U.S. Customs and Border Protection

19 CFR PART 177

REVOCATION OF ONE RULING LETTER, MODIFICATION OF ONE RULING LETTER, AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF REFLECTIVE ALUMINUM COMPOSITE PANELS

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

ACTION: Notice of revocation of one ruling letter, modification of one ruling letter and of revocation of treatment relating to the tariff classification of reflective aluminum composite panels.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter and modifying one ruling letter concerning tariff classification of reflective aluminum composite panels under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 57, No. 5, on February 8, 2023. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 30, 2023.

FOR FURTHER INFORMATION CONTACT: Amanda Alexander, Chemicals, Petroleum, Metals, and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–1552.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 57, No. 5, on February 8, 2023, proposing to revoke one ruling letter and modify one ruling letter pertaining to the tariff classification of reflective aluminum composite panels. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In Headquarters Ruling Letter ("HQ") 953138, dated March 18, 1993, CBP classified reflective aluminum composite panels in heading 7616, HTSUS, specifically in subheading 7616.90.00, HTSUS (1993), which provides for "Other articles of aluminum: Other." In New York Ruling Letter ("NY") N284130, dated September 15, 2017, CBP classified reflective aluminum composite panels in heading 7616, HTSUS, specifically in subheading 7616.99.5190, HTSUSA (2017), which provides for "Other articles of aluminum: Other: Other: Other: Other: Other: Other." CBP has reviewed HQ 953138 and NY N284130 and has determined the ruling letters to be in error. It is now CBP's position that the subject reflective aluminum composite panels with an aluminum component thickness exceeding 0.2 mm are

classified in heading 7606, HTSUS, which provides for "Aluminum plates, sheets and strip, of a thickness exceeding 0.2 mm." The subject reflective aluminum panels with an aluminum component thickness not exceeding 0.2 mm are classified in heading 7607, HTSUS, which provides for "Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking HQ 953138, modifying NY N284130, and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in HQ H320936, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

YULIYA A. GULIS,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H320936

May 10, 2023
OT:RR:CTF:CPMMA H320936 ACA
CATEGORY: Classification
TARIFF NO: 7606; 7607

MR. JOHN M. PETERSON, ESQ.
NEVILLE PETERSON LLP
55 BROADWAY, SUITE 2602
NEW YORK, NEW YORK 10006

RE: Revocation of HQ 953138; Modification of NY N284130; Tariff classification of reflective aluminum composite panels

DEAR MR. PETERSON:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered Headquarters Ruling Letter (HQ) 953138, dated March 18, 1993, regarding the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of the A-Look and A-Look EX, which are described as reflective aluminum composite panels. In HQ 953138, CBP classified the subject reflective aluminum panels in heading 7616, HTSUS, and specifically in subheading 7616.90.00, HTSUS (1993), which provides for "Other articles of aluminum: Other."[1] After reviewing HQ 953138 in its entirety, we find it to be in error.

We have also reviewed New York Ruling Letter (NY) N284130, dated September 15, 2017, regarding the classification, under the HTSUS, of reflective aluminum composite panels identified as the Inoxia/ID618–1 Aluminum Composite Panel (ACP) Speed Tile. In NY N284130, CBP classified the subject reflective aluminum composite panels in heading 7616, and specifically in subheading 7616.99.5190, HTSUSA (2017), which provides for "Other articles of aluminum: Other: Other: Other: Other: Other: Other." After reviewing NY N284130 in its entirety, we find it to be in error with respect to the classification of the reflective aluminum composite panels. For the reasons set forth below, we are revoking HQ 953138 and modifying NY N284130.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. No. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed action was published on February 8, 2023, in Volume 57, Number 5, of the Customs Bulletin. No comments were received in response to this notice.

FACTS:

In HQ 953138, CBP described the subject merchandise as follows:

> A-Look is a composite material made by laminating a polyethylene core between two sheets of aluminum alloy. The silver colored surface is electroplated with a layer of nickel and chromium, the bronze colored

[1] Subheading 7616.90.00, HTSUS (1993), has been deleted, and the merchandise classified therein has been moved to subheading 7616.99.51, HTSUS (2022). In 1993, the column one, general rate of duty on merchandise classified in subheading 7616.90.00, HTSUS, was 5.7% *ad valorem*. When the merchandise in subheading 7616.90.00, HTSUS (1993) was moved to subheading 7616.99.51, HTSUS (2022), the column one, general rate of duty was 2.5% *ad valorem.*

surface is electroplated with nickel alloy, and the gold colored surface is electroplated with brass. The back of A-Look is coated with an acrylic resin. A-Look EX is also a composite material made by laminating a polyethylene core between two sheets of aluminum alloy with a backing of fluoride resin. A-Look EX is specially designed for use outdoors and in locations exposed to high humidity.

Both articles are imported in standard sizes ranging from 2 feet square to 4 feet by 10 feet square, however they can be manufactured in any size and are advertised as an unbreakable, light weight, flexible, metallic mirror. Both products' reflective exterior surface may be etched or inscribed with decorative patterns. Both can be bent and applied to curved surfaces, machined to different sizes and shapes, and mechanically worked (e.g., by cutting, punching, grooving and bending). Both articles are used in a variety of places such as ceilings, walls, columns, furniture, displays, and as trims and accents.

The articles are sold in two different thicknesses, 3 millimeters (mm) and 2 millimeters (mm). The amount of polyethylene creates the difference in thickness. Polyethylene is the heaviest component of the 3 mm thick sample weighing 0.49 of a pound (lb.) per square foot (sq. ft.). The aluminum sheets weigh 0.28 lb. per sq. ft. The polyethylene costs $0.20 per sq. ft. and the aluminum sheets cost $0.34 per sq. ft. For the 2 mm sample, polyethylene predominates by weight, weighing 0.29 lb. per sq.ft., compared to the aluminum sheets which weigh 0.28 lb. per sq. ft. Aluminum costs $0.34 per sq. ft., while the polyethylene costs $0.12 per sq. ft. Trace amounts of nickel, brass, or chromium are electroplated onto the front aluminum sheet to give the different articles their varying colors.

In NY N284130, CBP described the subject merchandise as follows:

The Inoxia/ID618–1 Aluminum Composite Panel (ACP) Speed Tile consists of chips of metal, and measures approximately 12 inches in length by 12 inches in width by 0.175 inches in depth. The subject tile is a metal mosaic that is comprised of many square silvered colored pieces with self-adhesive pads on the back.

Laboratory analysis has determined that the silver colored metal is laminated aluminum, and that each piece is composed of two aluminum covers and a black plastic piece in the middle.

ISSUE:

Whether the subject reflective aluminum composite panels are classified in heading 7606, HTSUS, as aluminum sheets; heading 7607, HTSUS, as aluminum foil; or in heading 7616, HTSUS, as other articles of aluminum.

LAW AND ANALYSIS:

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

The 2023 HTSUS provisions at issue are as follows:

7606 Aluminum plates, sheets and strip, of a thickness exceeding 0.2 mm:
7607 Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm:
7616 Other articles of aluminum:

* * * * * *

Note 9(d) to section XV provides as follows:

> 9. For the purposes of chapters 74 to 76 and 78 to 81, the following expressions have the meanings hereby assigned to them:
>
> . . .
>
> (d) Plates, sheets, strip and foil
>
> Flat-surfaced products (other than the unwrought products), coiled or not, of solid rectangular (other than square) cross section with or without rounded corners (including "modified rectangles" of which two opposite sides are convex arcs, the other two sides being straight, of equal length and parallel) of a uniform thickness, which are:
>
> - of rectangular (including square) shape with a thickness not exceeding one-tenth of the width;
>
> - of a shape other than rectangular or square, of any size, provided that they do not assume the character of articles or products of other headings.
>
> Headings for plates, sheets, strip, and foil apply, *inter alia*, to plates, sheets, strip, and foil with patterns (for example, grooves, ribs, checkers, tears, buttons, lozenges) and to such products which have been perforated, corrugated, polished or coated, provided that they do not thereby assume the character of articles or products of other headings.

* * * * * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HS and are thus useful in ascertaining the proper classification of merchandise. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 76.06 provides as follows:

> These products, which are defined in Note 9 (d) to Section XV, correspond to similar goods made of copper. The provisions of the Explanatory Note to heading 74.09 apply therefore, *mutatis mutandis*, to this heading.
>
> The heading does not cover :
>
> (a) Foil of a thickness not exceeding 0.2 mm (heading 76.07).
>
> (b) Expanded metal (heading 76.16).

EN 74.09, in turn, provides:

> This heading covers the products defined in Chapter Note 1 (g) when of a thickness exceeding 0.15 mm.

> Plates and sheets are usually obtained by the hot- or cold-rolling of certain products of heading 74.03; copper strip may be rolled, or obtained by slitting sheets.
>
> All such goods remain in the heading if worked (e.g., cut to shape, perforated, corrugated, ribbed, channelled, polished, coated, embossed or rounded at the edges) provided they do not thereby assume the character of articles or of products of other headings (see Chapter Note 1 (g)).
>
> The limiting thickness of 0.15 mm includes coatings of varnish, etc.

EN 76.07 states as follows:

> This heading covers the products defined in Note 9 (d) to Section XV, when of a thickness not exceeding 0.2 mm.
>
> The provisions of the Explanatory Note to heading 74.10 relating to copper foil apply, *mutatis mutandis*, to this heading.
>
> Aluminium foil is used in the manufacture of bottle caps and capsules, for packing foodstuffs, cigars, cigarettes, tobacco, etc. Aluminium foil is also used for the manufacture of the finely divided powder of heading 76.03, in crinkled sheets for thermal insulation, for artificial silvering, and as a wound dressing in veterinary surgery.
>
> The heading does not cover :
>
> (a) Stamping foils (also known as blocking foils) composed of aluminium powder agglomerated with gelatin, glue or other binder, or of aluminium deposited on paper, plastics or other support, and used for printing book covers, hat bands, etc. (heading 32.12).
>
> (b) Paper and paperboard for the manufacture of containers for milk, fruit juice or other food products and lined with aluminium foil (i.e., on the face which will form the inside of the containers) provided they retain the essential character of paper or paperboard (heading 48.11).
>
> (c) Printed aluminium foil labels being identifiable individual articles by virtue of the printing (heading 49.11).
>
> (d) Plates, sheets and strip, of a thickness exceeding 0.2 mm (heading 76.06). . .

EN 74.10 provides:

> This heading covers the products defined in Note 9 (d) to Section XV when of a thickness not exceeding 0.15 mm.
>
> Foil classified in this heading is obtained by rolling, hammering or electrolysis. It is in very thin sheets (in any case, not exceeding 0.15 mm in thickness). The thinnest foils, used for imitation gilding, etc., are very flimsy; they are generally interleaved with sheets of paper and put up in booklet form. Other foil, such as that used for making fancy goods, is often backed with paper, paperboard, plastics or similar backing materials, either for convenience of handling or transport, or in order to facilitate subsequent treatment, etc. Foil remains in the heading whether or not it has been embossed, cut to shape (rectangular or otherwise), perforated, coated (gilded, silvered, varnished, etc.), or printed.

> The limiting thickness of 0.15 mm includes coatings of varnish, etc., but, on the other hand, backings of paper, etc., are excluded.

* * * * * *

In HQ 953138 and NY N284130, CBP determined that the reflective aluminum composite panels were classified in heading 7616, HTSUS, as other articles of aluminum. In so holding, CBP concluded in both rulings that the subject merchandise are composite goods under GRI 3(b). Accordingly, the reflective aluminum composite panels were classified based upon the material that imparted the essential character, which was the aluminum. Furthermore, CBP determined that the subject merchandise do not conform with ENs 76.06 and 76.07, and are instead classified in heading 7616, HTSUS.

When merchandise consists of multiple components that are described in more than one heading, they are considered composite goods pursuant to GRI 3(b). GRI 3 states that when, by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

> ...
>
> (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

EN VIII to GRI 3(b), pg. 4, states that:

> [t]he 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 value, or by the role of a constituent material in relation to the use of the goods.

Here, we agree with the finding in HQ 953138 and NY N284130 that the aluminum component imparts the essential character of these articles. The A-Look and A-Look EX in HQ 953138 are described as reflective aluminum composite panels made of polyethylene cores between two sheets of aluminum alloy. The Aluminum Composite Panel (ACP) Speed Tiles in NY N284130 are described as square aluminum pieces with self-adhesive pads on the back. The CBP Laboratory determined that the silver colored metal used in the ACP Speed Tiles was laminated aluminum, and that each piece was composed of two aluminum covers and a plastic piece in the middle. We note that aluminum costs more than polyethylene. In addition, while the merchandise consists of a plastic middle component, both the front and back of the reflective aluminum composite panels are composed of aluminum. Furthermore, while polyethylene weighs more, it costs less and serves only as support for the aluminum.

After establishing in HQ 953138 that the aluminum component imparts the essential character, CBP determined that the subject merchandise is not classified as aluminum sheets or aluminum foil because it does not meet the descriptions outlined in the ENs. In so holding, CBP concluded that the A-Look and A-Look EX aluminum composite panels fell within heading 7616, HTSUS, as the subject merchandise is not covered by another heading of the chapter. Additionally, in NY N284130, CBP concluded that the ACP Speed Tiles are classifiable in heading 7616, HTSUS. We now find both these conclusions to be in error.

To determine which heading properly describes the aluminum component of the reflective aluminum composite panels for purposes of classifying the entire article under GRI 3(b), we turn to note 9(d) to section XV, which defines plates, sheets, strip and foil as: "Flat-surfaced products... coiled or not, of solid rectangular (other than square) cross section with or without rounded corners...of a uniform thickness" that are "of rectangular (including square) shape with a thickness not exceeding one-tenth of the width." The ENs to heading 7606 and heading 7607 further clarify the scope of the two headings. EN 76.06 (and the corresponding EN 74.09) notes that "sheets" of aluminum remain in the heading if worked (e.g., cut to shape, perforated, corrugated, ribbed, channeled, polished, coated, embossed, or rounded at the edges), provided they do not thereby assume the character of articles or of products of other headings. Similarly, EN 76.07 (and the corresponding EN 74.10) states that foil of aluminum remains in the heading whether or not it has been embossed, cut to shape (rectangular or otherwise), perforated, coated (gilded, silvered, varnished, etc.), or printed.

Pursuant to GRI 3(b), the entire article must be classified as if it consisted only of the single component which imparts the essential character of the whole—in this case, the aluminum component. Accordingly, the reflective aluminum composite panels are classified based on the thickness of the aluminum component. Where the aluminum component has a thickness exceeding 0.2 mm, the entire article is classified in heading 7606, HTSUS, as aluminum sheets. On the other hand, where the aluminum component has a thickness not exceeding 0.2 mm, the entire article is classified in heading 7607, HTSUS, as aluminum foil. Not enough information was provided to CBP to determine the thickness of the individual layers of the reflective aluminum composite panels in HQ 953138 and NY N284130.

Where the reflective aluminum composite panels meet the criteria for sheets of aluminum of heading 7606, HTSUS, as described in note 9(d) to section XV and the ENs, and where the thickness of the aluminum component exceeds 0.2 mm, we find that they are properly classified as sheets of aluminum of heading 7606, HTSUS, under GRI 3(b). Classification at the subheading level by GRI 6 is dependent upon the shape of the aluminum composite panels and whether or not the panels are alloyed. Additionally, where the reflective aluminum composite panels meet the criteria for aluminum foil of heading 7607, HTSUS, as described in note 9(d) to section XV and the ENs, and where the thickness of the aluminum component does not exceed 0.2 mm, we find that they are properly classified as aluminum foil of heading 7607, HTSUS, under GRI 3(b). Classification at the subheading level by GRI 6 is dependent upon whether the aluminum composite panels are backed, and if not, whether or not they are rolled but not further worked.

HOLDING:

By application of GRI 3(b), the subject reflective aluminum composite panels with an aluminum component thickness exceeding 0.2 mm are classified in heading 7606, HTSUS, which provides for "Aluminum plates, sheets and strip, of a thickness exceeding 0.2 mm."

By application of GRI 3(b), the subject reflective aluminum composite panels with an aluminum component thickness not exceeding 0.2 mm are classified in heading 7607, HTSUS, which provides for "Aluminum foil

(whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm."

In order to provide duty rates for the merchandise at issue, each item must be specifically described and identified for purposes of classification. The text of the most recent HTSUS and the accompanying duty rates are provided at https://hts.usitc.gov/current.

On March 8, 2018, Presidential proclamations 9704 and 9705 imposed additional tariffs and quotas on a number of steel and aluminum mill products. Exemptions have been made on a temporary basis for some countries. Quantitative limitations or quotas may apply for certain exempted countries and can also be found in Chapter 99. Additional duties for steel of 25 percent and for aluminum of 10 percent are reflected in Chapter 99, subheading 9903.80.01 for steel and subheading 9903.85.01 for aluminum. Products classified under heading 7606 and 7607, HTSUS, may be subject to additional duties or quota. At the time of importation, you must report the Chapter 99 subheading applicable to your product classification in addition to the Chapter 76 subheading listed above. The Proclamations are subject to periodic amendment of the exclusions, so you should exercise reasonable care in monitoring the status of goods covered by the Proclamations and the applicable Chapter 99 subheadings.

EFFECT ON OTHER RULINGS:

HQ 953138, dated March 18, 1993, is hereby revoked; and NY N284130, dated September 15, 2017, is hereby modified.

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

Sincerely,

Yuliya A. Gulis,
Director
Commercial and Trade Facilitation Division

ADMINISTRATIVE FORFEITURE: NEW PUBLICATION TIMELINE FOR THE NOTICE OF SEIZURE AND INTENT TO FORFEIT

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

ACTION: General notice.

SUMMARY: This notice announces that U.S. Customs and Border Protection (CBP) is changing its processes concerning the publication of the Notice of Seizure and Intent to Forfeit for CBP seizures and administrative forfeitures. Currently, CBP neither publishes the Notice of Seizure and Intent to Forfeit online (available at *www.forfeiture.gov*) nor does it post such a notice, if required, at the appropriate U.S. Customhouse or U.S. Border Patrol Station or Sector office until the administrative process has been exhausted. CBP will now publish the Notice of Seizure and Intent to Forfeit online and, if required, post it at the appropriate U.S. Customhouse or U.S. Border Patrol Station or Sector office at approximately the same time that it first sends a written Notice of Seizure to the party or parties it has identified as potentially having an interest in property seized by CBP. The new publication timeline will make the administrative forfeiture process more efficient without affecting the rights or obligations of any interested party.

DATES: This general notice is effective on May 16, 2023.

FOR FURTHER INFORMATION CONTACT: Lisa Santana Fox, Director, Fines, Penalties and Forfeitures Division, Office of Field Operations, U.S. Customs and Border Protection at (202) 344–2150 or *lisa.k.santanafox@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

U.S. Customs and Border Protection (CBP) has the authority to seize property for violations of customs laws and other laws enforced by CBP. *See, e.g.,* Title 19, United States Code Section 482 (19 U.S.C. 482), 19 U.S.C. 1581, and 19 U.S.C. 1602; *see also* Title 19, Code of Federal Regulations Section 162.21 (19 CFR 162.21). CBP has the authority to administratively forfeit property if the seized property meets certain conditions. 19 U.S.C. 1607. Generally, seized property is eligible for administrative forfeiture if it is a conveyance used to unlawfully import, export, transport, or store a controlled substance

or prohibited chemical. *See id.* CBP may also administratively forfeit prohibited merchandise, monetary instruments as defined by 31 U.S.C. 5312(a)(3), or other property that does not exceed $500,000 in value.[1] *Id.*

The procedural aspects of the administrative forfeiture process are governed by one of two statutes. The first statute is Section 2 of the Civil Asset Forfeiture Reform Act of 2000 (CAFRA) (Pub. L. 106–185, 114 Stat. 202), codified at 18 U.S.C. 983. CAFRA provides certain procedures that CBP must follow when proceeding with a seizure and forfeiture under that statutory authority. *See also* 19 CFR part 162, subpart H (CBP regulations implementing CAFRA as it applies to seizures made by CBP). CAFRA does not apply, however, to all CBP seizures.[2] When CAFRA does not apply, the procedural aspects of the seizure and forfeiture process are governed by the Tariff Act of 1930, as amended (codified at 19 U.S.C. 1600, *et seq.*), and CBP's regulations at 19 CFR parts 162 and 171. Although CAFRA and the Tariff Act of 1930, as amended, specify different procedures and timeframes, the general administrative forfeiture process is the same under both statutes. A brief description of that process follows.

CBP initiates the administrative forfeiture process by mailing a Notice of Seizure to any party it identifies as potentially having an interest in the property. *See* 19 CFR 162.31, 162.92. The Notice of Seizure provides notice of the seizure and outlines the options for responding. After receiving the Notice of Seizure, a party interested in seeking relief must timely file a claim or a petition with CBP or make an offer in compromise.[3]

In addition to the Notice of Seizure, which is mailed to interested parties, CBP also publishes a Notice of Seizure and Intent to Forfeit on an official government forfeiture website (available at *www.forfeiture.gov*). The purpose of the Notice of Seizure and Intent to

[1] If the seized property is not eligible for an administrative forfeiture process, CBP will refer the case for judicial forfeiture. *See* 19 U.S.C. 1610; 19 CFR 162.32(c).

[2] CAFRA does not apply to seizures authorized under the Tariff Act of 1930, as amended, or any other provision of law codified in title 19, the Internal Revenue Code of 1986, 26 U.S.C. 1, *et seq.,* the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301, *et seq.*), the Trading with the Enemy Act (50 U.S.C. 4301, *et seq.*), the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*), and Section 1 of Title VI of the Act of June 15, 1917 (40 Stat. 233, 22 U.S.C. 401).

[3] For seizures under CAFRA, an interested party must file a claim within 35 calendar days after the date the notice of seizure is mailed. 19 CFR 162.94(b). Filing a claim means that the seizure will be transferred to a court for a judicial forfeiture process. *See* 19 CFR 162.94(f). For CAFRA and non-CAFRA seizures, an interested party must file a petition within 30 days from the date that the Notice of Seizure is mailed. 19 CFR 171.2(b). CBP will process the petition according to 19 CFR part 171. Additionally, at any time prior to forfeiture, an interested party may make an offer in compromise in accordance with 19 U.S.C. 1617 and 19 CFR 161.5. *See also* 19 CFR 171.31.

Forfeit is to provide notice to the public of the seizure and impending administrative forfeiture and allow any interested party who did not receive a Notice of Seizure to file a claim with CBP. *See* 19 U.S.C. 1607; 19 CFR 162.45(b). CBP publishes the Notice of Seizure and Intent to Forfeit on the government website for at least 30 consecutive days. 19 CFR 162.45(b). For property valued at $5,000 or less, CBP also posts the Notice of Seizure and Intent to Forfeit for three successive weeks in a conspicuous place that is accessible to the public at the appropriate U.S. Customhouse or U.S. Border Patrol Station or Sector office. 19 CFR 162.45(b)(2).

Any party seeking relief from the seizure and administrative forfeiture, and who did not receive a Notice of Seizure, may file a claim with CBP but the claim must be timely. *See* 18 U.S.C. 983(a)(2); 19 U.S.C. 1608; *see also* 19 CFR 162.47(a), 162.94(b). For seizures subject to CAFRA, where the notice of seizure is not received, the party must file the claim within 30 calendar days after the date of final publication of the Notice of Seizure and Intent to Forfeit. 19 CFR 162.94(b). For all other seizures, the party must file a claim within 20 days from the date of the first publication of the Notice of Seizure and Intent to Forfeit and must include a cash bond, unless CBP has waived the bond requirement. *See* 19 U.S.C. 1608; 19 CFR 162.47. The applicable deadline is specified in the Notice of Seizure and Intent to Forfeit.

If no action is taken by interested parties in response to either the Notice of Seizure or the Notice of Seizure and Intent to Forfeit (or if CBP denies a petition or offer in compromise), CBP will execute a Declaration of Administrative Forfeiture declaring the property forfeited and transferring full title of the forfeited property to CBP.

It has been CBP's practice to first mail the Notice of Seizure to any party identified by CBP as potentially having an interest in the property and then wait either for a party to file a claim or petition or for those respective timeframes to expire before publishing the Notice of Seizure and Intent to Forfeit. Once the deadline for filing a claim or petition has passed (or the administrative process has been exhausted), CBP has historically published the Notice of Seizure and Intent to Forfeit on the official government forfeiture website and, if required, posted it at the appropriate U.S. Customhouse or U.S. Border Patrol Station or Sector office.

New Publication Timeline for the Notice of Seizure and Intent To Forfeit

This notice announces that CBP now will publish a Notice of Seizure and Intent to Forfeit on the official government forfeiture website (and post the notice at the relevant U.S. Customhouse or U.S.

Border Patrol Station or Sector office, if applicable) at approximately the same time that it first sends a written Notice of Seizure to the party or parties identified as potentially having an interest in the property. CBP will no longer wait for the timeframe for filing a claim or petition to expire before publishing or posting the Notice of Seizure and Intent to Forfeit. This means that both the parties identified by CBP as potentially having an interest in the property and the public will be notified of the seizure and impending administrative forfeiture at approximately the same time.

This new publication timeline will apply to all property seized by CBP and eligible for administrative forfeiture, including seizures governed by CAFRA and by the Tariff Act of 1930, as amended. This includes seizures processed by CBP on behalf of U.S. Immigration and Customs Enforcement, Homeland Security Investigations. The new publication timeline does not apply to Schedule I and Schedule II controlled substances, which are summarily forfeited without notice. *See* 21 U.S.C. 881(f) and 19 CFR 162.45a.

This change will enable CBP to process seizures and forfeitures more efficiently. By notifying the public earlier in the process, all parties with a potential interest in the property will be identified earlier. Additionally, CBP expects that the overall processing time for seizures will decrease, allowing it to spend fewer resources on storage, inventory, and other administrative functions related to managing seized property.

The new publication timeline for the Notice of Seizure and Intent to Forfeit does not affect the rights or obligations of any interested party. This document does not change any of the respective deadlines for filing for relief, either in response to a Notice of Seizure or a Notice of Seizure and Intent to Forfeit. All interested parties will continue to be subject to the applicable requirements and deadlines specified by statute and in CBP's regulations. CBP is not changing any of its regulations or other procedures at this time.

PETE FLORES,
Executive Assistant Commissioner,
Office of Field Operations,
U.S. Customs and Border Protection.

[Published in the Federal Register, May 16, 2023 (88 FR 31268)]

U.S. Court of International Trade

Slip Op. 23–73

EREĞLI DEMIR VE ÇELIK FABRIKALARI T.A.Ş., Plaintiff, v. UNITED STATES INTERNATIONAL TRADE COMMISSION, Defendant, and STEEL DYNAMICS, INC.; SSAB ENTERPRISES, LLC; CLEVELAND-CLIFFS INC.; AND NUCOR CORPORATION, Defendant-Intervenors.

Before: Timothy M. Reif, Judge
Court No. 22–00349

[Denying plaintiff's motion for reconsideration and denying proposed defendant-intervenor's motion to intervene.]

Dated: May 15, 2023

David L. Simon and *Mark B. Lehnardt*, Law Offices of David L. Simon, PLLC, of Washington, D.C., for plaintiff Ereğli Demir ve Çelik Fabrikaları T.A.Ş.

Michael K. Haldenstein, Attorney-Advisor, *Andrea C. Casson*, Assistant General Counsel for Litigation, *Ravi D. Soopramanien*, Attorney-Advisor, Office of the General Counsel, United States International Trade Commission, of Washington, D.C., for defendant United States International Trade Commission.

Roger B. Schagrin, *Jeffrey D. Gerrish*, *Saad Y. Chalchal*, Schagrin Associates, of Washington, D.C., for Steel Dynamics, Inc. and SSAB Enterprises, LLC, defendant-intervenors.

Stephen P. Vaughn, *Neal J. Reynolds*, *Barbara Medrado*, King & Spalding LLP, of Washington, D.C., for Cleveland-Cliffs Inc., defendant-intervenor.

Alan H. Price, *Christopher B. Weld*, *Derick G. Holt*, *Maureen E. Thorson*, *Theodore P. Brackemyre*, *Nicole C. Hager*, Wiley Rein LLP, of Washington, D.C., for Nucor Corporation, defendant-intervenor.

Thomas M. Beline and *Sarah E. Shulman*, Cassidy Levy Kent (USA) LLP, of Washington, D.C., for United States Steel Corporation, proposed defendant-intervenor.

OPINION AND ORDER

Reif, Judge:

Before the court are: (1) the motion for reconsideration of plaintiff Ereğli Demir Ve Çelik Fabrikaları T.A.Ş. ("plaintiff" or "Erdemir") of the court's order granting the motions to intervene as defendant-intervenors of SSAB Enterprises, LLC and Steel Dynamics, Inc. ("SSAB/SDI"), Cleveland-Cliffs Inc. ("Cleveland-Cliffs" or "CC") and Nucor Corporation ("Nucor") (collectively, "defendant-intervenors" or "DIPs"); and (2) the motion to intervene of proposed defendant-intervenor United States Steel Corporation ("proposed defendant-intervenor" or "USSC") under U.S. Court of International Trade ("USCIT" or the "Court") Rule 24(b). Plaintiff invokes the Court's subject

matter jurisdiction under 28 U.S.C. § 1581(i)(1)(B) and (D),[1] alleging that Erdemir has been "adversely affected or aggrieved" by the decision of the U.S. International Trade Commission ("Commission") not to conduct a reconsideration proceeding. Plaintiff states that the Commission's decision relates to "tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue," and the "administration and enforcement" of those duties. 28 U.S.C. § 1581(i)(1)(B) and (D). For the reasons discussed below, the court denies plaintiff's motion for reconsideration and denies USSC's motion to intervene.

BACKGROUND[2]

Erdemir challenges the decision of the Commission to deny Erdemir's request to institute a reconsideration proceeding of the Commission's final injury determination with respect to imports of hot-rolled steel from the Republic of Turkey ("Turkey"). Pl.'s Am. Compl. ("Am. Compl.") ¶¶ 1–5, ECF No. 14; *see Hot-Rolled Steel Flat Products from Turkey; Denial of Request to Institute a Section 751(b) Review; Denial of Request to Institute a Section 751(b) Review or Reconsideration Proceeding Concerning the Commission's Affirmative Determination in Investigation No. 731-TA-1296 (Final), Hot-Rolled Steel Flat Products from Turkey* ("*Denial of CCR and Reconsideration*"), 87 Fed. Reg. 73,331 (ITC Nov. 29, 2022).[3] Erdemir requested that the Commission reconsider its original injury determination with respect to imports of hot-rolled steel from Turkey, rather than

[1] Further references to the U.S. Code are to the 2018 edition.

[2] Certain facts addressed in this section are taken from the Amended Complaint, and, although defendant-intervenors and proposed defendant-intervenor admit certain of these facts in their proposed answers, such facts constitute allegations at this stage of the case. Nothing in this Opinion and Order shall be construed as the court accepting plaintiff's factual allegations as true or making any finding of fact where such facts are or may be disputed. *GreenFirst Forest Prods. v. United States*, 46 CIT __, __, 577 F. Supp. 3d 1349, 1351 n.3 (2022).

[3] On September 29, 2016, the Commission determined that a U.S. industry was "materially injured by reason of imports of hot-rolled steel flat products" from Turkey found by the U.S. Department of Commerce ("Commerce") to be sold in the United States at less than fair value. *See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom* ("*2016 Injury Determination*"), 81 Fed. Reg. 66,996 (ITC Sept. 29, 2016). The Commission's original injury determination related to Commerce's antidumping order. *Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Australia, the Republic of Korea, and the Republic of Turkey and Antidumping Duty Orders* ("*AD Order*"), 81 Fed. Reg. 67,962 (Dep't of Commerce Oct. 3, 2016); *see* 19 U.S.C. § 1673d(b), 1673e(a).

conduct a Changed Circumstances Review ("CCR") or sunset review, which Erdemir requested at a later date.[4] *See* Am. Compl. ¶¶ 21–28.

On December 2, 2021, the Commission issued a notice requesting comments on Erdemir's request for a CCR and whether such a CCR should be conducted as part of the sunset review of the AD Order. *Hot-Rolled Steel Flat Products from Turkey; Request for Comments Regarding the Institution of a Section 751(b) Review Concerning the Commission's Affirmative Determination* ("*Request for Comments*"), 86 Fed. Reg. 68,512, 68,513 (ITC Dec. 2, 2021). In response to the *Request for Comments*, several domestic producers of hot-rolled steel — DIPs and USSC — provided comments with respect to Erdemir's CCR request. *Denial of CCR and Reconsideration*, 87 Fed. Reg. at 73,332. The Commission denied Erdemir's requests for reconsideration and a CCR. *See id.* In the denial, the Commission stated with respect to Erdemir's request for reconsideration that the Commission previously "has chosen to exercise its authority to reconsider only when 'extraordinary circumstances' are present," and that since "there is no evidence of fraud or other facts that suggest extraordinary circumstances, [the Commission] do[es] not find that the recalculation of the dumping margin by Commerce with respect to hot-rolled steel flat products from Turkey warrants reconsideration of our determination." *Id.*

On December 26, 2022, plaintiff filed its original complaint in this action. Pl.'s Compl., ECF No. 4. On January 24, 2023, plaintiff filed an amended complaint in which plaintiff corrected the statutory provisions through which plaintiff seeks to invoke the Court's subject matter jurisdiction over this action. *See* Am. Compl. ¶ 3. In the Amended Complaint, plaintiff contests the Commission's denial of Erdemir's request for reconsideration. *Id.* ¶ 1.

On January 12, 2023, USSC filed a motion to intervene as of right as defendant-intervenor under USCIT Rule 24(a). Mot. to Intervene as a Matter of Right, ECF No. 13. On February 2, 2023, plaintiff opposed USSC's motion to intervene as a matter of right. Opp'n to USSC's Mot. to Intervene as a Matter of Right, ECF No. 26. On February 6, 2023, the court denied USSC's motion to intervene as a matter of right without prejudice as to a potential motion for permissive intervention. Order (Feb. 6, 2023), ECF No. 29. On February 21, 2023, USSC filed a motion for permissive intervention. Mot. to Intervene and for Leave to File Answer ("USSC Mot. to Intervene"), ECF

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[4] Erdemir filed two additional actions seeking judicial review of the Commission's decision to deny Erdemir's request to institute a CCR *Ereğli Demir ve Çelik Fabrikalari T.A.Ş. v. United States*, CIT No. 22–00350 (filed Dec. 26, 2022), and the Commission's decision to continue the AD Order on Turkish hot-rolled steel. *Ereğli Demir ve Çelik Fabrikalari T.A.Ş. v. United States*, CIT No. 22–00351 (filed Dec. 26, 2022).

No. 34. On March 14, 2023, plaintiff opposed USSC's motion to intervene. Opp'n to Mot. to Intervene of USSC ("Pl. Resp. in Opp'n to USSC"), ECF No. 44.

On January 24, 2023, SSAB/SDI and Cleveland-Cliffs filed motions to intervene as defendants-intervenors. *See* SSAB/SDI's Partial Consent Mot. to Intervene as Def.-Intervenors ("SSAB/SDI Mot."), ECF No. 15; Cleveland-Cliffs' Partial Consent Mot. to Intervene ("CC Mot."), ECF No. 16. On January 25, 2023, Nucor filed a motion to intervene as defendant-intervenor. Nucor's Partial Consent Mot. to Intervene ("Nucor Mot."), ECF No. 22. On February 14, 2023, plaintiff opposed the respective motions to intervene of Cleveland-Cliffs and SSAB/SDI. *See* Opp'n to Mot. to Intervene of Cleveland-Cliffs Inc. ("Pl. Resp. in Opp'n to CC"), ECF No. 31; Opp'n to Mot. to Intervene of SSAB/SDI ("Pl. Resp. in Opp'n to SSAB/SDI"), ECF No. 32. On February 15, 2023, plaintiff opposed Nucor's motion to intervene. Opp'n to Mot. to Intervene of Nucor ("Pl. Resp. in Opp'n to Nucor"), ECF No. 33.

On February 27, 2023, DIPs filed a motion for leave to file a reply to plaintiff's opposition to their respective motions to intervene. Mot. for Leave to File a Reply to Pl.'s Resps. to Mots. to Intervene ("DIPs Mot. Leave Reply"), ECF No. 37. On March 1, 2023, the court granted DIPs' motion for leave to file a reply to plaintiff's opposition to their motions to intervene. *See* Order (Mar. 1, 2023), ECF No. 38; *see* Reply of DIPs to Pl.'s Opp'ns to DIPs' Mots. to Intervene ("DIPs Reply to Pl. Opp'n"), ECF No. 39.

On March 8, 2023, the court granted DIPs' motions to intervene as defendant-intervenors. Order (Mar. 8, 2023), ECF No. 40; Order (Mar. 8, 2023), ECF No. 41; Order (Mar. 8, 2023), ECF No. 42. On March 14, 2023, plaintiff filed a motion for reconsideration of the court's order. Mot. for Recons. ("Pl. Mot. Recons."), ECF No. 43. In its motion for reconsideration, plaintiff argues that it did not have an opportunity to oppose DIPs' motion for leave to file a reply and that DIPs were granted intervention before plaintiff could file a motion for leave to file a surreply, which plaintiff argues would have been supported by "fundamental fairness." *Id.* at 1. Further, plaintiff argues that the court erred in granting DIPs' intervention. *Id.* at 1, 20–27.

On April 4, 2023, DIPs filed a response to plaintiff's motion for reconsideration, arguing that the court should not reconsider its decision to grant DIPs' intervention. Def.-Intervenors' Resp. in Opp'n to Pl.'s. Mot. for Recons. ("DIPs Resp. Recons."), ECF No. 45.

JURISDICTION AND STANDARD OF REVIEW

Plaintiff brings the instant action challenging the denial of a reconsideration proceeding by the Commission pursuant to 28 U.S.C. § 1581(i) and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 702, 704, 706. Am. Compl. ¶ 3. Plaintiff notes that “the decision by the Commission not to conduct a reconsideration proceeding is not listed under 19 U.S.C. §§ 1516a or 1517, and alleges on this basis that jurisdiction here does not arise under 28 U.S.C. § 1581(c).”[5] *Id*. The court considers the questions of intervention and reconsideration thereof in the instant action under USCIT Rule 24 and USCIT Rule 54, respectively.

DISCUSSION

I. Plaintiff’s motion for reconsideration

A. Legal framework

USCIT Rule 54(b) permits a court to “revise” or reconsider any order “which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties” — that is, any order of interlocutory judgment — “at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all parties.” USCIT R. 54(b).[6] USCIT Rule 54(b) mirrors Rule 54(b) of the Federal Rules of Civil Procedure. *See* Fed. R. Civ. Proc. 54(b). A court may reconsider a non-final judgment, pursuant to USCIT Rule 54 “‘as justice requires,’ meaning when the court determines that ‘reconsideration is necessary under the relevant circumstances.’” *Irwin Indus. Tool Co. v. United States*, 41 CIT __, __, 269 F. Supp. 3d 1294, 1300–01 (2017) (quoting *Cobell v. Norton*, 355 F. Supp. 2d __531, 539 (D.D.C. 2005)), *aff’d*, 920 F.3d 1356 (Fed. Cir. 2019)).

“Factors a court may weigh when contemplating reconsideration include whether there has been a controlling or significant change in

[5] Further citations to the Tariff Act of 1930, as amended, are to the relevant portions of Title 19 of the U.S. Code, 2018 edition.

[6] USCIT Rule 54 (b) provides that:

> When an action presents more than one claim for relief — whether as a claim, counterclaim, crossclaim, 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. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties’ rights and liabilities.

USCIT R. 54(b).

the law or whether the court previously 'patently' misunderstood the parties, decided issues beyond those presented, or failed to consider controlling decisions or data." *Irwin*, 269 F. Supp. 3d at 1300–01 (citing *In re Papst Licensing GmbH & Co. KG Litigation*, 791 F.Supp.2d 175, 182–83 (D.D.C. 2011); *Singh v. George Washington Univ*., 383 F.Supp.2d 99, 101 (D.D.C. 2005). "The movant carries the burden of proving that 'some harm, legal or at least tangible,' would accompany a denial of the motion." *Irwin*, 269 F. Supp. 3d at 1300–01 (quoting *Cobell*, 355 F.Supp.2d at 540).

"[A] court should not disturb its prior decision unless it is 'manifestly erroneous.'" *Marvin Furniture (Shanghai) Co. v. United States*, 37 CIT 65, 66, 899 F. Supp. 2d 1352, 1353 (2013) (quoting *Dorsey*, 32 CIT at 270). The "manifestly erroneous" standard requires a showing of extraordinary circumstances that include "an intervening change in the controlling law, the availability of new evidence, the need to correct a clear factual or legal error, or the need to prevent manifest injustice." *Ford Motor Co. v. United States*, 30 CIT 1587, 1588 (2006) ("*Ford Motor I*") (citing *Virgin Atl. Airways, Ltd. v. Nat'l Mediation Bd*., 956 F.2d 1245, 1255 (2d Cir.1992)).

A motion for reconsideration should not be granted in circumstances in which an error is found to be harmless. *See id*. USCIT Rule 61 provides that:

> Unless justice requires otherwise, no error in admitting or excluding evidence — or any other error by the court or a party — is ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.

Id. "[E]ven a clear legal error will not require a court to grant a motion for reconsideration where that error does not affect the result reached in the first instance." *Ford Motor I*, 30 CIT at 1588 (citing USCIT R. 61).

B. Positions of the parties

In the instant case, plaintiff argues that it did not have an opportunity to oppose defendant-intervenors' motion for leave to file a reply regarding intervention notwithstanding that USCIT Rule 7 provides plaintiff with 21 days to do so. Pl. Mot. Recons. at 4 (citing USCIT R. 7). Further, plaintiff argues that it was deprived of an opportunity to file a surreply in response to DIPs' reply. *Id*. Last, plaintiff argues that

DIPs' motions to intervene were granted without "the significant arguments raised by the parties being addressed . . . ." *Id.*

DIPs argue that plaintiff fails to cite to any legal authority for reconsideration under the present circumstances, stating that "Erdemir merely seeks another bite at the apple and to litigate the issue further, rather than to rectify a clear legal or factual error in the Court's decisions." DIPs Resp. Recons. at 4. DIPs argue also that plaintiff fails to request explicitly reconsideration under USCIT Rule 59(e). *Id.*

C. Analysis

DIPs' argument that plaintiff's motion for reconsideration is inadequate because plaintiff did not cite to USCIT Rule 59(e) fails. USCIT Rule 54(b) applies in the instant action because the court's order granting DIPs' motion to intervene constitutes an interlocutory order "that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties . . . ." USCIT R. 54(b). The court concludes that plaintiff "has not demonstrated circumstances requiring reconsideration, offering no reasons for reconsideration beyond its disagreement with the court's opinion." *Irwin*, 269 F. Supp. 3d at 1301. The court addresses instead whether the court's error in failing to allow plaintiff its right to oppose DIPs' motion for leave to file a reply constitutes an error that affects any party's substantial rights. *See* USCIT R. 61.

The court granted DIPs' motion for leave to file a reply to plaintiff's opposition to their motion for intervention without providing plaintiff an opportunity to oppose DIPs' motion in accordance with USCIT Rule 7. The court's error does not constitute one that affects plaintiff's "*substantial rights*" with respect to the main action before the court. USCIT R. 61 (emphasis supplied). The preemptive grant of leave for DIPs to file a reply would not disturb the court's decision to grant the permissive intervention of defendant-intervenors. *See Ford Motor I*, 30 CIT at 1588 (citing USCIT R. 61). Plaintiff filed three responses in opposition to intervention, opposing separately each motion to intervene. *See* Pl. Resp. in Opp'n to CC; Pl. Resp. in Opp'n to SSAB/SDI; Pl. Resp. in Opp'n to Nucor. The court considered plaintiff's arguments in those briefs and considered plaintiff's further reiteration of its arguments in the brief accompanying plaintiff's motion for reconsideration. *See generally* Pl. Mot. Recons. The court concludes that the error is harmless and does not disturb the court's decision to grant DIPs' motions to intervene under USCIT Rule 24(b).

II. Intervention as a matter of right of SSAB/SDI and Nucor

A. Legal framework

USCIT Rule 24(a) provides in relevant part that "[o]n timely motion, the court must permit anyone to intervene who":

> [I]n an action described in section 517(g) of the Tariff Act of 1930, is a person determined to have entered merchandise through evasion or is the interested party that filed the allegation; or *claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.*

USCIT R. 24(a)(2) (emphasis supplied).

This Court and the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") have interpreted the clause of Rule 24(a)(2) that does not pertain to evasion cases under 19 U.S.C. § 1517[7] to provide for a four-part test:

> (1) [T]he motion must be timely; (2) the moving party must claim an interest in the property or transaction at issue that is "'legally protectable'—merely economic interests will not suffice," (3) "that interest's relationship to the litigation must be 'of such a *direct* and *immediate* character that the intervenor will either gain or lose by the *direct* legal operation and effect of the judgment,'"; and (4) "the movant must demonstrate that said interest is not adequately addressed by the government's participation."

N. Am. Interpipe, Inc. v. United States, 45 CIT __, __, 519 F. Supp. 3d 1313, 1323 (2021) (quoting *Wolfsen Land & Cattle Co. v. Pac. Coast Fed'n of Fishermen's Ass'ns*, 695 F.3d 1310, 1315 (Fed. Cir. 2012)), *aff'd sub nom. Cal. Steel Indus., Inc. v. United States*, 48 F.4th 1336 (Fed. Cir. 2022); *Cal. Steel Indus.*, 48 F.4th at 1340 (first quoting *N. Am. Interpipe*, 45 CIT at __, 519 F. Supp. 3d at 1323; then quoting *Wolfsen,* 695 F.3d at 1315).

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[7] USCIT Rule 24(a)(2) states in relevant part:

> [T]he court must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

USCIT R. 24(a)(2).

B. Positions of the parties

SSAB/SDI and Nucor move to intervene in the instant action under USCIT Rule 24(a)(2). *See* SSAB/SDI Mot. at 3–5; Nucor Mot. at 2. Both SSAB/SDI and Nucor argue that they satisfy the Federal Circuit's four-part test, are domestic producers of hot-rolled steel flat products — i.e., interested parties under 19 U.S.C. § 1677(9)(C) — and were petitioners in the original antidumping duty ("AD") investigation, factors that, according to SSAB/SDI and Nucor, weigh in favor of their intervention as a matter of right. SSAB/SDI Mot. at 4; Nucor Mot. at 2–3.

Plaintiff argues that SSAB/SDI and Nucor do not demonstrate "a legally protectable interest, that this case would have direct and immediate effect on [Nucor and] SDI/SSAB, or that [their] interest[s] would not be adequately protected by the Commission." Pl. Resp. in Opp'n to SSAB/SDI at 1; Pl. Resp. in Opp'n to Nucor at 1. Plaintiff also argues that the statutory construction of USCIT Rule 24(a)(2) indicates that this Rule does not apply beyond EAPA actions, stating that:

> [I]nstances where the court 'must permit anyone to intervene' are limited specifically to when there is unconditional right provided by statute and when the action is an EAPA action. Had the second clause of Rule 24(a)(2) used the word 'an action' [sic] — such that the rule granted intervention of right to anyone who 'claims an interest in the property or transaction that is the subject of an action' — the words could refer to any action brought before this Court.

Pl. Resp. in Opp'n to Nucor at 4 (emphasis omitted).

C. Analysis

The court concludes that SSAB/SDI and Nucor fail to meet the second and third factors of the four-part test, thereby failing to meet the standard for intervention as of right under USCIT Rule 24(a). *See N. Am. Interpipe*, 45 CIT at __, 519 F. Supp. at 1323 (quoting *Wolfsen*, 695 F.3d at 1315). In denying intervention as of right under USCIT Rule 24(a), the court analyzes the dispositive factors barring intervention as a matter of right of SSAB/SDI and Nucor.[8]

The court addresses first the narrow issue of whether SSAB/SDI and Nucor have a right to intervene under USCIT Rule 24(a) based on

[8] The timeliness of SSAB/SDI's and Nucor's motions under the first factor is uncontested, and the parties demonstrate that the participation of the Commission would not be adequate under the fourth factor to defend SSAB/SDI's and Nucor's positions. SSAB/SDI Mot. at 5–6; Nucor Mot. at 2–3.

a "legally protectable" interest. *Id.* (quoting *Wolfsen*, 695 F.3d at 1315). SSAB/SDI and Nucor do not explain how their interests in this action are "legally protectable" as opposed to "merely economic." *Id.* Further, the parties do not describe the "*direct* and *immediate* character that the intervenor will either gain or lose by the *direct* legal operation and effect of the judgment." *Id.*

In *California Steel*, the Federal Circuit made the distinction between parties with a "legally protectable interest" and parties that "participat[ed] in adversarial administrative proceedings." *Cal. Steel,* 48 F.4th at 1344 (finding no "legally protectable interest[]" on the basis that proposed defendant-intervenors participated in administrative proceedings that could have revoked tariffs in which the proposed defendant-intervenors had an interest);[9] *see Glob. Aluminum Distrib. LLC v. United States*, 45 CIT __, __, 579 F. Supp. 3d 1338, 1341 (2021) (quoting *N. Am. Interpipe*, 519 F. Supp. 3d at 1323). SSAB/SDI and Nucor make only limited arguments noting their status as interested parties in the instant action, which they allege threatens the relief from dumped imports that they obtained as a result of Commerce's AD Order on hot-rolled steel flat products. SSAB/SDI Mot. at 5; Nucor Mot. at 2. SSAB/SDI and Nucor fail to demonstrate that their interests in the instant action are "legally protectable" and, further, do not identify the relationship of their interests to this litigation, which must be "of such a *direct* and *immediate* character that the intervenor will either gain or lose by the *direct* legal operation and effect of the judgment." *Wolfsen*, 695 F.3d at 1315 (quoting *Am. Marine Transp., Inc. v. United States*, 870 F.2d 1559, 1561 (Fed. Cir. 1989)) (emphases in *Am. Marine Transp.*).

Accordingly, SSAB/SDI and Nucor do not identify under the second factor of the four-part test a "legally protectable interest" and do not establish under the third factor that the "relationship" between any

[9] In the instant action, the court does not address the issue of standing — as the court previously did in *North American Interpipe*— because the parties do not raise this issue and the prayer for relief of defendant-intervenors parallels that of the Commission, *see* Def.'s Answer to Am. Compl. ¶ 39, ECF No. 36; SSAB/SDI Answer to Am. Compl. at 8, ECF No. 15; Nucor Answer to Am. Compl. at 5, ECF No. 25 at 5, presenting "piggyback standing," *N. Am. Interpipe*, 519 F. Supp. at 1322 (citing *PrimeSource Bldg. Prods., Inc. v. United States*, 45 CIT __, __, 494 F. Supp. 3d 1307, 1319–20 (2021) (internal citations omitted). The Federal Circuit has explained that "[e]ven if it [is] unclear whether the proposed intervenors request[] additional relief beyond what the government request[s], the appropriate action [is] for the [Court] to request clarification from the parties before *sua sponte* raising and deciding the standing inquiry." *Cal. Steel*, 48 F.4th at 1343 & n.4 (concluding that "[b]ecause in each of these cases the proposed intervenors' requested relief is largely identical to the government's prayer for relief, the proposed intervenors have established piggyback standing"). As discussed, SSAB/SDI and Nucor request the same relief as the Commission — i.e., the denial of a reconsideration proceeding. *Compare* Def.'s Answer to Am. Compl. ¶ 39, ECF No. 36, *with* SSAB/SDI Answer to Am. Compl. at 8, ECF No. 15, *and* Nucor Answer to Am. Compl. at 5, ECF No. 25.

interest and this litigation is of such a "*direct* and *immediate* character that [they] will either gain or lose by the *direct* legal operation and effect of the judgment" and do not have a right of intervention under USCIT Rule 24(a). *Id.*

III. Permissive intervention of Cleveland-Cliffs, Nucor and SSAB/SDI

A. Legal framework

The court may permit a party to intervene under USCIT Rule 24(b) if such a party "has a claim or defense that shares with the main action a common question of law or fact." USCIT R. 24(b)(1)(B). If a proposed intervenor satisfies the requirements of USCIT Rule 24(b)(1)(B), the court may exercise its discretion to permit intervention. USCIT R. 24(b)(3). "Subject to the statutory provisions of 28 U.S.C. § 2631(j), permissive intervention is governed by Rule 24(b) of the Rules of this Court." *Manuli Autoadesivi*, 9 CIT at 98. "Any person who would be adversely affected or aggrieved by a decision in a civil action pending in the Court of International Trade may, by leave of court, intervene in such action . . . ." 28 U.S.C. § 2631(j)(1). "In 28 U.S.C. § 1581(i) cases, intervention is left to the sound discretion of the court as stated in [USCIT] Rule 24(b) and 28 U.S.C. § 2631(j)." *Neo Solar Power*, 2016 WL 3390237, at *1 (citing *Vivitar Corp. v. United States*, 7 CIT 165, 169, 585 F. Supp. 1415, 1419 (1984). Further, "[i]n exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." USCIT R. 24(b)(3).

The court considers three factors with respect to a motion for permissive intervention under USCIT Rule 24(b)(1)(B): "a) whether the intervenor's [defense] has a question of law or fact in common with the [defendant]; b) whether the application is timely; and c) 'whether the intervention will unduly delay or prejudice the adjudicative rights of the original parties.'" *Manuli Autoadesivi, S.p.A. v. United States*, 9 CIT 24, 26, 602 F. Supp. 96, 98 (1985) (citing USCIT R. 24(b)); *accord Neo Solar Power Corp. v. United States*, Slip Op. 16–60, 2016 WL 3390237, at *1 (CIT June 17, 2016).

Plaintiff does not dispute the timeliness of the application for intervention, so the court considers: (1) whether DIPs' defense has a question of law or fact in common with the Commission, *see* USCIT R. 24(b)(1)(B); (2) whether DIPs would be "adversely affected or aggrieved" by this court's decision, 28 U.S.C. § 2631(j)(1); and (3) whether DIPs' intervention would "unduly delay or prejudice the adjudication of the rights of the original parties," 28 U.S.C. §

2631(j)(2). DIPs briefed their respective motions to intervene and supplemented such motions with their joint reply, which the court had granted DIPs leave to file. *See* Order (Mar. 1, 2023), ECF No. 38. The court reaffirms that DIPs' motions to intervene meet the criteria of USCIT Rule 24(b) and 28 U.S.C. § 2631(j).

B. Positions of the parties

Plaintiff claims that the "main action" pertains to the Commission's denial of a requested reconsideration proceeding before the Commission, to which, plaintiff asserts, DIPs were not parties. Pl. Mot. Recons. at 20. In its motion for reconsideration, plaintiff reiterates its argument distinguishing the sunset review from the CCR and from the reconsideration request, arguing that DIPs failure to comment on Erdemir's request for reconsideration should bar them from participating in this proceeding as defendant-intervenors:

> [T]wo years after Erdemir's request for reconsideration, DIPs addressed Erdemir's request for reconsideration in the September 2022 hearing in the sunset review and in post-hearing briefing. The Commission acknowledged in the sunset review the arguments raised by parties relating to a CCR or reconsideration proceeding, but [the Commission] specifically stated that it was not addressing those arguments in the sunset review.

Id. at 10.

Further, plaintiff argues that DIPs would not be "adversely affected or aggrieved" by the court's decision on the merits because the instant action cannot itself affect the status of the AD Order or plaintiff's status as being subject to the AD Order. Pl. Mot. Recons. at 21. Moreover, plaintiff describes the reconsideration proceeding before the Commission as merely a way for plaintiff to obtain a retroactive end to a remedy to which defendant-intervenors were never entitled. *Id.* at 24. Last, plaintiff argues that "DIPs do not address delay during the proceeding or increased cost, effort, and expense caused by additional parties participating, seeking extension of time for briefing, and filing additional volumes of briefing." *Id.* at 26. Plaintiff underscores the prior argument by stating that "DIPs have already been the source of unnecessary delay and prejudice by filing inadequate motions to intervene that required 18 additional pages in reply." *Id.*

DIPs state that their prior participation in the CCR and sunset review, which concerned the same factual basis and legal issues as the requested reconsideration by the Commission demonstrates that DIPs' intervention is warranted in the instant action. DIPs Reply to Pl. Opp'n at 4–6. Further, DIPs state that they seek to address

"jurisdictional issues [that] share common questions of law and fact with those raised by Plaintiff in this action as well as in the underlying proceedings." *Id.* at 6. DIPs argue that they share common questions of law with the "main action" and that they participated in the underlying proceedings, maintaining their respective interests in addressing the legal questions that plaintiff raises in the present action. *Id.* at 4–5. DIPs argue further that their intervention was timely and that their interests and arguments concerning "key jurisdictional issues that could greatly assist the Court" outweigh plaintiff's concerns regarding the greater number of briefs and costs, which plaintiff and parties would likely incur as a result of DIPs' intervention. *Id.* at 11–12.

C. Analysis

1. "Claim or defense that shares with the main action a common question of law or fact"

DIPs' prospective defenses share common questions of law and fact with the "main action" before the court — i.e., Erdemir's request in 2020 that the Commission conduct a reconsideration proceeding. *Compare* Am. Compl. ¶¶ 26–31 (explaining the procedural background of the Commission's denial of a reconsideration proceeding), *with* DIPs Reply to Pl. Opp'n at 3–4 (recounting the involvement of DIPs in the proceedings in which the Commission requested comments). The "main action" concerns plaintiff's appeal of the Commission's denial of plaintiff's request to conduct a reconsideration proceeding. Pl. Mot. Recons. at 5–6. As such, DIPs' motions have met this criterion of Rule 24(b). DIPs Reply to Pl. Opp'n at 5–6 (citing USCIT R.24(b)(1)(B)).

The parties disagree about whether DIPs were parties to the underlying "proceeding," which was not actually a proceeding, but a *request* by Erdemir for a reconsideration proceeding before the Commission. Am. Compl. ¶ 1; *Denial of CCR and Reconsideration*, 87 Fed. Reg. 73,332. DIPs commented on the CCR and the sunset review of the injury determination underlying the connected AD Order but did not file comments with respect to Erdemir's request for reconsideration. *Denial of CCR and Reconsideration,* 87 Fed. Reg. at 73,332. The Commission denied that request without initiating a reconsideration proceeding. *Id.* As such, DIPs did not have an opportunity to present their views in a reconsideration proceeding before the Commission because no such proceeding occurred.

Irrespective of the fact that the Commission did not conduct a reconsideration proceeding, the core issue of whether the Commission should review its material injury finding in light of Commerce's de-

cision to reduce to zero the AD margin of Çolakoğlu Dis Ticaret A.Ş. and, therefore, remove the company from the AD Order was addressed by all parties in the CCR. *See Denial of CCR and Reconsideration*, 87 Fed. Reg. at 73,332; *see also* Am. Compl. ¶ 18 (citing *Certain Hot-Rolled Steel Flat Products from Turkey: Notice of Court Decision Not in Harmony with the Amended Final Determination in the Less-Than-Fair-Value Investigation; Notice of Amended Final Determination, Amended Antidumping Duty Order; Notice of Revocation of Antidumping Duty Order in Part; and Discontinuation of the 2017–18 and 2018–19 Antidumping Duty Administrative Reviews, in Part* ("*Turkey Partial Revocation*"), 85 Fed. Reg. 29,399 (Dep't of Commerce May 15, 2020)). That issue is largely the same as the one with respect to which Erdemir requested reconsideration by the Commission. *Id.*

Plaintiff's proffered distinction between the factual and legal issues covered by the CCR, the sunset review and the requested reconsideration by the Commission is not persuasive. To the contrary, DIPs' prospective defenses share common questions of law and fact with the main action. Accordingly, DIPs demonstrate that they meet the criterion of commonality with the "main action" pursuant to Rule 24(b).

2. "[A]dversely affected or aggrieved"

DIPs demonstrate adequately that they would be "adversely affected or aggrieved" if the court were to decide in favor of plaintiff in the instant case. 28 U.S.C. § 2631(j). In particular, DIPs show affirmatively in their pleadings that: (1) their interests may not be adequately represented by the Commission; and (2) DIPs' reliance on the AD Order would be jeopardized, which would then require that DIPs participate in a reconsideration proceeding to defend the correctness of the Commission's 2016 injury determination. DIPs Reply to Pl. Opp'n at 6.

DIPs state expressly in their pleadings that they have substantive legal positions that — based on all parties' pleadings that have been filed to date — will not be defended adequately by the Commission. *Id.* at 5 (citing *Denial of CCR and Reconsideration*, 87 Fed. Reg. at 73,332). In particular, DIPs state that they intend to argue that the Commission "does not have the authority to reconsider its final material injury determination," DIPs Reply at 9, whereas the Commission previously stated that it "determined not to *exercise its authority* to undertake a reconsideration of its negligibility analysis in its original material injury determination," *Denial of CCR and Reconsideration*, 87 Fed. Reg. at 73,332 (emphasis supplied). Notably, the present circumstance is distinct from that considered by the court in

GreenFirst, in which the court noted that "[proposed defendant-intervenor] has not shown that it will add anything or that Defendant will not adequately defend its position." 46 CIT at __, 577 F. Supp. 3d at 1353–54. As such, DIPs show adequately that they would be "adversely affected or aggrieved" by this court's decision and should be afforded the opportunity to present a distinct legal perspective. DIPs Reply to Pl. Opp'n at 6 (citations omitted).

In addition, the instant matter involves an unusually far-reaching issue of potential consequence for *all* private parties — i.e., the revocation of an AD order if the court remands to the Commission to reconsider the 2016 injury determination that underlies the AD order in this case. *Id.* at 6. For the reasons stated above, DIPs show that they would be adversely affected or aggrieved by a decision of this court in this matter.

3. "Unduly delay or prejudice the adjudication of the original parties' rights"

In determining whether a grant of intervention would "unduly delay or prejudice the adjudication of the original parties' rights" under USCIT Rule 24(b),[10] the court will consider the original parties' rights along with the interests and rights of the parties seeking intervention. Further, in assessing plaintiff's interest, the court must consider the USCIT Rules, which shall "be construed to secure the just, speedy, and inexpensive determination of every action." USCIT R. 1(a). "The negative effect of certain classes of intervenors on the orderly progress of certain proceedings has been noted in some of the cases." *Manuli Autoadesivi*, 9 CIT at 26, 602 F. Supp. at 98.

The court has clarified that motions for intervention must be weighed against the principles of USCIT Rule 1:

> [S]ix plaintiffs have expressed opposition to the Coalition's intervention. In exercising its discretion under § 2631(j)(2) and Rule 24(b), the court concludes that adding the Coalition as intervenors will burden the plaintiffs in all twelve actions with the need to respond to additional submissions and, unavoidably, also cause delays. These burdens and delays are not justified by broadening this litigation to allow the intervention that is sought here. In summary, allowing the intervention would not promote the principle expressed in USCIT Rule 1 that this Court's rules be "construed, administered, and employed by the

[10] Section 2631(j)(2) provides for a similar analysis as USCIT Rule 24(b), stating that "[i]n those civil actions in which intervention is by leave of court, the [Court] shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." 28 U.S.C. § 2631(j)(2).

> court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding."

Primesource, 494 F. Supp. at 1312–13 (quoting USCIT R.1). In contrast with the circumstances presented in *PrimeSource*, the instant case does not present twelve actions for the court's consideration. Rather, the main issues in the instant case are: (1) whether the Court has jurisdiction over the action brought by plaintiff; and (2) whether the Commission's denial of reconsideration was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and otherwise not lawful . . . ." Am. Compl. ¶ 38 (citing 5 U.S.C. § 706).

Last, DIPs state that they will argue that "the Commission does not have the authority to reconsider its final material injury determination under the circumstances present here" — an argument that the Commission has indicated that it will not present to the court. DIPs Reply to Pl. Opp'n at 9. Weighing plaintiff's rights under USCIT Rule 1 with the interests and rights of the DIPs and the court's motivation to receive a full understanding of the legal and factual issues presented and the perspectives of interested parties, the court determines that the intervention of DIPs would not "unduly delay or prejudice the adjudication of the original parties' rights." USCIT R. 24(b).

In conclusion, plaintiff does not demonstrate that the court must reconsider its prior order granting permissive intervention for DIPs.

IV. Permissive intervention of USSC

On February 6, 2023, the court denied USSC's motion to intervene pursuant to USCIT Rule 24(a) but indicated that the court would consider without prejudice a motion by USSC, should it elect to file one, for *permissive* intervention. *See* Order (Feb. 6, 2023), ECF No. 29. *See supra* Section II (analyzing the standard for intervention as of right under USCIT Rule 24(a)).

On February 21, 2023, USSC filed a motion for permissive intervention. *See* USSC Mot. to Intervene. Considering the legal framework delineated above, *supra* Section III, addressing USCIT Rule 24(b) and 28 U.S.C. § 2631(j)(1) and (2), the court denies USSC's motion for permissive intervention. *See id.* In contrast with DIPs, USSC asserts but does not explain how it would be "adversely affected or aggrieved" by the court's decision on the merits in this action. 28 U.S.C. § 2631(j)(1). USSC states only that it "has a strong interest . . . in this litigation as it could jeopardize the [AD] order that [USSC] . . . benefits from as a domestic producer of hot-rolled steel." USSC Mot. to Intervene at 2. USSC explains in conclusory fashion

that "it makes logical sense to allow U.S. Steel to intervene in this action because issues related to jurisdiction impact the companion cases where U.S. Steel has a statutory right to intervene and any disposition of substantive issues in this appeal may impact those appeals." USSC Mot. to Intervene at 3 (citing *Ereğli Demir ve Çelik Fabrikalari T.A.Ş. v. United States*, CIT No. 22–00350; *Ereğli Demir ve Çelik Fabrikalari T.A.Ş. v. United States*, CIT No. 22–00351). These reasons do not provide a basis to conclude that USSC would be "adversely affected or aggrieved" if it were not granted permissive intervention and the court examines USSC's position as presented in the action before it. *Id.*

Further, the Court has stated previously that a proposed intervenor must establish the reasons that the defendant will not adequately defend the position of the proposed intervenor. *See Neo Solar Power*, 2016 WL 3390237, at *2 ("[The proposed intervenor] has not indicated that it will make any arguments distinct from those of the government, accordingly, its participation in the case will be duplicative and unnecessary."); *GreenFirst*, 46 CIT at __, 577 F. Supp. 3d at 1353–54 (noting that the "[proposed defendant-intervenor] has not shown that it will add anything or that [the defendant] will not adequately defend its position"). USSC fails to do so and does not convince the court that its intervention would contribute to the "just, speedy and inexpensive determination" of the instant action." USCIT R. 1(a). Issues raised by USSC were not presented with the care, clarity, precision and persuasiveness such that the court could conclude that the party's participation would contribute to the court's fullest understanding of the issues presented.

CONCLUSION AND ORDER

For the foregoing reasons, plaintiff does not demonstrate that the court should reconsider its prior order granting intervention for DIPs. In addition, proposed defendant-intervenor USSC fails to show that the Commission and DIPs will not adequately defend its position. Accordingly, the court denies plaintiff's motion for reconsideration and denies USSC's motion for permissive intervention.

SO ORDERED.

Dated: May 15, 2023
New York, New York

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

Slip Op. 23–74

BORUSAN MANNESMANN BORU SANAYI VE TICARET A.S. AND BORUSAN MANNESMANN PIPE U.S. INC., Plaintiffs, v. UNITED STATES, Defendant, WHEATLAND TUBE, Defendant-Intervenor.

Before: Jane A. Restani, Judge
Court No. 23–00005

JUDGMENT

The complaint filed in this matter challenging the final determination of the United States Department of Commerce regarding *Circular Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2020–2021*, 87 Fed. Reg. 75,596 (Dep't Commerce Dec. 9, 2022) ("*Final Determination*") raises an issue that has been resolved in favor of the Department in *Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States*, 63 F.4th 25 (Fed. Cir. 2023). The parties have advised that, there being no other issues to adjudicate, judgment should be entered in agreement with that decision. Accordingly, it is **ORDERED**, **ADJUDGED**, and **DECREED** that the *Final Determination* by Commerce is **SUSTAINED**.

Dated: May 15, 2023
New York, New York

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

Slip Op. 23–75

CHINA MANUFACTURERS ALLIANCE, LLC AND DOUBLE COIN HOLDINGS LTD., et al., Plaintiffs, v. UNITED STATES, Defendant.

Before: Timothy C. Stanceu, Judge
Consol. Court No. 15–00124

[Effectuating the mandate of the Court of Appeals for the Federal Circuit and adjudicating the remaining claim in this litigation, in which parties contested an agency determination concluding an administrative review of an antidumping duty order on off-the-road tires from the People's Republic of China]

Dated: May 16, 2023

Daniel L. Porter, Curtis, Mallet-Prevost, Colt & Mosle LLP, of Washington, D.C., for plaintiffs China Manufacturers Alliance, LLC and Double Coin Holdings Ltd. With him on the briefs were *James P. Durling, Matthew P. McCullough*, and *Tung A. Nguyen.*

Ned H. Marshak, Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP, of Washington, D.C., for plaintiffs Guizhou Tyre Co., Ltd. and Guizhou Tyre Import and Export Co., Ltd. With him on the briefs were *Brandon M. Petelin*, *Dharmendra N. Choudhary*, *Andrew T. Schutz*, and *Jordan C. Kahn*.

John J. Todor, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, D.C., for defendant. With him on the briefs were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, *Patricia M. McCarthy*, Director, and *Franklin E. White, Jr.*, Assistant Director. Of counsel was *Paul K. Keith*, Attorney, Office of the Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce, of Washington, D.C.

OPINION AND ORDER

Stanceu, Judge:

In this consolidated case, plaintiffs contested a final determination the International Trade Administration, U.S. Department of Commerce ("Commerce" or the "Department") issued upon the conclusion of the fifth periodic administrative review ("Fifth Review") of an antidumping duty order on certain off-the-road pneumatic tires (the "subject merchandise") from the People's Republic of China ("China" or the "PRC").

This Opinion and Order is issued to effectuate the mandate of the Court of Appeals for the Federal Circuit ("Court of Appeals"), CAFC Mandate in Appeal # 20–1159 (Aug. 2, 2021), ECF No. 253, in *China Mfrs. Alliance, LLC v. United States*, 1 F.4th 1028 (Fed. Cir. 2021) ("*CMA IV*") and to adjudicate the sole claim that remains at issue in this litigation.

I. BACKGROUND

Background on this case is presented in the prior opinions of this Court and the Court of Appeals and is supplemented herein. *See CMA*

IV, 1 F.4th at 1030–35; *China Mfrs. Alliance, LLC v. United States*, No. 19–115, 2019 WL 4165274, at *1–3 (Ct. Int'l Trade Sept. 3, 2019) ("*CMA III*"); *China Mfrs. Alliance, LLC v. United States*, 43 CIT __, __, 357 F. Supp. 3d 1364, 1365–68 (2019) ("*CMA II*"); *China Mfrs. Alliance, LLC v. United States*, 41 CIT __, __, 205 F. Supp. 3d 1325, 1329–32 (2017) ("*CMA I*").

The administrative determination contested in this case, referred to herein as the "Final Results," appeared in two Federal Register publications. *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2012–2013*, 80 Fed. Reg. 26,230 (Int'l Trade Admin. May 7, 2015) (correcting a ministerial error in an earlier published decision, *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013*, 80 Fed. Reg. 20,197 (Int'l Trade Admin. Apr. 15, 2015)).

The plaintiffs in this case are China Manufacturers Alliance LLC and Double Coin Holdings Ltd. (collectively, "Double Coin"), and Guizhou Tyre Co., Ltd. and Guizhou Tyre Export and Import Co., Ltd. (collectively, "GTC"). Double Coin and GTC were the exporters/producers that Commerce selected as the mandatory respondents in the Fifth Review. Defendant is the United States.

II. DISCUSSION

All issues pertaining to the claims brought by GTC in this litigation have been resolved. As to Double Coin, the court first must interpret the scope of the mandate of the Court of Appeals in *CMA IV*, on which Double Coin and defendant United States disagree, as shown by submissions they made to the court following the issuance of that mandate. The court then must decide what issues, if any, remain to be litigated as to the claims of Double Coin.

A. Double Coin's Claim Concerning Control by the Government of the PRC Has Not Been Adjudicated

Double Coin argues that remaining to be adjudicated is its claim that Commerce erred in finding that Double Coin failed to rebut the Department's presumption that Double Coin is controlled by the government of the PRC. Joint Status Report and Proposed Briefing Schedule 1–3 (Sept. 17, 2021), ECF No. 255. Disagreeing, defendant argues that this claim already has been adjudicated in its favor.

According to defendant, the Court of Appeals held in *CMA IV* that "Commerce's application of the 105.31% PRC-wide entity rate to Double Coin was not contrary to law and was reasonable on the facts of this case." *Id*. at 4 (quoting *CMA IV*, 1 F.4th at 1040). Defendant

interprets this statement in the *CMA IV* opinion to mean that the Court of Appeals has adjudicated the claim at issue on the merits and that Commerce, on remand, must assign Double Coin the 105.31% rate Commerce determined for the PRC-wide entity in the Final Results, which rate the Court of Appeals, reversing this Court's decision and judgment in *CMA III*, ruled was according to law as applied to that entity. If defendant is correct, no issues remain to be decided in this litigation. If Double Coin is correct, then the court now must adjudicate its claim contesting the Department's determination that Double Coin failed to rebut the presumption of control by the PRC government and the Department's resulting decision to include Double Coin within the PRC-wide entity. Were Double Coin to prevail on that claim, Commerce would be required on remand to assign to Double Coin the rate Commerce calculated for Double Coin in the Final Results, which was a *de minimis* rate of 0.14%. *Issues and Decision Memorandum for Final Results of Antidumping Duty Administrative Review: Certain New Pneumatic Off-the-Road Tires from the People's Republic of China; 2012–2013* at 12 (Int'l Trade Admin. Apr. 8, 2015), P.R. 293 ("*Final I&D Mem.*").[1]

The court concludes that Double Coin is correct as to the interpretation of the mandate of the Court of Appeals. *CMA IV* held that it is permissible for Commerce to determine a "country-wide NME [non-market economy] entity rate" and to "assign such a rate to the unitary group of exporters in an NME country that have failed to rebut the presumption of government control." *CMA IV*, 1 F. 4th at 1039. Commerce determined that Double Coin failed to rebut the presumption and thus was among the unitary group of exporters, but that determination, which Double Coin contested in one of the claims it asserted in this action, has not been adjudicated by this Court. As defendant acknowledges, this Court "did not make any findings in *CMA I* regarding Double Coin's substantial evidence challenge to Commerce's conclusion that Double Coin failed to rebut the presumption of *de facto* Chinese government control." Def.'s Resp. to Pls.' Mot. for J. on the Admin. R. 5 (Feb. 4, 2022), ECF No. 264; *see CMA I*, 41 CIT at __, 205 F. Supp. 3d at 1344. The issue of whether substantial evidence supported that agency decision was not before the Court of Appeals in *CMA IV*, this Court not having adjudicated Double Coin's claim contesting it. Accordingly, the judgment of this Court set aside by *CMA IV* was not a judgment on the merits of Double Coin's claim contesting the Department's determination that Double Coin failed to rebut the presumption of government control. Judgment (Sept. 3,

[1] References to public documents in the Joint Appendix (Mar. 11, 2022), ECF Nos. 266 (Public), 267 (Conf.) are cited as "P.R. __."

2019), ECF No. 243. The court, therefore, proceeds to adjudicate that claim as asserted in support of Double Coin's motion for judgment on the agency record.

The parties have submitted updated briefing on Double Coin's motion. Opening Br. of Pls. China Manufacturing Alliance, LLC and Double Coin Holdings, Ltd. (Dec. 6, 2021), ECF Nos. 260 (Conf.), 261 (Public) ("Double Coin's Br."); Pls.' Rule 56.2 Mot. for J. on the Agency R. (Dec. 6, 2021), ECF Nos. 260 (Conf.), 261 (Public). Defendant has responded in opposition to this motion, Def.'s Resp. to Pls.' Mot. for J. on the Admin. R. (Feb. 4, 2022), ECF No. 264, and plaintiffs have replied, Reply Br. of Pls. China Manufacturers Alliance, LLC and Double Coin Holdings, Ltd. (Feb. 25, 2022), ECF No. 265.

B. The Department's Determination that Double Coin Failed to Rebut the Presumption of Government Control Is Supported by Substantial Evidence

In determining that Double Coin failed to rebut the presumption of *de facto* control over its export functions by the Chinese government, Commerce relied principally on Double Coin's corporate ownership structure. Commerce found that Double Coin's majority shareholder was the Huayi Group ("Huayi"), which held a 65.66% ownership share. *Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Certain Pneumatic Off-the-Road-Tires from the People's Republic of China, 2012–2013* at 10 (Int'l Trade Admin. Sept. 30, 2014), P.R. 259 ("*Prelim. Decision Mem.*"); *Final I&D Mem.* at 16 (incorporating findings from *Prelim. Decision Mem.*). Commerce also found that Huayi is 100% owned by the Shanghai State-owned Assets Supervision and Administration Commission of the State Council ("SASAC") and that SASAC "is a central governmental body that oversees important state assets." *Prelim. Decision Mem.* at 10. The record also contains evidence that no other shareholder held more than a one percent ownership share. *2012–2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Analysis of the Preliminary Results Margin Calculation for Double Coin* at 11 (Int'l Trade Admin. Sept. 30, 2014), P.R. 264 (citing *Double Coin's Section A Response* at 2–3 (Jan. 22, 2014), P.R. 48, 55).

Commerce also reached findings addressing what it considered to be the effect of the level of government ownership in Double Coin. Commerce found that "as Huayi is the controlling shareholder, it is the entity controlling Double Coin's board and management." *Final I&D Mem.* at 15. It also found that "Double Coin's Articles of Association demonstrate that a majority shareholder—and particularly

one with a 65.66 percent ownership—has near complete control over any shareholder decisions, including decisions which may affect the management and operations of the company." *Id.* at 16. Commerce found, in summary, that "there is undeniable evidence that the 100 percent SASAC-owned majority-owner of Double Coin exerts considerable influence over the board of directors (and, thus, the management and operations of the company), and that the factual record does not provide sufficient information to rebut the presumption of government control." *Id.* at 18.

In support of its motion for judgment on the agency record, Double Coin acknowledges that Huayi "has significant influence in the constitution of the board, and even in the selection of Double Coin's management" but argues that "such right does not automatically result in control by Huayi over the board and management." Double Coin's Br. 36. Double Coin argues that despite the majority government ownership, it retained control over its own business activities, and, in particular, its export activities. *Id.* at 10, 39–50. Double Coin points out that its U.S. subsidiary, China Manufacturers Alliance, set prices directly with U.S. customers. *Id.* at 44. Double Coin also argues that Commerce, although saying it applied a four-factor test to make its determination, departed from its established policy by regarding its decision on the third factor as the controlling factor, which was whether a respondent has autonomy from the government in making decisions regarding the selection of management.[2] *Id.* at 13–15.

Double Coin's remaining claim turns on the issue of the level of discretion Commerce may exercise in determining whether a majority-government-owned respondent has rebutted its presumption of *de facto* government control. The court concludes that this discretion is considerably broad.

The Court of Appeals repeatedly has affirmed the Department's authority to apply a rebuttable presumption of government control, even to a cooperative mandatory respondent, and to apply to that respondent a rate selected for the PRC-wide entity if the presumption

[2] Concerning its four-factor test, Commerce explained:

> Typically, the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

Decision Mem. for Preliminary Results of Antidumping Duty Administrative Review: Certain Pneumatic Off-the-Road-Tires from the People's Republic of China, 2012–2013 at 8 (Int'l Trade Admin. Sept. 30, 2014), P.R. 259 (citing two previous administrative determinations).

is not rebutted. *CMA IV*, 1 F.4th at 1039; *Diamond Sawblades Mfrs. Coal. v. United States*, 866 F.3d 1304 (Fed. Cir. 2017). Commerce has not grounded its exercise of that authority in a specific provision of the Tariff Act or implementing regulations. *See Jilin Forest Indus. Jinqiao Flooring Grp. Co. v. United States*, No. 23–14, 2023 WL 1867677, at *9 (Ct. Int'l Trade Feb. 9, 2023). Thus, there is no statutory language, legislative history, or regulatory language or preamble to guide a court when ruling on the Department's decision to apply its methodology. According to that methodology as applied in the Fifth Review, the presumption of government control over export functions, as a general matter, is not rebutted if a board of directors under the control of a majority government shareholder had the authority and potential to select and oversee company management.

Untethered by statutory or regulatory standards, Commerce was free to change its interpretation and application of the four-factor test at any time, so long as it provided a reasonable explanation for a departure from past practice. *See, e.g.*, *Atchison, T. & S. F. Ry. Co. v. Wichita Bd. of Trade*, 412 U.S. 800, 808 (1973); *Allegheny Ludlum Corp. v. United States*, 346 F.3d 1368, 1373 (Fed. Cir. 2003) (citing *Atchison*, 412 U.S. at 808) ("Commerce is permitted to deviate from this past practice, at least where it explains the reason for its departure," where the "past practice" was "not a burden imposed by statute or regulation" but was merely "a general practice of Commerce."). For the Final Results, Commerce explained that it revised its practice in response to the decision of this Court in *Advanced Tech. & Materials Co. v. United States*, 36 CIT 1576, 1593, 885 F. Supp. 2d 1343, 1359 (2012), *aff'd*, 581 F. App'x 900 (Fed. Cir. 2014) (reasoning that absent proof otherwise, management of a company with majority government ownership should be presumed "to be beholden to the board that controls their pay . . . ."). *Final I&D Mem.* at 18 n.64. Although the decisions of this Court and the Court of Appeals in the *Advanced Tech. & Materials* litigation are not precedential, nothing precluded Commerce from being guided by them in revising the practice by which it applies its *de facto* test. For these reasons, the court is not persuaded by Double Coin's argument that Commerce exceeded its discretion by giving controlling weight to its third factor on the record facts of the review.

Nor is the court persuaded by Double Coin's argument that substantial evidence did not support a finding that Huayi actually controlled day-to-day business decisions during the period of review, including decisions on the pricing of exports. Under its revised *de facto* test, Commerce need not base its decision entirely on evidence, or the lack thereof, of direct government control of the day-to-day

general business operations, or the export-related operations in particular, of a majority-government-owned corporation. Instead, Commerce may consider whether there is indirect, or potential, control of such day-to-day operations because of a government-influenced board of directors that has the authority to appoint and oversee a company's management. That is what Commerce did for the Final Results. *Final I&D Mem.* at 16 (emphasis added) (finding "near complete control over any shareholder decisions, including decisions which *may* affect the management and operations of the company.").

Moreover, an agency may draw reasonable inferences from the record evidence considered as a whole. *SeAH Steel VINA Corp. v. United States*, 950 F.3d 833, 845 (Fed. Cir. 2020) (quoting *Matsushita Elec. Indus. Co., Ltd. v. United States*, 750 F.2d 927, 933 (Fed. Cir. 1984) for the principle that "substantial evidence includes 'reasonable inferences from the record'"). Under its revised test, it sufficed that Huayi, a government entity, was the majority shareholder, that no other shareholder had more than a one percent share, and, as Double Coin itself acknowledges, that Huayi had significant influence in the constitution of the board and the selection of Double Coin's management. From these facts, Commerce reasonably inferred that an entity of the Chinese government, among all shareholders, had outsized influence over all business decisions of Double Coin.

Double Coin argues that despite Huayi's significant influence in the constitution of the board and selection of management, Huayi did not "control" the board and management because the board must act in the best interest of Double Coin, because minority shareholders may bring suit against board members who fail such duty, and because of the presence of "independent" board members. Double Coin's Br. 36. Double Coin explains that independent board members are required to act without the interference of the principal shareholders, or of persons in actual control or holding a material interest in, the company. *Id.* at 37 (citing Article 130 of Double Coin's Articles of Association ("AoAs"), P.R. 192). It points out that three of the seven directors were independent directors. *Id.* at 35 n.4. Double Coin points to safeguards such as Article 35 of the AoAs, which recognizes the right of a minority shareholder to bring suit against a member of the board or senior management who acts against the interests of the company and thereby breaches applicable law or Double Coin's AoAs. *Id.* at 34. Double Coin also mentions the right of holders of 10% of shares to call a shareholders' meeting, and of shareholders of 3% of shares to raise a proposal at a shareholders' meeting, adding that Huayi's shares would be excluded from voting in the event of a conflict of interest on a decision under debate. *Id.*

Double Coin's arguments are unconvincing because they are based on a presumption that the effect of government control is manifested only when there is conflict or "interference" between the governmental and commercial interests of a company. Double Coin fails to explain why Commerce, when examining the effect of government ownership in the context of a company's governing structure, was required to construe the influence and effect of government control so narrowly. Implicit in the Department's inquiry under its revised four-factor test is that a government-controlled business enterprise differs fundamentally from one that is free of government control with respect to its export functions. Because of the breadth of the Department's discretion in implementing its test for government control of export functions, the court has no reason to conclude that Commerce may not do so. In its narrow focus on "conflict" or "interference" with commercial interests, Double Coin fails to recognize that a government-controlled company may have, for example, commercial advantages, as well as commercial disadvantages, compared to companies that are independent of such control. On the evidentiary record of the Fifth Review, Commerce reasonably could conclude that Double Coin failed to demonstrate independence from aspects of government control over its business operations in general. Commerce reasonably could infer that this level of government control was inconsistent with the independent exercise of decision-making over export functions.

III. CONCLUSION AND ORDER

Commerce centered its inquiry on the influence of a government-controlled majority shareholder on the selection and supervision of management. That inquiry is not necessarily confined to a consideration of evidence of government control over management's day-to-day business decisions. In the absence of a statute or regulation that defines or otherwise governs this inquiry, the court lacks a basis to conclude that Commerce acted contrary to law in exercising its broad discretion in this way.

The court concludes, further, that the record evidence as a whole supported the Department's findings, and reasonable inferences, which in the aggregate showed that Double Coin failed to demonstrate that it was free of the influence of Huayi on its board and, indirectly, on its management. While Double Coin put forth certain evidence of independence of government control, including, in particular, the ability of its U.S. affiliate to set prices of subject merchandise, it did not show that it was free from all material aspects of government control that emanated from the authority of the board to

select and oversee the company's management personnel. Therefore, the court sustains as supported by substantial record evidence the determination that Double Coin failed to rebut the presumption of control of export functions, when viewed according to the methodology Commerce permissibly applied in the review.

Finally, Commerce permissibly having found that Double Coin did not rebut its presumption of government control of its export functions, and there being no other issues to be decided in this litigation by either Commerce or the court, Commerce must issue a new determination upon remand. That determination must effectuate the mandate of the Court of Appeals in *CMA IV* by assigning Double Coin the PRC-wide rate of 105.31%, which will allow the court to enter judgment concluding this litigation.

Therefore, upon consideration of all papers and proceedings had herein, and upon due deliberation, it is hereby

ORDERED that Plaintiffs' Rule 56.2 Motion for Judgment on the Agency Record (Dec. 6, 2021), ECF Nos. 260 (Conf.), 261 (Public) be, and hereby is, denied; it is further

ORDERED that Commerce shall issue a new determination upon remand that assigns to Double Coin the PRC-wide rate of 105.31%; and it is further

ORDERED that Commerce shall issue the required redetermination within 30 days of the issuance of this Opinion and Order.

Dated: May 16, 2023
New York, New York

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

Slip Op. 23–76

CYBER POWER SYSTEMS (USA) INC., Plaintiff, v. UNITED STATES, Defendant.

Before: Leo M. Gordon, Judge
Court No. 20–00124

Dated: May 16, 2023

John M. Peterson, *Richard F. O'Neill*, and *Patrick B. Klein*, Neville Peterson LLP, of New York, N.Y., for Plaintiff Cyber Power Systems (USA) Inc.

Luke Mathers, Trial Attorney, and *Beverly A. Farrell*, Senior Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of New York, N.Y., for Defendant United States. With them on the brief were *Brian M. Boynton*, Principal Deputy Assistant Attorney General, *Patricia M. McCarthy*, Director, and *Justin R. Miller*, Attorney-in-Charge. Of counsel was *Yelena Slepak*, Attorney, Office of the Assistant Chief Counsel, International Trade Litigation, U.S. Customs and Border Protection, of New York, N.Y.

MEMORANDUM and ORDER

Gordon, Judge:

Before the court is Plaintiff's Motion for Partial Reconsideration or Retrial. *See* ECF No. 161 ("Pl.'s Motion"); *see also* Defendant's Response in Opposition, ECF No. 162 ("Def.'s Resp."); Plaintiff's Reply, ECF No. 163. Following trial, the court held that Plaintiff failed to carry its burden of proof to (1) overcome the presumption of correctness attached to U.S. Customs and Border Protection's original determination that the subject four models of uninterruptible power supplies and one model of surge voltage protectors were products of the People's Republic of China, and (2) show, by a preponderance of the evidence, that these subject devices were substantially transformed into products of the Republic of the Philippines. *Cyber Power Sys. (USA) Inc. v. United States*, No. 20–00124, 47 CIT ___, ___, 2023 WL 2231894, at *1 (Feb. 27, 2023); *see also* 28 U.S.C. § 2639(a)(1) (establishing statutory presumption of correctness that imposes burden of proof on Plaintiff for contested factual issues).

By its motion, Plaintiff requests reconsideration or retrial under USCIT Rule 59. Pl.'s Motion 1. "[D]isposition of a Rule 59 motion is 'within the sound discretion of the court.'" *Since Hardware (Guangzhou) Co. v. United States*, 38 CIT ___, ___, 37 F. Supp. 3d 1354, 1359 (2014) (quoting *USEC, Inc. v. United States*, 25 CIT 229, 230, 138 F. Supp. 2d 1335, 1336 (2001)). "Such motions do not permit an unsuccessful party to re-litigate a case, but are supposed 'to address a fundamental or significant flaw in the original proceeding.'" *Id.*; *see also Ball v. Interoceanica Corp.*, 71 F.3d 73, 77 (2d Cir. 1995). The standard for determining whether the court's prior decision

should be disturbed is "manifestly erroneous." *Since Hardware*, 38 CIT at ___, 37 F. Supp. 3d at 1359 (quoting *USEC*, 25 CIT at 230, 138 F. Supp. 2d at 1337). A judgment in a bench trial "should not be set aside except for substantial reasons." 11 Charles A. Wright & Arthur R. Miller, *Fed. Prac. & Proc. Civ.* § 2804 (3d ed. 2023).

Plaintiff's motion fails to identify a manifest error or "a fundamental or significant flaw" in the court's Findings of Fact and Conclusions of Law. Specifically, Plaintiff's motion is premised on the incorrect assumption that the court found that Plaintiff overcame the statutory presumption of correctness attached to Customs' country of origin determination as to five of the six models of subject merchandise. As the court stated in its opinion, Plaintiff "*failed* in its burden of proof from the outset" with respect to its preferred country of origin as to these five models. *Cyber Power*, 47 CIT at ___, 2023 WL 2231894, at *11 (emphasis added). Moreover, the court agrees with the reasoning set forth in Defendant's response, which explains in detail why Plaintiff's motion fails. *See* Def.'s Resp. 6–10.

Accordingly, it is hereby

ORDERED that Plaintiff's Motion for Partial Reconsideration or Retrial pursuant to USCIT Rule 59 is denied.

Dated: May 16, 2023
New York, New York

/s/ Leo M. Gordon
JUDGE LEO M. GORDON

Slip Op. 23–77

BORUSAN MANNESMANN BORU SANAYI VE TICARET A.S. AND BORUSAN MANNESMANN PIPE U.S. INC., Plaintiffs, v. UNITED STATES, Defendant, WHEATLAND TUBE AND NUCOR TUBULAR PRODUCTS INC., Defendant-Intervenors.

Before: Jane A. Restani, Judge
Court No. 22–00057

JUDGMENT

The complaint filed in this matter challenging the final determination of the United States Department of Commerce regarding *Circular Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2019–2020*, 87 Fed. Reg. 8,785 (Dep't Commerce Feb. 16, 2022) ("*Final Determination*") raises an issue that has been resolved in favor of the Department in *Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States*, 63 F.4th 25 (Fed. Cir. 2023). The parties have advised that, there being no other issues to adjudicate, judgment should be entered in agreement with that decision. Accordingly, it is **ORDERED**, **ADJUDGED**, and **DECREED** that the *Final Determination* by Commerce is **SUSTAINED**.

Dated: May 17, 2023
New York, New York

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

Slip Op. 23–78

BORUSAN MANNESMANN BORU SANAYI VE TICARET A.S. AND BORUSAN MANNESMANN PIPE U.S. INC., Plaintiffs, v. UNITED STATES, Defendant, WHEATLAND TUBE AND NUCOR TUBULAR PRODUCTS INC., Defendant-Intervenors.

Before: Jane A. Restani, Judge
Court No. 21–00132

JUDGMENT

The complaint and USCIT R. 56.2 motion filed in this matter challenging the final determination of the United States Department of Commerce regarding *Circular Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–2019*, 86 Fed. Reg. 15,190 (Dep't Commerce Mar. 22, 2021) ("*Final Determination*") raise issues that have been resolved in favor of the Department in *Transpacific Steel LLC v. United States*, 4. F.4th 1306 (Fed. Cir. 2021) and *Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States*, 63 F.4th 25 (Fed. Cir. 2023). The parties have advised that, there being no other issues to adjudicate, judgment should be entered in agreement with those decisions. Accordingly, it is **ORDERED** , **ADJUDGED** , and **DECREED** that the *Final Determination* by Commerce is **SUSTAINED**.

Dated: May 17, 2023
New York, New York

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

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