is neither arbitrary nor an abuse of discretion when Commerce provides a reasoned explanation of its decision." (citation omitted)).

its glue. *PDM* at 16–17. Subsequently, Shelter Forest promptly attempted to correct the deficiencies identified with evidence that it claims unequivocally shows inquiry merchandise was commercially available prior to December 8, 2016. *See Shelter Forest July 3 Letter Submission* at 2. Commerce abused its discretion by rejecting this information as untimely. 19 C.F.R. § 351.301 and § 351.302 cannot be read to discharge Commerce of its obligation to notify respondents of deficiencies in submissions under § 1677m(d) and then allow Commerce to claim attempts to correct those deficiencies are untimely. Under 19 U.S.C. § 1677m(d), Commerce must raise identified deficiencies such as this one and provide respondents with an opportunity to explain, correct or supplement it.

Furthermore, Commerce cannot plausibly argue that it does not have the resources to review Shelter Forest's submission pursuant to 19 U.S.C. § 1677m(a). Gov. Br. at 48–50. The Government does not point to any other voluntary respondent that Commerce considered, *see PDM* at 4, nor does it provide any evidence to suggest that reviewing Shelter Forest's submission would be unduly burdensome. Gov. Br at 48–50. Commerce had more than four months to review the approximately 100-page submission prior to its issuance of the final determination. *See Shelter Forest July 3 Letter Submission*; *see also Final Determination*, 84 Fed. Reg. 65,783. The Government's argument regarding resource constraints is further suspect because Commerce already reviewed Shelter Forest's submission and determined Shelter Forest met two of the three requirements of inquiry merchandise. *PDM* at 4, 13, 15. It is unreasonable for Commerce to now claim that it would be administratively burdensome to consider Shelter Forest's prompt attempt to correct these identified deficiencies simply because it considers Shelter Forest in a different category from that of a mandatory respondent. Gov. Br. at 47–51; *see also PDM* at 16–17.

Furthermore, the circumstances here suggest that "the interests in fairness and accuracy outweigh [any] burden [placed] upon Commerce" in considering Shelter Forest's submission. *Grobest & I-Mei Indus. (Vietnam) Co., Ltd. v. United States*, 36 CIT 98, 125, 815 F. Supp. 2d 1342, 1365–67 (2012) (finding abuse of discretion when Commerce rejected an untimely but vital correction that came early enough in the proceeding to minimize the burden on Commerce of reviewing it).[17] Shelter Forest is purportedly providing evidence that the glue used in certain products sold prior to December 2016 is more than 98% urea formaldehyde, Shelter Forest Br. at 20, which if true

[17] On a different set of facts, the court in *Grobest* was guided by "the remedial, and not punitive, purpose of the antidumping statute. . . and the statute's goal of determining margins "as accurately as possible[.]" *Id*. at 1365 (internal citations and quotation marks omitted).

would result in inquiry merchandise not being later-developed. *See I & D Memo* at 24. Apparently, Shelter Forest went to extraordinary lengths to retrieve and submit documentation on the composition of its glue in response to the *PDM*. *See Shelter Forest July 3 Letter Submission* at Exhibit 1; *see also* Shelter Forest Br. 21–22; *PDM* at 16–17. If Commerce was only to be persuaded by several-year-old paper records detailing glue preparation and production, it was required to notify Shelter Forest of that requirement and provide an opportunity to respond. Any burden imposed on Commerce in reviewing Shelter Forest's submission is minimal and its decision to reject it points to an abuse of discretion, likely to lead to an inaccurate and punitive result. *C.f. ArcelorMittal USA LLC*, 399 F. Supp. 3d at 1281–82. Accordingly, on remand, Commerce shall consider Shelter Forest's July 3 submission, notify Shelter Forest of any deficiencies, and provide an opportunity to correct or explain those deficiencies, in accordance with 19 U.S.C. § 1677m(d).

III. Application of the China-wide rate of 182.90% as the cash deposit rate

Shelter Forest contends that Commerce applied AFA when it declined to review additional factual information from Shelter Forest and nonetheless, applied the China-wide cash deposit rate of 182.90%. Shelter Forest Br. at 42–47. The Government avers that it is not applying AFA to any of the respondents and that Shelter Forest has a "fundamental misunderstanding" regarding the rate assigned to it in an anticircumvention inquiry, which is derived from the investigation of the underlying Orders. Gov. Br. at 42–53; *I & D Memo* at 36; *see also* Coalition Br. at 51–52.

The Government maintains that where it affirmatively finds circumvention of an order, "the antidumping and countervailing duty rates that would apply to the inquiry merchandise would be the [same]. . . rates otherwise applicable to the relevant producer/exporter for in-scope merchandise already subject to the existing orders." Gov. Br. at 51. The assigned rate was set during the underlying investigation of the Orders and not determined during a subsequent administrative review. Gov. Br. at 51 (citing 19 U.S.C. § 1673d(c)(2)). The Government argues Plaintiffs are "subject to the suspension of liquidation of such entries at the China-wide rate (under the antidumping order) or the all-others rate (under the countervailing duty order)" unless Plaintiffs "could certify to CBP that the . . . inquiry merchandise was supplied by a . . . manufacturer [with] its own company-specific separate rate." Gov. Br. at 52; *see also I & D Memo* at 34–36.

The Government does not point to any opportunity provided to Plaintiffs to show that they were entitled to any rate other than an AFA-derived China-wide rate under the antidumping duty order.[18] Commerce argues it is not required to because Plaintiffs have not provided evidence that the China-wide rate was incorrect and Plaintiffs can request an administrative review to seek to obtain a more favorable assessment rate. Gov. Br. at 52 (citing *U.K. Carbon & Graphite Co. v. United States*, 37 C.I.T. 1295, 1312–13, 931 F. Supp. 2d 1322, 1336–37 (2013)); *see also I & D Memo* at 36.[19] Commerce's current approach appears to be inconsistent with the remedial purpose of 19 U.S.C. § 1677j(d). If on remand Commerce continues to reach an affirmative circumvention determination, Commerce shall provide Plaintiffs with an opportunity to demonstrate whether they qualify for a rate that is not derived from an AFA rate or otherwise explain why it is permissible not to provide Plaintiffs with this opportunity.

IV. Date of initiation pursuant to 19 C.F.R. § 351.225(l)

Commerce adopted September 18, 2018, the signature date of the *Initiation Notice* as the effective date of Commerce's inquiry, rather than September 21, 2018, the date of its publication in the Federal Register. *I & D Memo* at 41–43. The parties dispute the proper date for Commerce to rely on as the date of initiation, pursuant to 19 C.F.R. § 351.225(l)(2)[20]. *See* Gov. Br at 53–56; Coalition Br. at 47–50;Shelter Forest Br. at 47–53; Importers Alliance Br. at 34–43. The regulations do not define "the date of initiation" and the statute is silent as to when duties should be imposed. *See* 19 U.S.C. § 1677j.

The Government's argument that because Commerce's regulations don't explicitly refer to publication, the date of initiation refers to the

[18] The Importers Alliance separately argues that Commerce's unfair weighing of evidence and decision not to verify information submitted by the parties amounted to the application of AFA. Importers Alliance Br. at 13–26. The Government does not point to any evidence demonstrating that Plaintiffs have been uncooperative justifying Commerce's application of AFA.

[19] Apparently, Plaintiffs have not yet requested an administrative review under 19 C.F.R. §§ 351.212(a)–(c), 351.213(b). In any case, a review would not likely completely remedy the harm of an improperly set deposit rate.

[20] The relevant provision provides:

> If the Secretary issues a preliminary scope ruling under paragraph (f)(3) of this section to the effect that the product in question is included within the scope of the order, any suspension of liquidation described in paragraph (l)(1) of this section will continue. If liquidation has not been suspended, the Secretary will instruct the Customs Service to suspend liquidation and to require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product entered, or withdrawn from warehouse, for consumption *on or after the date of initiation of the scope inquiry* . . .

19 C.F.R. § 351.225(l)(2) (emphasis added).

signature date, fails. Gov. Br. at 55–56; *see also* Coalition Br. at 48–50. Commerce must give parties adequate notice that their products may be subject to administrative action before suspending liquidation. 19 C.F.R. §§ 351.225(f), (l); *Tai-Ao Aluminium (Taishan) Co., Ltd. v. United States*, 391 F. Supp. 3d 1301, 1313–14 (CIT 2019), *aff'd*, 983 F.3d 487 (Fed. Cir. 2020). It is well settled that parties are charged with knowledge of administrative action, such as the inquiry at issue here, as of publication in the Federal Register. *See Target Corp. v. United States*, 33 C.I.T. 760, 779–80, 626 F. Supp. 2d 1285, 1300–01 (2009), *aff'd*, 609 F.3d 1352 (Fed. Cir. 2010) (citing 44 U.S.C. § 1507; *Fed. Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 384–85 (1947), for the proposition that publication in the Federal Register provides legal notice of its contents); *Tai-Ao Aluminium*, 391 F. Supp. 3d at 1314 ("Typically, publication [in the Federal Register] ... is sufficient to give notice of the contents of the document to a person subject to or affected by it.") (citation and internal quotation marks omitted).

Under 19 C.F.R. § 351.225(l)(2), "the date of initiation" cannot be the internal signature date of September 18, 2018 because the parties were not provided with adequate notice until the *Initiation Notice* was published in the Federal Register on September 21, 2018. *Initiation Notice* 83 Fed. Reg. at 47,883. As Commerce cannot suspend liquidation prior to providing parties with notice and the Government provides nothing to show the parties received adequate notice prior to publication, the date of initiation in this case must refer to the date of publication in the Federal Register. *See Tai-Ao Aluminium*, 391 F. Supp. 3d at 1313–14 ("Commerce cannot suspend liquidation until the date at which it provided the parties notice that their products could be subject to the administrative action."); *see also* Shelter Forest Br. at 47–53; Importers Alliance Br. at 34–39. Commerce's interpretation of 19 C.F.R. § 351.225(l)(2) that the "initiation date" refers to the signature date is not in accordance with law. Accordingly, on remand, if Commerce continues to find circumvention of the Orders, it should amend the effective date to the publication date.

V. Notification to the ITC

IKEA contends that Commerce's decision not to notify the ITC violates 19 U.S.C. § 1677j(e)(1)(C), which states that Commerce must consult the ITC "with respect to any later-developed merchandise which incorporates a significant technological advance or significant alteration of an earlier product[.]" 19 U.S.C. § 1677j(e)(1)(C). Commerce counters that "altering the production process of hardwood plywood" to produce inquiry merchandise as a substitute for the Order's subject merchandise, does not require Commerce to notify the

ITC under § 1677j(e)(1)(C). *I & D Memo* at 39–41.

IKEA's argument rests on a prior decision by Commerce not to initiate a minor alterations anticircumvention inquiry on softwood plywood because it was a "different product" from merchandise covered by the Orders and fell outside of the scope of the Orders. IKEA Br. at 13, 20–23; *see Certain Hardwood Plywood Products from the People's Republic of China: Minor Alterations Anti-Circumvention Inquiry Request* at 12–16, A-570–051, C-570–052 (Dep't Commerce Apr. 2, 2018) ("*Non-Initiation Memo*"); *Columbia Forest Products v. United States*, 399 F. Supp. 3d 1283, 1292–94 (CIT 2019). There, Commerce stated that the inclusion of "plywood with both face and back veneers of softwood, which was not considered in the ITC's injury analysis, could potentially create a conflict with the ITC injury determination, and impermissibly expand the scope of the Orders." *Non-Initiation Memo* at 14–15; *see also Certain Hardwood Plywood Products from the People's Republic of China: Final Scope Comments Decision Memorandum* at 17–19, A-570–051, C-570–052 (Dep't Commerce Nov. 6, 2017).[21]

Commerce attempts to distinguish that analysis by arguing that later-developed merchandise inquiries are distinct from minor alterations inquiries under 19 U.S.C. § 1677j(c), which was at issue in the prior case. *See* Gov. Br. at 18–21, 56–58; Coalition Br. at 46–47; *I & D Memo* at 39–41.[22] It is odd, however, that Commerce concluded that the broad category of softwood plywood may be in conflict with the ITC injury determination, but inquiry merchandise, which is a subset of softwood plywood, would not only *not* require notification to the ITC but also would not "conflict with the ITC injury determination, and impermissibly expand the scope of the Orders." *Non-Initiation Memo* at 14–15; *see also I & D Memo* at 8–10. If on remand, Commerce continues to believe an affirmative circumvention determination is warranted, Commerce should consider whether notification to the ITC is required by 19 U.S.C. § 1677j(e)(1) in light of its prior

[21] This court sustained Commerce's determination not to initiate a minor alterations anticircumvention inquiry regarding softwood plywood pursuant to 19 U.S.C. § 1677j(c)(2) as supported by substantial evidence and in accordance with law. *Columbia Forest Products*, 399 F. Supp. 3d at 1295–96.

[22] The two inquiries are in fact distinct, with separate statutory requirements. Section 1677j contemplates several inquiries Commerce may pursue to determine whether a product is circumventing and therefore should be interpreted as included in the scope of an AD or CVD order. While a later-developed merchandise inquiry focuses on the statutory factors provided in Section 1677j(d), minor alterations inquiries concern "articles altered in form or appearance in minor respects . . . whether or not included in the same tariff classification." *Wheatland Tube Co. v. United States*, 161 F.3d 1365, 1371 (Fed. Cir. 1998) (citing 19 U.S.C. § 1677j(c)(1)). Both provisions, however, provide a mechanism to Commerce to consider whether "certain types of articles within the scope of an order will be a proper clarification or interpretation of the order instead of improper expansion or change even where these products do not fall within the order's literal scope." *Id.* at 1370.

assessment and conclusions regarding the scope of the Orders, *see, e.g.*, *Non-Initiation Memo* at 12–16. Should Commerce continue to believe that it is not required to notify the ITC, Commerce should address whether its decision is subject to judicial review. 19 U.S.C. § 1677j(e)(1)(C).

VI. IKEA's rebuttal brief

Commerce rejected a portion of IKEA's rebuttal brief for raising a new affirmative argument not raised in its case brief. *Commerce Clarified IKEA Rejection*. IKEA contends that the rejection was improper under 19 C.F.R. § 351.309(d) and maintains that its rebuttal "directly addressed legal arguments presented in case briefs. . . . [and] argued important nuances to others' arguments." IKEA Br. at 35; *see also Rejected IKEA Rebuttal Brief*; *IKEA Resubmission of Rebuttal Brief*. The Government maintains that its decision to reject a portion of IKEA's rebuttal was both reasonable and lawful. *See* Gov. Br. at 58–60; *see also* Coalition Br. at 52–53.

Commerce abused its discretion in rejecting IKEA's new legal argument in its rebuttal brief pursuant to §351.309(d) because IKEA refers to an intervening court decision that was decided after the case briefs had been submitted. *See Rejected IKEA Rebuttal Brief*, at 2–4 (citing *Columbia Forest Products*, 399 F. Supp. 3d 1283); *see also IKEA Case Br.* (submitted to Commerce 13 days before the decision in *Columbia Forest Products*). Although pursuant to §351.309(d), a rebuttal brief may only respond to arguments previously raised in case briefs, it is unreasonable for Commerce to reject new legal authority in a rebuttal brief where it was impossible for a party to submit the relevant legal authority in the case briefs because the decision had not yet been published. Commerce, therefore, in not considering the newly raised legal authority, abused its discretion.

Furthermore, IKEA's reference to *Columbia Forest Products* is likely relevant to the anticircumvention proceeding at issue here. IKEA points to *Columbia Forest Products* to persuade Commerce that regardless of whether evidence shows inquiry merchandise was later-developed, Commerce should reach a negative circumvention determination based on the administrative record underlying the Orders. *Rejected IKEA Rebuttal Brief*, at 2–4 (citing *Columbia Forest Products*, 399 F. Supp. 3d 1283). The court does not opine on this issue, but merely finds Commerce should not have rejected the rebuttal brief and should have dealt with the legal argument presented.

CONCLUSION

For the foregoing reasons, Commerce's determination that inquiry merchandise constitutes later-developed merchandise and is circumventing the Orders under 19 U.S.C § 1677j(d) is remanded. The remand determination shall be issued within 60 days hereof. Comments may be filed 30 days thereafter and any response 15 days thereafter.

Dated: February 18, 2021
New York, New York

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

Slip Op. 21–20

IÇDAŞ CELIK ENERJI TERSANE VE ULASIM SANAYI A.S., Plaintiff and ÇOLAKOĞLU METALURJI A.S. & ÇOLAKOĞLU, DIS TICARET A.S., ("ÇOLAKOĞLU") Consolidated Plaintiffs, v. THE UNITED STATES, Defendant, and REBAR TRADE ACTION COALITION, Defendant-Intervenor.

Before: Gary S. Katzmann, Judge
Consol. Court No. 19–00149
PUBLIC VERSION

[The court sustains Commerce's Final Results and denies Plaintiffs' motion for judgment on the agency record challenging the final affirmative determination.]

Dated: February 19, 2021

Matthew M. Nolan, Arent Fox LLP, of Washington, DC, argued for plaintiff and consolidated plaintiffs. With him on the brief were *Leah Scarpelli* and *Natan P.L. Tubman*.

Ann C. Motto, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, DC, argued for defendant. With her on the brief were *Joseph H. Hunt*, Assistant Attorney General, *Jeanne E. Davidson*, Director, and *L. Misha Preheim*, Assistant Director. Of Counsel *Reza Karamloo*, Senior Attorney, Office of Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce. With them on the post argument submission was *Jeffrey Bossert Clark*, Acting Assistant Attorney General.

Maureen E. Thorson, Wiley Rein, LLP, of Washington, DC, argued for defendant-intervenor. With him on the brief were *Alan H. Price* and *John R. Shane*.

OPINION

Katzmann, Judge:

Under American law, to promote fair trade in the domestic market for American goods, the United States Department of Commerce ("Commerce") conducts investigations to determine whether foreign exporters and manufacturers are introducing products into the American market for below-market prices due to subsidies given by foreign governments. Commerce can offset those prices by imposing countervailing duties ("CVD"). This case presents a number of questions relating to Commerce's CVD determination regarding steel concrete reinforcing bar ("rebar") from Turkey. Did a foreign exporter and manufacturer cooperate with Commerce's investigation to the best of its ability? Was the manufacturer's "corrective" submission improperly rejected by Commerce? Did that exporter and manufacturer receive benefits, in a variety of forms, constituting subsidies triggering the imposition of duties under American law? Plaintiff Içdaş Celik Enerji Tersane ve Ulasim Sanayi A.S. ("Içdaş") and Consolidated-Plaintiff Çolakoğlu Metalurji A.S. and Çolakoğlu Dis Ticaret A.S. ("Çolakoğlu"), foreign manufacturers and exporters of steel rebar

from Turkey (collectively, "Plaintiffs") have initiated this suit against Defendant the United States ("Government") to challenge these and other aspects of Commerce's final results in the administrative review of the CVD order on Steel Concrete Reinforcing Bar From the Republic of Turkey. *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2016*, 84 Fed. Reg. 36,051 (Dep't Commerce July 26, 2019) ("*Final Results*").

Commerce's investigation resulted in a final determination that imports of rebar from Turkey produced by Içdaş were appropriately subject to CVD under Section 751 of the Tariff Act of 1930 as amended, 19 U.S.C. § 1675[1] . Final Results, 84 Fed. Reg. at 36,052; *see also* Issues and Decision Mem. (Dep't Commerce July 18, 2019) ("IDM"), P.R. 323. Commerce Içdaş benefited from reduced customs duties, VAT exemptions, and access to reduced-cost natural gas as a result of the general incentives scheme ("GIIS") program covering the construction of two power plants by Içdaş and an affiliated company, Içdaş Elektrik. IDM at 34–38. Commerce additionally determined that the GIIS program benefits received by Içdaş were contingent liabilities subject to the International Monetary Fund ("IMF") benchmark interest rate, and found that no usable tier-two natural gas benchmark information was available, resorting instead to a teir-three benchmark to determine whether natural gas was provided to Çolakoğlu for less than adequate remuneration. *Id.* at 37–38; 16–21. Finally, Commerce applied adverse facts available ("AFA") to Içdaş reported sales denominator in response to its inaccurate reporting of its total sales denominator. *Id.* at 28–29. Plaintiffs now appeal Commerce's *Final Results*. Pls.' Mot. For J. on the Agency R. and Supp. Opening Br. at 1–2, Feb. 14, 2020, ECF No. 26 ("Pls.' Br."). The Government, joined by Defendant-Intervenor Rebar Trade Action Coalition ("RTAC"), supports Commerce's determination. Def.'s Resp. in Opp'n to Pl's Mot. For J. on Agency R., June 11, 2020, ECF No. 32 ("Def.'s Br."); Def.-Inter. Resp. in Opp'n to Pl's Mot. For J. on Agency R., June 11, 2020, ECF No. 33 ("Def.-Inter.'s. Br.").

The court concludes that Commerce's determinations were in accordance with law and based on substantial evidence. Therefore, the court denies Plaintiffs' challenge to Commerce's determination and sustains Commerce's *Final Results*.

[1] All citations to the United States Code are to the 2012 edition.

BACKGROUND

I. Legal Background

The Tariff Act of 1930 was enacted to empower Commerce to address trade distortions caused by unfair economic practices. In particular, it provides for the investigation of potential subsidization and the imposition of duties on subject merchandise. *Sioux Honey Ass'n v. Hartford Fire Ins. Co.*, 672 F.3d 1041, 1046–47 (Fed. Cir. 2012); *see also Bebitz Flanges Works Pvt. Ltd. v. United States*, 44 CIT __, __, 433 F. Supp. 3d 1309, 1314 (2020). These CVD actions are intended to be remedial rather than punitive in nature, *Chaparral Steel Co. v. United States*, 901 F.2d 1097, 1103 (Fed. Cir. 1990), and it is therefore Commerce's duty to determine rates as accurately as possible, *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990).

In order to impose duties under Section 701 of the Tariff Act of 1930, Commerce must first find the existence of a countervailable subsidy. A countervailable subsidy is one which satisfies the following elements: (1) a government or public authority has directly or indirectly provided a financial contribution; (2) a benefit is thereby conferred upon the recipient of the financial contribution; and (3) the subsidy is specific to a foreign enterprise or foreign industry, or a group of such enterprises or industries. *See* 19 U.S.C. § 1677(5)(A)–(B); *see also* 19 U.S.C. §§ 1677(5)(D)–(E), (5A). If Commerce determines that a foreign government is providing a countervailable subsidy with respect to the manufacture, production, or export of a class or kind of merchandise imported, sold, or likely to be sold for import into the United States, and the International Trade Commission determines that an industry in the United States is materially injured or threatened with material injury thereby, Commerce is then required by statute to impose a CVD upon such merchandise equal to the amount of the net countervailable subsidy. *See* 19 U.S.C. § 1677(5).

A countervailable subsidy provides a benefit where it results in the provision of goods or services for less than adequate remuneration. 19 U.S.C. § 1677(5)(E)(iv). To identify such benefit,

> [T]he adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of purchase or sale.

Id. In practice, Commerce applies a three-tier framework to determine the adequacy of remuneration. *See* 19 C.F.R. § 351.511. Under

tier one, Commerce compares the actual remuneration for the provided goods and services with the market price of those goods or services within the country under investigation. 19 C.F.R. § 351.511(a)(2)(i). If Commerce cannot identify a usable market price within the country under investigation, it applies a tier two benchmark. Under tier two, Commerce compares actual remuneration with the average world market price available to purchasers in the country under investigation. 19 C.F.R. § 351.511(a)(2)(ii). If neither tier one nor tier two market prices are available, Commerce applies a tier three benchmark, and "measure[s] the adequacy of remuneration by assessing whether the government price is consistent with market principles." 19 C.F.R. § 351.511(a)(2)(iii).

To be specific to an enterprise or industry, a countervailable subsidy must exhibit either de jure or de facto specificity. See 19 U.S.C. § 1677(5A). A subsidy is de jure specific where the authority providing the subsidy, or its authorizing legislation, expressly limits access to the subsidy to an enterprise or industry. *See* 19 U.S.C. § 1677(5A)(D)(i). To avoid a designation of de jure specificity, the administering authority must ensure that access to the subsidy is governed by objective industry- or enterprise-neutral criteria resulting in automatic eligibility, and that the criteria for eligibility are both strictly followed and clearly set forth in the relevant official materials so as to be verifiable. *See* 19 U.S.C. § 1677(5A)(D)(ii). A subsidy that escapes de jure specificity may nevertheless be designated de facto specific if one or more of the following factors exist: (1) the actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number; (2) an enterprise or industry is a predominant user of the subsidy; (3) an enterprise or industry receives a disproportionately large amount of the subsidy; or (4) the manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others. 19 U.S.C. § 1677(5A)(D)(iii)(I)–(IV).

In determining whether a countervailable subsidy is provided to the manufacture of the subject merchandise, Commerce may issue questionnaires to selected mandatory respondents[2] in order to gather

[2] In CVD investigations or administrative reviews, Commerce may select mandatory respondents pursuant to 19 U.S.C. § 1677f–1(e)(2), which provides:

> If the administering authority determines that it is not practicable to determine individual countervailable subsidy rates under paragraph (1) because of the large number of exporters or producers involved in the investigation or review, the administering authority may—
>
> (A) determine individual countervailable subsidy rates for a reasonable number of exporters or producers by limiting its examination to—

information for its review. *See* 19 U.S.C. § 1677f-1(c)(2). Pursuant to 19 U.S.C. § 1677e, if a party fails to satisfactorily respond to Commerce's requests for "necessary information" to calculate a dumping margin by (1) withholding requested information, (2) failing to provide information by the submission deadlines or in the form or manner requested, (3) significantly impeding a proceeding, or (4) providing information that cannot be verified, Commerce shall use facts otherwise available to calculate the margin. 19 U.S.C. § 1677e(a)(2). Where Commerce determines that a respondent has failed to cooperate, it may "use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available" and thereby apply AFA. 19 U.S.C. § 1677e(b)(1)(A). A respondent does not cooperate to the "best of its ability" when it fails to "put forth its maximum effort to provide Commerce with full and complete answers to all inquiries." *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003). In applying AFA, Commerce may rely on information from the initial petition, a final determination in the investigation, a previous administrative review, or any other portion of the administrative record. 19 U.S.C. § 1677e(b)(2); 19 C.F.R. § 351.308(c). Thus, recourse to AFA gives Commerce a mechanism for filling informational gaps where requested or otherwise necessary information is not provided. *See Nippon Steel,* 337 F.3d at 1381. Although Commerce may choose to supplement the administrative record of its own accord, the burden of creating an adequate record, and therefore of avoiding AFA, lies with the respondent. *Nan Ya Plastics Corp. v. United States*, 810 F.3d 1333, 1337 (Fed. Cir. 2016) (citing *QVD Food Co. v. United States*, 658 F.3d 1318, 1324 (Fed. Cir. 2011)).

II. Factual Background

On January 11, 2018, Commerce published a notice of initiation of administrative review of the CVD Order on rebar from Turkey covering calendar year 2016. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 Fed. Reg. 1,329, 1,334 (Dep't Commerce Jan. 11, 2018). Commerce limited its review to the three companies that accounted for the largest volume of rebar exports from Turkey to the United States during the period of review,

(i) a sample of exporters or producers that the administering authority determines is statistically valid based on the information available to the administering authority at the time of selection, or

(ii) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that the administering authority determines can be reasonably examined; or

(B) determine a single country-wide subsidy rate to be applied to all exporters and producers.

which included Içdaş and Çolakoğlu, pursuant to Section 751 of the Tariff Act of 1930 as amended, 19 U.S.C. § 1675. Içdaş and Çolakoğlu participated throughout the proceeding by submitting questionnaire responses and case briefs. *See, e.g.* Içdaş Celik Enerji Tersane ve Ulasim Sanayi A.S.'s Response to Section III of the Department's CVD Questionnaire (May 14, 2018) ("Içdaş Sec. III Resp."), P.R. 99, C.R. 84 *et seq*. On December 10, 2018, Commerce issued its preliminary determination calculating a CVD margin of 1.37 percent for Içdaş, and a CVD margin of 0.04 percent for Çolakoğlu *Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent to Rescind the Review in Part; 2016*, 83 Fed. Reg. 63,472, 63,473 (Dep't Commerce Dec. 10, 2018), P.R. 297 ("*Preliminary Results*"); Preliminary Issues & Decision Mem., Dec. 3, 2018, P.R. 292 ("PDM").

In the *Preliminary Results*, Commerce determined that Içdaş and Çolakoğlu each received countervailable subsidies during the period of review. With respect to Içdaş, Commerce: (1) treated the GIIS program as a contingent liability and a grant; (2) relied on a long-term interest rates published by the IMF to measure the benefits conferred by the contingent liabilities under the GIIS program; and (3) determined that any benefits received by respondent's cross-owned supplier, Içdaş Elektrik, under the GIIS program should be attributed to Içdaş. PDM at 11, 16–19. With respect to Çolakoğlu, Commerce preliminarily found that no usable tier-two benchmark information was available with respect to the market price of natural gas, and resorted to a tier-three benchmark to determine whether natural gas was provided for less than adequate remuneration. Commerce concluded that it could not use a tier-two market benchmark for natural gas prices in Turkey because: (1) Russian domestic prices are distorted by the government of Russia; (2) the government of Russia also controls export pricing because it is "the dominant supplier of natural gas in the international market," which "enables it to leverage prices and supplies for geopolitical purposes," and prevents export pricing from being market driven; (3) 39.5% of European Union ("EU") natural gas is supplied by Russia, so International Energy Agency ("IEA") data is not suitable for use as a benchmark; (4) the Azerbaijani government similarly controls the domestic gas market in Azerbaijan, so Azerbaijani gas prices are not suitable market benchmarks; and (5) liquefied natural gas ("LNG") is not a suitable benchmark because it is not transported in pipelines and therefore not an accurate comparison. *See* PDM at 19–25. Commerce preliminarily relied on U.S. export prices for LNG exports based on infor-

mation from the U.S. Department of Energy ("DOE") and subtracted from the monthly average price the cost of converting natural gas to LNG. *Id.* at 24–25. After utilizing this methodology, Commerce found that Çolakoğlu did not benefit from the provision of natural gas for less than adequate remuneration. *Id.* at 25.

Commerce affirmed that rebar from Turkey was properly subject to CVDs in its final determination on July 26, 2019. *See Final Results*; IDM. In addition, Commerce calculated final CVD review margins of 2.76 percent for Içdaş and 1.82 percent for Çolakoğlu. *Final Results*, 84 Fed. Reg. at 36,052. To reach these margins, Commerce applied a tier-three benchmark to measure adequacy of remuneration, but adjusted IEA natural gas prices to account for Russian export prices after determining that BOTAS's natural gas prices were not consistent with market principles. PDM at 24; *see* IDM at 16–17. Commerce then relied upon the adjusted IEA data as a benchmark for natural gas prices in the *Final Results*. IDM at 20. At verification, Commerce also discovered that Içdaş failed to report its sales figures on an accurate free-on-board ("FOB") basis. IDM at 2, 6–7, 26–29. Because of this failure, Commerce concluded that Içdaş failed to cooperate to the best of its ability. IDM at 6–7. Therefore, in the *Final Results*, Commerce applied AFA to Içdaş's sales denominator for failure to accurately report the total sales denominator, including electricity, which Commerce concluded "rendered Içdaş's reported total sales denominator for 2016 unverifiable." IDM at 6. In addition, Commerce found the GIIS program benefits received by Içdaş Elektrik to be countervailable, *id.* at 35, and determined that investment incentive benefits received were contingent liabilities subject to the IMF benchmark interest rate. *Id.* at 34, 37. On February 14, 2020, Plaintiffs filed a Rule 56.2 motion for judgment on the agency record, arguing that Commerce's findings regarding Plaintiffs were unsupported by substantial evidence, abused Commerce's discretion, and were not in accordance with law. Pls.' Br. The Government and RTAC filed their response briefs to Plaintiffs' motion on June 11, 2020. Def.'s Br.; Def.-Inter.'s Br. Plaintiffs replied on July 9, 2020. Reply Br. of Pls. to Def. and Def.-Inter.'s Resp. to Pls.' Mot. for J. on Agency R., ECF No. 36 ("Pls.' Reply"). Oral argument was held on November 17, 2020. Oral Arg., ECF No. 48. Prior to oral argument, the court issued and the parties responded to questions regarding the case. Letter re: Questions for Oral Arg., Nov. 6, 2020, ECF No. 42; Pls.' Resp. to Ct.'s Questions for Oral Arg., Nov. 13, 2020, ECF No. 45 ("Pls.' Suppl. Br."); Def.'s Resp. to Ct.'s Order, Nov. 13, 2020, ECF No. 46 ("Def.'s Suppl. Br."); Resp. to Oral Arg. Questions of Def.-Inter. RTAC, Nov. 13, 2020, ECF No. 43 ("Def.-Inter.'s Suppl. Br."). Following oral argument, the

parties submitted additional briefing on the issues. Pls.' Suppl. Post-Arg. Submission, Nov. 19, 2020, ECF No. 50 ("Pls.' Post-Arg. Br."); Def.'s Conf. Post-Arg. Submission, Nov. 19, 2020, ECF No. 53 ("Def.'s Post-Arg. Br."); Post-Arg. Submission of Def.-Inter. RTAC, Nov. 19, 2020, ECF No. 51 ("Def-Inter.'s Post-Arg. Br.").

JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction over this action pursuant to 28 U.S.C. § 1581(c) and 19 U.S.C. § 1516a(a)(2)(B)(iv) and (vi). The standard of review is set forth in 19 U.S.C. § 1516a(b)(1)(B)(i): "[t]he court shall hold unlawful any determination finding or conclusion found . . . to be unsupported by substantial evidence on the record, or otherwise not in accordance with law." Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 217 (1938). Nevertheless, prior to "review by the court of the merits of a given claim, a party challenging agency action must have first exhausted its administrative remedies or demonstrated to the court that it should be exempted from the exhaustion requirement." *Luoyang Bearing Corp. v. United States*, 44 CIT __, __, 450 F. Supp. 3d 1402, 1408 (2020); *see Boomerang Tube LLC v. United States*, 856 F.3d 908, 912 (Fed. Cir. 2017). Finally, while the court affords deference to Commerce's policy changes under *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984), Commerce must nevertheless provide an "adequate explanation" for changes or reversals in policy coming before the court. *See SKF USA Inc. v. United States*, 630 F.3d 1365, 1373 (Fed. Cir. 2011).

DISCUSSION

The court finds that Commerce's final determination was in accordance with law and supported by substantial evidence. In particular: (1) Commerce permissibly applied partial AFA in response to Içdaş's failure to cooperate with Commerce's investigation to the best of its ability; (2) Commerce reasonably attributed to Içdaş the GIIS program benefits received by Içdaş Elektrik as a cross-owned input supplier; (3) Commerce reasonably interpreted Içdaş's customs duty and VAT exemptions as both a grant and a contingent liability; (4) Commerce's application of an IMF TL loan interest rate benchmark with respect to the GIIS's interest-free contingent liability was appropriate under 19 U.S.C. § 1677(5)(E); and (5) Commerce permissibly resorted to a tier-three benchmark for the market price of natural gas in its assessment of adequate remuneration.

I. Commerce's Application of Partial AFA Pursuant to 19 U.S.C. § 1677e(a)(2)(C) is Supported by Substantial Evidence and in Accordance with Law

Plaintiffs argue that Commerce's application of partial AFA was contrary to law and unsupported by substantial evidence. Pls.' Br. at 2. Plaintiffs assert that Içdaş acted "to the best of its ability to comply with Commerce's requests and provided all information necessary for Commerce to calculate an accurate subsidy rate," and that any inaccuracy in Içdaş's reporting of sales values on an FOB basis does not rise to the level of noncompliance. *Id.* at 2, 17. The Government and RTAC argue that Içdaş submission of incomplete and inaccurate sales data constitutes a failure to comply with Commerce's requests to the best of its ability, and thus justifies application of partial AFA. Def.'s Br. at 8–10; Def-Inter.'s Br. at 6–9. The court finds that Commerce's application of partial AFA was reasonable given Içdaş's failure to carry its burden, and Commerce's resultant inability to verify Içdaş's submissions.

Commerce applied AFA in its Final Results in response to "Içdaş's failure to accurately report the sales denominator in its questionnaire response." IDM at 6. Içdaş's proposed correction indicated that it "inadvertently failed to include several product categories when attempting to derive a total FOB sales figure." *Id.* However, Içdaş did not identify or correct its error during the review process — rather, Commerce discovered the omission at verification. *Id.* Finding that Içdaş's omission of the accurate FOB sales data resulted in exclusion of "critical information required for [the] subsidy analysis" from the record, and further finding that "Içdaş had ample opportunity to report an accurate sales denominator . . . yet failed to do so," Commerce concluded that the application of AFA with respect to the sales denominator was warranted. *Id.* at 6–7.

Içdaş argues that it did not fail to report sales on an FOB basis. Pls.' Suppl. Br. at 2. It claims that it explained that the trial balance accounts are provided in the reconciliation worksheet, while in the accounting system sales are broken out between domestic sales [[ ]] accounts, export sales [[ ]] accounts and other sales [[ ]] accounts with sales further broken down into product families or other grouping within each three-digit account. Pls.' Br. at 12–13; *see also* CVD-12, P.R. 99, C.R. 84. Içdaş further argues that it provided to Commerce a detailed description explaining the accounting process and how its data are processed and organized. Pls.' Br. at 13; *see also* Içdaş Sec. III Resp. at CVD-12-CVD-13, P.R. 99, C.R. 84. Plaintiffs admit that "certain FOB value amounts were inadvertently not carried over to the total value column (AN) in the exhibit due to a clerical

error," but claim that the correct amounts were nevertheless reported, and simply incorrectly summed. Pls.' Br. at 14. In addition, Içdaş claims that it sought to rectify its error at the first possible opportunity by submitting a corrected summation, and by requesting that Commerce rely upon the total sales value reported in the table, including those not included in the Total Value column. *See* Içdaş Verification Report at 6–7, P.R. 312, C.R. 464; Pls.' Br. at 14; Çolakoğlu Içdaş Case Brief at 2 (June 17, 2019), P.R. 315, C.R. 466.

The Government asserts that Içdaş's error constitutes a failure to provide information by the deadline and in the manner requested by Commerce. 19 U.S.C. § 1677e(a)(2); Def.'s Br. at 10; *see Nippon Steel*, 337 F.3d at 1381. The Government and RTAC note that the company did not acknowledge its mistake until Commerce attempted to replicate Içdaş's reported sales at verification and expressly identified the error. Def.'s Br. at 11; Def-Inter.'s Br. at 2; Içdaş Verification Report at 6–7. In addition, the Government states that because Içdaş had to manually deduct freight expenses from its total sales, it was impossible for Commerce to find the correct FOB value from the information presented. Def.'s Post-Arg. Br. at 2–5. Içdaş's failure to provide accurate data therefore prevented Commerce from determining the accuracy and verifying the validity of its submissions. *See* Def.'s Br. at 10; IDM at 6, 27–28. Because Commerce could not verify the validity of the reported numbers, the Government concludes, it properly resorted to AFA. Def.'s Br. at 10; IDM at 27–28; *see also Universal Polybag Co., Ltd. v. United States*, 32 CIT 904, 907, 577 F. Supp. 2d 1284, 1289 (2008).

The burden of creating an accurate record before Commerce falls to Içdaş. *See Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330, 1336 (Fed. Cir. 2002). Although a party may avoid application of AFA by making an "effort to provide Commerce with full and complete answers" and ensuring it does "the maximum it is able to do" to comply with Commerce's requests, this flexible standard does not grant parties *carte blanche* for noncompliance. *Nippon Steel*, 337 F.3d at 1382. If a party determines prospectively that it is "unable to submit the information requested in the requested form and manner," it must promptly notify Commerce, and provide a "full explanation and suggested alternative forms" for the submission. 19 U.S.C. § 1677m(c)(1). Furthermore, while "[c]ompliance with the 'best of its ability' standard . . . does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping." *Dongtai Peak Honey Indus. Co., Ltd. v. United States*, 777 F.3d 1343, 1355 (Fed. Cir. 2015) (quot-

ing *Nippon Steel*, 337 F.3d at 1382); *see also* Def-Inter.'s Br. at 8. Indeed, the "failure of a respondent to furnish requested information — for any reason — requires Commerce to resort to other sources of information to complete the factual record on which it makes its determination," and should not be taken lightly. *Yantai Timken Co., Ltd. v. United States,* 31 CIT 1741, 1756, 521 F. Supp. 2d 1356, 1372 (2007) (citing *Nippon Steel*, 337 F.3d at 1381).

As the Government notes, the Federal Circuit's decision in *Nippon Steel* is instructive. In that case, the court held that that by failing to exert "maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation," a respondent fails to act to the best of its ability. 337 F.3d at 1382. The court noted that the 19 U.S.C. § 1677e(b) "requires a factual assessment of the extent to which a respondent keeps and maintains reasonable records and the degree to which the respondent cooperates in investigating those records and in providing Commerce with the requested information." *Id.* at 1383. In particular, respondents are expected to "take reasonable steps to keep and maintain full and complete records" in anticipation of possible production requests, and to "conduct prompt, careful, and comprehensive investigations of all relevant records" upon receiving an inquiry from Commerce. *See id.* at 1382.

Içdaş failed to meet the standard set forth in *Nippon Steel*. Commerce asked Içdaş numerous times — at least three times — to provide an FOB basis for the total sales value. Içdaş failed to do so. While Içdaş claims it provided all necessary information to Commerce in its original submission and that its subsequent adjustment to the total sales value was merely a corrective summation, Commerce found that Içdaş's correction would increase the company's reported figures by nearly 50 percent. Def.'s Br. at 11–12; IDM at 27. Furthermore, as the Government notes, if Commerce had transferred the values in the sales column to the FOB column at Içdaş's request, it would have been forced to accept at face value, without verification, Içdaş's statement that no freight costs needed to be added or subtracted from the reported sales." Def.'s Br. at 12. Under the circumstances, Commerce reasonably concluded that Içdaş failed to cooperate to the best of its ability by exerting "maximum effort to provide Commerce with full and complete answers" to its inquiries. *Nippon Steel*, 337 F.3d at 1382; IDM at 28; Def.'s Br. at 11.

Indeed, courts have consistently found that application of AFA is appropriate under these circumstances. In *Dongtai Peak Honey Indus. Co., Ltd. v. United States*, the Federal Circuit found that "[i]n selecting an AFA rate, Commerce may use information from the petition, investigation, prior administrative reviews, or 'any other

information placed on the record.'" 777 F.3d 1343, 1355 (Fed. Cir. 2015) (citing 19 U.S.C. § 1677e(b)(2)(D)). "[W]here there is useable information of record but the record is incomplete," and Commerce determines that "the respondent did not cooperate to the best of its ability," Commerce applies partial AFA: "adverse inferences about the missing information." *Wash. Int'l Ins. Co. v. United States*, 33 CIT 1023, 1035 n.18 (2009); *Yantai*, 31 CIT at 1746–48, 521 F. Supp. 2d at 1364–65, *aff'd* 300 Fed. Appx. 934 (Fed. Cir. 2008). In *Nippon Steel*, the court held that "[i]t is not an excuse that the employee assigned to prepare a response does not know what files exist, or where they are kept, or did not think—through inadvertence, neglect, or otherwise to look beyond the files immediately available." 337 F.3d at 1383.

Commerce therefore reasonably applied AFA in response to Içdaş's inaccurate submissions. Commerce is required to verify all information it relies upon in making a final determination in an investigation, 19 U.S.C. § 1677m(i), and is prohibited from relying on unverified information. *Yantai*, 31 CIT at 1762, 521 F. Supp. 2d at 1376. Nor is the inadvertent nature of Içdaş's error an excuse. Pls.' Br. at 14; *Nippon Steel*, 337 F.3d at 1383. Because Commerce could not verify Içdaş's corrective information due to Içdaş's own failure to cooperate, it was prohibited from relying on the corrective submissions. Accordingly, as the Government asserts Içdaş denied the agency the opportunity to consider the accuracy and verify the validity of the FOB sales value numbers, which are an essential component of Commerce's subsidy analysis. Def.'s Br. at 10. Recourse to AFA allowed Commerce to fill the resultant gap in its investigation. In sum, Içdaş's failure to provide the requested information — information it had access to and could have supplied — adequately establishes that Içdaş did not cooperate with Commerce's investigation to the best of its ability and supports Commerce's application of partial AFA. Def.'s Br. at 10.

A. Içdaş's Corrections were neither Clerical nor Timely

The court also rejects Plaintiffs' contention that Commerce abused its discretion by refusing to consider Içdaş's corrective submissions. Commerce is generally prohibited form considering untimely new factual information under 19 C.F.R. §351.302(d). Although it is Commerce's practice to accept "minor corrections to the information already on the record" at verification, this practice does not extend to major, substantive alterations. *Letter from M. Hoadley to Içdaş, re: Verification Agenda for the Countervailing Duty Investigation of Steel Concrete Reinforcing Bar from the Republic of Turkey at 2 (Apr. 23, 2019) (emphasis added), P.R. 307, C.R. 452*. Although Içdaş argues

that its error was only "clerical" and that Commerce must therefore incorporate its correction, the court finds that Commerce's interpretation of the error as substantive, and its consequential rejection of the corrective submissions, was not an abuse of discretion. Pls.' Br. at 19; Def.'s Br. at 15; Def-Inter.'s Br. at 12; IDM at 7 and 27.

Under limited circumstances, parties to a CVD investigation may supplement or correct the information they have provided to Commerce. If parties under investigation wish to provide new factual information,[3] Commerce's regulations provide specific time limits for submission based on the type of information involved. 19 C.F.R. § 351.301(c). Relevant to this dispute, miscellaneous new factual information must be submitted either thirty days before the scheduled date of the preliminary results or fourteen days before verification, whichever is earlier. *Id.* Beyond new factual information, "Commerce is free to correct any type of importer error—clerical, methodology, substantive, or one in judgment — in the context of making an antidumping duty determination, provided that the importer seeks correction before Commerce issues its final results and adequately proves the need for the requested corrections." *Timken U.S. Corp. v. United States*, 434 F.3d 1345, 1353 (Fed. Cir. 2006). The court has clarified that Commerce abuses its discretion by rejecting "corrective information," which includes submissions "to correct information already provided [to Commerce]," *Fischer S.A. Comercio v. United States*, 34 CIT 334, 348, 700 F. Supp. 2d 1364, 1376 (2010), or to "clarif[y] information already in the record," *id.* at 1373, but not submissions proffered to "fill [] gap[s] caused by [the respondent's] failure to provide a questionnaire response or evidence requested during verification." *Id.* at 1377.

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[3] Under 19 C.F.R. § 351.102(b)(21), "factual information" means:

(i) Evidence, including statements of fact, documents, and data submitted either in response to initial and supplemental questionnaires, or, to rebut, clarify, or correct such evidence submitted by any other interested party;

(ii) Evidence, including statements of fact, documents, and data submitted either in support of allegations, or, to rebut, clarify, or correct such evidence submitted by any other interested party;

(iii) Publicly available information submitted to value factors under § 351.408(c) or to measure the adequacy of remuneration under § 351.511(a)(2), or, to rebut, clarify, or correct such publicly available information submitted by any other interested party;

(iv) Evidence, including statements of fact, documents and data placed on the record by the Department, or, evidence submitted by any interested party to rebut, clarify or correct such evidence placed on the record by the Department; and

(v) Evidence, including statements of fact, documents, and data, other than factual information described in paragraphs (b)(21)(i)–(iv) of this section, in addition to evidence submitted by any other interested party to rebut, clarify, or correct such evidence.

Nevertheless, Commerce retains broad discretion when deciding whether to accept a respondent's corrective information. *Deacero S.A.P.I. de C.V. v. United States*, 42 CIT __, __, 353 F. Supp. 3d 1303, 1309 (2018). The court may only intervene if Commerce's rejection of supplemental information constitutes an arbitrary abuse of its discretion, such that Commerce "acted differently in this case than it has consistently acted in similar circumstances without reasonable explanation." *Consol. Bearings Co. v. United States*, 348 F.3d 997, 1007 (Fed. Cir. 2003) (*see also RHP Bearings v. United States*, 288 F.3d 1334, 1347 (Fed. Cir. 2002)). In particular, the court has found abuse of discretion where Commerce "refus[es] to accept updated data when there [i]s plenty of time for Commerce to verify or consider it." *Papierfabrik August Koehler SE v. United States*, 843 F.3d 1373, 1384 (Fed. Cir. 2016) (citing *NTN Bearing Corp. v. United States*, 74 F.3d 1204, 1207–08 (Fed. Cir. 1995)).

As Plaintiffs correctly note, courts have consistently held that Commerce abuses its discretion where it denies corrections involving "a 'straightforward mathematical adjustment' that 'would neither have required beginning anew nor have delayed making the final determination.'" *Fischer*, 34 CIT at 347 (quoting *Timken U.S. Corp. v. United States*, 434 F.3d 1345, 1353 (Fed. Cir. 2006)); *see also NTN Bearing,* 74 F.3d at 1208. Such corrections have included the deletion of four accidentally-included foreign sales, *NTN Bearing*, 74 F.3d at 1208; the correction of 23 mistyped item codes, *id.* at 1207–08; and the submission of missing pages from a sales agreement, *Fischer*, 34 CIT at 349. In each of these cases, supporting documentation was also provided which "establish[ed] the clerical nature of the[] errors." *NTN Bearing*, 74 F.3d at 1208; *see also Fischer*, 34 CIT at 348.

Plaintiffs err, however, in describing Içdaş's corrective submission as a straightforward mathematical adjustment. Unlike plaintiffs in *NTN Bearing* and *Fischer*, Içdaş reported zeros in the FOB column for numerous full categories of sales. *See* IDM at 27. Furthermore, its explanation for the error was contradicted by the record. *Id.* Far from being a straightforward adjustment, Commerce determined that the proposed correction would affect a significant portion of the data by increasing the provided sales denominator by almost 50 percent. IDM at 7 and 27. The correction requested by Içdaş would also require Commerce to manually deduct freight costs from Içdaş's total gross sales, something Commerce could not do because its requested data was missing from the record. Def.'s Suppl. Br. at 4–5.

Nor is it clear that incorporating Içdaş's correction would "neither have required beginning anew nor have delayed [a] final determination." *Fischer*, 34 CIT at 347 (quoting *Timken U.S. Corp. v. United*

States, 434 F.3d 1345, 1353 (Fed. Cir. 2006)). Where plaintiffs in *NTN Bearing* or *Fischer* submitted corrections prior to verification, Içdaş sought to correct its mistake substantially later in the proceedings, after Commerce discovered the error at verification. Def.'s Br. at 17. As Commerce stated in its determination, "[w]hat amounts to a brand-new sales denominator should have been submitted early enough in the review to allow Commerce and the petitioner adequate time to consider the accuracy of the numbers involved, as well as the calculation methodology, and then give Commerce sufficient time to verify the validity of those numbers." IDM at 27. If Içdaş had timely submitted its corrections, then "Commerce would have had an opportunity to review and verify its validity." IDM at 7.

The Federal Circuit has previously rejected a bright-line rule obligating Commerce to allow a respondent to correct any error, and this court similarly rejects such a holding here. *Timken*, 434 F.3d at 1353. In this case, Commerce asked Içdaş numerous times for the FOB values information, yet Içdaş either refused or failed to provide that information. Nor could Commerce verify Içdaş's corrective submission because of Içdaş's failure to provide the information Commerce requested. Forcing Commerce to accept Içdaş's delayed correction after its failure to cooperate would render Commerce's deadlines meaningless and disincentivize cooperation with agency requests. Def.'s Br. at 18; Def.-Inter.'s Br. at 9. The court therefore rejects Içdaş's contention that Commerce abused its discretion by refusing to consider the corrective submission and reiterates that Commerce acted reasonably in resorting to AFA.

II. Commerce's Attribution of GIIS Program Benefits Received by Içdaş Elektrik to Içdaş is Supported by Substantial Evidence and in Accordance with Law

Plaintiffs assert that Commerce incorrectly attributed GIIS program benefits received by Içdaş because the electricity input was not dedicated to the production of subject merchandise, but rather to unrelated electricity generation. Pls.' Br. at 19–20. While not disputing Commerce's cross-ownership determined with respect to Içdaş Elektrik, Plaintiffs claim that despite cross-ownership, the record shows that Içdaş Elektrik sold no power to the Içdaş steel mill and the exemptions granted to Içdaş Elektrik under the GIIS program were tied to non-subject merchandise and "bestowed" for purposes of electricity production. *Id.* at 20. The Government and RTAC contend that Içdaş Elektrik provided scrap, an input primarily dedicated to the production of the subject merchandise, to Içdaş. Def-Inter.'s Br. at 11. The Government also argues that Commerce identifies the type and

monetary value of the subsidy at the time of bestowal. *Id.* at 30. The court finds that Commerce's attribution of the GIIS program benefits received by Içdaş Elektrik to Içdaş was supported by substantial evidence and in accordance with law.

Commerce interpreted 19 U.S.C. § 1677(5)(E) through specific regulations governing the calculation and attribution of subsidy benefits. One such regulation, 19 C.F.R. § 351.525(a), provides that, in calculating *ad valorem* subsidy rates, Commerce will "divid[e] the amount of the benefit allocated to the period of investigation or review by the sales value during the same period of the product or products to which [Commerce] attributes the subsidy under paragraph (b)." Paragraph (b) identifies various rules for the attribution of subsidies, including that, where "production of the input product is primarily dedicated to production of the downstream product, [Commerce] will attribute subsidies received by the input producers to . . . both corporations." 19 C.F.R. § 351.525(b)(6)(iv).

However, subparagraph (b)(5)(i) states that "[i]f a subsidy is tied to the production or sale of a particular product, [Commerce] will attribute the subsidy only to that product." 19 C.F.R. § 351.525(b)(5)(i); *see, e.g., Nucor Corp. v. United States*, 44 CIT __, __, 461 F. Supp. 3d 1374 (2020); *Uttam Galva Steels Ltd. v. United States*, 44 CIT __, __, 425 F. Supp. 3d 1366, 1369 (CIT 2020). Furthermore, the preamble to Commerce's CVD regulations clarifies that, while there is no "all-encompassing definition of 'tied,'" the rules regulating tied subsidies are intended to "reasonably attribute[e] the benefit from a subsidy based on the stated purpose of the subsidy or the purpose we evince from record evidence at the time of bestowal." *See Countervailing Duties*, 63 Fed. Reg. 65,348, 65,403 ("*CVD Preamble*").

Içdaş acknowledged in the investigation that its affiliate Içdaş Elektrik was involved in the manufacture, distribution, and sale of subject merchandise during the relevant period of review. *See* PDM at 3, 9–10. Specifically, Içdaş Elektrik provided scrap — an input primarily dedicated to the production of the subject merchandise — to Içdaş. *See* Içdaş Celik Enerji Tersane ve Ulasim Sanayi A.S.'s Response to the Department's Section III CVD Questionnaire Identifying Affiliated Parties at 4 (Apr. 10, 2018), P.R. 36, C.R. 5. After receiving this disclosure, Commerce preliminarily determined that Içdaş Elektrik was a cross-owned supplier and satisfied the criteria enumerated in the agency's regulation. PDM at 9–10 (citing 19 C.F.R. § 351.525(b)(6)(iv), (vi)). Thus, Commerce preliminarily attributed the benefits received by Içdaş Elektrik under GIIS program to Içdaş. PDM at 16–19. Commerce made no changes in its analysis before the

Final Results besides revising Içdaş's sales denominator to apply partial AFA. IDM at 34–35.

Içdaş contests this finding, arguing that that Içdaş Elektrik only sold a small amount of scrap to Içdaş for [[ ]] Turkish Lira ("TL"), accounting for [[ ]] of the total [[ ]] TL in raw material costs incurred by Içdaş in 2016, an amount which would not support a finding of material input support. Pls.' Br. at 21; Pls.' Suppl. Br. at 12. In addition, Plaintiffs state that while Içdaş Elektrik also sold a small amount of electricity to Içdaş [[ ]], these electricity sales were to the Içdaş concrete plant, which is unrelated to the production of the subject merchandise. *Id.* at 22. Plaintiffs conclude that these sales were not sufficient to attribute the "entire [Içdaş Elektrik] investment certificate support" to the steel-making operation under investigation by Commerce. *Id.* at 22.

The Government argues that the quantity of scrap provided to Içdaş by Içdaş Elektrik is irrelevant to Commerce's analysis because there is no threshold for the amount of input supplied by a cross-owned company for purposes of attribution under 19 C.F.R. § 351.525(b)(6)(iv). Def.'s Br. at 30; *see also* IDM at 35. With respect to the GIIS program, the GOT indicated during the investigation that the program was intended to support investments in the country and to increase employment and exports. Def.'s Br. at 29 (citing Memorandum re: Verification of Questionnaire Responses Submitted by the Government of the Republic of Turkey at 6 (June 6, 2019), P.R. 314, C.R. 465 ("GOT Verification Report")). Based on record evidence of the subsidy at the time of bestowal, Commerce concluded that the exemptions were not specifically intended to benefit the production of non-subject merchandise only. *Id.*; IDM at 34 & nn. 204–05. Thus, the Government argues, it would be inconsistent with Commerce's regulations to base its determination the quantity of electricity Içdaş Elektrik sold to Içdaş for production of the subject merchandise because it would require Commerce to conduct its analysis beyond the time of bestowal. Def.'s Br. at 30 (citing *TMK IPSCO v. United States*, 41 CIT __, __, 222 F. Supp. 3d 1306, 1325 (2017)).

The court finds that Commerce's determination was supported by evidence and in accordance with law. It is well-settled that Commerce is not required to examine the ultimate use of the subsidy. *Fabrique de Fer de Charleroi, SA v. United States*, 25 CIT 567, 576, 166 F. Supp. 2d 593, 603 (2001). Nor do Plaintiffs identify any case or statute that requires Commerce to consider the quantity of scrap provided to a downstream producer. *See* Pls.' Br. at 21–22. While the final quantity may be low, the regulations do not obligate Commerce to measure the

impact of an input supplier's contributions when weighing whether to attribute its subsidies to the downstream producer. Rather, viewed in light of the *CVD Preamble*, 19 C.F.R. § 351.525(b)(6)(iv) looks only at the purpose of the subsidy at the time of bestowal. *See* 63 Fed. Reg. at 65,403. Therefore the quantity of the scrap provided to Içdaş by Içdaş Elektrik, while low, is not sufficient to persuade the court that Commerce acted without substantial evidence or contrary to law.

Nor is the court compelled by Plaintiffs' argument that because any benefit to Içdaş Elektrik was shared by all Içdaş affiliates, it is appropriate to allocate the subsidy to overall sales. Pls.' Br. at 23. In fact, as the Government notes, Commerce properly attributed subsidies received by Içdaş Elektrik to the combined sales of the input and downstream products by both corporations, as Içdaş Elektrik is an input supplier rather than a holding or parent company. Def.'s Br. at 32; 19 C.F.R. § 351.525(b)(6). Commerce's methodology was reasonable: from the start of the investigation, Commerce relied on Içdaş's supplemental questionnaire responses, and combined the total sales of both companies while excluding all sales to affiliates. *See* PDM at 3, 9–10; IDM at 34. Only after applying partial AFA did Commerce change its analysis, and then only to adjust Içdaş's sales deniminator. IDM at 34–35. Thus, Plaintiffs' argument is insufficient to overturn Commerce's determination.

In addition, the court rejects Plaintiffs' attempt to challenge Commerce's conclusion on the basis that it is inconsistent with Commerce's 2015 determination that the investment certificate granted to Içdaş Elektrik was tied to the production of non-subject merchandise. Pls.' Br. at 21–22; *see also* Çolakoğlu and Içdaş Case Br. at 11–12.[4] The Government correctly notes that Commerce's conclusions from earlier segments of the same proceeding do not serve as precedent controlling its conclusions in a future review. Def.'s Br. at 31 (citing *Pakfood Pub. Co. Ltd. v. United States*, 34 CIT 1122, 1138, 724 F. Supp. 2d 1327, 1345 (2010); IDM at 35)). Even so, courts "look for a reasoned analysis or explanation" from Commerce to ensure that the agency has not abused its discretion in departing from prior analysis. *Wheatland Tube Co. v. United States*, 161 F.3d 1365, 1369–70 (Fed. Cir. 1998) (citing *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 167–68 (1962)). Commerce has provided such an explanation here, noting that the GOT stated during the course of Commerce's investigation that "the purpose of the customs duty and VAT exceptions provided under the GIIs is to encourage general invest-

[4] Plaintiffs point to the 2015 review: *Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results and Intent to Rescind Review in Part; 2015*, 82 Fed. Reg. 57,574 (Dep't Commerce Dec. 6, 2017).

ments in the country." IDM at 34 (citing GOT Verification Report at 6). Where admissions from the GOT and Plaintiffs themselves evince an untied subsidy, Commerce does not abuse its discretion in departing from even an explicit contrary finding where those admissions were not available. *Id.*; *see also* Def.'s Suppl. Br. at 9.

Accordingly, the court concludes that there is no indication that Commerce's application of 19 C.F.R. § 351.525(b) was either unlawful or unsupported by substantial evidence.

III. Commerce's Decision to Treat the GIIS Program as a Contingent Liability and a Grant is Supported by Substantial Evidence and in Accordance with Law

Plaintiffs argue that Commerce's decision to treat the GIIS program as both a contingent liability and a grant essentially "double-counted" the subsidy provided for the purchase and import of equipment. Pls.' Br. at 23–24. Plaintiffs additionally claim that it was factually incorrect and impermissible for Commerce to treat the GIIS as a contingent liability given that the benefits received were not "contingent" on any subsequent event. *Id.* Instead, Plaintiffs contend, once the covered equipment was imported, the grant was received. *Id.* at 24. The Government and RTAC disagree, arguing that Içdaş Elektrik received two benefits: a contingent liability interest-free loan in the amount of the unpaid interest on its subsidized equipment purchases, and a grant consisting of the total amount of waived duties. Def.'s Br. at 18; Def-Inter.'s Br. at 12. The court finds that Commerce's decision to treat the GIIS program as a contingent liability and a grant was not impermissible double-counting and is in fact supported by substantial evidence and in accordance with law.

Commerce's treatment of contingent liabilities is prescribed by C.F.R. § 351.505. The statute finds that a benefit "exists to the extent that the amount a firm pays on the government-provided loan is less than the amount the firm would pay on a comparable commercial loan(s) that the firm could actually obtain on the market." 19 C.F.R. § 351.505(a)(1). "When 'the repayment obligation is contingent upon the company taking some future action or achieving some goal in fulfillment of the loan's requirement[],' [then] Commerce is normally required to treat the import duty deferrals as contingent liability loans until the liability is met or until the event upon which repayment depends is no longer a viable contingency." *MTZ Polyfilms, Ltd. v. United States*, 33 CIT 1575, 1583, 659 F. Supp. 2d 1303, 1311 (2009) (citing *Loans*, 19 C.F.R. § 351.505(d)); *see also* Def-Inter.'s Suppl. Br. at 3.

The benefit conferred to Içdaş by the GIIS program is, under C.F.R. § 351.505, reasonably understood as a contingent liability. It is not

disputed that Içdaş Elektrik received customs duty and VAT exemptions on certain purchases of machinery and equipment under the GIIS program. Def.'s Br. at 19; Pls.' Br. at 23. Contrary to Plaintiffs' assertions, the fact that the GOT could revoke these exemptions and require payment in full of suspended interest upon discovering issues at verification is sufficient to render the suspended interest an effective contingent liability loan. GOT Verification Report at 7–8; *see also* Def.'s Br. at 20. Indeed, as Commerce noted, failing to consider the contingent liability portion of the GIIS benefits would leave it with "no remedy to restore the subsidies attributed and duties paid." IDM at 37.

Here, the regulation defines a contingent liability interest-free loan as a loan for which "the repayment obligation is contingent upon the company taking a future action or achieving some goal." 19 C.F.R. § 351.505(d)(1). The administrative record shows that under the GIIS program, Içdaş Elektrik received customs duty and VAT exemptions on equipment purchases which were subject to reclamation with interest in the case that Içdaş Elektrik failed to receive a completion visa. PDM at 16 (citing GOT Initial Questionnaire Response (May 14, 2018), P.R. 64, C.R. 36, at 83–84); IDM at 36–37. Given this evidence, Commerce reasonably determined that Içdaş Elektrik's repayment obligation was contingent upon grant of the completion visa, and thus that the GIIS program included "a loan component within the meaning of 19 C.F.R. § 351.505(d)." IDM at 37; Def.'s Br. at 20. Because the GIIS program given to Içdaş Elektrik was attributable to Içdaş, the benefits received under the program were also attributable to Içdaş, and Commerce reasonably concluded that Içdaş's repayment obligation was contingent upon the company fulfilling its loan requirements under 19 C.F.R. § 351.505(d).

Furthermore, it is not contrary to law for Commerce to treat Içdaş's GIIS benefits as both a contingent liability interest-free loan and a grant. Under 19 C.F.R. § 351.505(d)(2), if Commerce "determines that the event upon which repayment depends is not a viable contingency, [Commerce] will treat the outstanding balance of the loan as a grant received in the year in which this condition manifests itself." Here, the contingent liability interest-free loan is not a viable contingency in the year in which the GOT granted Içdaş a completion visa. Therefore, Commerce reasonably determined that an additional benefit — a grant — arises in the year in which the GOT waives Içdaş's contingent liability and forgives Içdaş's unpaid VAT and duties. Def.'s Br. at 21. Nor does the plain language of the statute indicate that 19 C.F.R. § 351.505(d)(2) must be applied to the exclusion of 19 C.F.R. §

351.505(d)(1),[5] and as noted above, such exclusion risks leaving Commerce with no recourse to "restore the subsidies attributed and duties paid" through countervailing duties. IDM at 37. The court therefore concludes that Commerce's decision to treat the GIIS program as a contingent liability and a grant is supported by substantial evidence and in accordance with law.

IV. Commerce's Application of the IMF Loan Interest Rates to the Loan Provided Under the GIIS Program is Supported by Substantial Evidence

Plaintiffs contend that Commerce's decision to apply IMF benchmark loan rates to the GIIS program is unsupported by evidence and not in accordance with departmental policy. Pls.' Br. at 26. Setting aside the argument rejected above that the GIIS benefit cannot be characterized as a contingent loan, Plaintiffs additionally claim that Commerce improperly applied a TL benchmark rate where Içdaş Elektrik provided actual borrowing rates in U.S. dollars, and that the IMF TL rates applied were distortive. *Id.* at 26–27. The Government and RTAC deny these arguments and contend that, as neither Içdaş nor Içdaş Elektrik had any comparable long-term loans from commercial banks during the year under consideration or the preceding year, Commerce properly relied instead on national average interest rates from the IMF statistics. Def.'s Br. at 24; Def-Inter.'s Br. at 14. The court finds that the application of IMF benchmark rates was supported by substantial evidence and in accordance with law.[6]

A loan confers a benefit where there is a "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." 19 U.S.C. § 1677(5)(E). Under 19 C.F.R. § 351.505(c)(2), to determine the benefit conferred by a government-provided concessionary interest rate loan, Commerce looks to the difference between the actual interest rate and a benchmark rate constituting "the interest the firm would have paid on [a] comparison loan." In the case that the loan is a contingent liability loan, and repayment is conditioned upon an event set to occur more

[5] In *MTZ Polyfilms*, the court rejected a similar argument that Commerce improperly interpreted unpaid benefits under an export goods scheme as a contingent liability loan, finding that "in the absence of unambiguous statutory language to the contrary or unreasonable resolution of language that is ambiguous," Commerce's interpretation properly governs. 33 CIT at 1582, 659 F. Supp. 2d at 1313–14.

[6] While RTAC further argues that Plaintiffs failed to exhaust their administrative remedies with respect to both Commerce's reliance on IMF data and its application of a tier-three benchmark with respect to natural gas market value, Def.-Inter.'s Br. at 13–14, the court rejects this argument. Plaintiffs have adequately demonstrated that they raised the relevant issues and requested a hearing before Commerce. *See Çolakoğlu and Içdaş Case Brief* at 1, 12–15; *see also* Pls.' Suppl. Br. at 24–25.

than one year after the receipt of the loan, Commerce is obligated to employ a long-term interest rate benchmark. 19 C.F.R. § 351.505(d). In order to calculate a long-term interest rate, Commerce "normally will use a loan the terms of which were established during, or immediately before, the year in which the terms of the government-provided loan were established." 19 C.F.R. § 351.505(a)(2)(iii). However, if Commerce determines that "the firm did not take out any comparable commercial loans" during or immediately before the relevant year, it "may use a national average interest rate for comparable commercial loans." 19 C.F.R. § 351.505(a)(3)(ii).

Here, Commerce appropriately employed a long-term interest rate benchmark to calculate the total benefit received by Plaintiffs under the GIIS. 19 C.F.R. § 351.505(c)(2). As the court found above, one of the benefits conferred by the GIIS program is the suspension of interest on the contingent liability loan provided to Içdaş Elektrik. As the final waiver of liability through verification and grant of a completion visa could occur years after the issuance of the loan, the GIIS contingent liability loan qualifies as long term under the relevant regulation. PDM at 18; IDM at 36–37; 19 C.F.R. § 351.505(d). Thus, the appropriate benchmark for analysis of the total benefit amount is the interest rate provided under a "comparable commercial loan that the recipient could actually obtain on the market." 19 U.S.C. § 1677(5)(E).

Nor is there evidence that Commerce unreasonably applied IMF TL interest rate benchmarks to Plaintiffs. The applicable regulation clearly states that if Commerce finds that there are no comparable long-term loans it can rely on the national average interest rate. *See* 19 C.F.R. § 351.505(a)(3)(ii). In this case, Commerce concluded that the actual long-term interest rates obtained by Içdaş and Içdaş Elektrik during the relevant period were inappropriate for its analysis because the variable interest rates actually obtained were "set at the time the loans were opened," and thus reflect only "the financial reality of the company at that time." IDM at 37. In addition, the provided rates were in U.S. dollars, and thus could not reflect the cost of borrowing TL during the relevant period, while "had Içdaş paid the exempted duties, it would have paid the duties in TL, not USD." IDM at 37; *see also* Def-Inter.'s Br. at 10.

Indeed, the court has previously sustained Commerce's use of IMF national average interest rates for the calculation of contingent-liability loan benefits. *See MTZ Polyfilms*, 33 CIT at 1585, 659 F. Supp. 2d at 1313 (upholding reliance on a long term interest rate benchmark where the benefit scheme closed eight years after issuance of the relevant loan, and where plaintiff identified no compa-

rable long-term rupee-denominated loan from a commercial bank obtained during, or immediately before, the year under consideration); *see also Usinor Sacilor v. United States*, 19 CIT 711, 737–38, 893 F. Supp. 1112, 1135–36 (1995) (holding that Commerce's decision to rely upon an IMF rate benchmark was "supported by substantial evidence and [] otherwise in accordance with law" where Commerce "adequately explained its reliance upon the IMF rates" and rejected plaintiffs' provided rates as inapposite). As in *MTZ Polyfilms* and *Usinor Sacilor*, Commerce here provided an adequate explanation for its reliance on the IMF data, IDM at 37, and Plaintiffs have not identified sufficient grounds for the court to conclude such reliance was contrary to law or unsupported by substantial evidence.

Nor do Plaintiffs adequately demonstrate that application of the IMF interest rates was distortive. *See* Pls.' Br. at 27. Içdaş argues that, by converting the provided USD import values to TL to apply IMF TL interest rates, Commerce introduced "a second layer of distortion" beyond its rejection of the actual U.S. dollar interest rates Içdaş provided during the investigation. Pl.'s Br. at 28. However, as the Government notes, Içdaş does not allege that Commerce's calculations in fact resulted in a subsidy amount in excess of the amount that would have been received if the loan were given as a grant. Def.'s Br. at 26. In addition, Commerce clearly explained its decision to rely on the USD customs values for the exempted equipment, noting that "the TL value of the exempted duties . . . would have been based on the USD invoice amount," and thus "the amount of the contingent liability" in TL is dependent on the TL conversion of the USD invoice amount. IDM at 38. Thus, the court sustains Commerce's application of IMF TL loan interest rates in its review of the GIIS program.

V. Commerce Properly Measured the Adequacy of Remuneration Pursuant to 19 U.S.C. § 1677(5)(E)(iv) by Relying on Natural Gas Prices Published by the IEA as a Tier-Three Benchmark

Plaintiffs argue that Commerce inappropriately employed a tier-three benchmark to find that Çolakoğlu received natural gas for less than adequate remuneration. Pls.' Br. at 29. Plaintiffs do not contest Commerce's finding that there was no usable tier-one benchmark for adequate remuneration. Instead, Plaintiffs assert that Commerce improperly rejected viable tier-two benchmark data by rejecting Plaintiffs' submitted price data from Russia and Azerbaijan. *Id.* at 30. Specifically, Plaintiffs argue that Commerce's reliance on tier-three IEA averages was improper because (1) Commerce provided no evidence for its determination that the proposed tier-two benchmark countries exercise "outsized control" over the natural gas market, and

therefore provide distorted price data, and (2) Commerce itself distorted the tier-three price data by cherry-picking market participant gas prices. *Id.* at 32–33, 37. The Government and RTAC respond that Çolakoğlu provides no evidence contradicting Commerce's finding that Russian and Azerbaijani gas prices were unviable as a tier-two benchmark. Def.'s Br. at 37; Def-Inter.'s Br. at 16. The court finds that Commerce's rejection of the proposed tier-two benchmark, and reliance on a tier-three benchmark, was in accordance with law and supported by substantial evidence. In addition, the court holds that Commerce reasonably interpreted 19 C.F.R. § 351.511 in the development of the tier-three benchmark.

A. Commerce's Tier-Two Determination

In its *Final Results*, Commerce found that Russian and Azerbaijani domestic natural gas prices are distorted by government control, and that natural gas exports from those countries necessarily reflect these distorted prices. IDM at 17–18. Thus, Commerce concluded that neither domestic nor export prices from Russia or Azerbaijan were viable tier-two benchmarks. *Id.* In support of this conclusion, Commerce cited both its prior investigations relating to Russian and Azerbaijani export prices. *Id.* at 18 (citing *Preliminary Results; Steel Concrete Reinforcing Bar From the Republic of Turkey*, 82 Fed. Reg. 57,574 (Dep't of Commerce December 6, 2017).

Commerce's rejection of the proposed Russian benchmark data was supported by substantial evidence and in accordance with law. Commerce has consistently found that Russian natural gas export prices to the EU were distorted and unsuitable as a benchmark. *See, e.g.*, *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 81 Fed. Reg. 49,935 (July 29, 2016); PDM at 22. Additionally, the court has repeatedly sustained such findings. *See, e.g.*, *Rebar Trade Action Coal. v. United States II*, 43 CIT __, __, 398 F. Supp. 3d 1374, 1378–79 (2019). In particular, the court has held that "it is reasonable . . . for Commerce to predicate its determination that Russian export prices are not market-driven based on a pattern of abusing its 'dominant market position in support of foreign policy goals.'" *Habaş Sinai ve Tibbi Gazlar Istihal Endüstrisi A.Ş. v. United States*, 44 CIT __, __, 459 F. Supp. 3d 1341, 1350 (2020) (quoting *Remand Results* at 16–17 & n.74). Commerce does not, as Plaintiffs suggest, find that Russia "somehow . . . control[s] overall market

prices," Pls.' Br. at 32, but rather draws a reasonable conclusion from the available evidence. Thus, the court sustains Commerce's determination.

The court similarly sustains Commerce's rejection of the proposed Azerbaijani export data. Commerce concluded in its *Final Results* that, given Turkey's distorted domestic natural gas market, Azerbaijani natural gas export prices are likewise distorted by participation in the Turkish market. IDM at 18. Although Plaintiffs suggest this finding "amounts to a blanket repudiation of 19 C.F.R. § 351.511(a)(2)(ii)," Pls.' Br. at 32, the existence of a tier-three benchmark in fact "anticipates situations where the government intervenes, such that it is the only source available to consumers in that country." *Nucor Corp. v. United States*, 42 CIT __, __, 286 F. Supp. 3d 1364, 1379 (2018) (citing *CVD Preamble*, 63 Fed. Reg. at 65,378). In addition, while Plaintiffs claim that Commerce's determination was based on "mere speculation," Pls.' Br. at 32–33, Commerce is permitted to make reasonable inferences from the record evidence. *Daewoo Elecs. Co. v. United States*, 6 F.3d 1511, 1520 (Fed. Cir. 1993). Here, Commerce reasonably determined that the Turkish natural gas market is distorted by GOT control, and that Azerbaijan's exports to Turkey are necessarily "in conformity with the Turkish market," such that neither domestic nor export prices in Azerbaijan reflect undistorted tier-two benchmark data. IDM at 18.

Plaintiffs fail to demonstrate that Commerce's rejection of the proposed tier-two benchmarks was improper or contrary to the record evidence. The court therefore finds that Commerce's determination that Russia and Azerbaijan did not provide viable tier-two benchmark data was supported by substantial evidence and in accordance with law.

B. Commerce's Tier-Three Calculations

In the *Final Results*, Commerce employed a tier-three benchmark in its analysis of adequate remuneration. Commerce explained that it constructed the tier-three benchmark "based on IEA pricing data for EU countries, adjusted for Russian exports to the EU" during the relevant period, such that the benchmark provided as accurate an accounting of gas sales for less than adequate remuneration as possible. IDM at 17. In particular, the benchmark incorporated "all data available for EU countries on the record," including data from "both IEA submissions [and] the natural gas prices for electricity generation, as proposed by Çolakoğlu." IDM at 19.

Plaintiffs argue that if a tier-three benchmark is used, it should be based on the overall average of IEA data for all EU countries, rather

than limited data controlled for Russian exports. Pls.' Br. at 38. In particular, Çolakoğlu assets that the IEA data used is not representative of the EU market given its exclusion of Norway and Russia. *Id.* at 34. Plaintiffs argue that Commerce essentially cherry-picked the IEA data such that the resultant benchmark is "not representative" of the market value of natural gas. *Id.* at 34–35. The Government and RTAC respond that the unmodified IEA data could not have substantiated a market value determination, as Russian natural gas pricing is distorted by state involvement, and that Commerce in fact relied upon all EU IEA data in the record when reaching its final determination. IDM at 19; Def.'s Br. at 40–41; Def.-Inter.'s Br. at 18–19.

As noted above, the court has consistently sustained Commerce's reliance on IEA data in constructing a natural gas benchmark. *See Rebar Trade Action Coalition v. United States I*, 43 CIT __, __, 389 F. Supp. 3d 1371 (2019); *see also Habaş*, 459 F. Supp. 3d 1341. Furthermore, the court provides substantial deference to Commerce in "identifying, selecting, and applying its CVD methodologies." *Habaş*, 459 F. Supp. 3d at 1353; *see also Fujitsu*, 88 F.3d at 1039. Even where Commerce's explanation is "'of less than ideal clarity,'" the court is obligated to "sustain a determination . . . where Commerce's decisional path is reasonably discernable." *Rebar I*, 389 F. Supp. 3d at 1381–82 (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983)). The question is not whether some other inference could reasonably have been drawn, but if the record as it stands adequately supports Commerce's determination. *Id.* at 1384– 85 (citing *Daewoo*, 6 F.3d 1511, 1520 (Fed. Cir. 1993)). The court is not tasked with determining whether Commerce could have improved the data it relied upon. *Id.* Indeed, it is established that "[a]ntidumping and [CVD] determinations involve complex economic and accounting decisions of a technical nature, for which agencies possess far greater expertise than courts." *Fujitsu*, 88 F.3d at 1039. Thus, so long as Commerce's determination is reasonable, the court must uphold it.

Plaintiffs' argument is therefore unavailing. Here, as the Government notes, the aim of the tier-three analysis was not to precisely "estimate the price of natural gas in Europe, but to determine the market value for natural gas as consumed in Turkey, relying on what data are available on the record." Def.'s Br. at 38–39 (quoting IDM at 19); *see also* Def-Inter.'s Br. at 18. Commerce clearly explained its methodology in arriving at the tier-three benchmark, and Plaintiff has not demonstrated that the record cannot reasonably be construed to support Commerce's determination. IDM at 17–19. Accordingly, the court finds that Commerce reasonably measured the adequacy of

remuneration pursuant to 19 U.S.C. 1677(5)(E)(iv) by relying on IEA natural gas prices to constitute as a tier-three benchmark.

CONCLUSION

The court finds that Commerce's final determination was in accordance with law and supported by substantial evidence. In particular: (1) Commerce permissibly applied partial AFA in response to Içdaş's failure to cooperate with Commerce's investigation to the best of its ability; (2) Commerce reasonably attributed to Içdaş the GIIS program benefits reveived by Içdaş Elektrik as a cross-owned input supplier; (3) Commerce reasonably interpreted Içdaş's customs duty and VAT exemptions as both a grant and a contingent liability; (4) Commerce's application of an IMF TL loan interest rate benchmark with respect to the GIIS's interest-free contingent liability was appropriate under 19 U.S.C. § 1677(5)(E); and (5) Commerce permissibly resorted to a tier-three benchmark for the market price of LNG in its assessment of adequate remuneration.

Accordingly, Plaintiffs' motion for judgment on the agency record is denied; Commerce's *Final Results* are sustained, and judgment is entered in favor of the United States.

SO ORDERED.

Dated: February 19, 2021
New York, New York

/s/ Gary S. Katzmann
GARY S. KATZMANN, JUDGE

Slip Op. 21–21

THE CHEMOURS COMPANY FC, LLC, Plaintiff, v. UNITED STATES, Defendant, and AGC CHEMICALS AMERICA, et al., Defendant-Intervenors.

Before: Timothy M. Reif, Judge
Consol. Court No. 18–00174

[The Remand Results of the United States lnternational Trade Commission are sustained in conformity with this opinion.]

Dated: February 22, 2021

Mary J. Alves, Cassidy Levy Kent (USA) LLP, of Washington, DC, argued for plaintiff. With her on the brief were *James R. Cannon, Jr., Ulrika K. Swanson* and *James E. Randsell.*

Karl S. von Schriltz, Attorney-Advisor, United States International Trade Commission, of Washington, DC, argued for defendant. With him on the brief were *Andrea C. Casson,* Assistant General Counsel for Litigation, and *Dominic L. Bianchi,* General Counsel.

Jordan C. Kahn, Grunfeld, Desiderio, Lebowitz Silverman & Klestadt LLP, of New York, NY, for defendant-intervenors PTFE Processors Alliance and Chinese respondents. With him on the brief was *Max F. Schutzman.*

Russell A. Semmel, Arent Fox LLP, of Washington, DC, for defendant-intervenor Gujarat Fluorochemicals Limited. With him on the brief were *Matthew M. Nolan, John M. Gurley* and *Claudia D. Hartleben.*

OPINION

Reif, Judge:

This action arises from the determinations by the United States International Trade Commission ("Commission") in its antidumping and countervailing duty investigations of Polytetrafluorethylene Resin ("PTFE") from the People's Republic of China ("China") and India. *See Polytetrafluoroethylene Resin from China and India,* Inv. Nos. 701-TA-588 and 731-TA-1392–1393, USITC Pub. 4801 (July 2018) (Final), ECF No. 33, and *Polytetrafluoroethylene Resin from China and India*, Inv. Nos. 731-TA-1392–1393, USITC Pub. 4841 (Nov. 2018) (Final), ECF No. 33 (collectively, "Final Determinations"). Before the court are the Final Results of Redetermination Pursuant to Court Remand ("Remand Results"), ECF Nos. 108–09, pursuant to the court's decision in *Chemours Co. v. United States*, 44 CIT __, __, 443 F. Supp. 3d 1315 (2020) ("*Chemours I*"). The Commission complied with the court's instruction and its negative injury determination is supported by substantial evidence. Accordingly, the court sustains the remand determination.

PROCEDURAL HISTORY

The court presumes familiarity with the facts of the case as set out in its previous opinion, *Chemours I*, ordering remand to the Commission. *See Chemours I*, 443 F. Supp. 3d at 1320–22. The court now recounts those facts relevant to the court's review of the Remand Results.

On September 28, 2017, plaintiff The Chemours Company FC, LCC ("Chemours") filed antidumping and countervailing duty petitions with the United States Department of Commerce ("Commerce") and the Commission. In *Chemours I*, this court remanded the Commission's Final Determinations. *Id.* at 1319–20. The court found that the Commission's post-petition data analysis was unsupported by substantial evidence and directed the Commission to reconsider the effects of the petition filings on its analysis. *Id.* at 1320–22. The Commission filed its Remand Results on August 4, 2020. Views of the Commission, ECF Nos. 108–09 ("*Views*"). Defendant-Intervenors commented on the remand determination. Comments on Remand Determination of PTFE Processors Alliance and Chinese Respondents, ECF No. 111 ("PPA and Chinese Respondents Br."). Defendant-Intervenors the PTFE Processors Alliance ("PPA"), Chinese Respondents[1] and Gujarat Fluorochemicals Limited ("GFL") filed comments. Comments on Remand Determination of PTFE Processors Alliance and Chinese Respondents, ECF No. 112 ("Def.-Intervenors' Br."). Plaintiff Chemours filed comments. Plaintiff's Comments on the Remand Determinations, ECF Nos. 113–14 ("Pl. Br.").

Defendant-Intervenors PPA and Chinese Respondents replied. Reply to Comments on Remand Determination of PTFE Processors Alliance and Chinese Respondents, ECF No. 115 ("PPA and Chinese Respondents Reply Br."). Defendant-Intervenor AGC Chemicals Americas, Inc. replied. Reply Comments by Def.-Intervenor on the U.S. International Trade Commissions' Remand Results, ECF No. 116 ("AGC Reply Br."). Defendant United States replied. Def. United States International Trade Commission's Reply to Pl.'s Comments on Remand, ECF Nos. 117–18 ("Def. Reply Br.").

JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction pursuant to 19 U.S.C. § 1516a(a)(2)(B)(i) (2012) and 28 U.S.C. § 1581(c), which grant the court the authority to review a determination of the International Trade Commission. The

[1] The Chinese respondents are Zhejiang Jusheng Fluorochemical Co., Ltd., Shandong Dongyue Polymer Material Co., Ltd., Shanghai Huayi 3F New Materials Sales Co., Ltd., Zhonghao Chenguang Research Institute of Chemical Industry Co., Ltd., Jiangxi Lee & Man Chemical Ltd., Jiangsu Meilann Chemical Co., Ltd., and China Chamber of Commerce of Metals, Minerals & Chemical Importers.

court will uphold the Commission's determinations, findings or conclusions unless they are unsupported by substantial evidence on the record or otherwise not in accordance with the law. 19 U.S.C. § 1516a(b)(1)(B)(i).

DISCUSSION

In *Chemours I*, this court affirmed in part and remanded in part the Commission's original determinations. 443 F. Supp. 3d 1315. The court affirmed several administrative findings and issued a remand for the Commission to reconsider its reliance on post-petition data in its price effects analysis. *Id.* at 1321–34. In its original determinations, the Commission relied on the trend in prices of the domestic like product, including for the fourth quarter of 2017, as a key component in its analysis. *Views* at 43–48. In *Chemours I*, the court stated that, "[b]ecause the Commission failed to address this evidence, it is not clear, based on the Commission's Views, that the Commission considered all of the evidence on the record." 443 F. Supp. 3d at 1329. The court stated that the Commission's determination "must address and provide an explanation for how [the import price data] are consistent with the Commission's decision not to discount the data for the fourth quarter of 2017." *Id.* at 1329.

Following the court's remand, the Commission complied with this court's instructions, so the court now affirms the Commission's determinations. As instructed by this court, the Commission examined the record evidence relating to post-petition data. Remand Results at 9–14. Specifically, in its Remand Results, the Commission found that "[s]ubject import prices for product 1 from China increased throughout 2017, beginning in the first quarter," which buttressed the Commission's conclusion that subject import prices had begun to increase prior to the filing of the petition. Remand Results at 12 (citing CR/PR at Table V-3). The Commission also found that "subject import prices for sales of products 2 through 5 began to increase in the first and second quarters of 2017." *Id.* It was "[o]nly subject import prices for product 1 from India [which] began to increase after the third quarter of 2017." *Id.*

Altogether, the Commission noted, "[t]hese data are consistent with data showing that domestic prices also began to increase in early 2017, prior to the filing of the petitions, as demand recovered from the drop in 2016." *Id.* Any increased prices for domestic product *and* subject imports in the fourth quarter of 2017 represented "a continuation of existing price trends rather than a reaction to the filing of the petitions." *Id.* Thus, the Commission again determined not to accord

reduced weight to post-petition data. *Id.* This analysis demonstrates that the Commission sufficiently addressed in its price effects analysis this court's concern with the post-petition data pertaining to prices of subject imports.

Despite the Commission's analysis of the data, plaintiff claims that the Commission's remand determinations "fail[] to address the issue presented by Section 1677(E)(ii) in the context of the statutory scheme" and are thus insufficient to address the court's concern. Pl. Br. at 7–21. Plaintiff notes that "the statute recognizes that injury determinations involve the interplay of numerous variables and depend on conditions of competition that may differ among industries and even vary over a specific period." *Id.* at 7. "Price 'effects' calls for the Commission to do more than describe the trend in subject import prices." *Id.* at 8. The plaintiff argues that the Commission should not describe post-petition effects "in isolation," but rather examine the "interplay among demand, volume, price and the resulting (or not) impact on the domestic industry." *Id.* at 9.

The Commission retains significant discretion in weighing economic factors in its review; however, the Commission's analysis must abide by certain well-established guideposts. *Metallverken Nederland B.V. v. United States*, 14 CIT 481, 487, 744 F. Supp. 281, 286 (1990). First, the Commission is required to "consider all 'pertinent evidence' on the record of an investigation before reaching its final result." *AWP Indus., Inc. v. United States*, 35 CIT 774, 793, 783 F. Supp. 2d 1266, 1285 (2011) (quoting *Roses, Inc. v. United States*, 13 CIT 662, 665, 720 F. Supp. 180, 183 (1989)). As noted, here the court concluded that the Commission's original determination did not support the conclusion that the Commission considered all pertinent evidence in this case. The court's remand discussed how the Commission failed to consider "pertinent evidence" pertaining to post-petition trends of import prices in the U.S. market. *Id.*; *Chemours I*, 443 F. Supp. 3d at 1328–31. In this way, the remand demonstrated how the record of the case successfully rebutted the presumption that the Commission had considered all the evidence. *Id.*

The second guidepost is that "while the [Commission] need not address every argument and piece of evidence . . . it must address significant arguments and evidence which seriously undermines [sic] its reasoning and conclusions." *Altx, Inc. v. United States*, 25 CIT 1100, 1117–18, 167 F. Supp. 2d 1353, 1374 (2001). As the Statement of Administrative Action to the Uruguay Round Agreements Act makes clear, the Commission must "specifically reference . . . factors and arguments that are material and relevant, or must provide a discussion or explanation in the determination that renders evident

the agency's treatment of a factor or argument." Statement of Administrative Action, accompanying H.R. Rep. No. 103–826(I), at 892, reprinted in 1994 U.S.C.C.A.N. 4040, 4216. Third, the Commission must "articulate a rational connection between the facts found and the choice made." *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 167–68 (1962). In sum, the statute and case law in this area afford substantial, but not unbounded, discretion to the Commission to set forth and explain its analysis.

Consistent with the foregoing, a more clear and connected analysis by the Commission would have been helpful in this case, notwithstanding the Commission's protestations concerning its ability to weigh the evidence of record.

Nonetheless, the court finds that such an analysis, while useful in explaining its decision to the parties and the public, was not necessary here. As the court discussed in *Chemours I*, "[t]he Commission has wide discretion in deciding how to weigh post-petition information." 443 F. Supp. 3d at 1328 (citing *Nitrogen Solutions Fair Trade Comm. v. United States*, 19 CIT 86, 101, 358 F. Supp. 2d 1314, 1329 (2005)). The court [asked] the Commission to "explain its lack of findings with respect to subject import prices in the Commission's post-petition analysis," 443 F. Supp. 3d at 1329–30, and the Commission did so. As Defendant-Intervenors point out in their brief, in its Remand Results, the Commission "identif[ied] substantial corroborating data for its findings with respect to prices." PPA and Chinese Respondents Reply Br. at 10 (citing *Chemours I*, 443 F. Supp. 3d at 1322). Whether addressing these specific data points in a different manner would have altered the conclusion of the Commission's analysis is not the question before the court. As defendant points out, "the focal point on appeal is not what methodology Plaintiffs would prefer, but on whether the methodology actually used by the Commission was reasonable." Def. Br. at 18 (quoting *Shandong TTCA Biochemistry Co. v. United States*, 35 CIT 545, 559, 774 F. Supp. 2d 1317, 1329–30 (2011) (citations and internal quotations omitted)). For this reason, the court finds no basis to invalidate the analysis relating to post-petition data in the Commission's Remand Results.

CONCLUSION

For the foregoing reasons, the Commission's remand determination is supported by substantial evidence and in accordance with law and is, therefore, sustained. Judgment will enter accordingly.

Dated: February 22, 2021
New York, New York

/s/ Timothy M. Reif
TIMOTHY M. REIF, JUDGE

Slip Op. 21–22

NUCOR CORPORATION, Plaintiff, and DONGBU INCHEON STEEL CO., LTD., AND DONGBU STEEL CO., LTD., Consolidated Plaintiffs, and UNITED STATES STEEL CORPORATION, Plaintiff-Intervenor, v. UNITED STATES, Defendant, and DONGBU STEEL CO., LTD., DONGBU INCHEON STEEL CO., LTD., HYUNDAI STEEL COMPANY, NUCOR CORPORATION, UNITED STATES STEEL CORPORATION, CALIFORNIA STEEL INDUSTRIES, AND STEEL DYNAMICS, INC., Defendant-Intervenors.

Before: Jennifer Choe-Groves, Judge
Consol. Court No. 19–00042

[Sustaining the remand results of the U.S. Department of Commerce in the first administrative review of the countervailing duty order on certain corrosion-resistant steel products from the Republic of Korea.]

Dated: February 22, 2021

Alan H. Price, *Robert E. DeFrancesco, III*, *Tessa V. Capeloto*, *Adam M. Teslik*, and *Elizabeth S. Lee*, Wiley Rein LLP, of Washington, D.C., for Plaintiff and Defendant-Intervenor Nucor Corporation.

Donald B. Cameron, *Julie C. Mendoza*, *R. Will Planert*, *Brady W. Mills*, *Mary S. Hodgins*, and *Jordan L. Fleischer*, Morris, Manning, & Martin, LLP, of Washington, D.C., for Consolidated Plaintiffs and Defendant-Intervenors Dongbu Steel Co., Ltd. and Dongbu Incheon Steel Co., Ltd.

Claudia Burke, Assistant Director, and *Elizabeth A. Speck*, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., for Defendant United States. With them on the briefs were *Jeffrey Bossert Clark*, Acting Assistant Attorney General, and *Jeanne E. Davidson*, Director. Of counsel was *Ayat Mujais*, Office of the Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce.

OPINION

Choe-Groves, Judge:

Consolidated Plaintiffs Dongbu Incheon Steel Co., Ltd. and Dongbu Steel Co., Ltd. (collectively, "Dongbu") and Plaintiff Nucor Corporation ("Nucor") filed this consolidated action challenging the final results published by the U.S. Department of Commerce ("Commerce") in the first administrative review of the countervailing duty order on certain corrosion-resistant steel products from the Republic of Korea. *See Certain Corrosion-Resistant Steel Products from the Republic of Korea* ("*Final Results*"), 84 Fed. Reg. 11,749 (Dep't Commerce Mar. 28, 2019) (final results and partial rescission of countervailing duty administrative review; 2015–2016); *see also* Issues and Decision Mem. for the Final Results and Partial Rescission of Countervailing Duty Admin. Review, PD 299 (Mar. 18, 2019) ("Final IDM"). Before the court are the Final Results of Redetermination Pursuant to Court Remand, ECF Nos. 88, 89 ("*Remand Results*"), which the court or-

dered in *Nucor Corp. v. United States* ("*Nucor I*"), 44 CIT __, 461 F. Supp. 3d 1374 (2020). For the following reasons, the court sustains the *Remand Results*.

ISSUES PRESENTED

This case presents the following issues:

1. Whether Commerce's determination that Dongbu's loans could not be used as a benchmark for measuring benefits from government loans is supported by substantial evidence; and
2. Whether Commerce's determination that Dongbu's loan restructuring was a specific subsidy is supported by substantial evidence.

BACKGROUND

The court presumes familiarity with the facts and procedural history as set forth in its prior opinion and recounts the facts relevant to the court's review of the *Remand Results*. *See Nucor I*, 44 CIT at __, 461 F. Supp. 3d at 1377.

In the *Final Results*, Commerce determined that Dongbu's loans from private creditors on the debt restructuring committee could not be used as a benchmark for measuring benefits from government loans. *See* Final IDM at 32–33. Commerce determined that Dongbu was uncreditworthy and calculated a benchmark rate based on the formula for uncreditworthy companies. *Id.* Commerce also determined that Dongbu's loan restructuring was a countervailable, specific subsidy. *Id.* at 31. Dongbu challenged these determinations in *Nucor I*.

The court held in *Nucor I* that Commerce's determination that Dongbu's loans from private creditors could not be used as a benchmark was unsupported by substantial evidence on the record. *Nucor I*, 44 CIT at __, 461 F. Supp. 3d at 1378–79. The court also held that Commerce failed to address Dongbu's arguments challenging Commerce's determination that Dongbu's loan restructuring was a specific subsidy and that Commerce did not support its determination with substantial evidence. *Id.* at __, 461 F. Supp. 3d at 1379–80. The court remanded the case to Commerce for further proceedings. *Id.* at __, 461 F. Supp. 3d at 1382.

Commerce filed the *Remand Results* on September 30, 2020. On remand, Commerce maintained its determinations that loans from private creditors could not be used as a benchmark and that Dongbu's loan restructuring was a specific subsidy. *See Remand Results* at 34.

Dongbu filed comments in opposition to the *Remand Results*. Comments of Consol. Pls. [Dongbu] in Opp'n to Remand Determination of [Commerce], ECF Nos. 93, 94 ("Dongbu Cmts."). Defendant United States ("Defendant") and Nucor filed reply comments in support of the *Remand Results*. Def.'s Resp. Comments in Supp. of [Commerce's] Remand Redetermination, ECF Nos. 95, 96 ("Def. Cmts."); Comments of [Nucor] in Supp. of Remand Redetermination, ECF Nos. 97, 98 ("Nucor Cmts.").

JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction pursuant to 28 U.S.C. § 1581(c) and 19 U.S.C. § 1516a(a)(2)(B)(iii). The court will hold unlawful any determination found to be unsupported by substantial evidence on the record or otherwise not in accordance with the law. 19 U.S.C. § 1516a(b)(1)(B)(i). The court also reviews determinations made on remand for compliance with the court's remand order. *Ad Hoc Shrimp Trade Action Comm. v. United States*, 38 CIT __, __, 992 F. Supp. 2d 1285, 1290 (2014), *aff'd*, 802 F.3d 1339 (Fed. Cir. 2015).

DISCUSSION

I. Commerce's Determination that Dongbu's Loans from Private Creditors Could Not Be Used as a Benchmark

The first issue before the court is whether Commerce's determination that Dongbu's loans from private creditors could not be used as a benchmark for measuring benefits from government loans is supported by substantial evidence. In *Nucor I*, the court found that Commerce had failed to support its benchmark determination with substantial evidence on the record and remanded accordingly. *Nucor I*, 44 CIT at __, 461 F. Supp. 3d at 1378–79.

Commerce maintained its determination on remand that Dongbu's loans from private creditors could not be used as a benchmark for measuring benefits from government loans. *See Remand Results* at 3–10, 26–29. Dongbu argues that even if Dongbu was uncreditworthy, Commerce could have used Dongbu's loans as a benchmark. *See* Dongbu Cmts. at 3–6. Dongbu asserts that Commerce failed to support its determination with substantial evidence that Dongbu's loans were not comparable commercial loans that could be used as a benchmark. *See id.* at 6–13. Defendant responds that Commerce complied with the court's remand order and supported its determination with substantial evidence. *See* Def. Cmts. at 5–11.

Commerce must determine in a creditworthiness analysis whether a company could have obtained long-term loans from conventional

commercial sources. *See Nucor I*, 44 CIT at __, 461 F. Supp. 3d at 1379. While comparable commercial loans may be used as a benchmark to calculate a countervailable benefit, loans provided under a government program are not considered to be commercial. *See* 19 U.S.C. § 1677(5)(E)(ii); 19 C.F.R. § 351.505(a)(2)(ii). Commerce follows the applicable regulations when conducting a creditworthiness analysis. *See* 19 C.F.R. § 351.505. If Commerce determines that a company is uncreditworthy, as defined in 19 C.F.R. § 351.505(a)(4), Commerce will normally calculate the benefit associated with the extension of a government-provided long-term loan to an uncreditworthy company during the period of review, as follows:

> If the Secretary finds that a firm that received a government-provided long-term loan was uncreditworthy, as defined in paragraph (a)(4) of this section, the Secretary normally will calculate the interest rate to be used in making the comparison called for by paragraph (a)(1) of this section according to the following formula:
>
> $i^b = [(1 - q^n)(1 + i^f)^n / (1 - p^n)]^{1/n} - 1$,
>
> where:
>
> n = the term of the loan;
>
> i^b = the benchmark interest rate for uncreditworthy companies;
>
> i^f = the long-term interest rate that would be paid by a creditworthy company;
>
> p^n = the probability of default by an uncreditworthy company within n years; and
>
> q^n = the probability of default by a creditworthy company within n years.

19 C.F.R. § 351.505(a)(3)(iii).

Commerce supported its determination that Dongbu's loans could not be used as a benchmark by citing evidence showing the substantial government influence and inclusion of government programs, Dongbu's debt restructuring agreement that was significantly influenced by the state-owned Korea Development Bank, and low-interest loans provided by government-influenced banks. *See Remand Results* at 5–10, 27–29. The court concludes that it was reasonable for Commerce to determine that Dongbu's loans were non-commercial and provided under a government program based on record evidence demonstrating the significant influence of the state-owned Korea

Development Bank in Dongbu's restructuring. *See Remand Results* at 5– 7 (citing Certain Corrosion-Resistant Steel Products from the Republic of Korea, Case No. C-580–879: [Dongbu's] Initial Questionnaire Resp., PD 111–26 (Feb. 13, 2018) ("Dongbu Feb. 13 Resp.")); *see also* Admin. Review on Certain Corrosion-Resistant Steel Products from the Republic of Korea: [Government of Korea's] Resp. at 13–14, PD 94–110 (Feb. 12, 2018) ("Korea Feb. 12 Resp."). Commerce complied with the court's remand order by supporting the benchmark determination with citations to substantial evidence on the record. *See Remand Results* at 5–10 (citing Korea Feb. 12 Resp.; Dongbu Feb. 13 Resp.; Certain Corrosion-Resistant Steel Products from the Republic of Korea, Case No. C-580–879: [Government of Korea's] Second Suppl. Questionnaire Resp., PD 239 (July 6, 2019) ("Korea July 6 Second Suppl. Resp.")). The court concludes that Commerce determined properly that Dongbu's loans could not be used for calculating a benchmark interest rate because the loans provided under the government program were non-commercial. The court notes that the relevant statute and regulations do not require Commerce to use every loan received by a company as a benchmark. *See* 19 U.S.C. § 1677(5)(E)(ii); 19 C.F.R. § 351.505(a)(2)(ii). To the contrary, the regulations contemplate the possibility that some loans may be inappropriate to use as a benchmark. *See* 19 C.F.R. § 351.505(a)(2)(ii).

In addition, Commerce determined as a preliminary matter that Dongbu was uncreditworthy during the period of review. *Remand Results* at 3 (citing Final IDM at 4 (citing Decision Mem. for the Prelim. Results of the Countervailing Duty Admin. Review at 12, PD 256 (Aug. 3, 2018) ("Prelim. DM") (citing Certain Corrosion-Resistant Steel Products from the Republic of Korea, Case No. C-580–879: First Suppl. Questionnaire Resp. at 8–9, PD 185 (June 14, 2018) ("Dongbu Letter")))). The court observes that Dongbu conceded its uncreditworthiness, referenced by Commerce in the *Remand Results* and demonstrated in the Dongbu Letter on the record:

> Dongbu did not receive any long-term loans in 2016 . . . . Dongbu therefore does not contest the Petitioner's uncreditworthiness allegation for Dongbu in 2015 and 2016, because it has not obtained any comparable commercial loans that could be relied upon to rebut the Department's previous determination that it was not creditworthy . . . . Nor have the present or past financial indicators relied upon by the Department in the original investigation materially changed in a way that would lead to a different conclusion.

Dongbu Letter at 8–9; *see also Remand Results* at 3–4. The court concludes that because Commerce's determination that Dongbu was uncreditworthy was based on Dongbu's lack of comparable commercial loans and an admission contained in a record document, Commerce's determination is reasonable and supported by substantial evidence. *See Remand Results* at 5, 10. Because Commerce determined reasonably that Dongbu was uncreditworthy during the period of review, the court concludes that Commerce applied the proper formula for uncreditworthy companies when it calculated Dongbu's benchmark interest rate. *Id.* at 3–5; Final IDM at 33; *see also* 19 C.F.R. § 351.505(a)(3)(iii).

The court holds that Commerce's remand redetermination that Dongbu's loans from private creditors could not be used as a benchmark for measuring benefits from government loans is supported by substantial evidence. The court sustains Commerce's benchmark interest rate determination based on uncreditworthiness pursuant to the relevant regulations.

II. Commerce's Determination that Dongbu's Loan Restructuring Was a Specific Subsidy

The second issue before the court is whether Commerce's determination that Dongbu's loan restructuring was a specific subsidy is supported by substantial evidence. In *Nucor I*, the court found that Commerce had failed to address Dongbu's arguments challenging Commerce's specificity determination and remanded for Commerce to respond to Dongbu's arguments and support its determination with substantial evidence on the record. *Nucor I*, 44 CIT at __, 461 F. Supp. 3d at 1379–81.

Commerce maintained its determination on remand that Dongbu's loan restructuring was a specific subsidy. *See Remand Results* at 11–19, 32–34. Dongbu argues that its loan restructuring was not a specific subsidy and should be treated in the same manner as bankruptcy proceedings. *See* Dongbu Cmts. at 13–19. Defendant argues that Dongbu's loan restructuring is a specific subsidy and that Commerce complied with the court's remand order by responding to Dongbu's arguments and citing substantial record evidence. *See* Def. Cmts. at 11–15.

A subsidy is countervailable when an authority provides a financial contribution to a person, a benefit is conferred, and the subsidy is specific. 19 U.S.C. § 1677(5)(A)–(B). A subsidy is specific if it is an export subsidy, an import substitution subsidy, or a domestic subsidy. *Id.*§ 1677(5A)(A)–(D). Domestic subsidies are specific when one or more of the following factors exist: the actual recipients of the sub-

sidy, whether considered on an enterprise or industry basis, are limited in number; an enterprise or industry is a predominant user of the subsidy; an enterprise or industry receives a disproportionately large amount of the subsidy; or the manner in which the subsidy is granted indicates that an enterprise or industry is favored over others. *Id.* § 1677(5A)(D)(iii).

Commerce determined during the initial antidumping investigation that the loan restructuring program used by Dongbu was a specific subsidy. *See Remand Results* at 12 (citing *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the Republic of Korea*, 81 Fed. Reg. 35,310 (June 2, 2016) (final determination), and accompanying Issues and Decision Mem. at Cmt. 4). Commerce noted on remand based on record evidence that the loan restructuring program was used by twenty-five companies between 2011 and 2016. *See id.* at 16–17 (citing Korea Feb. 12 Resp.). Commerce determined that the actual recipients of the loan restructuring were limited in number on an enterprise basis. *Id.* at 16 (citing Prelim. DM). Commerce determined that the loan restructuring program used by Dongbu was a specific subsidy under the factors enumerated in 19 U.S.C. § 1677(5A)(D)(iii) because the subsidy was not broadly available and was not widely used throughout the economy. *Id.*; *see* 19 U.S.C. § 1677(5A)(D)(iii)(I).

Commerce addressed Dongbu's arguments challenging Commerce's specificity determination in accordance with the court's remand order. Dongbu argues that its loan restructuring operates similarly to bankruptcy, that Commerce does not consider bankruptcy proceedings to be a specific subsidy, and, therefore, that Commerce should not consider the loan restructuring to be a specific subsidy. *See* Dongbu Cmts. at 13–19. Commerce maintained its determination that Dongbu's voluntary loan restructuring operated differently from bankruptcy proceedings. *Remand Results* at 16. Commerce determined on remand that Dongbu's loan restructuring was used only by a limited number of enterprises, was supervised by a committee comprised mostly of state-owned policy banks, and was not administered by a bankruptcy court, based on record evidence including the Korea Feb. 12 Resp., Korea July 6 Second Suppl. Resp., and Dongbu Feb. 13 Resp. *Id.* at 16–18, 33–34. Commerce determined based on this record evidence that Dongbu's voluntary loan restructuring operated differently from bankruptcy proceedings, and Commerce maintained its specificity determination accordingly. *Id.* at 19.

The court concludes that Commerce's remand redetermination that Dongbu's loan restructuring was a specific subsidy that operated

differently from bankruptcy proceedings is supported by substantial evidence. The court sustains Commerce's specificity determination.

CONCLUSION

In summary, the court holds that Commerce supported its remand redetermination with substantial evidence that Dongbu's loans from private creditors could not be used as a benchmark for measuring benefits from government loans and that Dongbu's loan restructuring was a specific subsidy that operated differently from bankruptcy proceedings. The court sustains Commerce's *Remand Results*. Judgment will be entered accordingly.

Dated: February 22, 2021
New York, New York

/*s*/ *Jennifer Choe-Groves*
JENNIFER CHOE-GROVES, JUDGE

Slip Op.21–23

BOSUN TOOLS CO., LTD. AND CHENGDU HUIFENG NEW MATERIAL TECHNOLOGY CO., LTD., Plaintiff and Consolidated Plaintiff, and DANYANG NYCL TOOLS MANUFACTURING CO., LTD. et al., Plaintiff-Intervenors, v. UNITED STATES, Defendant, and DIAMOND SAWBLADES MANUFACTURERS' COALITION, Defendant-Intervenor and Consolidated Defendant-Intervenor.

Before: Claire R. Kelly, Judge
Consol. Court No. 18–00102

[Sustaining Commerce's second remand redetermination in the seventh administrative review for the antidumping duty order covering diamond sawblades and parts thereof from the People's Republic of China.]

Dated: February 24, 2021

Gregory S. Menegaz, *J. Kevin Horgan*, and *Alexandra H. Salzman*, deKieffer & Horgan, PLLC, of Washington, DC, for plaintiff, Bosun Tools Co., Ltd.

Lizbeth R. Levinson, *Ronald M. Wisla*, and *Brittney R. Powell*, Fox Rothschild LLP, of Washington, DC, for consolidated plaintiff Chengdu Huifeng New Material Technology Co., Ltd. and plaintiff-intervenors Danyang NYCL Tools Manufacturing Co., Ltd., Danyang Weiwang Tools Manufacturing Co., Ltd., Guilin Tebon Superhard Material Co., Ltd., Hangzhou Deer King Industrial and Trading Co., Ltd., Jiangsu Youhe Tool Manufacturer Co., Ltd., Quanzhou Zhongzhi Diamond Tool Co., Ltd., Rizhao Hein Saw Co., Ltd., and Zhejiang Wanli Tools Group Co., Ltd.

John J. Todor, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, DC, for defendant. Also on the brief was *Franklin E. White, Jr.*, Assistant Director, *Jeanne E. Davidson*, Director, and *Jeffrey Bossert Clark*, Acting Assistant Attorney General. Of Counsel was *Paul Keith*, Attorney, Office of the Chief Counsel for Trade Enforcement & Compliance, of Washington, DC.

Daniel B. Pickard, *Maureen E. Thorson*, *Stephanie M. Bell*, and *Cynthia C. Galvez*,Wiley Rein, LLP, of Washington, DC, for defendant-intervenor and consolidated defendant-intervenor, Diamond Sawblades Manufacturers' Coalition.

OPINION

Kelly, Judge:

Before the court is the U.S. Department of Commerce's ("Commerce") second remand redetermination filed pursuant to the court's order in *Bosun Tools Co. v. United States*, 44 CIT __, __, 463 F. Supp. 3d 1308, 1319 (2020) ("*Bosun II*"). *See also* Final Second Remand Redetermination, Oct. 13, 2020, ECF No. 94–1 ("*Second Remand Results*"). In *Bosun II*, the court sustained in part and remanded in part Commerce's remand redetermination in the seventh administrative review for the antidumping duty ("ADD") order covering diamond sawblades and parts thereof ("DSBs") from the People's Republic of China ("PRC"). *See Bosun II*, 44 CIT at __, 463 F. Supp. 3d at 1319; Final Results of Redetermination Pursuant to Ct. Remand, Mar. 10,

2020, ECF No. 79–1 ("*Remand Results*"). The court remanded for further consideration, or explanation, Commerce's determination of the rate applicable to Bosun Tools Co., Ltd. ("Bosun") and the separate rate respondents. *See Bosun II*, 44 CIT at __, 463 F. Supp. 3d at 1319. Commerce further explains that its decision to use the expected method, i.e., to average the rates of the examined respondents, to calculate the separate rate for separate rate respondents, including Bosun, is reasonable in light of record evidence of recent past calculated rates. *See Second Remand Results* at 8–9, 15. Bosun contends that the calculated rate assigned to Jiangsu Fengtai Single Entity ("Fengtai") in a prior review, that Commerce compares to the separate rate here, is an outlier, and that Commerce otherwise did not comply with the court's remand order. *See* Pl. Bosun Tools Co., Ltd.'s Cmts. Opp. Second Remand Results at 1–2, Nov. 12, 2020, ECF No. 97 ("Bosun's Br."). For the following reasons, the court sustains Commerce's determination.

BACKGROUND

The court presumes familiarity with the facts of this case as set out in its previous opinions ordering remand and now recounts those relevant to the court's review of the *Second Remand Results*. *See Bosun Tools Co. v. United States*, 43 CIT __, __, 405 F. Supp. 3d 1359, 1363–64 (2019) ("*Bosun I*"); *Bosun II*, 44 CIT at __, 463 F. Supp. 3d at 1319. Relevant here, Commerce selected Chengdu Huifeng New Material Technology Co., Ltd. ("Chengdu") and Fengtai as mandatory respondents.[1] *See* Selection of Respondents for Individual Examination at 8, PD 106, bar code 3566489–01, ECF No. 24–1 (Apr. 26, 2017).[2] Although both companies sought separate rate certifica-

[1] Commerce is authorized to impose ADDs when merchandise is sold at less than fair value in the United States. *See* 19 U.S.C. § 1673 (2012). ADDs are equal to the dumping margin, or the amount by which "normal value"—or, the price of merchandise in the exporting country—exceeds the export price—or the price of merchandise in the United States. *Id.* at §§ 1673e(a)(1), 1677b(a)(1), 1677a(a). If the exporting country is designated a nonmarket economy ("NME"), like the PRC, "sales of merchandise in [that NME] country do not reflect the fair value of merchandise." *See id.* at § 1677(18)(A). Therefore, Commerce determines normal value based on an NME producer's factors of production, used to produce the subject merchandise, in a market economy country or countries. *See id.* at § 1677b(c); *see also* 19 C.F.R. § 351.408 (2012). In proceedings involving a nonmarket economy, Commerce presumes exporters and producers are under foreign government control with respect to export activities, and will assign a single "country-wide" rate unless a respondent demonstrates it qualifies for a separate rate. *See Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370, 1373 (Fed. Cir. 2013) ("*Yangzhou*") (citing *Sigma Corp. v. United States*, 117 F.3d 1401, 1405 (Fed. Cir. 1997)); *see also* 19 C.F.R. § 351.107(d).

[2] On June 13, 2018, Defendant submitted indices to the public and confidential administrative records underlying Commerce's final determination. Defendant later filed a corrected index to the confidential record. The relevant indices are located on the docket at ECF Nos. 24–1 and 29–1, respectively. Subsequently, on March 24, 2020, Commerce filed on the docket the indices for the remand administrative record at ECF Nos. 80–1–2. All

tion,[3] Commerce found both companies uncooperative, finding they withheld necessary information from Commerce, and assigned each a rate based on total facts available with an adverse inference ("AFA").[4] Specifically with respect to Chengdu, Commerce rejected as untimely the public and business proprietary versions of Chengdu's second supplemental response.[5] *See* Commerce's Rejection of Chengdu's Second Suppl. Resp. at 1–2, PD 235, bar code 3625400–01, ECF No. 24–1 (Oct. 3, 2017). Commerce assigned separate rate respondents, a rate of 82.05 percent, invoking the expected method of averaging the rates assigned to the individually examined mandatory respondents. *See [DSBs] From the [PRC]*, 83 Fed. Reg. 17,527, 17,528 (Dep't Commerce Apr. 20, 2018) (final results of [ADD] admin. rev.; 2015– 2016) ("*Final Results*") and accompanying Issues & Decision Memo Admin. Rev. [ADD] Order on [DSBs] from the [PRC] at 24–27, A-570–900, ECF No. 24–5 (Apr. 16, 2018) ("Final Decision Memo"); *see also [DSBs] From the [PRC]*, 82 Fed. Reg. 57,585, 57,586 (Dep't Commerce Dec. 6, 2017) (prelim. results of [ADD] admin. rev.; 2015–2016) ("*Prelim. Results*"), and accompanying Decision Memo. for [*Prelim. Results*] at 10–13, A-570–900, PD 255, bar code 3646590–01, ECF No. 24–1 (Nov. 30, 2017).

In *Bosun I*, the court held Commerce abused its discretion when it rejected Chengdu's second supplemental response and directed Com-

references to administrative record documents in this opinion are to the numbers Commerce assigned to the documents in the relevant indices.

[3] A party may attempt to rebut the presumption of government control by filing a separate rate application through which it must demonstrate that their activities are de facto and de jure free of the NME-country's control. *See* [DSBs] From the [PRC]:Decision Memo for Prelim. Results of [ADD] Admin. Rev.; 2015–2016 at 4, A-570–900, PD 255, bar code 3646590–01, ECF No. 24–1 (Nov. 30, 2017). If a company successfully rebuts the presumption, it is assigned its own separate rate. *See id.* Congress does not prescribe a method for calculating a separate rate. Congress does, however, in 19 U.S.C. § 1673d(c)(5) prescribe a method for calculating an all-others rate, a rate assigned to non-mandatory respondent companies from a market economy country. Commerce has, by practice, adopted the methodology in 19 U.S.C. § 1673d(c)(5) to calculate a separate rate. *See Albemarle Corp. & Subsidiaries v. United States*, 821 F.3d 1345, 1351–53 (Fed. Cir. 2016) ("*Albemarle*"); *see also* 19 U.S.C. § 1673d(c)(5). Section 1673d(c)(5) states that the all-others rate shall be the weighted average of the individually investigated exporter's and producer's dumping margins, excluding any margins that are de minimis, zero, or determined entirely by adverse facts available..

[4] Parties and Commerce sometimes use the shorthand "adverse facts available" or "AFA" to refer to Commerce's reliance on facts otherwise available with an adverse inference to reach a final determination. However, AFA encompasses a two-part inquiry pursuant to which Commerce must first identify why it needs to rely on facts otherwise available, and second, explain how a party failed to cooperate to the best of its ability as to warrant the use of an adverse inference when "selecting among the facts otherwise available." 19 U.S.C. § 1677e(a)–(b). The phrase "total adverse inferences" or "total AFA" encompasses a series of steps that Commerce takes to reach the conclusion that all of a party's reported information is unreliable or unusable and that as a result of a party's failure to cooperate to the best of its ability, it must use an adverse inference in selecting among the facts otherwise available.

[5] No party challenged Commerce's calculation of Fengtai's rate, and Fengtai is not a party to this consolidated action.

merce, on remand, to place the submission on the record and consider it for purposes of calculating Chengdu's rate and to recalculate any rates affected by a change to Chengdu's rate. *See Bosun I*, 43 CIT at __, 405 F. Supp. 3d at 1366–67. On remand, Commerce placed Chengdu's second supplemental response on the record under respectful protest. *See Remand Results* at 1, 6. Commerce calculated an individual antidumping rate of 0.00 percent for Chengdu. *See id.* at 4. Commerce also assigned the separate rate respondents the average of Chengdu's 0.00 percent rate and Fengtai's AFA 82.05 percent rate, i.e., an all others separate rate of 41.025 percent. *See id.* at 7–8, 14–18.

In *Bosun II*, the court held Commerce's use of the expected method was not supported by substantial evidence because Commerce failed to address evidence proffered by respondents suggesting the expected method did not result in a rate reasonably reflective of respondents' dumping. *See Bosun II*, 44 CIT at __, 463 F. Supp. 3d at 1318–19. The court ordered Commerce to either reconsider or further explain its decision. *See id.* at 1319. Accordingly, Commerce reconsiders its decision to assign a separate rate for non-examined respondents calculated on the basis of the expected method. *See generally Second Remand Results*. But ultimately, Commerce continues to rely on the expected method to calculate a separate rate for non-examined respondents, finding that the 41.025 percent rate is similar to the separate rate for non-examined respondents in the 2013–2014 review and is consistent with rates generally, which are trending upward. *See id.* at 8–9, 15. Bosun argues that Commerce failed to comply with the court's remand order to consider Bosun's prior rates, and to rely instead on a separate rate which Bosun contends was the result of one outlier rate calculated for a mandatory respondent. *See* Bosun's Br. at 1–2.

JURISDICTION AND STANDARD OF REVIEW

The Court has jurisdiction pursuant to 516A(a)(2)(B)(iii) of the Tariff Act of 1930, as amended 19 U.S.C. § 1516a(a)(2)(B)(iii) (2012)[6] and 28 U.S.C. § 1581(c) (2012),[7] which grant the Court authority to review actions contesting the final determination in an administrative review of an antidumping duty order. This Court will uphold Commerce's determination unless it is "unsupported by substantial evidence on the record, or otherwise not in accordance with law[.]" 19

[6] Further citations to the Tariff Act of 1930, as amended, are to the relevant provisions of Title 19 of the U.S. Code, 2012 edition.

[7] Further citations to Title 28 of the U.S. Code are to the 2012 edition.

U.S.C. § 1516a(b)(1)(B)(i). "The results of a redetermination pursuant to court remand are also reviewed 'for compliance with the court's remand order.'" *Xinjiamei Furniture (Zhangzhou) Co. v. United States*, 38 CIT __, __, 968 F. Supp. 2d 1255, 1259 (2014) (quoting *Nakornthai Strip Mill Public Co. v. United States*, 32 CIT 1272, 1274, 587 F. Supp. 2d 1303, 1306 (2008)).

DISCUSSION

Commerce defends its decision to use the expected method to calculate a rate for the separate rate respondents, including Bosun, by explaining that the resulting rate under the expected method, of 41.025 percent, is reflective of a general market trend of increasing rates, and is also comparable to the rate for non-examined separate rate respondents in the 2013–2014 review. *See Second Remand Results* at 8–9, 15. Bosun argues the results of the 2013–2014 review are the result of an outlier rate for one of the mandatory respondents in that review,[8] and argues that Commerce failed to comply with the court's remand order. *See* Bosun's Br. at 1–2.

Commerce is required to "determine the individual weighted average dumping margin for each known exporter and producer of the subject merchandise" unless "it is not practicable . . . because of the large number of exporters or producers involved in the investigation or review[.]" 19 U.S.C. § 1677f-1(c)(1)–(2). Where the exception is met, Commerce may limit its examination to cover only certain exporters or producers of the subject merchandise. *See id.* at § 1677f-1(c)(2). Commerce normally calculates the rate applicable to non-investigated exporters and producers as the "weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and de minimis margins" and margins determined entirely on the basis of facts otherwise available. 19 U.S.C. § 1673d(c)(5)(A); *see also Albemarle Corp. & Subsidiaries v. United States*, 821 F.3d 1345, 1352–53 (Fed. Cir. 2016) ("*Albemarle*") (clarifying that the methods under 19 U.S.C. § 1673d apply to administrative reviews as well as investigations). However, where all margins for individually examined export-

[8] Fengtai and Weihai Xiangguang Mechanical Industrial Co., Ltd. were the mandatory respondents in the 2013–2014 review. *See [DSBs] From the [PRC]*, 81 Fed. Reg. 38,673, 38,674 (Dep't Commerce June 14, 2016) (final results of [ADD] admin. rev.; 2013–2014). Before review of Weihai was rescinded, it received a rate of 21.67 percent. *See id.* Fengtai received an individually calculated rate of 56.67 percent. *See [DSBs] From the [PRC]*, 84 Fed. Reg. 23,763, 23,765 (Dep't Commerce May 23, 2019) (notice of ct. decision not in harmony with the final results of rev., rescission of admin. rev. in part, and amended final results of the [ADD] admin. rev.; 2013–2014). Commerce explains that "Bosun ignores that other issues remanded by the CIT increased the margin ultimately calculated based on Weihai's information." Second Remand Results at 18.

ers and producers are zero, de minimis, or based entirely on facts otherwise available, Commerce "may use any reasonable method to establish the estimated all-others rate . . . , including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated." *Id.* at § 1673d(c)(5)(B). The Statement of Administrative Action elaborates that the "expected method[,]" in this scenario, is "to weight-average the zero and de minimis margins and margins determined pursuant to the facts available, provided that volume data is available." Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103–316, vol. 1, at 873 (1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4201.[9] If the "expected method" is "not feasible" or the method "results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers," Commerce may, instead, "use other reasonable methods." *Id.* Commerce's determination must be supported by substantial evidence. *See Albemarle*, 821 F.3d at 1352–53 (explaining that "Commerce must find based on substantial evidence that there is a reasonable basis for concluding that the separate respondents' dumping is different" to depart from the "expected method[.]").

Here, Commerce's application of the "expected method" of weight-averaging the zero and AFA margins is reasonable because, as Commerce explains on remand, it is feasible and produces a result that is reasonably reflective of the separate rate respondents' potential dumping. *See Second Remand Results* at 2, 6. Specifically, as instructed by the court Commerce considered the rates assigned to individually examined respondents over the preceding four reviews. Excluding rates based on AFA, Commerce calculated the following rates: in 2011–2012, 4.65 percent (Bosun) and 5.06 percent (Weihai Xiangguang Mechanical Industrial Co., Ltd. ("Weihai")); in 2012–2013, 3.45 percent (Bosun)[10] and 22.57 percent (Weihai); in 2013–2014,[11] 56.67 percent (Fengtai). *See id.*

[9] The Statement of Administrative Action is "recognized by Congress as an authoritative expression concerning the interpretation and application of the Tariff Act under 19 U.S.C. § 3512(d)[.]" *Yangzhou*, 716 F.3d at 1373.

[10] In its comments, Bosun states that it received a 1.51 percent rate in the 2012–2013 review. *See* Bosun's Br. at 3. Although this is the rate that it was assigned in the final results of the 2012–2013 review, *see [DSBs] From the [PRC]*, 80 Fed. Reg. 32,344, 32,344 (Dep't Commerce June 8, 2015) (final results of [ADD] admin. rev.; 2012–2013),the final results were subsequently amended, and Bosun's rate was adjusted to 3.45 percent. *See [DSBs] From the [PRC]*, 83 Fed. Reg. 55,520, 55,521 (Dep't Commerce Nov. 6, 2018) (notice of ct. decision not in harmony with the final results of rev. and amended final results of the [ADD] admin. rev.; 2012–2013)

[11] Bosun states that "Weihai, the other mandatory respondent in the 2013–14 appeal, had the review rescinded on appeal; prior to the rescission, however, the Department calculated

at 8.[12] Although the relatively lower rates calculated in 2011 and 2012 would suggest that the expected method would not lead to rates reasonably reflective of separate rate respondents' dumping, Commerce explains its position that the more contemporaneous rates reflect an upward trend, suggesting that the 41.025 percent rate is reasonably reflective of potential dumping by the separate rate respondents. *See id.* at 8–9, 15. The last calculated rate for non-individually examined respondents in 2013–2014, of 39.66 percent, is only slightly less than the rate sought to be imposed here. *See id.* at 15. This calculated rate for separate rate respondents resulted from the 56.67 percent rate calculated for Fengtai and the 21.67 percent rate calculated for Weihai, prior to the rescission of the review for Weihai.

In support of its argument that the 56.67 percent rate assigned to Fengtai in 2013–2014 is an "outlier," Bosun invokes a subsequent review in 2016–2017 where Fengtai received an even higher rate on the basis of AFA. *See* Bosun's Br. at 2, 4. That there is only an AFA rate in a subsequent review does not support Bosun's argument that Commerce was unreasonable in citing to Fengtai's rate in the 2013–2014 review. Moreover, Bosun invoked rates from the 2017–2018 review, where the separate rate respondents, including Bosun, received a zero rate, seemingly to support its argument that Bosun deserves a zero rate here. *See* Bosun's Br. at 4.[13] However, the results of this subsequent review are not on the record of this case, *compare Second Remand Results* (published October 13, 2020), *with [DSBs] From the PRC*, 85 Fed. Reg. 71,308 (Dep't Commerce Nov. 9, 2020) (final results of [ADD] admin. rev.; 2017–2018) (published November 9, 2020), and even if they were Commerce addresses Bosun's contention that it should be assigned a zero rate.[14] Commerce finds no support for assigning Bosun a zero rate in this review because, unlike Chengdu which received a zero rate because it was found to not have sold the subject merchandise at less than normal value, Bosun when individually examined in the past, was found to have sold at less than normal value. *See Second Remand Results* at 13–14.

a rate of 21.67%." Bosun's Br. at 2. In light of this fact, Bosun asserts that therefore "the 2013–14 review alone does not support the Department's conclusion that 41.025% is reasonably reflective." *Id.*

[12] In this review, 2014–2015, Fengtai received an AFA rate of 82.05 percent. *See Second Remand Results* at 8. In the subsequent review for 2015–2016, both Fengtai and Weihai received an AFA rate of 82.05 percent. *See id.*

[13] As noted by Defendant-Intervenor, Diamond Sawblades Manufacturers' Coalition, the results of the 2017–2018 review are still subject to appeal. *See* [Def.-Intervenor] Diamond Sawblades Manufacturers' Coalition's Reply Cmts. on Results of Second Remand Redetermination at 3, Dec. 14, 2020, ECF No. 99.

[14] Bosun claims that under the circumstances, Chengdu's 0.00 percent rate is the "only appropriate margin" to assign to Bosun. Bosun's Br. at 5–6.

Bosun nonetheless argues that Commerce's imposition of the 41.025 percent rate upon Bosun is unfair because it is based in part on a total AFA rate and Bosun is a cooperating exporter. *See* Bosun's Br. at 4–5. Bosun relies on *Changzhou Hawd Flooring Co. v. United States*, 848 F.3d 1006 (Fed. Cir. 2017) ("*Changzhou Hawd*") as support for its position that Commerce acted unfairly. *See* Bosun's Br. at 4–5. Bosun's reliance is misplaced. In *Changzhou Hawd*, all of the individually examined respondents received either a zero or de minimis rate. *See Changzhou Hawd*, 848 F.3d at 1008. In calculating the all others separate rate, Commerce departed from the expected method, which would have resulted in a de minimis rate for the separate rate respondents and calculated a rate that incorporated the PRC-wide rate for parties that had not rebutted the presumption of government control. *See id.* at 1008–09, 1011. The Court of Appeals held that this departure was unreasonable absent an explanation by Commerce as to why the individually examined respondents' rates were not representative of the separate rate respondents potential dumping. *See id.* at 1011–13. *Changzhou Hawd* thus differs from the present case. Although Bosun attempts to marshal the implication in *Changzhou Hawd,* that a separate rate respondent should not be saddled with a rate attributable to a non-cooperating party, *see* Bosun's Br. at 4–5, Commerce here is not deviating from the expected method, as it did in *Changzhou Hawd*. Rather, here Commerce assigns the separate rate respondents a rate derived by the expected method; an average of an AFA rate and a zero rate. Commerce then explains why that rate is reasonably reflective of separate rate respondents' potential dumping. Commerce bases its explanation on record evidence of recent past calculated rates, and Commerce considers and addresses the record evidence that detracts from its determination. Commerce's explanation is reasonable.

CONCLUSION

For the foregoing reasons, Commerce's *Second Remand Results* are supported by substantial evidence and comply with the court's order in *Bosun II*, and are therefore sustained. Judgment will enter accordingly.

Dated: February 24, 2021
New York, New York

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

Slip Op. 21–24

UNITED STATES, Plaintiff, v. AEGIS SECURITY INSURANCE COMPANY, Defendant.

AEGIS SECURITY INSURANCE COMPANY, Third-Party Claimant, v. TRICOTS LIESSE 1983, INC., Third-Party Defendant.

Before: Richard K. Eaton, Judge
Consol. Court No. 11–00388

[Third-Party Claimant Aegis Security Insurance Company's unopposed motion for summary judgment granted.]

Dated: February 26, 2021

Stephen C. Tosini, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, DC, for Plaintiff.

T. Randolph Ferguson, Sandler, Travis & Rosenburg, PA, of San Francisco, CA, for Defendant, and Third-Party Claimant.

John B. Brew and *Frances P. Hadfield*, Crowell & Moring LLP, of Washington, DC, for Third-Party Defendant.

MEMORANDUM OPINION and ORDER

Eaton, Judge:

Before the court is an unopposed motion for summary judgment by Aegis Security Insurance Company ("Aegis"), in its capacity as Third-Party Claimant, against Third-Party Defendant Tricots Liesse 1983, Inc. ("Tricots"). *See* Aegis' Original Mem. Supp. Mot. Summ. J., ECF No. 126 ("Aegis Original Br."). Aegis, a surety company, commenced this third-party action against Tricots, an importer, following the complaint in the main action, brought by Plaintiff the United States ("Plaintiff") to collect unpaid duties owed by Tricots that were secured by a customs bond written by Aegis. *See* Aegis' Answer and Third-Party Claim (Jan. 9, 2012), ECF No. 13; Pl.'s Compl., Ex. A (bond), ECF No. 2–1.

The court has jurisdiction over Aegis' third-party action under 28 U.S.C. § 1583(2). *See* 28 U.S.C. § 1583(2) (2012) ("In any civil action in the Court of International Trade, the court shall have exclusive jurisdiction to render judgment upon any . . . third-party action of any party, if . . . such claim or action is to recover upon a bond or customs duties relating to such merchandise.").

For the reasons that follow, the court grants summary judgment in favor of Aegis, and directs Aegis to submit proof of the amount of its reasonable attorney's fees, costs, and expenses, and a proposed judgment, in accordance with this Memorandum Opinion and Order.

BACKGROUND

In the main action, the United States sued on a customs bond written by Aegis to secure duties owed by Tricots on its imports of knitted circular fabric from Canada. *See United States v. Aegis Sec. Ins. Co.*, 43 CIT __, 422 F. Supp. 3d 1328 (2019). The court granted summary judgment in favor of Plaintiff, finding that the United States "ha[d] been deprived of lawful duties and fees as a result of Tricots' violation of [19 U.S.C.] § 1592(a), and that the unpaid duties and merchandise processing fees [were] due and owing to the Government from Tricots and from Aegis, as surety." *See id.*, 43 CIT at __, 422 F. Supp. 3d at 1352. In so ruling, the court noted that "Aegis' liability for duties [was] solely contractual and [was] limited by the face amount of the bond." *Id.*, 43 CIT at __, 422 F. Supp. 3d at 1352 n.18 (citing 19 C.F.R. § 113.62(a)).

Judgment in the main action was entered on January 9, 2020. *See* Judgment (Jan. 9, 2020), ECF No. 125. As against Aegis, the court entered judgment in the amount of $500,113.32 in lost revenue up to the bond limit, plus $260,031.35 in statutory interest and $81.98 per day in post-judgment interest. As against Tricots, the court entered judgment in the amount of $2,249,196.04 for unpaid duties and merchandise processing fees, plus post-judgment interest.

On May 1, 2020, Aegis tendered $768,916.53 to Plaintiff in satisfaction of the judgment against it. *See* Aegis Original Br., Ex. 1.

On May 14, 2020, Aegis filed its motion for summary judgment, seeking reimbursement of the amount it tendered to Plaintiff, plus reasonable attorney's fees, costs, and expenses incurred in defending the main action and pursuing its third-party action.

On June 17, 2020, Tricots filed a consent motion for an extension of time to respond to Aegis' motion, citing, as good cause, the close of its factory and facilities due to the COVID-19 pandemic. *See* Tricots' Mot. Extension of Time (June 17, 2020), ECF No. 127. The court granted the extension, giving Tricots an additional two months, *i.e.*, until August 17, 2020, to respond. *See* Order (June 23, 2020), ECF No. 128. No response was filed by the extended deadline. Counsel for Tricots withdrew their appearances approximately five weeks after the extended deadline, on September 23, 2020. *See* Order (Sept. 23, 2020), ECF No. 132. Tricots did not obtain substitute counsel.

On November 18, 2020, the court ordered supplemental briefing on the contractual basis for Aegis' claims for reimbursement and attorney's fees, costs, and expenses. *See* Order (Nov. 18, 2020), ECF No. 133. In response, Aegis filed its first supplemental brief, to which it attached the declaration of Amy Morlier, an employee of Aegis' agent,

Avalon Risk Management, Inc., regarding an "Application and Indemnity Agreement" that was entered into by Avalon and Tricots on October 17, 2000. *See* Aegis' First Suppl. Br., ECF No. 136.

On December 10, 2020, the court scheduled oral argument on Aegis' motion for summary judgment. *See* Order (Dec. 10, 2020), ECF No. 135. Tricots received notice of the scheduled proceeding and declined to participate.

Oral argument was held on December 17, 2020, following which the court ordered Aegis to provide further supplemental briefing in support of its motion, relating to the extent, if any, the language in the bond, that was the subject of the main action, supported Aegis' third-party claim for reimbursement. *See* Order (Dec. 17, 2020), ECF No. 138. In response, Aegis filed its second supplemental brief, to which it attached a second declaration by Ms. Morlier. *See* Aegis' Second Suppl. Br., ECF No. 141.

By way of proof in support of its claim for attorney's fees, costs, and expenses, Aegis has attached to its motion what appears to be attorney time sheets, but has not submitted a declaration or other proof to support the reasonableness of the amounts it claims to have incurred. *See* Aegis' Original Br., Ex. 2.A & 2.B.

STANDARD OF REVIEW

Summary judgment may be granted where there is no genuine issue of material fact, and the movant is otherwise entitled to judgment as a matter of law. *See* U.S. CT. INT'L TR. R. 56(a); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986).

LEGAL FRAMEWORK

A customs bond is a tripartite agreement, entered into by a principal and a surety, for the benefit of the United States.[1] *See* 19 C.F.R. § 113.62(a)(1)(ii) (requiring "principal and surety, jointly and severally" to "[p]ay, as demanded by [Customs], all additional duties, taxes, and charges subsequently found due . . . on any entry secured by [a] bond"); *see also Hartford Fire Ins. Co. v. United States*, 40 CIT __, __, 254 F. Supp. 3d 1333, 1355 (2017) (finding that the customs bonds at issue were "valid and enforceable contracts between Customs, the importer principals, and [the surety,] Hartford"). U.S. Customs and Border Protection ("Customs") regulations set out requirements for

[1] The language of the bond itself expresses the parties' respective promises and the purpose of the contract: "In order to secure payment of any duty, tax or charge and compliance with law or regulations as a result of activity covered by any condition referenced below, we, the below named principal(s) and surety(ies), bind ourselves to the United States in the amount or amounts, as set forth below." Pl.'s Compl., Ex. A.

bond contracts, including that the signature and seal of corporate sureties and principals appear on the bond, among other requirements and conditions. *See generally* 19 C.F.R. Pt. 113; *see also id.* § 113.37(e) ("A bond executed by a corporate surety must be signed by an authorized officer or attorney of the corporation and the corporate seal must be affixed immediately adjoining the signature of the person executing the bond . . . ."); *id.* § 113.33(b) ("The bond of a corporate principal must be signed by an authorized officer or attorney of the corporation and the corporate seal must be affixed immediately adjoining the signature of the person executing the bond . . . ."). This Court has held that Customs' regulatory bond requirements are "procedural" in that they "are meant to protect Customs in furtherance of its mission to protect revenue of the United States, and do not clearly alter the rights of the private parties engaging in the bonding procedure." *Hartford Fire Ins. Co.*, 40 CIT at __, 254 F. Supp. 3d at 1351.

Principles of contract law determine the validity of the bond contract and the respective duties of the parties. *See Hartford Fire Ins. Co.*, 40 CIT at __, 254 F. Supp. 3d at 1355 (citations omitted) (applying "ordinary principles of contract construction as would be applicable to any contract action between private parties" in evaluating the bonds at issue). Thus, the failure to satisfy a procedural requirement under Customs' regulations does not invalidate the bond, where the evidence otherwise shows the parties' intention to be bound by the contract. *See id.*, 40 CIT at __, 254 F. Supp. 3d at 1355 (citing *NRM Corp. v. Hercules, Inc.*, 758 F.2d 676, 681 (D.C. Cir. 1985)). Accordingly, the absence of an importer's signature on a bond does not render a bond void for want of an "essential term," where other circumstances, including, as in *Hartford*, entry paperwork, indicated the importer's intention to be bound. *See id.*, 40 CIT at __, 254 F. Supp. 3d at 1357–58.

DISCUSSION

By its motion, Aegis maintains that there is no genuine issue of material fact that would preclude granting summary judgment in its favor on its claim that Tricots agreed (1) to reimburse it for amounts paid to the United States on Tricots' behalf for lost duties and interest, and (2) to indemnify it for attorney's fees, costs, and expenses incurred in defending the main action and in bringing the third-party action.

I. Undisputed Facts

In the year 2000, Tricots applied for a continuous transaction bond in the amount of $230,000 from Aegis through Aegis' agent, Avalon

Risk Management, Inc. *See* Aegis' First Suppl. Br., Ex. 3 (Morlier Decl.) ¶ 6. To obtain the bond, on October 17, 2000, Tricots executed a "Customs Bond Application and Indemnity" form and submitted it to Avalon. *See* Aegis' First Suppl. Br., Ex. 3.1. Under the Indemnity Agreement on the back of the form, the execution of which was a condition to Aegis' issuance of the bond on Tricots' behalf, Tricots agreed:

> To indemnify the Company [*i.e.*, Aegis] and hold it harmless from and against any and all attorneys' fees, costs, damages, demands, liabilities, losses and expenses, regardless of the nature, which arise by reason of, or as a consequence of, the Company executing a bond on the Principal's behalf, and whether or not the Company has paid any sums, including, but not limited to: expenses paid or incurred in connection with claims, judgments or suits under its bonds; sums paid (including interest), or liabilities incurred, in settlement of claims; expenses paid or incurred in enforcing the terms of this Indemnity Agreement; expenses paid or incurred by the Company in procuring, or attempting to procure, release from liability under its bond; expenses incurred in recovering, or attempting to recover, losses or expenses paid or incurred; attorneys' fees, costs or expenses; accounting, engineering or investigation services; adjustments of claims; premiums on bonds issued by the Company.

Aegis' First Suppl. Br., Ex. 3.2 § 1.

In its answer to Aegis' third-party claim, Tricots admitted that "[a]t [its] special instance and request," Aegis, as surety, "executed and delivered to United States Customs and Border Protection [("Customs")], that certain Customs bond, a $230,000 Continuous Bond, dated October 24, 2002, attached to Plaintiff's Complaint as Exhibit A." Aegis' Third-Party Claim ¶ 5; Tricots' Third-Party Def.'s Answer ¶ 5, ECF No. 37. Under the terms of the bond:

> Principal(s) [*i.e.*, Tricots] . . . agree to reimburse surety and/or its agents any amount paid to U.S. Customs on behalf of the principal(s) and to pay all collection fees and legal costs in the recovery of payments made by the surety and/or its agents to U.S. Customs.

Pl.'s Compl., Ex. A; *see also* 19 C.F.R. § 113.62(a) ("Agreement to Pay Duties, Taxes, and Charges").[2] Tricots did not sign the bond, but it paid the annual premiums throughout the life of the bond. *See* Aegis Second Suppl. Br., Ex. 4 ¶ 6 (Second Morlier Decl.) & Ex. 4.1.

On January 9, 2020, Plaintiff obtained a judgment against Aegis, which Aegis has satisfied by tendering $768,916.53 to the United States. *See* Aegis' Original Br., Ex. 1.

II. Reimbursement Claim

Upon review of the declarations of Ms. Morlier and the indemnity agreement and other exhibits attached thereto, the language of the bond, and the parties' undisputed conduct and admissions in their pleadings, the court grants summary judgment in favor of Aegis on its third-party claim for reimbursement of amounts it paid under the bond to the United States.

There is no dispute that Tricots requested, and Aegis executed, the bond that formed the basis of Plaintiff's claims in the main action. Nor is it disputed that Tricots paid the annual premiums throughout the life of the bond. Thus, notwithstanding the absence of Tricots' signature, there can be little doubt that the bond is valid. *See Hartford Fire Ins. Co.*, 40 CIT at __, 254 F. Supp. 3d at 1357–58.

Turning to the language of the bond itself, it states that Tricots as principal "*agree[s] to reimburse* surety and/or its agents any amount paid to U.S. Customs on behalf of the principal(s) and to pay all collection fees and legal costs in the recovery of payments made by the surety and/or its agents to U.S. Customs." Pl.'s Compl., Ex. A (emphasis added). There is no dispute that Aegis satisfied its obligation under the bond when it tendered $768,916.53 to Plaintiff. *See* Aegis' Original Br., Ex. 1. Thus, applying the law of contracts, Tricots must "reimburse [Aegis] and/or its agents any amount paid to U.S. Customs on behalf of [Tricots]." Pl.'s Compl., Ex. A.

Therefore, because there is no genuine issue of material fact that would preclude summary judgment on Aegis' third-party claim for reimbursement of $768,916.53, and the law directs that the court

[2] Customs' regulations state, in pertinent part:

> If merchandise is imported and released from [Customs] custody or withdrawn from a [Customs] bonded warehouse into the commerce of, or for consumption in, the United States, . . . the obligors (principal and surety, jointly and severally) agree to:
>
> (i) Deposit, within the time prescribed by law or regulation, any duties, taxes, and charges imposed, or estimated to be due, at the time of release or withdrawal; and
>
> (ii) Pay, as demanded by [Customs], all additional duties, taxes, and charges subsequently found due, legally fixed, and imposed on any entry secured by this bond.

19 C.F.R. § 113.62(a)(1).

must "give effect to the mutual intentions of the parties," the court grants Aegis' motion for summary judgment on the reimbursement claim. *See Hartford Fire Ins. Co.*, 40 CIT at __, 254 F. Supp. 3d at 1355 (citation omitted).

III. Claim for Attorney's Fees, Costs, and Expenses

The language of both the bond and the indemnity agreement supports granting Aegis recovery not only of amounts incurred to defend the main action, but also to pursue this third-party action. The bond states that the principal "*agree[s] . . . to pay all collection fees and legal costs* in the recovery of payments made by the surety and/or its agents to U.S. Customs." Pl.'s Compl., Ex. A (emphasis added). Moreover, it is clear from the indemnity agreement that Tricots agreed to indemnify Aegis for "any and all attorneys' fees, costs, damages, demands, liabilities, losses and expenses, regardless of the nature, which arise by reason of, or as a consequence of, the Company executing a bond on the Principal's behalf." Aegis' First Suppl. Br., Ex. 3.2 § 1. "[T]he court's duty in construing the contracts at issue is to give effect to the mutual intentions of the parties." *Hartford Fire Ins. Co.*, 40 CIT at __, 254 F. Supp. 3d at 1355. Thus, both the bond and the indemnity agreement by their plain terms bind Tricots to pay any reasonable attorney's fees, costs, and expenses.

Aegis leaves it up to the court to determine an amount for "reasonable attorney's fees, cost[s,] and expenses as this Court . . . deems just and appropriate." Aegis' Second Suppl. Br. 8. It submits that "$92,042.50 in attorney fees and $679.45 in costs and expenses . . . is a reasonable sum spent in its defense of (1) the claims against [Tricots] prior to the trial, and (2) reimbursement for trial preparation, and the reasonable fees and expenses incurred in pursuing its Third-Party Claim." Aegis' First Suppl. Br. 9. Aegis fails, however, to support its proposed recovery amounts ("$92,042.50 in attorney fees and $679.45 in costs and expenses") with evidentiary support showing that these amounts are reasonable. Rather, as proof, Aegis has submitted what appear to be attorney time sheets, which are on Aegis' letterhead, without an accompanying declaration from a person with knowledge of these records to authenticate them and affirm the amounts that Aegis paid, or that are due and owing. *See* Aegis' Original Br., Ex. 2.A & 2.B. Absent a declaration or other evidence as to the reasonableness of the amounts submitted by Aegis, the court cannot determine the fair and reasonable value of Aegis' counsel's services. In order to permit the court to make this determination, Aegis is directed to submit proof in a form that is modeled after this Court's Form 15, "Application For Fees And Other Expenses Pursu-

ant To The Equal Access To Justice Act," which is available on the Court's website, in accordance with the court's order.

CONCLUSION and ORDER

For the foregoing reasons, Aegis' motion for summary judgment is granted on its third-party claim for reimbursement of $768,916.53, as well as for attorney's fees, costs, and expenses incurred in defending the main action and pursuing the third-party action. Accordingly, it is hereby

ORDERED that Aegis' motion for summary judgment is granted; it is further

ORDERED that Aegis shall submit proof to support its claim for attorney's fees, costs, and expenses that is modeled, in form and content, after this Court's Form 15, "Application For Fees And Other Expenses Pursuant To The Equal Access To Justice Act," which is available on the Court's website; it is further

ORDERED that Aegis shall submit a proposed Judgment that sets out the amounts owed to it by Tricots, and an amount for reasonable attorney's fees, costs, and expenses, in accordance with this Memorandum Opinion and Order; and it is further

ORDERED that Aegis' proof to support its claim for attorney's fees, costs, and expenses and its proposed Judgment shall be submitted to the court no later than the date that is four weeks from the date of this Memorandum Opinion and Order.

Dated: February 26, 2021
New York, New York

/*s*/ *Richard K. Eaton*
RICHARD K. EATON, JUDGE

Slip Op. 21–25

UNIVERSAL STEEL PRODUCTS, et al., Plaintiffs, v. UNITED STATES, et al., Defendants.

Before: Gary S. Katzmann, M. Miller Baker, Leo M. Gordon, Judges
Court No. 19–00209

Dated: February 26, 2021

Lewis E. Leibowitz, of Washington, DC, for Plaintiffs Universal Steel Products, Inc., PSK Steel Corporation, Dayton Parts, LLC, The Jordan International Company, and Borusan Mannesmann Pipe U.S. Inc.

Meen Geu Oh, Trial Attorney, and *Ann C. Motto*, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, DC, for Defendants. With them on the brief were *Brian M. Boynton*, Acting Assistant Attorney General, *Jeanne E. Davidson*, Director, *Tara K. Hogan*, Assistant Director, and *Stephen C. Tosini*, Senior Trial Attorney.

MEMORANDUM and ORDER

*Per Curiam***:**

Recently we issued an opinion granting Defendants' motion for judgment on the pleadings and denying Plaintiffs' cross-motion for summary judgment challenging Presidential Proclamation 9705, and its subsequent modifications, issued pursuant to Section 232 of the Trade Expansion Act of 1962, as amended, 19 U.S.C. § 1862 ("Section 232"). *See* Slip Op. 21–12, 2021 WL 401283 (CIT Feb. 4, 2021) ("Opinion").

In the Opinion, we rejected the amended complaint's claims (1) that the challenged proclamations were invalid because the Secretary violated Section 232's procedural requirements (Count One); (2) that the President "fundamentally misinterpreted Section 232 by failing to base his determination upon a finding of an impending threat to impair the national security of the United States" (Count Three); (3) that the "duration" set forth in Proclamation 9705 violated the requirements of Section 232 (Count Two); and (4) that the proclamation of tariffs on imports from Mexico, Canada, and the European Union countries pursuant to Proclamation 9759 violated certain mandatory timing provisions of Section 232 (Count Four, ¶ 70). *See* Am. Compl., ECF No. 11.

However, we noted that we would continue to stay consideration of the amended complaint's allegations that Proclamation 9772, which increased tariffs on steel imports from Turkey to 50 percent, violated other mandatory timing provisions of Section 232 ("Count Four ¶ 71 claim"). *See* Opinion at nn. 4, 18 & 21; *see also* Am. Compl. ¶ 71; Scheduling Order, Mar. 10, 2020, ECF No. 26 ("Ordered that consid-

eration of Plaintiffs' challenge to Presidential Proclamation 9772, as pleaded in Count Four of the Amended Complaint, Am. Compl. ¶ 71, is stayed pending the final disposition of *Transpacific Steel, LLC v. United States*, Ct. Int'l Trade No. 19–0009").

Plaintiffs now move the court to enter partial judgment pursuant to USCIT Rule 54(b). *See* Pls.' Mot. for Entry of R. 54(b) Judgment in Part, Feb. 17, 2021, ECF No. 59. Defendants do not oppose Plaintiffs' motion. *Id.* at 4. For the reasons set forth below, we grant Plaintiffs' unopposed motion and enter a Rule 54(b) partial judgment.

Rule 54(b) provides in part that:

> [w]hen an action presents more than one claim for relief—whether as a claim, counterclaim, cross-claim, or third-party claim—or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay.

USCIT R. 54(b).

Rule 54(b)'s "requirements are threefold: (1) partial finality; (2) separateness; and (3) an express finding that there is 'no just reason for delay.'" *Federal Appellate Practice* § 2.3 D(1) (3d ed. 2018). Rule 54(b) requires we "make an express statement" as to the requirements of the Rule. *Spraytex, Inc. v. DJS&T*, 96 F.3d 1377, 1379 (Fed. Cir. 1996) (citing *W.L. Gore & Assocs., Inc. v. Int'l Med. Prosthetics Rsch. Assocs., Inc.*, 975 F.2d 858 (Fed. Cir. 1992)). We consider each of these elements in turn.

Rule 54(b)'s first requirement, partial finality, refers to "an ultimate disposition of an individual claim entered in the course of a multiple claims action." *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 436 (1956). Here, the court has reached a final decision with respect to all of Plaintiffs' claims other than the Count Four ¶ 71 claim relating to Proclamation 9772, thereby providing "an ultimate disposition" as to those claims—meaning that the litigation is at an end for those claims and there is "nothing left for the court to do but execute the judgment." *Weed v. Soc. Sec. Admin*., 571 F.3d 1359, 1361 (Fed. Cir. 2009) (quoting *Allen v. Principi, 237 F.3d 1368, 1372 (Fed. Cir. 2001)*).

Rule 54(b)'s second requirement, separateness, is not satisfied by the mere fact that a party's pleading nominally denominates claims as separate counts or claims for relief. *See, e.g.*, *Lloyd Noland Found., Inc. v. Tenet Health Care Corp.*, 483 F.3d 773, 780 (11th Cir. 2007) ("[E]ven if a district court has adjudicated one count of a complaint, but another count seeks substantially similar relief, the adjudication

of the first count does not represent a 'final judgment' because both counts are functionally part of the same claim under Rule 54(b)").

Conversely, a nominally denominated single count or claim for relief might (or might not) represent two or more claims for Rule 54(b) purposes. For example, in this case, Count Four asserts two challenges—one that contends that the President issued Proclamation 9759 *too early* because he failed to negotiate with other countries for a full 180 days before issuing it, and another that contends that the President issued Proclamation 9772 *too late* because he issued it after the expiry of Section 232's deadlines. *See* Am. Compl. ¶¶ 70, 71. Our Opinion decided the former of these challenges and, as noted above, left the latter subject to the stay.

Regardless of how a pleading denominates claims for relief, for Rule 54(b) purposes the key questions are whether the relevant claims "involve at least some different questions of fact and law and could be separately enforced." *Advanced Magnetics, Inc. v. Bayfront Partners, Inc*., 106 F.3d 11, 21 (2d Cir. 1997). Here, Plaintiffs seeks a Rule 54(b) partial judgment as to their challenges to Proclamation 9705 and various of its modifications, including Proclamation 9772, that we rejected in the Opinion. Plaintiffs' unresolved challenge to Proclamation 9772, though related to challenges adjudicated in our Opinion, involves different questions of fact and law.[1] Because those challenges resolved in our Opinion are factually and legally distinct from Plaintiffs' stayed challenge to Proclamation 9772, we hold that the former satisfy the separateness requirement of Rule 54(b).

Rule 54(b)'s third and final requirement for issuance of a partial judgment is that we must "expressly determine[] that there is no just reason for delay." USCIT R. 54(b). As previously noted, the court stayed consideration of the Count Four ¶ 71 claim as it is substantially identical to the claims in *Transpacific*, which is currently before the Federal Circuit (Fed. Cir. No. 20–2157). Therefore, there is nothing for this court to do with the Count Four ¶ 71 claim until the Federal Circuit disposes of *Transpacific*.

The entry of a Rule 54(b) partial judgment would serve the interests of the parties and the administration of justice by bringing these adjudicated claims to a conclusion before this court and providing Plaintiffs an opportunity to immediately appeal all issues other than

[1] Plaintiffs' stayed challenge to Proclamation 9772 in Count Four ¶ 71 turns on the fact that the President imposed duties on Turkish steel imports allegedly in violation of the relevant statutory deadline. That fact is not relevant to Plaintiffs' challenges that we adjudicated in the Opinion. Likewise, the legal question at issue in Plaintiffs' challenge to Proclamation 9772 is whether the statute permits the President to take such action. That question is not implicated by the challenges we adjudicated in the Opinion.

the Count Four ¶ 71 claim. Delaying Plaintiffs' appeal of their challenges that we adjudicated in the Opinion until the Federal Circuit resolves the *Transpacific* appeal would serve no rational purpose. There is no threat of piecemeal judicial review as resolution of the *Transpacific* appeal will not resolve any of the issues adjudicated in our Opinion or moot Plaintiffs' challenges to the various Proclamations other than (possibly) Proclamation 9772. Therefore, the court has no just reason to delay issuance of a Rule 54(b) partial judgment.

Accordingly, it is hereby

ORDERED that Plaintiffs' unopposed motion for the issuance of a USCIT Rule 54(b) partial judgment is granted.

Dated: February 26, 2021
New York, New York

/*s*/ *Gary S. Katzmann*
JUDGE GARY S. KATZMANN

/*s*/ *M. Miller Baker*
JUDGE M. MILLER BAKER

/*s*/ *Leo M. Gordon*
JUDGE LEO M. GORDON

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